BEFORE THE

UNITED STATES DEPARTMENT OF COMMERCE

AND THE

UNITED STATES INTERNATIONAL TRADE COMMISSION

Case Nos. A-201-841 (Mexico)
A-580-868 (Korea)
C-580-869 (Korea)

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PUBLIC VERSION

LARGE RESIDENTIAL WASHERS FROM SOUTH KOREA AND MEXICO

ANTIDUMPING AND COUNTERVAILING DUTY PETITIONS ON BEHALF OF WHIRLPOOL CORPORATION

VOLUME I

NARRATIVE

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I. INTRODUCTION AND SUMMARY

These antidumping and countervailing duty petitions are submitted to the Department of Commerce ("Commerce" or the "Department") and the U.S. International Trade Commission (the "Commission" or "ITC") on behalf of Whirlpool Corporation ("Whirlpool" or "Petitioner"). They provide compelling evidence that: (1) imports of large residential washers ("LRWs") from the Republic of Korea ("South Korea") and Mexico have been sold in the United States at prices less than fair value; (2) imports of such washers from South Korea have been subsidized; and (3) these dumped and subsidized imports have caused material injury within the meaning of the antidumping ("AD") and countervailing duty ("CVD") statutes to the U.S. industry that produces the "like product."

Whirlpool, which accounts for the vast majority of production of the domestic like product and, therefore, has standing to proceed on its own under the U.S. antidumping and countervailing duty statutes "on behalf of" the domestic industry, has made a very substantial financial and workforce commitment to the manufacture of LRWs in the United States. Having produced conventional top load ("CTL") washers at its Clyde, Ohio plant for many years, Whirlpool more recently began producing high-efficiency top load ("HETL") washers at that facility and, more recently still, began the process of repatriating its offshore production of high-efficiency front load ("HEFL") washers to the Clyde, Ohio plant. Dumped and subsidized imports from South Korea and dumped imports from Mexico have, however, compromised the economics of Whirlpool's U.S. production of subject washers to the point where Whirlpool's ability to maintain its commitment to expanded U.S. production is very much at risk. The core problem has been the determination of two South Korean *chaebols*[1] — Samsung Electronics Co., Ltd. ("Samsung" or "SEC") and LG Electronics, Inc. ("LG" or "LGE") — to expand their presence in the U.S. market by unfairly pricing their highly-featured LRWs in a way that has captured significant sales from the domestic industry and suppressed the prices of Whirlpool's entire U.S.-made product line.

A. The Impact of Dumped and Subsidized Imports on Whirlpool's U.S. Production of Large Residential Washers

Imports of LRWs from South Korea and Mexico have increased significantly since 2008, both absolutely and relative to U.S. consumption, while the volumes and market shares of U.S. production and non-subject imports have dropped:

TABLE 1
Apparent Domestic Consumption of Large Residential Washers
2008-2010 and Jan.-Sept. 2010-2011

				Jan.-Sept.	
	2008	**2009**	**2010**	**2010**	**2011**
Domestic Vol. (MM Units)	4.532	4.264	4.270	3.107	3.189
Domestic Share (%)	72.0%	65.4%	60.4%	58.9%	66.1%
Subject Imports Vol. (MM units)	1.248	1.836	2.511	1.952	1.505
Subject Imports Share (%)	19.8%	28.2%	35.5%	37.0%	31.2%
Non-Subject Imports Vol. (MM units)	0.514	0.419	0.286	0.216	0.131
Non-Subject Imports Share (%)	8.2%	6.4%	4.0%	4.1%	2.7%
Apparent Domestic Consumption (MM Units)	6.294	6.519	7.066	5.275	4.826

Source: **Exhibit 1**

[1] The term *chaebol* refers to conglomerates or financial cliques that are run by powerful South Korean families. The *chaebols* dominate the South Korean economy (within South Korea, the country is sometimes referred to as the "Republic of Samsung"), have developed a reputation for squeezing their suppliers, and can limit competition through, *inter alia*, restricted access to group-controlled distribution channels. They also have demonstrated an ability to exert considerable influence over their customers, and over South Korean government policies generally.

Over the same period, the profitability of Whirlpool's domestic production of LRWs, which [financial performance], was improving until late 2010, but then took a sharp turn for the worse in the fourth quarter of that year and has not recovered:

TABLE 2 U.S. Financial Performance of Whirlpool's U.S. Production of Large Residential Washers					
	2008	**2009**	**2010**	**Jan-Sept 2010**	**Jan-Sept 2011**
Sales Val. ($MM)	[				]
Operating Profit ($MM)	[				]
Operating Profit (%)	[				]
Production Related Workers	[3,247	2,887		2,766	]

Source: **Exhibit 2**

The story behind these aggregate numbers is about the impact of subject imports on each of the three different types of LRWs that Whirlpool produces in the United States (*i.e.*, HETL, HEFL, and CTL washers). Much of the improvement in the economics of Whirlpool's U.S. production from 2008 through the first nine months of 2010 was attributable to Whirlpool's success in growing demand for its new line of HETL washers that was generally priced between Whirlpool's CTL washers and its higher priced HEFL washers. In late 2010, however, when LG began to export its own brand of HETL washers to the United States, there was an abrupt change in this segment of the market, which was compounded when Samsung entered the HETL market in 2011. Even as demand continued to grow, the overall profitability of Whirlpool's sales of its U.S. made HETL washers fell dramatically — and the profits on the larger HETL Whirlpool models that were specifically targeted by Samsung and LG [trend].

At the same time as Samsung and LG began to export their own HETL washers to the United States, they were lowering the prices of their HEFL product lines and, in doing so, destroyed the economics of Whirlpool's decision to repatriate production of its own HEFL washers from its plants in Germany and Mexico. When, in 2008, Whirlpool made the decision to produce its high-end "Alpha" line of HEFL washers in the United States, the retail prices of similarly featured washers was in the $1,200 range. By late 2010, when Whirlpool brought these washers to market, the retail prices had fallen by approximately $200. In fact, the evidence shows that Samsung and LG reduced the prices of their comparable washers just as Whirlpool's U.S. production of its HEFL washers was coming on stream. To compound the problem, because of the pricing of subject imports, the volume of "Alpha" HEFL washers that Whirlpool has been able to sell has never met expectations. The consequence of these developments has been [ ] losses on Whirlpool's domestic production of HEFL washers — and without a check on Samsung's and LG's ability to sell dumped and subsidized product into the U.S. market, [forecast].

Neither Samsung nor LG sell CTL washers in the United States, but as they have lowered the prices of their imported HE (both HEFL and HETL) washers, they have cut into the volumes, and suppressed the prices, of Whirlpool's CTL washer sales. Thus, while the impact of Samsung's and LG's sales of dumped and subsidized washers on Whirlpool's CTL washer business has been *indirect*, it has been no less real and no less adverse than the direct impact of Samsung's and LG's dumping on Whirlpool's U.S. production of HEFL and HETL washers.

The evidence of material injury "by reason of" subject imports in these petitions extends beyond the price suppression caused by Samsung's and LG's pricing and the post-2008 increase in the volumes of their imports to very specific instances of lost sales and lost revenues. Whirlpool's recent loss of a [Sales contract details] is particularly injurious given

Whirlpool's strategy to baseload its Clyde, Ohio washer plant with this business. Whirlpool lost the [brand] bid for [type] washers because, according to [source], its pricing was, on average, significantly higher than subject import pricing for the [brand] products at issue. Had Whirlpool won the contract, it would have given Whirlpool's domestic production of LRWs a much-needed boost, particularly since the lost sales at issue represent approximately [amount] units over a [duration] period. Over the term of the contract, this single sale lost to [co.] represents approximately $[amount] million in revenue that, but for LG's dumping, Whirlpool would have realized. Similarly, in 2008, Whirlpool lost to [co.] a similar bid for the supply of certain CTL and HETL washers under the [brand] brand during the [duration] contract period, representing more than [amount] units over the [duration], valued at more than $[amount] million.

Also significant were: (1) the insistence by [customer] that Whirlpool lower the introductory prices of its "Alpha" line of U.S.-made HEFL washers in order to compete with subject imports and qualify for floor spots at [location] retail stores; (2) a chain of events at [customer] in mid-2010 that forced Whirlpool to reduce the prices of its HEFL washers in order to stem the loss of market share to Samsung; (3) [threat of injury]; and (4) the impact on Whirlpool of sales of Samsung and LG washers at deeply-discounted prices during the second half of 2011.

The pressure that Samsung and LG are placing on Whirlpool's LRW business continues to mount. As the Commission knows, a significant portion of major appliance sales in the United States occurs during discounted holiday promotions, including "Black Friday." Whirlpool believes that Samsung and LG each sold tens of thousands of LRWs at deep discounts (*e.g.*, 50 percent) during their "Black Friday" promotions this year. In fact, because both companies began their "Black Friday" discounts around the November 4th Veterans' Day holiday, their impact on the market this year was unusually pronounced. Whirlpool, by contrast, began its Black Friday promotions closer to November 20 and did not offer the same volumes of discounted washers, or as deep a set of discounts, as Samsung and LG. The result was predictable — Whirlpool lost significant market share during this year's Black Friday promotions.

The price discounting by Samsung and LG over Black Friday reinforces two key considerations that underlie Whirlpool's decision to file these petitions. *First*, the pricing of large residential washers has a direct and substantial impact on consumer purchasing decisions. And *second*, because pricing matters, and because both Samsung and LG price as aggressively as they do, only the discipline of antidumping and countervailing duty orders can address the "material injury" caused by their dumped and subsidized imports.

B. Samsung and LG Have Been Dumping Subject Washers in the United States at Significant Margins

Samsung and LG produce a wide range of consumer goods, including large residential washers and other large household appliances. Both companies have publicly stated their intention to greatly expand their production of household appliances for export and thereby displace Whirlpool as the world's largest appliance manufacturer. To this end, both companies have focused heavily on exporting LRWs to the United States from their production platforms in South Korea and, in Samsung's case, also Mexico. The evidence demonstrates that Samsung and LG have relied on a protected, high-priced South Korean home market for appliances to support their export ambitions.

Whirlpool has collected, and presents in these petitions, compelling evidence of systematic dumping by both South Korean and Mexican LRW producers:

COUNTRY	MARGINS OF DUMPING
South Korea	31.03 % – 106.91 %
Mexico	64.99 % - 74.97 %

While the indicia of dumping are clear, Petitioner is concerned about the ability of Samsung and LG to manipulate their responses to antidumping questionnaires because they exercise effective control over their South Korean suppliers and customers. In order to appreciate the leverage that Samsung and LG have over their suppliers and customers, it is important to understand not only their relationships with their fellow *chaebol* member companies, but also their sheer weight in the South Korean economy.

To give a sense of that weight, consider that the combined consolidated sales revenues of Samsung and LG equaled 18.5 percent of total Korean GDP in 2010. To put this in perspective, the revenues of these two companies relative to the Korean economy is the same as the *combined revenues of the 50 largest U.S. manufacturing companies*, — *i.e.*, *Exxon Mobil, Chevron, GE, ConocoPhillips, Ford, Hewlett-Packard, GM, IBM, Proctor & Gamble, Valero Energy, Archer Daniels Midland, Boeing, Johnson & Johnson, Microsoft, United Technologies, Dell Computer, Pfizer, Marathon Oil, Lockheed Martin, Dow Chemical, PepsiCo, Kraft Foods, Apple, Cisco Systems, Northrop Grumman, Intel, Caterpillar, General Dynamics, Coca-Cola, Honeywell, Abbott Laboratories, Sunoco, Hess, Johnson Controls, Merck, DuPont, Raytheon, International Paper, Oracle, 3M, Deere, Motorola, Fluor, E.I. Lilly, Bristol Myers Squibb, Emerson, Nike, Murphy Oil and Kimberly-Clark — relative to the U.S. economy.*

Accordingly, during the course of its investigation, the Department should not accept at face value any questionnaire response data that, on their face, are implausible, *e.g.*, "designer"

LRW sales to South Korean customers at aberrationally low prices, prices paid to component suppliers that are materially below the prices for comparable parts sold to other customers, etc.

C. Exports of South Korean LRWs Are Being Subsidized

The Government of Korea ("GOK") has funneled, and through 2011 continues to funnel, vast amounts of subsidies to specific South Korean exporting industries, including companies in the home appliance industry, through tax credits and tax deduction programs, as well as under cover of "stimulus" and "green growth" spending. Samsung, LG, and Daewoo Electronics Corporation ("Daewoo" or "DWE") each benefitted from these subsidy programs. In addition, Daewoo continues to benefit from a GOK bailout program that began in 1999 when the Daewoo Group of companies went bankrupt. The bailout of Daewoo (which remains a ward of the South Korean state) involved equity infusions in 2001 and 2002 when the company and its predecessor were unequityworthy, as well as preferential terms for the deferral of debt and interest obligations when the company was uncreditworthy.

In addition to the direct subsidies received by Samsung, LG, and Daewoo, the GOK has given subsidies to the smaller companies that supply Samsung, LG, and Daewoo. Whirlpool believes that the benefits of these subsidies are attributable to Samsung, LG, and/or Daewoo through the benefit they receive from reduced prices for materials, parts, components, and subassemblies. The way in which Samsung and LG have dominated and squeezed their smaller suppliers is well-documented in South Korea. A full investigation of the subsidies alleged in this petition requires close attention to the pass-through to Samsung, LG, and Daewoo of subsidies provided to their respective supplier networks.

* * * *

The current situation is not sustainable. By any objective measure, Whirlpool has been "materially injured by reason of" subject imports during the period of investigation. The cause and effect relationship between, on the one hand, the rise in dumped and subsidized LRW imports from South Korea and Mexico and, on the other, the erosion of Whirlpool's share of the U.S. market, as well as the unprofitability of its U.S. LRW business, is evident from the data summarized in these petitions. Without relief from dumped and subsidized imports from South Korea, and dumped imports from Mexico, the ability of Whirlpool to justify its past investments in American manufacturing, and its planned future investments, [condition].

II. PETITIONER

Whirlpool is a publicly traded U.S. company that produces large residential washers, as well as other household appliances. Whirlpool is incorporated in Delaware; its world headquarters are located at:

Whirlpool Corporation
2000 N. M-63
Benton Harbor, Michigan 49022
Tel: 269-293-5000
www.whirlpoolcorp.com

The address of the U.S. plant at which Whirlpool produces LRWs is:

Whirlpool Corporation
Clyde Division
119 Birdseye Street
Clyde, Ohio 43410
(419) 547-7711

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Whirlpool's contact for inquiries regarding these petitions is:

Adrian Estrada Montemayor
Whirlpool Corporation
2000 N. M-63
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Phone: (269) 923-7212
Fax: (269) 923-6221
Adrian_Estrada@Whirlpool.com

Whirlpool produces large residential washers in the United States for sale under the Whirlpool, Maytag, Roper, Estate, Admiral, Amana, and Crosley brands, and also supplies LRWs to OEM customers for resale under their own brands. As discussed below, Whirlpool believes that it accounted for approximately [95] percent of U.S. production of LRWs during the twelve month period ending September 30, 2011.

III. THE U.S. MARKET FOR LARGE RESIDENTIAL WASHERS AND THE DOMESTIC INDUSTRY

According to the NPD Group — a leading market research firm that compiles data for U.S. retail transactions involving appliances — the following brands of large residential washers were sold during the 2008-2011 period: Amana, ASKO, Bosch, Electrolux, Estate, Fisher & Paykel, Frigidaire, General Electric, Haier, Hotpoint, LG, Maytag, Miele, Samsung, Roper, Speed Queen, Westinghouse, and Whirlpool.[2] Furthermore, Whirlpool knows that Admiral, Kenmore, and Daewoo branded products also appear in the U.S. market.[3]

[2] **Exhibit 3.**

[3] *Id.*

Whirlpool believes that, during the 2008-2011 period, General Electric,[4] Electrolux,[5] Bosch,[6] Fisher & Paykel,[7] Staber,[8] and Alliance[9] all produced LRWs in the United States.

---

[4] GE's contact information is:

Gregory Hoffman
General Appliances & Lighting
GE Appliance Park
Louisville, KY 40225
Phone: (502) 452-7608
Fax: (502) 452-0309
gregory.hoffman@ge.com

[5] Electrolux's contact information is:

George E. Hawranko
Electrolux Home Products, Inc.
20445 Emerald Pkwy SW, Suite 250
Cleveland, OH 44135
Phone: (216) 898-1800
Fax: (216) 898-2340
george.e.hawranko@electrolux.com

[6] Bosch's contact information is:

Tim Harvey
BSH Home Appliances Corporation
5551 McFadden Avenue
Huntington Beach, CA, 92649
Phone: (714) 899-3597
Fax: (714) 901-5980
tim.harvey@bshg.com

[7] Fisher & Paykel's contact information is:

Rebecca Holbrook
Fisher & Paykel Appliances
5900 Skylab Road
Huntington Beach, CA 92647
Phone: (888) 936-7282
Fax: (800) 547-1971
rebecca.holbrook@fp.co.nz

[8] Staber's contact information is:

(footnote continued next page)

Whirlpool further understands that: (1) Fisher & Paykel transferred its LRW production from Ohio to Thailand in October 2009;[10] (2) Bosch closed its LRW production line in New Bern, North Carolina in late-2010;[11] and (3) Electrolux closed its LRW production facility in Webster City, Iowa in Q1-2011 and transferred additional LRW capacity to its facility in Juarez, Mexico.[12]

To summarize, Whirlpool understands that the following companies produced the following brands of LRWs for sale in the U.S. market during the 2008-2011 period:

(continued from last page)

Staber Industries, Inc.
4800 Homer Ohio Lane
Groveport, OH 43125
Phone: (800) 848-6200
Fax: (614) 836-9524
sales@staber.com

[9] Alliance's contact information is:

Scott L. Spiller
Alliance Laundry Systems LLC
Commercial Laundry Systems
221 Shepard Street
Ripon, WI 54971
Phone: (920) 748-3121
Fax: (920) 748-4429
scott.spiller@alliancels.com

[10] **Exhibit 5.**

[11] **Exhibit 6.**

[12] **Exhibit 7.**

TABLE 3 **LRW Brands in U.S. Market and Manufacturer Detail**		
Brand	**Manufacturer**	**Country of Manufacture**
Whirlpool	Whirlpool	US, Mexico, Germany
Maytag	Whirlpool	US, Mexico, Germany
Roper	Whirlpool	US
Estate	Whirlpool	US
Admiral	Whirlpool	US
Amana	Whirlpool	US, Mexico, Germany
Crosley	Whirlpool	US
Kenmore	Various	US, Mexico, South Korea, Germany
LG	LG	South Korea
Samsung	Samsung	South Korea, Mexico
GE	GE, LG, Little Swan	US, South Korea, China
Hotpoint	GE	US
Electrolux	Electrolux	US, Mexico
Frigidaire	Electrolux	US, Mexico
Westinghouse	Electrolux	US, Mexico
Bosch	Bosch	US
Fisher & Paykel	Fisher & Paykel	US, Thailand
Miele	Miele	Czech Republic
Haier	Haier	China
Daewoo	Daewoo	South Korea
Speed Queen	Alliance	US
Staber	Staber Industries	US
ASKO	Antonio Merloni	Sweden

Source: **Exhibit 3**

Whirlpool has standing to petition the Department and the Commission for the imposition of antidumping and countervailing duties on imports of large residential washers from South Korea and Mexico, and there is adequate U.S. industry support for such petitions. **Exhibit 8** reports total U.S. factory shipments of washers (including both LRWs and compact units, which are outside the scope) as measured by the Association of Home Appliance Manufacturers ("AHAM"). The total AHAM shipment figure for the period October 1, 2010 through September 30, 2011 is 7,668,839 units. If total imports of LRWs during the same period under

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tariff subheading 8450.20.0090, *i.e.*, 2,264,958 units, is deducted, then the difference — 5,403,881 units — was supplied entirely from U.S. produced LRWs.[13] Whirlpool's reported LRW production during the same period was [amount] units,[14] which accounts for approximately [95] percent of the 5,403,881 units of domestic like product shipped during the October 1, 2010 through September 30, 2011 period.

In light of the foregoing:

- Whirlpool clearly accounted for more than 25 percent of total production of the domestic like product during the twelve month period from October 1, 2010, through September 30, 2011, and therefore has standing to bring these petitions;[15] and
- Because Whirlpool also accounts for far more than 50 percent of U.S. production of LRWs during that twelve month period, producers that account for a majority of the production of the domestic like product explicitly support these petitions.[16]

IV. RELATED PROCEEDINGS

To the best of Whirlpool's knowledge, there have been no related trade remedy proceedings in the United States against large residential washers from South Korea or Mexico. On September 18, 2003, the Australian Customs Service determined that Samsung and Daewoo had been dumping washing machines from South Korea into the Australian market and imposed remedial measures. On September 6, 2004, the Australian Customs Service expanded those

[13] **Exhibit 9.**

[14] **Exhibit 2.**

[15] 19 U.S.C. § 1673a(c)(4)(A)(i).

[16] 19 U.S.C. § 1673a(c)(4)(A)(ii).

measures to cover imports from LG. The measures were revoked on July 22, 2008, pursuant to a finding that "there is no Australian industry now producing like goods."[17]

V. SCOPE OF PETITIONS AND TARIFF CLASSIFICATION OF THE SUBJECT MERCHANDISE

The products covered by the petitions are all large residential washers ("LRWs") and certain subassemblies thereof from South Korea and Mexico.

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

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in LRWs which incorporate, at a minimum: (a) at least three cabinet surfaces; and (b) a bracket; (2) all assembled tubs[18] designed for use in LRWs which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets[19] designed for use in LRWs which incorporate, at a minimum: (a) a side wrapper;[20] (b) a base; and (c) a drive hub;[21] and (4) any combination of the foregoing subassemblies.

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[17] **Exhibit 10**.

[18] A "tub" is the part of the washer designed to hold water.

[19] A "basket" (sometimes referred to as a "drum") is the part of the washer designed to hold clothing or other fabrics.

[20] A "side wrapper" is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[21] A "drive hub" is the hub at the center of the base that bears the load from the motor.

Excluded from the scope are stacked washer-dryers and commercial washers. The term "stacked washer-dryers" denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term "commercial washer" denotes an automatic clothes washing machine designed for the "pay per use" market meeting either of the following two definitions:

> (1) (a) it contains payment system electronics;[22] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[23] <u>or</u>
>
> (2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[24] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

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[22] "Payment system electronics" denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycle and payment history and provide for transmission to a reader.

[23] A "security fastener" is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a "center pin reject" feature to prevent standard Allen wrenches or Torx drivers from working.

[24] "Normal operation" refers to the operating mode(s) available to end users (*i.e.*, not a mode designed for testing or repair by a technician).

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

VI. PRODUCT INFORMATION

Large residential washers, as defined above, are generally produced and sold in two common configurations, *i.e.*, vertical axis and horizontal axis. LRWs may include a variety of features (*e.g.*, capacity, water heaters, number/types of wash cycles, steam, cabinet finish, etc.) and energy and water consumption characteristics. These petitions include those units that are typically purchased by households for use in a single family dwelling. The petitions exclude small "compact" units with a cabinet width less than 24.5 inches that would be typically used in a mobile home,[25] as well as large washers with a cabinet width greater than 32.0 inches that would commonly be used in commercial or industrial settings.[26] The large residential washers at issue are those that use water and a detergent as the vehicle for cleaning fabrics, not dry cleaning machines.

Certain washers that are sized appropriately for household use, but are tailored for the laundromat trade, are also excluded from the scope of the petitions. Laundromat operators generally want simple, rugged washers, that are payment system-enabled and that are resistant to

[25] *See, e.g.*, **Exhibit 11**.

[26] *See, e.g.*, **Exhibit 12**.

pilferage. Laundromat operators' desire to control operating expenses often leads to limitations on the customer's ability to use more hot water than necessary. Such commercial washers may also be purchased for use in apartment and dormitory laundry room settings. While the "pay per use" segment is well defined and distinct, Petitioner has attempted to specify physical characteristics that are readily identifiable and that unambiguously characterize washers as destined for the pay per use trade.[27]

Although LRWs are sometimes sold with matching dryers, the petitions cover only large residential washers. There exist in the marketplace "combination washer/dryer" machines that purport to perform both the wash and the dry functions in a single cabinet.[28] On balance, the essential character of those units is that of a washer, as the design and construction of such units are primarily driven by the wash-related systems (*e.g.*, water inlets and pumps, dispensers, and motor and drive system) and Whirlpool intends that such units be included within the scope of the petitions. On the other hand, there are washer-dryer units that (a) separate the washing function from the drying function in separate tubs/drums, but (b) integrate the user interface in a single console.[29] Such "stacked washer-dryers" serve a small niche market (*e.g.*, small apartment dwellings) and are excluded from the scope of the petitions.

Attached at **Exhibit 15** is an overview of the different types of LRWs and their associated characteristics, according to *Consumer Reports.*

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[27] For example, if a washer is being sold with a warranty covering both parts and labor, it is generally not a commercial washer. However, from a customs enforcement perspective, that distinction would not be administrable. Accordingly, Petitioner's scope definition focuses on observable physical characteristics.

[28] *See, e.g.,* **Exhibit 13**.

[29] *See, e.g.,* **Exhibit 14.**

A. Domestic Like Product

All automatic washing machines are capable of removing soil from fabric using the wash/rinse/spin cycles that are engineered into the unit, *i.e.*, they can all be used for the same basic purpose. However, there are clear distinctions between the smaller compact units that would be inconvenient for the typical household or the industrial sized units that would not fit through the front door of the typical residence, on the one hand, and those large residential washers that are sized to conveniently service the needs of the typical family, on the other hand. Similarly, there are clear distinctions between the simple, limited functionality, and enhanced security units designed for the "pay per use" laundromat trade, and those designed for, and typically used in, single family homes.

Because the antidumping statute defines the domestic like product as the product that is "most similar in characteristics" and uses with the product under investigation, there is no statutory basis to dispute the proposition that large residential washers produced in the United States by companies such as Whirlpool constitute the "domestic like product." All references to the U.S. market and the U.S. industry in these petitions are to the market for, and U.S. producers of, the domestic like product as defined by the U.S. antidumping and countervailing duty statutes.

In its "like product" analysis, the Commission looks for "clear dividing lines among possible like products and disregards minor variations," focusing on: (1) physical characteristics; (2) end-uses and interchangeability; (3) channels of distribution and producer/customer perceptions; (4) manufacturing facilities, processes, and employees; and (5) price.[30] Large

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[30] *Narrow Woven Ribbons with Woven Selvedge from China and Taiwan*, Inv. Nos. 701-TA-467 and 731-TA-1164-1165, USITC Pub. 4099 (Aug. 2009).

residential washers are distinguished from small residential washers and very large washers on the basis of physical characteristics (*e.g.*, cabinet width and the associated capacity range) producer/customer perceptions, and, to some extent, channels of distribution. Large residential washers are also distinguished from pay per use commercial washers somewhat on the basis of physical characteristics, and strongly on the basis of channels of distribution and producer/customer perceptions. Finally, the pricing differences between (1) units less than 24.5 inches wide, (2) LRWs, and (3) commercial washers, respectively, are also apparent in the marketplace:

TABLE 4
Whirlpool Average Prices to Retailers
for Washers Produced and Sold in United States

$ / unit	**2008**	**2009**	**2010**	**Jan-Sept 2011**
Compact <24.5" [	206		219	]
LRWs [		318		]
Commercial [				]

Source: **Exhibit 2**

CONTAINS RANGED DATA

B. The Production Process

The manufacture of large residential washers is organized into several sub-system manufacturing processes involving a wide variety of materials. Some materials are purchased in bulk, others are purchased as cut, shaped or painted pieces, and others are purchased as component systems. Ultimately, the various components are brought together on an assembly line, and the finished unit is then tested and packed for shipment.

