

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
BOTTOM MOUNT COMBINATION) Investigation No.:
REFRIGERATOR-FREEZERS FROM) 701-TA-477 and
KOREA AND MEXICO) 731-TA-1180-1181 (Final)

REVISED AND CORRECTED COPY

Pages: 1 through 314
Place: Washington, D.C.
Date: March 13, 2013

HERITAGE REPORTING CORPORATION

Official Reporters

1220 L Street, N.W., Suite 600

Washington, D.C. 20005

(202) 628-4888

contracts@hrccourtreporters.com

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
BOTTOM MOUNT COMBINATION) Investigation No.:
REFRIGERATOR-FREEZERS FROM) 701-TA-477 and
KOREA AND MEXICO) 731-TA-1180-1181 (Final)

Tuesday,
March 13, 2013

Main Hearing Room
International Trade Commission
500 E Street, S.W.
Washington, D.C.

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

APPEARANCES:

On Behalf of the International Trade Commission:

Commissioners:

VICE CHAIRMAN IRVING A. WILLIAMSON
COMMISSIONER DANIEL R. PEARSON
COMMISSIONER SHARA L. ARANOFF
COMMISSIONER DEAN A. PINKERT
COMMISSIONER DAVID S. JOHANSON

Staff:

BILL BISHOP, Hearings and Meetings Coordinator
SHARON BELLAMY, Hearings and Meetings Assistant
CHRISTOPHER CASSISE, Investigator
RUBEN MATA, International Trade Analyst
JOHN BENEDETTO, Economist
JUSTIN JEE, Accountant/Auditor
KARL VON SCHRILTZ, Attorney
JAMES McCLURE, Supervisory Investigator

APPEARANCES: (Cont'd)

In Support of Antidumping and Countervailing Duty Orders:

On behalf of Whirlpool Corporation:

DR. MARC BITZER, President, Whirlpool North America

THOMAS SCHWYN, Vice President and Associate General Counsel, Whirlpool Corporation

JUSTIN REINKE, Product Director, Bottom Mount Refrigeration, Whirlpool Corporation

ADRIAN ESTRADA, Director of Legal Services, Whirlpool North America

In Support of the Imposition of Antidumping and Countervailing Duty Orders:

COLLEEN P. LOUGHLIN, Vice President, Compass Lexecon

CARL MOYER, Director of Economic Analysis, Cassidy Levy Kent

JOHN D. GREENWALD, Esquire

JACK A. LEVY, Esquire

Cassidy Levy Kent

2000 Pennsylvania Avenue, N.W., Suite 4500

Washington, D.C. 20006

(202) 567-2300

APPEARANCES: (Cont'd)

In Opposition to the Imposition of Antidumping and
Countervailing Duty Orders:

on behalf of

Samsung Electronics Co., Ltd. ("SEC")
Samsung Electronics S.A. de C.V. ("SEM")
Samsung Electronics America, Inc. ("SEA")

KEVIN DEXTER, Senior Vice President, Home
Appliances, SEA
KURT JOVAIS, Vice President of Marketing, Home
Appliances, SEA
EUGENE SEAGRIFF, Marketing Manager, Refrigerators,
SEA
I.S. CHOI, Business Managers, Refrigerators, SEA
DANIEL W. KLETT, Economist, Capital Trade Inc.

WARREN E. CONNELLY, Esquire
JARROD M. GOLDFEDER
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564
(202) 887-4000

APPEARANCES: (Cont'd)

In Opposition to the Imposition of Antidumping and
Countervailing Duty Orders:

on behalf of

LG Electronics U.S.A., Inc. ("LG USA")
LG Electronics Inc. ("LGE")
LG Electronics Monterrey Mexico, S.A. de C.V. ("LG
Mexico")

JOHN HERRING, Vice President of Sales, Home
Appliance National Accounts, LG
KIBEOM KIM, Senior Managers, International Group,
LG
DAEKWON KIM, Manager, International Group, LG
YOUNG NOH, Product Manager, Digital Appliances, LG
RICK WINGATE, Vice President and Regional General
Counsel for North America, LG
DANIEL W. KLETT, Economist, Capital Trade, Inc

RICHARD O. CUNNINGHAM, Esquire
THOMAS J. TRENDL, Esquire
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-6434

on behalf of

The Home Depot, Inc.

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

JAMES JOCHUM, Esquire
MARGUERITE TROSSEVIN, Esquire
Jochum Shore & Trossevin PC
11 H Street, N.W., Suite 910
Washington, D.C. 20005
(202) 281-4886/251-6170

APPEARANCES: (Cont'd)

In Opposition to the Imposition of Antidumping and
Countervailing Duty Orders:

on behalf of

Electrolux North America, Inc.
Electrolux Home Products, Inc.
Electrolux Home Products, Corp. N.V.

Matthew P. Jaffe
Neville Peterson LLP
Washington, D.C.

I N D E X

	PAGE
OPENING STATEMENT OF JOHN D. GREENWALD Cassidy Levy Kent	14
OPENING STATEMENT OF RICHARD O. CUNNINGHAM Steptoe and Johnson LLP	18
TESTIMONY OF DR. MARC BITZER President, Whirlpool North America	22
TESTIMONY OF KEVIN DEXTER Senior Vice President, Home Appliances, SEA	151
TESTIMONY OF EUGENE SEAGRIFF Marketing Manager, Refrigerators, SEA	160
TESTIMONY OF JOHN HERRING Vice President of Sales, Home Appliance National Accounts, LG	165
TESTIMONY OF ROBERT BAIRD Merchandising Vice President, Appliances & Kitchens, The Home Depot, Inc.	175
TESTIMONY OF DANIEL W. KLETT Economist, Capital Trade, Inc.	187
CLOSING STATEMENT OF JOHN D. GREENWALD Cassidy Levy Kent	302
CLOSING STATEMENT OF RICHARD O. CUNNINGHAM Steptoe and Johnson LLP	310

P R O C E E D I N G S

(9:30 a.m.)

1
2
3 VICE CHAIRMAN WILLIAMSON: Good morning. On
4 behalf of the U.S. International Trade Commission, I
5 welcome you to this hearing on Investigation No. 701-
6 TA-447 and 731-TA-1180-1181. This is final, involving
7 bottom-mount combination refrigerator-freezers from
8 Korea and Mexico.

9 The purpose of these investigations is to
10 determine whether an industry in the United States is
11 materially injured or threatened with material injury
12 or the establishment of an industry in the United
13 States is materially retarded by reason of subsidized
14 imports from Korea, and less than fair value imports
15 of bottom-mount combination refrigerator-freezers from
16 Korea and Mexico.

17 A schedule setting forth the presentation of
18 this hearing, notices of investigation, and transcript
19 order forms are available at the public distribution
20 table. All prepared testimony should be given to the
21 secretary. Please do not place testimony directly on
22 the public distribution table.

23 All witnesses must be sworn in by the
24 secretary before presenting testimony. I understand
25 that the parties are aware of the time allocations.

1 Any questions regarding the time allocations should be
2 directed to the secretary. Speakers are reminded not
3 to refer in their remarks or answers to questions to
4 business proprietary information. Please speak
5 clearly into the microphone and state your name for
6 the record for the benefit of the court reporter.

7 Finally, if you will be submitting documents
8 that contain information you wish classified as
9 business confidential, your request should comply with
10 Commission rule 201.6.

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

13 MR. BISHOP: No, Mr. Chairman.

14 VICE CHAIRMAN WILLIAMSON: Very well. Will
15 you please announce our embassy witness?

16 MR. BISHOP: Salvador Behar, Legal Counsel
17 for International Trade, the Embassy of Mexico.

18 VICE CHAIRMAN WILLIAMSON: Mr. Behar,
19 welcome to the Commission. You may begin.

20 MR. BEHAR: Thank you, Vice Chairman
21 Williamson. Thank you very much, Vice Chairman
22 Williamson. Good morning, members of the Commission.
23 The government of Mexico wants to thank again the
24 opportunity to express its views on this case.

25 For the record, I am Salvador Behar, Legal

1 Counsel for International Trade at the Embassy of
2 Mexico. First of all, I would like to emphasize the
3 concerns that the Mexican government has regarding
4 this investigation. I want to say that we have been
5 closely following these developments.

6 The U.S., it is Mexico's closest and most
7 important trading partner. The free flow of trade
8 between the two countries is essential in order to
9 continue recovering from the crippling global economic
10 recession. Therefore, the Mexican government is
11 deeply concerned about the severe impact on the
12 industry and our citizens that would result if the
13 U.S. imposes duties on our exports of bottom-mount
14 refrigerators.

15 Now, let me address a couple of the merits
16 of the case, and in particular the following five
17 points. First, it is very important to highlight that
18 the refrigerator is not a refrigerator, as it was
19 quoted. As your staff report correctly observes, BMRs
20 are available in a different range of depths,
21 capacities, and configurations. It varies from door-
22 to-door, three door, French door, and a four door,
23 French door configurations.

24 BMRs are available in an array of different
25 features, including LED lighting, LCD displays,

1 stainless steel exteriors, and external ice and water
2 dispensers. The diversity of BMRs makes it difficult
3 to consider them as a unique product when evaluating
4 the competitive conditions of the U.S. market.
5 Therefore, we respectfully ask the Commission to
6 ensure that the analysis of import behavior and prices
7 and the financial condition of the U.S. industry,
8 comparing domestic refrigerators with those only
9 imported products that have the same characteristics,
10 including capacity and other features.

11 In doing so, the Commission will find
12 increasing demand for Mexican BMRs can be attributed
13 to differences in features and in style, which play a
14 key role in consumer decisions concerning these kind
15 of refrigerators. Most importers and purchasers have
16 agreed that consumer decisions are driven by
17 innovative features and style, and not the lowest
18 price.

19 Second, the Commission's preliminary
20 findings stated that the profits associated with the
21 U.S. producers' production decreased in 2011. We
22 noticed that this decrease was due party in the
23 increase of raw material prices and factory overhead
24 costs, which increased significantly in 2011. We
25 consider that the increasing cost reflects problems of

1 U.S. producers' own cost inefficiencies of BMRs, which
2 has nothing to do with Mexican producers. These cost
3 inefficiencies are similar to those that led one of
4 the domestic producers to close its manufacturing
5 facility in Evansville, Indiana, and then transfer the
6 production assets to Mexico.

7 Third, when the Commission analyzes all the
8 factors mentioned in article 3.5 of the antidumping
9 agreement, it is clear that Mexican imports are not
10 the cause of the alleged injury. For example, the
11 Commission report states that the cycle of innovation
12 in the BMR market is very short. The U.S. Petitioner
13 has been unable to introduce competitive products in
14 the domestic market in a timely fashion, facing a
15 disadvantage vis-à-vis imported BMRs when considering
16 the importance of new features and style to U.S.
17 consumers.

18 Also, in the U.S., it is a common commercial
19 practice for manufacturers and retailers of different
20 kinds of products to offer discounts on their sales of
21 a specific product during certain promotional periods,
22 such as President's Day, Memorial Day, Labor Day, and
23 Black Friday. Even though discounts are offered
24 during these promotional periods, purchasing decisions
25 of BMRs are still driven by consumer preferences and

1 not solely or primarily by discounted prices.

2 Four, the Commission must consider that most
3 suppliers follow the Petitioner's lead in making price
4 changes, including for promotional periods.

5 Purchasers stated that the Petitioner is the lead
6 driver in the U.S. market for price increases and
7 decreases, setting the price discounts on obsolete
8 products and offering rebates to end users.

9 Finally, our comments on the merits of this
10 case are necessarily limited because under the
11 Commission rules, we are only permitted to review the
12 public record of the preliminary determination and
13 prehearing staff report. We are conscious of the
14 confidentiality provisions in the statute that require
15 the Commission to classify and restrict access to
16 business proprietary information, BPI, provided in
17 antidumping investigations.

18 In spite of that, article 12.2.1 of the
19 antidumping agreement provides that, and I quote, "A
20 public notice of the imposition of provisional
21 measures shall set forth, or otherwise make available
22 through a separate report, sufficiently detailed
23 explanations for the preliminary determinations on
24 dumping and injury, and shall refer to the matters of
25 fact and law which have led to the arguments being

1 accepted or rejected," end of quote.

2 We respectfully submit that the preliminary
3 determination and prehearing staff report contained
4 excessive treatment of information as confidential.
5 Several critical figures, such as the apparent U.S.
6 consumption, U.S. market shares, price trends, and
7 U.S. employment trends were all redacted from the
8 public versions of these documents. The Commission
9 also treated the perceptions of consumers -- sorry, of
10 producers and purchasers and importers regarding the
11 conditions of the U.S. market as confidential.

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

18 Mexico would encourage the Commission to
19 justify its assessment of the facts and evidence in
20 the record and reconsider the treatment given to this
21 information. Mexico respectfully requests that the
22 Commission takes this testimony into consideration,
23 and further concludes that the imports of BMRs from
24 Mexico are not the source of injury or threat thereof
25 in this investigation.

1 Thank you very much, and this concludes my
2 remarks.

3 VICE CHAIRMAN WILLIAMSON: Okay. Thank you.
4 Are there any questions?

5 (No audible response.)

6 VICE CHAIRMAN WILLIAMSON: Thank you for
7 your testimony.

8 MR. BEHAR: Thank you very much, Mr.
9 Chairman.

10 VICE CHAIRMAN WILLIAMSON: Okay.

11 MR. BISHOP: Opening remarks on behalf of
12 Petitioner will be by John D. Greenwald, Cassidy Levy
13 Kent.

14 VICE CHAIRMAN WILLIAMSON: Welcome, Mr.
15 Greenwald.

16 MR. GREENWALD: Good morning, Chairman
17 Williamson and members of the Commission. Thank you
18 for the opportunity for us to be here today. My name
19 is John Greenwald of Cassidy Levy Kent. We are
20 counsel to Petitioner Whirlpool.

21 Let me open by walking you through the
22 evidence, largely undisputed, which has been captured
23 by a comprehensive, well-written, easily digestible
24 staff report. The evidence shows that the domestic
25 industry has lost significant market share to subject

1 imports. It shows that the domestic industry has lost
2 a very substantial multi-year sale to subject imports.
3 It shows that competition in the U.S. market is
4 characterized by heavy promotional pricing because the
5 U.S. market is sensitive to change in relative pricing
6 among competitors.

7 It shows that price is a major factor behind
8 decisions to purchase a particular brand of bottom-
9 mount refrigerators, decisions not to purchase a
10 particular brand, and even decisions not to consider
11 purchasing a particular brand. And the evidence also
12 shows that when consumers narrow their choice down to
13 two or three options, price becomes a decisive factor.

14 The evidence shows that subject imports have
15 often undercut U.S. producer prices, and the evidence
16 shows that U.S. producer prices have declined
17 significantly over the period of investigation when
18 held constant for feature load, despite rising costs.

19 The evidence shows that U.S. producer prices more
20 often than not have been drawn down to levels set by
21 subject imports, and the evidence shows that a once
22 solidly profitable U.S. business has become
23 unprofitable, and a major investment in U.S.
24 production facilities has been put at risk.

25 Neither Samsung nor LG really dispute this

1 core evidence. Instead, they base their argument on
2 three contentions. The first is that the Commission
3 should make the evidence of material injury disappear
4 by rewriting Whirlpool's financial data, which
5 parenthetically have now been verified by the
6 Commission.

7 Second, they argue that because Whirlpool
8 like Samsung and LG discounts its own bottom-mount
9 refrigerators -- and this is particularly true in 2011
10 -- it has no basis for legitimate complaint.

11 And third, they argue that even if *they*
12 discount, even if price matters, and even if they have
13 been dumping, Whirlpool cannot complain because a
14 relatively small portion of their period of
15 investigation sales are refrigerators larger than
16 Whirlpool's largest refrigerators, and their
17 refrigerators have more features and are much admired
18 for their fit and finish.

19 As you very well know, you may not write a
20 domestic industry's verified financials, no matter how
21 much a respondent wants you to. And even taking
22 Samsung's and LG's claims at face value, refrigerator
23 size, feature load, or fit and finish do not confer a
24 license to dump.

25 Finally, the Commission may not weigh causes

1 of injury. Where the evidence shows that the volume
2 effects and price effects of dumped and subsidized
3 imports are significant, the statute requires an
4 affirmative finding, whether or not other factors
5 contribute to the injury.

6 The Commission will hear in a moment
7 directly from Whirlpool, and will hear in considerable
8 detail, how Samsung and LG's assault on the U.S.
9 market for bottom-mounts, which began five years ago
10 or so, has destroyed the value of what had been a very
11 profitable business.

12 As we proceed to argument, please bear in
13 mind that by acknowledging the rise in subject
14 imports, by acknowledging the significance of price in
15 the U.S. bottom-mount refrigerator market, in
16 conjunction with the significance of features, by
17 acknowledging the instances of underselling, and by
18 acknowledging the evidence of price depression and
19 suppression and the period of investigation decline in
20 the operating results of the domestic industry,
21 Respondents have in effect acknowledged the basis upon
22 which Whirlpool's injury and causation case rests.
23 Thank you.

24 MR. BISHOP: Opening remarks on behalf of
25 Respondents will be given by Richard O. Cunningham,

1 White and Case.

2 MR. CUNNINGHAM: I beg your pardon. Richard
3 O. Cunningham, Steptoe and Johnson.

4 MR. BISHOP: I apologize. Steptoe and
5 Johnson.

6 MR. CUNNINGHAM: Well, I thought maybe I got
7 traded for a draft choice there.

8 VICE CHAIRMAN WILLIAMSON: Anyway, welcome
9 to the Commission, Mr. Cunningham.

10 MR. CUNNINGHAM: Thank you. I'm always
11 fascinated when the other side gets up and tells you
12 what a wonderful staff report you have, and then when
13 you look at its brief, on all the key points they want
14 you to walk away from the staff report.

15 We see this market very differently, of
16 course, than Whirlpool does. What happened here is
17 that LG and Samsung brought to the U.S. multiple-door,
18 high value, high-priced refrigerators in larger sizes,
19 with more sophisticated features, and have in fact
20 created a market from which Whirlpool has benefitted,
21 and have done so without injuring Whirlpool in either
22 its volume or its costs.

23 What does your staff report do to resolve
24 these sharp differences in views? First, they make it
25 clear the subject imports' rising volume and market

1 share weren't taken away from the U.S. industry.
2 Indeed, the U.S. industry's domestic shipments rose
3 during the POI, both in terms of value and volume.
4 Second, the average unit value of U.S. producers'
5 domestic shipments also rose through the POI as demand
6 shifted toward the larger, more sophisticated, higher
7 value refrigerators that LG and Samsung had introduced
8 into this market. The staff concludes there is no
9 price depression here.

10 Third, Whirlpool's lost revenue allegations
11 were, with only a few exceptions, refuted by the
12 purchasers. Finally, the only lost sale, the *only*
13 lost sale the Petitioner alleges, the one that Mr.
14 Greenwald spoke of, was emphatically denied by the
15 retailer, and I urge you to read the retailer's
16 discussion of that.

17 Was this a retailer choosing a supplier for
18 a lower price, or was this a retailer that saw this
19 market moving to larger and more sophisticated models,
20 and knew that it had to have a seller that could
21 supply those models?

22 So what does Petitioner do with a staff
23 report like that? Well, it asks you to walk away from
24 it. First, it asks you to extend the POI and look at
25 the decline in its volume in 2008. That's a strange

1 sort of argument. We were hurt in 2008, and then
2 after three years of rising trends, now we bring a
3 case in 2011. But in fact, the subject imports'
4 pricing didn't cause that decline in 2008. It was
5 caused in part by the decision of a purchaser, the one
6 Mr. Greenwald referred to, to change for non-price
7 reasons from Whirlpool to one of the Respondents.

8 But more importantly, the U.S. industry
9 initially lost volume as consumers' demand moved to
10 the product categories new to this market that the
11 U.S. industry simply didn't supply: four-door models,
12 your product category two, and larger capacity models,
13 your categories three and five.

14 Now, that brings me to the really important
15 issue here that I think you need to focus on, which is
16 the price suppression claim. Certainly raw material
17 prices rose sharply during this period. The U.S.
18 industry's poor performance, as the staff report
19 notes, was specifically due to the fact that its
20 prices on U.S. shipments, although increasing, didn't
21 keep pace with those cost increases.

22 We don't dispute that. What we do dispute
23 is Petitioner's cry of price suppression by imports
24 because the staff report clearly says no, for two
25 reasons. First, the staff analyzed three areas of

1 U.S. industry operations that were subject to the
2 exact same cost increases, but not subject to
3 competition from subject imports: exports of bottom-
4 mount refrigerators, sales of top-mounts, sales of
5 side-by-side refrigerators.

6 If price suppression by subject imports was
7 the problem, one would have expected the industry to
8 perform better in those areas that were not affected
9 by imports, but in fact they performed substantially
10 worse.

11 The second and really devastating blow by
12 the staff report to Whirlpool's price suppression
13 claim comes in the underselling analysis. The staff
14 found a predominance of overselling. That overselling
15 is even more pronounced when one calculates the sales
16 volume of the overselling and compares it to the much
17 smaller volume of underselling, and its analysis is
18 consistent with and confirmed by public data on prices
19 at the retail level.

20 Here again, Petitioner wants you to walk
21 away from this, particularly as to the largest product
22 category, product six, and then in their brief they
23 offer a cockamamie alternative approach. I'm not
24 going to discuss that now -- we can discuss it later
25 -- because frankly I think they're going to abandon it

1 here. And the reason they're going to abandon it is
2 they've just sent us a whole bunch of new data after
3 your staff did its verification, and the data totally
4 undercut that report. They can't even get the
5 underselling that way.

6 The fact is there is no -- there is a
7 preponderance of overselling here. There is therefore
8 no price suppression, and there is no basis for an
9 affirmative determination.

10 VICE CHAIRMAN WILLIAMSON: Okay. Thank you.

11 MR. BISHOP: Would the first panel, those in
12 support of the imposition of antidumping and
13 countervailing duty orders, please come forward and be
14 seated. Mr. Chairman, all witnesses have been sworn.

15 (Pause.)

16 VICE CHAIRMAN WILLIAMSON: Okay. Mr.
17 Greenwald, you can proceed when you're ready.

18 MR. GREENWALD: Thank you very much. We are
19 ready. What I'd like to do is turn the microphone
20 over to Dr. Marc Bitzer, President of Whirlpool North
21 America.

22 MR. BITZER: Good morning, Chairman
23 Williamson. Good morning, Commissioners. I'm Marc
24 Bitzer. I'm President of Whirlpool North America, and
25 I'm here because what once was a very profitable

1 business for us, the bottom-mount refrigerator, has
2 turned into a very unprofitable business for us in
3 recent years.

4 Between 2008 and 2010, Whirlpool lost
5 significant market share to imports from Korea and
6 Mexico. In 2011, we largely stemmed our market share
7 loss by becoming more competitive on price, but during
8 a period of rising costs, the impact this had on our
9 bottom line was just not sustainable. And in a
10 moment, I will explain to you in detail how imports
11 from two Korean companies with plants in both Korea
12 and Mexico, Samsung and LG, are the root cause of the
13 problem.

14 But before I begin, I just want to give you
15 my appreciation and thanks for the effort you and the
16 ITC staff put into this investigation. This case is
17 critical for us as a company and for our 23,000
18 employees. And indeed, we are already beginning to
19 see a measurable improvement to our bottom-mount
20 business in 2012 as a direct result of this ongoing
21 investigation.

22 Let me just begin by saying a few words
23 about Whirlpool. Our company was founded in 1911, and
24 we just last year celebrated our 100-year anniversary
25 as a company. Our brands include Whirlpool, Maytag,

1 Jenn-Air, KitchenAid, Amana, just to name a few.
2 We're a global manufacturer with annual revenue in
3 excess of \$18 billion, and the world's largest
4 household appliance company.

5 But even as we have globalized, our American
6 roots have grown deeper. Whirlpool is still
7 headquartered in Michigan, only a few miles away from
8 where we started 100 years ago, and we currently
9 employ more than 23,000 American workers. That is
10 more than all our competitors combined. And more than
11 80 percent of what Whirlpool sells in the U.S. is
12 built in the U.S., and that's very simply because in
13 our experience, it makes perfect economic sense to
14 produce here in America.

15 Today we have operations across the United
16 States, including production facilities in Iowa, Ohio,
17 Tennessee, and Oklahoma. And referring to Exhibit 1,
18 which you see here, you can get a visual sense of
19 Whirlpool's brands and our geographic footprint, with
20 distributions centers and manufacturing centers. And
21 we are a company that prides itself on the track
22 record of quality, service, and product innovation.

23 While we have been producing bottom-mount
24 refrigerators since the 1950s, the rapid growth in
25 demand of the modern bottom-mount refrigerator began

1 in 2006 with a Maytag innovation. We introduced the
2 first bottom-mount refrigerator with an external ice
3 and water dispenser. I'm referring to Exhibit 2,
4 which you see here. You can see one of our first
5 bottom-mount refrigerators from over 50 years ago.
6 That is a very nice advertisement on the left side.
7 On the right side, you can see that Maytag ICE20, by
8 way of an advertisement from Home Depot, which was the
9 first ever example of external ice and water
10 dispensing in the bottom-mount segment.

11 And through the present day, *Consumer*
12 *Reports*, which is the number one information source
13 for consumers, has consistently ranked our products,
14 including bottom-mount refrigerators, in its top
15 ratings. We are continuing to invest in cutting edge
16 facilities and technology, and we recently committed
17 to investing more than a billion dollars in U.S.
18 manufacturing and R&D, including more than 100 million
19 in our facilities in Amana, Iowa, where we produce the
20 bottom-mount refrigerator.

21 So at a time when many are declaring
22 American manufacturing is dead, we're very proud of
23 our commitment to the future of American manufacturing
24 jobs, and indeed exactly one week ago we just opened a
25 brand new production facility in Tennessee.

1 Let me just zoom in a little bit and talk
2 about the product. There are, as you know, three main
3 types of refrigerators. There is top mounts, which
4 you see here on the very left side, with a freezer on
5 top and an average retail price of around \$520. There
6 are side-by-sides, where the freezer is one side and
7 the refrigerator is on the other side; and bottom
8 mounts, where the freezer is on the bottom.

9 They differ obviously in average retail
10 value. So the top mount is around \$520. The side-by-
11 side is roughly slightly above \$1,000. And bottom-
12 mount refrigerators slightly above \$1,500 or \$1,600.
13 Now, each of these refrigerator types differ from the
14 others in terms of its physical characteristics. Each
15 one is mostly produced in separate production lines.
16 Each one has a different set of parts, subassemblies,
17 and tooling. Each one is perceived as different by
18 producers and retailers and consumers. And each one
19 is subject to its own set of energy efficiency
20 standards. And as you can tell from the name, the
21 location of the freezer defines each product category,
22 and dictates a structure, thermodynamics, and
23 ergonomics of the unit.

24 Now, within each category you will find
25 refrigerators that are different in size and features,

1 but for all bottom-mount refrigerators, the
2 fundamental design principle of having the freezer
3 compartment in the bottom is exactly the same. And
4 let me just talk a little bit about the marketplace.
5 The U.S. market for bottom-mount refrigerator has been
6 expanding as consumers have shown a growing preference
7 for bottom mounts over both top mounts and side-by-
8 sides.

9 This trend is illustrated in Exhibit 4. And
10 you see here at the bottom of the chart, the bottom-
11 mount market size and development, the side-by-sides,
12 and the top mounts. Now, if you go from left to
13 right, between 2008 and 2011, we estimate that the
14 demand for bottom-mount refrigerators has grown by
15 about 670,000 units, or 40 percent. Virtually all of
16 that growth has been captured by imports from Korea
17 and Mexico.

18 You will also note at the same time the
19 side-by-side market has almost declined by about the
20 same size. Referring to Exhibit 5, you can see that
21 between 2008 and 2011, Whirlpool lost more than 10
22 points of market share to dumped and subsidized
23 products. Samsung and LG would you have you believe
24 that the very substantial rise in the imports and
25 their market share gains did not materially affect

1 Whirlpool because competition between us and them is
2 attenuated.

3 Nothing could be further from the truth.
4 The fact is that all high volume producers offer a
5 full line of bottom-mount refrigerators that begins at
6 a MAP price of somewhere between \$799 and \$999, and
7 that increases in price incrementally for a
8 refrigerator's size and the additional features.

9 On Exhibit 6, you see that exactly. You see
10 on the left these are the kind of entry bottom-mount
11 refrigerators, typically between \$799 and an opening
12 MAP of \$999, but they can go up to more than \$2,000.
13 In the middle, you see what we call the three or
14 French door bottom-mount refrigerator. On the right,
15 the four-door. All players are present in all
16 segments.

17 Indeed, it is actually not unusual for a
18 manufacturer to offer dozens of bottom-mount SKUs in
19 the marketplace. It is true that over the past three
20 years, there has been a movement to larger bottom-
21 mount refrigerators, over 27 cubic foot, which has
22 been led by Samsung and LG. But these so-called jumbo
23 refrigerators are not the heart of the market. The
24 heart of the market has been and remains in the 19.5
25 to 27.4 cubic-foot size range.

1 And Exhibit 7 exactly illustrates this
2 point. These data were taken directly from the Home
3 Depot's brief and were based on Traqline survey data.
4 What you can see here is that the heart of the market
5 -- that's the piece which is kind of boxed -- is
6 comprised of bottom-mounts with a capacity of 19.5 to
7 27.4 cubic-foot range, and that these model sizes
8 represent roughly 65 to 75 percent of the U.S. market.
9 This is where the lion's share of competition takes
10 place.

11 Now, Exhibit 8 shows market share trends
12 specifically in this heart of the market. So it's
13 exactly what we refer to in that box before. Again,
14 what you see here is that Whirlpool has lost
15 significant share to imports from Korea and Mexico.
16 And, of course, the pricing of a larger refrigerator
17 has had a direct impact on the pricing of smaller
18 refrigerators, as I will show you in a minute.

19 The next point I would like to make is that
20 price matters. The U.S. market for bottom-mount
21 refrigerator is price sensitive. Indeed, I would
22 argue it's very price sensitive, and it has grown in
23 importance. It has become increasingly dependent on
24 holiday promotions to spur sales, including Black
25 Friday, Labor Day, President's Day, et cetera.

1 When I attended the staff conference in
2 April of last year, LG's witness was very honest about
3 this. He said, and I agree, that a significant
4 portion of consumers need to be motivated to buy a new
5 bottom-mount refrigerator through promotion prices.
6 Samsung likewise has conceded the significance of
7 discounting in the public version of its prehearing
8 brief.

9 The reason that manufacturers offer
10 discounts are (a) that a certain number of consumers
11 wait for discounts before they buy; and (b), maybe
12 more important, that virtually all consumers take
13 price into account in deciding among competing brands.

14 Now, if price were not a key determinant of
15 sales, discounting would simply not occur on the scale
16 it does. The extent to which discounts spur sales is
17 not and cannot be open to any serious dispute. I'm
18 going to show you four examples that illustrate my
19 point that price matters.

20 The first example is in Exhibit 9. It is
21 LG's well-known and notorious Black Friday 2010 sale,
22 where LG slashed the price of its four-door French
23 door model by nearly 50 percent. Let me just explain
24 to you this chart. You see the blue line. These are
25 actually the sold units, and the orange line is

1 actually the average selling price.

2 You see around Black Friday of 2010, LG
3 dropped its price by more than 50 percent, and I think
4 the spike you've seen on the volume speaks for itself.

5 I mean, there has been a huge sensitivity to the
6 price move. You see also in subsequent promotional
7 events, particularly around July 4th, and then to some
8 extent Black Friday 2011, you saw similar spikes.

9 The next three examples, Exhibits 10 to 12,
10 are Samsung sales. We have a correlation between
11 promotion pricing, and the volume sold that is very
12 clear. Exhibit 10, that is a four-door refrigerator,
13 where you see essentially a similar development.
14 Whenever you see a significant move on pricing, as
15 indicated by the spikes above, you immediately see a
16 corresponding volume shift, most notable, obviously,
17 around Black Friday 2011.

18 The next example is Exhibit 11, which is
19 another Samsung example. And I'm sorry that we don't
20 have a picture here. It's actually of a product which
21 is standing here. You see also whenever you see a
22 spike or significant move in pricing, typically around
23 promotional periods, you immediately see a
24 corresponding volume spike of the same sold product.
25 The same is shown in Exhibit 12, again the same

1 pattern. That's another Samsung model. Also here you
2 see whenever there is a significant move on pricing on
3 a given SKU, you immediately see the corresponding
4 volume changes on the sales.

5 And the final example, shown as Exhibit 13,
6 is actually the sale of one of our own products. It's
7 a Whirlpool model which was promoted by a retailer for
8 Black Friday 2011, which demonstrates that when a
9 retailer cuts the price of a Whirlpool model relative
10 to the price in competing LG and Samsung model, the
11 volume of our sales jumps.

12 You see it first of all in these two
13 products. You see the Maytag and the Whirlpool model,
14 which from a feature load are essentially very
15 similar, the same models. We have a different brand,
16 of course. You see that the Whirlpool one actually in
17 this case was dropped by a retailer below what we had
18 as a so-called promotion MAP. And the volume
19 immediately picked up, while the Maytag one, where we
20 didn't move the price, basically stuck on very low
21 volumes, which also indicates on our own models
22 whenever there is a price move, you see a significant
23 increase of volumes.

24 Now, let me also state the obvious.
25 Obviously, when one supplier discounts one of its

1 bottom-mount products, it puts pressure on the other
2 suppliers with their competing models. I know it's
3 obvious, but I will still show you a couple of
4 examples. Now, in considering the price impact of a
5 Samsung or LG promotion on Whirlpool, you must bear in
6 mind that even within the same category, for example,
7 four-door, drawer, French door, each producer's
8 refrigerator is different, its size, feature load, and
9 aesthetics.

10 The price at which any producer can sell
11 depends on consumer perceptions about the total value
12 of its product offering at the price at which it is
13 offered for sale. So do features matter? Yes, they
14 are a big deal.

15 Now, referring to Exhibit 14, the rule of
16 thumb -- and you see on the left side, you see a
17 couple of typical features which are loaded in bottom-
18 mount refrigerators. You see in the middle column
19 typical of what you'd expect as a rule of thumb as an
20 estimate retail market value, as evidenced by both our
21 own documents, and there is also some Samsung
22 documents.

23 So as a rule of thumb, each cubic foot of
24 added capacity adds roughly \$100 or more to retail
25 value. Dual evaporators or twin cooling adds roughly

1 \$150. LED lighting adds roughly about \$100. External
2 ice and water should be worth roughly \$700.

3 So now let me just illustrate how features
4 and price come together to drive a market by showing
5 you how Samsung's and LG's discounts of heavily
6 featured bottom-mount refrigerators affected
7 Whirlpool's pricing. And again, I will tell you a
8 story using retail pricing because this is a public
9 hearing.

10 So let us first turn to Exhibit 15. And
11 this may well be our most important exhibit because
12 it's a microcosm of what we have been experiencing in
13 the market generally. And let me just take you a
14 little bit through that Exhibit 15.

15 So on the top, you first see three competing
16 bottom-mount refrigerators, all with four doors. The
17 two left ones, the LG one and the corresponding
18 Maytag-Whirlpool ones, are by and large similar from a
19 feature load. The only difference is that the top
20 drawer in the LG case is a freezer, and in the case of
21 Maytag-Whirlpool, the top drawer is a refrigerator
22 pantry. Beyond this one, the size, the LED lighting,
23 external ice and water, the single evaporator, is very
24 similar in terms of feature load.

25 On the right side, you see a Samsung four-

1 door model which is different from a feature load. It
2 offers three cubic-foot more capacity, a dual
3 evaporator, and it has a convertible, i.e., you can
4 switch from freezer to refrigerator, top drawer.

5 Now, if you combine that with the previous
6 page, you would expect at any given point that the
7 right product is roughly around \$400 to \$500 more
8 expensive in the marketplace, and that is just
9 following that feature load. Now, if you go to the
10 bottom part of this slide -- and here you see volume
11 and average retail price over time. If you start from
12 the very right side, Samsung basically had this four-
13 door refrigerator in Q2 2010, at roughly \$2,500.

14 We were planning to introduce our product
15 actually at \$2,599. But we quickly realized and heard
16 from retailers we would not be able to sell against a
17 significantly higher featured Samsung product. So we
18 actually subsequently lowered our introduction price
19 to slightly below \$2,000, obviously not knowing at the
20 same time Samsung, which you see on the right side,
21 continue to slash its prices down to \$2,100 in the
22 same period. Again, you need to bear in mind that is
23 a feature load difference of roughly \$500.

24 Now, the problem obviously arises not only
25 when you have pressure from the high side in terms of

1 high feature loads. If you go now to the left side of
2 the same period, LG launched the four-door product at
3 \$1,175. That was a Black Friday promotion which
4 lasted pretty much throughout the entire quarter, as
5 you can see in the average price. Now, obviously, as
6 Whirlpool, you're squeezed exactly in between. So on
7 a similar featured product, you're kind of undersold
8 by, in this case, \$800. On the higher featured loads,
9 the prices have come down so much that you just simply
10 don't have any space to breathe.

11 And what happened subsequently, Q2, Q111,
12 Q211, Q311, first of all, you see that the LG price is
13 slightly, but only marginally, increased. The Samsung
14 one actually surprisingly did not increase from Black
15 Friday volumes. And if you move over to Q411, you see
16 another very interesting thing. First of all, Samsung
17 further reduced the four-door price to \$1,800. Again,
18 that is with roughly a \$500 feature load difference.
19 Sold significant quantities.

20 The Whirlpool model was lowered and put in
21 the promotion by a retailer, sold significant
22 quantities, and the LG, which basically sold not so
23 far above the Whirlpool one, actually on average, it's
24 just \$80 more, sold hardly anything, which also shows
25 you the moment you put Whirlpool on a similar price

1 level with same feature load, we can sell significant
2 quantities, very significant ones. Now, obviously the
3 problem is that will be the sustained price which we
4 would support to retail, it is a very, very
5 unprofitable proposition.

6 If you go to the next example, that is
7 Exhibit 16, and essentially it's the same story, just
8 in a different product category. Now, obviously
9 coming in here, we didn't know what exhibits the
10 opposition would bring. But actually funny enough,
11 these are exactly the products which you see in the
12 charts. So the left side, the 267 Samsung product, is
13 what you see here on the left, and the Whirlpool one
14 is the one in the middle. It doesn't include the
15 higher featured 29-cubic foot model.

16 So let me first explain to you the products
17 which you see up here. So the two left ones, the
18 Samsung and the Whirlpool one, are similar featured
19 from a capacity, from LED lighting, external ice and
20 water. The Samsung one has a dual evaporator which
21 typically should command about \$150 more.

22 On the right side, you see a higher featured
23 Samsung, more than 29-cubic foot, with a dual evap.
24 Again, that should roughly give you about \$300 to \$400
25 more. So what you see here, and without going through

1 all the detail, that Whirlpool certainly on the
2 similar featured one was squeezed significantly on the
3 pricing side -- or not similar featured, but similar
4 size, but with dual evaporator difference. And on the
5 right side, on the higher featured one, that also
6 pressured.

7 So in a certain way, Whirlpool was literally
8 between two bookshelves, on the low end, with the
9 Samsung product, and the high end also with a higher
10 featured Samsung product.

11 Now, you cannot look at this data and
12 conclude, as Samsung and LG want you to, that the
13 pricing of imports had no material impact on
14 Whirlpool. And as these two exhibits show,
15 underselling occurs most often when the products are
16 comparable in terms of size and feature load. And
17 again, if you just look at this example, bear in mind
18 that the dual evaporator is worth about \$150 more.

19 This is what happened with the LG four-door
20 French door model as compared to Whirlpool four-door
21 French door models. And this is also what you see on
22 this exhibit. And there is also evidence of
23 underselling by Samsung even when it discounts its
24 larger feature heavy models. But even without
25 underselling, the pricing of larger Samsung models

1 lowers the price at which Whirlpool can sell a model
2 that is smaller and less featured. What matters is
3 pricing relative to the value a consumer ascribes to
4 differences in size, feature load, and even fit and
5 finish.

6 Now, let me next talk about the impact that
7 it all had on Whirlpool. And my job is to run
8 Whirlpool's North America business, and success in
9 this business requires constant investment in product
10 development, tooling, and production equipment. If a
11 company becomes complacent when it comes to
12 innovation, it compromises the future. I can only
13 sustain and grow this business if we can achieve a
14 reasonable return on our invested capital.

15 Returns of invested capital, on the other
16 hand, depend on our ability to sell at profitable
17 prices, which in turn depends on what happens in both
18 the price side and the cost side of a business. On
19 the cost side, we are sensitive to change in material
20 prices and to fixed costs. The cost of a bottom-mount
21 refrigerator is essentially a very big amount of
22 material cost, a certain amount of fixed costs, and
23 relatively speaking a small amount of labor.

24 Our material costs have risen as raw
25 material import prices have increased, and our fixed

1 costs have been deleveraged over time. Let me explain
2 that. Fixed costs are sensitive to how much volume
3 you have. Obviously, when a company operates at a low
4 capacity utilization, which is what happens when you
5 lose market share, its fixed costs per unit are higher
6 than they should be. But the most intractable problem
7 has been on the price side. Between 2008 and 2011,
8 prices for bottom-mount refrigerators held constant
9 for feature load have declined by over 11 percent.

10 Samsung's and LG's pricing has been a major
11 cause of the problem. Because of falling prices and
12 rising costs, the value of our bottom-mount business
13 has been destroyed. Exhibit 17 provides a visual
14 representation of our deteriorating P&L. Now, you
15 have precise data in our questionnaire response. It's
16 not a pretty picture.

17 For LG and Samsung or the Home Depot to
18 claim that import pricing has not been a genuine and
19 substantial cause of decline in U.S. producer prices
20 is to disregard the evidence.

21 And let me close by saying that in 2012, our
22 bottom-mount business has begun to show a remarkable
23 turnaround. You don't yet have these data on record,
24 but let me tell you that the volume of our sales is
25 up, and the price increases that we announced have

1 finally stuck. Whirlpool's bottom-mount business is
2 currently in the black on the chart in the green so
3 far this year. And actually, we start employing 200
4 more people.