Whirlpool recognizes nine modules in a large residential washer. They consist of the: (1) cabinetry (including top, lid, and door); (2) drive system; (3) wash system; (4) control system; (5) exterior features; (6) interior features; (7) literature; (8) labels; and (9) packaging. The components for each module originate within five areas in Whirlpool's plant, including:

(1) materials receiving; (2) cabinet forming; (3) fabrication support; (4) plastics forming; and (5) machining. Different producers may organize their components and assemblies in different departments, but ultimately the technology and processes they employ are the same.

The material department receives all purchased raw materials, including pre-stamped blanks, electrical subassemblies, injection molded parts, printed literature and labels, and packaging materials. The material department then maintains inventories and delivers materials to the appropriate fabrication department or to the assembly line.

The cabinet forming department produces the exterior metal shell of the washer (including the top, lid and door). Using automated equipment, raw metal blanks are formed from steel coils, stamped, and assembled. Some components are pre-fabricated in the fabrication support department and delivered to the cabinet formers. Cabinets and lids are fabricated and then processed through the paint department. Completed painted cabinets and lids are delivered to the assembly lines. Doors are generally purchased as an assembly, managed by the materials team, and delivered to the assembly line for attachment to the cabinet.

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

Drive system related components, including motor, gears, shafts, seals, metal and plastic housings, are designed and sized by Whirlpool engineers. These components are purchased from specialty manufacturers and fabricated in support departments. Motor manufacturing is highly specialized and it is a high volume manufacturing business.

The plastics forming department processes raw plastic granules or pellets principally into the plastic tubs for the wash unit modules. The plastic granules are melted and injected into plastic molding equipment. Injection molding equipment uses molds designed by Whirlpool to obtain the required geometry. The tubs created through this process are delivered to the final assembly departments.

The wash system module consists of a fabricated basket (drum) and plastic tub joined together. The fabricated basket (drum) is produced using automated equipment. The shell of the basket is formed from steel coils, stamped and welded together. Additional purchased and/or fabricated parts are attached to the shell to create the completed fabricated basket (drum). The wash system assembly includes a fabricated basket (drum) and tub together with a fastening device. The finished wash system is delivered to the assembly line.

The controls and interior and exterior feature components are designed by Whirlpool engineers and are supplied by specialty suppliers. Whirlpool owns these tool dies for all feature components. Whirlpool designs its own electronics hardware and software and uses global manufacturers to make parts to Whirlpool specifications. To drive economies of scale, Whirlpool purchases raw electronic components at global volume scale.

The quality group is responsible for establishing and monitoring systems and processes that ensure conformance to design specification for incoming materials as well as manufactured components within the factory.

The assembly process consists of integrating the self-produced subassemblies and purchased parts on an assembly line. The cabinet, wash unit, drive, and control systems are presented to the assembly line along with interior and exterior features, control system, literature, labels, and packaging. The components, whether purchased or fabricated, are assembled together in a defined sequence to construct the finished washer unit. One hundred percent testing and inspection is performed on the final washer unit. Fit and finish are visually inspected.

After inspection, the finished unit is transferred to the packaging area where labels are applied, literature is included, and the unit is packaged. External protective packaging is applied manually before the unit is automatically shrink-wrapped or automatically packaged in a corrugated box. The completed unit is then shipped to a distribution center.

VII. SOUTH KOREAN AND MEXICAN PRODUCERS AND EXPORTERS

Whirlpool believes that, during the period of investigation, Samsung, LG and Daewoo produced and exported subject washers to the United States from South Korea, and that Samsung Electronics Mexico, S.A. de C.V. ("Samsung Mexico"), Electrolux Home Products de Mexico, S.A. de C.V. ("Electrolux" or "Electrolux Mexico"), and Whirlpool Overseas Manufacturing Sarl ("Whirlpool Mexico") produced subject washers in Mexico and exported them to the United States.[31]

A. South Korea

1. Samsung

Samsung is a major diversified producer of a wide range of products. It is a member of the Samsung *chaebol* and produces LRWs in South Korea at its Gwangju plant, which operated as Samsung Gwangju Electronics ("Samsung Gwangju"), a Samsung subsidiary, until it was merged into Samsung at the beginning of 2011. To the best of Whirlpool's knowledge, Samsung

[31] Controladora Mabe, S.A. de C.V. ("Mabe") also produces LRWs in Mexico, but Petitioner is not aware of any situations where Mabe LRWs are sold into the U.S. market.

Gwangju "sold" LRWs to Samsung before the merger at a transfer price and Samsung, in turn, either exported the washers produced by Samsung Gwangju or sold them in South Korea.

In the South Korean market, Samsung sells its large residential washers to Department stores (such as the Lotte Department Store chain, the Hyundae Department store chain, and the Shinsegae Department store chain), discount stores or "hypermarkets" (such as E-Mart, GS Mart, and Lotte Mart stores), electronics appliance stores (such as Hi Mart and Electro Land) and franchise "Samsung" stores. Whirlpool believes that the Shinsegae Department stores, the E-Mart hypermarkets, and the Samsung stores are affiliated with Samsung within the meaning of the antidumping statute.

Samsung exports LRWs to the United States through its wholly-owned U.S. subsidiary, Samsung Electronics America, Inc. ("SEA"), for resale to its unaffiliated U.S. customers such as Lowe's and Sears.

The address of Samsung's global headquarters is:

Cheil Ryu
Samsung Electronics Co., Ltd.
Samsung Electronics Building
1320-10, Seocho 2-dong,
Seocho-gu, Seoul 137-857, South Korea
Phone: (82) 2-2255-0114
Fax: (82) 2-727-7892
www.samsung.com

Several Samsung affiliates, as defined by 19 U.S.C. § 1677(33), are involved in the production of subject Samsung LRWs in South Korea. These affiliated companies include members of the Samsung Group and smaller companies that belong to the "Samsung Association" and/or depend disproportionately on Samsung in their business. Many of these smaller companies are located in Gwangju and are managed by executives that maintain close ties to Samsung.

2. LG

LG, like Samsung, is a large producer of a wide range of products and is a member of a large South Korean *chaebol*, the LG Group, which is engaged in a variety of goods-producing and service-providing businesses. LG produces LRWs at its Changwon plant ("LG Changwon") which, Whirlpool believes, operates as an LG division rather than as an LG subsidiary.

In the South Korean market, LG sells its large residential washers through department stores, discount stores, electronic appliance stores and LG stores. Hi Plaza Inc. ("Hi Plaza"), which operates 220 retail stores throughout Korea, is a wholly-owned retail subsidiary of LG. Both Hi Plaza and the LG stores are affiliated with LG within the meaning of the antidumping statute.

LG exports its LRWs to the United States either through its U.S. sales subsidiary, LG Electronics USA, Inc. ("LGEUS"), or directly to unaffiliated customers such as [names]. LG also sells LRWs to [customers].

In addition, several other LG affiliates, as defined by 19 U.S.C. § 1677(33), are involved in the production of LRWs in South Korea. These affiliated companies include members of the LG Group and smaller companies that belong to the "LG Association" and/or depend disproportionately on LG in their business. Many of these smaller companies are located in Changwon and are managed by executives that maintain close ties to LG.

The address of LG Electronics' global headquarters is:

Kim Ki-Beom
LG Electronics, Inc.
LG Twin Towers
Yeoido-dong, Yeongdeung po-gu
Seoul, Korea 150-721
Phone: (82) 2-3797-1114
Fax: (82) 2-3777-3428
www.lg.com

3. Daewoo

Daewoo was a member of the Daewoo *chaebol* before it went bankrupt, and it has been a ward of the South Korean government ever since. Daewoo exports its LRWs to the United States through Daewoo Electronics America, Inc. ("Daewoo America").

The address of Daewoo's headquarters is:

Chul-Su Park
Daewoo Electronics Corporation
12th floor, Narakeyum Jeodong Building
1-2 Jeodong 1-Ga.
Jung-ku,
Seoul, Korea
Phone: (82) 2-360-7114
Fax: (82) 2-364-5588
www.daewoo.com

B. Mexico

As noted above, Samsung Electronics Mexico, S.A. de C.V., Electrolux Home Products de Mexico, S.A. de C.V., Whirlpool Overseas Manufacturing Sarl, and Controladora Mabe, S.A. de C.V. all produce LRWs in Mexico. Whirlpool believes that three of these companies — Samsung Mexico, Electrolux Mexico, and Whirlpool Mexico — exported LRWs to the United States during the period of investigation.

1. Samsung Mexico

The contact information for Samsung Mexico is:

Cheil Ryu
Samsung Electronics Mexico, S.A. de C.V.
Av. Benito Juárez 119
Parque Industrial Querétaro,
Querétaro, Qro., Mexico, C.P. 76220
Phone: (52) 442-296-9003
www.samsung.com/mx

2. Electrolux Mexico

The contact information for Electrolux Mexico's LRW plant is:

Joon So
Electrolux Home Products de México, S.A. de C.V.
Ave. de Las Industrias y Kelvin
Parque Industrial A.J. Bermúdez
Cd. Juárez, Chihuahua, Mexico, C.P. 32470
Phone: (52) 656-625-0636
Fax: (52) 555-250-5189
www.electrolux.com.mx

3. Whirlpool Mexico

Whirlpool Mexico's contact information is:

Jessica Paola Pena
Whirlpool Overseas Manufacturing Sarl
Carr. Miguel Alemán, Km. 1613
Col. El Milagro,
Apodaca, N.L. 66634
Mexico
Phone: (52) 818-3292069
Fax: (52) 818-3292052
Jessica_Paola_Pena@whirlpool.com

4. **Mabe**

Mabe's contact information is:

Paul Korder
Controladora Mabe S.A. de C.V.
Paseo de las Palmas
Col. Lomas de Chapultapec, DF 1000
Mexico
Phone: (52) 5591-788145
Fax: (52) 5591-788224
paul.korder@mabe.com.mx

VIII. PRODUCERS AND EXPORTERS OF NON-SUBJECT LARGE RESIDENTIAL WASHERS

In addition to imports from South Korea and Mexico, large residential washers were produced in Germany (by Whirlpool), in the Czech Republic (by Miele) and in China (by Little Swan and Haier), and exported to the United States during the period of investigation. By Whirlpool's count, imports of non-subject washers have fallen by more than 50 percent during the period to less than 3 percent of apparent domestic consumption.

IX. U.S. IMPORTERS OF LARGE RESIDENTIAL WASHERS

To the best of Whirlpool's knowledge, the largest U.S. importers of South Korean and/or Mexican LRWs are SEA, LGEUS, Daewoo, Electrolux Major Appliances North America ("Electrolux NA"), General Electric, and Maytag Sales, Inc. In addition, it is possible that certain retailers may act as the importer of record for certain LRW purchases. The addresses of all known potential importers are provided below:

1. Steve Peterson
Samsung Electronics America, Inc.
105 Challenger Road
Ridgefield Park, NJ 07060
Phone: (973) 601-6000
Fax: (973) 440-1604
speterson@sea.samsung.com

2. John Taylor
LG Electronics USA, Inc.
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632
Phone: (201) 816-2000
Fax: (201) 816-2188
john.taylor@lge.com
www.lge.com

3. Gregory Hoffman
General Appliances & Lighting
GE Appliance Park
Louisville, KY 40225
Phone: (502) 452-4311
Fax: (502) 452-0471.
gregory.hoffman@ge.com
www.ge.com

4. George E. Hawranko
Electrolux Major Appliances North America
Electrolux Home Products, Inc.
20445 Emerald Pkwy SW
Suite 250
Cleveland, OH 44135
Phone: (216) 898-1800
Fax: (216) 898-2340
george.e.hawranko@electrolux.com
www.electrolux.com

5. Adrian Estrada Montemayor
Maytag Sales, Inc.
2000 N. M-63
Benton Harbor, Michigan 49022
Phone: (269) 923-7212
Fax: (269) 923-6221
Adrian_Estrada@Whirlpool.com

6. Dev Mukherjee
Sears Holding Corporation
3333 Beverly Road
MDC2-225A
Hoffman Estates, IL 60179
Phone: (847) 286-6625
Fax: (847) 286-3906
dev.mukherjee@searshc.com
www.searsholdings.com

7. Clint Davis
Lowe's
1000 Lowe's Boulevard
Mooresville, NC 28117
Phone: (704) 758-1000
Fax: (704) 757-0733
clint.t.davis@lowes.com
www.lowes.com

8. Bob Baird
The Home Depot
2455 Paces Ferry Road, N.W. C6
Atlanta, GA 30339
Phone: (770) 433-8211
Fax: (770) 384-2100
Bob_Baird@homedepot.com
www.homedepot.com

9. Mike Vitelli
Best Buy Co., Inc.
7601 Penn Avenue South
Richfield, MN 55423
Phone: (612) 291-1000
Fax: (952) 430-8571
Michael.vittelli@bestbuy.com
www.bestbuy.com

10. Jeffrey McClintic
HH Gregg, Inc.
4151 East 96th Street
Indianapolis, IN 46240
Phone: (317) 848-1517
Fax: (317) 848-8769
jeff.mcclintic@hhgregg.com
www.hhgregg.com

11. Brittany Meyer Musacchio
Asko Appliances
P.O. Box 940609
Plano TX 75094-0609
United States
Phone: (972) 941-1900
Fax: (972) 941-1901
brittanymusacchio@askousa.com
http://www.askousa.com

12. Paul McCormack
Miele Appliance Inc.
22D Worlds Fair Dr.
Sommerset, NJ 0899
Phone: (908) 560-0899
Fax: (908) 560-9649
pmccormack@mieleusa.com

13. Shariff Kan
Haier America Trading
1356 Broadway
New York NY 10018
Phone: (212) 594-3330
Fax: (212) 594-9667
skan@haieramerica.com

14. Rebecca Holbrook
Fisher & Paykel Appliances
5900 Skylab Rd.
Huntington Beach, CA 92647
Phone: (888) 936-7872
Fax: (800) 547-1971
rebecca.holbrook@fp.co.nz
www.fisherpaykel.com

15. Renee Trottier
Daewoo Electronics America, Inc.
7769 N.W. 48th Street
Suite 375
Doral, Florida 33166
Phone: (305) 436-3031
Fax: (201) 460-2645
renee@e-daewoo.com
www.dweusa.com

16. Pamela Baldwin
Almo Corporation
2709 Commerce Way
Philadelphia, PA 19154
Phone: (215) 698-4000
Fax: (215) 698-4080
pbaldwin@almo.com
http://www.almo.com

17. David Trahan
Conns, Inc.
3295 College Street
Beaumont, Texas 77701
Phone: (409) 832-1696
Fax: (409) 832-4344
david.trahan@conns.com
http://www.conns.com

18. Clayton Daniels
Climatic Home Products
The Climatic Corporation
1001 Pinnacle Point Drive, Suite 300
Columbia, SC 29223
Phone: (803) 765-2595
Fax: (803) 765-2725
cdaniels@climaticcorp.com
http://climaticcorp.com/home/climatic-home-products

19. Randy Johnson
Brandsmart USA
3200 SW 42 Street
Hollywood, FL 33312
Phone: (954) 797-4000
Fax: (770) 427-8373
randy.johnson@bm1.brandsmart.com
www.brandsmartusa.com

X. SALES AT LESS THAN FAIR VALUE

A. Introduction

Foreign producers, including Samsung and LG, have been pricing the LRWs they sell in the United States well below fair value in order to expand the volume of their exports to the United States from their production platforms in South Korea and Mexico. In so doing, they have destroyed much of the value associated with the production and sale of LRWs in the United States. Whirlpool has concluded that the only way to address the problem is by challenging Samsung's and LG's export pricing under the U.S. trade remedy laws. To that end, Whirlpool has collected, and presents herein, both U.S. and home market pricing data, and cost of production data, on representative LRWs produced in South Korea and Mexico that have been sold in the United States in significant volumes during the applicable period of investigation ("POI"), *i.e.*, October 1, 2010 through September 30, 2011.

B. South Korea

1. United States Price

The point of departure for antidumping analysis is the gross invoice price to the first unrelated U.S. customer, *e.g.*, the retailer. In the LRW industry, prices to retailers are generally derived from the prices that the retailer charges to the customer (*i.e.*, the so-called "cash register price"). Excellent retail sales data exist that are SKU-specific, contemporaneous with the POI, and cover most U.S. transactions (including retail sales at Sears, Lowe's, and Best Buy). In particular, Petitioner's calculations are based on retail transaction data provided by the NPD Group ("NPD") for appliances sold in the U.S. market.[32]

Petitioner identified three representative SKUs in the NPD database for which cost estimates could also be readily developed. The first model selected is Samsung model WA5451ANW, which is a 4.7 cubic foot[33] top loading washer.[34] The second model selected is Samsung model WF330ANW, which is a 3.7 cubic foot front loading washer.[35] The third model selected is LG model WM2301HW, which is a 3.6 cubic foot front loading washer.[36]

As detailed in **Exhibit 17**, Petitioner calculated the following Net U.S. Prices:

Product	Net U.S. Price
Samsung WA5451ANW	$440.26
Samsung WF330ANW	$363.18
LG WM2301HW	$382.38

2. Normal Value

a. Home Market Price

The point of departure for calculating a price-based normal value is the gross invoice price to the first unrelated home market customer, *e.g.*, the retailer. As in the U.S. market, South Korean prices to retailers are generally derived from the prices that the retailer charges to the

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[32] The NPD detail provided in **Exhibit 16** covers all of the data fields reported by NPD for the selected SKUs under analysis for the antidumping POI, along with weighted-average price calculations.

[33] All capacity measurements are expressed using the applicable Department of Energy ("DOE") methodology, not the International Electrotechnical Commission ("IEC") capacity rating (which is equal to approximately 1.15 times the rated DOE capacity).

[34] **Exhibit 18**.

[35] **Exhibit 19.**

[36] **Exhibit 20**.

customer (*i.e.*, the "cash register price"). In South Korea, retail sales data exist that are SKU-specific, contemporaneous with POI, and cover a significant volume of South Korean market transactions. In particular, Petitioner's calculations are based on pricing information obtained from www.enuri.com ("Enuri"), a South Korean website available to the public which was established in 1998 and which offers Korean consumers access to detailed pricing data derived from major South Korean internet retailers, including Lotte, Hyundai, E-Mart, Home Plus, GS, and CJ. This website has been found to be accurate and reliable by the Korea Consumer Agency, a Korean Government agency.[37] Petitioner used the weighted average of the reported average weekly prices for relevant SKUs during the POI, weighted by the number of reporting retailers for each weekly observation.[38]

Petitioner identified three SKUs in the Enuri database that are comparable to the U.S. models analyzed above and for which cost estimates could also be readily developed. The first model selected is Samsung model WA-RB179NK, which is a 4.4[39] cubic foot top loading washer.[40] The second model selected is Samsung model WW-PJ167CW, which is a 3.6 cubic foot front loading washer.[41] The third model selected is LG model F2501NC1Z, which is a 3.7 cubic foot front loading washer.[42]

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[37] *See* **Exhibit 21** for an excerpt from a Korea Consumer Agency report, referencing the accuracy of the prices reported on the Enuri website at 99.6 percent.

[38] *See* **Exhibit 22** for worksheets showing the weekly prices reported on the Enuri website.

[39] For all washers sold in the South Korean market, Petitioner measured the unit's capacity using the applicable DOE methodology in order to ensure an apples-to-apples comparison.

[40] **Exhibit 23**.

[41] **Exhibit 24**.

[42] **Exhibit 25**.

As detailed in **Exhibit 17**, Petitioner calculated the following Net Home Market Prices:

Product	Net Home Market Price
Samsung WA-RB179NK	$576.89
Samsung WW-PJ167CW	$666.86
LG F2501NC1Z	$516.09

b. Allegation of Sales Below Cost

Petitioner has compared Samsung's Net Home Market Price of $666.86 for model WW-PJ167CW with an estimate of its cost of production for that product, and has also compared LG's Net Home Market Price of $516.09 for model F2501NC1Z with an estimate of its cost of production for that product.[43] Petitioner's methodology for calculating Samsung and LG's product-specific production costs is summarized below and at **Exhibit 26**. This comparison reveals that Samsung's and LG's home market pricing is grossly insufficient to enable them to fully recover their cost of production. Accordingly, Petitioner requests that the Department initiate a sales-below-cost investigation of South Korean respondents.

c. Cost of Production and Constructed Value

Petitioner's cost of production calculation is based on Whirlpool's cost of manufacture for specific SKUs, adjusted for known differences in cost between South Korea and the United States, plus amounts for selling, general, and administrative ("SG&A") and finance expenses.[44] Petitioner first estimated Samsung's and LG's material costs based on Whirlpool's experience. Specific adjustments were made for differences in usage of factors of production, differences in average input prices available to producers in South Korea, and differences in material costs due

[43] **Exhibit 26**.

[44] *Id.*

to differences in technology. Petitioner then adjusted for other known cost differences, including labor, factory overhead, and packing. Petitioner's SG&A and interest expense ratios were based on the 2010 unconsolidated financial statements of Samsung Electronics Co., Ltd. and LG Electronics, Inc., respectively.[45]

Based on the above methodology, Petitioner calculated constructed values for the following South Korean-origin models sold in the U.S. market because there were no comparable above-cost models to which they could be matched in the South Korean home market:

Product	Constructed Value
Samsung WF330ANW	$751.46
LG WM2301HW	$699.27

3. Margins of Dumping

On the basis of this analysis, Petitioner alleges the following dumping margins for South Korean producers:

Product Sold in United States	Dumping Margin Based on Home Market Price	Dumping Margin Based on Constructed Value
Samsung WA5451ANW	31.03%	n/a
Samsung WF330ANW	n/a	106.91%
LG WM2301HW	n/a	82.87%

[45] **Exhibits 27 and 28**.

C. Mexico

1. United States Price

As noted above, Petitioner's calculations are based on transaction data provided by the NPD Group for appliances sold in the U.S. market.[46] For U.S. sales of LRWs from Mexico, Petitioner identified two representative SKUs in the NPD database for which cost estimates could also be readily developed.

The first model selected is Samsung model WF220ANW/XAA, which is a 3.5 cubic foot front loading washer.[47] The second model selected is Frigidaire model FAFW3801LW2, which is a 3.3 cubic foot front loading washer.[48]

As detailed in **Exhibit 17**, Petitioner calculated the following Net U.S. Prices:

Product	Net U.S. Price
Samsung WF220ANW/XAA	$309.45
Frigidaire FAFW3801LW2	$292.30

2. Normal Value

a. Home Market Price

The point of departure for calculating a price-based normal value is the gross invoice price to the first unrelated home market customer, *e.g.*, the retailer. As in the U.S. market, Mexican prices to retailers are generally derived from the prices that the retailer charges to the customer (the "cash register price"). Since no third-party database covering POI sales transactions was reasonably available, in September 2011, Whirlpool conducted its own survey

[46] The NPD detail provided in **Exhibit 16** covers all of the data fields reported by NPD for the selected SKUs under analysis during the October 1, 2010 through September 30, 2011 POI.

[47] **Exhibit 29**.

[48] **Exhibit 30**.

covering POI Mexican retail transactions and used the data obtained as the starting point for its price-based normal value calculations.

Whirlpool's survey included two SKUs — a Samsung model and a Frigidaire model — that are virtually identical to the U.S. models analyzed above and for which cost estimates could also be readily developed. Samsung model WF220ANW/XAX is a 3.5 cubic foot[49] front loading washer,[50] and Frigidaire model FAFW3801LW0 is a 3.3 cubic foot front loading washer.[51]

As detailed in **Exhibit 17**, Petitioner calculated the following Net Home Market Prices:

Product	**Net Home Market Price**
Samsung WF220ANW/XAX	\$490.84
Frigidaire FAFW3801LW0	\$342.93

b. Allegation of Sales Below Cost

Petitioner has compared Samsung's Net Home Market Price of \$490.84 for Samsung model WF220ANW/XAX with an estimate of its cost of production for that product, and has also compared Electrolux's Net Home Market Price of \$342.93 for Frigidaire model FAFW3801LW0 with an estimate of Electrolux's cost of production for that product. Petitioner's methodology for calculating Electrolux's and Samsung's product-specific production costs is summarized below and at **Exhibit 26**. This comparison reveals that Samsung's and Electrolux's home market pricing is insufficient to enable them to fully recover their cost of production. Accordingly, Petitioner requests that the Department initiate a sales-below-cost investigation of Mexican respondents.

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[49] For all washers sold in the Mexican market, Petitioner measured the unit's capacity using the applicable DOE methodology in order to ensure an apples-to-apples comparison.

[50] **Exhibit 31**.

[51] **Exhibit 32**.

c. Cost of Production and Constructed Value

Petitioner's cost of production calculation is based on Whirlpool's cost of manufacture for specific SKUs, adjusted for known differences in cost between Mexico and the United States, plus amounts for SG&A and finance expenses.[52] Petitioner first estimated Samsung's and Electrolux's material costs based on Whirlpool's experience. Specific adjustments were made for differences in usage of factors of production, differences in average input prices available to producers in Mexico, and differences in material costs due to differences in technology. Petitioner then adjusted for other known cost differences, including labor, factory overhead, and packing. Petitioner's SG&A and interest expense ratios — for both Samsung and Electrolux — were based on the 2010 unconsolidated financial statement of Samsung Electronics Mexico, S.A. de C.V., which is the only Mexican LRW manufacturer for whom public financial statements were available during the POI.[53]

Based on the above methodology, Petitioner calculated constructed values for Samsung model WF220ANW/XAA and Frigidaire model FAFW3801LW2 because there were no comparable above-cost models to which they could be matched in the Mexican home market:

Product	Constructed Value
Samsung WF220ANW/XAA	$510.57
Frigidaire FAFW3801LW2	$511.44

3. Margins of Dumping

On the basis of this analysis, Petitioner alleges the following dumping margins for Mexican producers:

[52] **Exhibit 26**.

[53] **Exhibit 33**.

Product Sold in United States	Dumping Margin Based on Home Market Price	Dumping Margin Based on Constructed Value
Samsung WF220ANW/XAA	n/a	64.99%
Frigidaire FAFW3801LW2	n/a	74.97%

XI. LARGE RESIDENTIAL WASHERS FROM SOUTH KOREA ARE SUBSIDIZED

A. Government of Korea Subsidization of Home Appliances

The GOK has a long history of subsidizing its *chaebol* exporters in the electronics industry, whether through significant bailouts or tax reduction programs. A new twist to GOK subsidization has been added recently under the cover of generally available "stimulus" and new "green growth"/"core technology" spending, beginning in 2008 and 2009, with a view to countering the global financial crisis.[54] These more recent subsidies represent simply the latest installment of vast amounts of government funds being funneled to specific South Korean exporting industries. The targeted subsidization has continued through 2010, as evidenced in the Department's preliminary determination and various post-preliminary analyses in the *Bottom Mount Combination Refrigerator-Freezers* investigation,[55] and into the 2011 POI.[56]

[54] Press reporting at the height of the financial crisis in Korea opens a window onto the objectives of these programs and onto the targeted recipients, which include SEC and LGE. The *Korea Times* on July 7, 2009 reported that "cash-rich *chaebol* showed a lukewarm attitude to the investment promotion campaign" of the GOK. *See* **Exhibit C-1**, *The Korea Times* (July 7, 2009), "Firms Lukewarm on Investment." South Korea's President is reported as having pressed *chaebols* into facilities expansion and research and development spending, urging them "to actively build plants and other business-related facilities." *Id.*

[55] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Preliminary Negative Countervailing Duty Determination*, 76 Fed Reg. 55044 (Sept. 6, 2011). *See also Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Post-Preliminary Analysis Regarding the Restructuring of Daewoo Electronics Corporation* (Dec. 21, 2011); *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Post-Preliminary Analysis of New Subsidy Allegations* (Dec. 21, 2011).

Among the South Korean major exporters benefiting from these subsidies are SEC, LGE, and DWE. DWE, for its part, continued its failing home appliance operations during the POI thanks in large part to the GOK-directed workout commenced in 1999, when the Daewoo Group of companies collapsed. The GOK-directed workout involved equity infusions in 2001 and 2002 when the company and its predecessor were unequityworthy, as well as fresh loans and preferential terms for the deferral of existing debt and interest obligations while the company remained uncreditworthy.

These GOK national subsidy programs were complemented during the POI by a variety of subsidies targeted to the suppliers of South Korean *chaebols*, including small- and medium-sized ("SME") suppliers.

Based on information reasonably available to Whirlpool, all of these subsidies are countervailable, and have directly benefitted the manufacture, production and export of LRWs by SEC, LGE, and DWE during the POI.

B. South Korean *Chaebols* and Their Input Suppliers

Because of the significance of *chaebols* such as the Samsung Group and the LG Group to South Korea's economy, and given the way in which major *chaebol* members like SEC and LGE

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[56] Upon the initiation of a countervailing duty investigation of LRWs from South Korea in January 2012, the Department should examine the most recently completed fiscal year for the government and producers/exporters in question. 19 C.F.R. § 351.204(b)(2). Consistent with the Department's regulations and past precedent, and in order to establish the most accurate cash deposit rate for the producers/exporters in question, the POI should therefore be calendar year 2011. *See, e.g., Countervailing Duty Investigation Checklist, Drill Pipe from the People's Republic of China* at 6 (establishing a calendar year 2009 POI for a CVD investigation initiated in January 2010, where the petition was filed on December 30, 2009).

are able to exercise effective control over their networks of smaller dependent suppliers, the Department's investigation of subsidies benefitting SEC and LGE must extend to subsidies granted to all Samsung and LG affiliates within the meaning of 19 U.S.C. § 1677(33) and small- and medium-sized enterprise suppliers that are found to be "cross-owned" within the meaning of 19 C.F.R. § 351.525.[57] If the Department determines that any such affiliates or suppliers are

[57] The pervasiveness of *chaebol* in the Korean economy is well documented. In a paper presented to the Organization for Economic Co-Operation and Development entitled "Chaebol Reform: The Missing Agenda in Corporate Governance," Mr. Yoon Youngmo, International Secretary of the Korean Confederation of Trade Unions, described the "internal structure" of chaebols as follows: "Chaebol owner is different from the owner of an SME: a chaebol owner-chief exercises an unchallenged and unaccountable control over a network of companies whose total assets are 40 to 50 times the capital he actually invested." *See* **Exhibit C-2**, Y. Youngmo, "Chaebol Reform: The Missing Agenda in Corporate Governance," presented at the OECD Conference "Corporate Governance in Asia: A Comparative Perspective," Seoul, March 3-5, 1999 at 3. *See also* **Exhibit C-3**, Sung-Hee Jwa & In Kwon Lee, Competition and Corporate Governance in Korea: Reforming and Restructuring the Chaebol, 44-45 Sung-Hee Jwa & In Kwon Lee ed., Edward Elgar Publishing 2004. Academic literature confirms the abusive control by *chaebols* over their suppliers as an acknowledged fact within South Korea: "The abuse of economic power by the chaebols has a long history and is already well documented. As most firms with market power belong to a chaebol, they have often exploited consumers. They also financially exploit their suppliers by routinely issuing long-term post-dated cheques and squeezing them through price cuts and other concessions in times of financial trouble." Finally, *see* **Exhibit C-4**, Dong-Woon Kim, "Personal and Managerial Capitalism: Evidence from Management in the Korean Chaebol," at 2-3, and 30-35, as presented at The 14th International Economic History Congress, 21-25 August 2006, Helsinki, Finland ("{A}ll legally independent member companies are owned by a family and controlled by a family member, who, as the dominant entrepreneur, takes the status of both the representative owner and the group chairman. This is made possible by strategic interlocking ownership. First, the entrepreneur, who himself has a tiny shareholding, organizes his intimate group consisting of three clusters of in-house shareholders – family members, family-owned charities, and top professional managers of member companies. Then, they together have controlling interests in a few member companies, which, as quasi-holding companies, control the other companies. The dominant entrepreneur is usually a full-time board member and the chief executive officer only in a few companies; sometimes, he is a part-time board member also in some others. He is not involved in management of most other companies, which, however, is under the control of members of the entrepreneur's intimate group and other top managers as the entrepreneur's proxies. As the result, all legally independent member companies, informally or even illegally, constitute one inter-related and interdependent big business with one large-scale managerial hierarchy headed by one dominant entrepreneur.").

cross-owned and, in the case of suppliers, the production of the input products is primarily dedicated to the production of the downstream product, it must request further information from those affiliates and suppliers to determine whether they received countervailable subsidies that are attributable to the production of the LRWs under 19 C.F.R. § 351.525(b)(6).

In this respect, the definition of "affiliated persons" in 19 U.S.C. § 1677(33) includes "(G) Any person who controls any other person and such other person" and provides for purposes of this provision that a person is considered to control another person "if the person is legally or operationally in a position to exercise restraint or direction over the other person." The definition of "cross-ownership" under 19 C.F.R. § 351.525(b)(6)(vi) provides that two or more corporations are cross-owned "where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets." In the Preamble to the Countervailing Duty Final Rule, the Department explains further that cross-ownership exists where corporate interests "have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits)."[58]

It was reported at the start of the global financial crisis that supplier relationships were a major advantage of the South Korean *chaebol* as a "family business" going into the crisis:

> Kim Joo Hoon, an adviser to Finance Minister Kang Man Soo, says wages at large exporters increased in recent years but remained largely depressed at small and medium-sized part suppliers. The big exporters get good quality parts from local suppliers at relatively low costs when compared

[58] 63 Fed. Reg. 65348, 65401 (Nov. 25, 1998).

> with their Japanese or Western rivals,' Kim says. 'This will help the exporters stay competitive in the foreseeable future'.[59]

Based on information reasonably available, there are solid grounds for the Department to collect information regarding cross-ownership of SEC and LGE affiliates, as well as cross-ownership of SEC and LGE SME suppliers, in the same manner as was done in *Bottom Mount Combination Refrigerator-Freezers*. In that investigation, the Department requested the respondents SEC, LGE, and DWE to identify all suppliers of inputs into the production of the subject refrigerators, any suppliers that were affiliated under 19 U.S.C. § 1677(33), and any suppliers that were cross-owned under 19 C.F.R. 351.525(b)(6)(vi).[60] Whirlpool undertook its own independent research based on publically available information to identify SEC and LGE suppliers for purposes of the investigation in *Bottom Mount Combination Refrigerator-Freezers*, and is prepared to do so again. The Department also requested a significant volume of information in that investigation regarding SEC's and LGE's relationships with their suppliers, their supply agreements, and whether the inputs supplied were primarily dedicated to the production of the downstream refrigerators.[61]

Information reasonably available to Whirlpool provides a strong basis to find affiliation and cross-ownership among the Samsung Group and the LG Group companies. The Samsung Group and LG Group of companies are required to report the identity of their member companies under the South Korean Monopoly Regulation and Fair Trade Act ("Fair Trade Act"). In *Bottom*

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[59] **Exhibit C-5**, *Bloomberg Businessweek* (September 19, 2008), "No Crisis for Samsung, Hyundai, and LG: With some rivals hindered by global financial turmoil, South Korea's *chaebol* are expanding fast."

[60] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Preliminary Negative Countervailing Duty Determination*, 76 Fed Reg. 55044 (Sept. 6, 2011).

[61] *Id.*

Mount Combination Refrigerator-Freezers, LGE confirmed that all LG Group companies were crossed-owned and provided copies of the Fair Trade Act and the related Enforcement Decree that supports this conclusion.[62] While SEC refused to acknowledge cross-ownership among the Samsung Group companies, the Fair Trade Act filings of the Samsung Group establish exactly the same basis for a finding of cross-ownership of all companies within the Samsung Group.

Information reasonably available to Whirlpool also provides a strong basis to find affiliation and cross-ownership of SEC's and LGE's SME suppliers. As core *chaebol* member companies, SEC and LGE operationally are able to use the assets of their SME suppliers as though these assets were their own, notwithstanding any financial hardships the SME suppliers suffer as a result.[63] SEC's and LGE's SME suppliers in effect exercise no real financial

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[62] **Exhibit C-6**, *Refrigerators from Korea*, LGE responses to Remaining Questions for Section III of the Department's Initial Questionnaire, (June 29, 2011) (Public) at 1. Under the Act, an "enterprise group" is defined in Clause 2 of Article 2 ("Definitions") as "a group of companies the businesses of which is substantially controlled by the same person according to the following distinction pursuant to the standards prescribed by the Presidential Decree." **Exhibit C-7**, Monopoly Regulation and Fair Trade Act, Article 2; Exhibit 48 (Public), LGE Second Supplemental Questionnaire Response, Part II (August 23, 2011). An "affiliated company" is defined in Clause 3 of Article 2 ("Definitions") of the Act as "where two or more companies belong to the same enterprise group." *Id.* In addition, Clause 1 of Article 3 ("Scope of Enterprise Group") of the Enforcement Decree sets the scope of a "Company in virtual control of the business," and speaks to joint holdings with spouses, blood relatives within six degrees of kinship, and in-laws within four degrees of kinship, as well as companies "the businesses activities of which are in fact controlled by the same person." *Id.*, Enforcement Decree, Monopoly Regulation and Fair Trade Act, Article 3; Exhibit 48 (Public) LG Second Supplemental Questionnaire Response, Part II (August 23, 2011). Also included under Clause 2 of Article 3 of the Enforcement Decree are companies that are "regarded as exercising controlling influences upon the management of the relevant company," including companies that are "subject to controlling influences by the same person, directly or through a person related to the same person, upon making any principal business decisions or conducting services, such as institutional changes in the relevant company and investments in new business." *Id.*

[63] With respect to the SME suppliers of SEC and LGE, Whirlpool notes that *chaebols* have been characterized as having a "dictatorial monopoly" over the entire Korean national economy. *See* **Exhibit C-2**, Y. Yongmo, "Chaebol Reform: The Missing Agenda in Corporate Governance," presented to OECD Conference "Corporate Governance in Asia: A Comparative Perspective,"
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autonomy and SME supplier profitability is a function of Samsung's and LGE's conduct and supply chain practices.

It is a well-known matter of public record in South Korea that SEC and LGE are key members of the Samsung Group and the LG Group *chaebols*.[64] Equally well-known is the GOK's concern about the control exercised by SEC, LGE and other *chaebol* companies over their SME suppliers. South Korean President Lee Myung-bak admonished Samsung, LG, and other *chaebols* on more than one occasion as recently as in 2010 for being "the reason for our SME's current struggles" and urged them to "do more to narrow the gap."[65] In fact, the GOK's

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Seoul, March 3-5, 1999 at 3. ("The dominance of *chaebol* firms has brought about a suffocated development of SME's and a gross imbalance in the national economy. This was exasperated by the recent developments where the power of chaebols has surpassed the capacity of the government and banks, breaking out of their gravitational influence.").

[64] A spokesperson for South Korean President Lee in a briefing on the President's "*meeting with large corporations*" identified large Korean conglomerates as *chaebols*, including Samsung and LG. **Exhibit C-8**, The Blue House Briefing Room (January 24, 2011), "Briefing on meeting with large corporation on export-investment-employment expansion." In addition, a Korean National Assembly study group in a 2008 report on economic reform identified four major Korean conglomerates as *chaebols*: Samsung, Hyundai, LG and SK. **Exhibit C-9**, Korea National Strategy Institute (September 22, 2008), "2008 Research Report for Korean National Assembly: Seeking for Korean Model of Coordinated Market." Finally, *The Economist* magazine describes South Korea's industrial production after the 1997-98 Asian financial crisis as remaining "dominated by a handful of family-controlled conglomerates, called chaebol" and goes on to identify Samsung Group as "the largest of the lot." **Exhibit C-10**, *The Economist* (April 20, 2006), "South Korea and its conglomerates: 'The wages of atonement; Saying sorry is a delicate business – and an expensive one.'" *The Economist* also notes that while other *chaebols* were "forcibly broken up by the government, or allowed to fail under their weight of debt" during and after the Asian financial crisis, Samsung Electronics in particular fared better than most and in fact emerged from that crisis better off. *Id.*

[65] **Exhibit C-11**, *Korea Joonang Daily* (Sept. 14, 2010), "Lee urges businessmen to 'coexist';" **Exhibit C-12**, *Hanopolis* (July 30, 2010), "President Lee Myung-bak clashes with big business;" and **Exhibit C-13**, Korea Ministry of Strategy and Finance (June 24, 2010), "Policy Directions for Managing the Economy in the Second Half of 2010" ("Business practices between large companies and SME's will be improved in a way that result of economic activities spill to the

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own "Small and Medium Business Administration" was reported in 2010 to have found that "large businesses use their market position to force unfair business deals with smaller suppliers."[66] Shortly after President Lee's admonition that *chaebols* were the reason for the struggles of their SME suppliers, both Samsung and LG are reported to have been "scrambling to announce packages designed to better support their suppliers and small and medium-sized enterprises."[67]

During the 2011 POI, South Korean media have reported that Samsung, LG and other *chaebols* "...must be hit for their abusive relationship with suppliers in contrast to large Japanese companies which treat suppliers as 'family.' *Chaebol* growth does not always make small-and

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latter, which will later contribute to raising competitiveness of the SME's"). The Korean Fair Trade Commission also formed a task force in July 2010 charged with examining "unfair" business transactions between large conglomerates and their small suppliers. Commenting on the formation of the task force, Kim Dong-sun, head of the Small and Medium Business Administration stated that, "Statistics show the gap between the profitability of large businesses and that of small and medium enterprises has worsened" and that "We have many subcontractors who say they can no longer keep their businesses, and we urgently need plans to help save them." **Exhibit C-12.**

[66] **Exhibit C-12.**

[67] **Exhibit C-14**, *The Korea Times* (August 22, 2010), "LG Electronics Vows to Better Help Suppliers." The Korea Herald also reported in 2010 that, in response to the calls from the GOK to address *chaebol*-supplier relationship issues, Samsung announced that it would begin directly purchasing core raw materials and providing these to its suppliers, and that "(t)he method will first be applied to the manufacturing process of electronic items such as refrigerators, washers, air conditioners and liquid-crystal display televisions." **Exhibit C-15**, *The Korea Herald* (August 16, 2010), "Samsung Electronics to Form W1 Trillion Fund for Suppliers." Finally, In August 2010, Samsung announced the establishment of a KRW 1 trillion fund to "help its suppliers grow and develop." The Samsung program is "jointly supported by Samsung and the Industrial Bank of Korea" and is to involve the creation of a "Supplier Support Fund", to be used to support facility investment, technological development and operation funding assistance. LG appears to have done the same thing. **Exhibit C-16**, *What Hi-Fi News* (August 16, 2010), "Samsung establishes £500m+ fund to support suppliers, build future."

medium-sized enterprises (SMEs) happy. SMEs have to provide parts to these groups at the most competitive price so that they can maintain their global competitive edge."[68] In addition, South Korean media have reported in 2011 that the profitability gap between SMEs and *chaebols* persists, as discussed in more detail below.

International financial analysts also continue to report on the GOK's own policies to address *chaebol* abuse of their SME counterparts. *The Financial Times* reported during the POI that: "President Lee Myung-bak is beseeching chaebol to share their riches with the rest of the economy, particularly small and medium-sized business (…) So far, success has been slow in coming. Critics say that the chaebol are still squeezing their SME suppliers hard in order to cut costs."[69] *The Financial Times* also reported that: "Big chaebol groups such as Samsung, Hyundai and SK and LG have been criticized for snuffing out or gobbling up SMEs that account for 90 percent of jobs in the country. (…) {The head of a GOK Commission created to protect SMEs also stated: } 'The unfair relationships between large and smaller companies are becoming more serious. We need to fix it,' …"[70]

SEC's abusive control over its SME suppliers is widely reported.[71] Notably, Yeonhap News broke the news of the GOK Fair Trade Commission investigation into SEC in 2010.[72]

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[68] **Exhibit C-17**, *The Korea Times* (Jan. 27, 2011), "Chaebol block sunlight for small firms."

[69] **Exhibit C-18**, *Financial Times* (May 29, 2011), "South Korea: An economy divided."

[70] **Exhibit C-19**, *Financial Times* (April 25, 2011), "South Korea: chaebols chastened."

[71] **Exhibit C-20**, *Hankyoreh News* (Jan. 20, 2010) "Large enterprise suppliers cries out too: pressure to decrease prices make survival difficult… Samsung's explanation 'shifting responsibility'." *Hankyoreh News* provides a relevant illustration of Samsung's control over its suppliers located in and around Gwangju Metropolitan City. The report notes that approximately 80 primary suppliers of Samsung Gwangju (now merged into SEC) are located in the city, with secondary and tertiary suppliers bringing the number to approximately 300 suppliers in total. The report also notes that there are complaints coming from these suppliers concerning the

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According to this report, the GOK appears to have commenced an on-site investigation of Samsung and its then-cross-owned affiliate Samsung Gwangju Electronics Corporation ("SGEC"), including at SEC headquarters in Seoul and SGEC headquarters in Gwangju Metropolitan City. The on-site investigation is reported to have been commenced on conclusion of a prior documentary investigation on Samsung's subcontracting practices, which included

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pressure to survive "due to the supply price depression" being exercised by Samsung. The report quotes one anonymous supplier describing the situation as follows: "'H' supplier who used to supply the refrigerator parts to the SEC Gwangju recently closed down the company. The former president, who once also served as board member for the Samsung's affiliated company, said 'indeed there were other internal factors (to the closure) but why would anyone give up on a factory if you can make money? There is no SME who can survive in this environment." The report goes on to note the view of SME suppliers as being that improvements to Samsung profitability come at the expense of supplier component pricing, and it goes on to describe the notoriety of Samsung's practices in this respect: "Gwangju Large-Small/Medium Enterprise Mutual Growth board president Park Sung Soo, also a Commerce professor at Jeon-Nam University, said 'each time a message of hardship from the SME is handed over to the large enterprises, they simply always claim that it is inevitable in order to increase the international competitiveness– the environment for domestic large-small/medium enterprises' mutual growth is not yet fertile.'" *See also* **Exhibit C-21**, *Hankyoreh News* (May 20, 2008), "Samsung Electronics is having an 'earning surprise', while suppliers suffer minimum wages: Samsung Electronics' Gumi factory Partner Suppliers stop supplying – why?" *Hankyoreh News* broke a story of a supply stoppage affecting Samsung cellular telephone production in the City of Gumi. Key testimonials in this respect include: "The president of one Samsung Electronics component assembly supplier, located in Kyung-book Province Gumi City, complained 'I am not a CEO, I am just a head of an assembly line.' According to him, his company cannot even pay their employees' salaries close to the legal minimum wage, as he has been controlled by Samsung Electronics on manufacturing costs and other various managerial matters." Testimonials also include the following: "Insiders of the assembly supplier we met in Gumi opined that this supply stoppage was triggered because of the repressive control over the Partner Suppliers; and they said that same coercive treatments continue even after the resumption of the supplies. One assembly supplier President said 'Until now, there has been no negotiation in price whatsoever; SEC gathered suppliers in one place and simply notified the price and obtained the signatures on the agreement.' An insider of another Partner Supplier explained 'SEC has forced suppliers to sign an agreement, merely one page document, without any information regarding their cost structure, in the name of trade secret or confidentiality.'"

[72] **Exhibit C-22**, *Yeonhap News* (Nov. 24, 2010) "Fair Trade Commission to conduct field investigation regarding Samsung Electronics' subcontracting practices."

"unfair interference with management," "unfair subcontract supply price setting," and "stealing of technologies."[73]

DC News also reported in 2010 that the South Korean Supreme Court had affirmed KRW 11.5 billion in fines levied on SEC by the GOK Fair Trade Commission for unfair trade practices against its cell phone parts suppliers.[74] It has also been reported elsewhere that the South Korean Fair Trade Commission imposed record-breaking fines against SEC in 2008 in respect of five separate counts of unfair practices involving its suppliers, including the withholding of written supply agreements, the appropriation of suppliers' proprietary technology, and interference in supplier management.[75]

With respect to LGE, information reasonably available to Whirlpool shows that control is also exercised over its SME suppliers through family ties or otherwise.[76] For example, Economy

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[73] *Id.*

[74] **Exhibit C-23**, *DC News* (April 29, 2010), "Fair Trade Commission to conduct field investigation regarding Samsung Electronics' subcontracting practices."

[75] **Exhibit C-24**, *Pressian* (Feb. 22, 2008), "Fair Trade Commission fines Samsung Electronics in record amount: various types of unfair practices and even interference of the Fair Trade Commission Investigation." The Fair Trade Commission's findings are reported as follows: "For this large fine, the Fair Trade Commission said 'There has never been a case where a large enterprise has done 5 different types of unfair practices against subcontractors, all at the same time'." On this point, *SBS News* also reported that Samsung interfered with the Commission's investigation by ordering the destruction of relevant component pricing documentation, leading to additional fines being imposed directly against individual Samsung employees. **Exhibit C-25**, *SBS News* (Feb. 21, 2008), "Abuse by the haves? Samsung Electronics fined KRW 11.5 billion" Notwithstanding such unprecedented enforcement action by the Fair Trade Commission, *SBS News* reported that criticism was voiced in respect of the results of the Commission's investigation: "However, many criticize that the levels of current penalties are not adequate to break away from the deep rooted repression and abuse by the large enterprises against the suppliers, due to systematic problems in the subcontracting."

[76] *See* **Exhibit C-26**, *eToday* (Nov. 2, 2009), "Large enterprises in electronics, unfairly abuse suppliers with their imbalance of power: Economy Reform Institute analyzes Samsung Electronics and LG Electronics' suppliers." *eToday* reported that the Economy Reform Research

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Today reported in 2010 on fines imposed on four LG Group subsidiaries, including LGE, by the South Korean Fair Trade Commission. The charges appear to be for transactions reported as "forced transactions" and the fines are reported to have been in the amount of KRW 691 million.[77]

It was also reported in 2010 that LGE CEO Nam Yong was replaced by Koo Bon-joon, the brother of LG Group Chairman Koo Bon-moo.[78] Financial analysts expected improvement in LG Electronics' performance on the basis of this change of CEOs as Yong was expected to bring, among other things "a faster decision-making process enhancing execution" and "improvement in supply chain management based on his leadership in LG Group."[79]

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Institute had released a study on large enterprises' abuse of power in dealing with SMEs. The study was based on Samsung Electronics and LGE and their respective suppliers. One finding of the study shows that large enterprises transferred capital investment for cost cutting. An insider of the Institute is reported as stating that "there needs to be various safety mechanisms to stop and prevent further exploitive treatments by the large enterprises against SMEs." *Economy Today* also reported that a Korean Cargo Truck Association is suffering from higher oil prices and unfair trade practices by cargo owners. The Association's Changwon group went into strike on May 24, 2008 against LG's subsidiary HI-Logistics, in front of LGE's Changwon factory to protest an inability to pass on the increase of oil prices due to the power imbalance between them and LG. *See also* **Exhibit C-27**, *Economy Today* (May 24, 2008), "Cargo Trucking Association predicts a strike – demands include more relevant transportation pricing."

[77] **Exhibit C-28**, *Economy Today* (Dec. 17, 2010) "19th marks the Fifth anniversary of the Fair Trade Commission Seoul Office – case completion rate at 45.6%."

[78] **Exhibit C-29**, *EETimes* (Oct. 19, 2010), "Analysis: Changes seen at LG and Samsung."

[79] *Id.* In respect of family ties across the Samsung group, it was also reported in 2010 that the son of Samsung Chairman Lee Kun-hee, Lee Jae-yong, was promoted to President and Chief Operating Officer of Samsung Electronics with the expectation that he will "continue to strengthen the competitiveness of Samsung's strategic businesses and to lay the foundation for Samsung's future new growth businesses." *See* **Exhibit C-30**, *Bloomberg* (Dec. 3, 2010), "Samsung Promotes Scions as Lee Family Shows Resilience of 'Chaebol' Model." *The Financial Times* also reported very recently on the possible unwinding of the Samsung Group shareholding structure. **Exhibit C-31**, *Financial Times* (Sept. 14, 2011) "Samsung disposal

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LGE has also publically outlined in its 2010 Sustainability Report a "Win-Win Growth" objective, presumably in response to President Lee's admonitions, whereby it pledged to promote stable business for its SME suppliers through financial support, strengthens managerial capability of its SME suppliers through non-financial support, and enhances communication with its SME suppliers as business partners. Among other things, LGE has announced that it has begun "to fund suppliers' quality enhancement and productivity improvement activities (*e.g.*, molding equipment improvement) (2010: KRW 33 billion, 2011: KRW 37 billion)" and continues "to offer zero-interest funds and network loans to provide ongoing support for the suppliers' financial stability."[80]

Equally notable is a report that the GOK Ministry of Knowledge Economy hosted in 2010 an "SME Supply Price Adjustment Meeting" during which the Ministry met with executives from major South Korean corporations, including SEC, to request that they "lead the relief of SME by realistically setting supply prices and minimizing the raw material prices."[81]

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points to long-term overhaul." In this report, Samsung Everland is described as "the group's de facto holding company, {which} is at the centre of the chaebol's complex web of cross shareholdings." The report continues: "Samsung is South Korea's biggest conglomerate with 83 affiliates involved in various businesses. The group has been under fire at home for its murky corporate governance. Even after disposal, the Lee's grip on power will not be shaken as the founding family owns 46 percent of Samsung Everland. Lee Jae-young, the son and apparent heir of chairman Lee, is the biggest shareholder of Samsung Everland with a 25.1 per cent stake. Chairman Lee owns less than 4 per cent of Samsung Electronics but wields much greater influence because of cross shareholdings."