5 We're under no illusions about why this is
6 happening. Faced with significant antidumping duty
7 liability, Samsung and LG have moderated their
8 behavior. The evidence indicates that without this
9 case, they never would have done so. As shown in
10 Exhibit 18, LG and Samsung continue to say that their
11 intent is to displace Whirlpool as the world's largest
12 appliance manufacturer. But they have to change their
13 behavior in this market, particularly after the
14 publication of a Commerce Department's preliminary
15 determination in November 2011.

16 We believe this is a case with clear
17 evidence of present injury. Things hit bottom in
18 2011. And while we stemmed the loss of market share
19 in 2011 by reducing our own prices, the bottom line
20 impact on our business was unacceptable. The threat
21 is that if the Commission chooses not to impose
22 antidumping and countervailing duty discipline on LG
23 and Samsung, they will pick up where they left off in
24 2011.

25 With antidumping and countervailing duty

1 orders, we fully expect that Whirlpool's turnaround in
2 bottom-mount refrigeration will continue. Thank you,
3 and I'm looking forward to your questions.

4 MR. GREENWALD: Is it possible to get a
5 quick time check, please?

6 MS. BELLAMY: You've used 24 minutes.

7 MR. GREENWALD: Okay. Thank you very much.
8 Perhaps another ten minutes, and then we will close,
9 and I'll welcome your questions.

10 Dr. Bitzer's testimony addressed the volume
11 of subject imports and pricing largely at the retail
12 level. I would like to talk for a minute about the
13 very significant lost sales at an OEM account. There
14 is no question that Whirlpool twice lost out on three-
15 year contracts to supply this customer, once in 2008
16 for 2010-2012 supply, and then again in 2011, for
17 2013-2015 supply.

18 There is no question that Whirlpool lost
19 this business to subject imports. What Respondents
20 take issue with is Whirlpool's claim that price was a
21 factor in the loss of this sale both times. What I
22 would like you to do, if you would bear with me, is
23 turn to the evidence. One of the things that I found
24 disheartening about my friend Dick Cunningham's
25 opening remarks is how he misstated the evidence.

1 As you all are aware of it, you probably
2 don't need me to point out the misstatements. But for
3 the record, let me first ask you to turn to pages 40
4 and page 41 of our prehearing brief. What you will
5 see there on the 41 is a discussion of the importance
6 that the customer attaches to the value of its
7 purchase decisions. And by value, I mean the
8 features, size, et cetera, of a refrigerator at a
9 particular price point. And what matters here is at
10 the particular price point.

11 It's impossible to argue seriously that a
12 customer that pays attention to features at a price
13 point is indifferent to price.

14 Second, when you go to the later
15 transaction, what you will find is an analysis that we
16 did of the bids by both parties. And it is true that
17 for this account, there was a small part of the
18 business that Whirlpool did not make because of the
19 customer's interest in size.

20 However, there is also a considerable
21 overlap of business. And when you look at the
22 sequence of pricing, what you see is opening bids and
23 subsequent declines in pricing until the final offers
24 are in. And in the final offers, we have prepared for
25 you an analysis of final prices by SKU where there is

1 an overlap. I can't talk about the details, but what
2 I would ask you to do is look at that chart, look at
3 bid prices multiplied by projected units, and then
4 look at the question which bid was lower.

5 Again, I take you back to this customer's
6 insistence on value, that is, features for the price,
7 and then ask you to look at the actual bids where
8 there was overlap, and reach your own conclusions
9 about the extent to which price mattered in this sale.

10 Now, while we're on the subject of price,
11 what I would next like you to do, if you have the
12 patience, is to take a look at the pricing, or more
13 specifically the discount and rebate data that
14 Respondents have given to you. To put this in the
15 proper context, rebates and discounts in this business
16 are always on a customer-specific basis. They are
17 often on a time-specific basis, and they are often on
18 an SKU-specific basis.

19 What we did was to take the rebates as
20 reported by the two major Respondents from our point
21 of view, that is, LG and Samsung, and if you look at
22 Exhibit 1 to our brief, you will see an analysis of
23 rebates and discounts as a percentage of sale price
24 over all the products for which data were collected by
25 time period.

1 If you look at Whirlpool's -- and we gave
2 you Whirlpool's response, which again parenthetically
3 have been verified. We insisted that they be
4 verified. What you will see is variations by time and
5 by SKU. I ask you to compare those analyses to the
6 data that Samsung and LG, particularly LG, have put on
7 the record. And if you do not find the variance that
8 you would expect from rebate discount programs that
9 again are customer-specific, product-specific, time
10 specific, there is something fundamentally wrong with
11 those data.

12 Now, a final point. You are relying on the
13 Samsung and LG certifications for accuracy. They have
14 to sign that there is nothing misleading when they
15 submit their questionnaire responses. Everybody does.
16 You verified us. The Department of Commerce verified
17 LG and Samsung's rebate and discount data, and they
18 found very, very serious discrepancies, to the point
19 at the preliminary determination, the Commerce
20 Department went best information available, I believe,
21 against Samsung. And if you read the verification
22 report for LG, you will see the same problems.

23 When a Respondent -- oh, last point. This
24 issue came up in the preliminary. Your preliminary
25 determination was very precise. You said, we expect

1 Samsung and LG to report accurate rebate and discount
2 information. That part of the decision was
3 unequivocal.

4 So in light of that, and when a respondent
5 makes what it essentially a no price underselling
6 cornerstone to its case, is incumbent on that
7 respondent to provide accurate data, and I submit they
8 have not done so. And as a Commission, I don't see
9 how you can accept what I consider to be the unusable
10 discount rebate information that has been submitted to
11 you.

12 Now, the final point, and then I'll close
13 our direct testimony. One of the other lessons I've
14 learned in appearing before you and appearing before
15 the Department of Commerce is the importance of
16 consistency in the story that you tell to both
17 agencies. It goes to the integrity of the argument,
18 and frankly the integrity of the arguer.

19 About two weeks or so ago, there was
20 argument on targeted dumping, and Mr. Cunningham, for
21 LG, said to the Department of Commerce, retailers make
22 us do it. You can't blame us. Let me quote from the
23 transcript. "The manufacturer is not directing
24 anything here. The manufacturer is being responsive
25 to its customer in the same way that all manufacturers

1 are being responsive to the customer."

2 Now let me contrast that with a quote on
3 page 14 from LG's brief. And I quote, "It is the
4 manufacturer, i.e, Whirlpool, Samsung, LG, GE, et
5 cetera, not the retailer, that determines the models
6 which will be promoted and the promotional MAP
7 prices." Those two statements are irreconcilable.
8 It's not a major issue, frankly, because the data
9 speak for themselves, except to the extent that
10 Respondents have failed to provide accurate rebate and
11 discount data.

12 But there is an issue about the integrity of
13 the arguments you make and credibility. And on that
14 basis, in this instance, you have direct contradictory
15 assertions to the two agencies that are investigating
16 the dumping charge.

17 With that, let me close. We'll reserve
18 whatever time we have for our rebuttal, and glad to
19 take your questions.

20 VICE CHAIRMAN WILLIAMSON: Thank you, Mr.
21 Greenwald. I want to thank all of the witnesses for
22 coming today. I know you're taking time off from your
23 business, but this is very important to have your
24 information.

25 Actually, this morning we will begin with --

1 I will begin the questioning. The first question has
2 to do with the product categories that were selected,
3 I mean the pricing information. Whirlpool proposed a
4 number of product categories to the Commission staff
5 for comparison purposes. There is no domestic
6 production during the POI for two of these product
7 categories. This is the product three, four-door
8 27.5, and the product five, the three-door bottom
9 mount 27.5 cubic capacity.

10 How should we use the data in these
11 categories in our material injury analysis? What does
12 this data tell us? And also, does Whirlpool currently
13 produce products in these categories?

14 MR. GREENWALD: The product categories,
15 except for product category six and seven, are exactly
16 the same as they were at the preliminary stage of the
17 investigation. The reasons product three and product
18 five have no U.S. production is they are
19 definitionally dual evaporator. The company that
20 makes refrigerators with dual evaporator, which is a
21 feature that has costs and has a market value, is
22 Samsung.

23 What you saw in the exhibits that Dr. Bitzer
24 referred to was the relative pricing of, for example,
25 the large 28-cubic foot Samsung four-door, French door

1 bottom mount. Whirlpool makes a much smaller version,
2 as does LG. The way you should use those data are not
3 to say as a sort of a throw away line in their brief,
4 that therefore there is no competition. To the
5 contrary, what you want to do is to look at price
6 trends for the -- in this case, the Samsung models
7 because they are the only ones that fit that
8 definition, and compare that to the trends on the
9 similar Whirlpool models.

10 So you have a Whirlpool four-door, French
11 door in product two. You have an LG four-door French
12 door in product two. They are very similar, not the
13 same, but they are similar. And then in product
14 three, you have the Samsung version, which is much
15 larger. The reason they're separate is feature
16 differences. And again, they were separate in the
17 preliminary determination, and there frankly there was
18 no issue.

19 Now, the other category for which you see no
20 U.S. production is product seven. And what happened
21 in product seven is the following. If you go back to
22 the preliminary determination, you will actually see
23 both domestic and foreign production of product seven.
24 The parameters of product seven, which were
25 Respondent's selection, were changed at Respondent's

1 urging, okay?

2 And by narrowing, lowering the outside
3 capacity band, Respondents, for whatever reason,
4 changed the parameters so that Whirlpool's production
5 fell outside. Specifically, Whirlpool makes a -- let
6 me get this right -- 24.8 cubic-foot model, and the
7 limit is, I think, 24.4 -- 24.8 against 24.4. So we
8 didn't report it because we didn't think that it fit
9 within that category, and we assumed the change that
10 was made at Respondent's urging was deliberate.

11 We are perfectly happy to report the larger
12 Whirlpool -- sorry, the 24.8 cubic-foot model and the
13 pricing for it, quarterly changes, et cetera, if the
14 Commission wants. However, I have one request, and
15 this I suppose the Commission staff should listen to
16 as well. When you're thinking about product seven,
17 which is a larger band than most of the others -- we
18 tried to keep for comparable purposes products within
19 a one-cubic foot capacity band. Both product six and
20 product seven have two cubic feet. That's fine. And
21 if you want to extend it up to include the Whirlpool
22 24.8 cubic foot, that's fine, too.

23 But that isn't a request I would make. When
24 you are looking at those products, we went through the
25 analysis and the SKUs, the specific models that were

1 actually reported. The product definition says no ice
2 and water. And what you actually have is the
3 possibility in that definition of having a model that
4 has no ice or water against a model that has ice or
5 water. And as you go back to the features, that's a
6 major difference.

7 So my request would be to harmonize
8 everything in there, have no ice or water, so there is
9 more of an apples to apples comparison, and that will
10 capture the Whirlpool model. It will also, I think,
11 eliminate some of the distorting elements that you see
12 in the product seven submissions that you got from
13 Samsung and LG and the others.

14 But again, I come back to this basic point.
15 On pricing, what you have been given in terms of
16 rebates and discounts by both major Respondents is
17 unusable.

18 VICE CHAIRMAN WILLIAMSON: Thank you.

19 MR. GREENWALD: I hope it answers your
20 question. It was a bit longer than I anticipated.

21 VICE CHAIRMAN WILLIAMSON: I think you
22 answered several of my questions, but you created
23 some, too. So again, what are you telling us about
24 what should we make of these larger refrigerators
25 compared to the Whirlpool models?

1 MR. GREENWALD: Do what we did here. Look
2 at the pricing, look at the value of the features. I
3 mean, this is a consumer product.

4 VICE CHAIRMAN WILLIAMSON: Yes.

5 MR. GREENWALD: When you go out to shop,
6 when I go out to shop, when you go out to shop -- as a
7 matter of fact, I just replaced a refrigerator. Price
8 matters. And what you do is you look at price
9 relative to feature load. We looked at the size. We
10 wanted this or that or the other. But they're not --
11 it's not a commodity product. We're not dealing with
12 the sort of wheat that Cargill ships against the wheat
13 somebody else ships. These are differentiated
14 consumer products, and none of them are identical.
15 And the issue -- the only real issue is do the data
16 show that price matters.

17 Do the data show, as Dr. Bitzer's exhibit
18 indicated, that when -- if I can go back to the four-
19 door, French-door example. When the Whirlpool price
20 was at parity with the LG price -- this is in the
21 fourth quarter of 2011 -- and when it was around \$400
22 to \$500 below the Samsung higher featured price, the
23 Whirlpool price sold in very large volumes because
24 when people went out and looked at value for money,
25 they found value there.

1 Those that were in that sort of budget range
2 bought the Whirlpool model in large volume. So, you
3 know, relative pricing matters. And that's how you
4 should be looking at especially the products with the
5 dual evaporators, looking at that compared, as Dr.
6 Bitzer showed, to what happens when price gaps narrow
7 or grow compared to the most comparable Whirlpool
8 product.

9 VICE CHAIRMAN WILLIAMSON: Okay. Maybe some
10 of the Whirlpool representatives can talk about the
11 large size and how it gets market. I mean, I live in
12 Manhattan, and so I'm limited by space in the kitchen.
13 But a lot of places, that's not the case. But I only
14 have a minute, but get started on that.

15 MR. BITZER: And I do presume you're
16 referring to large size being above 27-cubic foot
17 or --

18 VICE CHAIRMAN WILLIAMSON: Right, yes.

19 MR. BITZER: Is that what you're referring
20 to?

21 VICE CHAIRMAN WILLIAMSON: Yes. I'm trying
22 to figure out -- you know, again I'm still trying to
23 make what do we make of these two categories where we
24 don't have any Whirlpool competition.

25 MR. BITZER: First of all, as you -- and as

1 I said before, all full-line players, LG, Samsung,
2 Whirlpool, and to a large extent GE, you start the
3 entire bottom mount with a two-door bottom mount --
4 that's where everybody has an offer -- up to a very
5 high end four door. And you basically make a simple
6 economic decision about which features or which sizes
7 do you offer. Particularly to a very large size, the
8 segment which has been growing lately, it's a very
9 simple question. Do you decide to build and to make
10 an investment decision for that platform.

11 If you basically make a decision to have a
12 29 or 30 cubic-foot platform, that is in terms of
13 capital and engineering resources about an \$80 million
14 or \$100 million investment. So, of course, you have
15 got to be convinced that you will get the adequate
16 return, which if you look at our own economic numbers,
17 which was not really fully justifiable so far.

18 Having said that, we made last year a
19 decision, and we're launching now a 29-cubic foot.
20 There is nothing magic about deciding to build a
21 larger one. It's just do you get the economic
22 returns.

23 VICE CHAIRMAN WILLIAMSON: Okay. Actually,
24 I'm going to -- we're running out of time, and I guess
25 the chairman should not start off with a bad example.

1 So let me come back to that. But thank you for
2 getting me started on that.

3 MR. BITZER: Okay.

4 VICE CHAIRMAN WILLIAMSON: Okay. Let's see.
5 Commissioner Pearson is next, please. Thank you.

6 COMMISSIONER PEARSON: Thank you, Mr.
7 Chairman. I would like to extend my thanks to those
8 who hosted some of us in Cedar Rapids, or at Amana,
9 actually. It was a very educational trip.

10 Mr. Bitzer or perhaps Mr. Reinke, when does
11 ownership of a bottom-mount refrigerator pass from the
12 manufacturer to the retailer?

13 MR. BITZER: I mean, typically -- I mean, I
14 can give you the financial accounting treatment.
15 There is a typical -- there are certain rules about
16 revenue recognition. And typically, the ownership
17 passes over when the risk of a product is transferred.
18 And that typically happens when a different logistics
19 mode -- if a retailer picks up a product at our
20 warehouse, which is, for example, the case of Sears
21 and some other ones, typically the ownership passes
22 the moment it leaves the dock and is loaded in their
23 truck.

24 If we deliver to a retailer in their
25 warehouse, it's typically once it leaves our logistics

1 truck. So that's typically when the risk of a product
2 is transferred, that's when the ownership passes.

3 COMMISSIONER PEARSON: Okay. And are there
4 instances where you are delivering directly to a
5 consumer after a product has been sold by a retailer?

6 MR. BITZER: I mean, you have so-called home
7 deliveries, and they differ by trade customer and
8 setup. So there is certain examples. For example,
9 take Home Depot -- and Bob Baird can probably explain
10 in a lot more detail. It's where it ships to a so-
11 called FDC, which is managed by GE Logistics, and they
12 facilitate the actual delivery.

13 There is other examples where you -- let's
14 say for a big builder, for Pulte or whatever, we would
15 deliver directly to construction site. And then
16 typically that risk transfers the moment you drop it
17 off on the construction site. But it differs slightly
18 retailer or trade partner by trade partner.

19 COMMISSIONER PEARSON: Okay. So given those
20 differences, are we measuring the point of sale at the
21 right point?

22 MR. GREENWALD: The short and right answer
23 to that is yes, you are. When a Whirlpool sells to a
24 -- it could be a Home Depot or it could be a Lowe's,
25 any of them -- the title, the liability, the

1 responsibility passes to the retailer. The retailer
2 may arrange for delivery. It may be through GE. It
3 may be in a Lowe's warehouse and the like. The
4 pricing of the retailer is whatever the retailer wants
5 to make it.

6 It is not a matter that Whirlpool could even
7 lawfully try to control. So the -- again, the
8 retailer is free --

9 COMMISSIONER PEARSON: If I might, Mr.
10 Greenwald, my impression from the staff report is that
11 the manufacturers do try to control the prices at
12 which retailers sell the product.

13 MR. GREENWALD: That is not true. What the
14 staff report says, I believe, and read correctly, is
15 that there is a minimum advertised price. That is a
16 price at which a manufacturer will offer sales support
17 to the retailer, but it does not control whatever the
18 retailer chooses to sell it.

19 MR. BITZER: I can also directly respond to
20 this one. As you know, there is a clear law where we
21 cannot control retail prices. And I would expect that
22 some of the retail witnesses will be very sensitive to
23 us dictating a price.

24 We do set so-called minimum advertised
25 prices to preserve our brand value in the marketplace.

1 And what that basically means, if a retailer chooses
2 to sell below that, which they can do, they lose the
3 so-called co-op advertising support from us. That's
4 the only means you have as a manufacturer to kind of
5 try to establish somewhat of a floor of a brand value
6 in the marketplace. And what you typically do when
7 you set MAPs, these minimum advertised price or promo
8 MAPs, you're trying to somewhat make it predictable
9 for a retailer to have an appropriate margin on these
10 respective prices.

11 COMMISSIONER PEARSON: Right. But in this
12 case, is the retailer actually a purchaser in the way
13 we normally use the term? Or is the retailer more
14 like a toller who offers the product to consumer in
15 exchange for a margin that's guaranteed by the
16 manufacturer?

17 MR. BITZER: No.

18 COMMISSIONER PEARSON: We deal with some
19 businesses in which we have tolls.

20 MR. BITZER: The simple answer is no. In
21 this case, we don't invoice to the consumer. I would
22 expect that Home Depot will be very angry on us if we
23 go to a door and delivered to the consumer and asked
24 for the invoice. These are done in the store. There
25 is no so-called -- there is one manufacturer in Canada

1 who has an Asian model -- that's Miele -- but we don't
2 have it, and it's not common in the U.S. industry.

3 COMMISSIONER PEARSON: Okay. So do
4 manufacturers and retailers actually negotiate over
5 the price of bottom-mount refrigerators, or do they
6 negotiate over margin?

7 MR. BITZER: The retailer typically -- what
8 we typically do, we negotiate on the so-called first
9 cost, basically the invoice price which we have to
10 retailer. And of course that is against an
11 expectation for retailer against a margin at a certain
12 price point. But they're typically not very
13 transparent about at what price they actually will
14 sell it. So it's the typical negotiation. It's
15 really what cost do you invoice the retailer to.

16 MR. GREENWALD: I understand that in the
17 Respondent's brief a lot was made of this. But let me
18 go back again to one of the examples that was given.
19 We showed you a case in which the Whirlpool price --
20 I'm sorry, the Whirlpool volume jumped when the price
21 was lowered. I think it was the four-door, French
22 door in Black Friday 2011.

23 That price had nothing to do with the MAP
24 price between Whirlpool and that particular retailer.
25 It was a retailer decision to sell it where the

1 retailer wanted to sell.

2 COMMISSIONER PEARSON: Right. But what I'm
3 trying to understand is this. The quality of
4 discussion between manufacturers and retailers as
5 they're trying to decide how these products should
6 enter consumption, you know, because we're more
7 familiar, frankly, with products where price is the
8 issue, and there is a direct sale, and invoice, and
9 then the retailer may do with it as he or she wishes.

10 Here the situation is at least somewhat
11 different if not very different. And so I am
12 wondering to what extent do the discussions between
13 retailers -- between manufacturers and retailers
14 really involve this idea of margin. If I'm putting
15 myself in the shoes of a retailer, I think that that
16 might be a pretty important criterion to me. And so I
17 would think that there would be a lot of discussion
18 about margin, maybe more about margin than about flat
19 price.

20 MR. BITZER: First of all, let me again come
21 to that example which we used in an exhibit, which
22 probably exemplifies that very well, this famous
23 Whirlpool four-door which was significantly used on
24 Black Friday 2011. We basically had our promotion MAP
25 at \$1,700, and we usually do our back-of-the-envelope

1 math. Many retailers on a Black Friday make single
2 digit or maybe low double digit margin. That's what
3 kind of -- then we give them a first cost price.

4 That respective retailer kind of decided to
5 sell it significantly below that, significantly. So
6 we had zero influence on this. Just wanting to be
7 honest, I didn't have an interest in that promotion
8 price. So on this case, we had -- which was a very
9 significant one -- no influence whatsoever.

10 Now, in an ongoing base, every retailer
11 probably in the United States would confirm it, the
12 retailers and the merchants themselves typically
13 measure it either on gross margin, per unit of gross
14 margin for invested capital. So, of course, they will
15 share with you, listen, I make on you only X, Y, X
16 margin. We need to talk about your first cost or your
17 support.

18 These are typical discussions with any
19 retailer in the United States.

20 COMMISSIONER PEARSON: Okay. But as a
21 practical matter -- I mean, you have indicated that
22 the retailer is allowed to sell at less than the
23 advertised price. But on an occasion like Black
24 Friday, with a discounted price being widely
25 advertised, wouldn't it be quite unusual for the

1 retailer to sell below that price?

2 MR. BITZER: It would be unusual and
3 certainly not in our interest. In this case, that
4 retailer who did it lost significant promotion funds
5 called advertising. So there was a significant
6 monetary loss for that retailer.

7 Now, what you do on Black Friday -- and
8 these are technicalities. You have on the so-called
9 minimum advertised price, you have ongoing promotion
10 and minimum advertised price. You have promo MAPs,
11 and sometimes you even go for open MAP, so you just
12 say you can do pretty much whatever you want. I mean,
13 it's outside our normal cooperative advertising.

14 COMMISSIONER PEARSON: Okay. But for the
15 major sales, like Black Friday, is it really correct
16 to say that the retailer is setting the sales price?
17 Or is that being set by the manufacturer or perhaps in
18 a negotiation between the manufacturer and the
19 retailer?

20 MR. BITZER: I would with 100 percent
21 certainty -- the retailer sets the price and keeps it
22 as a big, big secret until a few days. In most cases,
23 we're not even informed because there is an enormous
24 sensitivity among retailers about the transparency of
25 any of these prices on Black Friday, an enormous

1 amount of sensitivity.

2 So typically, we're left in the dark
3 typically until two or three weeks ago, when the first
4 print ads appear at some of the printers. But I would
5 consider it almost a trade secret, particularly around
6 the promotional holidays.

7 COMMISSIONER PEARSON: Okay. Well, thank
8 you. My time has expired.

9 VICE CHAIRMAN WILLIAMSON: Commissioner
10 Aranoff.

11 COMMISSIONER ARANOFF: Thank you, Mr.
12 Chairman. Welcome to the panel this morning, and I
13 join Commissioner Pearson in thanking you for your
14 hospitality on that warm day in January when we were
15 visiting Amana.

16 This sort of follows onto what Commissioner
17 Pearson was talking about. But in some of the briefs,
18 there is a discussion of something called an in-store
19 promotion, and there was a suggestion that an in-store
20 promotion is something other than an either direct or
21 indirect discount that would have turned up in the
22 data that we collected.

23 Can you explain what an in-store promotion
24 is? My understanding was that it's an unadvertised
25 promotion. Is that right?

1 MR. BITZER: I can take that. It's
2 basically -- I'm coming back to this minimum
3 advertised prices and our co-op advertising policy.
4 As a manufacturer, you can tie co-op advertising
5 supports to the advertised prices, typically in press
6 medium. However, you cannot by law say what is
7 happening in the store. You cannot. We simply cannot
8 tie our co-op advertising funds to what is happening
9 in the store.

10 So some retailers may choose to have an in-
11 store, but unadvertised promotion support. And that's
12 what you sometimes see appearing.

13 MR. GREENWALD: In the briefs, there was a
14 suggestion that Whirlpool had not reported these sorts
15 of discounts and rebates, right, to the Commission.
16 That is wrong. All rebate programs of all sorts were
17 reported. We were very careful about this, in part
18 because we suspected that other side was not going to
19 be.

20 We asked that our rebates and discounts be
21 verified during verification, and they were. There
22 was one change we had to make as a result of
23 verification. The letter went in last night. It is
24 actually a very minor change. But let me assure you
25 that all rebates and all discounts have been reported

1 on a customer-specific, SKU specific, time specific
2 basis.

3 COMMISSIONER ARANOFF: Okay. I appreciate
4 that piece. I'm still, though, trying to understand.
5 There was some suggestion that an in-store promotion
6 then would be something in your view, Dr. Bitzer, that
7 the retailer decides on themselves and that doesn't --
8 because they're advertising whatever the minimum
9 advertised price is, it doesn't affect the advertising
10 support, the co-op support that they're getting from
11 you, but they can then price lower. That's what you
12 would describe as an in-store promotion.

13 MR. BITZER: Sorry. Typically, what the
14 retailer -- once they do an in-store promotion, they
15 cannot show that price in the newspaper. They may
16 refer to store prices different, or whatever, and that
17 what they do in store is not affected by the co-op
18 advertising support. That is correct.

19 COMMISSIONER ARANOFF: Okay. Because in the
20 Respondent's brief, they seem to imply that an in-
21 store promotion is something that you offer as an
22 additional discount, which they can then reduce their
23 prices, but they can't advertise. So you're saying
24 no, that's something that you would have no role in.

25 MR. BITZER: The in-store price is not tied

1 to so-called co-op funds, which is this co-op
2 advertising fund. Now, there may be other retailers
3 or retailers who then on an ongoing basis say, well, I
4 run an in-store promotion. I need special values or
5 special support. That would have been all reported in
6 what was submitted in the petition.

7 COMMISSIONER ARANOFF: Okay. I'll ask, you
8 know, the afternoon panel as well. But, you know, if
9 you were a retailer, what would be the point in
10 offering an in-store promotion that you can't tell
11 anyone about? How do you get the customers in the
12 store in the first place?

13 MR. BITZER: I think it's first the key to
14 get the customers in the store. It is still some
15 retailers want to have an in-store promotion of
16 another 5 or 10 percent to just have a spontaneous
17 move to a certain SKU. Personally, I'm not overly
18 sold because it doesn't help what we call creating
19 draw to the consumer in the store.

20 It may increase what we call conversion in
21 the store, but to a less extent.

22 COMMISSIONER ARANOFF: So by conversion, you
23 mean that it can close the deal. Okay. For your
24 product, do any of the retailers that you deal with
25 carry inventory of your product?

1 MR. BITZER: Yes, but it differs widely by
2 retailer. So there are retailers who the maximum -- I
3 mean retailers with some very large warehouse which
4 can carry up to several weeks of inventory. There is
5 retailers who essentially carry no inventory, but you
6 -- the consumer buys in the store, and you facilitate
7 the home delivery. So there is big differences. I
8 would say on average, a retailer may carry two to
9 three weeks of inventory, but again with differences
10 across retailers.

11 COMMISSIONER ARANOFF: Does your pricing to
12 the retailer differ based on whether they carry
13 inventory or not?

14 MR. BITZER: What we typically do in the
15 first cost, we reflect differences in terms of
16 logistic cost. So if I give you an example, if one
17 retailer picks up a product from our factory, that is
18 of course cheaper for us when delivering through home
19 delivery, very significant. And that is typically
20 what is reflected in our net price on the invoices.

21 COMMISSIONER ARANOFF: Okay.

22 MR. LEVY: Commissioner Aranoff, I should
23 also clarify that Whirlpool properly followed the
24 Commission's instructions in deducting freight in
25 reporting its quarterly pricing, and that also was

1 part of the staff's verification about a week ago.

2 COMMISSIONER ARANOFF: Okay. At least one
3 of the parties in the case has argued that
4 refrigerators are sort of like the broad category of
5 consumer electronics, in that, you know, a new
6 advanced product comes on the market at a fairly high
7 price, and then the price declines over time. Is that
8 a correct understanding of how this market works, you
9 know, all other things being equal, that a new model
10 with new features would come on at a high price, and
11 the price would go down over time?

12 MR. BITZER: I don't know consumer
13 electronics that well, so it's for me hard to make
14 that comparison. The fundamental of if prices come
15 down, they need to be driven by cost efficiencies
16 because otherwise it doesn't make sense to bring
17 prices down. There may well be on certain LCD panels
18 on computer chips. If you look at the long-term
19 fundamentals of appliances, and in particular take
20 into account that steel and plastics are the vast
21 majority of product cost, they didn't come down.

22 So behind that entire logic would have been
23 a cost curve, which changes massively because of
24 inputs or scale or learning curve or whatever, I would
25 buy that argument. But it's not the case for

1 appliances.

2 COMMISSIONER ARANOFF: Okay. Once a
3 specific model is introduced, what would be the
4 circumstances under which the price of that model --
5 and I guess this would be either to the retailer or
6 for the retailer to their customers. When would that
7 price actually go up for a specific model?

8 MR. BITZER: Hopefully when the antidumping
9 duties are imposed. But apart from that, no, it
10 differs when you launch the products or on an ongoing
11 basis. When you launch a product, of course, you look
12 how your entire lineup is being built. So, for
13 example, now that we launch a 29-cubic foot, we check,
14 of course, where we have a 25-cubic foot, dual
15 evaporator, where you put it, and that's where you
16 typically set the launch price.

17 On an ongoing basis, of course you look
18 every day, literally every day, what other competitive
19 price is out there, what are the online prices out
20 there, and that's how you typically see how it's
21 performing, and that's how you make certain decisions
22 if you want to change MAP prices over time.

23 COMMISSIONER ARANOFF: So I'm just trying to
24 understand. I mean, I understand that there are, you
25 know, promotional prices for certain periods, and then

1 those periods end, and those prices go away. You get
2 back to whatever the regular MAP price is. But I'm
3 trying to envision what it looks like in the market
4 when you call up the retailer and you say, well, the
5 regular MAP price is going up 5 percent because costs
6 are going up for whatever reason. I mean, does that
7 actually happen?

8 MR. BITZER: Yes, it happened actually three
9 times in the last 12 months because material costs, in
10 particular steel and plastic, on all appliances have
11 gone up massively. So we issued several price
12 increases, and these are, as you can imagine, very
13 intense discussions with retailers because everybody
14 is concerned about what could happen. But that is
15 basic. We announced it three times. It happened in
16 the last year, and it also happened in 2005, and it
17 also happened in 2007.

18 COMMISSIONER ARANOFF: Okay. Now, retailers
19 don't make volume commitments to you, right?

20 MR. BITZER: First of all, you need to
21 differentiate between our branded sales and our so-
22 called -- when you have an OEM sale. In the past, OEM
23 trade partners very often came with volume sales or
24 certain conditions which were tied to minimum volume
25 at times. That has -- and, Justin, correct me if I'm

1 wrong, but it has largely disappeared. There is no
2 firm volume commitments.

3 What retailers typically have is to have
4 certain volume targets, which you establish on an
5 annual base, which are then tied to certain volume
6 rebates. But there is no firm or firm volume
7 commitment typically coming into a season. It may be
8 slightly different -- let me just correct it. For
9 example, when you talk about a major Black Friday
10 promotion or July 4th promotion, these promotions are
11 typically tied up four to six months beforehand. And
12 given that they typically involve large quantities of
13 certain SKUs, there are certain volume indications
14 done quite a bit in advance.

15 COMMISSIONER ARANOFF: Okay. Thank you.
16 I'm going to come back to this in my next round.
17 Thank you, Mr. Chairman.

18 VICE CHAIRMAN WILLIAMSON: Okay.
19 Commissioner Pinkert.

20 COMMISSIONER PINKERT: Thank you, Mr.
21 Chairman. And I join my colleagues in thanking all of
22 you for being here today and helping us to understand
23 what is happening in this industry. I want to begin
24 by asking whether you agree with Samsung and LG that
25 they are the innovation leaders in the marketplace.

1 MR. BITZER: As you can imagine, I would
2 firmly disagree. So let me just expand a little bit
3 on this one, and also demystify here a little bit. As
4 we first of all showed, the bottom-mount refrigerator
5 was invented like 50 or 60 years ago. The first time
6 really that bottom mount, and particularly also French
7 door, took off was with Maytag in 2006. That's when
8 it took off.

9 There has been a lot -- and I heard about it
10 in the preliminary hearing, and we'll probably hear
11 about it a lot today, about the so-called innovative
12 features. Now, in my view, innovative features is
13 tied to you brought it to market, or you invented it.
14 That is simply not true. None of the features, or
15 most of the features which you see here, are
16 exclusive, or you can't achieve them.

17 So let me just give you a couple of
18 examples. The last time I heard a lot of stories
19 about vacuum panels or super-insulated panels. And I
20 heard a lot of stories about how when they were
21 brought to market, they were exclusive. That is
22 simply not true. Vacuum panels were introduced by
23 Owing Corning in Ohio in 1992. Admiral did the first
24 test even published in 1992.

25 Linear compressors, you will hear most

1 innovative. That is a family of compressors where a
2 number of companies have patents, LG, Samsung, Sanyo,
3 even our own daughter company has patents, and
4 actually were introduced by some power in Ohio in the
5 early nineties as well.

6 LED lighting, a standard common industry
7 practice. All of these features, they're not
8 innovative in the way that, okay, I invent it, bring
9 it to market. It's a question of costs because
10 they're fairly costly. So if you have a vacuum panel,
11 that is a pretty expensive panel to produce. LED, it
12 costs you money. So the question is do I load the
13 cost in my product, or do I not load it. Do I expect
14 an economic return?

15 But there is nothing magic about, you know,
16 having a vacuum panel in a refrigerator or linear
17 compressor, or whatever else, or a larger size. It's
18 a question of do you make that investment decision.
19 So when we talk about innovation, we should not
20 confuse innovation with investments in features.

21 The other thing which I want to point out is
22 also if indeed we will be not innovative, how can it
23 be that even today we have the top eight spots on the
24 bottom mount two door, and two of the top three spots
25 on the French door bottom mount by *Consumer Union*. So

1 it's kind of hard to follow exactly that logic.

2 MR. GREENWALD: Just for emphasis here, you
3 heard an awful lot about we are the innovators. There
4 is nothing that LG or Samsung has brought on that is
5 their innovation. What they have done is shown a
6 willingness to invest money in features because they
7 are apparently indifferent to the return that their
8 sales generate. Whirlpool could do exactly the same
9 thing, but it is cost prohibitive for Whirlpool at
10 today's prices.

11 So please distinguish between innovation and
12 decisions to invest capital in features.

13 COMMISSIONER PINKERT: Well, let me try to
14 get clarification on that point. You have suggested
15 that what they are doing is introducing features on
16 their products at lower price points. Are they
17 introducing those features as the first players in the
18 market to introduce those features, or are they
19 introducing features that are already in the
20 marketplace and introducing them at lower price points
21 that don't get them a recovery of cost?

22 MR. BITZER: I would argue the latter one.
23 So, for example, again if you go back to vacuum
24 panels, they have been in the market throughout the
25 world, a number of players before. So it's not the

1 first to market. But it's a significant cost. Or
2 take the dual evaporator. It's just a decision. Do
3 you load that cost into the product? They have been
4 in the market, also in professional products, for a
5 long time.

6 COMMISSIONER PINKERT: Thank you. Now, I
7 want to get to this question of pricing net of direct
8 discounts or pricing net of direct and indirect
9 discounts. And I'm going to give you an opportunity
10 to clarify your position on what pricing we should be
11 relying on.

12 But before we get there, I want to
13 understand the dynamic of the marketplace, and in
14 particular whether the purchasing company can take
15 into account the indirect discounts when making the
16 decision to purchase from the manufacturer.

17 MR. GREENWALD: I think that my answer ought
18 to be supplemented because I'm not as privy to all of
19 the back and forth that goes on in negotiations. This
20 goes a bit to other questions I think Commissioner
21 Aranoff asked.

22 What you actually see in the marketplace is
23 -- or it was Commissioner Pearson that focused on this
24 -- is a dialogue between a retailer and a
25 manufacturer. So the retailer will say and, for

1 example, the Home Depot has said, what we want to do
2 is have a blockbuster summer promotion. And we think
3 to do that we're talking to all our customers. We're
4 talking to LG. We're talking to you, Whirlpool. And
5 we see us offering a range of products at these price
6 points. And that might be a MAP price point.

7 At the same time, they will say, in order
8 for us to sell at this MAP, we're looking for a
9 contribution from your part of such and such. So that
10 goes to how the specific promotional pricing is in
11 fact derived at, and you can see long email chains
12 that discuss all aspects of that.

13 In addition, a retailer will know whatever
14 volume a rebate or discount may be eligible for, and
15 he may factor that into his thinking, should I --
16 which would be an indirect rebate, not direct. Should
17 I engage in this promotion, because if I do I can meet
18 volume, and I'll get so much from the manufacturer
19 that has a volume target with me?

20 So my answer is that the most accurate would
21 be frankly net of both direct and indirect rebates.
22 The difficulty comes with the inaccuracy with which
23 the indirect part of the equation has been reported,
24 or actually in one case both the direct and indirect.
25 But the indirect rebates and discounts have been

1 allocated in ways by Respondents that we know to be
2 false.

3 So the whole indirect issue doesn't raise so
4 much a question of what would be the best result were
5 all the data accurate. It raises a question of what
6 is the best approach given the inaccuracies in the
7 reported data.

8 MR. BITZER: Maybe just to echo what John
9 was saying, I would say most retailers first look at
10 just the immediate price on the invoice, i.e.,
11 everything which is directly on the invoice. The
12 reason I'm -- of course, as John says, most other
13 retailers try to factor in what may be is a trailing
14 or indirect rebate, which is typically a quarter-end
15 or year-end rebate.

16 However, most merchants prefer to
17 predominately look at the first cost because there is
18 always some uncertainty with trailing because we don't
19 know if we hit the volume rebate or other aspects. I
20 would say still most merchants are so sophisticated,
21 they basically take the net of both numbers, and they
22 put a different weight on probably more what they see
23 direct invoice versus probably indirect.

24 The tricky thing is to what John is
25 elaborating. You know, in our case, it's pretty

1 straightforward what we have in indirect because we
2 only sell appliances. What do you do if you sell TVs,
3 cell phones, and everything else to Best Buy, and
4 appliances are only 20 percent of your volume? That's
5 where the whole indirect rebates become very
6 uncertain, and which product category do they really
7 flow into?

8 COMMISSIONER PINKERT: So are you saying
9 that some sort of allocation is inescapable when
10 dealing with the indirect discounts?

11 MR. GREENWALD: There has to be some sort of
12 allocation, as long as it's by customer. Let me again
13 just throw in a hypothetical. Let's say you have a
14 retailer and you have an OEM customer, okay? And the
15 trailing promotions that we're talking about award the
16 retailer for volumes. I don't see how you can
17 possibly allocate any of those to your OEM customer,
18 if that's what you have.

19 They are customer-specific. And in some
20 cases, they will be annual, in some cases they will be
21 quarterly. But if you're going to do this accurately,
22 you cannot simply take averages of your rebates paid
23 and allocate them across your customer base and across
24 all your products and across time. Even trailing
25 rebates have more specificity to them than are

1 suggested by the data that I looked at.

2 COMMISSIONER PINKERT: Thank you.

3 VICE CHAIRMAN WILLIAMSON: Commissioner
4 Johanson.

5 COMMISSIONER JOHANSON: Yes. Thank you.
6 And I'd also like to thank you all for appearing here
7 today. I visited your Amana plant in Iowa a few years
8 ago. It was, of course, not when I was a member of
9 the Commission. I just joined the Commission about
10 three months ago, but I was working in the Senate at
11 that time, in the U.S. Senate, and had the opportunity
12 to go out there. So I do have some idea of what you
13 all do.

14 I'm going to start with a very basic
15 question. It's kind of a 30,000 foot -- view foot
16 question. And this is for Mr. Bitzer. Mr. Bitzer, in
17 your statement, you advanced, and you all have
18 advanced, a single domestic like product that is
19 coextensive with Commerce's scope. I was wondering if
20 you could go into that a bit, into a bit more detail,
21 and explain why the Commission should not more broadly
22 define the like product to encompass all refrigerators
23 regardless of configuration. And I'd like for you to
24 in particular address the issue of consumer
25 perceptions. Thank you.

1 MR. BITZER: First of all, I do appreciate
2 that you visited us in Amana some time ago. So let me
3 just come back to this fundamental distinction between
4 what we call top-mount refrigerators, bottom mount,
5 and side-by-sides. As I said before, first of all,
6 they typically end being produced in separate lines,
7 if not even separate factories. So, for example, in
8 Amana, you probably didn't see any side-by-side
9 products. Our top mounts are produced in different
10 factories.