[80] **Exhibit C-32**, 2010 LG Electronics Sustainability Report, at 52-55 and 74 ("Win-Win Partnership Based on Mutual Trust and Cooperation"/"Fair Trade").

[81] **Exhibit C-33**, *Asia Today* (April 30, 2010) "Government asks large corporations to reflect realities in setting the supply prices – to the raw material suppliers, asks for minimization of the price increases." The report goes on to note that "iron scrap price has increased 23% from the last year" but that the casted product prices from suppliers "only went up 6%" and that carbon

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Information reasonably available shows that South Korean cost studies have quantified the price squeeze felt by SEC's SME suppliers as recently as 2010 on the basis of the observed profitability differential.

For example, the South Korean Federation of Small and Medium Businesses released a report in June 2010 on the results of a survey of SMEs input suppliers. The report showed an 18% increase in the cost raw materials for SMEs over the period January 2009 through April 2010, compared to a 1.7% increase in supply contract pricing over the same period. In terms of proposed solutions, the largest group of respondent SMEs (45.2 percent of respondents) indicated that "strict regulations and prohibitions against large enterprises' collusion and unfair trade practices" was what was needed to address this issue.[82]

In addition, Hankyorae News reported in July 2011 on the profitability gap between SME and *chaebols* in order to "find out the effects of large enterprises' price cutting practices on the SME's performance," and included data specifically on SEC's profitability during 2010 as compared to that of its SME suppliers: the data show an 8.1% differential in operating profit for the former over the latter. SME suppliers are reported as stating that "excessive supply price cutting, stealing of technologies and other chronic unfair subcontracting practices remain unchanged" during 2010, the first year after the announcement of President Lee's "mutual growth" policy seeking to ensure fair treatment of SMEs at the hands of *chaebols*. Hankyorae News further reported that both SEC and SGEC, specifically, were being investigated

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steel pricing "went up 13%, but is supplied to the large corporations at the same price as the last year."

[82] **Exhibit C-34**, Korean Federation of Small and Medium Businesses (June 2010), "Report on supply price setting practices and difficulties for manufacturing SMEs."

by the GOK (Fair Trade Commission) further to allegations of "unfair supply price cutting and stealing {of} technologies."[83]

The Department in *Bottom Mount Refrigerator-Freezers* found a number of suppliers of LGE and SGEC (the producer of the subject merchandise) to be cross-owned. In the 2011 POI, Petitioner notes that there are significant changed circumstances relevant to this issue, notably to merger of SGEC into SEC, effective January 1, 2011.

Given the information outlined above, Whirlpool urges the Department to investigate to the fullest extent the receipt of GOK subsidies by cross-owned SME suppliers and SEC and LGE affiliates. This should include investigation of the GOK's own investigations and findings regarding the relationship between SEC and LGE and their respective suppliers.

C. Countervailable Subsidies Benefitting the Manufacture, Production and Export of Home Appliances

The GOK, as well as regional and local governments and South Korean government corporations and agencies, provide the countervailable subsidies described below on a program-

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[83] **Exhibit C-35**, *Hankyorae News* (July 1, 2011), "One year after the mutual growth policy… SMEs lost hope: (second special) profitability gap comparison investigation between the partner suppliers, and Samsung Electronics and Hyundai Motors show even wider variance than before the mutual growth policy… implementation of measures to improve unfair subcontracting practice is dire." *MK News* reported in August 2010 that unfair subcontracting practices of *chaebols* remain a well-established fact relating to the "Korean economic structure centered on large enterprises." *MK News* reports that based on the GOK Fair Trade Commission orders relating to violations of Korean subcontracting laws, non-payment of notes payable interests, non-payments of invoices, and non-payments of advance payments accounted for 91.6% of all violations in 2009. *MK News* reports further that "cases of large enterprises taking advantage of their market position and not paying or forever delaying payments are common occurrences." *See* **Exhibit C-36**, *MK News* (Aug. 13, 2010) "Heated unfair practice debate…master-servant relationship in subcontracting transactions: the shades of the super accelerated growth in decades; Large enterprise-SME imbalance of power widens continuously; servant suffers by master's unilateral demands."

by-program basis. Each of these programs meets the elements of a countervailable subsidy within the meaning of 19 U.S.C. § 1677(5).

The Department has found a large number of the programs identified below to constitute countervailable subsidies in prior determinations and findings. Many are subsidy programs on their face and have been identified by the GOK as such. All of the subsidy programs identified below are specific to the South Korean home appliance industry and/or its South Korean supplier network, or are contingent on exports.

1. Daewoo Restructuring

The Department in *Bottom Mount Combination Refrigerator-Freezers* has already initiated an investigation into the Daewoo workout.[84] In addition, the Department in that investigation also preliminarily found the program to be a countervailable subsidy.[85] The workout involved the GOK purchase of massive amounts of bad debt from Daewoo Group company creditors, the forced failure of many Daewoo Group subsidiaries, the infusion by the GOK of vast amounts of equity into many other unequityworthy Daewoo Group subsidiaries, the spin-off of the newly infused subsidiaries as new government-owned business entities, and the continued propping up of such uncreditworthy entities through the repeated extensions of the workouts and the accumulation of ever-increasing debt levels by GOK institutions such as the South Korean Asset Management Corporation ("KAMCO").

[84] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: July 15, 2011 New Subsidy Allegations* (Aug. 16, 2011) at 2-6. *See also* **Exhibit C-37**, *Yeonhap News* (22 June 2011), "The Samsung and LG refrigerators alleged by Whirlpool of America, no CVD duties."

[85] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Post-Preliminary Analysis Regarding the Restructuring of Daewoo Electronics Corporation* (Dec. 21, 2011).

DWE is one such new entity, whose home appliances operations were commenced in 2002 based on the transferred/spun-off remains of Daewoo Jeonja Co. Ltd ("DWJ"). Both DWJ and DWE are reported in the South Korean press to have been given equity infusions, through debt-to-equity conversions under GOK-directed terms, totaling as much as KRW 1.46 trillion.[86] DWJ received at least three such infusions in separate amounts of KRW 386 billion on August 14, 2001, of KRW 19 billion on August 22, 2001, and of KRW 330 billion on December 5, 2001, for a total of KRW 735 billion.[87] DWE, for its part, received at least two such infusions in separate amounts of just over KRW 508 billion on November 18, 2002, and of just over KRW 10 billion on December 17, 2002, for a total of just over KRW 519 billion.[88]

DWE continues to this day to benefit from preferential debt financing on non-commercial terms pursuant to repeated extensions and adjustments of the GOK-directed workout.[89] Specifically, the terms of the relevant Memoranda of Understanding regarding the workout were extended, and the repayment of DWJ/DWE debt was deferred, no less than five times:

- December 1, 2006 (workout extended to December 31, 2007);
- December 24, 2007 (workout extended to March 31, 2009);
- March 30, 2009 (workout extended to March 31, 2010);

[86] **Exhibit C-38**, *Donga News* (29 Oct. 2001), "Dewoo Jeonja general shareholders meeting passes non-compensated stock cancellation." *See also* **Exhibit C-39**, Initial Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (September 30, 2011) (Public Version) and **Exhibit C-40**, Supplemental Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Nov. 8, 2011) (Public Version).

[87] **Exhibit C-39** at 14, 16.

[88] *Id.* at 33-34.

[89] *Id.* at 38-41; **Exhibit C-40** at 27-28.

- November 12, 2009 (workout extended to March 31, 2011); and
- January 31, 2011 (workout extended to March 31, 2012).[90]

In addition, no less than six adjustments were made in respect of interest payments:

- December 23, 2003 (deferred application of increased interest rates);
- May 23, 2005 (reduction of KRW-denominated loans to 5% beginning April 1, 2005);
- March 26, 2007 (interest payments deferred until maturity date of December 31, 2007);
- September 29, 2008 (payment of interested accrued between January 1, 2007 and December 31, 2008 deferred until March 31, 2009);
- March 30, 2009 (interest capitalization, interest rate setting, and interest exemption); and
- June 30, 2011 (interest accrued between April 1, 2011 and March 31, 2012 to be paid on March 31, 2012).[91]

On the basis of the public information provided in the *Bottom Mount Combination Refrigerator-Freezers* investigation, as well as on the additional information provided below, Whirlpool submits that there is reason to believe and suspect that the decisions of the GOK to infuse equity into DWE in 2001 and 2002 were inconsistent with the usual investment practice regarding the provision of risk capital in South Korea and that therefore, during the POI, DWE received countervailable benefits flowing from these equity infusions within the meaning of 19 C.F.R. § 351.507(a)(1). Furthermore, Whirlpool submits that there is reason to believe and suspect that DWE has been uncreditworthy in each year of the workout since at least 2001

[90] **Exhibit C-39** at 41; **Exhibit C-40** at 26-27.

[91] **Exhibit C-40** at 27-28.

through to 2011 and that DWE continues to receive countervailable benefits within the meaning of 19 C.F.R. § 351.505(a)(1) during the POI.

a. Background

As described in the context of the *Bottom Mount Combination Refrigerator-Freezers* investigation, by the time Daewoo Group announced a detailed restructuring plan in December 1998, it had become clear that the financial condition of the Group and of its many subsidiaries, including DWJ, was fatal.[92] It had also become clear that the GOK was going to intervene heavily to ensure a successful workout.[93]

Daewoo Group was the second largest *chaebol* in South Korea at that time, with assets of over KRW 77 trillion and revenues of over KRW 62 trillion.[94] Given the magnitude of the outstanding debt owed by Daewoo Group companies to financial institutions alone, which totaled KRW 57 trillion, Daewoo Group's imminent failure was something the GOK was not going to allow.[95]

During the 1998-2002 period, the imminent failure of Daewoo caused turmoil in South Korean financial markets which had just begun recovering from the Asian Financial Crisis.[96]

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[92] **Exhibit C-41**, Congresswoman Lee Gye Gyung (10 Oct. 2005), "2005 National Assembly Inquiry Sourcebook 6: The Truth of Daewoo Workout – the Complete Steps in Dissolution of Daewoo" at 5-11 ("The Truth of the Daewoo Workout").

[93] **Exhibit C-42**, Korean Public Fund Management Committee (August 2001), "2000 Public Fund White Paper" at 4-5, 13-16 ("Public Fund White Paper").

[94] **Exhibit C-41**, "The Truth of the Daewoo Workout" at 9.

[95] **Exhibit C-42**, "Public Fund White Paper" at 5.

[96] **Exhibit C-43**, IMF Working Paper: "The Role of KAMCO in Resolving Nonperforming Loans in the Republic of Korea," at 3-4 ("IMF Working Paper"). *See also* **Exhibit C-42** at 4-5,
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This situation caused the GOK to revert to implementing emergency measures to respond to this new crisis.

According to a report on public fund spending for the year 2000, issued by the Public Fund Management Commission, the GOK devised a KRW 50 trillion bailout fund to "stabilize the market."[97] Certain key objectives for the use of these funds were explicitly targeted to Daewoo, as outlined in the September 2000 press release of the South Korean Financial Supervisory Commission, evidencing an express GOK policy to support the restructuring of Daewoo:

> The prompt action for corporate restructuring is needed to make financial restructuring more effective since the ailing companies are directly responsible for ailing financial institutions. For the stability of financial market, viable companies will be firmly supported by the creditors...
>
> Prompt settlement of the ailing companies
>
> Comprehensive plan for the settlement of 12 affiliates of Daewoo through the sell-off, among others, will be finalized by the end of October, 2000.
>
> For the other 34 workout companies, the plan for early graduation of workout program or liquidation will be determined by the end of November, 2000 based on the review of their viability.[98]

To implement this policy to restructure Daewoo and, in particular, to rescue the home appliances operations of DWJ (now with DWE), the GOK acquired a controlling stake among

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and **Exhibit C-44**, Financial Supervisory Commission (24 September 2000), "Press Release: The 2nd Round Financial Restructuring Plan" at 1-3 ("2002 Financial Restructuring Plan").

[97] **Exhibit C-42**, "Public Fund White Paper" at 15. *See also* **Exhibit C-41**, "The Truth of the Daewoo Workout" at 8.

[98] **Exhibit C-44**, "2002 Financial Restructuring Plan" at 6-7.

Daewoo's bank and investment trust creditors, several of which were GOK policy banks such as the South Korean Development Bank ("KDB") and the Industrial Bank of Korea ("IBK").[99] Beginning in 2000, KAMCO embarked on a mission to purchase Daewoo non-performing loans in the form of uncollateralized company bonds and commercial paper that was held by domestic South Korean investment trusts. These domestic investment trust creditors had up to that point disagreed with the restructuring plan proposed for Daewoo.[100] The GOK solved the problem through its acquisition of approximately KRW 18.48 trillion worth of bonds and commercial paper at a price of KRW 6.41 trillion, thereby becoming the largest single voting rights holder among the creditors with 29.44% of voting rights held.[101] The price KAMCO paid, 34.67 cents on the dollar, has been reported to be much higher than the expected recovery rate or the fair market value. An IMF analysis described this KAMCO purchase as follows:

> (…) KAMCO's public agency nature occasionally compromised its operational autonomy from the government. On such occasions, commercial principles had to give way to other policy considerations. An example is KAMCO's purchase <of> Daewoo bonds from the investment trust companies (ITCs) in the aftermath of Daewoo collapse. KAMCO's purchase was at the behest of the government as part of its strategy to stabilize the ITC sector in the face of heavy redemptions, and the prices paid proved to be far higher than the likely rate of recovery…[102]

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[99] **Exhibit C-39**, Initial Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Sept. 30, 2011) (Public Version) at 25-26.

[100] **Exhibit C-45**, *Yeonhap News* (4 Sept. 1999), "Daewoo restructuring, a dividing line in stock market." *See also* **Exhibit C-41**, "The Truth of the Daewoo Workout" at 6-7.

[101] **Exhibit C-41**, *Id.* at 10.

[102] **Exhibit C-43**, "IMF Working Paper" at 16.

It is clear, therefore, that the GOK intervention in the Daewoo workout leading to massive equity infusions in 2001 and 2002 was not undertaken in accordance with the usual investment practice regarding the provision of risk capital in South Korea.

GOK intervention in the Daewoo workout did not stop there. Because the restructuring plan did not bind overseas creditors, there was a concern that such creditors would adversely interfere with the workout.[103] Indeed, many overseas creditors ultimately disagreed with the terms of the Daewoo restructuring plan.[104] As a result, KAMCO proceeded to buy up Daewoo's outstanding overseas debt over the period 2000 to early 2001. This next purchase was done at even more inflated prices, averaging 39-40 cents on the dollar.[105] KAMCO is reported to have purchased at least two tranches of bad Daewoo debt valued at KRW 4.33 trillion and KRW 190.7 billion, respectively, and paid KRW 1.87 trillion and KRW 61.7 billion, respectively.[106]

All told, the GOK is reported to have invested a total of KRW 1.57 trillion in public funds into DWJ, its subsidiary (Orion Jeonja), and DWE, of which the GOK anticipated recovering only KRW 877 billion or 56%.[107]

According to the South Korean Public Fund Management Committee, these Daewoo-specific bailout measures were vital to the survival of South Korean financial institutions that were incapable of dealing with bad Daewoo debt.[108] This was the case particularly given the

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[103] **Exhibit C-41**, "The Truth of the Daewoo Workout" at 11.

[104] *Id. See also* **Exhibit C-42**, "Public Fund White Paper" at 93-94.

[105] **Exhibit C-41**, "The Truth of the Daewoo Workout" at 11.

[106] *Id.*

[107] *Id.* at 23.

[108] **Exhibit C-42**, "Public Fund White Paper" at 124.

IMF-imposed banking requirement introduced in 2000 which required higher capital reserves for potential bad-debts.[109]

On September 24, 2000, the South Korean Financial Supervisory Commission confirmed in a press release a policy to direct and control the outcome of the Daewoo restructuring through the following means:

> Authorities will solve the Daewoo related financial burden of investment trust companies as early as possible, by purchasing the collateralized (commercial paper) issued by Daewoo.[110]

The GOK also made explicit its plan to direct and control the workouts of selected Daewoo subsidiaries, such as DWJ (whose home appliance operations were to become those of DWE), through debt-to-equity swaps that clearly would not have occurred without GOK intervention. In this respect, the National Assembly of South Korea has reported on the GOK policy and plan through reference to a Q&A developed by the Financial Supervisory Committee on August 16, 1999:

> 8.16 Matters Related to 'Special Agreement for Financial Structure Enhancement' between Daewoo and Major Creditors
>
> Anticipated Inquiry and Corresponding Responses
>
> 1999.8.16
>
> Financial Supervisory Committee
>
> (...)
>
> #8. It is considered that debt-equity infusion would be necessary for an effective separation {of Daewoo Group companies}. In this case, it is considered that public fund infusion would be necessary in order to protect

[109] *Id. See also* **Exhibit C-43**, "IMF Working Paper" at 7.

[110] **Exhibit C-44**, "2002 Financial Restructuring Plan" at 12.

> the loss of the financial institutions. What is the agency's position on this and when is the infusion going to occur?
>
> The plan is to respond aggressively when it is determined that additional public fund infusion is needed in order to maintain the health of financial institutions during Daewoo restructuring and debt-equity swap of loans.
>
> Beginning from the end of the current year when the asset categorization in accordance with future collection ability will be implemented, burden to reserve KRW 9~10 trillion for the allowance for bad debt will occur, including KRW 1~2 trillion for allowances against Daewoo loans.
>
> The burden to reserve for bad debt allowances should first be borne by the financial institutions through expansion of ordinary income, recapitalization or issuance of depository receipts, but
>
> Where problem still arises regarding capital adequacy despite the effort, the government will participate in increasing the capital. The government will infuse public funds through methods such as purchase of subordinate bonds, and will minimize burdens on tax payers.
>
> However the infusion amount and time will be determined at later date, in consideration of creditor financial institutions' bottom line."[111]

The result of the "aggressive response" through debt buy-outs was that the GOK became, in 2001, the direct holder of close to 70% of all DWJ's domestic long term liabilities as set out in the table below:[112]

[111] **Exhibit C-41**, "The Truth of the Daewoo Workout" at 71.

[112] **Exhibit C-46**, 2001 DWJ Annual Financial Report at 42-44.

TABLE 5 DWJ Domestic Long-Term Liabilities	
Lending or Guaranteeing Institution	**Sum of Amount (in 1000 KWR)**
DWJ long-term liabilities held by KAMCO, KDB and IBK	
IBK	45,000,000
KAMCO	2,245,191,444
KAMCO et. al.	378,926,600
KDB	55,622,221
KDB et. al.	35,000,000
Total for IBK, KDB, KAMCO et. al. (A)	**2,759,740,265**
Total Daewoo Jeonja Co. Ltd. long-term liabilities as of Dec 31 2001 (B)	**4,043,764,051**
KAMCO, KDB, IBK et. al.'s share of Daewoo Jeonja Co. Ltd.'s total KRW long-term liabilities (A/B)	**68.25%**
DWJ long-term liabilities held by other financial institutions with significant GOK ownership interest (from near 50% to 100% of GOK shareholdings.) See footnotes to each bank. *This is not intended to be an exhaustive list of all such financial institutions	
Seoul Guarantee Insurance Corp[113]	594,500,000
Korea Exchange Bank[114]	136,471,906
Korea Exchange Bank et. al.	9,406,615
Hanvit Bank[115]	90,087,459
Jo Heung Bank[116]	41,223,585
Cheil Bank[117]	5,741,163

[113] *See* **Exhibit C-47**, 1999 Seoul Guarantee Insurance Corporation Annual Financial Report, **Exhibit C-48**, 2000 Seoul Guarantee Insurance Corporation Annual Financial Report, and **Exhibit C-49**, 2001 Seoul Guarantee Insurance Corporation Annual Financial Report.

[114] *See* **Exhibit C-50**, 2000 Korea Exchange Bank Annual Financial Report, and **Exhibit C-51**, 2001 Korea Exchange Bank Annual Financial Report. The Export-Import Bank of Korea is a GOK-owned policy bank. *See also* **Exhibit C-52**, Export Import Bank of Korea Act.

[115] *See* **Exhibit C-53**, 1999 Hanvit Bank Annual Financial Report, **Exhibit C-54**, 2000 Hanvit Bank Annual Financial Report, and **Exhibit C-55**, 2001 Hanvit Bank Annual Financial Report.

[116] *See* **Exhibit C-56**, 1999 Jo Heung Bank Annual Financial Report, **Exhibit C-57**, 2000 Jo Heung Bank Annual Financial Report, and **Exhibit C-58**, 2001 Jo Heung Bank Annual Financial Report.

[117] *See* **Exhibit C-59**, 1999 Cheil Bank Annual Financial Report, **Exhibit C-60**, 2000 Cheil Bank Annual Financial Report, and **Exhibit C-61**, 2001 Cheil Bank Annual Financial Report.

Total for six listed banks (C)	**877,430,728**
Total Daewoo Jeonja Co. Ltd. long-term liabilities as of Dec 31 2001 (B)	**4,043,764,051**
Six listed banks' share of Daewoo Jeonja Co. Ltd.'s total KRW long-term liabilities (C/B)	**21.70%**
DWJ long-term liabilities *de facto* held by the GOK	
Total Daewoo Jeonja Co. Ltd. long-term liabilities *de facto* held by the GOK as of Dec 31 2001 (A+C)	**3,637,170,993**
Total Daewoo Jeonja Co. Ltd. long-term liabilities as of Dec 31 2001 (B)	**4,043,764,051**
The GOK's share of Daewoo Jeonja Co. Ltd.'s total KRW long-term liabilities {(A+C)/B}	**89.95%**

Source: **Exhibit C-46**, 2001 DWJ Annual Financial Report.

In addition, many of the "private" banks that were major creditors to DWJ were GOK-owned banks over the relevant time period. As a result, the GOK indirectly held nearly 90% of all DWJ's domestic long-term liabilities, as illustrated in the table above.

With the GOK now firmly directing creditor action in restructuring DWJ, it proceeded to make a number of equity infusions by way of debt-to-equity swaps totaling KRW 735 billion.[118]

According to the DWJ's quarterly reports, in and around the time of the first two GOK-directed equity infusions, the average secondary market price for DWJ shares was reported to be approximately KRW 542 per share.[119]

[118] **Exhibit C-39**, Initial Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (September 30, 2011) (Public Version) 14, 16.

[119] *See* **Exhibit C-62**, 2001 DWJ Second Quarter Financial Report, and **Exhibit C-63**, 2001 DWJ Third Quarter Financial Report.

TABLE 6 DWJ's average share price from January 2001 up until August 2001								
(KRW)	July	June	May	April	March	February	January	Total average
Max	895	650	620	530	620	595	570	
Min	540	525	430	405	435	420	355	
Monthly average	717.5	587.5	525	467.5	527.5	507.5	462.5	542.1428571

Sources: **Exhibit C-62**, 2001 DWJ Second Quarter Financial Report, and **Exhibit C-63**, 2001 DWJ Third Quarter Financial Report.

As a result of those first equity infusions in 2001, KAMCO instantly became DWJ's largest shareholder.[120]

The third GOK-directed equity infusion took place in December 2001, when KRW 330 billion of debt was swapped for 66 million shares of DWJ, again yielding KRW 5000 per share.[121] According to the DWJ's quarterly reports, at that time, the average secondary market price for DWJ shares was KRW 916 per share.[122]

TABLE 7 DWJ's average share price from August 2001 up until December 2001					
(in KRW)	August	September	October	November	Total average
Max	1600	1100	1105	795	
Min	800	655	700	570	
Monthly average	1200	877.5	902.5	682.5	915.625

Sources: **Exhibit C-63**, 2001 DWJ Third Quarter Financial Report, and **Exhibit C-65**, 2002 DWJ First Quarter Financial Report.

[120] **Exhibit C-64**, DWJ Disclosure on Change of the Largest and or Major Shareholders.

[121] **Exhibit C-46**, 2001 DWJ Annual Financial Report at 55-56.

[122] *See* **Exhibit C-63**, 2001 DWJ Third Quarter Financial Report, and **Exhibit C-65**, 2002 DWJ First Quarter Financial Report.

During 2001 and early 2002, the secondary market also witnessed a dramatic decrease in the volume of DWJ shares traded, from over 100,000,000 shares in January 2001 down to approximately 200,000 shares by February 2002.[123]

Further debt-to-equity swaps took place in respect of DWE in 2002, after the home appliances operations of DWJ were transferred/spun off to DWE. Through two subsequent infusions that year, total debts of just over KRW 519 billion were swapped for equity priced at KRW 5000 per share, yielding an issuance of approximately 104 million shares.[124]

Thus, the estimate of the total equity infusions into DWJ/DWE reported in DWJ and DWE financial statements and reported in the context of the Department's ongoing investigation in *Bottom Mount Combination Refrigerator-Freezers*, was KRW 1.255 trillion. Since that time, DWE has not issued any shares to the public,[125] nor could Whirlpool find any evidence of market pricing for DWE shares in either the primary or secondary markets.

Notwithstanding these substantial equity infusions, DWE has remained uncreditworthy and unable to obtain long-term loans from conventional commercial sources in the absence of the GOK ownership and backing of the workout. And notwithstanding the dismal financial performance of DWE since 2002, the GOK has continued to direct debt financing to DWE on terms that are anything but conventional pursuant to the repeated extensions and adjustments to the workout outlined above. The ongoing deferral of DWE debt and interest payments, as well

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[123] *Id.*

[124] **Exhibit C-66**, 2010 DWE Annual Financial Report. *See also* **Exhibit C-39**, Initial Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Sept. 30, 2011) (Public Version) 33-34.

[125] *Id. See also* **Exhibit C-67**, 2002 DWE Annual Financial Statement at 30.

as the provision of new preferential financing, was set out in detail in that investigation.[126] This information reasonably available to Petitioner confirms that the DWE workout has been extended and re-extended numerous times and remains in place at the time of the filing of this Petition.

b. GOK-Directed Equity Infusions under the Daewoo Workout

The GOK-directed debt-to-equity swaps of 2001 and 2002, which provided an extraordinary infusion of just over KRW 1.255 trillion to prop up the home appliances operations of DWE, are countervailable subsidies within the meaning of 19 U.S.C. § 1677(5).

(i) Financial Contribution

The GOK debt-to-equity swaps at issue constitute a direct transfer of funds and as such qualify as financial contributions under 19 U.S.C. § 1677(5)(D)(i). In addition, GOK-owned and other commercial banks made similar equity infusions pursuant to GOK entrustment and direction within the meaning of 19 U.S.C. § 1677(5)(B)(iii).

(ii) Specificity

Given that the debt-to-equity swaps at issue were express GOK policies implemented for the sole benefit of the DWJ-turned-DWE, these subsidy programs are both de jure and de facto specific to an enterprise under 19 U.S.C. § 1677(5A)(D)(i) and 19 U.S.C. § 1677(5A)(D)(iii)(I).

(iii) Benefit Conferred

Based on the information provided in support of this allegation and in accordance with 19 C.F.R. § 351.507(a)(7), Whirlpool submits that there is a reasonable basis to believe and

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[126] **Exhibit C-39** at 38-41; **Exhibit C-40** at 24-28, beginning at Question 18.

suspect that DWE received during the POI countervailable benefits flowing from the GOK-directed equity infusions made in 2001 and 2002.

In accordance with 19 U.S.C. § 1677(5)(E)(i) and 19 C.F.R. § 351.507(a)(1), the debt-to-equity swaps at issue create a benefit to the extent that the GOK investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the South Korea. As explained in the Preamble to CVD Final Rule, the Department applies a two-track methodology to determine whether a benefit exists.[127] Under paragraph (a)(2), the Department will first determine whether or not actual private investor prices can serve as a benchmark for the shares purchased by the government. If no such private investor prices exist, paragraph (a)(3) provides that the Department will determine whether or not the recipient funded by the government-provided equity was equityworthy at the time of the equity infusion.[128]

c. No Private Investor Prices for DWJ and DWE Equity

Petitioner believes that no private investor pricing existed for any of the DWJ and DWE equity infusions in either 2001 or 2002 for the following reasons.

First, no other share issuances have been reported other than the debt-to-equity swaps at issue.[129]

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[127] *Countervailing Duties, Final Rule*, 19 C.F.R. Part 351, 63 Fed. Reg. 65,347, 65,372 (Nov. 25, 1998).

[128] *Id.* at 65,372-65,373.

[129] *See* **Exhibit C-46**, 2001 DWJ Annual Financial Report at 55-56, **Exhibit C-66**, 2010 DWE Annual Financial Report, **Exhibit C-67**, 2002 DWE Annual Financial Statement at 30, and **Exhibit C-68**, 2002 DWJ Annual Financial Report at 9.

Second, while other commercial lenders participated in the equity infusions, it is clear from GOK reports and DWE responses to the Department's questionnaires in the *Bottom Mount Combination Refrigerator-Freezers* investigation, that these other commercial lenders were entrusted and directed by the GOK to do so.[130] Applying the Department's test in *DRAMS from Korea*, the GOK established an express policy to support the Daewoo workout and restructuring and took actions in furtherance of that policy.[131] As set out above, the GOK's ownership of DWJ's creditors was large enough for it to dominate and dictate the decision-making process for the DWJ workout.

The GOK, through the voting rights held by KAMCO, KDB, and IBK, held approximately 70% of DWJ's debts during 2001.[132] The GOK also held controlling ownership interests between 1999 to 2001 of Hanvit Bank, Jo Heung Bank, Cheil Bank and Korea Exchange Bank. Hanvit Bank was acquired by Woori Financial Holdings in 2001,[133] which, as set out below, is owned 100% by the GOK. All of these entities were reported to have been intimately involved in the plans for DWJ restructuring in 1999 as part of a "special Daewoo restructuring team."[134]

[130] For example, *see* **Exhibit C-69**, Korea Economic Research Institute (Sept. 2001), "Evaluation of and recommendations for the Corporate Restructuring Promotion Act."

[131] *Notice of Final Affirmative Countervailing Duty Determination: DRAMS from Korea*, 68 Fed. Reg. 37,122 (June 23, 2003).

[132] *See* **Table 1**.

[133] **Exhibit C-55**, 2001 Hanvit Bank Annual Financial Report.

[134] **Exhibit C-41**, "The Truth of the Daewoo Workout" at 5 (Note timeline entry for July 27, 1999).

In addition, the GOK held further controlling ownership interests in other major creditors to DWJ, such as the Seoul Guarantee Insurance Corporation. Indeed, public information reasonably available to Whirlpool suggests that the GOK held a very significant and controlling majority of the voting rights within the DWJ restructuring creditors' committee in 1999, at the time when the Daewoo workout plans were devised, and continued to hold such a majority of the DWJ's domestic long-term liabilities and corresponding voting rights as these plans were implemented.[135] Specifically:

- Seoul Guarantee Insurance Company ("SGIC") held 14.70% of DWJ's 2001 long-term liabilities. The GOK, through the Korean Deposit Insurance Corporation, invested KRW 1.25 trillion in common shares, which amounted to 93.85% of SGIC's voting equity in 1999, 2000, and 2001;[136]

- Hanvit Bank held 2.23% of DWJ's 2001 long-term liabilities. The GOK, again through the Korean Deposit Insurance Corporation, owned 74.7% of Hanvit Bank in 1999, 100% in 2000, and 100% in 2001 (when the ownership was transferred to Woori Bank, a subsidiary of KDIC the Korean Deposit Insurance Corporation);[137]

- Korea Exchange Bank held 3.38% of DWJ's 2001 long-term liabilities. In 1999, the GOK, through the Bank of Korea, owned 15.90% of the Korea Exchange Bank and, through the Export-Import Bank of Korea, owned 16.30% of the Bank. Together, the GOK was the single largest shareholder of the Bank. For the period 2000-2001, the GOK, through the Bank of Korea, owned 10.67% of the Korea Exchange Bank and, through

[135] *Id. See also* **Exhibit C-39**, Initial Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Sept. 30, 2011) (Public Version) at 11-12 and **Exhibit C-40**, Supplemental Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Nov. 8, 2011) (Public Version) at 16-17.

[136] *See* **Exhibit C-47**, 1999 Seoul Guarantee Insurance Corporation Annual Financial Report, **Exhibit C-48**, 2000 Seoul Guarantee Insurance Corporation Annual Financial Report, and **Exhibit C-49**, 2001 Seoul Guarantee Insurance Corporation Annual Financial Report.

[137] *See* **Exhibit C-53**, 1999 Hanvit Bank Annual Financial Report, **Exhibit C-54**, 2000 Hanvit Bank Annual Financial Report, and **Exhibit C-55**, 2001 Hanvit Bank Annual Financial Report.

the Export-Import Bank of Korea, owned 32.50% of the Bank.[138] The Export-Import Bank of Korea is a government run bank established under the *Export-Import Bank of Korea Act*;[139]

- Jo Heung Bank (or "Cho Heung Bank") held 1.01% of DWJ's 2011 long-term liabilities. In each of 1999, 2000, and 2001, the GOK, through the Korean Deposit Insurance Corporation, owned 80.05% of Jo Heung Bank;[140]

- Cheil Bank held 0.14% of DWJ's 2011 long-term liabilities. Throughout 1999, the GOK, through the Korean Deposit Insurance Corporation, owned 96.91% of Cheil Bank, and through Ministry of Strategy and Finance, owned remaining 3.09%. In 2000 and 2001, the GOK, through the Korean Deposit Insurance Corporation, owned 45.92% of Cheil Bank, and through the Ministry of Strategy and Finance, owned 3.09%.[141]

Whirlpool believes that the information provided in support of this allegation provides a reasonable basis to believe and suspect that the GOK, particularly through KAMCO and Korea Deposit Insurance Corporation, was the primary driver of the DWJ/DWE restructuring program, which included the equity infusions in 2001 and 2002.

At a minimum, because the GOK appears to have held a significant and controlling majority of the voting rights of the relevant DWJ/DWE creditors' councils when the workout plans were devised and continued to hold such a majority of the DWJ's voting rights as these plans were implemented, private investor purchasers of the newly issued DWJ/DWE shares would be insignificant and should be disregarded as such pursuant to 19 C.F.R.

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[138] *See* **Exhibit C-50**, 2000 Korea Exchange Bank Annual Financial Report, and **Exhibit C-51**, 2001 Korea Exchange Bank Annual Financial Report.

[139] **Exhibit C-52**, Export Import Bank of Korea Act.

[140] *See* **Exhibit C-56**, 1999 Jo Heung Bank Annual Financial Report, **Exhibit C-57**, 2000 Jo Heung Bank Annual Financial Report, and **Exhibit C-58**, 2001 Jo Heung Bank Annual Financial Report

[141] *See* **Exhibit C-59**, 1999 Cheil Bank Annual Financial Report, **Exhibit C-60**, 2000 Cheil Bank Annual Financial Report, and **Exhibit C-61**, 2001 Cheil Bank Annual Financial Report.

§ 351.507(a)(2)(iii). In any event, the price that any remaining minority creditors not controlled by the GOK paid for DWJ and DWE equity reflected an artificial GOK-set price, rather than a true market price as would be required under 19 C.F.R. § 351.507(a)(2). The investment decisions of these remaining creditors would have been fundamentally distorted by the influence the GOK had over DWJ/DWE creditors at that time based on its overwhelming voting stake acquired pursuant to the stated government policy to implement the restructuring of DWJ/DWE.

The fact that the artificial (par value) debt-to-equity conversion price of KRW 5000 per share bore no relationship of any kind to the prevailing DWJ share prices in the secondary market is simply one indication of the purpose behind the GOK-directed workout of DWJ and DWE at that time.[142] For example, an average secondary market price for DWJ's share in 2001 before the debt-to-equity swap barely reached 10% of the price per share the creditors paid under the GOK-directed restructuring.[143] It has also been reported that Daewoo creditors in 2002 had offered other DWJ shareholders a mere KRW 10 per share to purchase their shares.[144]

Another telling indicator of GOK intervention and distortion is the magnitude of the GOK debt buy-outs required to remove dissention to the Daewoo workout from domestic investment trust companies and overseas bondholders.[145] In addition, the magnitude of the GOK

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[142] **Exhibit C-39**, Initial Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Sept. 30, 2011) (Public Version) at 15-16. **Exhibit C-40**, Supplemental Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Nov. 8, 2011) (Public Version) at 2-6 (response to Question 4).

[143] *See* **Table 2**.

[144] **Exhibit C-70**, *Hankuk Economy* (Oct. 23, 2002), "Daewoo Jeonja determines KRW 10 per share as a price for share buyback in divestiture."

[145] *See* **Exhibit C-41**, "The Truth of the Daewoo Workout" at 9-11, and **Exhibit C-45**, Yeonhap News (Sept. 4, 1999), "Daewoo restructuring, a dividing line in stock market."

funding of Daewoo creditor deficiencies in deposits for bad debt allowances enabled debt-to-equity swaps under a restructuring that would otherwise have not occurred.[146] To this end, the GOK reported that the creditor financial institutions were in no position to cope with the bad debts resulting from Daewoo.[147] Had the GOK not undertaken to backstop the other Daewoo creditors and thereby reduce the risk associated with the debt-to-equity swaps, as outlined in the September 2000 press release of the South Korean Financial Supervisory Service describing the GOK's policy to support the restructuring of Daewoo, the workout and subsequent equity infusions would appear to have been inconceivable.[148]

In addition, the following information supports a finding by the Department of direct and indirect GOK involvement in the DWJ/DWE restructuring and, specifically, of GOK entrustment and direction of non-GOK-owned/controlled DWJ/DWE creditors throughout the relevant Daewoo workout period involving equity infusions and ongoing preferential financing.

In a July 29, 1999 "Korea Economic Update," the GOK (Ministry of Finance and Economy) stated: "The FSC and Daewoo's creditor banks will supervise Daewoo's restructuring process. In addition, the FSC will ask the creditor banks to take additional action, such as disposition of collateral, in order to ensure Daewoo's successful restructuring."[149] In a similar update on October 25, 1999, the GOK announced that "... the government will map out Daewoo's debt-restructuring workout plan as soon as possible. For this purpose, the government

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[146] **Exhibit C-42**, "Public Fund White Paper" at 4-5, 124. *See also* **Exhibit C-41**, *Id.* at 71.

[147] **Exhibit C-42**, *Id.* at 14.

[148] **Exhibit C-44**, "2002 Financial Restructuring Plan"

[149] **Exhibit C-71**, Ministry of Finance and Economy (July 29, 1999), "Korea Economic Update" at 4.

is making its utmost effort to expedite Daewoo's due diligence process."[150] The GOK announced further that it expects "a draft workout plan ... to be made by Daewoo's domestic creditor banks no later than November 6, 1999," and that "... the government will estimate losses for the ITC's {Investment Trust Companies} . . . If ITCs face fund shortages, the government will pump public funds into them."[151]

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[150] **Exhibit C-72**, Ministry of Finance and Economy (Oct. 25, 1999), "Korea Economic Update" at 2.

[151] *Id. See also*: **Exhibit C-73**, Ministry of Finance and Economy (Feb. 28, 2000), "Korea Economic Update" (The GOK reported that: "Based on these situations, the second phase of corporate restructuring will be implemented as follows: Capital structures of the companies will be improved by establishing advanced financial markets. In addition, the nation's *chaebols* will be encouraged to raise their profitability by focusing on their core competencies. Unviable companies will be immediately ousted from the market while viable ones will be revitalized" at 3-4 and "Debt-workout programs will be more effectively implemented... The government will encourage creditor banks to set up CRVs {Corporate Restructuring Vehicles} in the form of either asset management companies or specialized corporate restructuring companies... A special task force will be organized to specialize in restructuring the dismantled Daewoo Group's affiliates. Moreover, subsequent measures regarding foreign creditors of the Daewoo Group will be swiftly completed" at 4); **Exhibit C-74**, Ministry of Finance and Economy (Sept. 8, 2000), "Korea Economic Update" (During the course of the process, the GOK warned its financial services sector that: "Creditor banks, in turn, have neglected their responsibility to supervise owners and managers of workout companies, according to the FSS {Financial Supervisory Service}... Regarding creditor related matters, the FSS will confront non-compliant creditor banks and establish rigid guidelines to correct existing problems" at 3); **Exhibit C-75**, Ministry of Finance and Economy (Sept. 27, 2000), "Korea Economic Update" (Under the heading "Corporate Restructuring" and Item 8 "Reinforcing accountable management systems," the GOK indicated that: "The Financial Supervisory Commission and the Korea Deposit Insurance Corporation will pursue legal actions against managers of firms who renege on their responsibilities. The related law will be set forth in October. A joint agreement will be formulated to reinforce the collaboration of financial institutions on debt redemption and accountability of troubled corporations" at 6); **Exhibit C-76**, Ministry of Finance and Economy (Dec. 21, 2000), "Korea Economic Update" (The GOK advised that: "Based on the assessment by the independent Management Evaluation Committee (MEX), Hanvit Bank, Peace Bank of Korea, Kwangju Bank and Cheju Bank were judged to be not self-sustainable. Consequently, these four banks and Kyongnam Bank, which was under management improvement requirements, will be subject to inclusion as a subsidiary of a government-led FHC {Financial Holding Company} in accordance with policy directions reported to the Tripartite Commission of government, management and labor on July 12, 2000" at 2); and **Exhibit C-77**, Ministry of Finance and Economy (Feb. 16, 2001), "Korea Economic Update" (The GOK explained its

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On September 21, 2000, *The Economist* reported as follows on the consequences of the GOK ensuring that companies such as DWJ/DWE succeeded in their workout: "The government bears a lot of the blame for the banks' woes. Fearful of rising unemployment, it has been loath to let insolvent companies go bust. Financial firms were forced to prop up Daewoo by rolling over its bonds. To no avail: Daewoo still defaulted on some 100 trillion won of debts. Had the banks been allowed to call in loans sooner, they might have lost less. The government also forced banks to pay investors in Daewoo's debt up to 95% of its face value even though it was

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direct involvement in the financial sector and in the restructuring of failing companies (highlighting the former Daewoo Group and its companies by name) as follows: "Thus, the Korean government's role in establishing a well-functioning market system is imperative, not only for a quick turnaround of the Korean economy but also for convincing, sustainable growth. (…) In the initial stages of restructuring, however, prompt, speedy restructuring becomes a distant reality in the absence of government's active role. Korea's corporate restructuring has been proceeding exactly along this path" at 1 and "This is why the government has announced a 'Second Round Restructuring Plan' with a target date. It is intended to give a clear signal to market participants about the government's policy priorities. However, it should not be interpreted as a final date of completion of the restructuring process" at 3. The GOK also explained that: "In fact, the government has become more serious about structural reforms in the financial, corporate and public sectors, especially since August. It has provided a new impetus to reform efforts, witnessed, for example, by putting Daewoo Motor into court receivership, accelerating the privatization process of public enterprises such as Korea Electric Power Corp. and by consolidating the commercial banking system through financial holding companies as well as mergers. (…) While the concerns of foreign investors are understandable, I would like to clarify that Korea's corporate restructuring is fundamentally different from the past attempts to improve the business sector, particularly with regard to the '*chaebols*.' The lessons of Daewoo group suggest that no '*chaebol*' is too big to fail. This principle was confirmed again when creditor banks firmly refused new loan requests from construction firms Woobang and Dong-Ah. (…) If the government in the past directly intervened in the fate of the companies, it is now empowering financial institutions to take on the role of monitoring the financial health of their borrowers and taking appropriate measures to ensure their soundness. This can further be facilitated by the presence of a continuous exit system, in which non-viable companies are removed from the market in an expeditious manner" at 2).

almost worthless."[152] This was preceded by similar reporting by *The Economist* on the challenges the GOK was to overcome in directing the restructuring of Daewoo Group companies: "On August 16th, Daewoo's long-suffering creditor banks announced a government-orchestrated plan to dismantle the sprawling group, signalling what they hope will be the final chapter in a protracted crisis that has cast a cloud over South Korea's recovery. (…) Even achieving the restructuring announced this week will be tough. There are more than 60 South Korean creditor banks in the negotiations, and not all of them are controlled by the government. Foreign banks, which together extended $9.9 billion of loans to Daewoo, are even harder to keep in order."[153]

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[152] **Exhibit C-78,** *The Economist* (Sept. 21, 2000), "The burden on the banks: By propping up companies, South Korea is making things worse, not better."

[153] **Exhibit C-79**, *The Economist* (Aug. 19, 1999), "The death of Daewoo." See also: **Exhibit C-80**, Korean Journal (Vol. 42, No. 1 Spring 2002), "Corporate Restructuring: With an Emphasis on *Jaebol*." (This report, which is contemporaneous to the equity infusions of DWJ/DWE, notes that the Korean financial crisis of the late 1990s prompted the GOK "…to designate 'the resolution of ailing firms' as its first priority in *jaebeol* reform and to decide on the principle that 'corporate restructuring will be directed by creditor financial institutions'." The report adds the following important note in this respect: "Since banks were also subject to restructuring, and as the government ended up being the largest shareholder in numerous banks as a result of financial sector restructuring, this effectively meant that the government would direct the corporate restructuring program through banks and other financial institutions. This was criticized as government intervention through a new kind of government-directed finance…" at 15 and fn 11. Finally, this report highlighted the direct hand that the GOK had in the DWJ/DWE workout by describing a GOK change of policy whereby "…the government has modified its approach after placing Daewoo in workout and going through the Hynudai management crisis" at 19); **Exhibit C-81**, Participatory Democracy (Sept. 1, 1999), "Political abuse of power encourages collusion and fraud: the perspective on Daewoo resolution." (Lee Yoon Ho, Professor, Soon Cheon Hyang University.) (This report noted that the Daewoo workouts at the time "…inevitably {are} led by the government (government owned financial institutions) and it therefore means government take-over of Daewoo group in effect."); and **Exhibit C-82**, Cham World News (Nov. 1, 1999), "{Current investments} Foreign creditors of Daewoo refuse government's workout involving payment delay." (This report detailed how the GOK directly orchestrated the buy-out of the Daewoo foreign creditors, over the "fierce opposition from the domestic creditors" as part of the Daewoo workouts. It also details the steps taken by the GOK to next resolve the positions of

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In addition, a 2003 Korean National Assembly audit report highlighted that loans made to Daewoo under GOK direction resulted in court action on the basis of fraudulent Daewoo financial statements. The findings of this National Assembly audit included the following: "In summary, Daewoo was not intended to receive loans with fraudulent financial statements – it was a situation created by the government-led emergency funding infusion, designed to revive Daewoo group in consideration of the economic circumstances at the time."[154]

More notably, the practice of GOK direction of credit during the time of the DWJ/DWE workout appears to have been a well-established matter of public record. The *Korean Economy Herald*, during the period July 13-18, 2000, published a five-part media report on state-directed banking in South Korea, which had been triggered by labor strikes at South Korean financial institutions through which unions demanded the elimination of the GOK practice of directing credit.

Part one of *the Korean Economy Herald* report noted the reality of the financial sector in South Korea at that time as follows: "...that the government interferes in banks' operations and staffing."[155] In response to a union recommendation to organize financial institution resistance to GOK apportionment of bad debt during that time, the report quotes one anonymous bank president as accepting the inevitability of GOK action to stabilize the South Korean financial

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investment trust companies on the Daewoo workouts, including Korea Investment Trust, Daehan Investment Trust, and Seoul Guarantee Insurance).

[154] **Exhibit C-83**, National Assembly Audit of Deposit Insurance Corp (Finance and Economy Committee).

[155] **Exhibit C-84**, *Korean Economy Herald* (July 13, 2000), "It is time to end the state-directed banking: (1) Bank presidents sandwiched."

markets but at the same time as being "repulsed by the government's lead."[156] A general sense of obedience by banks to GOK direction is reported "because they cannot avoid the government's influence," which included for example "the selection of Kim Sang Hoon, a vice commissioner of the Financial Supervisory Commission, as Kookmin Bank's president." South Korean academic institutions (Korea Financial Research Institute; Incheon University) are also reported as weighing in on the need to correct GOK-directed banking practices "like staffing and use of assets."[157]

Part two of the *Korean Economy Herald* report noted that South Korean financial institutions at the time "{had} to operate like government owned entities as a result of the government's 'demand for cooperation'..." and could not "...ignore the government's demands."[158] The *Korean Economy Herald* report noted that the problem was wide spread, affecting "...not only the government owned banks like Hanvit Bank and Korean Exchange Bank, which have received public funds, but also others."[159] This report also detailed how Hanvit Bank in particular was required to take over "3 Daewoo related workout projects" which affected its BIS position, and that the reality at the time was "...that healthy banks who haven't received public funds, as well as government-owned banks who did receive them, are quick to concede to the government's cooperation demand."[160] GOK Financial Supervisory Commission

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[156] *Id.*

[157] *Id.*

[158] **Exhibit C-85**, *Korean Economy Herald* (July 14, 2000), "It is time to end the state-directed banking: (2) Banks without owners... suck it up or lose."

[159] *Id.*

[160] *Id.*

(FSC) executives were reported as having pressured investment trust companies at the time preceding the Daewoo crisis, to force them to acquire bad Daewoo commercial paper to avoid Daewoo's bankruptcy, and that one year later a president of one such company noted that the practices did not yield positive results: "…we lost 20% following the Financial Supervisory Commission's directions, but the government now has the burden of upset financial institutions and market with no confidence."[161] Finally, this part of the report detailed how the GOK direction was "usually communicated through phone calls" with the practice being so rampant that "…recording phone calls has become an industry practice among the investment trust banks whenever the Financial Supervisory's oral commands are given."[162]

Part three of the *Korean Economy Herald* report described in detail the controversial appointment of Kim Sang Hoon, a former GOK Bank Supervisory Vice Commissioner, as Kookmin Bank's new president. The practice of FSC staffing direction is also reported to have occurred with respect to the Korea Exchange Bank, and with frequency in respect of "other banks and investment trusts."The Report also described the resignation of an academic member of a GOK-established Bank President Recommendation Committee, on the basis that "state-direction finds its way even into the appointment of outside directors."Finally, the report noted that "International Management Development in Switzerland ranks Korean government's degree of market interference as second in the world, following Slovenia."[163]

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[161] *Id.*

[162] *Id.*

[163] **Exhibit C-86**, *Korean Economy Herald* (July 15, 2000), "It is time to end the state-directed banking: (3) Parachute staffing… remote controlling from and to wherever."

Part four of the *Korean Economy Herald* report noted the pervasiveness of GOK staff appointment practices: "Contrary to the policy to grow the banks into market oriented financial companies after the chaos, the government has appointed government-related personnel into the banks in large scale."[164] An insider at Korea Exchange Bank is reported to have commented on this new reality as follows: "We expect less 'business person' skills from the former government bureaucrat President; rather, the expectation is more interactions with the government."[165] The report detailed how Hanvit Bank was the first to lead GOK stabilization efforts, notwithstanding its financial difficulties: "Hanvit Bank is also one who paid the largest sum of money to the bond-stabilization funds and bond funds, even in the dire worries regarding its BIS position. It has also taken over 5 Daewoo workouts, including Daewoo Jeonja and Daewoo Jeonja Parts it has assumed initially, and 3 others discarded by Jeil bank – Daewoo Inc., Daewoo Communications, Diners Card – of the total of 12 Daewoo companies."[166] Joheing Bank and Seoul Bank were also reported to have been under similar control and direction, leading to significant labor unrest by bank staff.[167] This fourth part of the report also noted that the Korean secondary financial industry, which included Daehan Life, Korea (Hankook) Investment Trust, and Daewoo Financial prior to the merger into the GOK Deposit Insurance Corporation, was set to become "an exclusive field of the government."[168]

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[164] **Exhibit C-87**, *Korean Economy Herald* (July 17, 2000), "It is time to end the state-directed banking (4) Collar on the state banks."

[165] *Id.*

[166] *Id.*

[167] *Id.*

[168] *Id.*

Finally, part five of the *Korean Economy Herald* report noted that the Housing Bank president distributed an email to bank executives stating that he would "refuse any {GOK} interference in appointment procedures," and specified further that he "…even felt extreme anger after various government high officials were making demands regarding the executive shuffles and promotions by phone calls or personal visits."[169] The fifth part of the report also noted that this GOK practice was not isolated to the Housing Bank. Across the sector, it was reported that "{e}ven if the front-line professional opposes making a loan or providing funding because the criteria are not met, the decision is made by 'Sir or Madam,' to whom the demand or request has been made. The one in the middle merely agonizes over the dilemma between the two, thinking of his future career progression."[170]

Much of the evidence on the record of the *DRAMS from Korea* investigation regarding GOK entrustment and direction of Hynix creditors during the period 2001-2002, and the evidence on the record in the current *Bottom Mount Combination Refrigerator-Freezers* investigation, apply to GOK entrustment and direction of DWJ/DWE creditor financial institutions during the same period.[171] The evidence from the *DRAMS from Korea* record constitutes further information reasonably available to Whirlpool with respect to GOK direction of credit during the time period in question and includes the following.

Kookmin Bank disclosed in a September 10, 2001 SEC filing under the heading "The Korean government promotes lending to certain types of borrowers as a matter of policy, which

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[169] **Exhibit C-88**, *Korean Economy Herald* (July 18, 2000), "It is time to end the state-directed banking: (5) Banks, falling into their own trap."

[170] *Id.*

[171] *Notice of Final Affirmative Countervailing Duty Determination: DRAMS from Korea*, 68 Fed. Reg. 37,122 (June 23, 2003).

New Kookmin may feel compelled to follow" that: "(...) In addition, the Korean government has promoted, and, as a matter of policy, may continue to attempt to promote lending to certain types of borrowers. It generally has done this by requesting banks to participate in remedial programs for troubled corporate borrowers and by identifying sectors of the economy it wishes to promote and making low interest loans available to banks and financial institutions who lend to borrowers in these sectors. The government has in this manner promoted low-income mortgage lending and lending to technology companies. We expect that all loans made pursuant to government policies will be reviewed in accordance with New Kookmin's credit review policies. However, we cannot assure you that government policy will not influence New Kookmin to lend to certain sectors or in a manner in which New Kookmin otherwise would not in the absence of the government policy."[172] Kookmin Bank's June 18, 2002 disclosure is in essence identical.[173]

Attachment 1 to the Department's Direction of Credit Memorandum from its investigation in *DRAMS from Korea* supported the Department's findings in *DRAMS from Korea* is an IMF Report that states that, "IMF {has taken} issue with the Korean Government's record with 'out-of-court' workouts, suggesting that greater reliance should be put on court-supervised insolvency in order to accelerate the restructuring of distressed companies, and stressing the need for additional insolvency reform. IMF directors 'urged the authorities to refrain from pushing creditors into bailing out troubled companies'."[174] Attachment 2 to the Department's Direction

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[172] **Exhibit C-89**, Kookmin Bank/H&CB U.S. Securities and Exchange Commission filings (Sept. 10, 2001 & June 18, 2002).