11 So it's not only separate production line,
12 it's actually in our case even a separate facility.
13 Could you theoretically put them on the same roof?
14 Yes, theoretically. But it's the fundamental
15 difference in the process. The other big difference
16 is the fundamental thermodynamics of having the
17 freezer on the top, on the bottom, on the side, are
18 fundamentally different in terms of, you know, what
19 compressor you need to put in, how much you need to
20 pump up versus how much natural cool air flows down
21 the product, which also explains why there is a
22 fundamental energy efficiency difference across these
23 different product categories.

24 That's why the DOE has different energy
25 standards. Typically from a consumer perspective,

1 they recognize it as fundamentally different. Having
2 said that, if you would ask most consumers between
3 bottom mount and side-by-sides, there is a certain
4 back and forth. So you would very often see that
5 somebody who bought a bottom mount may have previously
6 bought a side-by-side. You would less see that a top-
7 mount consumer jumps right straight into a bottom
8 mount, a sophisticated four-door refrigerator.

9 So there is some movement from a consumer
10 perspective between side-by-sides and a bottom mount,
11 but only to a less extent. What you would see as
12 typical of a retail floor is in most cases arranged by
13 configuration type. So you see top mounts on one
14 side, side-by-sides, and bottom mounts. And you would
15 also most retail online sites are also organized the
16 same way.

17 *Consumer Union* also differentiates typically
18 across these ones. So from trades, institutions,
19 consumers, there is a fundamental difference. But
20 more important for manufacturing, and the whole
21 physical characteristics, there is a fundamental
22 difference for these three different product
23 configurations.

24 COMMISSIONER JOHANSON: Thank you. That's
25 helpful. I have another question concerning the like

1 product issue. I was wondering if one of you could
2 respond to Electrolux's argument that the Commission
3 should define French door style, bottom-mount
4 refrigerators as a separate domestic like product?

5 MR. GREENWALD: Let me begin with the
6 statute, okay? The statute instructs -- or the
7 statute defines the domestic like product by reference
8 to the product under investigation by the Department
9 of Commerce. So there is a statutory presumption for
10 coextensive analyses by both agencies involved. You
11 can and have in the past departed from that, but only
12 where there are clear dividing lines in terms of
13 consumer perception, in terms of production processes,
14 in terms of in this case the ergonomics or the
15 thermodynamics.

16 If I can go back to what Dr. Bitzer said,
17 the fundamental defining characteristic of a bottom-
18 mount refrigerator, regardless of how many doors it
19 has, is where the freezer is located. And that is the
20 same through all the various types. So while there
21 are differences, and there are differences as sort of
22 a price scale, they're not quite what -- as pronounced
23 as counsel for Electrolux might think.

24 I mean, one of the things that when I was
25 looking at a refrigerator, I actually at one point had

1 aspirations for a Sub-Zero. That was a two-door, not
2 French door, maybe \$8,000. That was out of my price
3 range. But what I was looking for was bottom mount,
4 not a particular type of bottom mount.

5 COMMISSIONER JOHANSON: Thank you. What
6 conclusions should we draw from GE's recent \$194
7 million investment to expand its bottom mount capacity
8 in Kentucky with production forecasts to commence in
9 2014?

10 MR. GREENWALD: That they have a lot of
11 faith in the Commission's determination in this case.

12 COMMISSIONER JOHANSON: Okay. Yes.

13 MR. BITZER: First of all, I can't speak on
14 behalf of GE, and I don't talk to GE. I can only
15 read. GE in the past has heavily outsourced their
16 bottom-mount production, either to Mabe or to LG, and
17 they ran into limitations about variability to kind of
18 gain market share and raise prices or have adequate
19 returns from the business. I think it's a fundamental
20 re-decision on their side in terms of producing on
21 their own as opposed to sourcing and producing
22 elsewhere.

23 I think apart from the duties, on a level
24 playing field, production in the U.S. makes absolute
25 sense because increasingly with rising logistic costs,

1 the labor costs' advantage is offset.

2 COMMISSIONER JOHANSON: Thank you for your
3 response, and I realize you can't respond. You don't
4 know what GE is thinking. But I just thought you'd
5 have some idea as to what is going on there.

6 Samsung Respondents argued that bottom-mount
7 consumers are far less price sensitive than top mount
8 and side-by-side buyers. Are there truly different
9 customers for each design, or is there overlap in
10 purchasers?

11 MR. GREENWALD: It is generally true that
12 bottom mounts are the high end of this, and therefore
13 the priciest, side-by-sides in the middle, and top
14 mounts at the lower end. It is generally true that if
15 somebody can afford a bottom mount, as opposed to the
16 other two, they will gravitate towards it.

17 The point that Samsung misses is that if you
18 are looking at bottom mounts, consumers are sensitive
19 to relative pricing among the different bottom mount
20 brands. The evidence on that in your staff report,
21 from purchasers, from basically everybody is
22 overwhelming. So while I would not disagree with the
23 proposition that you can line up these three different
24 types of refrigerators and make general conclusions
25 about where they fit in terms of average prices -- and

1 I think we did it actually in one of our exhibits --
2 it does not follow that because bottom mounts are in
3 the higher end that therefore consumers are
4 insensitive to a drop in an LG price or rise in an LG
5 price of X or Y. In fact, you cannot reconcile this
6 claim of price insensitivity to the record of constant
7 promotional pricing.

8 COMMISSIONER JOHANSON: Thank you. Was LG's
9 creation of a pared down bottom-mount refrigerator for
10 a Black Friday promotion a new business strategy, and
11 what conclusions should we draw from the reported
12 success of this initiative?

13 MR. GREENWALD: Let me just take issue with
14 pared down. I believe that the difference between
15 that model and the model that preceded it at roughly
16 twice the price was an inch or so on the -- and,
17 Justin, can you --

18 MR. REINKE: Yeah, let me speak. And this
19 is Justin Reinke. I'm product director for bottom
20 mounts for Whirlpool. And since this is my first time
21 speaking here today, I'll say good to see some of you
22 again, and we do appreciate your time.

23 The LG model that is this infamous Black
24 Friday model, from my understanding and recollection,
25 it didn't have crushed ice, so it had a feature there

1 that was taken out. It had a little bit of a more
2 inexpensive execution of a dispenser, and a few other
3 things.

4 If I add all those up in my head -- and
5 again, I don't know their exact costs. But if I add
6 all those up in my head, that's maybe \$50 worth of
7 cost at most. And so to discount something over
8 \$1,000 for \$50 in costs economically doesn't make a
9 whole lot of sense.

10 MR. GREENWALD: Well, Commissioner Johanson,
11 that was a play for volume, and it succeeded.

12 COMMISSIONER JOHANSON: Okay. Well, thank
13 you for your responses, and my time has expired.

14 VICE CHAIRMAN WILLIAMSON: Thank you. Just
15 to finish up on an earlier line of questioning, Mr.
16 Greenwald, I think you offered to give us some
17 comparison, for example, that I think there was a
18 Whirlpool model that you said was slightly larger than
19 that category, but you thought we should compare it
20 under certain circumstances.

21 So I'm just inviting you post-hearing to
22 make sure that we have those comparisons clear.

23 MR. GREENWALD: Sure. In -- I forget whose
24 brief. What they asserted is that either we should
25 report something that was outside the parameters of a

1 product category that they redefined -- we did report
2 it in the preliminary.

3 VICE CHAIRMAN WILLIAMSON: Okay.

4 MR. GREENWALD: Or alternatively, they asked
5 us to report it.

6 VICE CHAIRMAN WILLIAMSON: Yes.

7 MR. GREENWALD: And that I will do. At the
8 same time, I ask the Commission to do something. When
9 I looked at this product category, what I found was
10 that you have apples and oranges in terms of features
11 in it, in the sense that the category is defined as
12 refrigerators of a certain type, a certain size,
13 stainless steel, with no ice and water. And if there
14 are in the reporting of anybody refrigerators with ice
15 and no water, or water and no ice, but has a dispenser
16 in one form or another, then it seems to me you have
17 to correct that because you don't want to have a
18 skewed analysis. Anyway --

19 VICE CHAIRMAN WILLIAMSON: Okay. But just
20 make it -- you know, explain to us how should we look
21 at it --

22 MR. GREENWALD: Fine.

23 VICE CHAIRMAN WILLIAMSON: -- and why should
24 we look at it that way. And I'm sure Respondents will
25 respond to that. Thank you.

1 LG has stated in its prehearing brief that
2 it does not appear that Whirlpool reported all of the
3 bottom-mount refrigerators, refrigerator models it
4 promoted during the period of investigation, and did
5 not report all of the units associated with the
6 promotional models it did report. Either now or in
7 post-hearing, would you respond to this statement?

8 MR. LEVY: Sure. We'd be happy to elaborate
9 in our post-hearing by reference to proprietary
10 information. But to be clear, Whirlpool correctly
11 reported, and the ITC staff verified, that the SKUs
12 identified in each of the relevant 14 product
13 categories were complete and accurate, that is to say
14 that the SKUs that belonged there were reported.
15 Those that did not belong there were excluded.

16 Similarly, the gross invoice prices, net of
17 freight, were properly reported. Similarly, the --

18 VICE CHAIRMAN WILLIAMSON: Saying that you
19 correct the report is what I need to know now. You
20 know, your answer is post-hearing, just to --

21 MR. LEVY: Certainly.

22 VICE CHAIRMAN WILLIAMSON: -- understand.
23 Thanks. Should the Commission use the A or B products
24 in their pricing comparisons, and why? And if you
25 should use one or the other, is there something to be

1 learned by looking at both, and what is it?

2 MR. GREENWALD: The advantage to the B
3 products is it allows you, in a way that the A
4 products don't, unless you really get -- well, the A
5 products don't. To look at differences of
6 refrigerator types because you're talking about the
7 largest single SKU, and therefore you can look at
8 feature differences, which clearly matter to pricing.

9 The A series don't. The series are more of
10 a mix. I've been talking, for example, about product
11 seven and what it can include. It can include things
12 that have a range of features. In product six and
13 seven, the A series are particularly -- well, they
14 have a two cubic foot capacity.

15 VICE CHAIRMAN WILLIAMSON: Is there anything
16 to be learned by looking at those product categories?

17 MR. GREENWALD: Yeah, sure, sure.

18 VICE CHAIRMAN WILLIAMSON: What is it?

19 MR. GREENWALD: Yes. If you look at both --
20 I think it was the A series that we gave you. What we
21 did -- I think it's on table 2 or table 3 of our
22 brief, if you would look at it.

23 VICE CHAIRMAN WILLIAMSON: Okay.

24 MR. GREENWALD: What we did is we asked
25 ourselves the question, when you take your pricing

1 data, what does it show? I mean, we felt that what
2 was happening in this market is that subject imports
3 were actually pulling down, depressing, the prices at
4 which Whirlpool could sell its competing product. And
5 we looked at the A series to test that hypothesis.
6 And it is clear from the data that what you find in
7 almost every one of the products for which these
8 direct comparisons, a drift down in prices that are
9 pulled by pricing of subject imports. I don't think
10 there is any doubt in the data.

11 So sure, the A series are valuable. The D
12 series are valuable. If you want to get to specific
13 issues of underselling as opposed to this sort of
14 gravitational pull of subject imports, then you have
15 to adjust for features. But more generally, both
16 series are useful, and they show essentially -- they
17 substantiate what Dr. Bitzer has said about how this
18 market has changed over the last three years.

19 VICE CHAIRMAN WILLIAMSON: Okay. Thank you.
20 LG has stated that two-door, bottom-mount
21 refrigerators are not commercially important, and note
22 that they only account for 6 percent of all bottom-
23 mount sales at Home Depot. Do you agree with LG's
24 characterization of this market segment?

25 MR. BITZER: As I stated before, bottom

1 mount two-door are a continuum of the bottom mount
2 three-door and a continuum of a bottom mount four-
3 door. LG and Samsung are all present in that segment.
4 The famous OEM sale which we lost, which John
5 Greenwald referred to, only three months ago LG was
6 very intent to also get that two-door bottom mount as
7 part of an overall contract on the bottom-mount
8 refrigerators. So most retailers ask for propositions
9 along the continuum. Most manufacturers play in that.

10 So no, I don't see a distinct difference in
11 the segment. It's a sub, if you want to say, of
12 certain features and sizes, yes, but it makes certain
13 difference. But it's not a completely different
14 segment.

15 MR. GREENWALD: But in terms of the
16 economics, does it matter? The answer is, you bet it
17 does. What I'd like to do in the -- sort of a
18 response to this question is get you the details of
19 the volume and value of the two-door bottom mount
20 business that Whirlpool lost at the single OEM
21 contract over the three-year projected period of that.
22 We are talking about significant numbers and
23 significant dollars.

24 VICE CHAIRMAN WILLIAMSON: Okay. Are we
25 seeing a situation -- clearly I guess when the bottom

1 mounts were introduced, they were more of a premium
2 brand because people found them to be more expensive.
3 Are we seeing a situation where almost the standard,
4 everybody is going to want a bottom, or the bottom
5 mount is going to be the dominate feature, so you've
6 got to have something at every -- shall we say price
7 point to cover the purchasers, you know, how much
8 money they have available to spend on refrigerators.

9 MR. BITZER: First of all, I wouldn't expect
10 that the bottom mount is all of a sudden going to be
11 dominating the entire market. As you may recall from
12 the earlier segments, when we showed the top mount,
13 the side-by-sides, and the bottom mount, yes, the
14 bottom mount over that time period has increased by
15 roughly 670,000 units. While the side-by-sides have
16 almost gone down to a similar level, top mounts has
17 been reasonably stable.

18 So I wouldn't see -- and by the way, top
19 mounts is still in terms of quantities quite a bit
20 bigger than bottom mounts. So I don't see that that
21 market will fundamentally go away. It has not been
22 evident in the last couple of years. And the cost --
23 because to produce a bottom mount is significantly
24 more cost intensive than a top mount. The cost
25 differences just don't allow you to reach certain

1 price points. I mean, just physically you have too
2 much steel, plastic, and electronics in there to get
3 to price points where consumers would look to today.
4 So if you would, for example, top mount is -- you see
5 499, 599, 699 top mounts in the market. You can't
6 even pay for the steel and plastics which is in a
7 bottom mount with that money, not even talking about
8 conversion and all other aspects.

9 VICE CHAIRMAN WILLIAMSON: Good, thank you.
10 Good, okay. Since my time is about to expire,
11 Commissioner Pearson?

12 COMMISSIONER PEARSON: Thank you, Mr.
13 Chairman. There has been some discussion of features
14 and the role they play in the marketplace. Is it
15 correct to understand that new or improved features
16 are important in driving shifts in consumer demand for
17 these bottom-mount refrigerators?

18 MR. BITZER: I mean, features-slash-price.
19 I mean, consumers typically look at features at a
20 given price point. That's why you would, you would
21 enter any retailer in U.S., you always see the price
22 and typically two or three dominant features on the
23 price tag.

24 So yes, in terms of any proposed value
25 proposition to consumer, features and price are very

1 important. And as such, you know, you can drive
2 significant amounts of market volumes in the
3 respective markets.

4 MR. REINKE: Let me add on just a little
5 bit, and maybe I'm hearing your question a little bit
6 of a different way. But if the question is, are
7 features driving the shift from side-by-sides and
8 other markets to, or other platforms to bottom mounts,
9 my primary answer to that would be the configuration
10 is driving people, not the features.

11 The features, once they've made that move,
12 help them determine, and then again on price, help
13 them determine which model to buy. But the
14 overwhelming move to this bottom-mount industry has
15 really been driven by configuration.

16 COMMISSIONER PEARSON: Okay. But the
17 introduction of new features does have some effect in
18 the marketplace.

19 MR. REINKE: Absolutely.

20 COMMISSIONER PEARSON: Anti-lock brakes,
21 inside airbags, that would be of interest to at least
22 some segment of --

23 MR. GREENWALD: Sure, but there is this
24 notion, and I sort of touched on a point that I think
25 matters enormously. There is a notion out, especially

1 in Respondent's brief, that there's something called
2 non-price factors, non-price attributes, that sell
3 independently of price.

4 What actually happens is if you introduce a
5 heavily loaded, attractive refrigerator with the best
6 possible fit and finish, people will pay more for it.
7 That's true.

8 But it is, again, value for the money. What
9 you care about and what drives market-share shifts is
10 the feature load at particular price points.

11 COMMISSIONER PEARSON: Right, okay. Permit
12 me to share with you an observation from a recent
13 kitchen remodeling in my own household. This is a
14 different point of sale than we're looking at, because
15 we're looking at not the consumer purchase, but the
16 purchase by retailers, assuming they actually do
17 purchase them.

18 But in the case of our refrigerator, which
19 is indeed a bottom-mount refrigerator now, effective I
20 think late June -- the dust has settled, things are
21 okay. But the purchase decision there was made under
22 the paradigm, my role was to say yes, dear, whatever
23 you would like. And I found price to be less of a
24 determinant than the preferences of the primary
25 purchaser, okay.

1 And so you say price is everything. Boy, it
2 sure was not in my case.

3 MR. GREENWALD: No, I don't say it's
4 everything. I think wives are an independent factor
5 in all of this. And it varies by what you can afford.

6 I mean, it is true that when you look at any
7 marketing survey, no matter what, there are price
8 ranges precisely because different customers have
9 different budgets. And I daresay that the person that
10 wanted the refrigerator that person wanted in his or
11 her mind had a very large budget, you know.

12 In that sense, no, pricing is not the be-all
13 and end-all. But for most people going out and
14 buying, whether it's a bottom mount or otherwise,
15 price is a key determinant. Not the only one. And
16 you cannot look at the record that you had with
17 insights from purchasers, with insights from
18 producers, with data showing how volume responds to
19 price, and conclude that what really, really matters
20 is features, as opposed to features for the price.

21 COMMISSIONER PEARSON: Okay.

22 MR. BITZER: And maybe let me also elaborate
23 a little bit, because presumably we will hear a lot
24 this morning about price sensitivity in the segment.

25 A starting point is, first of all, if indeed

1 the segment will be insensitive, why on Earth do we
2 see so many promotions by LG Samsung or Home Depot?
3 Why? If it wouldn't drive anything, why did the
4 prices go down?

5 Let me also make a couple broader comments,
6 because we may hear a lot about consumer service, et
7 cetera. You have in the data, you have luxury, but
8 you have actual transactional data; the so-called NPD
9 data, which was in a lot of submissions.

10 There's a fundamental that every undergrad
11 economics students can tell you, there's a fundamental
12 difference in consumer actual behavior versus stated
13 purchase intention. Actually, most market researchers
14 would say stay away from stated intentions, look at
15 the actual data.

16 So you actually have actual cash-register
17 data in front of you, which shows exactly how a
18 consumer decided in face of price. Which shows you
19 entire, the entire picture.

20 There are consumer surveys out there. But
21 first of all, I once again want to caution, it's like
22 comparing, if you want to drive a car looking through
23 the windshield and see what's happening right now? Or
24 do you ask a passenger, judging from what's happening
25 inside, what may happen in the future in the front?

1 So I would still prefer to look through a windshield.

2 If you would look at consumer survey, I
3 think we're more than happy to submit more stuff,
4 probably most relevant is Traqline. Traqline
5 consistently shows the feature and price are the most,
6 are the biggest determinant of purchase among
7 consumers.

8 And even if you look at the last four years,
9 that importance has even increased in bottom mounts.
10 And by brands, they asked purchasers of different
11 brands what was the biggest driver of purchase, on
12 Kenmore and LG the price sensitivity was even higher
13 than in Whirlpool and many other brands.

14 So to say that basic market is not price-
15 sensitive, with all due respect, just doesn't make
16 sense.

17 COMMISSIONER PEARSON: Okay, well, thank you
18 for those comments, but I did not ask about price. I
19 asked about features. And I have another question on
20 features, okay.

21 Did LG and Samsung have a timing advantage
22 in the introduction of new features for at least part
23 of this period of investigation?

24 MR. BITZER: On some features they had. But
25 again, it's not driven because they are not

1 accessible. You can decide to put these features with
2 a certain cost onto the market. So for example, our
3 own production, compressor production company in
4 Embraco has linear compressors. Vacuum panels you can
5 put on the market. So there was in some cases a
6 timing difference, but it's not because Whirlpool
7 couldn't go there. I mean, it's just investment --

8 COMMISSIONER PEARSON: No, I didn't say
9 that. I'm just asking about what had transpired in
10 this marketplace. And I have the impression from the
11 staff report that for some features, that LG and
12 Samsung were in the market somewhat earlier than
13 Whirlpool. And that's, I just wanted --

14 MR. GREENWALD: That is correct.

15 COMMISSIONER PEARSON: Okay.

16 MR. GREENWALD: They invested in features.
17 It goes back to Commissioner Pinkert's point, it's not
18 innovation, but they did invest in features.

19 COMMISSIONER PEARSON: Okay, thank you.
20 Then another question on features. Is it normal for
21 the price of a feature to decline over time as it
22 becomes more commonplace in the market? Mr. Bitzer?

23 MR. BITZER: You would expect that to see if
24 an initial feature is produced small-scale and then
25 produce large-scale and get higher-scale economies.

1 That's what you could see. To a lesser extent.

2 But I mean, compressors, I mean, the first
3 linear ones were a little bit more expensive. You see
4 some scale as it builds, but not to the magnitude of
5 what we see in the marketplace.

6 MR. GREENWALD: Again, the short answer is
7 you would expect features to decline as the cost of
8 features declines. You would not expect features to
9 decline, or the refrigerators with features to
10 decline, to a point that's below cost. No matter how
11 long a feature has been in the marketplace.

12 COMMISSIONER PEARSON: Okay. Well, though
13 we may occasionally see different patterns in some
14 other products, but I accept what you're saying.

15 How does Whirlpool manage its several brands
16 to maintain the value of each in the marketplace?

17 MR. BITZER: First of all, we try to have
18 our brands appeal to different consumer segments. So
19 typically, the Maytag customer is slightly different
20 than an Amana customer, slightly different than a
21 Whirlpool, than a KitchenAid customer.

22 So yes, through positioning in our consumer
23 advertising we try to appeal to different consumer
24 segments across the entire spectrum. What you also
25 see in addition, for example if you would take the

1 difference between a KitchenAid and Amana. The
2 KitchenAid typically caters more to the higher, or
3 high-end consumer, and you wouldn't see a 399 top-
4 mount KitchenAid refrigerator. So you slightly differ
5 in product range, but you would still have from a
6 product range a high amount of overlap.

7 In addition, you may see some distribution
8 difference that, i.e., not all our brands are present
9 in all distribution channels.

10 COMMISSIONER PEARSON: Okay. So does
11 Whirlpool then sometimes find itself competing, its
12 various brands competing against each other in much
13 the same way that they would compete against products
14 from Samsung or LG?

15 MR. BITZER: I would say on the floors,
16 where you see multiple of our brands present, with
17 like for like product, it may be occasion that a
18 consumer switches from one brand to another.

19 But it's typical of retailers to try to
20 differentiate in terms of product range, which would
21 bring the different brands.

22 COMMISSIONER PEARSON: Okay, thank you.
23 Well, perhaps I'll come back to this, but for now I've
24 run out of time.

25 VICE CHAIRMAN WILLIAMSON: Commissioner

1 Aranoff.

2 COMMISSIONER ARANOFF: Thanks. In your
3 brief you make a lot of arguments based on four years
4 of data, rather than the three years that we usually
5 look at. Are you arguing that we should extend the
6 POI to four years?

7 MR. GREENWALD: The reason that was done is
8 in fact, you do have four years of data, and it shows
9 the same trends as the three years show, but they are
10 more pronounced. You begin earlier, with higher
11 Whirlpool profits, so you have a higher base to see
12 what's actually happened.

13 I don't mean to say that you have to do it.
14 It does seem to me it puts what goes on in more
15 perspective, and we kept ourselves to data that you
16 have on the record. But fundamentally, the case is
17 the same either way, the trends are the same. Your
18 pricing data is all from 2009. If you went back to
19 2008 you'd probably see more of this what I call
20 gravitational pull of the subject imports.

21 But we did that simply to put the data you
22 have before you in the sharpest relief. We're not
23 arguing that you in some sense have to change the
24 period of investigation. That decision is yours.

25 COMMISSIONER ARANOFF: Okay. Can you

1 describe a little bit about how retailers allocate
2 their floor space to refrigerators? Is that part of
3 the negotiation that you do with them over prices and
4 MAPs and features, and which of your products are
5 going to show? Are you actually negotiating over how
6 many floor spots you get?

7 MR. BITZER: Short story is yes, that could
8 be sometimes part of the discussion. Let me step back
9 and again, and probably expand a lot more on how
10 retailers decide and allocate a floor space.

11 First of all, a fundamental decision how
12 much we allocate for different refrigerator
13 categories. So for example, you would see at a
14 Lowe's, you would tend to see more top-mount
15 refrigerators, relatively speaking, than a Home Depot.
16 And on a relative scale, a lot of side-by-sides and
17 French-door and bottom-mount refrigerators at Home
18 Depot, on a relative scale.

19 So there's a fundamental decision on how
20 much we allocate to the different categories. Within
21 each category, yes, it is very much as you introduce
22 new products, or as you, for example, show them now
23 the new price list after a price increase, a
24 discussion, can you defend that floor space, can you
25 get that floor spots. Which is ultimately, in most

1 cases, a reflection of can the retailer get the
2 adequate return in terms of their margin of floor
3 space.

4 COMMISSIONER ARANOFF: When you are
5 competing for floor space, are you competing just
6 against other refrigerators? Or do retailers
7 sometimes reduce their refrigerator slots in order to
8 put in other appliances?

9 MR. BITZER: That happens, but very
10 infrequently. Because typically that involves
11 physical changes on the floor space, typically. But I
12 mean, it happens, but typical discussion is how many
13 SKUs do you get on a bottom mount, how many SKUs do
14 you get in a side-by-side. That would be the typical
15 discussion.

16 COMMISSIONER ARANOFF: Okay. I know my
17 colleagues have gone over a number of the arguments
18 that Respondents have made about how the Commission
19 should and shouldn't compare prices, and I think this
20 is one that none of them have asked about yet. But
21 maybe they have.

22 Respondents argue that when we're doing the
23 direct price-to-price comparisons, which we do for the
24 pricing products, that we should not compare
25 promotional and non-promotional prices. And there is

1 one specifically that they asked us to adjust, or to
2 check on that basis. Do you have a comment on that?

3 MR. GREENWALD: Yes. My reaction to myself
4 is they've got to be kidding. This market is
5 characterized by promotional pricing. Some of the
6 most significant pricing moves have been to
7 promotional pricing.

8 You saw what happened when LG decided it was
9 going to introduce its four-door, French-door bottom-
10 mount, a fairly high-end bottom-mount refrigerator, at
11 \$1199 MAP price. I cannot imagine what the possible
12 rationale for ignoring promotional pricing in a
13 dumping case would be, since those are the most
14 egregious examples of dumping.

15 COMMISSIONER ARANOFF: One other point. The
16 Respondents urged the Commission to look at pricing in
17 terms of the difference between the MAP and the
18 invoice price to the retailer, to compare the
19 retailer's profit, or whatever the amount that they
20 clear on each model that they sell.

21 Is that a valid analytical approach?

22 MR. GREENWALD: The answer to that is no.
23 Because the MAP pricing has no necessary relationship
24 to what the retailer clears. The retailer has
25 additional promotional that he or she does, that may

1 affect pricing. The retailer is not bound by the MAP
2 price.

3 Again, you have no reliable retail margin
4 data. It's a construct that they would like you to
5 look at because I think they're not particularly happy
6 with what the data in the records show.

7 COMMISSIONER ARANOFF: Turning to another
8 point entirely. We've had this sort of continuing
9 disagreement about tax credits, and what tax credits
10 mean in this case. So I wanted to ask a few questions
11 about that.

12 Respondents go to some length in their brief
13 to argue that if you earn a tax credit, but you don't
14 use it, but you are holding onto it, that that is a
15 financial benefit to the producer that holds it; in
16 particular, because creditors may take the existence
17 of the tax credit into account in making financing
18 decisions. Can you respond to that?

19 MR. BITZER: I may respond to this one.
20 First of all, zooming out on tax credits, I mean, why
21 do we get tax credits? The U.S. Government was trying
22 to promote energy-efficient appliances, and trying to
23 promote the production of energy-efficient appliance,
24 and that's exactly what we've done. That's why we get
25 the so-called tax credits.

1 Now, credit may be a little bit misleading
2 in terms of true meaning of a word. But it basically
3 means you pay less taxes in case you make a profit.

4 So as you've seen before and you have the
5 questionnaire data, you don't make profits, there is
6 little to be saved in taxes, because your tax bill is
7 less.

8 COMMISSIONER ARANOFF: Do you have to use
9 the credit against the precise product, profit on the
10 precise product on which it was earned? Or does it go
11 across the broader business unit?

12 MR. BITZER: It goes against the U.S. legal
13 tax entity. We did not use those credits, that's why
14 we're so-called on our assets, and we may or may not
15 use them over time.

16 But there is no money you get in a given
17 period. But it happens basically it's an unused
18 asset, it's sitting on the balance sheet, because
19 theoretically you can use it if you make some money.
20 We did not, we did not show a U.S. legal entity a
21 profit.

22 COMMISSIONER ARANOFF: Okay. But the
23 Respondents do argue that just by sitting on your
24 balance sheet, it makes you look better to creditors.

25 MR. GREENWALD: Let me -- you have that

1 data. You actually have the financing costs. The way
2 your income statement, I mean your request for
3 information is structured, you have operating profit,
4 and then you have net profit, and you have interest
5 costs. So you can see if there is a benefit.

6 If there were, and it were material,
7 Whirlpool would not be in quite the shape that its
8 financials suggest it is. So the hypothesis can be
9 tested by reference to the Whirlpool financials you
10 have before you.

11 MR. BITZER: Let me also directly answer
12 your question, because you asked the question do you
13 get credit for banks by having that on balance sheet.
14 The answer is no.

15 Typically banks look at two fundamental
16 measures, and probably 10 other ones. But the two
17 they always look at is debt-equity ratio and so-called
18 interest coverage. That's what every bank looks at.

19 On debt equity, you need to understand when
20 it sits on balance sheets, the tax credits don't sit
21 in your equity. They are not part of our shareholder
22 equities. So they don't matter, they don't flow in
23 that calculation.

24 On the so-called interest coverage, you look
25 at the EBITA over kind of the interest expenses. Tax

1 credits, by definition, EBIT means before interest and
2 taxes. They don't flow through that line item. So to
3 a bank's external you get zero credit for the energy
4 tax credits, and it may make a certain investment or
5 financing decision.

6 COMMISSIONER ARANOFF: Okay, thank you, I
7 appreciate those answers. Thank you, Mr. Chairman.

8 VICE CHAIRMAN WILLIAMSON: Commissioner
9 Pinkert.

10 COMMISSIONER PINKERT: Thank you, Mr.
11 Chairman. I have a few questions that are kind of
12 technical, and if you can't answer them here, I hope
13 that you're able to answer them in the post-hearing.

14 First of all, I'm wondering, in regard to
15 the financial performance of the domestic industry in
16 2011, what are we to make of that in light of the
17 declining market share of subject imports at that
18 time?

19 MR. GREENWALD: It gets into confidential
20 information. Let me discuss it broadly.

21 What you see in 2011 is a, what I would call
22 a modest, very modest decline in the share of subject
23 imports, coupled with, for the first time, a rise in
24 non-subject imports. And you actually see a
25 continuing, but again relatively modest, 2010-to-2011

1 decline in essentially world market share.

2 So the question becomes what went on. First
3 in regard to Whirlpool. In 2011 they'd been losing
4 market share 2008, 2009, 2010. In 2011 they did
5 become more competitive in pricing. It's no accident
6 that the entire Whirlpool is doing, leading prices
7 down argument, on the other side, is based on 2011
8 data. I was intrigued to go through it and see so
9 much focus on 2011, and nothing on 2009, 2008, '09, or
10 '10. So that's what happened.

11 Whirlpool did stem its loss of market share.
12 It did so deliberately, and the bottom-line
13 consequences were horrendous.

14 Now, on the drop in subject imports. I
15 can't give you the data, but I can tell you from
16 public information that Whirlpool has, they have seen
17 a sharp rise in imports from China. They have access
18 to China's export data. And according to their own
19 data, they see a significant rise in imports from
20 China.

21 Those imports are Samsung imports. What
22 actually happened is -- and again, this is Whirlpool's
23 public intelligence -- Samsung shifted production
24 immediately following this case, from wherever it was
25 producing, either Mexico or Korea, to China. And they

1 have become a presence in the market.

2 You cannot ascribe injury caused by that,
3 because they are non-subject imports, to the subject
4 imports. But you can look at that, and find a
5 determination on the part of Samsung not to abandon
6 any part of the U.S. market, even if they have to do
7 so, selling at prices that where those manufacturing
8 plants in Korea and/or Mexico dumped.

9 So we look at these data, and in fact we
10 understand what went on in the U.S. market. As I
11 said, Whirlpool made a conscious decision to be more
12 competitive on price, and it was disastrous in terms
13 of bottom line. No significant market share gain by
14 Whirlpool, coupled with a new front opened by Samsung
15 in terms of its assault on the U.S. market.

16 And again, you know, there are formal
17 reasons why you can't ascribe the imports from Samsung
18 China to the harm that their imports from Korea and
19 Mexico are doing. But the point here is that in fact
20 it is all the companies that are driving the subject
21 imports, and you do not see, even with that, a
22 significant decline, as I read the data, in subject
23 imports.

24 COMMISSIONER PINKERT: Thank you. Now,
25 another causation question. And again, if you can't

1 address this here, I hope you address it in the post-
2 hearing.

3 What does Whirlpool's performance, the
4 financial performance, on the side-by-side and the
5 top-mount models tell us about whether subject imports
6 are causing injury with respect to the domestic like
7 product in this case.

8 MR. BITZER: And I think you have access to
9 this data. On side-by-sides we also have significant
10 losses, and top-mounts to a lesser extent. The
11 economic reason behind the side-by-sides is twofold,
12 basically. One is, as you have seen before, the
13 market has shifted roughly 600,000 is from side-by-
14 sides and French-door to bottom-mounts. We basically
15 have one entire factory sitting idle, or had, and that
16 was our Fort Smith, Arkansas factory.

17 So you have a fixed cost of an idle factory
18 sitting on your financial performance. It's just
19 because you have a cost of a factory irrespective of
20 if you produce one or 100 units or 100,000 or a
21 million units. So you have a significant capacity
22 under-utilization, which should give you also a side
23 note on perspective of how fixed costs weigh in this
24 business.

25 The second point is you can't disconnect

1 what's happening on bottom-mount refrigeration on
2 what's happening on side-by-side refrigeration. And
3 what I mean with that, historically there has been a
4 reasonable profitable business on the side-by-side
5 segments. Very typically, you have 1199, 1299, 1399.
6 That was another small piece of the market.

7 That market you can imagine, the side-by-
8 side market, 1299, 1399, it's hard to even get it
9 floored when you can get bottom mounts at 1199 or even
10 below. So you had the collateral effect of bottom-
11 mount pricing really putting a lot of pressure on
12 side-by-sides. And that once-profitable segment of
13 above \$1,000 is a fraction of what it was before.

14 So you have a combination of these two
15 effects.

16 MR. GREENWALD: The other point I think,
17 when you look at the data, the major problem in bottom
18 mounts is that within the period of the investigation,
19 that used to be, at the beginning of it, was a good
20 business. The same cannot be said in terms of the
21 economics of either of the other segments.

22 So what you see is, in this particular
23 segment, is the value has been basically destroyed,
24 and a good business no longer exists.

25 COMMISSIONER PINKERT: Thank you. Now, as

1 you know, LG contends that the aggregate U.S. demand
2 elasticity provided in the staff report is too low.
3 Do you share that view?

4 MR. GREENWALD: No, the staff report got it,
5 got it right. We will give more details. We went
6 through, and we had a set of very well-regarded
7 economists run the same sort of elasticities that the
8 staff did, and they came out where the staff did. If
9 I may, we'll provide you more detail on that in the
10 post-conference brief.

11 COMMISSIONER PINKERT: That will be helpful.
12 But just conceptually, what role does the U.S. demand
13 elasticity play in your price-suppression argument?

14 MR. GREENWALD: What LG is arguing is that
15 by lowering prices, they created demand that would not
16 otherwise exist. And so they look at the staff report
17 or the staff economists' notion of elasticities; they
18 find that it doesn't support the argument, so they
19 have no option but to challenge the accuracy of the
20 elasticities.

21 If your elasticity of demand is much less,
22 as it is, then your elasticity of substitution between
23 competing demands and bottom mounts, as it is, LG's
24 argument has nowhere to go.

25 COMMISSIONER PINKERT: I understand that's

1 your response to LG's argument. But more broadly,
2 what role should the U.S. demand elasticity play in
3 our analysis of the price-suppression issue?

4 MR. GREENWALD: I don't think it has any
5 role. I really would like to supplement, because this
6 is a difficult question that requires more thought
7 than I am capable of in giving a response on the spot.
8 But I don't think that --

9 COMMISSIONER PINKERT: Don't sell yourself
10 short on that now.

11 MR. GREENWALD: Well, thank you for that.
12 But you know, when you think of price, it's really
13 price depression. I mean, I've read enough opinions
14 to know there are issues around price suppression.

15 But when you see falling prices on a bottom-
16 mount refrigerator basis held constant for features,
17 and the evidence on that is overwhelming, what you are
18 talking about is price competition within the segment.
19 What you find is prices going down, Whirlpool
20 responds to LG or Samsung. Again, the data that you
21 have before you are remarkable to me. I don't think
22 I've ever quite seen it this clearly, where at the
23 beginning of the period, prices are here. You look at
24 each of the product's selective pricing analysis, and
25 you see gravitational pull.

1 And in each case, I would submit, you see
2 that what's going on is pricing of subject imports,
3 and a gradual descent on the part of Whirlpool to that
4 level. That is an issue of elasticity of bottom-mount
5 brand supply. It's not an issue of elasticity of
6 total demand.

7 COMMISSIONER PINKERT: Thank you. Thank
8 you, Mr. Chairman.

9 VICE CHAIRMAN WILLIAMSON: Thank you.
10 Commissioner Johanson.

11 COMMISSIONER JOHANSON: Yes, I thank you. I
12 started my last round of questions with the very basic
13 3,000-foot type of question, and I'm going to start my
14 second round with the same type of question. I guess
15 I can do this without being embarrassed since I'm
16 brand new here, so here it is.

17 What features are most important in the
18 refrigerator market to consumers? And what features
19 does Whirlpool use to distinguish its refrigerators
20 from the competition? And how do you differentiate
21 your brands in the market?

22 MR. REINKE: The answer is, it depends,
23 right. And so every consumer is not the same. But
24 when we talk to consumers, and today we're talking
25 about, about features, it probably makes sense to just

1 talk about what some of these features are quickly,
2 right?

3 So there's, if you just look at the products
4 in the back of the room, and I know there was a kind
5 of a checklist for people to go through and evaluate
6 those products, you know, there's aesthetics on the
7 outside of how it looks. There are features in terms
8 of ice and water dispensers, cubed ice, crushed ice.
9 When you get to the interior of product, there's
10 features like lighting, LED lighting, flip-down shelf,
11 fold-up shelves. Capacity can be considered a
12 feature, as well. And it's really a combination of
13 all of those that a consumer will put in to making
14 their decision.

15 I believe when someone walks into a store,
16 one of the first things that they look at is how big
17 of a refrigerator can I fit. And Commissioner
18 Williamson, we talked about this when we were at
19 Amana, right, of boy, you'd like one of these, but
20 only this size will fit, right?

21 So a lot of it starts with size. And then
22 it just moves to, you know, again, the different
23 features. I can't say that there is one that is
24 exactly the most important. It's a combination of a
25 bunch of different things.

1 MR. BITZER: Let me maybe also add a
2 response. Most consumers entering the store of a
3 purchase window are a lot less sophisticated than we
4 present here. Most consumers are basically color --
5 i.e., stainless steel or white is still a big driver.
6 Most consumers will ask the shop floor assistant
7 reliability, dependability. The Whirlpool brand in
8 particular scores exceptionally well in bottom mount.

9 And once they get more into a purchase side,
10 in particular once they compare different SKUs on the
11 floor, and most consumers will typically look at two
12 or three SKUs; once they're narrowed down, I want to
13 have a stainless steel and this is roughly the size I
14 want to be having; that's when you, a typical shop
15 floor assistant would then highlight certain feature
16 differences.

17 COMMISSIONER JOHANSON: How do you
18 differentiate your product in the market, then?
19 Regarding the features.

20 MR. BITZER: You mean our respective
21 different brands?

22 COMMISSIONER JOHANSON: Yes. And also
23 versus your competition.

24 MR. BITZER: I mean, first of all, if you
25 take Maytag and Whirlpool, who from a brand position

1 perspective have probably the most overlap. with
2 KitchenAid it's a little bit of different story
3 because it's such a, it's very much a super-premium.

4 First of all, we have similar capacity size
5 for both Whirlpool and Maytag. That's why you saw in
6 certain products before exactly the same capacity. We
7 offer LED lighting pretty much for both brands.

8 There are some style and design differences.
9 The Maytag consumer, we typically make reference it's
10 a typically Ford F-150 consumer. It's a little bit
11 more different style preferences in Whirlpool, and
12 that's what you're trying to reflect.

13 In addition because Maytag in particular is
14 built on dependability and reliability, we have
15 certain commercial-grade components in many of our
16 Maytag products. That's typically how we try to
17 differentiate.

18 COMMISSIONER JOHANSON: Thank you. And I'd
19 like to now address, pose a demand question. Overall
20 there's been an increasing trend in U.S. demand for
21 bottom-mount refrigerators. Do you see any
22 significant trends that you foresee will adversely or
23 positively affect demand in the U.S. market for these
24 products?

25 MR. BITZER: You're referring just the

1 bottom-mount refrigerators?

2 COMMISSIONER JOHANSON: Yes, just the bottom
3 mounts.

4 MR. BITZER: I mean, you mean what we
5 foresee going forward.

6 COMMISSIONER JOHANSON: Right. Do you see
7 changes in the market which might impact sales, et
8 cetera?

9 MR. BITZER: The interesting thing is right
10 now we have a very short-term impact, and that is ever
11 since the preliminary duties were imposed, we saw a
12 significant correction of the marketplace. The prices
13 have on average gone up, by and large a reflection of
14 the preliminary duties.