[173] *Id.*

[174] **Exhibit C-90**, Attachment 1 of the Department's Direction of Credit Memorandum: IMF Public Information Notice (No. 01/8) (Feb. 1, 2001), "IMF Concludes Article IV Consultation Korea."

of Credit Memorandum, which is a further IMR Report, supported the Department's findings that, "IMF directors expressed concern that 'the role of the government as part-owner and supervisor of financial institutions, coupled with a significant role as guarantor of corporate debt, would hinder the pace of restructuring and risk impeding the development of a sound commercial banking system and a thriving capital market'."[175] Finally, Attachment 3 to the Department's Direction of Credit Memorandum in *DRAMS from Korea*, which again is an IMF Report, supported its findings that, "IMF notes that the corporate sector remains 'beleaguered' by the continued operation of loss-making companies. The directors 'stressed that the orderly exit of nonviable companies should be accelerated, and that state-owned banks, in particular, need to accept reductions on their claims, including by allowing a company to be liquidated if losses become unmanageable'."[176]

These IMF reports were complemented by general media reporting, including on additional IMF officials' views. The Department explained in support of its findings that this media reporting highlighted the continued practice of GOK-directed financing: "Stanley Fischer, an IMF official who was an architect of the IMF's restructuring plan in the ROK, was quoted as saying that the GOK needed to get itself out of the financial sector and should stop supporting failing banks and corporations. With regard to the GOK, he stated that, 'they have got to get

[175] **Exhibit C-91**, Attachment 2 of the Department's Direction of Credit Memorandum: IMF Public Information Notice (No. 01/79) (Aug. 2, 2001), "IMF Concludes Post-Program Monitoring Discussion on Korea."

[176] **Exhibit C-92**, Attachment 3 of the Department's Direction of Credit Memorandum: IMF Public Information Notice (No. 02/09) (Feb. 12, 2002), "IMF Concludes 2001 Article IV Consultation with Korea."

themselves out of the financial sector' and that '{t}here is a conflict of interest between the government as an owner and the government as a supervisor."[177]

In addition, Whirlpool notes that World Bank reporting relied on by the Department in its investigation in *DRAMS from Korea* highlighted the DWJ/DWE situation tellingly as follows: "Creditors plan to restructure and sell of {sic} ten or so units of Daewoo Electronics (DEC), but

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[177] **Exhibit C-93**, *International Herald Tribune* (July 10, 2001), "IMF's No. 2 Assails Seoul's Private-Sector Bailouts"; **Exhibit C-94**, *New York Times* (July 9, 2001), "IMF Official Warns Asia about Barriers to Recovery." Further general media reporting relied on by the Department in its investigation in *DRAMS from Korea* is equally applicable to the time period and circumstances surrounding the GOK-directed DWJ/DWE workout: **Exhibit C-95**, *Wall Street Journal* (Jan. 29, 2001), "American Boss Dispenses With Protocol at South Korean Bank: Wilford Horie Stands Up to Government, Refuses to Help Troubled Firms" (On the basis of this Wall Street Journal report, the Department found that Korean banks have "...been more accustomed to following government orders than making sound credit decisions." The Department went on to note that "...when KFB (a bank that is 51 percent foreign-owned) refused to participate in a GOK debt restructuring program (that was focused primarily on Hyundai Group companies) at the request of FSS, the FSS applied pressure to KFB and 'strongly urged' KFB to participate in the plan lest it risk losing some of its clients."); **Exhibit C-96**, *Korea Times* (January 10, 2001), "Hyundai's Brinkmanship Vs. Timid Government." (The Department explained that this report was that "Korean banks are now under tight state control" and that "The government jawboned banks to bail out insolvent firms, including Hyundai Engineering and Construction {("HEC")}. The independence of the central bank was compromised, as the BOK must get approval for its budget from the {MOFE}."); **Exhibit C-97**, *Euromoney* (February, 2001), "Intervention, Interference or Encouragement?" (This article discusses the state of Korean banks after certain GOK reform efforts and whether the government and banks were restructuring in the "right way." The Department highlighted the fact that the independence of Korean banks from GOK direction was expressed by a managing director at UBS Warburg, when he stated that "...the impression we get is that while the government claims {the banks} are totally independent, behind-the-scenes pressure is being applied so that they lend to certain entities."); **Exhibit C-98**, *New York Times* (March 7, 2002), "With Growth in Sight, Korea Plans Privatization for Banks." (The Department noted that this article explained the prevailing view among analysts that privatization in Korea was needed to foster "management independence and lending discipline." One analyst with the IMF is reported as saying, "there's a suspicion that the government mucks around with the banks" and that "with one quarter of Korean companies losing money, banks often face political pressure to keep them on life support."); and **Exhibit C-99**, *Dow Jones & Company* (June 20, 2001), "Korean Banks Complete Purchase of KRWIT Hynix Conv Bond." (The Department explained that this article reported that "KorAm Bank reversed its decision not to participate in the Hynix June 2001 convertible bond offering after the FSS warned of a possible sanction against KorAm if it did not participate.").

must first obtain approval from public shareholders (who hold 94% of DEC's shares) for a second debt/equity conversion. Despite the fact that DEC has *negative* capital of KRW 27 trillion at end-2000, creditors continued – incredibly – to attempt to resolve DEC out of court."[178] The Department explained that this report states that there are several press reports that the Financial Supervisory Service ("FSS") "had instructed creditor banks to classify Hynix loans as normal further highlight the conflicts of interest that can arise when a financial supervisor is tasked with managing corporate/financial sector restructuring in a systematic crisis" and that "the FSS – in contravention of its duty to safeguard the soundness of the financial sector – has been pressuring financial institutions to extend credits to distressed companies as promised in (out-of-court) workout."[179]

d. DWJ and DWE Were Unequityworthy

Because no private investor prices existed at the time of the DWJ and DWE equity infusions, due to the GOK entrustment and direction in this respect as set out above, 19 C.F.R. § 351.507(a)(3) provides that the Department will determine whether or not DWJ and DWE were equityworthy at the time of the 2001 and 2002 equity infusions.

According paragraph (a)(4), an equityworthy firm is one that shows "an ability to generate a reasonable rate of return within a reasonable period of time." Whirlpool believes that neither DWJ nor DWE showed an ability to generate a reasonable rate of return within a reasonable period of time. Whirlpool submits the following information relating to factors that have been examined by the Department pursuant to 19 C.F.R. § 351.507(a)(4) as well as in its

[178] **Exhibit C-100**, World Bank, East Asia and Pacific Region (Nov. 2001), "Corporate Restructuring and Reform Lessons From East Asia."

[179] *Id.*

prior determinations in support of a finding that both DWJ and DWE were unequityworthy at the time of the 2001 and 2002 GOK-directed debt-to-equity swaps.[180]

(i) Equity Investment in DWE by Private Investors

While there has been no other new investment in DWJ/DWE to Whirlpool's knowledge that would allow the Department to compare the KRW 5000 per share par value price paid by the GOK and the other directed creditors of DWJ-turned-DWE, Whirlpool notes again that the secondary market valuations for DWJ equity during the relevant periods was approximately 10% of the price paid by the GOK. Again, the average secondary market price for shares was reported to be between KRW 542 per share[181] and KRW 916 per share.[182]

Whirlpool has been unable to locate any objective analyses of the future financial prospects of either DWJ or DWE. All reports and analyses provided to DWJ/DWE creditors by outside consultants followed from the clear pronouncement by the GOK of its policy to ensure the successful workout of certain Daewoo Group companies, including DWJ and DWE.[183] For example, GOK action in this respect was already announced by July 29, 1999 in the "Korea Economic Update" issued by the Ministry of Finance and Economy, which indicates planning and direction taking place with DWJ's lead bank (a 100% GOK-owned creditor) well in advance

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[180] *Notice of Final Affirmative Countervailing Duty Determination: Steel & Wire Rod from Venezuela*, 62 Fed. Reg. 55,015 (1997).

[181] *See* **Table 2**.

[182] *See* **Table 3**.

[183] **Exhibit C-39**, Initial Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Sept. 30, 2011) (Public Version) at 20-22, 27 and **Exhibit C-40**, Supplemental Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Nov. 8, 2011) (Public Version) at 28-35.

of any report of an outside consultant having been issued.[184] Whirlpool also believes that DWE has not issued any new shares since the debt-to-equity swaps at issue.[185] Whirlpool's understanding is that the shares of DWE are currently not traded in the secondary market. That said, it has been reported that valuation experts in 2011 have priced 97% of the DWE shares belonging to the creditors who had made the prior debt-to-equity swaps in 2001 and 2002 as follows: approximately KRW 300 billion.[186] This value calculated in 2011 is less than one quarter of the KRW 1.255 trillion infused into DWJ-turned-DWE to restructure and spin off home appliance operations to DWE. In addition, whereas DWE posted a net loss of KRW 64.6 billion in the most recently completed and publically available financial report for the fiscal year 2010,[187] in 2002, DWE posted no less than double that in terms of a net loss: KRW 150 billion.[188]

In summary, Whirlpool believes, based on information reasonably available as outlined above, that any DWJ share price in 2001 or DWE share price in 2002 would have been significantly less than the GOK-directed KRW 5000 per share price used for the equity infusions at issue and there is no evidence of any private equity investment at anything like that level at the time or since.

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[184] **Exhibit C-71**, Ministry of Finance and Economy, Korea Economic Update (July 29, 1999) at 4. *See also* **Exhibit C-39**, *Id.* at 21 and **Exhibit C-40** at 28-35.

[185] **Exhibit C-66**, 2010 DWE Annual Financial Report. *See also* **Exhibit C-67**, 2002 DWE Annual Financial Statement at 30.

[186] **Exhibit C-101**, Money Today News (June 2, 2011), "Daewoo Electronics valuation rapidly decreases… Expecting around KRW 300 billion."

[187] *Id.*

[188] **Exhibit C-67**, 2002 DWE Annual Financial Statement at 8-9.

(ii) Current and Past Indicators of DWJ/DWE's Financial Condition Calculated from DWJ/DWE's Financial Statements

At the time of the GOK-directed equity infusions in 2001 and 2002, DWJ was under the Daewoo workout plan. DWJ has not been in operation since mid-2003[189] and was bankrupt as of July 10, 2006.[190] DWE has been under the same workout plan since the spin-off of assets in 2002.

For the period 2001-2002, DWJ and DWE financial indicators, including the ratios provided in Table 8 below, show that neither company was equityworthy at the time of the infusions.

[189] **Exhibit C-102**, 2005 DWJ Annual Financial Report.

[190] **Exhibit C-39**, Initial Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Sept. 30, 2011) (Public Version) at 31 (response to Question 30) and **Exhibit C-40**, Supplemental Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Nov. 8, 2011) (Public Version) at 24.

TABLE 8 **Noteworthy financial data and ratios of DWJ and DWE during 1999-2002**				
	DWJ			**DWE**
Financial Data and Ratios	**1999**	**2000**	**2001**	**2002**
Current Asset (A)	1,824,368,000,000	2,133,911,376,682	2,024,332,680,447	1,069,961,336,998
Current Liabilities (B)	1,889,927,000,000	2,198,384,008,907	2,132,703,263,861	657,823,460,821
Quick Assets (C)	1,654,620,000,000	1,500,291,488,066	1,481,181,465,328	749,625,768,191
Common Share Capital (D)	424,097,000,000	424,096,840,000	448,442,405,000	532,273,800,000
Shareholders Equity (E)	-1,859,734,000,000	-2,749,055,471,565	-3,170,152,678,565	395,167,980,828
Net Income or Loss (F)	-2,928,491,000,000	-956,671,522,924	-781,565,908,830	-146,904,213,966
Net Loss Before Taxes (G)	-2,928,491,000,000	-952,684,031,793	-776,760,785,633	-147,883,474,476
Total liabilities (H)	5,314,654,000,000	6,202,165,444,439	6,228,297,152,936	1,491,317,602,743
Acid Test or Quick Ratio (C/B)	0.8755	0.6825	0.6945	1.1396
Current Ratio (A/B)	0.9653	0.9707	0.9492	1.6265
Return on Capital (G/D)	-6.9052	-2.2464	-1.7321	-0.2778
Debt to Equity (H/E)	-2.8577	-2.2561	-1.9647	3.7739
Current Debt to Equity (B/E)	-1.0162	-0.7997	-0.6727	1.6647

Sources: **Exhibit C-46**, 2001 DWJ Annual Financial Report, **Exhibit C-67**, 2002 DWE Annual Financial Statement, and **Exhibit C-103**, 1999 DWJ Business Report.

As a preliminary matter, Whirlpool notes that the auditors refused to give an opinion for DWJ for its fiscal years 2001 and 2002 on the grounds that the company could not have been deemed a going-concern.[191]

Moreover, as of the end of 2001, DWJ posted total current assets of approximately KRW 2 trillion against current liabilities of KRW 2.1 trillion, yielding a current ratio below one (0.95).[192] The acid test ratio (*i.e.*, using only the assets immediately disposable) was far lower at

[191] **Exhibit C-46**, 2001 DWJ Annual Financial Report at 3-4, and **Exhibit C-68**, 2002 DWJ Annual Financial Report at 2.

[192] **Exhibit C-46** at 6-8. The current ratio was calculated by dividing current assets by current liabilities.

0.69.[193] These figures suggest that DWJ was in imminent danger of failure had the GOK-directed creditors not provided a bailout.

In addition, Whirlpool believes that DWJ had no prospect of generating earnings to meet its current liabilities as they came due. According to income statements available to Whirlpool for the period leading up to the 2001 and 2002 debt-to-equity swaps, DWJ incurred net losses of approximately KRW 3 trillion in 1999,[194] KRW 1 trillion in 2000,[195] KRW 800 billion in 2001,[196] and KRW 800 billion in 2002.[197] The company's inability to pay its long-term debts as they would have come due is also evident in the company's debt ratio exceeding 200% in 2001.[198]

Indeed, Whirlpool believes that neither DWJ nor DWE could have survived even if it could have managed to meet the short-term obligations. Even after the significant GOK-directed equity infusions, the financial condition of DWE continued to be dire.

First, DWE, the primary beneficiary of the GOK-directed debt-to-equity swaps with DWJ and the direct recipient of its own equity infusions at the time of the spin-off of assets in 2002, reportedly had a debt ratio of almost 244% even after the GOK-directed equity infusions.[199]

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[193] *Id.* The acid test ratio was calculated by dividing quick assets by current liabilities.

[194] **Exhibit C-103**, 1999 DWJ Business Report at 5.

[195] **Exhibit C-46**, 2001 DWJ Annual Financial Report at 10.

[196] *Id.*

[197] **Exhibit C-68**, 2002 DWJ Annual Financial Report at 5.

[198] **Exhibit C-46**, 2001 DWJ Annual Financial Report at 6-8. Debt ratio was calculated by dividing total liabilities by total assets.

[199] **Exhibit C-104**, *Hankuk Economy* (15 October 22), "Daewoo Electronics starts new next month… Daewoo Jeonja cleans its finances to debt ratio of 244%."

Second, even after the DWE debt-to-equity swaps of 2002, DWE's consolidated balance sheet at the end of 2002 indicated a current ratio of only 1.63 and an acid test ratio of a mere 1.14[200] Given the artificially inflated equity pricing directed by the GOK, it is clear that DWE was also in imminent danger of failure but for the GOK-directed infusions.

Third, as was the case with DWJ, DWE had no ability to generate earnings to meet its current liabilities as they came due. DWE incurred a net loss of approximately KRW 150 billion in its first year of operations after the transfer to it of DWJ's home appliance operations.[201] In addition, DWE's debt ratio stood dangerously close to 100%, at 79.05%, as of the end of 2002 even after all the equity infusions made to that point.[202]

DWE's significant financial problems have continued through the 2011 POI. As noted above, the workout program is reported to have been extended into 2012, clearly due to the precariousness of DWE's current financial condition, which is examined in more detail in respect of DWE's uncreditworthiness further below.

(iii) Future Financial Prospects of DWJ and DWE, Including Market Studies, Economic Forecasts, and Project or Loan Appraisals

As explained, but for the subsidies provided through the GOK-directed equity infusions, Whirlpool believes that DWJ in 2001 would have collapsed given its lack of short-term liquidity. Whirlpool believes that this assessment is supported by the auditor's report for DWJ in 2001 in

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[200] **Exhibit C-67**, 2002 DWE Annual Financial Statement at 5-7.

[201] *Id.* at 9.

[202] *Id.* at 5-7. Debt ratio was calculated by dividing total liabilities by total assets.

respect of DWJ's ability to remain a going concern,[203] as well as by the financial ratios set out above indicating short-term assets covering approximately only half of its short-term liabilities.

Whirlpool believes that, but for the subsidies provided through the GOK-directed equity infusions, DWE would have collapsed for the same reasons as DWJ. Even with the equity infusions made before (through DWJ) and after its creation, DWE posted an acid test ratio of almost 1.0 and posted a net loss of no less than KRW 150 billion in its first year.[204]

DWJ's credit rating at the time of infusion is one illustration demonstrating the company's inability to raise funds to meet its obligations. Media reports in 2001 confirm that DWJ held a "C" credit rating given by the Moody's affiliated Korea Investors Service, 205 which signifies "high credit risk and lack of capacity for timely repayment."[206] Whirlpool notes that the "C" credit rating is the second lowest rating type given by the Korea Investors Service.[207] Moreover it appears that DWJ had been financing its operations up to the point when it entered into workout with loans which it received in part through fraudulent accounting practices. Asia Times reported that creditors in 1999 discovered only KRW 2.5 trillion worth of assets out of the stated asset value of KRW 8.2 trillion,[208] while Bloomberg reported that DWJ

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[203] **Exhibit C-46**, 2001 DWJ Annual Financial Report at 3-4.

[204] **Exhibit C-67**, 2002 DWE Annual Financial Statement at 5-7, 9.

[205] **Exhibit C-105**, *Yeonhap News* (July 20, 2001), "Yeonhap headlines."

[206] **Exhibit C-106**, *Korea Investors Service*, "Corporate Bond Rating."

[207] *Id.*

[208] **Exhibit C-107**, *Asia Times* (Oct. 29, 1999), "Creditors find $30bn of Daewoo 'assets' useless."

had fictitiously generated revenues through internal transfer transactions.[209] As a result, the GOK public prosecutors laid charges against a number of DWJ executives[210] and sentenced the Group's President Kim Woo Joong to a ten-year prison term.[211] In an apparent acknowledgement of the precariousness of Daewoo's overall position, one of the GOK public prosecutor's arguments against the DWJ executives was that "KRW 28 trillion of tax payers' blood tax money has been infused as public funds, but there is no sign of Daewoo recovery."[212]

(iv) Rates of Return on Capital in the Three Years Prior to the GOK-Directed Equity Infusions

Whirlpool believes that the financial condition of DWJ, as demonstrated in the rate of return on capital ("ROC") for the three years prior to 2002, indicates substantial financial difficulties by any reasonable standard. As indicated in Table 9 below, one dollar of equity invested in DWJ in 1998 suffered a cumulated negative return of 1258.80% by 2002.[213] In addition, DWJ posted negative total equity of approximately KRW 3 trillion in both 2000 and 2001, and of approximately KRW 4 trillion in 2002.[214]

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[209] **Exhibit C-108**, *Bloomberg Business Week* (Feb. 19, 2001), "Kim's fall from grace at Daewoo: Inside the Korean conglomerate's fraud scandal."

[210] **Exhibit C-109**, *BBC News* (Feb. 2, 2001), "Daewoo corruption scandal deepens."

[211] **Exhibit C-110**, *Financial Times* (May 30, 2006), "Daewoo founder sentenced for fraud."

[212] **Exhibit C-111**, *Hankuk Economy* (Mar. 2, 2001), "'Kim Woo Joong ordered defraud the accounting book'… the first Daewoo fraud trial."

[213] Calculated by dividing the sum of net income (loss) of DWJ from 1998 to 2002 by average total common shareholders equity over the same period.

[214] **Exhibit C-46**, 2001 DWJ Annual Financial Report at 8, **Exhibit C-68**, 2002 DWJ Annual Financial Report at 8.

TABLE 9 **Rate of return on capital for Daewoo Jeonja Co. Ltd.**			
Daewoo Jeonja Co. Ltd.			
	Income before taxes	**Total common shareholders equity**	**Rate of return on capital**
1998	8,203,000,000	420,826,000,000	0.019%
1999	-2,928,491,000,000	424,097,000,000	-690.52%
2000	-952,684,031,793	424,096,840,000	-224.64%
2001	-776,760,785,633	448,442,405,000	-173.21%
2002	-803,141,872,613	448,442,405,000	-179.10%

Sources: **Exhibit C-46**, 2001 DWJ Annual Financial Report, **Exhibit C-68**, 2002 DWJ Annual Financial Report, and **Exhibit C-103**, 1999 DWJ Business Report.

DWE also posted negative ROC for 2002 as calculated in Table 10. Whirlpool notes that this ROC is based on DWE's financial figures which already include the prior GOK-directed equity infusions to DWJ during 2001 and to DWE in 2002.

TABLE 10 **Rate of return on capital for Daewoo Electronics Co. Ltd.**			
Daewoo Electronics Co. Ltd.			
	Income before taxes	**Total common shareholders equity**	**Rate of return on capital**
1998	n/a	n/a	n/a
1999	n/a	n/a	n/a
2000	n/a	n/a	n/a
2001	n/a	n/a	n/a
2002	-147,883,474,476	532,273,800,000	-27.78%

Source: **Exhibit C-67**, 2002 DWE Annual Financial Statement.

On the basis of these financial indicators, Whirlpool believes there is a reasonable basis to believe and suspect that both DWJ and DWE were unequityworthy in 2001 and 2002. Whirlpool also believes that the information provided shows that neither DWJ nor DWE could have been restructured without the GOK-directed equity infusions. Even after the DWJ debt-to-equity conversions, DWE as the recipient of DWJ spun-off assets continued to be unequityworthy in 2002.

(v) Prospects in the Marketplace

According to the DWJ's 2001 business report, the firm identifies the factors listed below, among others, as reasons for its underperformance in 2001:

- Domestic economic downturn;
- Slow recovery of global economy; and
- Contraction of general consumption due to 2001 9/11 terrorist attack.[215]

DWJ goes on to identify the following further factors as continuing risks to the electronics market:

- Increasing competition and price pressure from developing world, especially China;
- Depreciation of Japanese Yen currency and depression on competitiveness of South Korean products in export market as a result; and
- Conflict with Hi-Mart (one of the main electronic goods distributor in Korea).[216]

On their face, many of these were factors that prevailed in the electronics market in 2001, and Whirlpool was unable to locate any specific project or product of DWJ or DWE that could have significantly altered its future outlook from that of the electronics market as a whole. However, the credit ratings received by DWJ and DWE and the criminal charges laid in respect of fraudulent accounting practices discussed in detail further above also pointed to substantially different and more dire prospects.

e. GOK-Directed Ongoing Preferential Lending Under the Daewoo Workout

The GOK-directed debt financing, which continued to prop DWE up through the 10-year AUL period, including during the POI, constitutes countervailable subsidies within the meaning of 19 U.S.C. § 1677(5).

[215] **Exhibit C-112**, 2001 *DWJ Business Report.*

[216] *Id.*

(i) Financial Contribution

The GOK-directed lending that remains outstanding during the 2011 POI as a result of the repeated extension of the workout, including several new loans provided within the context of the workout, constitutes a direct transfer of funds and as such qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i). In addition, loans outstanding during the POI from commercial lenders are made pursuant to the ongoing GOK-directed workout program and, as such, constitute GOK entrustment and direction to provide loans within the meaning of 19 U.S.C. § 1677(5)(B)(iii).

(ii) Specificity

Given that the lending at issue has been made in furtherance of express GOK policies established and implemented for the sole benefit of DWE and the successful completion of the workout program, these subsidies are specific both in law and in fact to an enterprise under 19 U.S.C. § 1677(5A)(D)(i) and 19 U.S.C. § 1677(5A)(D)(iii)(I).

(iii) Benefit Conferred: DWE Was Uncreditworthy

Based on the information provided in support of this allegation and in accordance with 19 C.F.R. § 351.505(a)(6)(i), Whirlpool submits that there is a reasonable basis to believe and suspect that DWE received during the POI countervailable benefits pursuant to the ongoing GOK-directed workout.

In accordance with 19 C.F.R. § 351.505(a)(1) and 19 C.F.R. § 351.505(a)(3)(iii), a benefit exists in respect of the loans at issue to the extent that DWE pays a lower rate of interest on the loans as compared to what it would pay on comparable commercial loans it could actually obtain on the market. Pursuant to 19 C.F.R. § 351.505(a)(4), the Department will consider DWE to be uncreditworthy if the Department determines that, based on information available at the time of the loan, DWE could not have obtained long-term loans from conventional commercial sources.

(A) Receipt by DWE of Comparable Commercial Long-Term Loans

In this respect, 19 C.F.R. § 351.505(a)(4)(ii) specifies that the receipt by DWE of comparable long-term commercial loans, unaccompanied by a government-provided guarantee, would normally be dispositive evidence that DWE is not uncreditworthy. Since the end of 2002, DWE has been and today remains a government-owned enterprise operating under continued workout protection.[217] Accordingly, subparagraph (a)(4)(ii) by its own terms does not apply. In the preamble to CVD Final Rule, the Department explains as follows:

> We do not believe that the presence of commercial loans is dispositive of whether a government–owned firm could have obtained long-term financing from conventional commercial sources. This is because, in our view, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of default.[218]

KAMCO, a GOK special purpose agency,[219] remained by far the majority holder of shares and liabilities of DWE during 2010 and Whirlpool has no public information reasonably available to it to suggest that KAMCO did not remain so during the 2011 POI.[220]

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[217] **Exhibit C-113**, *Money Today News* (Mar. 16, 2011), "Daewoo Electronics value drops with the delay in sales."

[218] *Countervailing Duties, Final Rule*, 19 C.F.R. Part 351, 63 Fed. Reg. 65,347, 65,367 (Nov. 25, 1998).

[219] **Exhibit C-39**, Initial Response of Daewoo Electronics to the New Subsidy Allegations in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Sept. 30, 2011) (Public Version) at 4-5. *See also* **Exhibit C-43**, "IMF Working Paper" for reference to KAMCO's functions.

[220] **Exhibit C-114**, 2010 DWE Annual Financial Report, 23.

Accordingly, the Department may not treat this factor under subparagraph (a)(4)(A) as dispositive evidence of creditworthiness, and must instead go on to examine evidence under each of the other factors under paragraph (a)(4), namely: (B) the present and past financial health of DWE, as reflected in various financial indicators; (C) DWE's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and (D) various other evidence of DWE's future financial position.

Even assuming DWE were not government-owned and controlled, Whirlpool submits that private lender financing under the Daewoo workout during the POI was GOK-directed, on the basis of the evidence of express GOK policy and intervention in respect of the workout as discussed above.

Furthermore, even assuming that private lender financing under the Daewoo workout during the POI was not GOK-directed, which Whirlpool denies on the basis of the information set out above regarding the GOK's direction of the workout results discussed further above, Whirlpool submits that receipt by DWE of comparable long-term commercial loans during the POI was accompanied by an implicit government-provided guarantee, as the Department found in *DRAMS from Korea*.[221]

Based on the evidence of the GOK's ownership stake in DWE and the GOK intervention in the workout plan alone, Whirlpool submits that any long-term commercial loans made by private lenders in the absence of GOK entrustment and direction is to be disregarded under the regulations.

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[221] *Notice of Final Affirmative Countervailing Duty Determination: DRAMS from Korea*, 68 Fed. Reg. 37,122 (June 23, 2003).

(B) Present and Past Indicators of DWE's Financial Health

Even after the GOK led equity infusion bailout measures as discussed above, DWE has continued to show near-decade long dismal financial health that Whirlpool believes strongly indicates DWE's uncreditworthiness. This can be seen from the indicators set out in Tables 11 and 12 below.

TABLE 11
DWE Financial Ratios: 2002-2010

	2010	Change	2009	Change	2008	Change	2007	Change
Current ratio	1.13	-5.36%	1.20	-8.39%	1.31	3.38%	1.26	-1.05%
Quick ratio	0.77	-11.43%	0.87	-1.23%	0.88	6.41%	0.83	-0.58%
D/E	-6.41	45.89%	-11.84	-166.69%	17.76	-13.06%	20.43	137.11%
D/A	1.18	8.49%	1.09	15.37%	0.95	0.70%	0.95	6.40%
ROA	-0.07	58.51%	-0.16	-168.01%	-0.06	31.61%	-0.09	20.58%
ROE[222]	na	na	na	na	-1.10	40.13%	-1.83	-77.00%
Net profit margin	-0.04	68.79%	-0.13	-246.82%	-0.04	38.05%	-0.06	10.89%
Cash flow to total debt	0.01	-85.42%	0.04	56.03%	0.03	127.73%	-0.09	-404.04%
Times interest earned	-1.62	76.31%	-6.84	-595.08%	-0.98	50.97%	-2.01	29.11%

	2006	Change	2005	Change	2004	Change	2003	Change	2002
Current ratio	1.28	-9.36%	1.41	-12.70%	1.61	5.37%	1.53	-5.90%	1.63
Quick ratio	0.83	-13.83%	0.96	-9.57%	1.07	0.53%	1.06	-6.87%	1.14
D/E	8.62	98.18%	4.35	34.61%	3.23	-0.36%	3.24	-14.11%	3.77
D/A	0.90	10.21%	0.81	6.47%	0.76	-0.09%	0.76	-3.33%	0.79
ROA	-0.11	-171.24%	-0.04	-304.25%	0.02	-23.72%	0.03	132.71%	-0.08
ROE	-1.04	387.74%	-0.21	-358.21%	0.08	-23.93%	0.11	129.06%	-0.37
Net profit margin	-0.07	140.93%	-0.03	-315.25%	0.01	-31.32%	0.02	106.65%	-0.28
Cash flow to total debt	0.03	54.21%	0.02	-59.09%	0.05	148.65%	0.02	na	na
Times interest earned	-2.83	-78.70%	-1.58	-175.25%	2.11	-13.76%	2.44	121.16%	-11.54

Sources: **Exhibit C-115**, 2002 DWE Annual Financial Report, **Exhibit C-116**, 2004 DWE Annual Financial Report, **Exhibit C-117**, 2006 DWE Annual Financial Report, **Exhibit C-118**, 2008 DWE Annual Financial Report, and **Exhibit C-114**, 2010 DWE Annual Financial Report.

[222] 2010 and 2009 calculations are not provided, as these would show as a positive return on equity which would result only because both the equity and profit values are negative. As such, a ROE calculation for these years would yield a mathematically irrelevant ratio for purposes of assessing DWE financial performance.

TABLE 12
Financial Performance and Rates of Change: 2002-2010

	2010	% change	Change	2009	% change	Change
Current Asset	574,944,017,909	-12.85%	-84,774,224,709	659,718,242,618	-27.84%	-254,553,291,815
Quick Asset	390,878,623,730	-18.44%	-88,373,090,618	479,251,714,348	-22.20%	-136,731,032,050
Total Asset	994,330,082,046	-15.90%	-187,940,801,849	1,182,270,883,895	-22.07%	-334,793,050,596
Current Liabilities	507,987,590,384	-7.92%	-43,666,076,916	551,653,667,300	-21.23%	-148,684,942,926
Total Liabilities	1,178,184,135,700	-8.76%	-113,120,974,543	1,291,305,110,243	-10.09%	-144,890,785,002
Shareholders' equity	-183,854,053,654	-68.62%	-74,819,827,306	-109,034,226,348	-234.83%	-189,902,265,594
Revenue	1,607,365,934,926	11.79%	169,546,929,559	1,437,819,005,367	-39.78%	-949,686,070,832
Net income	-64,648,542,694	65.11%	120,632,210,058	-185,280,752,752	108.86%	-96,571,085,273
Interest charges	-24,506,900,471	-3.65%	-862,750,900	-23,644,149,571	-46.42%	20,486,798,588
Tax charges	-443,851,835	-821.85%	-505,340,210	61,488,375	-105.31%	1,220,440,693
Operating cash flow	6,909,734,913	-86.70%	-45,031,768,498	51,941,503,411	40.29%	14,916,530,981

	2008	% change	Change	2007	% change	Change
Current Asset	914,271,534,433	2.42%	21,592,786,670	892,678,747,763	-6.52%	-62,296,893,497
Quick Asset	615,982,746,398	5.42%	31,676,364,543	584,306,381,855	-6.08%	-37,835,931,424
Total Asset	1,517,063,934,491	0.82%	12,291,078,637	1,504,772,855,854	-11.73%	-200,011,149,403
Current Liabilities	700,338,610,226	-0.93%	-6,566,684,297	706,905,294,523	-5.53%	-41,417,507,687
Total Liabilities	1,436,195,895,245	0.11%	1,646,054,096	1,434,549,841,149	-6.08%	-92,937,846,704
Shareholders' equity	80,868,039,246	15.16%	10,645,024,541	70,223,014,705	-60.39%	-107,073,302,699
Revenue	2,387,505,076,199	11.29%	242,288,595,451	2,145,216,480,748	-21.33%	-581,605,211,646
Net income	-88,709,667,479	31.05%	39,947,876,679	-128,657,544,158	-29.90%	54,866,690,479
Interest charges	-44,130,948,159	-3.97%	-1,684,752,051	-42,446,196,108	0.43%	-182,912,282
Tax charges	-1,158,952,318	-12.60%	-129,679,618	-1,029,272,700	-95.24%	20,580,197,058
Operating cash flow	37,024,972,430	127.76%	170,394,202,314	-133,369,229,884	-385.54%	-180,076,405,821

	2006	% change	Change	2005	% change	Change
Current Asset	954,975,641,260	-20.32%	-243,485,937,854	1,198,461,579,114	-4.17%	-52,200,044,957
Quick Asset	622,142,313,279	-24.24%	-199,075,095,072	821,217,408,351	-0.74%	-6,122,954,431
Total Asset	1,704,784,005,257	-15.06%	-302,362,293,552	2,007,146,298,809	-2.09%	-42,941,912,299
Current Liabilities	748,322,802,210	-12.09%	-102,885,313,905	851,208,116,115	9.76%	75,704,537,649
Total Liabilities	1,527,487,687,853	-6.39%	-104,305,038,991	1,631,792,726,844	4.24%	66,392,781,936
Shareholders' equity	177,296,317,404	-52.77%	-198,057,254,561	375,353,571,965	-22.56%	-109,334,694,235
Revenue	2,726,821,692,394	-4.38%	-124,845,392,019	2,851,667,084,413	-7.10%	-217,882,581,453
Net income	-183,524,234,637	-130.38%	-103,862,700,525	-79,661,534,112	-299.97%	-119,498,887,038
Interest charges	-42,263,283,826	-5.09%	-2,048,608,714	-40,214,675,112	-14.36%	6,740,927,671
Tax charges	-21,609,469,758	-189.06%	-45,872,521,948	24,263,052,190	-301.11%	36,327,759,001
Operating cash flow	46,707,175,937	44.35%	14,351,355,476	32,355,820,461	-57.35%	-43,514,445,246

	2004	% change	Change	2003	% change	Change	2002
Current Asset	1,250,661,624,071	1.87%	22,941,769,900	1,227,719,854,171	14.74%	157,758,517,173	1,069,961,336,998
Quick Asset	827,340,362,782	-2.81%	-23,917,308,248	851,257,671,030	13.56%	101,631,902,839	749,625,768,191
Total Asset	2,050,088,211,108	-0.23%	-4,826,878,423	2,054,915,089,531	8.93%	168,429,505,960	1,886,485,583,571
Current Liabilities	775,503,578,466	-3.32%	-26,637,390,773	802,140,969,239	21.94%	144,317,508,418	657,823,460,821
Total Liabilities	1,565,399,944,908	-0.32%	-5,037,666,682	1,570,437,611,590	5.31%	79,120,008,847	1,491,317,602,743
Shareholders' equity	484,688,266,200	0.04%	210,788,258	484,477,477,942	22.60%	89,309,497,114	395,167,980,828
Revenue	3,069,549,665,866	10.81%	299,399,522,275	2,770,150,143,591	435.64%	2,252,981,148,099	517,168,995,492
Net income	39,837,352,926	-23.89%	-12,507,735,678	52,345,088,604	135.63%	199,249,302,570	-146,904,213,966
Interest charges	-46,955,602,783	5.60%	2,783,707,409	-49,739,310,192	-321.70%	-37,944,326,614	-11,794,983,578
Tax charges	-12,064,706,811	37.61%	7,272,767,621	-19,337,474,432	-2074.70%	-20,316,734,942	979,260,510
Operating cash flow	75,870,265,707	147.85%	45,258,784,114	30,611,481,593			

Source: **Exhibit C-115**, 2002 DWE Annual Financial Report, **Exhibit C-116**, 2004 DWE Annual Financial Report, **Exhibit C-117**, 2006 DWE Annual Financial Report, **Exhibit C-118**, 2008 DWE Annual Financial Report, and **Exhibit C-114**, 2010 DWE Annual Financial Report.

Notably, DWE achieved positive net income in only two of the nine prior years, namely in 2003 and 2004 alone.[223] Partly due to DWE's continuous accumulation of losses, the company has been in an "impaired-capital" state since at least 2009, where shareholders' equity

[223] *See* Table 8, *supra*.

sank below zero.[224] In addition, Whirlpool notes that while DWE's assets have declined by half over the period 2002 to 2010, its liabilities decreased by only 21%.[225]

Various financial ratios also clearly display the dire financial condition in which DWE finds itself. For example, DWE's current ratio in 2002 was 1.63 but fell to 1.13 after a total of seven yearly declines over a period of nine years.[226] DWE's quick ratio, which was barely above 1.0 in 2002, sank substantially below 1.0 by 2010.[227] Most notably, the times-interest earned ratio has been negative in seven years of this nine-year period, *i.e.*, for the vast majority of time during the period at issue. This may be explained by DWE's continuous losses—for 2009, the losses before taxes and interest charges were almost seven times the interest payables in that year alone.[228]

In sum, the many financial ratios set out above show that DWE is a failing company that has been artificially kept alive through continuous and ongoing GOK support.[229] Whirlpool submits, therefore, that there is a reasonable basis to believe and suspect that DWE was uncreditworthy at the time of the lending at issue and remains so to this day.

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[224] *Id.*

[225] *Id.*

[226] *See* Table 7, *supra*.

[227] *Id.*

[228] *Id.*

[229] In respect of certain key ratios, note that negative equity values will yield negative debt-to-equity ratios. Also, again, 2010 and 2009 show as a positive return on equity only because both the equity and profit values are negative — yielding an irrelevant mathematical result for purposes of assessing DWE financial performance.

(C) DWE's Recent Past and Present Ability to Meet its Costs and Fixed Financial Obligations with its Cash Flow

Again, since 2002, DWE earned positive income before taxes and interest charges sufficient to cover interest expenses in only two years of the nine-year period, *i.e.,* in 2003 and 2004 alone.[230] At the same time, over the period 2002-2009, DWE's assets have declined by half while its liabilities decreased by only 20%.[231] Notwithstanding the enormous GOK equity infusions in 2001 and 2002, DWE's total debt-to-asset ratio has worsened since 2002 from slightly below 1.0 to being above 1.0 since 2009. Both the current ratio and quick ratios have been close to and under 1.0 for many of the recent periods, indicating an inability of the company to meet any short-term, medium-term or long-term liabilities.[232]

In addition, South Korean media in 2008 reported that overseas bondholders sought to put DWE into court receivership, which was opposed by DWE's domestic creditors.[233] Although the petition for court receivership was ultimately denied by South Korean courts, the reasons for the denial of the petition, which amounted to minor improvements in DWE financial performance around that time, have all but disappeared since then and have reversed in many instances. For example, total assets sank by roughly 22% from 2008 to 2009 and by 16% from 2009 to 2010. During the 2009 to 2010 period, total liabilities decreased at only half the rate of the company's decrease in total assets, *i.e.*, liabilities decreased by only 10% (2009) and 9%

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[230] *See* Table 8, *supra*.

[231] *Id.*

[232] *Id.*

[233] **Exhibit C-119**, *Newsys* (Oct. 23, 2008), "Court denies receivership of Daewoo Electronics."

(2010) as compared to a 22% (2009) and 16% decrease in total assets.[234] In addition, revenue decreased by almost 40% in 2009, to recover by only 12% in 2010.[235] As a result, revenue for 2010 was less than revenue in 2008.[236] In the meantime, the company continued to incur net losses and its total shareholders' equity sank to negative levels since 2009.[237]

On the basis of the above financial data, Whirlpool submits that there is a reasonable basis to believe and suspect that DWE was unable to meet its costs and financial obligations. Indeed, considering the dire state of DWE's financial health during and prior to the POI, Whirlpool believes that DWE simply would not have been able to operate at all in the absence of the ongoing GOK-directed workout and the debt financing continued under that program.

(D) Evidence of DWE's Future Financial Position

Based on the information set out above, Whirlpool believes that DWE would not have been able to continue operations even in the short term during the period 2002-2010 had the GOK not provided new preferential debt financing pursuant to the Daewoo workout.

In addition, Whirlpool believes that both external and internal economic conditions would not have allowed DWE to turn its financial performance around into a creditworthy company.

In respect of external conditions, Whirlpool notes that South Korean experts predict that the home appliance market will remain in relative depression for the coming years. Specifically,

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[234] *See* Table 8, *supra*.

[235] *Id.*

[236] *Id.*

[237] *Id.*

the Optical Journal predicts that the home appliance market in South Korea through 2011 will grow by only 1.6% in terms of domestic consumption and 4.7% in terms of exports.[238] These figures are the third-lowest out of ten IT manufacturing industries subject to the report, and the predicted export figure represents a nearly 85% decline from 2010 export growth levels.[239] The Korea Institute for Industrial Economics & Trade has also predicted a mere 2% increase in the South Korean domestic home appliance market, due to decreases in consumer spending and residential construction.[240]

Whirlpool also believes that the internal financial performance of DWE, as outlined above, would not allow the company to overcome these declining market prospects in the absence of ongoing GOK preferential lending pursuant to the workout program. DWE has been posting negative net incomes since 2005 and its equity has once again fallen into negative territory since 2009.[241] DWE is also posting negative returns on assets, which is symptomatic of the fact that the company is shedding assets and acquiring further debts and posting further losses instead.[242]

On this basis, Whirlpool submits that DWE would simply fail in the absence of ongoing GOK preferential lending pursuant to the workout program. Whirlpool therefore submits that there is a reasonable basis to believe and suspect that DWE was uncreditworthy during at the

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[238] **Exhibit C-120**, *Optical Journal*, "Economic growth to be stunned down to 4%, IT manufacturing is too lean overall growth: 2011 outlook for economy and industries" at 16.

[239] *Id.*

[240] **Exhibit C-121**, Korea Institute for Industrial Economic and Trade (Oct. 27, 2010), "e-KIET information regarding industry economy: 2011 major industry outlook" at 4.

[241] *See* Table 8, *supra.*

[242] *Id.* See also Table 7, *supra.*

time of the lending at issue and remains so to this day. As a result, DWE continued to receive countervailable benefits through preferential GOK lending outstanding during the POI under the ongoing GOK-directed workout.

2. Restriction of Special Taxation Act ("RSTA") Articles 26 Tax Credit for Investments in Facilities Located Outside the Seoul Metropolitan Area "Overcrowding Control Region"

The GOK provides significant tax subsidies to support investments in facilities located outside the "Overcrowding Control Region" of the Seoul Metropolitan Area ("SMA").[243]

Article 26 of the RSTA will have provided countervailable benefits during the 2011 POI for qualifying facilities investments.[244] The Department has preliminarily determined in its *Bottom Mount Combination Refrigerator-Freezers* investigation that RSTA Article 26 is countervailable.[245]

a. Financial Contribution

Tax credits under RSTA Article 26 represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii).

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243 **Exhibit C-122**, Restriction of Special Taxation Act, Article 26. **Exhibit C-123,** Response of the Government of Korea to the First Supplemental Questionnaire of the United States Department of Commerce in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Aug. 15, 2001) (Public Version) at 26-30.

244 19 C.F.R. § 351.509.

245 *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Preliminary Negative Countervailing Duty Determination*, 76 Fed Reg. 55044 (Sept. 6, 2011) and the accompanying Issues and Decision Memorandum at 23.

b. Benefit Conferred

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of RSTA Article 26 tax credits in the amount of the tax revenue foregone by the GOK.

c. Specificity

In its preliminary determination in the *Bottom Mount Combination Refrigerator-Freezers* investigation, the Department found RSTA Article 26 to be de jure regionally specific in accordance with 19 U.S.C.§1677(5A)(D)(iv).[246] Petitioner requests that the Department investigate the use of the program in respect of the 2010 tax year, which, if used in 2010, would provide countervailable benefits during the POI.

To the extent that RSTA Article 26 is not considered de jure regionally specific, Petitioner believes that the tax credits provided under this provision are de facto specific within the meaning of 19 U.S.C.§1677(5A)(D)(iii).

Specifically, the Voice of Public reported in October 2010 that for the taxation year 2009, total tax benefits from RSTA Article 26 amounted to just over KRW 2 trillion, 43.7 percent of which was granted to 5 major companies including Samsung Electronics Co., Ltd. and LG Electronics Inc.[247]

In addition, in a November 9, 2010 edition of Tax Daily, Professor Yoon Tae Hwa of Kyungwon University and Vice President of Korean Accountings Academics Associations is reported as having agreed with GOK views that the Article 26 Temporary Tax Credit on Investments as it existed in 2010 was unsatisfactory because "its benefits are disproportionately

[246] *Id.*

[247] **Exhibit C-124**, *Voice of Public* (Oct. 5, 2010), "Deductions for employment creations? Benefits only the large companies."

distributed to the large companies and certain industries, and the magnitude of the inequality in distribution is much greater than other forms of tax benefits."[248] In the same edition, Mr. Ahn Jong Seok of the Taxation Research Institute is reported as adding: "some companies get it and some don't depending on the industry they are in; some investments are eligible, some are not."

The GOK itself appears to confirm the de facto specificity of these facilities investment tax programs. In an August 19, 2010 Press Release, the Ministry of Strategy and Finance announced "Revisions to improve fiscal situations."[249] In respect of "lifting unnecessary tax exemptions and reductions," the Ministry specified as follows: "Tax deductions for facility investment will be given to limited number of companies."[250]

3. Tax Reduction for Research and Manpower Development: RSTA 10(1)(3)

Significant tax reduction support is provided to the producers and exporters of LRWs under RSTA Article 10(1)(3), as described below. Petitioner notes that the Department included this program in its investigation on *Bottom Mount Combination Refrigerator-Freezers*,[251] and preliminarily found it to be a countervailable subsidy in its post-preliminary analysis.[252]

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248 **Exhibit C-125**, *Tax Daily* (Nov. 9, 2010), "Heated and contentious debates over tax benefit repeal. All eyes at politics."

249 **Exhibit C-126**, GOK Ministry of Strategy and Finance, Press Release (Aug. 19, 2010), "2010 Tax Revision Plan" at 8.

250 *Id.*

251 *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: July 15, 2011 New Subsidy Allegations* at 6 (Aug. 16, 2011).

252 *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Post-Preliminary Analysis of New Subsidy Allegations* (Dec. 21, 2011).

a. Background

Pursuant to RSTA Article 10(1)(3), the GOK provides reduction on tax payable of either 40% of "research and manpower development expenditures" ("R&MD") exceeding the average of such expenditures over the past four years, or a maximum of 6% of the same expenditures for the year. The text of the provision as of 1 January 2010 provides as follows:[253]

> "Article 10 (Tax deduction on research and workforce development)
>
> Where a domestic individual has research or workforce development expenses in a taxation year, the sum of the following are deducted from the individual's business income tax or corporate tax. For the sub-provision 1 and 2, only the research or workforce development expenses until 2012 December 31st are eligible in this Article.
>
> 1. The amount calculated by: research and development expenses in the New Growth Engines areas as declared by the Presidential decree, to the extent they are incurred in the taxation year, multiplied by 20/100 (multiplied by 30/100 for small or medium enterprises),
>
> 2. The amount calculated by: research and development expenses for the purpose of obtaining the Core Technologies as declared by the Presidential decree, to the extent they are incurred in the taxation year, multiplied by 20/100 (multiplied by 30/100 for small or medium enterprises),
>
> 3. For the domestic individual for whom the sub-provisions 1 or 2 does not apply or who chooses not to use sub-provisions 1 or 2, any one of the applicable following among the research and workforce development expenditures (hereinafter "ordinary research and workforce development expenditures").
>
> a) 40 of 100 (50 of 100 in cases of small and medium enterprises) of ordinary research and workforce development expenditures incurred during the current taxation year, to the extent that such amount exceeds the average ordinary research and workforce development expenditures over the past four taxation years
>
> b) Ordinary research and workforce development expenditures incurred in the current taxation year multiplied by the rate calculated by the

[253] **Exhibit C-127**, Restriction of Special Taxation Act, Article 10(1) (Jan. 1, 2010).

> following formula (limit is 6 of 100, 25 of 100 for small and medium enterprises):
>
>> 3 of 100 + share of research and workforce development cost against total earning during the current taxation year x 1 of 2"

The Department has in the past found prior versions of Article 10(1)(3) to be both countervailable and non-countervailable.[254] However, since the time of the Department's prior findings of non-countervailability, Article 10(1)(3) has undergone multiple amendments[255] and new tax survey data have become available showing trends in increased concentration in the use of, and receipt of benefits under, the provision.[256] Based on new information reasonably available, the Petitioner believes that Article 10(1)(3) has been predominantly used by large enterprises, *i.e.*, *chaebols* such as SEC and LGE, and that such enterprises have benefited disproportionately under the program.

As was the case in the *Bottom Mount Combination Refrigerator-Freezers* investigation, new information reasonably available includes 2005 South Korean media reports that a Ministry of Finance and Economy study showed that the "Top Five" companies claimed as much as 45%,

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[254] *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation, Import Administration Memorandum* (June 16, 2003).

[255] For example, *see* **Exhibit C-127**, (Jan. 1, 2009), Restriction of Special Taxation Act, Article 10(1) as compared to **Exhibit C-128**, (Jan. 1, 2010) Restriction of Special Taxation Act, Article 10(1). *See also* **Exhibit C-129**, (Dec. 28, 1998), Restriction of Special Taxation Act, Article 10(1) and (Dec. 29, 2000), Restriction of Special Taxation Act 10(1).

[256] *See* **Exhibit C-130**, *Herald Economy* (July 12, 2005), "R&D expense tax credit shows serious polarization". 2003 tax data was only reported in 2005. *See also* **Exhibit C-131**, National Tax Service (Dec. 2010), "Statistical Yearbook of National Tax" study of 2009 tax data was reported in December 2010.

46%, 63% and 65% of the total tax benefits conferred under this RSTA provision in 2000, 2001, 2002 and 2003 respectively.[257]

In addition, it was reported in 2006 that 75.8% of all business R&D expenditures were made by large enterprises, with the "Top Twenty" enterprises alone making 53.5% of such expenditures.[258] This 2006 report also provides that business R&D expenditures accounted for 77.3% of total national R&D expenditures, meaning large enterprises accounted for 58.59% of total South Korean R&D spending at that time.[259]

Furthermore, new information reasonably available shows that SEC and LGE were two of only three South Korean companies to be listed among the world's top 100 companies for 2008 in terms of R&D expenditures.[260] In 2010, it was reported that SEC alone made KRW 9.41 trillion (or KRW 8.3 trillion, depending on the media report) in R&D investments— and that this is more than the total R&D investments made by 961 other publically listed companies in South Korea combined.[261] LG was not far behind: LG Life Science, for example, spent the highest proportion of revenues on R&D, and LG Display and LGE ranked second and fourth in R&D investments in 2010, respectively.[262]

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[257] **Exhibit C-131**, *Id.*

[258] **Exhibit C-132**, *CNB News* (Jan. 13, 2008), "More than 15,000 domestic company research institutes: 3 years and 4 months since 2004… the reason is R&D investment increases."

[259] *Id.*

[260] **Exhibit C-133**, *Newsys* (June 9, 2009), "Samsung Electronics-Hyundai Motors-LG Electronics, the '3 R&D powers.'"

[261] **Exhibit C-134**, *Pax News* (May 1, 2011), 'R&D investment', Samsung Electronics > 961 companies." *See also* **Exhibit C-135**, Seoul Economy (Apr. 11, 2011), "LG Life Science tops the R&D spending compared to revenue category with 20%."

[262] *Id.*

The Petitioner submits that generous South Korean tax incentives, which are custom-made for *chaebols*, are a key reason behind these R&D investment numbers.

According to another more recent study entitled "Effects of corporate tax reduction on real tax rates on *Chaebol* companies," which was commissioned by the office of Congresswoman Lee Jung Hee of the Korean National Assembly, the GOK's "tax reduction benefits are being concentrated on *Chaebol* companies."[263] According to this study, companies with capital of KRW 500 billion or more (*i.e.,* 0.03% of all South Korean companies) received 30.5% of total tax reductions claimed in 2009.[264] The top 0.16% companies accounted for 51% of the total tax reductions.[265] When corporate tax rates are adjusted to take into account tax reduction claims, this study further found that the real tax rate applied to the *chaebol*s (*i.e.,* those with capital of KRW 500 billion or more) was 19.7%.[266] This effective *chaebol* tax rate is less than the real tax rates applied to companies one rung down on the ladder with capital between KRW 500 million and KRW 500 billion.[267] Congresswoman Lee stated that "(t)he very few *Chaebol* companies with more than capital of KRW 500 billion are receiving the tax reduction benefits; not only that, this concentration is rapidly intensifying, and the corporate tax rate reduction from 22% to 20% for the amount over KRW 200 million this administration {intends

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263 **Exhibit C-136**, *Mail News* (Apr. 20, 2011), "Real corporate tax rates for Chaebols are lower than those for large enterprises."