15 So the question is what will higher prices
16 generally bring. So far we have not seen a
17 significant decline on the market demands. We have
18 seen an improvement on our profitability. We have so
19 far not seen a massive decline in market, overall
20 demand for French door and bottom mounts.

21 So I'm not expecting a huge volume shift on
22 French door. I would expect maybe a slower growth
23 rate going forward, but I don't see a massive
24 reduction.

25 In terms of feature differences, yes, there

1 could be a trend to even larger bottom-mount
2 refrigerators. The discussion that you always have,
3 do I still fit in the house. Because many for 31 just
4 simply don't fit the door frame. But that's
5 ultimately just a question of how big do you want to
6 go. So could there be at one point a 35 cubic foot,
7 probably. It's a question just when you've got to put
8 an investment, and can you actually fit it in the
9 house.

10 COMMISSIONER JOHANSON: Thank you, I never
11 thought of that. My house is pretty normal-sized, so
12 I guess I probably couldn't fit some of these in
13 there. Although we did fit a piano in somehow, so
14 maybe we could.

15 MR. GREENWALD: There you go.

16 COMMISSIONER JOHANSON: In this
17 investigation there are four large purchasers
18 accounting for a substantial share of the total
19 market. How should the Commission treat the responses
20 of other purchasers from which it has received
21 questionnaire responses? And are these firms treated
22 differently by vendors than the four big purchasers?
23 And if so, how?

24 MR. BITZER: Obviously, I don't see the
25 confidential data for purchasers. I would say in

1 principle, different purchase or trade partners have
2 different commercial policies. They carry different
3 brands, and they have different requirements on what
4 you give them as a first cost price versus trading
5 rebates.

6 But in general we don't have a preferential
7 treatment to one or the other customer. I mean, I
8 wouldn't expect a huge amount of difference.

9 Now, in the case of Home Depot, it is
10 slightly different now because it is owned by the
11 Maytag brand. It does not include the Whirlpool
12 brand. And that drives a lot of differences.

13 MR. GREENWALD: I think just to elaborate,
14 Commissioner Johanson, it is right that there are
15 these large retailers who certainly have enough
16 bargaining power to deal directly with manufacturers.
17 There are much, a great many more medium-sized, or
18 even smaller-sized retailers across the nation. And I
19 think perhaps what you're picking up on is whether
20 they are at any competitive advantage or disadvantage,
21 given their relative size.

22 And I think the answer speaks to the way in
23 which they work collectively to negotiate pricing.
24 Perhaps Dr. Bitzer or Justin Reinke can speak to that
25 issue.

1 MR. REINKE: I mean, so if you get outside
2 of the four large retailers that you mentioned, there
3 are another number of retailers that are large enough
4 to successfully negotiate on their own.

5 But then there are groups that have what are
6 called buy groups. So you may have another, you know,
7 20, 30 retailers that together will negotiate with
8 manufacturers. And there's, you know, a number of
9 those as well.

10 MR. BITZER: So to give you one example, and
11 I think I'm not referring to confidential data. But
12 HHGregg is almost the same size as Best Buy. HHGregg
13 is together with other big retailers, Brand Smart, to
14 basically build almost a buying consortium by basing
15 together a lot of volume.

16 Then you have a lot of very small
17 independent retailers like, who are organizing so-
18 called buying groups, who typically buy big quantities
19 in so-called buy fairs. But you basically make one
20 price, basically take into account the combined volume
21 of all these ones.

22 So they group themselves in order to get
23 certain purchasing volume.

24 COMMISSIONER JOHANSON: Once again, those
25 are smaller, smaller stores? Smaller retailers?

1 MR. BITZER: The latter one which I referred
2 to could be very small ones; the first example which
3 I've given you, HHGregg, has not, whatever, 220 stores
4 in the United States, so they're quite a bit larger.

5 COMMISSIONER JOHANSON: Okay, thank you.
6 That concludes my questions.

7 VICE CHAIRMAN WILLIAMSON: Thank you.
8 Continuing along that line of questioning, is there,
9 do you see a difference in the way Samsung and LG
10 compete with the Whirlpool product line in this, in
11 the sort of non-big-four category?

12 MR. BITZER: Again, I can't speak on behalf
13 of LG and Samsung. But typically what you see is that
14 LG and Samsung are less present at small independent
15 retailers, as far as I recall. But we probably hear
16 Samsung does not sell to retailers with less than half
17 a million turnover a year, but I mean we'll probably
18 hear more from a respondent directly.

19 But typically, they are more present on the
20 large four.

21 VICE CHAIRMAN WILLIAMSON: Okay. How does
22 that square with this idea, with their idea that they
23 are the innovator? I was thinking if you go into a
24 kitchen design store and decide to buy your appliances
25 through them, I assume they're going to want to sell

1 you the hottest, or the premium products, the things
2 that are most innovative. Or is this true?

3 MR. BITZER: Let's put it this way. If
4 indeed some of these features will be so exclusive, or
5 if they really will be the determinant of everything,
6 you would see a lot stronger demand from the small
7 independent key accounts, what we call key accounts.
8 And we don't. For LG and Samsung products.

9 VICE CHAIRMAN WILLIAMSON: Okay, thank you.
10 Mr. Reinke, you had mentioned something about
11 configuration rather than features driving demand.
12 And I didn't quite understand that. I was wondering
13 if you could elaborate.

14 MR. REINKE: Sure. And what I meant by that
15 was, and we went through it in one of our exhibits,
16 there is a fundamental difference in how you use or
17 access a refrigerator, whether it's a top mount, a
18 side-by-side, or a bottom mount.

19 The bottom-mount configuration has the
20 refrigerator compartment more at an eye level, or an
21 easy access level, and you're actually in that
22 compartment probably 70 percent of the time. Maybe 30
23 percent of the time you're accessing your freezer. So
24 you're not bending down to access your fresh foods;
25 it's just easier.

1 That's what I meant by configuration. That
2 ease-of-use configuration is what has driven people,
3 in my opinion, for the most part from the side-by-side
4 platform over to the bottom-mount platform.

5 VICE CHAIRMAN WILLIAMSON: And are they sort
6 of learning this, because when they walk in the store
7 the salesman points this out to them?

8 MR. REINKE: They are, absolutely. That's
9 one way. The other way is just word of mouth from
10 friends and relatives. There's any number of ways
11 that they would so-called learn this.

12 If we talk about features, though, so on the
13 other side of things, if we would define some of the
14 features that we mentioned already today. LED lights.
15 In-door ice is another feature. Capacity is
16 features, things like that.

17 A lot of those same features are in side-by-
18 sides, as well. So it's not like somebody comes into
19 a store and says my goodness, I have to have LED
20 lights; well, I guess I have to buy a bottom mount.
21 That's not the case. They could buy a side-by-side,
22 but they choose for the most part to buy a bottom
23 mount, again because of the configuration.

24 VICE CHAIRMAN WILLIAMSON: Okay, thank you
25 for that clarification. Going back to my previous

1 question about the smaller dealers, and what in fact
2 you do not see in Samsung and LG, and that if there's
3 anything you can sort of add post-hearing about what
4 conclusions we should draw from that regarding the
5 nature of the competition, we'd appreciate that. You
6 sort of suggested, you alluded to it, but if there's
7 anything else you can expand on, that would be
8 helpful. Thank you.

9 The Commission's questionnaire requested
10 that you guys produce or submit all studies and
11 reports dealing with French-door-model refrigerators
12 that discuss, among other things, factors that
13 influence the purchase decision of consumers. And I
14 was just wondering, why hasn't Whirlpool submitted any
15 of these reports?

16 MR. GREENWALD: That was a failing on our
17 part, frankly. We have them; we are aware of the
18 deficiency. We weren't focused on it when we were
19 trying to make sure that, for example, all the rebate
20 and discount data were accurate, and we were preparing
21 for verification. It is something that we will
22 provide.

23 VICE CHAIRMAN WILLIAMSON: Good, okay.
24 Thank you for that. So Respondents have argued that
25 their ability to produce thin-wall mounted

1 refrigerators will allow them to produce larger-
2 capacity products than Whirlpool; and that Whirlpool
3 has had to lower prices in order to compete with these
4 higher-capacity products.

5 And so I guess the question, if you do not
6 produce a thin-walled product, how do you compete with
7 larger-capacity bottom-mount refrigerators? Or should
8 I say how did you compete? Because I assume, are you
9 going to these thin walls?

10 MR. BITZER: Mr. Chairman, that refers to
11 so-called vacuum panels. Thin walls are vacuum panels
12 in different configurations. And what is basically,
13 stepping back a little bit in time, in the late
14 eighties they discovered if you have a vacuum-panel
15 installation, it basically increases both performance
16 and insulation capabilities.

17 Back then the discussion in the late
18 eighties was A, it's very costly, because the
19 production process is fairly expensive. Because you
20 just don't have a foaming agent; you have to have
21 vacuum panel. And two, what is frankly still not
22 proven 100 percent to date, what happens to these
23 panels after 10 or 20 years. Because if you lose a
24 vacuum, you lose insulation.

25 Whirlpool actually, the whole concept was

1 invented by Owens-Corning in Toledo. And it's public
2 that the first ones produced by Van Buren & Merlot,
3 which is a Maytag brand, were in 1992. So the
4 technology has been around for a long time. It is
5 fairly expensive to produce. So it's just a question,
6 do you want to put the costs into it or not. And
7 actually, Justin, we have even some examples of vacuum
8 panels. So it's just, do you put in the cost or not.

9 MR. REINKE: And again, no consumer is going
10 to pay a penny for a vacuum panel, or pay a penny for
11 thin-wall technology. They're paying for the capacity
12 that comes with that, right? And so I don't want us
13 also to think that thin walls is the only way that LG
14 and Samsung have gotten extra capacity. They've also
15 made their boxes bigger. So they've made them
16 slightly taller, slightly deeper. Actually not even
17 slightly; much deeper.

18 So there is other ways that they've gone
19 about getting to that capacity. Whirlpool is going to
20 be introducing models with, as you would define it,
21 thin-wall technology soon. And in fact, when we were
22 at Amana, we looked at some of those type of products,
23 and we looked at some of the investments we're making
24 to make some of those type of products.

25 And so it's not magic. Again, it's back to

1 the economic decision that Mr. Bitzer mentioned
2 before.

3 MR. GREENWALD: Let me take the Samsung or
4 LG, I don't know who made the point, at face value.
5 Let me do it the following way.

6 MR. BITZER: Yes, LG.

7 MR. GREENWALD: Let's say that it's true
8 that because LG or Samsung have greater capacity
9 because they use a thin-wall technology; and it is
10 true that consumers are willing to pay more for larger
11 capacity; then it has to be true that if you are
12 trying to sell a smaller-capacity refrigerator in
13 competition with a larger-capacity refrigerator, one
14 of the ways you can distinguish is on price, okay?
15 And that's essentially what they're saying.

16 Behind that is the assertion that whether or
17 not that's a dumped price is beside the point. Let me
18 ask you to go to our exhibit, essentially the three-
19 French-door pricing.

20 VICE CHAIRMAN WILLIAMSON: Which number?

21 MR. GREENWALD: Sixty-eight.

22 VICE CHAIRMAN WILLIAMSON: Okay.

23 MR. GREENWALD: And to focus on the bottom
24 two quarters: third quarter 2011, fourth quarter
25 2011. And to look at Samsung's promotional pricing of

1 its thin-wall 29-cubic-foot refrigerator with dual
2 evaporators. And compare -- this is NPD pricing --
3 compare the pricing to the 26-cubic-foot smaller
4 Whirlpool model without dual evaporators. Single
5 evaporator.

6 It is undeniably true that when you have the
7 larger model, with the larger capacity and the dual
8 evaporator, at exactly the same price as the smaller
9 Whirlpool model, you're going to sell a lot of the
10 former, and very few of the latter.

11 So in a sense, they're right. But what
12 they're saying is their pricing acts as a cap on what
13 Whirlpool can price, and they are in effect saying
14 dumping of larger refrigerators has a direct and
15 significant impact on the price of what smaller
16 refrigerators can sell. That's true.

17 VICE CHAIRMAN WILLIAMSON: This raises the
18 question. This Exhibit 14, the estimated market
19 value. If you look at those two, you get something
20 like maybe \$450 difference in pricing. This market
21 value, is this no longer true?

22 MR. GREENWALD: No, I want you to go to
23 slide, the slide immediately preceding it. Go to
24 Slide 15. And there, what you see is what happens
25 when the price differential is at that \$500, \$400.

1 So if you look at the middle column, you see
2 a Whirlpool four-door French-door priced at \$1263, and
3 a Samsung much larger, again, dual-evaporator four-
4 door French-door, 28 cubic feet versus 25, priced at
5 \$1800. The differential there is in fact the four or
6 five hundred dollars, and both of them sell.

7 The point we're trying to make is that
8 relative pricing, or pricing relative to features,
9 drives volume of sales.

10 VICE CHAIRMAN WILLIAMSON: Okay. Thank you,
11 and my time has expired. Let's see. Commissioner
12 Pearson.

13 COMMISSIONER PEARSON: Thank you, Mr.
14 Chairman. I believe I have just one additional issue
15 to discuss.

16 Other Commissioners have raised the like-
17 product question. We recently made a preliminary
18 determination that various types of large residential
19 washing machines constituted a single like product.
20 What's different about refrigerators that should cause
21 us to find bottom-mount refrigerators are a like
22 product that is distinct from other types of
23 refrigerators? In other words, did I get the issue
24 wrong on washing machines?

25 MR. GREENWALD: Well, certainly we would

1 differ with your decision in preliminary washing
2 machines determination in that sense.

3 COMMISSIONER PEARSON: Just talk about the
4 like-product determination, please.

5 MR. GREENWALD: You did indeed get it wrong.
6 But let's talk about the like-product issue.

7 Let's again start with the product under
8 investigation, and the statutory language that looks
9 for co-determinants, unless there is a reason not to
10 be, okay?

11 The product under investigation is bottom-
12 mount refrigerators. All other things being equal,
13 bottom-mount refrigerators should be the domestic like
14 product. There are these other sorts of
15 refrigerators, and it seems to me the legitimate
16 question is why didn't Whirlpool bring a case against
17 all refrigerators.

18 And the answer is, in both cases, if you're
19 looking for the neutral principle that governs the
20 decision making, it's that in both cases Whirlpool did
21 not structure its petition beyond its domestic
22 production.

23 What the anti-dumping and countervailing
24 statutes are about is domestic production. Whirlpool
25 had no business broadening its complaint to side-by-

1 sides, which it no longer produces in the United
2 States, and top-mounts I think are essentially
3 produced offshore, as well.

4 The bottom-mount category is a distinct
5 category. And under sort of well-established like-
6 product criteria, and frankly Commission precedent,
7 there are clear distinguishing lines between that,
8 between top-mounts and side-by-sides.

9 We can argue about the appropriateness of
10 the like-product distinction in washers when it comes
11 to that. But there is, believe me, a neutral
12 principle that governs what this company does. It is
13 not interested in bringing cases that are essentially
14 directed at products not made in the United States.

15 COMMISSIONER PEARSON: Okay, thank you for
16 that clarification. I would have to say, though,
17 being an owner not only of a refrigerator, but also a
18 washing machine, and having had to replace it somewhat
19 recently, and having gone to a front-loading high-
20 efficiency washer, so, from a conventional top-loader,
21 I am familiar with the differences there.

22 And to me, frankly, the differences in
23 washing machines seem greater than the differences in
24 refrigerators. And so this may not be obvious, but I
25 do try to avoid against internal conflicts in my

1 thinking on these things, and that's what I'm
2 wrestling with now.

3 So for the purposes of post-hearing, if you
4 have more to say about the direct issue here of how we
5 handle like product, vis-a-vis washing machines, I'd
6 be interested in reading it.

7 MR. REINKE: Let me just make a quick
8 comment. And I know about refrigerators. I only know
9 about washing machines from my own home, like you,
10 right.

11 One of the reasons, though -- but what I do
12 know is I've been in refrigeration long enough to see
13 the bottom-mounts grow, and the side-by-sides go down
14 as we've mentioned before.

15 For a while, these same type of trends were
16 happening in laundry, where front-loaders were
17 growing, and top-loaders were going down or flat.

18 You mentioned a minute ago why you were
19 considering, one of the reasons why you were
20 considering a front-loader; high efficiency, right?
21 Well, there's now high-efficiency top-loaders as well,
22 and I think you've seen those industries kind of start
23 to move in the same direction, right?

24 The fundamental benefit, which we mentioned
25 before, of a bottom-mount is the way that you access

1 the food, right? Well, you can't change that in a
2 side-by-side, you can't change that in a top-mount.
3 So they're going to continue to be distinctly
4 different.

5 COMMISSIONER PEARSON: Thanks.

6 MR. GREENWALD: We will address it in the
7 post-conference brief.

8 COMMISSIONER PEARSON: Okay. And I would
9 note, in this current case that we're dealing with, I
10 doubt that the issue is dispositive. I really have
11 some genuine interest in trying to get the like-
12 product question correct. So I'm showing my --

13 MR. GREENWALD: We certainly have a genuine
14 interest in trying to change your mind in the other
15 case.

16 COMMISSIONER PEARSON: I may have been on
17 the Commission too long now, that I'm taking such a
18 keen interest in like product. But thank you very
19 much for all your responses. Mr. Chairman, I think
20 that concludes my questioning.

21 VICE CHAIRMAN WILLIAMSON: Okay.
22 Commissioner Aranoff.

23 COMMISSIONER ARANOFF: One thing that hasn't
24 come up yet this morning, that I did want to ask
25 about, is the extent to which consumers shop based on

1 brand. To what extent, well, to what extent do
2 consumers shop based on brand? And if they do, is it
3 because they associate brand with a certain level of
4 reliability or some other familiarity? Or as another
5 person that's gone through a kitchen renovation, do
6 you care that the handle on the door matches the
7 handle on your oven or your dishwasher, and so you're
8 going to buy the same brand to have that consistent
9 look? And how important is that in the marketplace?

10 MR. BITZER: Let me try to answer it. And
11 first of all, starting point is again, every consumer
12 is different. And there is a big difference if you're
13 a replacement purchaser or if you buy a complete new
14 kitchen. It's just a fundamental difference in how
15 you go through a purchase process, and typically also
16 how long the purchase window is.

17 Yes, there are certain consumer segments
18 which come predisposed to a certain brand preference.
19 We measure brand preference as every other
20 competitor. We pride ourselves that for our brands,
21 we're, you know, in terms of top-rank preference, more
22 than 40 percent of the market.

23 Having said that, typical consumers call it
24 almost like an accepted circle of brands, brands which
25 they would take into consideration. The shop floor

1 influence on brand choice is not insignificant, or in
2 many cases is very strong.

3 If you ask more, put it in brand context,
4 more in context with other things, again, if you would
5 go for the Traqline data, which apart from sample size
6 is still the biggest consumer survey, they will show
7 you that first feature and price come long before
8 quality and questions around quality. And then at one
9 point comes appearance and brand.

10 So as much as we would like to have
11 everybody predisposed to Whirlpool, it comes in the
12 actual purchase decision after feature, price, and
13 quality reputation.

14 COMMISSIONER ARANOFF: Okay, that's helpful.
15 I just want to go back, and we've had a lot of
16 discussions about how manufacturers and retailers talk
17 to each other about prices, and what to look at in
18 that relationship.

19 But looking at that more broadly, do you
20 have something that would look like an annual contract
21 negotiation? Or how do you describe this process?
22 Are you constantly talking about what prices and what
23 models with a retailer? Are you doing it once a year
24 in a line review? Does that look like a contract
25 negotiation? Do you have a contract?

1 MR. BITZER: First of all, there are clear
2 laws which govern how much and how specifically we can
3 talk about pricing. So we can suggest, we can
4 incentivize MAP through our advertising. That's
5 pretty much what you can, by law, do.

6 Every retailer differs pretty strongly in
7 terms of how they look and what kind of discussions
8 there are. There are some retailers who are maybe
9 more on an annual or semi-annual line review, and
10 that's where you have a fundamental discussions. We
11 have other retailers who are quite a bit more
12 transactional, who will respond immediately to some
13 other competitive retailer fad and may want to have
14 immediate discussions.

15 So it differs a little bit by retailer. But
16 again, we are, what we technically can respond to is
17 by adjusting the MAP or a promo MAP. But there are
18 very clear limits in terms of what you can exactly do
19 on pricing.

20 MR. GREENWALD: If it would help,
21 Commissioner Aranoff, we have, the only contract that
22 I am aware of that is long term is the OEM. And you
23 have data on that.

24 There was a lot of questioning I think from
25 all of you on how are prices done. And you're going

1 to hear this afternoon from Mr. Baird at Home Depot.
2 He is a compulsive e-mailer, so we have e-mail chains
3 that describe how various promotions evolve, and what
4 happens, and what Whirlpool says, Whirlpool's
5 response.

6 If you're interested, we could put that sort
7 of chain in the record, which would give you a much
8 better notion of how pricing and sales evolve.

9 COMMISSIONER ARANOFF: Well, I mean, I guess
10 I would say I invite you to do that if you think it
11 helps your case. I'm just, I'm trying to understand
12 in a broad sense, you know, what we call this animal
13 that is the negotiation between the manufacturer and
14 the retailer. It's not a contract. You could argue
15 you aren't really even selling them anything, because
16 it's sort of a pass-through with some kind of a
17 margin. So I'm trying to characterize that in my
18 mind.

19 MR. GREENWALD: You can argue that you're
20 not really selling anything. The other side is try to
21 create the image that you don't really sell them.
22 Many retailers carry inventory; they take the
23 responsibility. Once the sale is made, it may be
24 delivered to let's say a GE Services, which
25 redelivers. But at that point, it is the retailer's

1 product. The retailer is the one that has complete
2 control over whatever price it wants to sell at, not
3 the manufacturer.

4 So again, there has been an effort to create
5 an impression of essentially agency, but that just is
6 factually incorrect.

7 MR. LEVY: Commissioner Aranoff, on this
8 point I would simply direct your attention back to
9 Exhibit 13 of Petitioner's Exhibits. And what you see
10 on the right side is a Whirlpool SKU with a
11 promotional MAP, during Black Friday of 2011, of \$1799
12 for this unit. So the MAP delineated by Whirlpool is
13 \$1799.

14 If a retailer chooses to sell this product
15 to consumers at a price below \$1799, it must forgo the
16 co-op advertising support. In this case, a very large
17 retailer made a decision to heavily promote this
18 product, again, not with the consent of Whirlpool --
19 much to the contrary -- at an average retail price of
20 \$1,253, substantially below \$1799.

21 I don't think it's -- and of course, the
22 product sold like hotcakes, compared to the almost-
23 identical Maytag brand, in the same month at a much
24 higher price.

25 The assertion that the retailer is simply

1 passing through to the consumer with a built-in profit
2 margin is simply false, as seen in this context. For
3 all I know, it may very well be that this retailer
4 lost money on these sales, and was engaged in much
5 more aggressive competition with other retailers for
6 market share on Black Friday.

7 COMMISSIONER ARANOFF: It all strikes me as
8 a level of math that apparently I never reached in
9 school, to try and do the algorithm that puts all
10 those pieces in and gets you to whether or not a
11 retailer is actually making money on something, and
12 why. So I'll leave it at that for now.

13 With that, I don't think I have any further
14 questions, but I do want to thank this panel for your
15 answers.

16 VICE CHAIRMAN WILLIAMSON: Commissioner
17 Pinkert.

18 COMMISSIONER PINKERT: Thank you. I just
19 have one additional question. Looking at your brief,
20 and then also hearing you testify today, there hasn't
21 been a lot of discussion about Mexico. The focus has
22 been on the subject imports from Korea.

23 How does Mexico fit into this case?

24 MR. GREENWALD: If that's the impression we
25 gave, it's a misimpression. We speak of Samsung and

1 LG rather than Korea, because both of them are major
2 exporters from Mexico. So anything we say about
3 Samsung and LG in fact is a reference both to their
4 production in Korea and in Mexico, and I want to make
5 that perfectly clear.

6 There are two other producers in Mexico, one
7 is Mabe, the other is Electrolux. They are part of
8 this case. If it were only for them, this case
9 probably wouldn't have been brought. That simple.
10 This is, at heart, a case about what Samsung and LG
11 have done to the U.S. market, not what GE, Mabe, or
12 Electrolux have done.

13 COMMISSIONER PINKERT: Thank you. If the
14 panel doesn't have any further comments on that issue,
15 I will thank the panel, and I look forward to the
16 post-hearing submission.

17 VICE CHAIRMAN WILLIAMSON: Commissioner
18 Johanson.

19 COMMISSIONER JOHANSON: Thank you. What do
20 Petitioners make of the responses from purchasers
21 regarding price leadership? As elicited in the staff
22 report, eight named Whirlpool, six named LG, five
23 named Samsung, one named GE, and one named Electrolux.
24 Most purchasers named multiple suppliers.

25 Does this indicate that price leadership

1 shifts between suppliers?

2 MR. BITZER: Mr. Johanson, I would just read
3 this is a highly, highly competitive marketplace where
4 prices matter a lot. And sometimes depending on who
5 drives what promotion, that's what was probably behind
6 these questions.

7 I would also read there is no clear price
8 leader in the segment, and whereas sometimes somebody
9 does something, somebody else responds to it. That's
10 what we typically see.

11 MR. GREENWALD: I think that the responses
12 you got are a fair indication of how dynamic the
13 pricing interaction among the various players is, and
14 how it shifts, depending on who you're talking to and
15 what prices are stuck in their mind.

16 It is true that price matters, it is true
17 that all major producers discount, in Whirlpool's case
18 I would say defensively. But the discounts are across
19 the board.

20 COMMISSIONER JOHANSON: Thank you, and that
21 concludes my questions for today. And I'd like to
22 thank you all for appearing today.

23 VICE CHAIRMAN WILLIAMSON: Thank you. Does
24 any other Commissioner have any additional questions?
25 Does staff have any questions for this panel?

1 MR. McCLURE: Tim McClure, Office of
2 Investigations. Mr. Chairman, staff has no questions.

3 VICE CHAIRMAN WILLIAMSON: Thank you. Do
4 Respondents have any questions for this panel?

5 MR. CUNNINGHAM: No, Your Honor.

6 (Laughter.)

7 VICE CHAIRMAN WILLIAMSON: Okay. I'll
8 answer to that, too. Thank you.

9 MR. CUNNINGHAM: Your Highness, whatever.

10 VICE CHAIRMAN WILLIAMSON: Okay, thank you.
11 Seeing there are no further questions, we'll take a
12 lunch break of about 63 minutes, so we'll reconvene at
13 1:40. I just want to remind everyone that this room
14 is not secure, and that you should not leave
15 confidential business information in the room. So
16 we'll break until 1:40. Thank you.

17 (Whereupon, at 12:37 p.m., the hearing in
18 the above-entitled matter recessed, to reconvene at
19 1:40 p.m. this same day, Tuesday, March 13, 2012.)

20 //

21 //

22 //

23 //

24 //

25 //

26

1 examine today. These refrigerators are going to be
2 used to answer a number of the Commissions questions
3 this morning about how do you differentiate your
4 products from those of the competitors, and Eugene
5 Seagriff, after Kevin Dexter testifies, Eugene
6 Seagriff is going to go through exactly the kind of
7 thing he talks to his customers about.

8 If you look at these refrigerators, they
9 merely look the same. Believe me, they're very
10 different, and that's one reason why Samsung is
11 succeeding, so we're going to invite the Commission
12 down. Instead of taking you to Iowa, we've brought
13 Gwangju, Korea, here, but before we get to our
14 witnesses, I'd like to provide an overview of our
15 presentation.

16 As Dick Cunningham said this morning, it is
17 Whirlpool, not the Respondents, that engaged in
18 substantial underselling during the POI. No matter
19 which data you examine, Whirlpool has consistently
20 been the aggressive low-price leader. The reason is
21 that Whirlpool has had to play catchup, which they're
22 still doing . Samsung and LG on the other hand have
23 greatly expanded their French-door sales, especially
24 for the largest-capacity models that Whirlpool does
25 not make. They have also emphasized quality, design

1 and those characteristics known as fit, feel and
2 finish to a much greater extent.

3 For these reasons, it is quite
4 understandable why Mr. Bitzer tries to frame dumped
5 imports as the culprit. After all, who wants to take
6 responsibility for failing to take the steps needed to
7 keep pace with your competitors, but Whirlpool knows
8 better. Consider the fact that the world's largest
9 home appliance manufacturer knows exactly why
10 retailers and consumers either buy or don't buy its
11 bottom-mount refrigerators. They possess numerous
12 studies that they've chosen to withhold that explain
13 purchaser motivations in detail despite an explicit
14 request for them.

15 This morning we heard the explanation that
16 they just didn't have enough time to submit these
17 studies. The questionnaire response was due on
18 January 18. The notion that they didn't have enough
19 time, when we raised this very same issue in the
20 preliminary determination, is simply not believable.
21 In contract, we've given you a substantial number of
22 independent studies that explain what motivates
23 consumers to buy Samsung and LG products as well as
24 why retail sales people recommend them.

25 Whirlpool has mischaracterized what they

1 show, which is that price is just one of many purchase
2 motivators when a consumer decides what brand to buy.

3 This does not mean that price does not matter to
4 consumers, and Whirlpool has mischaracterized our
5 position on this issue as well, but if Samsung and LG
6 models don't undersell the Whirlpool brands, and
7 consumers still decide to buy the imports, then they
8 must have done so for non-price reasons.

9 The weaken of whirlpool's pricing arguments
10 has cause the Petitioner to resurrect its legally
11 dubious and entirely subjective theory of feature
12 dumping. We heard a lot about feature dumping this
13 morning. You did not buy that theory last May, and
14 you shouldn't buy it now. Our witnesses are going to
15 touch on each of these issues, and they will also
16 address the overriding issue, which is whether
17 Whirlpool has fallen behind Samsung and LG because it
18 cannot compete on price or whether it has fallen
19 behind because retailers and consumers strongly prefer
20 the Respondents' models largely for non-price reasons.

21 When price is an issue, holiday promotions
22 do need to be considered. Do these promotions lead to
23 increased sales volumes? Absolutely, but did they
24 cause declines in Whirlpool sales volumes? They did
25 not. That is what the record shows. Does Whirlpool

1 itself use holiday promotions as a corporate strategy?
2 There is no question that it does. In fact, Whirlpool
3 engages in more frequent promotional activity than the
4 Respondents, and you did not get a straight answer to
5 your questions about that subject this morning.

6 In addition, Whirlpool offers promotional
7 MAPs that are discounted from the regular MAP by at
8 least as much as the discounts offered by the
9 Respondents. In addition, in our view, Whirlpool has
10 grossly under-reported the extent of its holiday
11 promotional activity. Please take a look at the
12 analyses in our prehearing briefs as well as
13 additional analyses on this subject will provide in
14 our post-hearing briefs.

15 These analyses show that Whirlpool, in
16 essence, regards the entire calendar year as one big
17 holiday given how extensive and pervasive its
18 discounting practices are, especially its indirect
19 discounts, which are considerable. The issue here is
20 not whether a lower holiday price drives volume. This
21 is a home-industry appliance commonplace. Rather, the
22 issue is why do customers frequently prefer the
23 Respondent's products over Whirlpools?

24 Whirlpool has failed in its effort to show
25 that lower prices drive the decision in a significant

1 number of instances. They do in some to be sure but
2 not to a level that constitutes significant adverse
3 price effects, and with that, I will turn it over to
4 Kevin Dexter.

5 MR. DEXTER: Good afternoon. My name is
6 Kevin Dexter, and I'm the Senior Vice President for
7 the Home Appliance Division of Samsung Electronics
8 America. In this capacity, I have overall
9 responsibility for sales and marketing for Samsung's
10 home appliances in the United States. Before joining
11 Samsung, I was with Electrolux for 15 years.

12 My testimony today will focus on three
13 subjects, (1) why Samsung has been successful in the
14 French-door segment of the market and why Whirlpool
15 has not been nearly as successful; (2) how the
16 negotiation process works with our retail customers
17 and the role of pricing in our negotiations, and (3)
18 the role that holiday promotions play in our overall
19 business strategy. My goal is to show you that
20 Samsung has not undercut Whirlpool's prices. We
21 simply haven't needed to do that to succeed.

22 First, why Samsung has been successful in
23 the French-door segment. Samsung is a world-class
24 producer of TVs, smart phones, tablets, semi-
25 conductors, home appliances and a wide variety of

1 other products. We have design, R&D and manufacturing
2 capabilities around the world and in the U.S. In the
3 mid-2000s, when we studied the bottom mount products
4 that were being offered in the U.S. market, we
5 concluded that an opportunity existed to use our
6 capabilities to produce well-designed and featured
7 models that consumers would prefer over the existing
8 offerings.

9 Samsung saw that its best opportunity by far
10 was in the French-door segment. This is the high-end,
11 high-price, high-profit segment where consumers are
12 not nearly as price conscious. Moreover, we saw unmet
13 needs in the market. Our judgment proved to be
14 correct as we have been extremely successful in this
15 segment. There were offerings available when we first
16 entered the French-door market in mid-2007, but our
17 models, quite frankly, were better than Whirlpool's at
18 the time, and they remain better five years later.

19 Whirlpool has been playing catchup on
20 design, quality and features. This is not a
21 subjective viewpoint, and it is not just my personal
22 opinion or Samsung's corporate opinion. Our
23 refrigerators were ranked No. 1 in customer
24 satisfaction by J.D. Power & Associates for six
25 consecutive years. Our own dealer attitude surveys

1 show that retail salespersons are twice as likely to
2 recommend our product than Whirlpool's. Our products
3 are just easier to sell, even at higher prices.

4 We've heard Whirlpool say over and over that
5 our holiday promotion prices drive our sales and that
6 their own sales have suffered as a result. Yet,
7 holiday promotion sales accounted for only 26 percent
8 of our business in 2011 and 20 percent in 2010, so
9 Whirlpool's assertion here, as in many other areas, is
10 simply not accurate. Price is certainly a factor, but
11 it is not the important factor in our consumers'
12 minds, especially in mass-premium segment on which
13 Samsung focuses.

14 In a few minutes, Eugene Seagriff, our
15 Marketing Director for Refrigeration, is going to
16 identify a significant number of differences between a
17 Samsung model and the comparable Whirlpool model that
18 we brought today. These are design differences, not
19 cost differences, but they still make a distinct
20 impression on consumers. These differences allow us
21 to price our products higher than Whirlpool is able
22 to. Bear in mind that ultimately consumers drive the
23 purchasing decisions of retailers, not vice versa.

24 The models that we brought are both 25.5-
25 cubic-foot models. To compete against our model,

1 Whirlpool has had to promote very frequently and offer
2 deep discounts when it does. Both of these models
3 fall within the definition of the Commission's Product
4 6, but our product is superior because of what the
5 industry calls fit, fill and finish. When we approach
6 retailers in an effort to convince them to buy our
7 products, this is what we emphasis, and this is why we
8 succeed.

9 We also show the retailer the most important
10 findings that have led J.D. Power to consistently rank
11 us No. 1. We emphasize the ratings that we receive
12 from consumers on performance and reliability, styling
13 and feel, ease of use and features. These are the
14 factors that matter most to retailers and consumers,
15 and Whirlpool's models will always trail our models on
16 each of these factors, and they frequently trail by a
17 wide margin. In proof of this point, consider the
18 MAPs on the two models that are here today.

19 Our MAP on the RF267 at the end of 2011 was
20 \$2,399, while Whirlpool's MAP on its GI6 was \$200
21 lowers. If our product was not superior, we cannot
22 justify to the retailer the much higher MAP. Next,
23 I'd like to talk about how the negotiation process
24 with our retail customers work. After we demonstrate
25 to the retailer why our products are superior to those

1 of our competitors, we begin the discussion of minimum
2 advertised price and invoice pricing, and you've heard
3 quite a bit about that this morning. To the retailer,
4 the margin matters just as much if not more than the
5 invoice price that it pays.

6 This is a unique aspect of pricing in the
7 home appliance business. This typically leads to a
8 give and take in the negotiation process in which we
9 try to achieve a balance that will generate
10 significant sales and profits for each SKU that we
11 offer. There's no question that retailers attempt to
12 get us to lower our invoice prices in order to
13 generate a greater margin compared to the MAP, but
14 because we are offering superior products, we don't
15 have to lower our MAPs to the level of Whirlpool in
16 order to make a sale.

17 However, when we do get pressure from the
18 retailer, it is frequently because Whirlpool has been
19 offering a greater discount off their MAP, and we're
20 being asked to match it. Your underselling analysis
21 compares the prices that Samsung and Whirlpool charge
22 on comparable models. When you perform your
23 underselling analysis, it is critical that you
24 consider both direct and indirect discounts offered to
25 retailers because of the differing discount approaches

1 that we in Whirlpool employ.

2 To the best of our knowledge, Whirlpool
3 grants much greater volume rebates than Samsung does.
4 These are indirect discounts that have a huge
5 influence on what the retailer pays. We know, for
6 example, that Whirlpool regularly back-end volume
7 rebates of at least 10 percent. As I mentioned at the
8 start, Samsung's strategy is to concentrate on the
9 high end where Whirlpool has chosen not to compete.

10 For example, our four-door model has a much
11 greater capacity than Whirlpool's four-door model, and
12 it is far more popular even though our MAP is \$400
13 higher. Whirlpool also offers no competition for our
14 29-cubic-foot three-door model. Whirlpool has chosen
15 not to develop thin-wall technology like we did and LG
16 did and reportedly GE has recently done, so they have
17 not been able to expand the amount of interior space
18 inside the cabinet.

19 We make a counter-depth in the 23-cubic-foot
20 capacity range that has no competition from Whirlpool.
21 We also make a 26-cubic-foot 33-inch-wide product
22 that Whirlpool chooses not to compete with as well.
23 Whirlpool doesn't offer dual ice makers, and it didn't
24 offer dual evaporators or LED lighting until 2010.
25 We've been doing this all along, so we may well be

1 replacing Whirlpool units, but that is because
2 Whirlpool does not offer consumers what they value
3 most, and we do.

4 Finally, let's discuss the role that holiday
5 promotions play in Samsung's business strategy.
6 Retailers use holiday promotions to drive foot traffic
7 because that's when people shop. We have to respond
8 to what retailers want, and everyone does. Whirlpool
9 makes a big deal about this, but it's an unremarkable
10 aspect of the entire home-appliance business.
11 Whirlpool has attempted to spin the increases in
12 volume that we generate using a holiday weekend
13 promotion into a claim that we have injured them, but
14 please remember that we generate less than 30 percent
15 of our annual sales through holiday promotions.

16 In addition, the recession has increased the
17 pressure on all manufacturers and retailers to engage
18 in greater promotional activity. This is not unique
19 to Samsung or to bottom-mount refrigerators. Instead,
20 it's today's economic reality in every consumer-
21 products business from appliances to cars to TV. In
22 addition, we ask that you examine the holiday
23 promotion advertisements that retailers publish for
24 Black Friday and other holiday periods in 2011. The
25 first thing to notice is that Whirlpool engages in

1 holiday promotions every bit as frequently if not more
2 so than we do.

3 The second thing you'll notice is that
4 Whirlpool frequently promotes lower-priced "door
5 buster"-type models that are priced to generate in-
6 store traffic, but which have smaller capacities and
7 fewer features. A good example is the Black Friday
8 2011 ad for Lowe's, and you heard some about that this
9 morning already. In that ad, Lowe's promotes
10 Whirlpool's 25-cubic-foot four-door model at \$1,299,
11 which is a discount of \$1,200 off the regular MAP.
12 This was a drop in SKU for Lowe's. In other words,
13 Lowe's had not sold this SKU before.

14 In contrast, Lowe's promoted Samsung's 28-
15 cubic-foot four-door model at \$1,799, which is also a
16 discount of \$1,200 off regular MAP, so our regular MAP
17 was \$500 than Whirlpool's and Lowe's promotional price
18 was also \$500 higher on Samsung than on Whirlpool. In
19 other words, our models start at \$500 higher than
20 Whirlpool, and our models end at \$500 higher than
21 Whirlpool because Lowe's offered both at the same
22 discount.

23 The result of the promotional efforts on
24 these two models was that Samsung sold 20,000 units
25 between October and November 2011. Whirlpool

1 generated over 18,000 units and sales for its SKU for
2 that same time period, so we engaged in the same
3 amount of discounting, and we generated nearly the
4 same unit sales, so this type of holiday activity in
5 which Whirlpool consistently engages did not cause
6 injury to Whirlpool. They enjoyed phenomenal sales
7 volume far beyond the roughly 500 units per month they
8 had previously been selling with the Kitchenaid and
9 Maytag versions of that model.

10 Whirlpool has proven that promotions can
11 drive sales during holiday periods, but that is
12 elementary retail economics and nothing more. Any
13 objective examination of the industry data clearly
14 shows that Whirlpool, under their many brands
15 including Whirlpool, Kitchenaid, Maytag, Amana and
16 Jenn-Air, plays as aggressively as anyone else during
17 holiday promotional periods.

18 In conclusion, we urge the Commission not to
19 allow Whirlpool to distract it by insisting over and
20 over that price is the most important factor in every
21 single sales. The J.D. Power surveys indicate
22 precisely the opposite for the vast majority of sales,
23 but when the issue does come down to price, in the
24 consumer's mind it is far more often the case that
25 lower Whirlpool prices will influence the consumer's

1 decision.

2 Now I'd like to ask Eugene Seagriff to give
3 you a brief demonstration of the differences between
4 the Samsung and Whirlpool refrigerators that we
5 brought here for your inspection. Thank you.

6 MR. SEAGRIFF: So now we'd like to invite
7 the Commission to come down. This won't take very
8 long.

9 (Pause.)

10 MR. SEAGRIFF: Good afternoon. Thanks for
11 joining me here. I'm Eugene Seagriff. I'm
12 responsible for product in the U.S. for Samsung,
13 refrigerator products specifically. There's two
14 reasons why we're winning the market. First and
15 foremost is we focus on mainly on creating new
16 segments, high-value segments, for example, in the
17 same size box, we add three more cubic feet. All
18 right. That's big to customers, big on the inside.

19 The second reason is what you've been
20 hearing a lot about, this fit, feel and finish
21 business, and that's what I want to explain. What
22 does that even mean? So we took very similar products
23 to go through that, and customers when they're
24 comparing products, as you know, go through the same
25 set of procedures that you guys went through when you

1 were shopping, right? I outlined them here. If you
2 observe people in retail, they do the same things.
3 The first thing they do is sell it, right?

4 VOICE: Eugene, can you speak up a little
5 bit?

6 MR. SEAGRIF: Yes. Sorry. They're so
7 close to me, I didn't want to yell at them, but
8 anyway, while they're doing that, they're making value
9 judgments, right? They're getting impressions about
10 the quality, how things look, how they operate, how
11 easy they are to use, right? So we'll start from the
12 beginning just like a customer.

13 The first thing they're going to do is
14 they're going to look at the outside, and when they
15 look at the outside, they're going to say gosh, this
16 is a really nice looking display, and that's going to
17 make them want to touch it, and when they touch it,
18 what they're going to see is it moves, and the same
19 thing with this nice expensive two-paddle design. It
20 moves. It's not strong and stable, right? It's not
21 crisp. That's big. That gives impressions about
22 quality.

23 Similarly with the handles, right? We have
24 a very expensive three-piece design there. We went
25 with the less-expensive one piece with a couple of

1 caps on it, but the difference in style is striking,
2 and more importantly the difference in feel is very
3 important. How it feels in your hand when you're
4 opening the door is vastly different, and I urge you
5 to try it. That's why we put the little hand-tags on
6 there with what customers do, right? They look at the
7 outside. They touch it.

8 They open the doors, and when you get
9 inside, the differences are even more striking, so you
10 see we have LED lighting. We have LED lighting on
11 every product we make. We've had it that way for
12 years, okay? Whirlpool still has light bulbs in some
13 of their products. This one happens to have LED
14 lighting in the refrigerator, has a lightbulb in the
15 freezer, but you can see the LED lighting was put into
16 a box designed to hold a lightbulb, okay? Because we
17 put it in every product and we design it that way from
18 the start, we have this nice recessed look, and the
19 cost is minimal. We do it on every product.

20 It's not a cost adder, is the cost. It's
21 not additional cost. In fact, it's less because it's
22 on every product. The same thing if you look at the
23 back wall. It looks like they added the cooling
24 system here, the shelf bracket is kind of in the
25 middle of nowhere. Here, we have symmetry and

1 elegance in the back wall, okay? It's a very
2 different design approach, and these things keep
3 adding up in the customer's mind, the fit, the feel of
4 the door bins, the crispers. It matters.

5 The controls, we actually use the less-
6 expensive control. We plated it. It looks a lot
7 better. It feels a lot better. The screen printing,
8 a more elegant font. This doesn't add cost, but it
9 makes a big difference to the customer. Another key
10 feature is this pantry with built-in temperature
11 controls. We both have them. It's a much sought-
12 after feature in the marketplace, but part of the
13 issue here is a customer can't tell that this is a
14 temperature-controlled pantry when they look at it.

15 To know there's temperature controls there,
16 they got to put their hand in this sort of
17 uncomfortable hole, open it and peak around to the
18 side there and say gosh, what's that? Maybe it's the
19 temperature control, right? On the Samsung, on the
20 other hand, the controls are right on the outside.
21 You can't miss them, easy to see, easy to get credit
22 for at retail, easy to use for the customer, right?
23 These differences keep adding up. Basically, the same
24 parts and materials, vastly different apparent value
25 to the customer.

1 Moving on to the freezer, you can see in the
2 Samsung we have what we call the easy-open handle, and
3 yes, we have dual evaporator, and you know what? We
4 have that in every single model, so the cost adder is
5 negligible. You open the drawer, there's a little
6 bump in the rail that helps pull this drawer out. We
7 have a single molded plastic piece. We have another
8 little plastic piece there to add more stuff. This
9 side, you open the drawer, you got to reach back under
10 here, and you drag out this wire rack.

11 This actually would cost us more to do that
12 an. I don't know about Whirlpool's cost, but for us,
13 that's cheaper. There's a lightbulb in there. We're
14 still using LED. It gives you better energy
15 efficiency, and for us, it's a lot more cost
16 effective. Okay. So this is what we're talking about
17 when we talk about fit and finish. Whirlpool
18 understands this, right? They see the data trends
19 just like we do. They buy our competitive products,
20 and they tear them down to the component level.

21 They understand. They told you today
22 already they're developing the high capacity.
23 They've already launched dual evaporator. They've
24 already launched much-enhanced LED lighting on some of
25 their products, so this is not new to them. GE's

1 already doing it, right? I can't wait to see their
2 new products. They're coming in June, making them in
3 Louisville, okay? So if you design it in, this fit,
4 feel and finish business is not a tremendous cost
5 adder, okay? So I appreciate your time and attention,
6 and thank you very much.

7 MR. CUNNINGHAM: Members of the Commission,
8 our next witness is John Herring of LG Electronics.

9 MR. HERRING: Good afternoon. My name is
10 John Herring. I'm with LG Electronics. I'm the Vice
11 President of National Account Sales within our Home
12 Appliance Division. I've been in the appliance
13 industry almost 18 years, and almost the last six at
14 LG Electronics.

15 During the next few minutes, I just want to
16 share with you briefly an overview of French door,
17 specifically how it differentiates from the two door,
18 which you talked about earlier and had lots of
19 conversation and questions around, a little bit about
20 the expansion of the French-door market and why it's
21 taken off in the way that it has and then touch a
22 little briefly on the promotional dynamics.

23 First off, I just want to talk about the
24 two-door bottom mount and French door. There's been
25 some discussion over it being similar, yet they're

1 vastly different. Yes, they both cool. They both
2 have a refrigerator and a freezer section, but how
3 they're segmented in the market is much different.
4 Consumers are constrained by space. In fact, some
5 conversation earlier around I don't have enough room
6 in my home to fit a certain-sized refrigerator.

7 That's actually one of the first qualifying
8 questions a customer should be asked or they should be
9 looking at is what's my physical width that I have and
10 what refrigerator can I fit within that, so they come
11 in 30, 33 and 36 inches. Two-door refrigerators are
12 typically 30 and 33 inch. In fact, we don't even make
13 a 36-inch, two-door refrigerator, so that's one key
14 differentiator between those two segments. The other
15 segment is typically you don't get an ice and water
16 dispenser on a two-door refrigerator. In fact, I'm
17 not even aware of anyone making a two-door model with
18 ice and water, so again dramatically different
19 segment.

20 Manufacturers are investing in the three-
21 door, which is the faster-growing segment. That's
22 dominantly more 36 inches where the major focus is.
23 That's where they're launching their newer
24 technologies, newer features, thin-wall capabilities,
25 so yes, two door and three door are both bottom mount

1 platforms, but they're dramatically different in how
2 they're marketed, how they're segmented, how they're
3 researched and how retailers sort them and present
4 them and how you ever research them online. They're
5 differentiated.

6 Briefly on the trend, French door has
7 clearly been the bright spot inside the refrigeration
8 business. In fact, just as an example, in 2011,
9 French-door business was up 11 percent. Yet, the
10 industry was down four. In fact, all other
11 configurations, top mount, side by side and two door
12 were all down last year in 2011. French door was the
13 only one that had shown an increase, and that's a
14 typical trend. Over the last few years, French door
15 has outpaced the other categories over that timeframe.

16 Next what I want to touch on is why has
17 French-door refrigeration grown so rapidly? This was
18 touched on earlier. The first is really kind of the
19 natural consumer acceptance. The fact that it is eye
20 level. The fresh food section is at eye level.
21 Consumers are accessing it more frequently. They can
22 easily see their entire fresh-food compartment without
23 bending over or crouching over, so that's one major
24 driver.

25 The other drivers, in addition to that, are

1 how manufacturers such as LG and Samsung are investing
2 in that platform for style and design, and LG has been
3 a leader in style design in the fit, feel and finish,
4 things such as stylish handles, contoured doors,
5 hidden hinges, LED displays or digital displays and
6 LED lighting just to name a few are how manufacturers
7 are differentiating that platform, so fit, feel and
8 finish, style and design are important.

9 The reason why it's so important is
10 consumers are entertaining in their home. The kitchen
11 is very much an area where they congregate, and their
12 refrigerator is somewhat of a centerpiece into that
13 kitchen, and so style, design is a major driver to
14 consumers when they purchase refrigerators in that
15 category. I'll point you to slide one. You should
16 have these slides that were passed out.

17 Slide one just highlights the distinct brand
18 attributes of all the brands or the majority of the
19 large brands that are available on the market today.
20 The thick red line is LG's brand, and this is a
21 consumer research that asked on a variety of different
22 attributes how they viewed those brands, and farther
23 to the outside would signify a greater significance or
24 correlation between that attribute and that brand.

25 LG is highly differentiated between style

1 and design, innovation, technology, trend setting, et
2 cetera. I think that just goes to the point that the
3 brands are different, consumers do view them
4 differently, and that's one of the drivers behind LG's
5 success in terms of its style and design and how
6 that's translating to consumers.

7 Next, I want to talk about another reason
8 why LG and Samsung are driving incremental demand
9 inside the French-door segment is through innovation.
10 I'll point you to Slide 2, and this is just an
11 example of the type of innovation that LG is bringing
12 to market that consumers are gravitating towards,
13 innovation we call slim-space plus, which really
14 signifies that the ice maker has been slimmed down or
15 virtually disappeared from the product.

16 If you look on the left slide of the slide,
17 you'll see the interior shot of an LG refrigerator.
18 You'll notice a somewhat of an absence of the ice
19 maker. The ice maker is on the door, and it's behind
20 those top two rows of condiments and liquids. On the
21 right side is what Whirlpool and Maytag have where you
22 can visibly see the ice maker and the dispenser into
23 the door.

24 We spent the time and the resources to
25 innovate in terms of ice makers to make the ice maker

1 virtually disappear which gives the consumer greater
2 visibility, sight lines and more usable space inside
3 the refrigerator, and that's what we're talking about
4 when we mention innovation and being a driver in that
5 segment and creating incremental demand.

6 Next, I'd like to take you to the third
7 slide, a product innovation overview, and this is
8 specifically in the ice and water segment of French
9 door. Across the top are the years '08, '09, 2010 and
10 2001. On the left side are the brands that we've
11 highlighted, LG, Samsung and Whirlpool. I'd like to
12 point you to the top left corner. LG launched a four-
13 door ice and water refrigerator in 2008.

14 It was the first one of its kind to have an
15 ice and water dispenser in a four-door refrigerator
16 platform. It immediately became of the industry's
17 best-selling refrigerators, and LG didn't offer it at
18 the same price. LG didn't offer it at a lower price.
19 We launched it at a higher price. The MAP price was
20 \$2,999. It was a premium-priced refrigerator in that
21 segment.

22 The question is what happened with
23 Whirlpool, and when did they launch a four-door
24 refrigerator? They launched almost two years or just
25 over two years later in October 2010, so eventually

1 they came to market with a four door, but in terms of
2 being there with the consumer and met them with
3 innovation that they desired, they were behind the
4 curve with respect to LG.

5 The second major innovation you heard a
6 little bit earlier is thin-wall construction, and I
7 point you to 2008 as well on the bottom. Samsung
8 launched a thin-wall construction product in 2008 in
9 their 29-cubic-foot platform. That was innovation in
10 terms of the marketplace in French door and bringing
11 that technology to market. LG followed in 2009, and
12 Whirlpool has yet to launch a thin-wall construction
13 product, and we're going to talk a little bit more why
14 that's important.

15 I also want to point out, during 2009,
16 Samsung's 29-cubic foot was one of the industry's
17 best-selling refrigerators. Again, they didn't launch
18 it at the same price. They launched it at a higher
19 price and collected a value for that thin-wall
20 technology. In 2010, LG launched that same type of
21 technology in thin-wall construction in different
22 versions, in 33-inch versions, and that's what you see
23 under the 2010, so launching that same technology in
24 not just a 36-inch platform, but in a 33-inch
25 platform.

1 In 2010, Samsung also launched a four-door
2 refrigerator, and in 2010, again one of the industry's
3 best-selling refrigerators in 2010, again not at a
4 lower price but at a higher price. In 2011, last
5 year, LG launched a 31-cubic foot, the industry's
6 largest capacity refrigerator, and it overnight became
7 one of the industry's best-selling refrigerators.
8 You'll see a trend here, 2008, 2009, 2010 and 2011.

9 Each time LG or Samsung launched innovation,
10 whether it be a four-door, larger capacity
11 refrigerator, each time at the premium end of the
12 spectrum, in each time, it became of the industry's
13 best-selling refrigerators. I want to turn to Slide
14 4. This is focused on the importance of thin-wall
15 construction and how consumers are voting for a
16 larger-capacity refrigerator.

17 What we have here is the three years 2009,
18 2010 and 2011, and the number, the 23, 34 and 44 is
19 the percentage of units sold in that year that were
20 termed "large capacity," which is 27½ cubic foot and
21 larger, and what you see here is a tremendous trend
22 for consumers purchasing larger-capacity refrigerators
23 and paying a premium price for that. LG and Samsung
24 have been effectively meeting the consumer demand for
25 a larger capacity in the same footprint, and again, as

1 I pointed out earlier, Whirlpool has yet to launch
2 their technology in that platform.

3 The last item I just want to briefly touch
4 on is promotional dynamics. The appliance industry,
5 approximately 60 percent of purchases are done in a
6 distressed mode, meaning my refrigerator failed, or I
7 need a service call, and the cost of that service call
8 is considered in saying I don't really want to repair
9 my old one. It's eight or 10 years old. I'm going to
10 go ahead and replace. That's what we call distressed
11 purchases, and it's approximately 60 percent of the
12 industry is done in that segment.

13 The other 40 percent is more discretionary.
14 Consumers either are remodeling or it can be
15 stimulated in terms of demand to upgrade their
16 refrigerator that's existing or working properly today
17 or maybe remodeling their kitchen and driving a whole
18 package. Retailers or manufacturers alike are wanting
19 to capture a larger share of that business. That's
20 what drives activity.

21 A lot of the promotion activity is around
22 stimulating and creating extra demand, and that's
23 where a lot of our focus has been in terms of bringing
24 consumers into the marketplace based on the exciting
25 new innovation and technology that we offer. Those

1 are the major events we talked about, Memorial Day,
2 Labor Day, Black Friday and July 4th. One last point
3 on the promotional strategies before we move on is
4 you'll want to be careful when you compare promotional
5 models.

6 Don't compare promotional models to non-
7 promotional models, and the reason being is
8 manufacturers and retailers determine their strategies
9 of how they're going to go to market. If everybody
10 came with the exact same offering, the retailer has
11 the same offering under all their brands. It wouldn't
12 be a very attractive offer. They want to show choices
13 to consumers, so one manufacturer may say I want to
14 get behind three-door refrigerators, French door.
15 Next, the manufacturer and the retailer work together
16 and say I want to launch the large capacity as part of
17 my major campaign during this promotional event.

18 Another manufacturer may say I want to
19 partner and launch the four-door during that even, so
20 they're tackling different segments of the marketplace
21 and showing an offering to the consumer during that
22 timeframe, so just important when you look at your
23 evaluation not to single out a model but look at the
24 industry as a whole or the French-door segment as a
25 hole.

1 In summary, I just want to touch on two door
2 and three door are dramatically different segments
3 based upon the size, the configuration, the constraint
4 that the consumer is under, under the type of
5 innovation such as ice and water and larger capacity
6 and four door that's available on the French-door
7 platform. French door's the rapidly fastest-growing
8 segment.

9 Incremental demand has been created in that
10 segment, driven dominantly by LG and Samsung focusing
11 in on what the consumer costs at the high end of the
12 spectrum collecting a premium price, not a lower
13 price, for all those innovations and features. That
14 concludes my remarks.

15 MR. BAIRD: Hello. My name is Bob Baird,
16 and I'm a serial emailer. As a little background, I'm
17 actually the Vice President of Appliances, Kitchen and
18 Bath with Home Depot, so I hope the two people up
19 there who bought kitchens bought a kitchen from Home
20 Depot. I started in the appliance business in the
21 fall of 1966, so I've done it about 46 years, so I'm
22 not sure there's anybody that probably has done it as
23 long as I have. I'm not sure if that's good or bad,
24 but I've done it a long time.

25 I'm here because Home Depot wants me here,

1 and I'm here because we're a value retailer, and we're
2 concerned about how it will affect our customer. One
3 of the possible outcomes of this hearing would be that
4 our customers have to pay a large price increase and
5 get absolutely no value for that price increase, and
6 that's why I'm here is because we kind of feel that we
7 need to be the advocate for the consumer, which
8 doesn't seem to be a lot of concern about the consumer
9 in all of this.

10 We are the largest Maytag retailer in the
11 world. We're the largest GE appliance retailer in the
12 world, and we're the largest LG appliance retailer in
13 the world. We don't sell a Samsung, and it's kind of
14 weird to be on this side of the bench because as far
15 as I'm concerned Samsung would be the enemy at this
16 point, but I did work for Maytag a long time, so I'm
17 actually a pensioner.

18 The people on the left side of the room
19 actually send me money every month, so it's a little
20 bit strange to be here, but there's no option to be in
21 the middle of the room. I had to either pick the
22 right or the left, so this is why I'm here where I am.
23 I will tell you one thing that's interesting about
24 Home Depot is we're what we call a fair floor. It
25 means we put the products out there.

1 We don't spiff our people to sell them. We
2 don't have any inventory pressure, because quite
3 frankly, as Marc talked about it, we don't have a lot
4 of inventory, so all we want to do is fulfill the
5 wants and needs of the customer, so whatever happens
6 on our floor is what happens nationally. We don't
7 force anything to happen that wouldn't happen
8 normally.

9 Another point I want to make, and this goes
10 back to Mr. Pearson's thing, but quite frankly, in my
11 opinion, and I'm not sure if this helps or hurts our
12 case, in my opinion a refrigerator is a refrigerator.
13 a washer is washer, a dryer is a dryer and a
14 dishwasher is a dishwasher. I'm not quite sure why
15 they decided to call ranges ranges, but ranges cook.
16 They all do basic functions, and I don't know why you
17 can pick out one particular group of a product and
18 make it unique.

19 I think it's probably because in this case,
20 Whirlpool has expatriated all their workers that made
21 top mounts and side-by-sides in Mexico, and they chose
22 to focus, as they said earlier, on a category they
23 still make in America, but to me it's all one
24 category.

25 Whirlpool did launch, I guess if you want to

1 call it they invented the category, they did launch
2 the French door with dispenser in March 2006. It was
3 actually a Maytag brand, and the ad that Marc showed
4 you earlier was the ad that I ran because we were
5 allowed to introduce that product, so it was pretty
6 exciting. As John said, the key thing about a French
7 door is probably the ideal configuration to a customer
8 with the freezer on the bottom, this access at least,
9 plus cold air goes to the bottom, and you have full
10 access to the fresh food.

11 What those units did not have up until March
12 of 2006 was an ice and water dispenser which is very
13 important for consumers, so that was launched by Home
14 Depot and Maytag in March of 2006. They were the
15 absolute leader. They owned the category. However,
16 60 days later, LG also introduced a piece for Memorial
17 Day of that year. Essentially, where the Maytag was
18 \$2,449, the LG was \$2,499, but the LG right off the
19 bat offered a couple of big innovations or plus
20 features, whatever you want to call them.

21 They had the crushed ice dispenser, which
22 the Maytag did not have, and a flush dispenser, so
23 right off the bat, they were in fact \$50 higher, but
24 they offered a product that customers preferred. As
25 John said, I think LG, and I'll give some credit to

1 Samsung, I guess, but they've actually led the market,
2 and if you want to call it innovation, that's okay.
3 If you want to call it new stuff, but if you look at
4 those first two models that we introduced in March and
5 May of 2006, and you look at all the offerings today,
6 all the new stuff the new stuff has come from LG and
7 Samsung.

8 Whether you want to call it innovation or
9 just new stuff, that's irrelevant, but any meaningful
10 addition to that category, any improvement that's been
11 made in the last six years has been made by LG and
12 Samsung. In fact, today, we sell a 31-cubic-foot LG.
13 The MAP on that piece is \$3,199. Twelve of the last
14 13 weeks in Home Depot that's been our absolute No. 1
15 best seller, so it pulls retails up. It doesn't drag
16 them down, and as a matter of fact, LG just introduced
17 a Kenmore product at Sears that's called Magic Door
18 and actually Sears has it on the floor for \$4,200, so
19 they've introduced a lot of higher-priced things.

20 In terms of the category of French doors and
21 bottom mounts, I guess my opinion would be one and two
22 doors probably don't count. If I were you guys, I
23 wouldn't spend a lot of time on two doors. I don't
24 think that's really at odds here. It's not a growing
25 business. It's a small part of the business. Quite

1 frankly, I don't think the French doors without
2 dispensers are too meaningful. I think what this gets
3 down to quite frankly is French-door refrigerators
4 with three or four doors that have dispensers.

5 In the case of what is out there now, you
6 probably just need to look at 25s and 26s, which is
7 what these two models are back here because quite
8 frankly Whirlpool doesn't offer any of the larger-
9 capacity models, so you could almost look at this as
10 it really comes down to those two pieces right there,
11 and there's an LG piece that would fit there very
12 well.

13 I'll talk a little quick about GE. When we
14 were here 11 months ago, one of the staff asked Marc
15 Bitzer if he was aware, because Marc's making the
16 point that it's impossible to make money, make French
17 doors in America, and they were going to have to close
18 the plant and ship all the people out, and he was
19 asked point blank was he aware of anybody else that
20 was going to make French-door refrigerators in
21 America, and he answered that question no.

22 I respect the fact that he was telling the
23 truth, but at that time, GE had already announced the
24 fact they were going to make a plant in Louisville and
25 make French door. The total expenditure was \$342

1 million, which about \$190 went to French door. They
2 actually had Joe Biden down in the plant to make the
3 announcement, so it's pretty well known, and I would
4 tell you that I had the privilege of going to GE last
5 month and seeing all these new models.

6 I mean, the production actually starts not
7 in 2014, the production actually starts next month,
8 and we'll launch that product in May, and to quote
9 Clint Eastwood on the Super Bowl commercial, it's
10 going to be a new game. The second half has started,
11 and I can tell you the models that I saw from GE are
12 dramatic, quite frankly, and I've already told LG and
13 Samsung that it is a new day. In fact, we're going to
14 remove probably one or two LG's from our floor to make
15 room for the GEs because they came out with a product
16 that is absolutely drop-dead gorgeous, thin-wall
17 construction, everything you want.

18 I think it is possible to make money, and
19 I'm sure that it would be hard to argue that GE's not
20 a rational company. I mean, they're probably more
21 concerned how they spend money than about anybody, and
22 they looked at this market and decided that instead of
23 making \$500 top mounts or \$1,000 side by sides, the
24 play was to making French doors over \$2,000, and what
25 they did is they've priced the goods quite frankly

1 with LG and Samsung.

2 I don't want to give too much away here
3 because Kevin's looking at me, but it's priced
4 certainly in parity with LG and Samsung, and I think
5 the real question is if you look at these two
6 refrigerators here, and Kevin's point was if the
7 Samsung is \$200 more, it has to have \$200 more fit,
8 feel and finish, that's not the real question in my
9 mind. The real question is if you're Whirlpool, and
10 you're worried about making money, why would you price
11 yours \$200 less than the Samsung. That's the real
12 question here.

13 It was the same question 11 months when we
14 had an LG up there that was \$2,399, and the Maytag was
15 \$2,199. The question's got to be why would you price
16 it less if your products are good? I can tell you
17 it's certainly not about quality. In my opinion the
18 Maytag and Whirlpool is equally as good a quality of
19 LG and Samsung, if not better. I can tell you it's not
20 about brand. The fact is, and I think Mark would
21 confirm that the brand preference for Maytag and
22 Whirlpool is probably larger than LG and Maytag, so
23 it's not about brand. It's about the actual product
24 itself, and that's what you got to focus on.

25 Let me talk a little bit about promotional

1 activity. My guess is I'm going to get a lot of
2 questions about this later, but there's a lot of
3 offers, and you have to understand how they all work,
4 and it gets a little bit confusing, but what we call
5 from a retailer's perspective a house offer, and when
6 we offer 10 percent off on all appliances, that's
7 what's called a house offer. Typically, we wouldn't
8 obtain any support from a supplier to run 10 percent
9 off,

10 When you're talking about in-store specials
11 is when a manufacturer decides to have a product run
12 at below MAP, and I would tell you in this category
13 MAP is a critical number. When somebody asks me how
14 we choose to sort what we do, the answer is going to
15 be we look at the MAP because the MAP tells you what
16 the manufacturer thinks it will sell for, but the fact
17 is, if you look at how promo MAPs work, we have a MAP
18 that we've looked at, and we select.

19 We look at the MAP, and we base our margin
20 on the MAP price, and then a manufacturer may have a
21 promo MAP for Black Friday, for example, and they
22 reduce that MAP to a lower MAP, it's called a promo
23 MAP, and probably supply funding to help the margin.
24 That's how kind of that works. Then, the other you
25 have is when a manufacturer will reduce a piece in

1 your store, and this is probably a single piece or
2 maybe two pieces, but they won't MAP it or promo MAP
3 it.

4 They'll just tell you you can run it in your
5 store, and you can have it less, but it won't be any
6 kind of MAP. You cannot run it in any kind of ads,
7 okay? And you'll see a lot of that from Whirlpool and
8 Maytag were they actually fund reductions of prices,
9 but it's not part of MAP or promo MAP, so it probably
10 wouldn't show up on any kind of chart that you're
11 tracking if Whirlpool's tracking, but the fact is on
12 our two Maytag French doors, we've had them on
13 promotion below MAP 52 out of the last 52 weeks, and
14 those reductions have been supported by Whirlpool.

15 It's 100 percent of the time. It's never
16 been a full MAP yet since we've them. Two minutes.
17 Let me talk about Black Friday. One, I got to tell
18 you, I'm kind of surprised that Black Friday is so
19 important here, if you want my opinion. I mean, Black
20 Friday by definition is an irrational event. If
21 anybody's ever gone out on Friday morning and seen
22 what's happening, or this year, if you've gone on
23 Thursday night, I mean, the very essence of the event
24 is it doesn't make sense.

25 The fact is, if my Board or Directors or my

1 leadership team rated me based on the profitability I
2 generate on Black Friday, I wouldn't be here today, so
3 I think it's way too important for you to base duties
4 on something that's going to be 365 days a year on one
5 little event, and I understand Black Friday's
6 important, but I think it's not nearly important as
7 it's being made here.

8 I also got to talk a little bit about Black
9 Friday this year because we were here 11 months ago.
10 There was a lot of conversation, about preliminary
11 duties, and quite frankly what I thought would happen
12 didn't happen, and if you listen to the Whirlpool
13 earnings call in February of last year, they made a
14 big point of the fact they participated way too much
15 in Black Friday 2010.

16 The fact is it hurt their financials for the
17 quarter, and they were going to fix all that, and this
18 year they were going to promote fewer models in a
19 shorter amount of time with smaller discounts, and I
20 will tell you in real life, just the exact opposite
21 happened. They had more models in promotion with
22 larger discounts for a longer period of time. As a
23 matter of fact, they started their Black Friday
24 pricing at Home Depot in October, so it was even
25 longer than last year, and I guess the real surprise,

1 and if you look at the one sheet on what is this
2 called?

3 (Discussion held off the record.)

4 MR. BAIRD: Do you have a 13? I've got no
5 time. Just real quick, just to show you how this
6 graph really looks. On the Maytag on the left where
7 you've got sales of 193 pieces, that would be me. On
8 the right where you got the Whirlpool that sold 20,000
9 pieces at \$1,299, that would be Lowe's, so to think I
10 knew that was going to happen or anticipated it is not
11 true, and the fact is, probably in 46 years in the
12 business, I don't think I've ever seen anything quite
13 as aggressive as that pricing.

14 My guess is in fact that it was below cost,
15 and I'm not saying Whirlpool condoned that price, but
16 they certainly helped get that price to where it was,
17 but I tell you, Black Friday 2011 was a real shock to
18 us based on what had happened 11 months ago. Okay.
19 The last thing I just want to say, and then I'll be
20 done, is I think the message you got to convey here is
21 I don't think you can penalize LG and Samsung and to
22 some extent Electrolux, and Mabe, for making a better
23 product.

24 I think that can't be the message. I don't
25 think you can go to GE and say guys, you really didn't

1 have to spend \$342 million to build a better product
2 and build the product in America. The fact is we were
3 going to fix the game so you didn't have to do that.
4 I think the message that has to come out of this
5 hearing is you have to tell the guys on the left side
6 of the room they got to go back and make better
7 product. Quite frankly, I've been telling them that
8 exact message since 2006, every month. You can ask
9 Mr. Bitzer that. It's all about the product.

10 They can make better product. If GE can
11 come out from a dead start and make product that's
12 drop-dead gorgeous and very competitive with LG and
13 Samsung in six months, Whirlpool can do it too.
14 They've been after it for six years now. There's no
15 reason they would be behind, and that's pretty much
16 all I got to say about that.

17 MR. KLETT: Good afternoon. My name is Dan
18 Klett. I'm an economist with Capital Trade. I will
19 address two issues, why the record does not support a
20 finding of price depression and flaws in the analysis
21 presented by Petitioners' economic expert. On price
22 suppression, Petitioners pointed to declines in prices
23 of specific refrigerator models. However, it is
24 normal to see prices for bottom-mount refrigerators to
25 decline for at least two reasons. First, all big

1 ticket consumer durables, especially those
2 characterized by rapid advances in quality, features
3 and design show price declines over time.

4 Second, the recession necessarily put
5 downward pressure on bottom-mount refrigerators just
6 as it did for all big-ticket appliance prices. All
7 parties agree that the product life of a bottom-mount
8 model is two to three years. Volume starts small at
9 relatively high prices. Prices then decline as the
10 per-unit costs drop and volumes increase when the
11 model becomes establish and because competitors start
12 to catch up. At the end of the cycle, both the price
13 and the volumes for the older model decline sharply as
14 volume for the newer model increases and at a higher
15 price.

16 Slide 1 shows this phenomenon for Samsung's
17 French-door models with 28.5- to 29-cubic-foot
18 capacity, which corresponds to your Product 5 pricing.
19 For the earlier generation Samsung models, retail
20 prices started at over \$2,600 in April 2008 and stayed
21 above \$2,300 through May 2009 as volumes climbed. The
22 largest Whirlpool model at this time was the smaller
23 25-cubic-foot model priced at retail at \$1,700 when
24 first introduced in April 2008. It's price was
25 reduced to \$1,365 by the end of 2008, far below the

1 Samsung model price.

2 In June 2009, the Samsung price dropped to
3 below \$2,200, but with few exceptions remained above
4 \$2,000 through February 2011 as volumes continued to
5 increase. In March 2011, newer Samsung models were
6 introduced at a high price point and through Black
7 Friday 2011 were generally priced above \$1,900 at
8 retail. This model was promoted during Black Friday
9 2011 generating a significant increase in volume, and
10 this promotion is highlighted in the expert report of
11 Petitioner's economist.

12 However, this volume increase was not at the
13 expense of Whirlpool as these are capacities that
14 Whirlpool does not offer. Rather, this increase
15 reflects discretionary purchasing that naturally takes
16 place during Black Friday and also was at the expense
17 of Samsung's sales of this model in future periods.
18 Moreover, in the aggregate import market share for
19 imports, did not increase in 2011, which highlights
20 the danger of a myopic focus on individual model
21 promotions out of context.

22 Given time constraints, I won't present a
23 full discussion here, but you can see a similar life
24 cycle pattern for Whirlpool models in Slide 2. I do
25 want to point out though as shown in Slide 3 that

1 prices for all home appliances generally fell by about
2 the same percentage from 2008 to 2011 as did prices
3 for these Whirlpool models.

4 Regarding the recession, Whirlpool asserts
5 that because U.S. apparent consumption for bottom-
6 mount refrigerators increased, any demand declines
7 from the recession did not injure the domestic
8 industry. It is ludicrous to contend that the
9 recession did not affect supplier's pricing decisions
10 and strategies for bottom-mount refrigerators. The
11 recession affected bottom-mount refrigerator prices
12 just as it affected for large appliances generally.

13 The price index for home appliances shown in
14 Slide 3 shows a continuous decrease since the first
15 quarter of 2009 through the first quarter of 2011.
16 The LG brief includes information for various factors
17 that affected demand for bottom-mount refrigerators
18 such as new home completions and homeowner
19 improvements, all of which show declines from 2008 to
20 2011.

21 Regarding Whirlpool's economic report, I
22 don't disagree with certain of the obvious and
23 uncontroversial findings such that lower prices
24 generate higher sales volumes. These findings do not
25 undermine any position we are taking in this

1 investigation, nor do they support an affirmative
2 determination. I disagree however with other analyses
3 and findings.

4 Two of the Samsung models illustrated as
5 being promoted in the report were 28-cubic foot and
6 over capacity where Whirlpool does not compete.
7 Increased volumes for the higher-priced large-capacity
8 models reflects additional discretionary sales. The
9 other Samsung model is the one you see before you
10 today, and it's a higher-price than Whirlpool's
11 comparable model. This model is in your product
12 pricing category 6, which shows consistent over
13 selling. None of the Samsung promotional examples
14 support a conclusion that Whirlpool lost volume to
15 import pricing.

16 The one LG model shown in Petitioners'
17 expert report is what has been referred to as the
18 four-door drop-in model promoted by LG during Black
19 Friday 2010. However, this presents a particularly
20 clear example of the dangers of comparing an import
21 promotional price with a domestic non-promotional
22 price. We also urge the Commission to look closely at
23 the U.S. Industry's volume trends for the comparable
24 model in this pricing table.

25 Imports are not the only models offered in

1 sales promotions. Slide 4 shows that Whirlpool has
2 promoted numerous models over the last two years
3 generating a significant increase in sales volume at
4 retail. Slide 5 shows Whirlpool brand promotions for
5 bottom-mount refrigerators from a different source at
6 a variety of other retailers. However, advertised
7 prices will have even larger discounts when compared
8 to MAP rather than the last advertised price.

9 These examples do not include Whirlpool
10 promotions at the Home Depot, confidential details of
11 which are included in the prehearing brief of LG. I
12 won't spend too much time on the statistical analysis
13 summarized in Appendix Table 1 other than to say that
14 the results, although impossible to replicate, are
15 used to argue that prices charges by LG and Samsung
16 should have been higher given their features. The
17 Commission explicitly rejected in the preliminary
18 phase any feature-adjusted price comparison analysis.
19 That concludes my remarks, and I'd be happy to answer
20 any questions. Thank you.

21 MR. JAFFE: Matthew Jaffe with Neville
22 Peterson on behalf of Electrolux. It's kind of odd
23 being here in the back addressing the first topic that
24 you are going to address, like product, but it has the
25 advantage of actually seeing what other people have

1 testified already, and the one thing that all the
2 parties agree on is that demand for the French-door
3 refrigerator is going up whereas others are going
4 down, and the question is why? What is driving that
5 demand?

6 You saw in Exhibit 2 of Whirlpool's exhibit
7 that the bottom freezer has been in existence since
8 1950, so you know it's not the freezer at the bottom
9 that suddenly drove demand up 50 years later. Now,
10 someone at Whirlpool again explained it's
11 configuration. Seventy percent of the time is spent
12 on the top, so it's something in the refrigeration
13 area that's important. They explained that it was
14 ergonomics, that it was at eye level, but again, that
15 eye level has been there for 50 years. That's not
16 what drove demand up. It's something different.

17 They are called French-door refrigerators
18 for a reason. It is the door. Remember Exhibit 4 of
19 Petitioners' hearing when they showed the side by
20 side? A side by side is a French-door refrigerator.
21 That's what a French door is defined as. It is
22 showing that there has been drive that the side by
23 sides lost about the same demand, again this is
24 Whirlpool talking here, as the French-door
25 refrigerator gained, so again, what we're seeing here,

1 it's not the similarities between the conventional
2 two-door bottom freezer refrigerator and the French
3 door that is driving the demand. It's the
4 differences.

5 We've provided exhibits again demonstrating
6 what Maytag has said. It's a combination. That's
7 what the French door is. It's a combination of the
8 side by side. It's what GE also says, and remember
9 Whirlpool said every customer is different. We're not
10 too sure what drives them, but what drives if you look
11 at perceptions, if you look at every producer website,
12 every major retailer, Best Buy, Home Depot, Lowe's,
13 Sears, they distinguish refrigerators and make the
14 French door a separate.

15 It is a hybrid. It is a separate like
16 product, and this goes to everything, physical
17 characteristics, again, Whirlpool Exhibit 14, \$700,
18 ice/water dispenser. You heard today that's not with
19 the two-door conventional, it's only, so there is
20 another very important, very expensive physical
21 difference between them. Four doors, thin walls,
22 increased capacity, all French door.

23 Production process, maybe they're
24 manufactured under the same roof, but the similarities
25 end there. You're talking totally different tooling,

1 totally different components, most likely different
2 production lines as well, and then finally, premium
3 price, very different, so if you're looking at
4 something here, and you're looking at like product, I
5 invite you to actually split and make the French door
6 a separate like product than the two-door conventional
7 bottom mount. Thank you.

8 MR. CUNNINGHAM: Mr. Connelly said at the
9 outset that I'd get to speak if we have time. As you
10 can see, we don't. What he told me was nobody gets to
11 speak on my panel that refers to the Chairman as Your
12 Honor, so I will not have time to tell you how
13 Petitioners' Exhibit 7 proves conclusively every
14 single aspect of our case. Thank you.

15 VICE CHAIRMAN WILLIAMSON: All the years
16 I've known you, this is the first time you haven't had
17 a chance to speak, but we'll give it to you later. I
18 want to thank everybody for their testimony, and we'll
19 begin the afternoon questioning with Commissioner
20 Pearson.

21 COMMISSIONER PEARSON: Thank you, Mr.
22 Chairman. Permit me to extend my greetings to all
23 members of this panel. It's been very interesting
24 listening to you. This morning, I was addressing the
25 question of the relationship between the manufacturers

1 and the retailers and how the discussions unfold
2 regarding pricing and the margin, and I wouldn't ask
3 you to say anything here that's confidential, but I
4 really am curious to know more about that discussion,
5 particularly does the manufacturer have great control
6 over the price at which the product is actually sold,
7 or is that controlled almost exclusively by the
8 retailer?

9 MR. HERRING: This is John Herring from LG
10 Electronics. The retailer exclusively determines
11 their own selling price. However, obviously their
12 cost or their margin has influence, and the MAP price
13 at which they start at also has influence, so margin
14 is a critical factor in the retailer's decision, but
15 also the MAP price is also part of that equation, so
16 you may be going there later, but the MAP price
17 determines how it's positioned in the marketplace.

18 If you have too high of a MAP price to
19 inflate a margin, that's not really credible, and the
20 retailer's not going to give you credit for that, so
21 it's a combination of the MAP price as well as the
22 margin that you're delivering, but ultimately the
23 retailer determines their own selling price day in and
24 day out.

25 MR. CUNNINGHAM: I would just like to add

1 one thing about the margin. Mr. Greenwald was quite
2 intense today when you said that the margin is not the
3 issue here. That's rather different from his brief at
4 page 42, which says that that is, and I quote, "One of
5 the key reasons for Samsung's and LG's market share
6 gains at major retailer accounts," is the margins that
7 they offer. I think he backed away from that because
8 at page 42 of our brief, we did a tabulation based on
9 your pricing data of the margins between MAP and
10 invoice price with discounts thrown in, and that
11 didn't work too well for Mr. Greenwald at all.

12 I think Mr. Baird probably would have
13 something to say about this whole thing too
14 mechanically because I think he's the guy who beats
15 people over the head and gets the margins and the
16 prices and things like that.

17 MR. BAIRD: Despite what Jack said earlier
18 when he said retailers are the bad guys that make
19 manufacturers do things they don't want to do, I don't
20 think I'm that good, but the fact is what is really
21 critical in this business is the MAP. This is one of
22 the few businesses I know where they give you the
23 retail. The manufacturer says this is the retail
24 price, and MAP actually stands for Minimum Advertised
25 Price, but in real life what it means it means maximum

1 price you could ever sell something for.

2 In real life, that's what that means, and
3 when they come to us with the MAP, we can tell them we
4 think your MAP's too high, and we don't think it will
5 sell at that price, but our margins are based on the
6 MAP, and quite frankly in this category of goods, the
7 margins are pretty similar among all ours. I have
8 three suppliers, and the margins on a French door like
9 this that's going to sell for \$2,500, the margins of
10 the MAP are somewhere real close to \$2,500 versus
11 invoice, so it doesn't vary a lot by supplier, and
12 that's kind of how we negotiate lineups is we start
13 with the MAP price.

14 COMMISSIONER PEARSON: Okay. Mr. Dexter?

15 MR. DEXTER: Yes. I just wanted to add part
16 of what you heard here this afternoon is we spent a
17 fair amount of time thinking about the competitive
18 landscape when we set those MAPs and where our product
19 should be placed versus the things that again we've
20 discussed, fit, feel and finish, perceived value, all
21 those kinds of things, so there's a fair amount when
22 you walk in to see somebody like Mr. Baird that you're
23 not off the mark when you come in or you hope you're
24 not too far off the mark on how you've discussed your
25 MAP pricing, for example.

1 COMMISSIONER PEARSON: So how might the
2 discussion unfold. You've got a new product. It's
3 got \$200 worth of fit, feel and finish that you think
4 makes it worth that much more than your competitors
5 product, and so do you go to Mr. Baird with a MAP
6 suggestion of \$200 higher than this other guy? I
7 mean, comparing directly to something that's already
8 there in the marketplace?

9 MR. DEXTER: Well, you could look at where
10 models have been sold predominantly out there and
11 understand what MAP pricing is. Many times, you're
12 comparing it to products that you've had success with
13 in the past, so it's a common language that you're
14 already speaking based on the fact that we had this
15 success at this MAP before, but we've added \$200 worth
16 of features, here's the new MAP. Then, you start the
17 margin discussion, and you go from there.

18 COMMISSIONER PEARSON: Okay. So you would
19 be thinking about MAP both in terms of in comparison
20 to your own previous offerings as well as your
21 competitors offerings?

22 MR. DEXTER: Yes.

23 COMMISSIONER PEARSON: Mr. Baird, how does
24 it look from your perspective?

25 MR. BAIRD: Well, we really don't negotiate

1 MAPs. I can't think of an instance where I've ever
2 convinced a manufacturer to change MAP. I mean, they
3 come to us with the MAP. That's what starts the
4 procedure, and we may think that's the wrong MAP, but
5 that's the MAP, that's what our margin's based on, and
6 our choice would be if we don't like that MAP, and we
7 don't think it will sell at that MAP, then we just
8 don't buy it. On our floors, we wouldn't display it
9 is what that means.

10 COMMISSIONER PEARSON: Does that happen
11 fairly often that you just don't bring it in the
12 store?

13 MR. BAIRD: Well, in my case, it probably
14 does because I have the smallest floor. I only have
15 25 refrigerators in my store, so I have to get real
16 picky. I can't afford to carry things that don't
17 sell. For example, that Whirlpool back there. We
18 have a Maytag version of that. It's called a 2670
19 model. The MAP is about \$2,299. The fact is we had
20 it for a while, and if we sold 100 of them, we would
21 sell one of those and 99 of the LG's, so we stopped
22 carrying that one because I would tell you the MAP of
23 that price wasn't right.

24 Whatever the MAP was, it quite frankly it
25 needed to be lower, and Whirlpool knows that, and

1 that's why they tend to promote it below that because
2 they know between the current models they have, they
3 probably need something like a 15- to 20-percent
4 differential between LG and Samsung to get the market
5 share they would like to have.

6 COMMISSIONER PEARSON: Okay.

7 MR. BAIRD: But it's more about sorting
8 something or displaying something or not. I mean, the
9 only vote I really get, I don't get to vote on MAP. I
10 get to vote on whether I want to display at my store
11 or not.

12 MR. CUNNINGHAM: I might just note that the
13 LG version was at a significantly higher price than
14 the Whirlpool version, yet still the LG was selling 99
15 to Whirlpool's one.

16 COMMISSIONER PEARSON: Okay. So as you
17 address the marketplace, Mr. Baird, you're trying to
18 allocate your floor space directly based on what you
19 believe the consumers will respond to?

20 MR. BAIRD: That's correct. In real life,
21 I'm trying to maximize how much sales they generate
22 from 25 models in this case, and of the 25 models, as
23 Marc said, we have to figure out how many of those
24 will be French doors. In our case, it's about 25
25 percent of the units as he said. It's about 50

1 percent of the dollars, so we kind of arbitrate those
2 two numbers, and we carry about 40 percent or 10 of
3 the 25 will be french doors, and then once I get the
4 10, then I want to have a vendor split. I've got
5 three suppliers, and I'll probably try to support all
6 three suppliers with some models somewhere, and you
7 want some kind of a range of prices and features
8 within that 10 to show customers.

9 COMMISSIONER PEARSON: Okay. So you have 25
10 models on your floor, all of which have their MAPs,
11 and is your advertised price then going to be that
12 MAP, or will you sometimes be selling for less than
13 that?

14 MR. BAIRD: Unlike Lowe's, we would have
15 actually followed MAP in the paper, so you would not
16 see us violate MAP like you saw Black Friday at
17 Lowe's.

18 COMMISSIONER PEARSON: I'm glad to hear
19 that, so you're honoring the MAP pricing.

20 MR. BAIRD: We're honoring MAP pricing in
21 the newspaper, and in real life, the newspaper isn't
22 so critical anymore. Quite frankly, it's online, and
23 each manufacturer has different online policies, and
24 I'm not sure you want to get too involved in that,
25 but some people regard online as a store function, and

1 some people regard online as an advertising function.
2 For example, GE says online is the same as the store.
3 There are no MAPs online, okay? LG would view online
4 as advertising, and they would in fact try to MAP
5 online prices.

6 COMMISSIONER PEARSON: Okay. Mr. Herring?

7 MR. HERRING: Just to help clarify that. I
8 think one way to look at it is what happens in the
9 store is the retailer's responsibility. That's their
10 turf, so they determine their own pricing in the
11 store. What happens in an advertise vehicle, which is
12 Sunday or Thursday circular, that's where minimum
13 advertised price comes into play in terms of what they
14 can advertise to the public in terms of viewership,
15 and then to this point online whether it's an
16 advertised vehicle or a store is kind of a gray area
17 that's still open for debate.

18 COMMISSIONER PEARSON: Okay.

19 MR. BAIRD: But we'll advertise what's
20 called a house offer like I talked about earlier, like
21 10 percent off, but the prices in the ad and the
22 actual pieces in the add would be at MAP, and you
23 would have like before discount, so we wouldn't net
24 the 10 percent off of the price, because that's a MAP
25 violation, but we would advertise the MAP, but we

1 would have the banner on the top that said 10 percent
2 off of whatever price you see here.

3 COMMISSIONER PEARSON: Okay. And generally,
4 would the manufacturer be compensating Home Depot in
5 some way so that the Home Depot margin would be
6 basically protected?

7 MR. BAIRD: No, but that's a really good
8 idea.

9 COMMISSIONER PEARSON: Did I get the
10 impression incorrectly from the earlier panel that
11 there was often compensation provided by the
12 manufacturers?

13 MR. BAIRD: What's compensated for is they
14 take a model. Pick a French door, and they say you're
15 going to run 10 percent off, but instead of being
16 \$1,899 if that's the MAP, we want you to run it, and I
17 don't want to get too into pricing here, but we'll
18 hold your margin to \$1,699 for two weeks, and they
19 support that, so they would support a reduction in
20 price off of MAP, and it could be a promo MAP, which
21 means you could advertise the reduced price or not.
22 Frequently, with Maytag and Whirlpool, they don't do
23 promo MAPs.

24 You're just allowed to reduce their price in
25 the store, but you can't advertise it because they

1 typically do it by retailer. To the extent we would
2 advertise, they would have to give that same support
3 to all retailers, and they choose not to do that.

4 COMMISSIONER PEARSON: Okay. Well, thank
5 you very much. My time has expired.

6 VICE CHAIRMAN WILLIAMSON: Thank you.
7 Commissioner Aranoff?

8 COMMISSIONER ARANOFF: Thank you. First, I
9 just want to ask a couple of questions to clarify
10 about the two models that we were looking at on the
11 side of the floor. Were both of those models
12 available for sale during the entire period of
13 investigation that we're looking at?

14 MR. SEAGRIFF: Virtually, and we took these
15 models because they're both actually discontinuing and
16 being replaced with new ones soon, but we made sure we
17 bought the older ones so that they would be models
18 that were during the period of inquiry. I can't speak
19 purely for Maytag's, but ours was at least two of the
20 three years in the period of inquiry.

21 COMMISSIONER ARANOFF: Okay. So these are
22 not the most up-to-date models that would fit the
23 definition for that pricing product. I think you said
24 it was Product 6?

25 MR. SEAGRIFF: Samsung's new product is

1 coming. It's launching in a couple of months, the
2 replacement for that SKU. Right now, it's still
3 available in the market.

4 COMMISSIONER ARANOFF: Okay. So right now
5 you would say at least for Samsung's product that is
6 the most up-to-date product that matches the pricing
7 product description?

8 MR. SEAGRIFF: Yes.

9 COMMISSIONER ARANOFF: Okay. A question
10 about promotions. Mr. Baird, you opined that Black
11 Friday is a crazy construct, but Black Friday really
12 isn't just the people waiting online and trampling
13 each other at midnight anymore that it can extend for
14 days and even weeks as part of a promotion, and so I
15 did want to ask you and then also the two
16 manufacturers or Electrolux too if they're prepared to
17 answer, about what proportion of bottom-mount
18 refrigerators are sold during promotional periods as
19 opposed to non-promotional periods, and has that
20 changed over the period of investigation?

21 MR. BAIRD: Well, let me take a first stab.
22 I will tell you that Black Friday in total has gotten
23 a lot larger over the last few years. I mean, if you
24 look at our last five years, our volume has gone from
25 on the Black Friday event as we would define it from

1 \$36 million to \$42 to \$165 to \$450 to \$535 million, so
2 this last year, because of what you saw from Lowe's, I
3 did \$450 million, which would be 15 percent of my core
4 appliance business for the entire year, so it is an
5 impactful holiday.

6 COMMISSIONER ARANOFF: Okay. And that's
7 just Black Friday, so that doesn't include the Fourth
8 of July and Memorial Day and Labor Day, and I don't
9 know what, Arbor Day, I mean, whatever else people are
10 promoting things for.

11 MR. BAIRD: Arbor Day is good. I like that,
12 but the holidays have become big events because one
13 everybody runs promotions and we just kind of force
14 that to happen, plus it's a time when both the husband
15 and wife or the spouses can shop together, which tends
16 to be appliances. That's kind of how you buy
17 appliances because it's a major purchase, so any time
18 you have a holiday, you're going to see accelerated
19 retail activity in big ticket kind of merchandise.

20 MR. JOVAIS: This is Kurt Jovais for
21 Samsung. We sold 26 percent of our total annual
22 volume over holiday periods in 2011 and about 20
23 percent in 2010.

24 COMMISSIONER ARANOFF: Okay. If anyone
25 wants to supply additional detail on that post

1 hearing, I'd be happy to look at that. As between the
2 purchase, who has to replace their refrigerator, and
3 the one who's more discretionary, of those promotional
4 sales, are those going to be mostly the discretionary,
5 or are the people who have to buy more evenly
6 distributed throughout the year?

7 MR. BAIRD: Sure. Yes, if you have the
8 Black Friday event where you've got great prices, the
9 people who don't really need it tomorrow, but they're
10 going to need it in the next month, two or three, or
11 they're going to buy one piece, and instead of buying
12 one piece, they buy the whole kitchenful. Yes, I
13 mean, you pull in, as John was talking about, the 40
14 percent of the market is discretionary.

15 That's what you're getting because the
16 distressed buyers are what the distressed buyers are,
17 and it's not like everybody's refrigerator is going to
18 fail on Black Friday morning. It just doesn't happen
19 that way, so you do in fact pull in a good chunk of
20 the discretionary buyers for a big event.

21 COMMISSIONER ARANOFF: Let me just hit this
22 one off the top. Obviously, there's a great deal of
23 time devoted in Petitioners' brief to the argument
24 that LG and Samsung couldn't possibly have reported
25 their direct and indirect discounts accurately because

1 of the way that the discounts are distributed across
2 the products. Is there anything that anyone would
3 like to say in a public forum to respond to that?

4 MR. CONNELLY: Yes. Our rebates and
5 discounts are completely accurately reported. We
6 heard a long discussion about the Commerce Department,
7 a very strange and I think irrelevant discussion
8 because it dealt with the preliminary determination.
9 Well, there's a verification report out, and we'll
10 have a final determination next Monday, I think we'll
11 learn the results. I would submit that the Commission
12 ought to wait and see what the Commerce Department has
13 to say at that time.

14 We have had discussions with the staff about
15 our rebate reporting. I believe that the staff is
16 completely satisfied. I will let them speak for
17 themselves on that, but I believe that they are
18 satisfied that we have accurately and correctly
19 reported our rebates. Frankly, I think that the
20 allegation is a sign of desperation.

21 MR. TRENDL: This is Tom Trendl for LG.
22 Yes, LG absolutely correctly reported its direct and
23 indirect discounts. We appreciated the efforts of the
24 Commission staff to make sure of that because they
25 were certainly not shy about asking us further

1 questions, and we were not unhappy about answering
2 those questions, and I think what you'll see is a lot
3 of the discounts in fact are built into the invoice
4 price.

5 I'll leave it at that from my APO point of
6 view. I'll let Dan Klett add to that if he wants to
7 on a more macro level, but the discounts are reflected
8 without question. You asked us. We answered it. We
9 worked hard at it. Your staff asked us further
10 questions, and we confirmed it.

11 MR. CUNNINGHAM: Before Dan goes, I would
12 just like to say one thing. There was some stuff in
13 Whirlpool's brief quoting the verification reports at
14 the Commerce Department, which contained the word
15 "unrealistic" about some of our allocations. That was
16 the Commerce department quoting us, and what that
17 meant was you have to do allocations here because you
18 have end-of-the-year lump-sum payments for total sales
19 by the retailer covering not just bottom-mount
20 refrigerators, not just refrigerators, but all
21 appliances.

22 You have to have an allocation, and we had
23 done a set of allocations on an methodology agreed in
24 advance with the Department, and we went to the
25 Department and said some of these look like they're

1 producing unrealistic figures, and we want to make
2 some modifications of them, so we were the ones who
3 used the word unrealistic and corrected them to make
4 them realistic. That's what you get when you have
5 quotations, and they have three or four dots. Then,
6 you know something's left out there, so that's what
7 was left out.

8 MR. BAIRD: We reported all discounts we got
9 from both LG and Maytag, and I would tell you there's
10 a difference. When LG does a discount, it tends to be
11 across all retailers, and it's pretty trackable. It's
12 pretty easy for us, and what Whirlpool does or Maytag,
13 they have what they call co-marketing funds, which
14 means the local people that call a Home Depot have
15 basically a P&L, a pot of money, that they can use how
16 they want to use it.

17 I don't know how it works, but my guess
18 there's a lot of discounts we get that he wouldn't
19 even know about because it's done at the local level
20 with co-marketing funds, and it's based on a P&L.
21 They have to run our account.

22 COMMISSIONER ARANOFF: Okay. I'm going to
23 have to talk to staff after this and see what their
24 take on this is. I talked a little bit with the panel
25 this morning about how and when prices would ever go

1 up for an existing model, and Petitioners' view was
2 well, all things being equal, if your costs went up,
3 you would raise the MAP for your model. Is that the
4 same way that it would work for LG and Samsung? Do
5 you raise prices or raise MAP for your models when
6 your costs go up, or are there other circumstances
7 under which you would raise prices, and has that
8 actually happened during this period?

9 MR. DEXTER: Yes, so the considerations
10 would be the same as durable goods manufacturers when
11 you have significant material cost increase than in
12 some cases. The costs will go up, for example, and we
13 have actually had examples of that occurring.

14 MR. HERRING: The same for LG. I think one
15 other way of raising costs is bring out a new model
16 and trying to increase the retail positioning at that
17 time other than the existing models where you see
18 their price increase based upon materials and
19 transportation increases, et cetera.

20 COMMISSIONER ARANOFF: So when you say bring
21 out a new model, are you saying you would bring out a
22 new model with more or less the same features so that
23 you could charge a higher price for it or that you
24 would bring out a new model with new features and then
25 charge a higher price for it?

1 MR. HERRING: The latter.

2 COMMISSIONER ARANOFF: Okay. Well, because
3 my time is up, if there's anyway that you can show us
4 post hearing how in our data a price increase on an
5 existing model would be reflected, if there's any way
6 that we've captured that, that would be helpful.

7 MR. KLETT: Commissioner Aranoff, this is
8 Dan Klett. My Slides 1 and 2 in my presentation tried
9 to get at that point through the NPD data just to show
10 that as you can see from product Slide 1 for a Samsung
11 model and Slide 2 for some Whirlpool models that over
12 the life cycle as one model gets older and prices
13 really drop and volumes drop at the end of the life
14 cycle that you essentially have the introduction of a
15 newer model at a higher price with very similar
16 features, so at least at retail, the NPD data pretty
17 much support what Mr. Herring --

18 COMMISSIONER ARANOFF: Okay. I mean, you
19 know the Commission was wary in the prelim of the
20 retail data, so if there's something we can do with it
21 at the first level of trade, that would be even more
22 helpful.

23 MR. KLETT: I understand. Thank you.

24 COMMISSIONER ARANOFF: Thank you very much.
25 Thank you, Mr. Chairman.

1 VICE CHAIRMAN WILLIAMSON: Thank you.
2 Commissioner Pinkert?

3 COMMISSIONER PINKERT: Thank you, Mr.
4 Chairman, and I thank all of you for being here today,
5 to help us understand these issues. Commissioner
6 Aranoff asked about the indirect discounts and whether
7 they've been accurately report; but that prompted me
8 to remember that I had asked earlier about whether the
9 indirect discounts can be taken into account by the
10 purchaser at the time that you're making the
11 purchasing decision or is it the kind of thing where
12 you can only determine at the end of the year what the
13 indirect discounts were with respect to the particular
14 purchases that you made. And perhaps Mr. Baird or
15 somebody else on the panel could help me with that.

16 MR. BAIRD: In terms of indirect discounts,
17 I guess the two big ones you want to talk about is
18 coop advertising, which is basically -- typically, an
19 accrual of purchases in some kind of a volume rebate
20 schedule, based on you get a volume rebate; the more
21 you buy, the higher the rebate gets. But, I would say
22 in the course of things, those are kind of just taken
23 for granted. We sit down once a year, we sign those
24 agreements, and they're done. And, quite frankly,
25 after that, it doesn't really come into decision-

1 making. The fact is we get two percent coop from all
2 of our supplies. We get a VR that is somewhere around
3 two percent and that's just kind of a -- it's just
4 kind of in the mix and all you worry about from that
5 point on is invoice and map. You don't really worry
6 about the ongoing programs because they don't change.
7 They are what they are for the year. In fact, they
8 are what they are probably for -- they probably don't
9 ever change in real life.

10 MR. HERRING: Just to add to that, he's
11 right -- not that he's not right, it's an annual
12 basis, but it's certainly part of a purchaser's
13 decision process. They're going to look at the total
14 financials, indirect and direct, when they make a
15 purchase decision. But some of those indirect costs
16 are not rapidly changing. They're done on an annual
17 basis.

18 MR. CUNNINGHAM: I'd like to add one thing
19 and that is while Mr. Baird's experience is that the
20 discounts are relatively the same, the staff data
21 quite clearly show that different manufacturers have
22 different balance between direct and indirect
23 discounts, and we've done some analysis on that.
24 You've seen it in our exhibits to our briefs. It's
25 one of the reasons that the underselling issue change

1 so dramatically between the preliminary, where you
2 only looked at direct discounts, and the staff report
3 today, where you included indirect discounts. And
4 that change must be and does mean that different --
5 well, that Whirlpool does a lot more by indirect
6 discounts and rebates than do LG and Samsung.

7 MR. DEXTER: I would say also by the --
8 depending on the retailer, they will consider the
9 indirect discounts not differently, but they will have
10 a higher priority of consideration as they look at
11 their pricing and their programs.

12 COMMISSIONER PINKERT: Thank you. Now this
13 next question does not go to the accuracy of the
14 reporting of the indirect discounts, but it goes more
15 to the question of whether there's a kind of a
16 subjective allocation that goes into the reporting of
17 the discounts. And the reason I ask that is you heard
18 earlier today that you may be selling lots of
19 different products to a particular retailer and the
20 indirect discounts may be calculated on a broader
21 basis than just the product that we have in front of
22 us today. And so, what goes into determining how you
23 allocate those indirect discounts?

24 MR. CONNELLY: Well, let me give it a shot.
25 First of all, the absolute fundamental requirement is

1 generally accepted accounting practices. It has to be
2 done in accordance with GAAP, which is to say that our
3 discount information comes straight from the company's
4 financial records.

5 Let's talk about the difference between a
6 direct discount and an indirect discount, as defined
7 by the Commission, which might be different, by the
8 way, from how a company would do it. The way the
9 Commission defined a direct discount is it is a
10 product specific discount, meaning you granted a
11 discount on a particular SKU. Now, for those
12 discounts that's exactly what we did. We went into
13 our records and we got the SKU specific discounts.
14 Now, obviously, there can be more than one SKU in a
15 product one through seven. So, then, we have to
16 aggregate those direct discounts to add them up and
17 then we allocate them.

18 Now, so indirect discounts are everything
19 else. So, these are discounts that could be granted
20 on all bottom-mount refrigerators, all refrigerators,
21 all home appliances. For those discounts, therefore,
22 they have to be aggregated and then they have to be
23 allocated. That's what the Commission wanted, that's
24 what we did, straight from the company's accounting
25 records.

1 MR. TRENDL: This is Tom Trendl. That's
2 essentially the same thing that occurred for LG. We
3 followed the Commission's instructions and, yes,
4 there's an allocation. And I think when you look at
5 the confidential data, you'll see what those
6 percentages are. But, you allocate it on the basis
7 that it occurred. So, if it's overall refrigerators,
8 all appliances, you know, that's the allocation basis.

9 MR. BAIRD: Our case, and again I've only
10 got -- we only have three suppliers, but the indirect
11 discounts are absolutely flat across the board. They
12 don't vary for one product category versus another.
13 The only exception to that, quite frankly, is in GE.
14 We carry a GE Café line, which is a higher-priced
15 line, and we get a VR bonus on that. But, otherwise,
16 all the products count, in terms of coop, in terms of
17 volume rebate; everything you buy counts. It doesn't
18 count differently.

19 COMMISSIONER PINKERT: Thank you. Now, I'd
20 like to turn to this issue of feature dumping or
21 alleged feature dumping and, as you'll see, a lot of
22 my questions seem to have to do with valuation and
23 allocation and whether things are being reported
24 subjectively. But, my question is whether you can
25 attribute some value to the feature that's independent

1 of the value of the entire product and then look to
2 see whether that value is reflected in the prices that
3 are being charged, or is that an inherently subjective
4 or impossible enterprise to engage in? And if you can
5 attribute a value to the feature, then how should we
6 be doing that; how should we be looking at that?

7 MR. KLETT: Commissioner Pinkert, this is
8 Dan Klett. I guess I'll start with saying, I don't
9 think you should put a value -- or a value to any
10 feature differences, kind of starting at the last part
11 of your question, and the reason is that the
12 Commission has a way of collecting pricing data where
13 you inherently take the features into account in your
14 specifications. And you have an LG price and a
15 Samsung price and a Whirlpool price and if the LG
16 price and the Samsung price are higher than a
17 Whirlpool price and someone still buys the LG and the
18 Samsung, then, obviously, they're buying it due to a
19 non-price reason, whether it be fit, finish, feel, a
20 better feature, whatever. I mean, from the
21 demonstration given by Mr. Seagriff earlier, it's not
22 so much the specific features, which maybe you could
23 put a value on, but I'm not even sure that's a real
24 precise science. But, I definitely don't think you
25 can put a value on things such as fit, finish, feel,

1 or at least a -- I mean, the value actually is
2 implicit in the fact that a consumer is willing to pay
3 \$200 more for an LG or a Samsung refrigerator. And if
4 that's the case, they're buying it for a non-price
5 reason. There's no underselling.

6 I think -- we're not saying that features
7 don't -- we're not saying that price doesn't matter
8 and we never said that. What we're saying -- I mean,
9 obviously, consumers do price featured tradeoffs when
10 they're trying to buy two things. But if they buy at
11 a higher price, obviously, it's the better feature or
12 some non-price factor that's driving that decision,
13 not lower price, and I think that's the key issue.

14 COMMISSIONER PINKERT: For purposes of this
15 question, I'm not referring to fit, finish, and feel
16 as being features. They are features in a broad sense
17 of the term; but for purposes of this question of
18 feature dumping, I'm talking about specific features
19 on the product that somebody can point to and say,
20 this feature is on this product, but not on this other
21 product.

22 MR. BAIRD: Let me take it real quick. I
23 mean, if you look at somebody's exhibit, I think it
24 was either Kevin's or somebody, they talked about the
25 value of a dual evaporator. Remember that one?

1 Somebody said it was worth \$150. The fact is, we even
2 sell an LG to the same price as Samsung for the last
3 six years and the LG doesn't have a dual evaporator.
4 So, I mean, if it was that important, we would have
5 had a hard time. And I think it's probably nice to
6 have and Marc told everybody last time that it cost
7 him 30 bucks, but he chose not to put it on there.
8 But the fact is, I don't think it is particular
9 features with value. I think it's the total package
10 and I think -- I think it's just how the customer
11 approaches the whole product in terms of how it
12 appeals to him.

13 There are certain defaults. You've got to
14 have glass shelves. You've got to have -- most of
15 them have stainless steel. So, there are certain non-
16 negotiables. But, overall, it's hard to actually get
17 dollar values per feature.

18 MR. CONNELLY: Can I just add to that?

19 COMMISSIONER PINKERT: Certainly.

20 MR. CONNELLY: This one really gets me, this
21 argument, so I've got to say something about it. It's
22 impossible to assign an objective value to a feature.
23 Why? Because, everyone evaluates the importance of a
24 feature differently. When you go to look at a
25 refrigerator, one feature may mean more to you,

1 another may mean less to you. It's an entirely
2 subjective decision as to how you make your decision.
3 And as I think about how the Commission would write
4 an opinion that would say, okay, the price should have
5 been \$100 higher because it had this feature, I don't
6 believe it is possible for you to reach that
7 conclusion, because there's no evidence that would
8 support it, as to how a consumer makes his or her
9 decision.

10 COMMISSIONER PINKERT: Thank you. Thank
11 you, Mr. Chairman. I know I went over my time
12 allotment there -- allocation, that is.

13 VICE CHAIRMAN WILLIAMSON: Okay, thank you.
14 Commissioner Johanson?

15 COMMISSIONER JOHANSON: Yes, thank you,
16 Chairman. Mr. Cunningham, you stated a minute ago
17 that Petitioners' Exhibit 7 proves Respondents' case.
18 Would you mind walking through that just to
19 demonstrate your point?

20 MR. CUNNINGHAM: Very reluctantly. We told
21 you at the outset that our view of this market is that
22 the Respondents, LG and Samsung, has bought
23 sophisticated larger refrigerators and created a new
24 market here; not that they have taken the market away
25 from Whirlpool. If you look at Whirlpool's chart,

1 you'll look at the squared area in red, which they
2 call the heart of the market. There's a little self-
3 serving in that because that's what Whirlpool makes.
4 They don't have anything larger than 27 cubic feet.
5 So, that's the heart of the market for them.

6 If you look down at the bottom, you'll see
7 that over the period, that heart of the market has
8 declined as a share of the market during this period.
9 What has grown during the period is 27-1/2 cubic feet
10 above. Only Samsung and Whirlpool have been in that -
11 - Samsung and LG have been in that market and they
12 brought that to us.

13 They testified here that capacity is very
14 important. Mr. Reinke, in response to questions from
15 you, Commissioner Johanson, said that when a consumer
16 walks into a store, size is the first issue for her in
17 distinguishing among refrigerators. And Mr. Bitzer,
18 responding to a question from you about what future
19 developments he sees in the market, he sees a trend
20 toward what? Toward even larger refrigerators. And
21 that's the area that they haven't been in. They have
22 -- and that's the area where Samsung and LG have
23 created, the one area of the market that's been
24 growing.

25 Now, Whirlpool argues that it has lost 10

1 percentage points of market share. Look down at the
2 bottom there. The growth area of the market by 10
3 percentage points -- 10 percentages points of growth
4 has occurred in the bottom line there, that they
5 haven't been in. That's why they've lost 10 percent
6 market share. They haven't been in the market share
7 that's grown 10 percent.

8 And, finally, Whirlpool claims that prices
9 didn't keep pace with its costs. Well, Mr. Greenwald
10 answered that in this context: he said that one of
11 the ways to compete against a rival that has superior
12 features is to reduce your prices. And then he said,
13 and I took this down very carefully, Whirlpool reduced
14 its prices to build market share and that it did so
15 deliberately and this is what he -- produced what he
16 called horrendous effects on the bottom line. In
17 other words, this is just what we've been telling you.
18 Whirlpool missed out on largely the growth in this
19 market, which occurred in the market that Samsung and
20 LG had created. Now, they have begun cutting prices
21 to try to get back market share, not because their
22 prices are forced down by imports, and that's what had
23 cost -- brought about the cost-price squeeze. That is
24 the only symptom of injury that I submit that they
25 have here, a cog squeeze.

1 So, this chart, and I've asked my client to
2 take a certain percentage of fees that would otherwise
3 be paid to Steptoe & Johnson, and send them to Mr.
4 Greenwald for his help in make our case here. But
5 that chart really does show exactly what we've been
6 trying to tell you here.

7 MR. JOVAIS: And furthermore, there's been a
8 lot of talk about the OEM bid that Whirlpool lost to
9 LG here. The director of merchandising for that
10 retailer has been very, very clear in saying that they
11 are very interested in driving capacity as a story.
12 Large capacity is the story for them, for going
13 forward.

14 We were participating in that bid, as well.
15 We did not win that bid because we chose not to give
16 our high capacity piece as an OEM product. LG was.
17 They were able to win. Whirlpool did not have a high
18 capacity product to give. And I would submit that
19 that's why Whirlpool lost that bid, not anything other
20 than that.

21 MR. BAIRD: Just one quick thing on the new
22 GE line that I talked about. They're only going make
23 27s and 29s. They're not going to make any 25s and 6s
24 at all, because they understand at this point and
25 time, that's kind of the yucky part of the market.

1 So, they're going to skip that part. All they will do
2 is going to make 27 and most of their focus will be on
3 29 cubic feet.

4 MR. CUNNINGHAM: But could I add this one
5 last point here? There's good news coming for
6 Whirlpool here, because Whirlpool has announced today,
7 and I think they've announced it probably before, that
8 they're going to be producing quite soon a jumbo size
9 refrigerator in this growing market category. And the
10 record in this case has evidence that when Whirlpool
11 comes belatedly to a sector of the market, they are
12 quite successful when they enter. There's one of your
13 pricing products where you see Whirlpool coming in
14 late in the period where they didn't have a model
15 before and they came in at a time when one of the most
16 severe, in their view, price cutting promotional
17 endeavors by the Respondents was going on in that
18 particular sector. And, yet, if you look at what
19 happened to their volume, their volume succeeded
20 substantially; indeed, rose 775 percent in five
21 quarters in that sector.

22 So, look at your tables. You'll see this.
23 There's good news coming for Whirlpool. They're doing
24 the things now that they hadn't done before, that they
25 needed to do, to get into this market, and there's

1 every reason to believe they'll be successful. And I
2 apologize for saying that to my clients -- apologize
3 to my client for saying that, but that's what the
4 record here shows.

5 MR. DEXTER: I think just one more thing to
6 add and I mentioned it in my testimony; but,
7 ultimately, the consumer is going to drive the retail
8 activity. And you heard Mr. Baird talk about, you
9 know, introduction of larger capacity, the French Door
10 in the category, and how they immediately become the
11 most successful model that he has in his lineup. You
12 heard Mr. Herring talk about the same thing during
13 those introductions; same with us. And it wasn't
14 about price; it was about consumers perceiving and
15 actually buying those products based on the fact that
16 it added value to them.

17 MR. BAIRD: And just one point of
18 clarification, because somebody asked the question,
19 and LG has a 31 cubic foot. It essentially is the
20 same footprint at the other ones. They're all 35-3/4
21 wide. The 31 may be about an inch deeper. But, it's
22 not like you have to had double the space for these
23 refrigerators. They're bigger on the inside. The
24 footprint is very similar. It may be an inch deeper
25 at most, but the width on all of these are going to be

1 35-3/4s.

2 MR. DEXTER: So, as long as you can get a
3 piano in there, we've got it.

4 (Laughter.)

5 COMMISSIONER JOHANSON: Okay. I won't
6 comment on my purchasing decisions in the areas of
7 refrigerators, at least. Many of the Petitioners'
8 arguments center on the claimed superior fit, feel,
9 and finish of subject imports. Can you explain then
10 or reconcile the fact that a majority of purchasers
11 reported that U.S. in subject product were comparable
12 on the 18 factors listed in the questionnaire?

13 MR. CONNELLY: Well, of course -- I'm not
14 sure -- well, let me answer it this way. I don't
15 believe that question in which you check a box gets at
16 what is going on in this industry with consumers.
17 Now, you asked retailers and they checked comparable.
18 Well, that is not inconsistent with all the testimony
19 we've provided today and we would certainly commend to
20 you the JD Power studies, six of them, along with the
21 two we submitted during the preliminary determination,
22 and along with whatever Whirlpool chooses to submit.
23 But, I would submit to you that if consumers drive
24 demand, which I don't think there's any debate about,
25 with Whirlpool, if consumers drive demand and what's

1 going on is definitely not that these competing models
2 are seen as comparable.

3 Just think about that demonstration that
4 Eugene Seagriff did a little while ago, that leads to
5 a \$200 difference. You could check the box that says
6 they're comparable, but they're not in the mind of a
7 consumer. So, we put these out, so we have much -- a
8 very fair floor. We have price signs. We tab all the
9 bullets, all the features on it. And nowhere on any
10 LG does it say, superior fit, feel, and finish on any
11 of them. We don't say that. The customer just sees
12 it there and does what they do. But, there's a reason
13 why they pay \$200 more for what you see there and it's
14 because we tell them. It's because they see -- they
15 look at the products on our floor. We could care less
16 which piece they buy. And, again, it's not about
17 quality. It's not about brand. It's about how the
18 product looks to the customer.

19 MR. CUNNINGHAM: Yeah. I think that
20 question leads more to an answer of, are these two
21 that I would compare together. It's not quite as an
22 evaluative question, as which one is clearly superior
23 to me over the other. And so, I think I tend to agree
24 with Mr. Connelly, that the question doesn't drive you
25 to as fine an evaluation as you might want, in terms

1 of who is superior. But, they would be comparable,
2 but I look at them, I compare them, I like one better
3 than the other. It's that kind of thing.

4 COMMISSIONER JOHANSON: Yeah, I'm out of
5 town. It thank you for offering to answer that
6 question. Maybe we can come back to this. You can go
7 on and finish.

8 MR. TRENDL: Sure. I'll just quickly
9 answer. Those 18 factors that you listed really don't
10 go to fit, feel, and finish, as we described them.
11 And when you look to fit, feel, and finish, you'll
12 see, you know, it's not things like packaging and the
13 other items that are listed here. And I would
14 encourage you to read footnote three to that Table 2-
15 5, I believe it's Table 2-5, which in APO brackets,
16 lists a number of customers who describe it one way
17 versus another way and the percentage of the market
18 that those customers are involved in is significant.

19 COMMISSIONER JOHANSON: All right. Thank
20 you for your response. My time is up.

21 VICE CHAIRMAN WILLIAMSON: Okay. Thank you.
22 I'm just not sure where to start here. Mr. Connelly,
23 you had mentioned that it really wasn't possible to
24 assign value to features. And I was just curious, I
25 mean, there is something -- you know, features may add

1 -- be more costly to include. Isn't that some kind of
2 value because it tells you how much the manufacturer
3 has to spend on it?

4 MR. CONNELLY: Oh, yeah. We can tell you
5 exactly how much it cost. Now, I'll tell you in
6 public, because I don't think it's a hugely sensitive
7 issue, how much a dual evaporator cost; in other
8 words, how much does it cost to add one evaporator.
9 It cost \$10. That's what it cost Samsung, \$10.

10 VICE CHAIRMAN WILLIAMSON: Okay. So, you're
11 saying -- are you saying these estimated market values
12 don't reflect the actual cost it cost --

13 MR. CONNELLY: Not even -- no, no, no.

14 VICE CHAIRMAN WILLIAMSON: Okay.

15 MR. CONNELLY: Eugene testified earlier that
16 it cost nothing to do the LED lighting the way they do
17 it, which is distinctly different. There's no premium
18 for --

19 VICE CHAIRMAN WILLIAMSON: Okay.

20 MR. CONNELLY: -- LED lighting. So, yeah, I
21 stick by that statement. Frankly, I just don't see
22 how you can say a feature is worth something. If I go
23 --

24 VICE CHAIRMAN WILLIAMSON: Okay, well, you
25 made the point.

1 MR. CONNELLY: Okay.

2 VICE CHAIRMAN WILLIAMSON: Okay. But what
3 about -- the marketing of used refrigerators is not
4 that great. But if you had a Blue Book for used
5 refrigerators, I assume that someone would say, yeah,
6 you've got to have an ice maker; otherwise, it's worth
7 x.

8 MR. CONNELLY: Yeah. I'm leery of
9 testifying on factual issues as a lawyer. I'd rather
10 have my company people talk about this.

11 VICE CHAIRMAN WILLIAMSON: Okay.

12 MR. DEXTER: So, I think, you know, we're
13 right at the heart of when you think about the
14 marketing of the products out there. You know,
15 certainly, we have costs that we know that are put
16 into the product and we have -- make assumptions on
17 what we think that perceived value is going to be in
18 the marketplace and then we talked about how we set
19 our maps, as we go forward. I mean, the real proof in
20 the pudding, as we described earlier in several
21 examples, is what actually then happens on the retail
22 floor and that's where you start to see -- and there's
23 a host of things that factor into it. Warren
24 mentioned it earlier and others, you know, it's not
25 the same consideration for every consumer. So, as you

1 put these menu of items together on a single model,
2 you know, you know that it's going to trigger
3 different people and then some combination there's
4 going to be more perceived value and you're balancing
5 that against what the cost that you actually know that
6 you're putting into it, as you go to retail out there.

7 So, again, I wish it were an exact science
8 to say, well, we know it cost us exactly and were the
9 Blue Book example, that then it's \$50 and, you know,
10 it was just a menu of goods. But, I think what you
11 heard Bob say back there is, you know, then when they
12 get placed on the floor and he doesn't put on his
13 sign, fit, feel, and finish, but when consumers go
14 choose, there's a combinations of things that cause
15 them overwhelmingly to choose not only the product,
16 but at the price that they are willing to pay for it.

17 MR. BAIRD: But there's some -- if you
18 bought a --

19 VICE CHAIRMAN WILLIAMSON: Okay.

20 MR. BAIRD: -- a top-mount refrigerator,
21 which we're not talking about here, for \$500 and you
22 wanted to add an ice maker, we would charge you \$50.
23 If you wanted one of those French doors and took the
24 ice maker off, it would be worth about nothing. So, I
25 think it's very difficult, I'll agree with Mr.

1 Connelly, to try to do what you're trying to do. It
2 just doesn't work out well.

3 VICE CHAIRMAN WILLIAMSON: Okay.

4 MR. TRENDL: And I'll add also that -- I
5 mean, how do you define the features. Is the feature
6 going to be an ice and water maker? As Mr. Herring
7 testified, we have an ice and water maker in a number
8 of LG models that's basically built into the wall and
9 doesn't take up a lot of space inside the
10 refrigerator. If you want to check a box, does it
11 have that; yeah, it's got that. But some people
12 might, we think wisely, prefer the LG model that
13 doesn't take up a lot of interior space with that.
14 And you heard and you saw in the demonstration with
15 Samsung, some of the better handles that they use
16 actually cost less. How do you measure the value of
17 that?

18 VICE CHAIRMAN WILLIAMSON: Okay.

19 MR. TRENDL: Is it based on cost? Is it
20 based on what in a big package of things, somebody is
21 willing to pay more for a thing? We think it's the
22 latter.

23 MR. BAIRD: Real quick. If you go back to
24 2006, and we introduced those two French doors --

25 VICE CHAIRMAN WILLIAMSON: Yeah.

1 MR. BAIRD: -- at 2449, 2499, if you had
2 asked me what that same refrigerator is going to sell
3 for today, six years later, I would have probably said
4 \$1,499, because that's the way it goes. Things get
5 cheaper. And the fact is, you look at the one thing -
6 - the one Whirlpool feature thing, they say a
7 dispenser is worth \$700, we would say, there's no way
8 that a dispenser costs you \$700. So through time, as
9 this probably gets more popular, you're going to see a
10 huge depression in the French door prices because of
11 that. The fact is, our average retail on French doors
12 is exactly the same as it was six years ago, which I
13 find incredibly amazing, and it's not because these
14 two now are less. They're not 2499; they're 2299 and
15 2199. But, you have all these 28s and 29s and 31s
16 that are keeping the retail price the same. In the
17 average retail today, price for us is exactly the same
18 number as it was six years ago.

19 VICE CHAIRMAN WILLIAMSON: Okay. So what
20 you're saying, then, is the products don't -- I guess
21 certain packages don't decline in value, in terms of
22 when you sell a new one.

23 MR. BAIRD: Well, I think what you've seen
24 is an introduction of whether you want to call it
25 innovation or just new stuff, you're seeing stuff that

1 all of a sudden is going to be \$3,000 is holding it
2 up. I mean, if we never had any changes from where it
3 was six years ago, I think we'd probably be below
4 where the prices are today. But, I think what's
5 holding the home market up is all these new products.
6 And I think when Whirlpool -- I'm very excited to
7 hear that Whirlpool is going to do a 29, that's the
8 kind of stuff that customers want to buy. That's what
9 they need.

10 VICE CHAIRMAN WILLIAMSON: Okay. Let me ask
11 you this about -- because not only one thinks of
12 premium products -- premium features maybe being
13 advertised in top in-line stores or like the Kitchen
14 Stores; but, it seems like this hasn't happened here.
15 Now, Mr. Baird, I particularly think of you because I
16 used to love Expo design, which your company used to
17 own. And so the question I'm asking, I guess, is --
18 and it was addressed this morning that they said that
19 LG and Samsung aren't in the -- not in the Kitchen
20 Stores and places like that. Does that tell us
21 anything?

22 MR. BAIRD: Well, I think what you're
23 talking about, you're talking about an ultra premium
24 product, you know, and KitchenAid had got part of
25 that. You're talking about typically refrigerators

1 that are 42 and 48 inches wide and they're built-in
2 refrigerators. I think Whirlpool does have a 42-inch
3 front door. But, quite frankly, if you have a 48 inch
4 and I have a 48 inch KitchenAid at home, you really
5 couldn't have a French door version of that because
6 the bottom drawer would be too big. So, I mean,
7 that's a different market. That's built-in
8 refrigerators --

9 VICE CHAIRMAN WILLIAMSON: Okay.

10 MR. BAIRD: -- and it's different stuff.

11 VICE CHAIRMAN WILLIAMSON: Okay. So,
12 actually, what we're talking about is innovation in,
13 shall we say more mass market or --

14 MR. BAIRD: Yeah.

15 VICE CHAIRMAN WILLIAMSON: -- middle market
16 level.

17 MR. BAIRD: And the sub-zero kind of
18 business you're talking about is, you know, you're
19 talking probably five percent of the business,
20 certainly less than 10 percent of the total business.

21 VICE CHAIRMAN WILLIAMSON: Okay. Okay,
22 thank you for clarifying that. This morning,
23 Petitioners point out that product six from the staff
24 report might contain a mix of products because of the
25 capacity range for this category is larger than other

1 product categories. And I was wondering, does this
2 product range limit the usefulness of the product
3 category and does product 6(b) contain a mix of
4 products?

5 MR. KLETT: Commissioner Williamson, this is
6 Dan Klett. The point they're making is because
7 there's a two cubic foot delta between the low end and
8 the high end of the range in product six and a one
9 cubic foot delta in some of the other products, that
10 there may be a distortion. Theoretically, that may be
11 the case, but it would only be to the disadvantage of
12 Whirlpool if the Whirlpool products were toward the,
13 you know, the top -- toward the bottom end of that
14 range and the LG and the Samsung products were at the
15 top end of that range, so the distortion would
16 potentially create margins of underselling.

17 I look at the specification and models in
18 product six for Whirlpool, Samsung, and LG and, in
19 fact, just the opposite is the case. The Whirlpool
20 models tend to be more heavily weighted toward the
21 upper end of that product category range and the LG
22 toward the bottom end of that category range and
23 Samsung probably more in the middle. So,
24 theoretically, any time you have a broader product
25 range, you may have product mix distortions. But, you

1 run -- you have that in almost all cases when you have
2 product comparisons. But, factually, if there is a
3 distortion, it wouldn't be to the disadvantage of
4 Whirlpool, given the specifications that are actually
5 reported.

6 VICE CHAIRMAN WILLIAMSON: Okay.

7 MR. TRENDL: Aside from the lack of
8 distortion, as Dan just described it, a little bit of
9 factual background. The ranges on those products were
10 much larger in the preliminary phase, I think frankly
11 due to typos or miscommunication; but, it was narrowed
12 for the purposes of this final. So, I mean, in fact,
13 it shrunk down from where it used to be in the prelim.
14 And as Dan explained, you don't really have a risk
15 of, you know, skewed data, if you will, by just having
16 a two cubic foot range there.

17 VICE CHAIRMAN WILLIAMSON: Okay.

18 MR. CONNELLY: And I'd just add that I
19 really don't think that Whirlpool would be complaining
20 about product six if the underselling analysis had
21 worked out in its favor.

22 VICE CHAIRMAN WILLIAMSON: Okay, thank you.
23 And so what are Respondent's proposed product seven,
24 where there's no U.S. production, and how should we
25 interpret this pricing data? If you don't know now,

1 can you maybe address it post-hearing?

2 MR. KLETT: No, I think that the original
3 product seven, I think, also was a wider product range
4 and I think the attempt was to make it more precise.
5 One thing I will say about the fact that Whirlpool did
6 not report for that because the top end of that range
7 was, I think, 24.5 cubic foot and Whirlpool produces a
8 24.8 cubic foot, there is a note at the bottom of
9 those pricing tables, that if you produce a
10 competitive product, you can report pricing data. So,
11 by not reporting pricing data, I presume that -- I
12 mean, the inference is that Whirlpool is saying it
13 doesn't -- it doesn't produce or sell a product that
14 competes with product seven products for which pricing
15 was reported by LG and Samsung; otherwise, it would
16 have reported pricing because it had the opportunity
17 to do so.

18 VICE CHAIRMAN WILLIAMSON: Okay. Okay,
19 thank you. If Petitioners want to add anything on
20 this point post-hearing, it's welcome.

21 MR. CONNELLY: Can I just add? The answer
22 this morning was that the data for -- from Whirlpool
23 was that the data for products three, five, and seven,
24 you should just disregard that because they didn't
25 report a product in that category. Our position is

1 actually just the opposite. That is legally
2 significant precisely because they have the
3 opportunity to identify a competitive product and they
4 did not.

5 VICE CHAIRMAN WILLIAMSON: Okay.

6 MR. CONNELLY: That means they don't make a
7 competitive product.

8 VICE CHAIRMAN WILLIAMSON: Okay, fine.
9 Okay, I'm going way over my time. If Petitioners have
10 any response to this post-hearing, that will be fine.
11 Thank you. Commissioner Pearson?

12 COMMISSIONER PEARSON: Thank you, Mr.
13 Chairman. I actually wouldn't worry too much about
14 the time overage, if I were you, because I'm recalling
15 the hearing we had two or three years ago, in which I
16 think Commissioner Okun, also, was not present and we
17 charged all the overages to her, and it worked great,
18 because no one objects.

19 VICE CHAIRMAN WILLIAMSON: No one was here
20 to object.

21 COMMISSIONER PEARSON: Although, I think she
22 was not recused at that hearing. She is at this one,
23 so it might not be quite the same. We could consider
24 that. It's fun being a Commissioner.

25 (Laughter.)

1 COMMISSIONER PEARSON: Mr. Baird, you only
2 have one of each refrigerator on the floor, if I
3 understand correctly, and so you have some substantial
4 quantities in inventory that can be delivered on
5 relatively short order?

6 MR. BAIRD: The way our model works is we
7 have a display in 2,000 stores and then the
8 manufacturer, whether it be LG, Maytag, or GE,
9 actually deliver that to one of 120 delivery agents
10 and the delivery agent delivers the product to the
11 customer. So, we don't have warehouses, no.

12 COMMISSIONER PEARSON: Okay. And so if I go
13 to a Home Depot out here on Ox Road in Fairfax County,
14 which I do fairly often, but never on Black Friday,
15 and having heard what you said, I'm going to keep that
16 up --

17 MR. BAIRD: No, actually buying an
18 appliance, Black Friday would be a great time to buy
19 it.

20 COMMISSIONER PEARSON: If I go and buy a
21 refrigerator there to add to my collection, how would
22 that be handled? I would look at the one on the
23 floor; I would say, I want this one; I'd pay for it;
24 and then the order would go to whichever manufacturer
25 that was and they would arrange to have it delivered

1 to my house 48 or 72 hours later, something like that?

2 MR. BAIRD: The answer to the question is
3 it's totally transparent to you. You have no clue
4 where the refrigerator comes from. As far as you
5 know, it could come from D.C. we have; we just don't
6 happen to have those. It actually comes from a
7 Whirlpool or Maytag or LG or GE distribution center to
8 an agent directly.

9 And by the way, speaking of Home Depot, I'd
10 love to have you guys come out and take a tour of a
11 Home Depot.

12 COMMISSIONER PEARSON: I think it would be
13 fun. That would be a good field trip to arrange. We
14 have lots of products that you can find at Home Depot,
15 not just bottom-mount refrigerators.

16 MR. BAIRD: Our model is unique. I think
17 Marc talked about that. We're probably -- there's not
18 many retailers that don't have inventory, but we don't
19 have boxes of inventory in buildings.

20 COMMISSIONER PEARSON: Okay. So, in that
21 case, when do you take ownership of the refrigerator
22 that I am coming and buying? You never physically
23 have it, okay, and so when does ownership pass from
24 the manufacturer to you?

25 MR. BAIRD: We deliver the product to the

1 customer. If the customer has a successful delivery,
2 it's been installed, they sign off on a sheet in their
3 house. When they sign off on that sheet, that's when
4 title passes.

5 COMMISSIONER PEARSON: And is it passing
6 from Home Depot to me or is it passing from
7 potentially Whirlpool to me at that point?

8 MR. BAIRD: Home Depot. So, we would own it
9 for a second.

10 COMMISSIONER PEARSON: Okay.

11 MR. BAIRD: Which is long enough, you know.

12 COMMISSIONER PEARSON: Okay. So, your
13 inventory costs are not high then, one second
14 ownership.

15 MR. BAIRD: Well, somebody talked about
16 earlier that most people who have inventory have two
17 or three weeks. Just so you know, that's not true.
18 If you go to Lowe's, quite frankly, they will have
19 probably three turns, which means they have four
20 months of inventory on hand. The fact is, yeah, in
21 our case, we have no inventory. It's a pretty good
22 model.

23 COMMISSIONER PEARSON: Okay. If counsel has
24 any guidance for us in post-hearing, in terms of
25 whether this has any implications for how we

1 understand the pricing analysis and whether we're
2 actually measuring sale at the right level of trade,
3 I'd be happy to know that. But, I don't think I'm
4 prepared to dig into right now. Mr. Cunningham, do
5 you have something to say?

6 MR. CUNNINGHAM: One quick word on level of
7 trade. I'm not about to climb the Mount Everest of
8 trying to persuade the Commission to forget about
9 manufacturer to retailer prices and look only at
10 prices to consumers. But, I will say, there is a
11 purpose of looking in addition to prices at the
12 consumer level for a couple of reasons. One is that
13 the manufacturers don't exactly set the prices to
14 consumers, but they substantially influence the price
15 through their setting of the map.

16 Secondly, there's a pretty good amount of
17 information in your staff report that in most cases,
18 with one or two OEM exceptions, the head-to-head
19 competition doesn't really take place in the normal
20 sense at the manufacturer-to-retailer level; that is
21 when LG goes to Bob Baird or to Best Buy or something
22 like that, they're not going to be told what
23 Whirlpool's prices are. They may be told, we think
24 your price might be reduced to be competitive in the
25 marketplace, but that might mean competitive to enable

1 retail sales. And the real head-to-head competition
2 that determines market shares occurs at the retail
3 level.

4 Now, fortunately for you, there's a lot of
5 price data, public data on retail prices. There are
6 some glitches in it. Home Depot doesn't supply
7 information to NPD. Trackline is a different type of
8 survey. It's an ask-the-consumers survey, rather than
9 an actual point of sale, get the prices survey. But,
10 there's lots of information out there. I don't think
11 you can do precise analysis of it; but one thing you
12 can do, you can see that there is a very substantial
13 consistency in the overselling, underselling question
14 by all of the public sources at the retail level. And
15 it shows that the Samsung and LG prices are quite
16 consistently higher than the Whirlpool prices at the
17 retail level.

18 That may not be as scientific as you want
19 it, but when your staff report comes out and shows a
20 preponderance of overselling by the subject imports at
21 the earlier level of trade, that tends to confirm that
22 conclusion. Indeed, it would be a bit anomalous if
23 you had a substantial, consistent overselling at the
24 retail level and then, for some reason, you had data
25 telling you that, wait a minute, there's underselling

1 at the earlier level of trade, that would force you to
2 say, wait a minute, all of the retailers are taking a
3 hit when they deal with one manufacturer, as opposed
4 to the other manufacturer, and that doesn't appear to
5 be rational.

6 So, I guess I'm not telling you science
7 here; but, I'm saying that there is some -- we deal in
8 economics here. We deal in looking at trends, looking
9 at getting the best feel for the market we can, and
10 retail level stuff is relevant for you there and
11 retail level stuff is pretty conclusive as to who is
12 overselling and who is underselling.

13 COMMISSIONER PEARSON: Counsel for the
14 Petitioners, as I understood it, made the case this
15 morning that we should not see the relationship
16 between the refrigerator manufacturers and the
17 retailers as being one of an agency relationship,
18 where the retailers, in essence, serve as -- provide
19 the service of displaying the product and getting the
20 customer to sign the paper and then --

21 MR. CUNNINGHAM: He's probably right as a
22 legal matter, although Bob Baird comes pretty close to
23 that.

24 COMMISSIONER PEARSON: Well, yeah, and
25 that's why -- if there are things about that, that we

1 should understand, that you would care to elaborate in
2 post-hearing, I'd be glad to learn more about it.

3 MR. BAIRD: Just to take a little mystery
4 out of it, it's not like we wait for something to
5 happen. We sit down with all of our suppliers every
6 month, we'll sit down in the middle of this month and
7 say, we think we'll sell this many of this model next
8 month. They make that and put it in D.C. So, the
9 fact that our model is different doesn't really change
10 anything at retail, other than the fact that we don't
11 pay commission, we don't pay spiffs, and we don't have
12 any inventory pressure. So, it is a fair floor for
13 the customer. But, it doesn't change the flow of
14 things.

15 MR. CUNNINGHAM: Bob, you ought to tell him
16 what a "spiff" is.

17 MR. BAIRD: A spiff is when some retailer
18 will pay their people based on typically
19 profitability. So, they'll make more if they sell one
20 model versus another and that can influence, quite
21 frankly, what actually happens on the retail floor.
22 In our case, we don't do that.

23 COMMISSIONER PEARSON: You're not arguing
24 that people respond to incentives, are you? Another
25 question for you, Mr. Baird, to what extent to

1 Whirlpool's various brands compete against each other?
2 Is there a possibility that they create downward
3 pressure against themselves without any particular
4 help from Samsung and LG?

5 MR. BAIRD: Well, I think, we carry Maytag
6 and obviously the bigger line is Whirlpool. So, I
7 mean, we pretty much try to marry it up. So what we
8 have in Maytag, you're going to probably find
9 something in Whirlpool very similar. We just -- we go
10 with the Maytag brand. I would tell you though, that
11 being said, I'm not sure the average consumer out
12 there understands that the product is really the same
13 product. I mean, the average customer comes in,
14 Maytag is something way different than a Whirlpool.
15 In real life, they come from the same plant and they
16 may look a little bit different; but, if you look
17 close, you can tell they're the same product. But, I
18 think because we don't sell Whirlpool, Whirlpool has
19 had to kind of construct a line such that we can
20 compete with Whirlpool, bottom line.

21 COMMISSIONER PEARSON: Okay.

22 MR. BAIRD: Because if we don't compete with
23 Whirlpool, that means there's a big group of the
24 business that's going to go to GE is what that
25 probably means. So, they've been forced to make the

1 two lines pretty parallel.

2 COMMISSIONER PEARSON: Okay. Well, thank
3 you for that. Mr. Chairman, my time hasn't quite
4 ended, but I'm going to stop anyway.

5 VICE CHAIRMAN WILLIAMSON: Commissioner
6 Aranoff?

7 COMMISSIONER ARANOFF: Thank you. On the
8 subject of price suppression, as I read both of the
9 main Respondents' briefs, the argument that was being
10 made was that the record doesn't support a claim of
11 price suppression by reason of subject imports because
12 even though there is a cost price squeeze, which seems
13 to be acknowledged, the reason that the costs
14 increased doesn't have anything to do with the subject
15 imports. Now, I was accused this morning of using big
16 words when I said algorithm; otherwise, I would have
17 said that this argument is tautological. But,
18 instead, I'll say, it's circular for the following
19 reason. The statute says that the Commission is
20 supposed to determine whether price increases for the
21 domestic product that otherwise would have occurred
22 are being suppressed to a significant degree. So the
23 issue isn't what caused the cost increases, but why
24 prices can't increase to cover them.

25 So, in some cases, the answer to that might

1 be, well, especially for the last few years because of
2 demand, because demand is falling and so even though
3 costs are going up, you can't pass along your cost
4 increases in the form of higher prices. Well, I don't
5 think that's the reason here, I think you would agree,
6 because we've said that demand for these particular
7 part of the refrigerator market has been going up and
8 the purchasers who are interested in them are not the
9 most price sensitive people who are out buying
10 refrigerators. So that being the case, do you want to
11 revise your price suppression argument and tell me why
12 prices are not able to go up to cover cost for the
13 domestic industry?

14 MR. KLETT: Commissioner Aranoff, on the
15 cost side, there are certain costs in cost of goods
16 sold that when they go up, you would not expect them
17 to be passed through to price, and those are one time
18 costs or costs associated with, I wouldn't call them
19 extraordinary costs, but basically costs that are
20 being incurred by one manufacturer that are non-
21 recurring, not being experienced by other
22 manufacturers. And for those types of cost increases,
23 you would not expect prices to go up. And at least
24 for Whirlpool, and I won't get into the details,
25 there's an element of that in their increase in cost

1 of goods sold. So, at least for that, I would argue
2 that's not price suppression, even though you do have
3 a nominal cost price squeeze.

4 The other is one of causation and we get
5 back to -- we get back to the price side. And, you
6 know, to the extent that prices didn't rise to cover
7 cost, aside from the cost you wouldn't expect to pass
8 through anyway, is that due to import competition or
9 is that due to price competition from imports. And we
10 kind of get back to the underselling and why people
11 are buying LG and Samsung, rather than Whirlpool
12 product.

13 So, there are two stages to our argument.
14 One is what costs would be expected to be passed
15 through or should be expected to pass through, and the
16 other is if prices don't rise to meet cost increases,
17 why haven't they risen? And if it's not due to
18 imports, there's no price suppression.

19 MR. CUNNINGHAM: Could I sort of put a clink
20 on that? As you say, nobody is going to contest the
21 fact that cost went up, steel went up, that sort of
22 thing. Nobody is going to argue against the fact that
23 the prices Whirlpool charges didn't go up enough -- it
24 didn't go up by the same percentages on bottom mounts.
25 But, also, they didn't go up by the same percentages

1 on their other products that have exactly the same
2 price -- exactly the same cost problem, but aren't
3 subject to competition from subject imports. And I
4 went through three of those: their exports of bottom
5 mounts; their sales of the side-by-side; their sales
6 of top mounts. And that would suggest, wait a minute,
7 maybe it's not imports that is the suppressive factor.

8 It's not always suppression when your prices
9 don't keep pace with your costs. It may be a
10 marketing decision that you make to lower your prices
11 or to keep them low, in order to achieve some
12 marketing objective. And the interesting thing today
13 was that that's what Petitioners said they did. They
14 wanted to expand their market share and they cut their
15 prices. And they said exactly -- said exactly what is
16 the answer to your question, which is, what caused the
17 problem of the bottom line in a cost price squeeze.
18 They said, well, it was our cutting prices to get
19 market share that caused that, as it was a horrendous
20 bottom line consequence.

21 I don't think that's irrational on their
22 part. It is a situation where, as we have explained,
23 they were in large refrigerators and in some others,
24 four doors, they were late to the four-door market,
25 too. They were playing catch up. And as Mr.

1 Greenwald said, one of the things that you do when
2 you're playing catch up, when you've got manufacturers
3 competitive with you who have introduced models
4 perceived by the public to be superior, is you cut
5 your prices. They're also doing the other thing,
6 which is, you bring out better models and they're
7 coming out with a 29-inch model, which will be a good
8 thing for them and is, I think, good news on the way
9 for them.

10 But, I don't think the cost price squeeze is
11 any mystery anymore after looking at that chart, after
12 looking at what the staff report has found about the
13 other similar product categories, similarly situated
14 on cost, but not import competition, and after hearing
15 the testimony today. I don't think there's any
16 mystery about it anymore.

17 COMMISSIONER ARANOFF: Okay. All right,
18 that helps some and I invite, you know, all the
19 parties to think further about the price suppression
20 equation for the purposes of post-hearing.

21 MR. CUNNINGHAM: -- normally even hope for.

22 COMMISSIONER ARANOFF: Well, let me go back
23 to something else that Mr. Cunningham had recently
24 said in response to one of my colleagues. You had
25 said that market share is determined at the retail

1 level and that's one reason why the Commission should
2 maybe be more comfortable at looking at things at the
3 retail level instead of the earlier level between the
4 manufacturer and the retailer. We know, for example,
5 because Home Depot is here and has told us, they don't
6 carry all the major brands and I assume that may be
7 true for other large retailers, as well. So, it seems
8 to me that that diminishes the argument that we should
9 care about the retail level, because if I walk into
10 Home Depot to buy a refrigerator, especially if I'm a
11 replacement buyer, who's got to have a refrigerator,
12 I'm going to buy one of the three brands they have on
13 the floor.

14 MR. CUNNINGHAM: Unless you decide to walk
15 across the street to Best Buy.

16 COMMISSIONER ARANOFF: Yeah, well, for me,
17 it's way up Rockville Pike and there's terrible
18 traffic.

19 (Laughter.)

20 MR. JOVAIS: There is a fair bit of cross
21 shopping across retailers that does occur. So, if you
22 were to go into Home Depot, much to Bob's chagrin, you
23 might not necessarily buy there. There's a high
24 likelihood that you'll visit at least two or three
25 retail stores before you make your final decision,

1 especially if you're looking at a product that's
2 \$2,500 or above. And there are really only two major
3 retailers that don't carry all brands and those would
4 be Lowe's and Home Depot. Lowe's doesn't carry LG and
5 Home Depot doesn't carry Samsung.

6 MR. CUNNINGHAM: And I would also note that
7 in terms of market share between subject imports and
8 domestics, domestic industry, I mean, Home Depot
9 carries one of the two major importers and carries two
10 of the major U.S. producers. There's also --

11 COMMISSIONER ARANOFF: Well, you're
12 referring to GE as one of the two domestic producers?

13 MR. CUNNINGHAM: Well, I understand the
14 worlds is a complicated place, but it will even more
15 domestic producer pretty soon.

16 COMMISSIONER ARANOFF: This is probably why
17 I drove the salespeople crazy when I was redoing my
18 kitchen, because I asked them where everything was
19 made and they looked at me like I was from Mars. It's
20 an occupational hazard.

21 Can anybody comment, because we haven't
22 heard a lot about Electrolux products. Mr. Jaffe, I
23 don't know if you want to comment on this or someone
24 else does. Which of the major retailers, if any,
25 carry Electrolux products and how would you compare

1 them, in terms of these fit, feel, and finish issues
2 to the two other brands that we're talking about here?

3 MR. JAFFE: Well, the interesting thing
4 about Electrolux is I must admit that we actually came
5 to the French door refrigerator market later than the
6 other retailer -- excuse me, the other manufacturers
7 in the room. So, we didn't actually start producing
8 them in greater quantities until 2010 and 2011. So,
9 while they are at many of the major retailers and
10 others, it's a much smaller quantity and, again, much
11 later to the market than everybody else that's in the
12 room.

13 COMMISSIONER ARANOFF: But, Electrolux is
14 competing in this same retail space, looking for the
15 same customers who want these sort of upper end, but
16 not built-in French door type models.

17 MR. JAFFE: That's correct. They started
18 basically with what's been known as the Electrolux
19 Icon model and now they're also introducing later the
20 Frigidaire, which is considered as far as branding,
21 one would consider the Electrolux Icon as a more
22 premiere brand, whereas the Frigidaire would be a
23 normal brand. One would be the Acura; the other would
24 be the Honda.

25 COMMISSIONER ARANOFF: Okay. I've gone way

1 over my time, but thank you for all your answers.

2 VICE CHAIRMAN WILLIAMSON: Commissioner
3 Pinkert?

4 COMMISSIONER PINKERT: Thank you, Mr.
5 Chairman.

6 Mr. Cunningham, you talked about the
7 decision by the domestic industry to cut prices in
8 order to gain market share or at least to slow the
9 loss of market share. Did cutting prices in fact slow
10 the loss of market share for the domestic industry?

11 MR. CUNNINGHAM: It seems to have based on
12 the 2011 statistics. Import market shares turned down
13 a bit.

14 COMMISSIONER PINKERT: So what I'm trying to
15 understand is what the relationship is between the
16 price competition in this market and the fit, feel and
17 finish factors that we talked about earlier.

18 MR. JOVAIS: It's interesting to note that,
19 yes, they did cut their prices in 2011, and Whirlpool
20 did see some share gains, but even in the testimony
21 from Greenwald, they -- there was not an appreciable
22 increase in market share, which clearly there's some
23 other reason why people are continuing to choose the
24 Samsung and LG product in the midst of price decreases
25 from Whirlpool.

1 MR. CUNNINGHAM: I guess I would suggest to
2 you that they've actually -- well, first of all, we --
3 as we have emphasized over and over again; we don't
4 say that price is irrelevant. When you have a product
5 disadvantage, at some point, you can -- a price
6 reduction will affect the commercial imbalance between
7 you and your competitors. That is true in any
8 product, any case, anywhere, any time.

9 The point here is that their major loss of
10 market share, and the one that they're going to try
11 and get back now, is the area they simply haven't been
12 in. That's what that chart makes so clear here. They
13 talk about ten percent loss of market share. Look at
14 the figures there. They're the share of the market
15 held by the products that they make has fallen ten
16 percent.

17 The share of the market held by the products
18 they don't make has gone up ten percent. Whatever the
19 price problem may be, that's not a price problem.

20 COMMISSIONER PINKERT: Thank you.

21 MR. BAIRD: Can I give you an example? If
22 you look at Petitioner's Exhibit -- look at Exhibit
23 Number -- I think it is 16. Because this is where the
24 share increase came from, if you look at -- if
25 everybody has that, Exhibit 16. If you look at the

1 middle piece on that page, which is a Whirlpool, and
2 it talks about the fact that the price was 1583, does
3 everybody see that?

4 Well, in real life what happened, that
5 wasn't the Black Friday model. In real life, it was a
6 model just like that without LED lighting; in fact, it
7 sold for \$999. Now, I sold 30,000 of them. So, I
8 mean, this doesn't really portray what really happened
9 and where the share gains came from. It came from
10 extreme price cutting on the three-door, basic piece.
11 We were \$999; HH Gregg was \$999.99, and Lowe's was
12 \$1,199 on a similar piece. So, yeah, you sell that
13 kind of volume, you're going to gain share.

14 MR. CUNNINGHAM: And that's a Maytag.

15 MR. BAIRD: Maytag.

16 MR. CUNNINGHAM: Just to be clear.

17 COMMISSIONER PINKERT: Thank you. Now, just
18 looking at 2009/2010, which, of course, is not the
19 period we were just discussing with the decision to
20 cut the prices; but just looking at that period, there
21 appears to be a strong correlation between loss of
22 domestic industry market share and the cost price
23 squeeze that we talked about earlier, as well
24 declining profitability. What happened in that
25 period, 2009 to 2010?

1 MR. CUNNINGHAM: I would take a little bit
2 of issue with your strong correlation there, because
3 you need to look at how much of the market share gain
4 by imports was in models and product areas, because
5 remember, in 2009 and most of 2010, the domestic
6 industry not only didn't have the high volume stuff,
7 they didn't have four doors either. But -- but, at
8 any rate, let me turn to -- for one -- let me turn to
9 Mr. Klett.

10 MR. KLETT: From 2009 to 2010, I mean, it is
11 true that there's a nominal -- you know, there's
12 increase in import share, and decline in domestic
13 industry profitability. But, I mean, you have to look
14 at, at least on the import side, where was the
15 increase in imports, and in our brief, we, actually,
16 went through -- based on some information we got from
17 the clients as well as from NPD on where the market
18 share increase was. And, as Mr. Cunningham has said,
19 in large part, it was in the large -- a good chunk of
20 the increase was in the larger -- the larger models.
21 So, in terms of the causal link, I'm not sure it's
22 there.

23 In terms of why the profitability decreased?
24 It wasn't -- It wasn't average price, because, in
25 general, that went up. So, it was a cost side -- it

1 was a cost side factor, and we can go into that a
2 little bit more detail in the brief if we can.

3 MR. CUNNINGHAM: And I would also ask you to
4 be a little careful about looking at market share.
5 Remember, this is not market share in terms of imports
6 coming in and reducing the domestic industry's volume.
7 This is imports -- this is imports coming in, we
8 would say, creating a market, but whether the imports
9 created it or not, there was a market that grew
10 significantly during the period. And U.S. volume --
11 Whirlpool's domestic shipments grew in that period.
12 Everybody's domestic shipments grew in that period.
13 And, so, I've always been a little hesitant to look at
14 market share, and say market share loss itself is an
15 indicia of injury. It may be, but its importance is
16 reduced in a circumstance like this, wherein point of
17 fact, your volume has gone up. It's just that
18 somebody else's has gone up quicker.

19 COMMISSIONER PINKERT: Thank you. Now, this
20 next question may be one of those questions where it
21 all depends on what your general theory of the case is
22 as to how you would view this particular issue, but --
23 but I'm wondering how should we factor in, if at all,
24 into our analysis the impact of the subject imports on
25 the urgency of product innovation and research and

1 development by the domestic industry?

2 In other words, you talked earlier about how
3 they're finally starting to do some of the things that
4 they need to do. Could the subject imports in their
5 pricing be forcing a kind of urgency on to the
6 domestic industry that would not be there otherwise?

7 MR. BAIRD. Yes, that's what innovation
8 does.

9 MR. CUNNINGHAM: I guess I would commend you
10 to your underselling analysis on that, too. Because,
11 I mean, it's -- these are hard arguments for the
12 Petitioners to make, it seems to me, when they're not
13 being predominantly undersold by the imports. Yes,
14 they did not make some of the innovations, moving
15 larger sizes, bringing four door as quickly as they
16 could. I'm always reluctant to look at a U.S.
17 industry and say, essentially, you screwed up. But
18 industries react late. Industries that are well
19 entrenched, dominate markets sometimes react late.

20 That doesn't mean that when they do react,
21 they won't be very effective, and there's every reason
22 to believe here that, that will happen, and that one
23 we'll tell you which pricing category it is when the
24 brief -- can't do it right now. But that one category
25 where in the middle of this period, yeah, they did

1 react. They brought out the product they needed to
2 bring out, and, boy, 700 percent increase in their
3 volume. I mean, yeah, there's every reason to believe
4 they'll be successful, but it's true. They didn't
5 make the investments that they did. They don't seem
6 to be, in some cases, massive investments that were --
7 for the size of Whirlpool, in a market that they look
8 at that seems as promising as this, in a market where
9 another U.S. company is making equally substantial
10 investment, General Electric, here in the market.

11 It doesn't seem to me there's an import
12 competition situation that explains their decision not
13 to make those investments. It look -- it just sort of
14 looks like they got it a little late.

15 MR. BAIRD: I would say that -- I look back.
16 I've done this a long time. This used to be a
17 business -- that's why they call it white goods. They
18 were all white goods, and the focus was on features.
19 It was a feature game up all the way until about 2000.
20 Once you go to 2000, it becomes a fashion game, and I
21 think what LG and Samsung has introduced fashion into
22 appliances, and, quite frankly, and Marc would tell
23 you this is true. I've been asking them for six years
24 to keep up with fashion, and the fact is they've done
25 that on laundry. They've done that on dishwashers.

1 They've done that on Ranges.

2 The fact is they've got one category that's
3 way behind. And I think they know that, bottom line,
4 and they're going to fix that, but they're just way
5 behind on refrigerators when it's all said and done.

6 COMMISSIONER PINKERT: I know this calls for
7 speculation on your part, but why do you think that
8 they were so slow in this product segment?

9 MR. BAIRD: I probably -- I don't know if I
10 can answer that. I mean, obviously, laundry is a very
11 important category to them, so they want to get that
12 fixed, I would say, but I don't know. It's a good
13 question. I'm somewhat amazed that GE can come out in
14 six months, whiz right by them. It is a little bit
15 startling to me that, that happens, but they need to
16 get it fixed.

17 I mean, this is nothing new. You know, it
18 really isn't. I happened -- they were the market
19 leader. They had a hundred percent market share for
20 sixty days, and it's been downhill since then.

21 MR. CUNNINGHAM: And, remember, they still
22 dominate this market overall. It is just in the
23 growth part of the market. They have not done the
24 things necessary yet -- they're going to. But they've
25 not done the things necessary yet to be where they

1 can -- they have demonstrated they can be in the rest
2 of the market. COMMISSIONER

3 PINKERT: Thank you. Thank you, Mr. Chairman.

4 VICE CHAIRMAN WILLIAMSON: Thank you,
5 Commissioner Johanson.

6 COMMISSIONER JOHANSON: Yes, thank you. In
7 your briefs and testimony, and in particular, I
8 believe the testimony of Mr. Herring, you have argued
9 that the commission should not compare promotional
10 models with non-promotional models. And I was
11 wondering why this is the case. Aren't promotional
12 models competing for sales of non-promotional models?

13 MR. HERRING: Just to expand on that a
14 little bit, one of the examples that was used was the
15 Black Friday model, drop-in model for LG, and there
16 was substantial de-contenting or feature
17 differentiating that was taken into account as we
18 developed that drop-in SKU. So, there was a list of
19 different design characteristics and feature
20 differentiation that was -- that we're taking out of
21 that product to get to a lower cost point threshold.

22 So, it's probably not an accurate -- it's
23 not an accurate analysis to compare to the same
24 feature or the same basic configuration that was
25 already in place. So, it was a drop-in SKU,

1 promotional in nature, designed to hit a lower price
2 point threshold where feature content was pulled out
3 of the product to be able to hit that more attractive
4 offer and stimulate consumer demand.

5 MR. CUNNINGHAM: Mr. Commissioner, there's a
6 particular reason here relating to how the Commission
7 does overselling and underselling analysis, because
8 the question you ask is to what extent have imports
9 oversold? So, how many sales of imports have we got
10 that oversold? How many sales of imports have we got
11 that undersold? Okay? Let's supposed that two
12 different manufacturers have identical Black Friday
13 promotions, except that they choose different models
14 to do it. One has a promotion on a model in your
15 Category 2, the other has a promotion on a model in
16 Category 3. It's the same promotion, each one gives a
17 twenty percent discount. The one that gives the
18 twenty percent discount, sells 20,000 units. The one
19 that gives -- that doesn't give the discount, sells
20 10,000 units.

21 Here's what you get in your analysis. Where
22 the importer gives -- where the subject import has
23 discounted the twenty percent, you will find that
24 20,000 units of the subject import undersold the
25 domestic, you know, the domestic manufacturer. When

1 you do the analysis for the other situation, you will
2 find that 10,000 units of the imports oversold the
3 domestic manufacturer. Both manufacturers did the
4 same thing, both got the same result, but they got it
5 on different models. It's an odd situation. It's one
6 you don't normally have.

7 I'm not sure where we're trying to dictate
8 you exactly how you should do it to correct that.
9 We've said to do it more broadly. Look at it more
10 broadly. But you want to avoid the type of distortion
11 that I just took to you, because what you're then
12 saying is we're finding there was more import
13 underselling, because what we look at is the import
14 sales, and we ask did they undersell or oversell. And
15 there are various ways you go about that. Just be
16 aware of the distortion. That's what we're saying to
17 you. Beware of the possible distortion as you look at
18 this, and so much of what the U.S. industry has -- has
19 argued here today relates to sort of specific model
20 promotional discounting. And, as you heard from Mr.
21 Baird, in one of the -- when he was talking about one
22 of the LG, quite substantial, promotional discounts,
23 he says, "Well, there was this other promotional
24 discount by Whirlpool on another product. Boy, that
25 was, in my view, the really leading discounting in the

1 market place.”

2 But it wouldn't show up that way in your
3 statistics. So, that's the kind of thing I want you
4 to take a look at here and avoid the distortion.
5 That's all we're saying. We're not saying to you that
6 promotional discounting doesn't move the market.
7 Promotional discounting doesn't get you more sales.
8 We're saying to you, everybody does it. Be careful
9 how you analyze it so your methodology doesn't give
10 you a distortion.

11 COMMISSIONER JOHANSON: Okay, thank you.
12 Petitioners contend that LG's and Samsung's models are
13 superior to those of Whirlpool. When did LG and
14 Samsung begin production of bottom mount
15 refrigerators, and I'm wondering whether they were
16 able to begin production with a clear sheet design,
17 and whether this gave them a competitive advantage?
18 Was Whirlpool constrained by it's existing production
19 platforms, after all, Whirlpool's been producing
20 bottom mount refrigerators I think since the '50s or
21 so.

22 MR. DEXTER: So, certainly, as we -- as I
23 described, and you've heard others describe as LG and
24 us came into the marketplace, we had the opportunity
25 to look at where we -- where there were unmet consumer

1 needs and that could be in terms of configuration.
2 That could be in terms of fit, fill and finish and
3 product, so we did, in essence, in our case, start in
4 2007, and we really did take the time to analyze and
5 say, how can we meet those consumer needs. I think
6 part of your other question on the advantage or
7 disadvantage that Whirlpool has had, certainly, they
8 had some legacy platforms in place, but you've also
9 heard quite a lot about continuous investment over
10 time or lack of it or you hear about the GE case where
11 not they're in the period as Mr. Baird said, of six
12 months going from not being in the marketplace to
13 clearly being in the midst of it. I think those are
14 all just choice that a company has to make in the
15 course of doing business and how you view the
16 marketplace and how to position yourself competitively
17 for it.

18 MR. CUNNINGHAM: And I guess I would say
19 that we're here to deal with injury caused by dumping
20 not by the fact that somebody had an advantage,
21 because they were starting fresh. I mean, there are
22 lots of industries -- one of the problems the steel
23 industry had for year and year was it had an
24 established set of manufacturing problems --
25 manufacturing technologies, and it was sort of leap-

1 frogged at one point, this was back in the '70s, by
2 the Japanese, particularly. Unfortunately, the
3 Japanese also dumped substantially, and also undercut
4 U.S. producer prices. So you didn't have the problem,
5 but if you don't have a dumping -- if you don't have a
6 problem caused by pricing, it's not something that
7 you're here to correct. And I think the Petitioner is
8 doing something to correct it. But getting dumping
9 duties isn't part of the statutory cure, isn't a
10 statutory cure for a company that had to redesign in a
11 way that other companies didn't.

12 COMMISSIONER JOHANSON: And, so, when did LG
13 and Samsung enter the bottom mount market? I'm just
14 kind of curious just for a little background.

15 MR. HERRING: In terms of production of
16 bottom mount or french door, we began production in
17 the early '90s in the Korean domestic market. So, I'm
18 not sure of the exact year. I'll have to find out in
19 terms of when we entered the U.S. market with the
20 bottom mount.

21 MR. CUNNINGHAM: We'll give you exact year -
22 -

23 COMMISSIONER JOHANSON: That's fine. I'm
24 just -- for background, that would be helpful. And,
25 Mr. Baird, I have a question for you. You stated that

1 you have been telling the Petitioners for years that
2 they can make better products and that they should
3 make better products. Do you have any documentation
4 along those lines?

5 MR. BAIRD: Yeah, I'm a serial emailer, so
6 I'm sure if we go back --

7 COMMISSIONER JOHANSON: Okay.

8 MR. BAIRD: No, I don't think they -- they
9 wouldn't -- they would -- you probably just ask Marc,
10 he'll tell you. And it's not better product. Let's
11 make sure we understand. The quality of the Maytag
12 product is fine. That's not what we're talking about.
13 I don't know how you define better. But, in terms of
14 the fit, feel, the fashion look of it, that's what
15 we've been -- that's what we've been harping on them
16 for a long time, and, like I said, they achieved that
17 in most every category. This is just the last one
18 that they have to do.

19 COMMISSIONER JOHANSON: Okay, thank you.
20 And, Mr. Seagriff, you took us over and showed us the
21 two different refrigerators, and I thought that was
22 helpful. And we looked at the different features on
23 those, and I'd just like to step back and hear what
24 you think -- what features you believe are most
25 important in the refrigerator market for consumers.

1 MR. SEAGRIFF: Again, as people have been
2 saying, I'm not quite sure there's one specific
3 feature or another, but seriously capacity is an
4 overwhelming trend right now. French doors, high
5 capacity, that's where things are going. As Kurt
6 mentioned earlier, last week we met with a rather
7 large retailer, and they said that's the theme of all
8 of their marketing in store and in print and on T.V.
9 for this entire year. It's all about more capacity
10 and the same space, whether that's 36 inch, 33 inch,
11 whatever size. So, it seems like from our research
12 and what the retailers are saying, they're planning to
13 do -- capacity is king. I'm glad to hear Whirlpool is
14 on board. I'm thrilled to see GE is on board. And we
15 look forward to competing with them.

16 COMMISSIONER JOHANSON: Alright. Thank you.
17 My time has expired.

18 VICE CHAIRMAN WILLIAMSON: Okay, thank you.
19 We've covered this subject already, but I just wanted
20 to maybe take one other stab at it. I'm thinking
21 particularly about Petitioner's argument this morning
22 that sort of the prices of some of the products that
23 they don't make are sometimes so low that they feel
24 that is causing hurt -- I'm thinking particularly
25 about Exhibit 16 where you had the 29 cubic foot

1 refrigerator, which was being sold at the same price
2 as the 26 cubic foot. Now, I know if I sort of see an
3 add for something, and I say, okay, that sounds good.
4 And then I go in the store and find out that I can
5 get, say, more space or more features for the same
6 price, I'm going to immediately look at that. So, I'm
7 just wondering whether -- to what extent to you feel
8 this does happen, and --

9 MR. JOVAIS: The example that they've
10 selected here is a very clever selection, because this
11 particular piece, the 29 cube, from Samsung, for Q-4,
12 that was a Black Friday model, which was taken below
13 what the actual mat price was from Samsung. That was
14 one of those times when the retailer basically went
15 deeper than anticipated, basically dipped into their
16 own pockets to do that. Also did it to the Whirlpool
17 piece. So that's why you're seeing that significant
18 dip in the price. Typically speaking, there's about a
19 \$300 delta, and we maintain that against that
20 Whirlpool piece consistently.

21 VICE CHAIRMAN WILLIAMSON: Okay. Given the
22 importance -- well, but is that an issue that even if
23 it wasn't that much of a -- there is a significant
24 difference between the two models in terms of what's
25 available. So, I guess, are there other cases where

1 you are seeing this you really can get a good day on,
2 say, a large -- a large refrigerator?

3 MR. BAIRD: Let me just point out one more
4 time.

5 VICE CHAIRMAN WILLIAMSON: Yes. Yes.

6 MR. BAIRD: The middle piece, sir, wasn't in
7 play on Black Friday, so if you're comparing the
8 middle one with the one on the right, you're -- that
9 is not a valid comparison. The real Whirlpool piece
10 that was out there is, quite frankly, was \$999.

11 VICE CHAIRMAN WILLIAMSON: Okay.

12 MR. BAIRD: That 26 cubic foot in real life
13 wasn't \$1,599 in the market. That wasn't part of the
14 -- that wasn't part of the Black Friday specials. The
15 special you saw on the market --

16 VICE CHAIRMAN WILLIAMSON: Okay.

17 MR. BAIRD: -- that we ran under the Maytag
18 brand; HH Gregg ran another Whirlpool brand was \$999.
19 So, that's a \$600 delta between the 26 and the 29,
20 and, obviously, with the -- if you're -- somebody said
21 earlier, Whirlpool, that you've got a capacity that's
22 worth a hundred bucks a foot, if that's true, than
23 nobody would ever buy the 29 Samsung. They would have
24 bought the \$999 Whirlpool.

25 VICE CHAIRMAN WILLIAMSON: Okay. Well,

1 let's put it this way; at a normal time, would the
2 \$1,800 for 29 cubic foot versus normal price of \$1,500
3 for the 26 be --

4 MR. JOVAIS: Well, it's the same delta to
5 our own product, right? So, the -- I mean, our own
6 26. So, what we're seeing here -- it's just that
7 consumers aren't really very interested in the
8 Whirlpool 26 cube, because there's a compelling
9 product -- there's already a compelling piece there
10 with a better feel and finish. And if you actually
11 want to spend more money, then there's a compelling
12 product up there. It just happens to be that
13 Whirlpool doesn't make either of those compelling
14 products.

15 MR. CUNNINGHAM: But I think, an answer to
16 your question is that the delta -- the difference
17 between \$1,882 and the \$1,500 and some price is, in
18 fact, for Samsung the difference between those two
19 sizes, because you see it between the regular price
20 and the Samsung model on the left column.

21 VICE CHAIRMAN WILLIAMSON: You're saying
22 that's enough to --

23 MR. CUNNINGHAM: Apparently, for Samsung.

24 VICE CHAIRMAN WILLIAMSON: I mean, the
25 difference in the products is enough to attract

1 consumers to the larger --

2 MR. CONNELLY: Yeah, and the point is it was
3 the retailer that created that difference, not Samsung
4 on the 29. That was a sale below the map by the
5 retailer.

6 VICE CHAIRMAN WILLIAMSON: Okay. Okay.

7 MR. SEAGRIFF: And one other issue is what
8 Kurt, I think was trying to point out, and on that
9 same slide, the SKU all the way on the left is a
10 Samsung 26 cub., which is priced the same as the
11 Whirlpool 26 cub., and, so, maybe that's the one
12 that's affecting this. And the 29 cub., was maybe
13 targeting or competing with some other product.

14 VICE CHAIRMAN WILLIAMSON: Okay, what I was
15 getting at was to what extent is there a competition,
16 both -- in the same size, comparable size, model and
17 also competition from something, is, you know, clearly
18 larger and more featured.

19 MR. DEXTER: So, I don't know if this is
20 going to answer that question, but with the expansion
21 of that product category when we talk about the large
22 size, and you've heard again what GE plans to come in,
23 they're targeting the large size.

24 VICE CHAIRMAN WILLIAMSON: Yes.

25 MR. DEXTER: It's going to come inherently

1 more competitive because you have more players in the
2 space. I think the other thing to note that we tried
3 to point out here is that whether it were outside of
4 Black Friday or in the cases that were shown here
5 inside of Black Friday, there is still a delta between
6 the two when you look at large capacity and our other
7 -- other capacities out there, that's anywhere from
8 \$300 to \$500 depending on the time frame that we're
9 looking at.

10 VICE CHAIRMAN WILLIAMSON: Okay, good.
11 Thank you.

12 MR. CUNNINGHAM: Mr. Chairman, might I --
13 there's a data point that the commissions had a little
14 trouble with and I've had a little trouble with, just
15 take thirty seconds if I could raise it to you. We
16 have complained that Whirlpool has not provided
17 information on all of its promotional models to the
18 Commission. And, as I've listed to the testimony
19 today, I think I understand what the problem is.

20 You've heard Mr. Baird say, we see an
21 example here that there are Black Friday promotions
22 that are done that don't fit the reduce-the-map format
23 that the -- and there are ones that are done that,
24 nevertheless, the manufacturer will support the
25 retailer in doing it, but it's not a reduction in the

1 map. And there may be -- there may be a bunch of
2 those that Whirlpool didn't report, because it didn't
3 read the Commission's instructions as requiring them,
4 because there wasn't a reduced map. I want to think
5 that, that's a sort of a mistake on their part or at
6 least a misinterpretation because it is my policy to
7 never impugn the integrity of another lawyer. And the
8 -- but I think it would be worthwhile for the
9 Commission to look at that. You might look at Exhibit
10 5 to our prehearing brief where we've got a big table
11 that -- I think it's Exhibit 5 that -- of the ones
12 that we thought not reported, and you might check with
13 Whirlpool and see if that simply -- sort of a missed
14 communication between the Commission.

15 Because, clearly, if the manufacturer was
16 reporting -- was supporting the cut by the retailer,
17 that's the --

18 VICE CHAIRMAN WILLIAMSON: Okay.

19 MR. CUNNINGHAM: -- same thing as if you're
20 doing it by map, even if it's not a map production.

21 VICE CHAIRMAN WILLIAMSON: Okay. Well, then
22 they're going to have an -- staff can followup on
23 that, and --

24 MR. CUNNINGHAM: Right.

25 VICE CHAIRMAN WILLIAMSON: -- they can have

1 an opportunity to address in post-hearing.

2 MR. CUNNINGHAM: Thank you, sir. Thank you.

3 VICE CHAIRMAN WILLIAMSON: Okay. Thank you.

4 Let's see. In this, shall we say, the heart of the
5 market example that we have on this Exhibit 7, I think
6 you sort of said, there's a question of whether or not
7 how much competition there really was in that
8 category. But, I was going to say, isn't there quite
9 a bit of -- still a substantial amount of overlap in
10 the products of both Petitioners and Respondent's
11 products in that category? And can't you still say
12 there really in competition there.

13 MR. CUNNINGHAM: There is certainly
14 competition between imports and domestic in that
15 category. And, in particular, there is one of your
16 product pricing categories where probably is --
17 without any doubt is the largest volume competition.
18 I would just urge you to -- Product Category 6.

19 VICE CHAIRMAN WILLIAMSON: Yeah.

20 MR. CUNNINGHAM: I would just urge you to
21 look at the staff's results in that category.

22 VICE CHAIRMAN WILLIAMSON: Okay. Okay,
23 thank you. I was wondering which countries are that
24 are just non-subject producers of bottom mount
25 refrigerators and where does China fit into this?

1 MR. NOH: European market is mostly bottom
2 mount market. And Australia has pretty good portion
3 of bottom mount. And China also has some bottom mount
4 market.

5 VICE CHAIRMAN WILLIAMSON: That's being
6 produced?

7 MR. NOH: Chinese manufacturers produces
8 bottom mount as well.

9 VICE CHAIR WILLIAMSON: And there are
10 European producers who are --

11 MR. NOH: Yeah, almost have of European
12 market is bottom mount.

13 VICE CHAIR WILLIAMSON: Okay. I was going
14 to say, which of the largest global markets for bottom
15 mount refrigerators, but I think you've already
16 answered that. You say Europe and --

17 UNIDENTIFIED SPEAKER: European production
18 of bottom mount.

19 MR. NOH: I don't know the total demand over
20 Europe. Around the forty -- around forty percent or
21 more can be bottom mount for European market.

22 VICE CHAIRMAN WILLIAMSON: Okay. Thank you,
23 my time has expired.

24 COMMISSIONER PEARSON: Thank you, Mr.
25 Chairman. Mr. Baird, you'd spoken earlier about Home

1 Depot presenting a wide product offering. I just
2 wanted to clarify is it Home Depot's approach to
3 provide a full spectrum of products across the, you
4 know, refrigerator spectrum, if you will, with the
5 exception of the very expensive built-in ones?

6 MR. BAIRD: Yeah. I mean, we have
7 refrigerators, we have top mounts, side by sides, and
8 french doors. I mean, typically, based on our
9 clientele, we would lean a little bit toward the
10 higher end stuff. We have a pretty robust clientele.
11 So, we would carry -- I think Mark said, we'll carry
12 a lot less top mounts than Lowe's does, because their
13 customers are obviously not as smart as our customers,
14 so we tend to carry more better stuff.

15 COMMISSIONER PEARSON: But you also have
16 several lower cost top mount refrigerators, the
17 traditional type, I mean, you're not ignoring that
18 part of the market, are you?

19 MR. BAIRD: No, I mean, the top mount
20 business is half the market in units, so, yeah, we
21 don't have as many as you might think we do. We've
22 got five or six out of twenty-five. But we have them,
23 yes.

24 COMMISSIONER PEARSON: Is this desire to
25 serve all parties in the marketplace one of the

1 reasons that you may see some logic in looking at all
2 refrigerators as part of a single-like product instead
3 of dividing it up into top mount, bottom mount, etc.?

4 MR. BAIRD: Yeah, I mean, we look at our
5 customer. We try to present the kind of -- what they
6 want to buy. That's our whole goal as merchants is to
7 put the twenty-five pieces on the floor that match
8 best we can, by store, what they want to buy.

9 COMMISSIONER PEARSON: Okay, thank you. So,
10 following up on that, we've mostly been discussing the
11 mid to upper range of the market I believe. Which
12 companies are important players in the lower end of
13 the marketplace? Do LG and Samsung have offerings in
14 the -- the less expensive top mount refrigerator
15 segment?

16 MR. BAIRD: Not particular, I would say that
17 Frigidaire, GE and Whirlpool brands are going to
18 dominate top mounts and the side by sides under a
19 thousand dollars.

20 COMMISSIONER PEARSON: Okay, and are some of
21 those refrigerators imported or would those all be
22 domestic?

23 MR. BAIRD: Well, it depends. On the GE,
24 they make most of their top mounts in Alabama. They
25 make a lot of side by sides in Bloomington. They make

1 some side by sides in Mexico. And, obviously, Maytag
2 and Whirlpool, the side by sides and top mounts are
3 going to come from Mexico.

4 COMMISSIONER PEARSON: Okay, so it -- that
5 segment of the market is largely served by the NAFTA
6 markets -- marketplace, I mean, the Mexico and the
7 United States together serves that.

8 MR. BAIRD: No, I think most top mounts
9 actually are made in the United States between
10 Electrolux and Frigidaire and GE. I think that's
11 probably the lion's share of that business.

12 COMMISSIONER PEARSON: Okay, so, the actual
13 competition by LG and Samsung is focused very much on
14 the mid to upper end of the market; is that --

15 MR. BAIRD: Typically, if you would have
16 asked me, I would say that Samsung and LG compete in
17 the top half of the market. They compete a lot less
18 in the bottom half of the market.

19 COMMISSIONER PEARSON: Okay, thank you. You
20 had mentioned earlier that, you know, your desire to
21 serve consumers, and you have something for everybody
22 who comes in the door. And you also had said
23 something about that, you know, that if anti-dumping
24 duty order -- if anti-dumping duties are put in place,
25 maintained in place on these products that it would

1 have implications for what products you would offer.
2 I have to explain that the statute does not allow us
3 to consider the effects on consumers in this case when
4 we make just make it our determination, because
5 we're -- it's quite specific that we have to look at
6 the effects on domestic producers. Okay? So, I don't
7 want counsel anywhere to think that I've forgotten
8 that, and I'm going entirely off the reservation, but
9 I'm -- as a matter of condition of competition, I'm
10 wondering how would Home Depot deal with their
11 refrigerator business, if there is an anti-dumping
12 duty order that is going to be in place for five
13 years?

14 MR. BAIRD: I would assume at that point in
15 time that the -- if we were -- let's say, where the LG
16 prices, the MAPs would go up. And then we'd have to
17 make a determination given if the MAP was \$2,399, and
18 you imposed a \$500 duty, and there was \$2,899. We'd
19 have to assess are we going to sell any at \$2,899?
20 And then we would assort it or display it based on
21 whether we thought it would sell at \$2,899. That's
22 the decision we'd have to make.

23 MR. KLETT: Commissioner Pearson, this is
24 Dan Klett.

25 COMMISSIONER PEARSON: Yes.

1 MR. KLETT: I don't want there to be a
2 conclusion that Mr. Greenwald may make, and that is,
3 well, gee, that proves out case, that if you anti-duty
4 dumping duty orders are imposed and import supply goes
5 down and prices go up, that pretty much proves price
6 suppression or price depression. Because it's basic
7 economics, when you reduce supply of a product,
8 there's going to be a price effect. The question
9 still is, during the period of investigation, was the
10 success of LG and Samsung due to price or non-price
11 factors. So, the fact that you may have a price
12 effect if an anti-dumping duty order is imposed,
13 doesn't prove his price suppression case. I just want
14 to make that clear.

15 COMMISSIONER PEARSON: Of course. So, Home
16 Depot would be juggling its product offerings in a way
17 that might shift some floor space away from LG. How
18 would consumers respond to that, do you think? I
19 mean, because there has been some discussion of
20 consumers really liking the features of some of the
21 sexy refrigerators imported from Korea. Do they like
22 those features enough so you would continue to
23 allocate the same amount of floor space to those units
24 or --

25 MR. BAIRD: I think that's just a

1 determination that we'd have to sit in a room and
2 make. I mean, like I told you, our number one seller,
3 number one, is a 31 foot cubic LG at \$3,199 MAP. If
4 that MAP went to \$4,000. My guess is we'll sell less.
5 And then we have to make a determination, well, does
6 it still deserve a floor spot or not.

7 MR. CUNNINGHAM: Mr. Chairman -- Mr.
8 Commissioner, I'd just like to put this in context
9 that we're talking about \$500 duties. The preliminary
10 margin as to Korea for LG was four percent.

11 COMMISSIONER PEARSON: Yes, I noticed that.

12 MR. CUNNINGHAM: There may be a different
13 equation for Mr. Baird to deal with than the \$500
14 increase.

15 COMMISSIONER PEARSON: He may have less
16 heartburn if the duty goes into --

17 MR. CUNNINGHAM: Yeah.

18 COMMISSIONER PEARSON: -- effect.

19 MR. BAIRD: No, at four percent, I would
20 just ask LG to absorb it.

21 COMMISSIONER PEARSON: Okay. Okay. Good,
22 well, this has been very interesting. At the moment,
23 I have no further questions, so I think I'll stop when
24 I'm ahead and hand back the rest of my time. And
25 assuming that I don't come back for further questions

1 after I get myself organized, I would just like to
2 express my appreciation to all of you for being here
3 this afternoon. It's been very helpful.

4 VICE CHAIRMAN WILLIAMSON: Commissioner
5 Aranoff, do you have -- Commissioner Pinkert?

6 COMMISSIONER PINKERT: This may be a post-
7 hearing kind of question, but we talked a little bit
8 about Whirlpools financial performance with respect to
9 the top mount and side by side segments or products.
10 Can you show us an example of where the Commission did
11 that kind of analysis to determine whether other
12 products, that is, in this case, the products that
13 comprise the domestic-like product, whether there was
14 causation of injury with respect to those products?

15 MR. CUNNINGHAM: You just created a lovely
16 research project for a Steptoe & Johnson associate.

17 COMMISSIONER PINKERT: Well, I didn't mean
18 to, but if that's the way it is so be it. Mr.
19 Connelly, I see you --

20 MR. CONNELLY: I would say you created a
21 lovely research project for me. And I look forward to
22 it. I would say that this is kind of a very helpful
23 situation where we've got three different segments,
24 let's call them that: Bottom mounts, side by side and
25 top mount. But we also have exports. We also have

1 the ability -- there's almost a control to look at
2 what's going on with Whirlpool's exports, and how the
3 financial picture gives with respect to exports versus
4 with how it is with respect to their domestic
5 shipments. We'll take a closer look than we even did
6 on our prehearing brief on that, because it suggests
7 to us that you may find the answers to whether there's
8 price suppression and price depression and a lot of
9 other things by simply using the export profitability
10 as a control on the U.S. shipment profitability, and
11 we'll do that.

12 COMMISSIONER PINKERT: And just to be clear,
13 when you do address the top mount and the side by
14 side, can you explain whether the fit, feel and finish
15 issue exists with respect to those products and not
16 just with respect to the products that we're looking
17 at here, the bottom mount.

18 MR. CONNELLY: Yeah, we'll do our best.

19 COMMISSIONER PINKERT: Thank you. Mr.
20 Cunningham? I didn't know if you had anything to add.

21 MR. CUNNINGHAM: Unusually, I don't.

22 COMMISSIONER PINKERT: Well, thank you very
23 much, and I look forward to the post-hearing
24 submission.

25 VICE CHAIRMAN WILLIAMSON: Okay,

1 Commissioner Johanson.

2 COMMISSIONER JOHANSON: I have no further
3 questions, but I'd like to thank the witnesses for
4 appearing here today.

5 VICE CHAIRMAN WILLIAMSON: I too have no
6 further questions, and I, too, want to thank the panel
7 for just being here to answer the questions. Does
8 staff have any questions for this panel?

9 MR. MCCLURE: Jim McClure, Office of
10 Investigations. Staff has no questions.

11 VICE CHAIRMAN WILLIAMSON: Do Petitioners
12 have any questions for the panel?

13 MR. GREENWALD: We have no questions.

14 VICE CHAIRMAN WILLIAMSON: Okay. Good,
15 well, I guess before dismissing the panel, I see the
16 Petitioners have twenty-six minutes from direct and
17 five minutes for closing, for a total of thirty-one
18 minutes. Respondent's have five minutes closing.
19 And, as we usually do, you are supposed to merge the
20 times, Petitioners have thirty-one minutes, and the
21 Respondent's five. That's okay, and so we'll dismiss
22 this panel, and then you have the closing statements.
23 MR. GREENWALD: May we have a five-minute
24 recess to sort of gather thoughts before we give
25 closing statements?

1 VICE CHAIRMAN WILLIAMSON: Okay, fine.

2 (Whereupon, a short recess was taken.)

3 MR. BISHOP: Will everyone please take your
4 seats and come to order?

5 (Pause.)

6 VICE CHAIRMAN WILLIAMSON: Okay. You can
7 proceed when ready.

8 MR. GREENWALD: Thank you very much. We
9 were deliberately short in our direct presentation
10 because we thought we might have quite a bit to say in
11 rebuttal, and I know it's been a long day, and I know
12 the last thing you want to hear is a long exposition,
13 but there are points that we very much want to get
14 out, because much of what was said, is either without
15 foundation or gets the law wrong or sort of misstates
16 the record and the facts. So, with, you know, your
17 forbearance, first Dr. Bitzer is going to address some
18 of the specific points that were raised by
19 Respondents.

20 DR. BITZER: And, first of all, I have to
21 admit it's kind of difficult to not spend 31 minutes.
22 I would like to answer a lot more questions. I want
23 to limit it just to five comments, which were stated
24 in the testimony and some of the questions and
25 answers. The first one, there was a lot of discussion

1 around innovation and Whirlpool being late or catching
2 up. I would like to make just a few comments.

3 The first document, which was used the LG
4 in-door ice. It was compared to a Whirlpool in-door
5 ice. That is factually incorrect. That is not a
6 Whirlpool in-door ice, period. So, these would --
7 should show an in-door ice model. I would also remind
8 that it's kind of difficult to argue about this one if
9 as LG knows, there are currently eleven patent laws
10 that's pending on in-door ice.

11 There was also discussion about vacuum panel
12 and Whirlpool couldn't do it, and Whirlpool didn't
13 have it to market. Also, factually incorrect. We had
14 in 2009 and 2010, a vacuum panel, 27.4 bottom mount
15 refrigerator in the market. So, both statements are
16 incorrect. Also, the OEM contracts where apparently
17 Whirlpool didn't have a size, also, for the record,
18 this OEM contract starts next year. That OEM customer
19 typically goes long and matches secure and supply, but
20 the OEM customer knew exactly, that in the summer of
21 this year, we would have that size, so it was not a
22 question about do you have that size at that time
23 period.

24 Second comment I want to make, there's been
25 extensive discussion about feature values and about

1 what value you can ascribe to it or not. The numbers
2 which we put on this exhibit where we show the feature
3 values were not arbitrary. There's both a cost logic
4 and a go-to-market logic, but first on the cost logic,
5 just to give you a couple numbers, typically a vacuum
6 panel costs anywhere between \$35 and \$50. This is not
7 inexpensive. Then you have material costs to get to
8 retail value, typically times two or times three
9 because you've got to add the overhead, your own
10 margin, retail margin, VAT, et cetera.

11 The dual evap, I heard it costs apparently
12 only \$10. It must be another myth about some really
13 great cost advantage. Dual evap costs typically
14 between \$28 and \$32. Again, it's not the first time
15 we do dual evap. So there's a clear cost associated
16 with these features, which most people who do
17 understand manufacturing would pretty much confirm
18 that.

19 More important, the feature values are
20 typically, you can infer very clearly from so-called
21 plan to sell. So the manufacturers typically try to
22 explain to a trade partner or consumer how twenty or
23 thirty bottom mount refrigerators line up, that's the
24 plan to sell, from anywhere from \$1,900 or from \$900
25 to \$3,000. You typically do it along a continuum of

1 features and values. And you will have noticed in our
2 exhibit that we use as sources Whirlpool and Samsung.
3 So, we have a Samsung plan to sell document, which I
4 think we submitted in a prehearing, which clearly
5 shows, for example, this in-door ice, \$700. It's in
6 that document.

7 So, those values are not arbitrary. They're
8 pretty well known market facts. That's how every
9 manufacturer does their plan to sell. And you can
10 clearly infer to these feature values. A third point
11 that compares a model, which you see up here and our
12 famous Exhibit 16 was quoted very -- quite a bit.
13 Now, again, because of a cost difference of a dual
14 evaporator and what you typically see marked, we would
15 argue that model, under normal circumstances, should
16 cost about \$150 more. I'm not even going to argue
17 about fit, feel and finish. That's why the \$200 map
18 differentials were quoted. I mean, you could argue --
19 it's about right, whatever the difference is. And the
20 real question, that's what was shown in Exhibit 16,
21 well, if it's worth \$200 more, why was the average
22 selling price over an extended period so much lower
23 than the comparable Whirlpool model?

24 That's exactly what is in Exhibit 16. I
25 also heard that Samsung -- only about 26 percent of

1 sales are promotions. It's a pretty well known
2 industry fact that Samsung in 2010 had about more than
3 20 weeks with 25 percent off, supported by the
4 manufacturer.

5 Let me just come in to another point. There
6 was a lot of discussion about promotion importance,
7 how long are promotions. Do respective manufacturers
8 know what others do? Do whatever price you set in one
9 category or one subsegment impact of price in another
10 category. So I want to directly respond to some
11 comments to Mr. Cunningham and Bob Baird. Now I have
12 a lot of respect for Bob, and he's a very good
13 merchant. I'm not trying to discredit him, I just
14 have Bob responding to Bob; that is, an email from Bob
15 Baird, which we got in December 2010. That was right
16 after the Black Friday event where LG had a huge sale
17 of a four door.

18 And I will just read out. Our thoughts
19 would be that you would view this event just like
20 Black Friday with both open maps and promo maps on
21 selected items. Our ad dates are 6/23, 6/30, 7/7.
22 Event dates are 6/23 to 7/13; that's July 4th, over
23 three weeks. In general is two-and-a-half weeks. In
24 July we view this as about seventy percent of Black
25 Friday. Our key emphasis will be refrigeration and

1 suites. LG has already committed to the event. They
2 will reup a four-door but with a better dispenser and
3 crushed ice. Target retail is \$1,398 or \$1,498. I
4 think that answers a lot of questions.

5 And now I ask you what would you do if you
6 get as Whirlpool that information. You basically have
7 a choice -- first of all, it answers, you know, who
8 triggers here what? In that case, LG was already out
9 there for promotion. Would I have a choice to
10 basically not be present, which basically would have
11 meant I would have had to lay off another 200 people
12 in Amana or participate with a famous Maytag
13 promotion, which was quoted here so often. That's
14 what we've done.

15 The price was pretty much predetermined,
16 because if you know four-door sells at \$1,398, there's
17 not a lot of space to sell a three-door at \$1,598.
18 But I think that answers that part. The last point I
19 just want to make, there was a point about is it
20 possible to make money in bottom mounts? Yes, I
21 absolutely agree with Bob on this statement. We made
22 money on bottom mount before the dumping started, and
23 now when dumping has eased, we make money again. So,
24 I'm convinced GE can make money on bottom mounts if
25 it's a fair level playing field.

1 MR. LEVY: Yeah, I'll just sort of echo a
2 few of the comments that Dr. Bitzer just made, but I
3 think I'll start by going back to the -- the fit,
4 feel, finish spiel that you heard from Mr. Seagriff
5 here when he brought you out here and you looked at
6 the two models. First, just to reiterate a point that
7 I think you understand, I would direct your attention
8 back to Petitioner's Exhibit 15, and when you look at
9 that exhibit, you'll see there are three models along
10 the top. The one in the upper left is this exact SKU
11 that was shown to you.

12 The one in the middle is the exact Whirlpool
13 SKU that was shown to you. And what I found most
14 stunning about that description and overview that Mr.
15 Seagriff gave you was his utter failure to flag for
16 you that there was a major feature difference between
17 the two products, most notably that the Samsung unit
18 had dual evaporators and the Whirlpool model did not.

19 Now, there's some difference in viewpoint as
20 to what the associated cost difference may be with
21 regard to dual evaporator, and what the associated
22 consumer value may be associated with the dual
23 evaporator versus not. Now, Mr. -- counsel for
24 Samsung, Mr. Connelly would have you believe, that an
25 evaporator coil that's \$10. I'm not an engineer, but

1 I know that when you have a dual evaporator, it's not
2 just the coil. It's the fan, it's the thermostats,
3 it's the additional tooling. It's the engineering and
4 product design that goes into that. So, we're talking
5 about, as Dr. Bitzer just indicated, costs that are
6 many multiples of \$10. And to suggest otherwise, is
7 simply to write the truth out of the bill of
8 materials.

9 Now, with that background, recognizing there
10 is an objective feature difference between this
11 Samsung model and the associated Whirlpool model, fit
12 and finish aside, what do we see in the data at a
13 retail level? Well, again, going back to Exhibit 16,
14 I would direct your eyes to the fourth quarter of
15 2011, where the Samsung model is being sold at retail
16 less than the associated Whirlpool model. Why is
17 that? By Samsung's own admission, the map
18 differential between these two SKUs should be \$200.
19 So, why is their product being priced less. What's
20 going on here? And I would ask you to think about
21 that in conjunction with the Commerce Department's
22 final determination of dumping.

23 Another point that I would simply like to
24 address, we heard from counsel for LG, who,
25 essentially, made the argument that you should not

1 somehow be comparing subject import models that were
2 being promoted at a particular period of time with
3 domestic SKUs that were not being promoted during the
4 same time period. And I would submit to you that's
5 exactly what you need to do. To ignore those
6 comparisons when these SKUs are like for like in terms
7 of features is to otherwise give Respondents a license
8 to dump. The fact remains that there is in this
9 marketplace targeted dumping. That is to say, pricing
10 behavior that is focused on particular customers, on
11 particular products, at particular points in time.
12 And that is exactly the mechanism through which injury
13 is caused to domestic industry. And, so, I'd urge you
14 not to ignore those comparisons, but, rather, to focus
15 exactly on them.

16 So, again, going back to Exhibit 16, now, if
17 you look at the more featured Samsung model at 29
18 cubic feet with dual evaporator, that, naturally
19 speaking, should have a map differential of \$400 or
20 \$500, when that product was promoted down to \$1,583,
21 in this case perhaps by the retailer, well, what is
22 the competitiveness of the Whirlpool product at the
23 same price? The answer is it didn't move. By
24 contrast, a less featured and different Maytag model
25 sold in large volumes. Why? Because the price was

1 lowered materially.

2 So, is there a cause and effect between the
3 pricing of subject imports and the direction of
4 Whirlpool prices when Whirlpool is forced to compete?
5 The answer is surely yes. Mr. Cunningham also made a
6 statement, which I found quite perplexing, which is to
7 say somehow that domestic industries market share loss
8 is not so much indicative of causation in this case,
9 particularly, when you see rising sales volumes. And,
10 again, here I would simply direct you back to the
11 statute, which charges you with looking at import
12 volumes, both in absolute and in relative terms. And
13 to read the word relative out of the statute would be
14 an error in law.

15 And, finally, or perhaps my penultimate
16 point, exports. Mr. Connelly asks you to look at
17 Whirlpool export data as somehow suggestive that there
18 is no evidence of causation in this case. And I would
19 simply bring to your attention a point that we will
20 reiterate in our post-hearing brief, which is that
21 there is a different, a fundamental difference in
22 product mix between what Whirlpool sells in the United
23 States and what Whirlpool exports, and to assume they
24 are the same, is to simply read distortion in to the
25 analysis of the data.

1 Final point, and this is the theme we heard
2 a lot about, which is somehow that Whirlpool was slow
3 to innovate. Dr. Bitzer has explained to you in many
4 different ways how these are features, whether it's a
5 vacuum panel to deliver more capacity with the same
6 footprint or whether it's a dual evaporator otherwise,
7 but these are features that are readily available in
8 the marketplace.

9 But, as some of you saw when you visited the
10 Amana plant, the introduction of a new refrigerator
11 platform with these features requires tens of millions
12 of dollars in engineering, requires tens of million
13 dollars in capital expenditure, including substantial
14 tooling. And, in order for Whirlpool to justify this
15 investment, Whirlpool needs to see a reasonable return
16 on investment. What Whirlpool has described for you
17 in its questionnaire response, the details of which
18 are proprietary, is that certain of its investment
19 decision were retarded during the period of
20 investigation by reason of imports. Why? Because
21 depressed market prices caused by subject imports
22 destroyed the economics of reinvestment. Now,
23 Respondent's come back with the chutzpah to say,
24 failure to introduce those models are the very cause
25 of your problem. I would submit to you that the

1 causation dynamic is quite the reverse. So, with
2 those limited points, I would leave it to my partner,
3 John Greenwald, for some closing remarks.

4 MR. GREENWALD: Thank you. The issue here
5 is dumping or more precisely the effect of dump
6 imports on the U.S. industry. There is no question
7 and, frankly, Respondent's do not question, that
8 there -- over the period of investigation, there has
9 been a significant loss of market share by Whirlpool,
10 which was a -- had a much higher presence in the
11 market in 2007 than it now does. And that process was
12 a three, four-year process, in which you see steady
13 erosion of U.S. market share.

14 The case was made that the reason the U.S.
15 industry lost market share was evident in this heart
16 of the market analysis in Exhibit 16. What I'd like
17 you to do if you don't mind is turn the page and go
18 over to Exhibit 17. No, I'm sorry, Exhibit 7 and
19 Exhibit 8; excuse me. It's Exhibit 7 that was the
20 heart of the market exhibit and then turn the page and
21 go to Exhibit 8.

22 And what you see there is a very significant
23 loss of share by Whirlpool in this category where
24 there is no question that they do not have a
25 competitive product. Pricing within this -- within

1 these products is close. It is true that Samsung, in
2 particular, has features like dual evaporators that
3 Whirlpool does not. But everything about the
4 testimony today acknowledged the fact that feature
5 load has value. The question wasn't does feature load
6 have value? Are people willing to pay more or less --
7 more for added features; rather the question was, can
8 you reduce it to some sort of scientific formula?

9 And the answer Respondent's gave you was
10 that is difficult, and, in fact, there certainly isn't
11 any accepted scientific formula. But if I can go from
12 volume here where the claim that Whirlpool's volume
13 loss is simply a function of Whirlpool not being in
14 certain segments of the market to the pricing
15 analysis.

16 What I'd like you to do is to focus on, first,
17 the underselling. What the Petition -- I'm sorry.
18 What the Respondent's want you to do is to take a
19 mechanical view of price underselling. And my first
20 response is okay. What that shows when you do a close
21 read on the staff report on the price underselling is
22 a mixed pattern of overselling and underselling. So,
23 the underselling is there. But then I'd like you to
24 go a step further. You have aggregate numbers on the
25 underselling.

1 And in our pre-hearing brief at Page 7, we gave
2 you a table that disaggregated those numbers. Now, in
3 fairness because of a mistake we made, one of the
4 numbers in terms of overselling and underselling
5 changes. But what you can see in this table is the
6 same pattern of underselling that you see in many of
7 the other analyses that you have before you. When you
8 ask the question who was low in the market among
9 Whirlpool, LG and Samsung? If you want to ask the
10 question what caused this sort of cascade down in
11 price? I would submit to you that, in fact, the
12 underselling data you have in front of you make that
13 point very nicely.

14 If you would go back -- not the under -- the
15 pricing data. If you would go back now a page before
16 that to Table 2 in our prehearing brief. What we did
17 was to take the beginning price in your pricing --
18 price comparisons and take it through, right up to the
19 point at which just before the Commerce Department
20 issued its preliminary determination. So, what we did
21 is we looked at a beginning price, defined as when
22 Whirlpool entered the market, and an ending price,
23 defined as January through September of 2011 price.

24 Those numbers, I submit to you, are self-
25 explanatory. That gets me to a point of law that is

1 important and is frequently overlooked. It certainly
2 has been overlooked by Respondents. Their argument is
3 essentially a no underselling argument. It is
4 disproved on the underselling basis on which its made,
5 but beyond that, it assumes that you can only have
6 causation when there is underselling. And that simply
7 misreads the statute. The statute talks about volume
8 effects, and we have those in spades. And it talks
9 about price effects. And when it talks about price
10 effects, it is written disjunctively, so there is
11 price underselling, price depression or price
12 suppression.

13 Everybody that testified before you today
14 acknowledges that there was suppression in the sense
15 that prices were insufficient to cover costs. I
16 would, in fact, go a step further and say the
17 overwhelming argument -- I mean the overwhelming
18 evidence is of price depression.

19 Now, let me go back to the testimony and try
20 and put this in context. When you think about price
21 suppression, what you're asking yourself -- or for
22 that matter for price depression, what you're asking
23 yourselves are whatever the differences in product
24 features and attributes may be, is there evidence that
25 Whirlpool's prices are either reduced or price rises

1 are constrained by the pricing of subject imports.
2 What the Respondents say, yeah, of course, price
3 matters, but there's no underselling, so it can't
4 matter so much. That, simply, is not true.

5 Let me quote to you from testimony that was
6 given today. The witness for Samsung, roughly, a
7 minute-and-a-half to two minutes in his direct
8 testimony, it's Mr. Kevin Dexter. He said, and this is
9 a quote, I hope it's accurate. I tried to take it
10 down as quickly as I could. His quote, To compete
11 with Samsung, Whirlpool has had to discount its
12 product. Let me, again, repeat that. To compete with
13 Samsung, Whirlpool has had to discount its product. I
14 would be hard pressed to come up with a more succinct,
15 precise definition of price suppression caused by
16 subject imports than what their own witness, in fact,
17 admitted to you, and, frankly, the bulk of the
18 testimony confirms.

19 Second, Mr. Baird spoke at great length
20 about what it would take for Whirlpool to regain
21 market share. And he said to you, oh -- and this is
22 not a precise quote. And under present conditions,
23 they would need a fifteen percent to twenty percent
24 differential to get market share. Well, in fact,
25 that's what dumping is all about. He said again if

1 there were a dumping order imposed in connection with
2 the dialogue with Commission Pearson, he would
3 reassess the viability of the Samsung models on his
4 floor.

5 Let me take this back to 2008, 2009, 2010,
6 2011, and give you the obvious implications of the
7 statement. If the Samsung or, frankly, the LG models
8 were sold at fair value, he would have had to reassess
9 the position of Samsung or -- I guess it's Home Depot,
10 it's LG. LG on his floor year by year. You can't say
11 anymore clearly than that that relative pricing
12 matters and, therefore, in a case that is about
13 dumping, dumping matters.

14 Another, to me, striking piece of evidence
15 put on the record by Respondents was Mr. Klett's
16 pricing model. It's Page 1 I guess. Of Samsung -- if
17 you can get it out, what I'd like you to do is to look
18 at the Samsung price in April of 2008, okay?
19 According to his chart, that's above \$2,500. And it
20 goes down with a very sharp drop and a spike in sales
21 in June 2011, presumably as this is being promoted
22 prior to phase-out. And what he then says to you is
23 that's because we were introducing a new and
24 presumably better model.

25 What I'd like you to do is compare the

1 introductory price marked in red on this chart of the
2 Samsung model with the price of the preexisting model
3 it is replacing, look at that price trend and ask
4 yourself the question, if you want evidence of a
5 gradual decline in prices by subject imports, isn't
6 this pretty good evidence? Doesn't this also stand
7 for the very basic proposition that if price doesn't
8 matter or if price is not even a critical factor, why
9 on earth are the imports priced this way? Why are
10 they promoted this way? The interesting comparison,
11 actually, is over the next page with the Whirlpool
12 model. And what there is you see far less radical
13 difference between a preexisting price and an
14 introductory price. Now, we have been through the
15 slides on the specific models you have. You've looked
16 at these two models here, you've heard the fit and
17 finish argument. The question that has never been
18 answered and can't be answered is if price is not a
19 major factor in the sales of refrigerators and in
20 competition of bottom mount refrigerators between
21 Whirlpool and subject imports, why on earth is there
22 this consistent pattern of radical discounting? The
23 answer you were given today is, oh, what you really
24 ought to do is ignore the discounting. You can't.
25 This is a case about the price impacts of subject

1 imports that have been dumped. And when you sort of
2 look at the totality of the evidence and you step back
3 and you hear, again, Mr. Baird say that if dumping
4 duty force prices up -- oh, this is Mr. Klett. Import
5 value -- if any dumping duties forces prices up,
6 imports will lose market share because the basic
7 economics of supply and demand dictate that result.
8 Well, that's one part of econ. 101. The other part of
9 econ. 101; is when you introduce very significant
10 supply of dumped product, sales increase, and it
11 pushes market prices down.

12 Let me close by reiterating a point that is
13 enormously important. The question was raised several
14 times by one or more of you. Can you increase prices,
15 and when would you increase prices? In fact, since
16 the Commerce Department's preliminary determination,
17 prices have risen I think by an average of about \$200
18 -- \$200 to \$300 a refrigerator. And that has meant a
19 dramatic turn around in Whirlpool's business. The
20 first two months of 2012 are in, and it proves the
21 point that just as things went south during the first
22 period of investigation, since the orders have begun
23 to bite, there has been a dramatic improvement in
24 Whirlpool's operating results, and I cannot think of a
25 clear and more convincing illustration of cause and

1 effect. Thank you.

2 VICE CHAIRMAN WILLIAMSON: Thank you.

3 MR. CUNNINGHAM: I'll be a bit briefer.
4 I used to think I knew what the dumping law was all
5 about. Sometimes I get confused or bemused at this
6 hour of the day. Mr. Greenwald has a strange view of
7 causation under the statute. Let's suppose that
8 someone brings into the United States automobile
9 market, a car that gets 300 miles to the gallon, and
10 sells it at a price that is double the price an
11 American manufacturer whose cars get 15 miles to the
12 gallon. And the U.S. manufacturer loses market
13 share. Mr. Greenwald -- let's assume that the car is
14 dumped. Let's assume that the car is, actually,
15 instead of priced at \$100,000. In its home market,
16 it's price \$110,000, so it's dumped.

17 Mr. Greenwald would say that the car being
18 sold here at \$100,00 is suppressing the prices of the
19 car that gets 15 miles to the gallon or whatever it
20 was in my example. And, Mr. Greenwald would ignore
21 the fact there's a tiny other reason for why the car
22 is succeeding in the U.S. market. That's just not
23 what this law is all about.

24 You need to really look at your underselling
25 analysis here, because there's not much left of this

1 case, frankly, there's a genuine issue -- we win the
2 issue, but a genuine issue as to price suppression.
3 There's not much of anything else left in this case.
4 You've seen that the market share that imports have
5 gotten is predominantly in the areas where the U.S.
6 industry doesn't compete. In this area where the
7 industry does compete in part, not entirely; because
8 they didn't have four-doors, for examples, until this
9 part where the graphs start to narrow. You'll see in
10 the biggest category, certainly, very, very
11 substantial consistent undersell -- overselling by the
12 imports. And you have U.S. industry volume
13 increasing. And the market share loss is really a
14 market share loss primarily because they didn't --
15 weren't in the area where the imports were gaining the
16 market share or in areas where there was no
17 underselling.

18 It's a hard case for the petitioner here. I
19 really do think that the only legitimate issue here is
20 a price suppression issue. I think it's an issue that
21 falls apart if you have no underselling or if you have
22 predominance of overselling. I think Petitioner
23 effectively concedes that there's a predominance of
24 overselling by any method that the Commission
25 ordinarily uses. And I would ask you to look hard at

1 our brief, which analyzes overselling, underselling;
2 every way you could possibly analyze it, and comes out
3 that there's a great predominance of overselling.

4 I don't think you could get to a point where
5 you can say here that an industry that has not lost
6 volume, has lost market share only to imports that it
7 doesn't compete with, and that is not being undersold
8 can get an affirmative determination in this case.
9 Look hard at the underselling. It totally refutes the
10 price suppression issue.

11 Look hard at the analysis, which we'll do
12 for you in more detail of the other aspects of this
13 industry that have the same cost pressures but no
14 import competition. That also refutes the price
15 suppression issue. This really is a case that needs a
16 negative determination, and I urge the Commission to
17 do it.

18 VICE CHAIRMAN WILLIAMSON: Thank you,
19 Petitioners and Respondents. Let's see, so, our
20 hearing is now over. Post-hearing briefs, statements
21 responsive to questions and request of the Commission
22 and corrections to the transcript must be filed by
23 March 20th, 2010. Closing of the record and final
24 release of data to parties is April 10, 2010; and
25 final comments are due April 12, 2012. And, with

1 that, this hearing is closed. Thank you.

2 (Whereupon, at 5:30 p.m., the hearing in the
3 above-entitled matter was concluded.)

4 //

5 //

6 //

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

CERTIFICATION OF TRANSCRIPTION

TITLE: Bottom Mount Combination
Refrigerator-Freezers From Korea
and Mexico

INVESTIGATION NO.: 701-TA-477, 731-TA-1180-1181

HEARING DATE: March 13, 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: March 13, 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