264 **Exhibit C-137**, *Kyunghyang* (Apr. 18, 2011), "Corporate tax reduction, benefits only the 0.03%."

265 **Exhibit C-136**, *Mail News* (Apr. 10, 2011), "Real corporate tax rates for Chaebols are lower than those for large enterprises."

266 *Id.*

267 *Id.*

to implement} in 2012 will only make real tax rate reduction to *Chaebols* worse."[268] She has argued that, as a result, the "{t}ax reductions must be reengineered, such as by downsizing the R&D tax reductions."[269]

South Korean media elsewhere also report that "(t)he reason for relatively lower corporate taxes paid by large enterprises is not only because of lower corporate tax rate, but also because temporary investment tax credit and R&D investment tax deductions have become 'fit-to-large enterprise' tax reductions" and that the "R&D tax deductions have also been altered favorably to large enterprises."[270]

Additionally, a 2010 "Survey of Research and Development in Korea" conducted by the Ministry of Education, Science and Technology together with the "Korea Institute of Science Technology Evaluation and Planning" found that the top 20, 10 and 5 highest revenue-generating companies in 2009 (which include Samsung and LG[271]) accounted for 31.13%, 28.75% and 26.82% of the entire national R&D expenditures.[272]

Whirlpool believes that such high concentration of R&D expenditures by South Korean *chaebol*s represents new information showing predominant use by *chaebol*s of Article 10(1)(3) as well as the granting to *chaebols* of disproportionate benefits under Article 10(1)(3). This is

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[268] *Id.*

[269] *Id.*

[270] **Exhibit C-137**, *Kyunghyang* (Apr. 18, 2011), "Corporate tax reduction, benefits only the 0.03%."

[271] **Exhibit C-138**, *Data News* (Sept. 9, 2010), "Top 1000 companies, decreasing revenues but increasing permanent employees."

[272] **Exhibit C-139**, GOK Ministry of Education, Science and Technology, and Korea Institute of Science and Technology Evaluation and Planning (Nov. 2010), "2010 Survey of Research and Development in Korea, 2010."

made clear by the further data provided in the GOK's "2010 Statistical Yearbook of National Tax" for the tax year 2009. According to the Yearbook, a mere 18.28% of South Korean corporations, accounting for 83.14% of total tax amounts to be paid,[273] claimed 50% of the total Article 10 tax credits claimed by all corporations for 2009 of KRW 1.545 trillion.[274]

b. Financial Contribution

Tax deductions or exemptions represent a foregoing or non-collection of revenue by the GOK that is otherwise due and as such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii).

c. Benefits Conferred

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred to the recipient of tax deductions or exemptions in the amount of the tax revenue foregone by the GOK.

d. Specificity

As set out above, information reasonably available to the Petitioner confirms that Article 10(1)(3) is predominantly used by, and/or has disproportionately benefitted the large enterprises, including *chaebols* such as Samsung and LG. Article 10(1)(3) is therefore de facto specific within the meaning of 19U.S.C.§1677(5A)(D)(iii).

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[273] **Exhibit C-131**, National Tax Service (December 2010), "Statistical Yearbook of National Tax" at 468.

[274] *Id.* at 512.

4. Government of Korea Targeted Green "Stimulus" Subsidies

On January 6, 2009, the GOK launched a "Green New Deal" package totaling approximately US$38.1 billion, of which US$30.7 billion (approximately 80 per cent) was allocated to "green" initiatives, such as renewable energies, energy efficient buildings, low carbon vehicles and water and waste management.[275] This added to the GOKs existing green subsidy programs.

The GOK's green stimulus subsidies programs include:

- Research, Supply or Workforce Development Investment Tax Deductions for "New Growth Engines" Under RSTA Article 10(1)(1);
- Research, Supply or Workforce Development Expense Tax Deductions for "Core Technologies" Under RSTA Article 10(1)(2);
- RSTA Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities;
- GOK Subsidies for "Green Technology R&D" and its Commercialization; and
- Industrial Bank of Korea ("IBK") Preferential Loans to Green Enterprises.

Specific allegations regarding the status of each of the above programs as countervailable subsidies are set out below.

a. Research, Supply or Workforce Development Investment Tax Deductions for "New Growth Engines" Under RSTA Article 10(1)(1)

(i) Background

In 2010, the GOK implemented two new targeted enhanced tax deduction programs for research and/or workforce development expenses, consistent with the targeted growth objectives of the "Green New Deal." The first program was implemented through an amendment to the RSTA. It was enacted to facilitate South Korean corporations' investments in research and

[275] **Exhibit C-140**, United Nations Environment Program (UNEP), "An Update for the G20 Pittsburgh Summit" at 2, 7.

development activities relating to the "new growth engines" program. The program is set out at subparagraph 1 of Article 10(1) of the RSTA.[276] Paragraph 1 of Article 9 of the Enforcement Decree implements Article 10(1)(1) while Appendix 7 of the Enforcement Decree sets forth the following eligible technologies that are covered by the New Growth Engine program.[277] Those eligible "new growth engine" technologies are as follows:

- LED;
- Green transportation;
- Robot application;
- Bio-medicine or healthcare equipment;
- New material/nano fusion;
- New renewable energy;
- Contents-software;
- Carbon-reduced energy;
- High margin food; and
- High tech water treatment.[278]

Under Article 10(1)(1), large corporations making research, supply or workforce development investments in a "new growth engine" technology would qualify for a tax deduction of 20 percent of such expenses in a taxation year, while SME's would qualify for a tax deduction at a rate of 30 percent.[279]

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[276] **Exhibit C-122**, Restriction of Special Taxation Act, Article 10(1)(1), Restriction of Special Taxation Regulations and Annex defining "New Growth Engines" (translation).

[277] **Exhibit C-122**, Restriction of Special Taxation Regulations, Article 9 (Tax deduction on research and workforce development) (translation). **Exhibit C-122**, Restriction of Special Taxation Regulations, Appendix 7 (translation).

[278] *Id.*

[279] **Exhibit C-122**, Restriction of Special Taxation Act, Article 10(1)(1), Restriction of Special Taxation Regulations and Annex defining "New Growth Engines" (translation).

The Department of Commerce has previously initiated an investigation into this program in *Bottom Mount Combination Refrigerator-Freezers*.[280]

(ii) Financial Contribution

Tax deductions for research, supply or workforce development expenses for "new growth engines" represent a foregoing or non-collection of revenue that is otherwise due to the GOK and as such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii).

(iii) Benefit Conferred

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of Article 10(1)(1) RSTA tax deductions for research, supply or workforce development expenses in the amount of the tax revenue foregone by the GOK.

(iv) Specificity

Given that eligibility and use of the GOK's research, supply or workforce development investment tax deduction is limited to expenses pertaining to a specified and highly limited list of "new growth engines," this program is specific both in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D).

(v) Eligibility for Use of Program during the POI

While information reasonably available to Petitioner does not allow Petitioner to confirm actual receipt and use tax of deductions under RSTA Article 10(1)(1) by South Korean producers/exporters of LRWs, there is considerable evidence of substantial investments by major producers of LRWs which would appear on their face to qualify for Article 10(1)(1) RSTA tax deductions for research, supply or workforce development expenses.

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[280] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Initiation of Countervailing Duty Investigation*, 76 Fed Reg. 23,298, 23,300 (Apr. 26, 2011).

For example, both LGE and SEC produce and incorporate LED technology into the LRWs that they produce.[281] Moreover, in May 2010, SEC announced a KRW 23.3 trillion green technology investment plan between 2010 and 2020 including KRW 8.6 trillion to be invested in LED technology.[282]

b. Research, Supply or Workforce Development Expense Tax Deductions for "Core Technologies" Under RSTA Art 10(1)(2)

(i) Background

The second green stimulus program introduced through amendment of the RSTA in 2010 was for the purpose of facilitating investments in South Korean corporations' research and development activities in the "new growth engines" program. This program is pursuant to subparagraph 2 of Article 10(1) of the RSTA and was implemented pursuant Paragraph 2 of Article 9 of the Enforcement Decree.[283] This program offers a credit towards taxes payable for certain personnel and equipment costs falling under an eligible "core technology" program.[284] The "core technologies" are set out in Appendix 8 of the Enforcement Decree as follows:

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[281] **Exhibit C-141**, Samsung Product Catalogue, "Samsung Laundry Product Specification" (translation). **Exhibit C-142**, LG Product Catalogue, "LG Laundry Product Specification" (translation).

[282] **Exhibit C-143**, Samsung Investor Relations Press Release (May 13, 2010), "Samsung Outlines Investments in Eco, Healthcare Industries;" Online Media Article (May 11, 2010), "Samsung's $20B GreenTech Plan."

[283] **Exhibit C-122**, Restriction of Special Taxation Act, Article 10(1)(2), Restriction of Special Taxation Regulations and Annex with Presidential Decree defining New Growth Engines (translation). *Id.* Restriction of Special Taxation Regulations, Article 9 (Tax deduction on research and workforce development) (translation).

[284] **Exhibit C-122**, Restriction of Special Taxation Act, Article 10(1)(2), Restriction of Special Taxation Regulations and Annex with Presidential Decree defining New Growth Engines (translation).

- Metal;
- Technologies fundamental to production lines;
- Textile;
- Increasing energy efficiency;
- Greenhouse gas;
- Resources;
- Electricity;
- Nuclear;
- Information Security;
- Environmental clean-up technology;
- Chemical processing;
- RFID;
- Ubiquitous computing;
- Medicine;
- Astronomy;
- Display;
- Semi-conductor; and,
- Carriers.[285]

The Department of Commerce has previously initiated an investigation into this program in *Bottom Mount Combination Refrigerator-Freezers*.[286]

(ii) Financial Contribution

Tax deductions for research, supply or workforce development expenses for "core technologies" represent a foregoing or non-collection of revenue that is otherwise due to the GOK and as such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii).

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285 **Exhibit C-122**, Restriction of Special Taxation Act, Article 10(1)(2), Restriction of Special Taxation Regulations, Appendix 8 (translation).

286 *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Initiation of Countervailing Duty Investigation*, 76 Fed Reg. 23,298, 23,300 (Apr. 26, 2011).

(iii) Benefit Conferred

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of Article 10(1)(2) RSTA tax deductions for research, supply or workforce development expenses in the amount of the tax revenue foregone by the GOK.

(iv) Specificity

Given that eligibility and use of the GOK's research, supply and workforce development investment tax deduction program is limited to investments pertaining to a specified and limited list of "core technologies," this program is specific both in law and in fact to an enterprise or industry under section 19 U.S.C. § 1677(5A)(D).

(v) Eligibility for Use of Program during the POI

While information reasonably available to Petitioner does not allow Petitioner to confirm actual receipt and use of deductions under RSTA Article 10(1)(2) by South Korean producers/exporters of LRWs, there is considerable evidence of substantial investments by major producers of LRWs which would appear on their face to qualify for such deductions.

For example, in February 2010, LGE announced that it will invest KRW 1.5 trillion in 2010 in "eco-related sectors, including renewable energies and smart grids."[287] "Smart Grid" technology is included in LRWs produced by LGE and is advertised to "help homeowners improve their energy efficiency."[288] In July 2010, it was further reported that LG Group intends to invest KRW 20 trillion by 2020 to cut greenhouse gas emissions and to develop more energy-

[287] **Exhibit C-144**, *Korea Times* (Feb. 24, 2010), "LG Electronics Promotes Smart Grid Technology."

[288] **Exhibit C-145**, *Energy Efficiency News* (Jan. 7, 2011), "LG Unveils New Generation of Smart THINQ appliances;" *eMeter* (undated), "LG unveils smart appliances, but we still need smart electricity rates;" *Online Media Article*, "Samsung Washers Solar Power Compatible" (translation).

saving products.[289] These initiatives would appear on their face to be eligible for an RSTA Article 10(1)(2) tax deduction as related to "increasing energy efficiency" and/or "greenhouse gas." Similarly, in May 2010, SEC announced a US $21 billion investment in low-carbon technologies, technologies which on their face would be related to increasing energy efficiency and reducing greenhouse gas emissions.[290] SEC also announced in August 2010 its PlanetFirst initiative, a KRW 1.01 trillion investment to reduce carbon dioxide emissions from its manufacturing sites and develop a greater range of environmentally-friendly technologies and electronic devices.[291] This investment would on its face qualify as a "greenhouse gas" core technologies program. Furthermore, LGE's reported KRW 172.4 billion investment related to improving production of molds, tools and equipment for washer production on its face would appear to relate to "technologies fundamental to production."[292]

c. RSTA Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities

(i) Background

A further "green stimulus" program is pursuant to paragraph 2 of Article 25 of the RSTA. The purpose of this program is to enhance the energy efficiency of business sectors that may in

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289 **Exhibit C-146**, *Online Media* (July 15, 2010), "South Korea Companies and Government to Spend Billions More on Clean Energy."

290 **Exhibit C-147**, *Online Media* (May 11, 2010), "Samsung ramps up clean tech investment plan."

291 **Exhibit C-148**, *Online Media* (Aug. 6, 2010), "Samsung Focuses its Effort on Eco-Management."

292 **Exhibit C-149**, LG Q3 2010 Quarterly Report (Translation) at 35.

turn help to enhance the efficiency generally in the national economy.[293] This program was introduced in the predecessor of the RSTA and remained in effect in during the POI.[294] Eligible types of facilities are set out in paragraph 2 of Article 22 of the RSTA Enforcement Decree.[295] Corporations who have made investments in facilities to enhance energy utilization efficiency or produce renewable energy sources are entitled to a tax credit of 10% of the eligible investments towards taxes payable.

This program has been found countervailable in *Bottom Mount Combination Refrigerator-Freezers*.[296]

(ii) Contribution

Tax deductions for investments in energy economizing facilities pursuant to RSTA Article 25(2) represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii).

(iii) Benefit Conferred

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of RSTA Article 25(2) tax deductions/credits in the amount of the tax revenue foregone by the GOK.

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[293] **Exhibit C-122**, Restriction of Special Taxation Act, Article 25-2 (translation).

[294] **Exhibit C-150**, Response of the Government of Korea to the Department of Commerce's Questionnaire in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (June 29, 2011) (Public Version) at 246.

[295] **Exhibit C-122**, Restriction of Special Taxation Act, Article 22(2) (translation).

[296] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Preliminary Negative Countervailing Duty Determination*, 76 Fed Reg. 55,044 (Sept. 6, 2011) and the accompanying Issues and Decision Memorandum at 20.

(iv) Specificity

Given that eligibility and use of the RSTA Article 25(2) tax deduction is limited to investments in energy-economizing facilities, this program is specific both in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D).

(v) Eligibility for Use of Programs During POI

Article 22(2) of the RSTA Enforcement Decree specifies four categories investments which qualify as "energy economizing facilities," including "Facilities, parts or materials necessary for facilities producing new or renewable energy…"[297] On its face, LGE's announced KRW 1.5 trillion investment in eco-related sectors including renewable energies would appear to qualify under the RSTA Article 25(2) tax credit for investment in energy economizing facilities.[298] Similarly, SEC's announcement of a US $20 billion investment to develop green technology, including solar cells, battery cells and LEDs, would appear on its face related to the production of new or renewable energy.[299] Its KRW 1.01 trillion investment in the PlanetFirst initiatives to reduce carbon dioxide emissions from its manufacturing sites and develop environmentally-friendly technologies would also appear to qualify for the program as it would be an investment in energy economizing facilities.[300]

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[297] **Exhibit C-122**, Restriction of Special Taxation Regulation, Article 22-2 (translation).

[298] **Exhibit C-144**, *Korea Times* (Feb. 24, 2010), "LG Electronics Promotes Smart Grid Technology."

[299] **Exhibit C-147**, *Online Media* (May 11, 2010), "Samsung's $20B GreenTech Plan."

[300] **Exhibit C-148**, *Online Media* (Aug. 6, 2010), "Samsung Focuses its Effort on Eco-Management."

d. GOK Subsidies for "Green Technology R&D" and its Commercialization

(i) Background

The GOK has established programs to financially support green technology research and development by South Korean enterprises, including under authority of the *Framework Act on Low Carbon, Green Growth* (the "Framework Act") as part of its five-year Green Growth Plan.[301] The statutory basis for this program is found in Article 26 of the Framework Act, which is as follows:

> "Article 26 (Facilitation of Research, Development, and Commercialization of Green Technology)
>
> (1) The Government may establish and enforce measures, including the following matters, to facilitate research, development, and commercialization of green technology: (…)
>
> 3. Financial support for the facilitation of research, development, and commercialization of green technology"

The program covers multiple GOK agencies and, as such, is managed by the Korea National Science and Technology Commission.

Based on information reasonably available to the Petitioner, the GOK implemented a national strategy for Green Technology R&D and committed to investing KRW 107 trillion over 2009 to 2013.[302] According to the latest reported figures from the GOK that are reasonably available to the Petitioner, no less than twelve separate GOK Ministries invested KRW 1.9466

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[301] **Exhibit C-151**, Framework Act on Low Carbon and Green Growth, Article 26.

[302] **Exhibit C-152**, Presidential Committee on Green Growth, "Korea Green Technology Policies and Int'l Cooperation" (2010) at 19.

trillion over 4,732 projects for Green Technology R&D in 2009.[303] These funds have been invested exclusively into 27 "Core Green Technologies" identified by the GOK as follows:

- Modeling for technologies;
- Estimating the impact of climate change and applied technologies;
- Technologies to improve efficiency and reduce prices for the silicon-based solar battery;
- Mass production of non-silicon-based solar cells and key original technologies;
- Bio energy production and system technologies;
- Technologies for eco-friendly nuclear reactors and nuclear fuel recycling systems;
- Design and construction techniques for upgraded light-water reactors;
- Design and construction of fusion reactor technologies;
- High efficient hydrogen manufacturing and hydrogen storing technology;
- Next generation fuel cell system;
- Integrated gasification technology and applied power generating technology;
- Technologies for high-efficiency and low pollution applied vehicles;
- Intelligent transportation and distribution technologies;
- Creating ecological space and urban generation technology;
- Eco-friendly environment and low energy construction technologies;
- Technologies for eco-friendly plant growth;
- Green process technologies;
- Technologies maximizing the energy efficiency of LED for lighting and Green IT devices;
- Technologies enhancing the efficiency of intelligent power network (power IT) and electrical devices;
- Secondary high-efficiency cell producing technology;
- Technologies for collecting, storing and processing CO2;
- Technology processing of non-CO2;
- Estimating the quality of water and management technology;
- Technology procuring alternative water resources;
- Waste reduction, recycling and energy making;
- Monitoring and processing technology for harmful substances; and
- Virtual reality technology.[304]

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[303] **Exhibit C-153**, Ministry of Education, Science and Technology, and Korea Institute of Science and Technology Evaluation and Planning (Sept. 2010), "2010 Green Technology Research and Development Investigation and Analysis Report" at 3, 20.

[304] *Id.* at 5.

Of the GOK's total R&D investments, the share invested into private sector R&D (versus public sector R&D) in 2009 reached close to 40%, totaling KRW 743.2 billion.[305] The manufacturing industry fared well in receiving these subsidies. "Automobiles and transportation equipment", "electrical and machinery equipment" and "electrical component, computers, and visual/audio communication equipment" industries ranked as the three highest industry groups in terms of the amount of R&D funding received, respectively.[306]

The most recent GOK reporting on "Green Technology R&D Investments" shows that KRW 13 billion, which is 20.5% of the total investment into the area, went to large corporations in 2009.[307] The report also indicates that this 2009 figure is a 146% jump from the year before.[308]

The Department of Commerce has previously initiated an investigation into this program in *Bottom Mount Combination Refrigerator-Freezers*, and preliminarily found it to be a countervailable subsidy in its post-preliminary analysis.[309]

(ii) Financial Contribution

Green Technology R&D grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

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[305] *Id.* at 20.

[306] *Id.* at 20, 21.

[307] *Id.*at 177.

[308] *Id.*

[309] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Post-Preliminary Analysis of New Subsidy Allegations* (Dec. 21, 2011).

(iii) Benefit Conferred

A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of Green Technology R&D grants in the amount of the grant.

(iv) Specificity

Given that eligibility for "Green Technology R&D" subsidies appears to be expressly restricted to listed "Core Green Technologies,"[310] this program is specific both in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D).

(v) Eligibility for Use of Program during POI

As can be seen from the evidence already discussed above in the sections discussing RSTA Article 10(1)(1) and RSTA Article 10(1)(2) in respect of SEC and LGE production of LRWs, at least two of these "Core Green Technologies" are applicable on their face: (1) "Technologies maximizing the energy efficiency of LED for lighting and Green IT devices"; and (2) "Technologies enhancing the efficiency of intelligent power network (power IT) and electrical devices." SEC and LGE lead the South Korean market in these areas.[311]

An additional "Core Green Technology" relevant to the production of LRWs is the "Green Process technology considering environment load and energy consumption prediction," which covers energy-saving technologies involved in the entire product life cycle of

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[310] **Exhibit C-153**, Ministry of Education, Science and Technology, and Korea Institute of Science and Technology Evaluation and Planning (Sept. 2010), "2010 Green Technology Research and Development Investigation and Analysis Report" at 5.

[311] **Exhibit C-154**, Green Technology Information Portal, "LED for light and Green IT Technologies: current market trend and future expectations."

electricity-consuming products.[312] Here too, the GOK has identified SEC and LGE as the market leaders in South Korea.[313] In this area, the GOK is reported to have invested KRW 10.7 billion in 2009 for research to be carried out by large enterprises.[314]

In addition, both the SEC and LGE, in their Sustainability Report regarding their performance during 2009, prepared in accordance with the G3 guidelines of the Global Reporting Initiative and Accountability Principles Standard, indicate that they have received direct and indirect subsidies from the GOK. Specifically, LGE in its Sustainability Report states that it "gets direct and indirect support from the Korean government to offset… operating costs related to national policy research projects,"[315] while SEC in its Sustainability Report states that its "headquarters and overseas production plants have received various indirect subsidies from governments…"[316] Finally, and notably, in September 2010, LG issued a press release boasting its receipt of Green Certificates from the GOK, including for high-efficiency LED flat lighting. LGE went on to note in that release that, as a result of the Green Certificates, "LG will now be

[312] **Exhibit C-155**, Green Technology Information Portal, "Green Process technology considering environment load and energy consumption prediction: introduction."

[313] **Exhibit C-156**, Green Technology Information Portal, "Green Process technology considering environment load and energy consumption prediction: current market trend and future expectations."

[314] **Exhibit C-153**, Ministry of Education, Science and Technology, and Korea Institute of Science and Technology Evaluation and Planning (Sept. 2010), "2010 Green Technology Research and Development Investigation and Analysis Report" at 171.

[315] **Exhibit C-157**, 2009 LG Electronics Sustainability Report at 19.

[316] **Exhibit C-158**, 2009 Samsung Electronics Sustainability Report at 19.

eligible for tax benefits and state backing for its green industries. The company will also receive additional incentives to take part in R&D projects with the government."[317]

According to the GOK study on its 2009 Green Technology R&D Investment, published in September 2010, the GOK's Green Technology R&D investment is to be increased to 20% of total R&D investment by 2013.[318] This, according to the report, would double the Green Technology R&D investment from its 2008 level to KRW 2.8 trillion by 2012, and 82.1% of it, KRW 2.3 trillion, would go to the Core Green Technologies R&D.[319] As noted above, a large portion of such subsidies went to large enterprises in 2009.[320] LGE and SEC would qualify for this program based on its programs and products discussed above and because they are large enterprises. The Petitioner, therefore, reasonably believes that LGE and SEC might have benefited from the GOK's subsidies during the POI in line with the 2009 report, or more.

e. Industrial Bank of Korea ("IBK") Preferential Loans to Green Enterprises

The IBK is a leading state-run bank that offers a full suite of financial services.[321] GOK ownership of IBK (direct and through government agencies such as KEXIM and KoFC) amounts

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[317] **Exhibit C-159**, LG Media Release (Sept. 3, 2010), "LG Wins Green Certificates for Eco-Friendly Growth.

[318] **Exhibit C-153**, Ministry of Education, Science and Technology, and Korea Institute of Science and Technology Evaluation and Planning (Sept. 2010), "2010 Green Technology Research and Development Investigation and Analysis Report" at 237.

[319] *Id.*

[320] *Id.* at 3, 20.

[321] **Exhibit C-160**, 2009 IBK Annual Report, at 2.

to 77.3% of voting shares.[322] Since its establishment in 1961, IBK's highest priority has been the health and sustainability of the country's SME sector and must extend more than 80% of its loans to the SME sector.[323]

Beginning in 2010, the IBK provides a preferential loan program for enterprises with Green Technology / Business / Specialized Business certificates or who possess "Green Management" Level "S", "A" or better.[324] This program allows for up to a 1% reduction in the interest rate on the loan.[325]

The Department has previously determined that preferential loans issued by GOK policy banks are countervailable.[326] Moreover, the Department has previously initiated on this program in *Bottom Mount Combination Refrigerator-Freezers*.[327]

(i) Financial Contribution

This preferential loan program represents a direct transfer of funds and as such qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

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[322] **Exhibit C-150**, Response of the Government of Korea to the Department of Commerce's Questionnaire in Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (June 29, 2011) (Public Version) at 24.

[323] *Id.*, at 23.

[324] **Exhibit C-161**, Industrial Bank of Korea, "Green company loans."

[325] *Id.*

[326] *Notice of Final Affirmative Countervailing Duty Determination: Coated Free Sheet Paper from the Republic of Korea*, 72 Fed. Reg. 60,639-60,641 (Oct. 25, 2007) and Issues and Decision Memorandum for Final Determination, Import Administration Memorandum (Oct. 17, 2007).

[327] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: July 15, 2011 New Subsidy Allegations* (Aug. 16, 2011) at 8.

(ii) Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(ii) is conferred on the recipient to the extent that the recipient pays a lower discounted rate of interest on the loans as compared to what they would pay on comparable commercial loans.

(iii) Specificity

Given that the IBK Preferential Loans to Green Enterprises are directed only to businesses with Green Technology / Business / Specialized Business certificates or with Green Management level "S", "A" or better, the loans are specific both in law and in fact to an enterprise or an industry under 19 U.S.C. § 1677(5A)(D).

(iv) Eligibility for Use of Program During POI

SEC and LGE are major holders of Green Certificates. By their own account, both companies are reported to have Green Certificates under one or more categories of GOK Green programs. For example, LGE reported that it held 11 Green Technology Certificates as of the end of 2010, including "Technology for maximizing washing machine capacity using a fixed tub structure," "6 motion washing technology" and "dual injecting steam washing features" for washers.[328] In addition, a LG Group entity has been participating as a pilot Green Management company, according to one media report,[329] while Samsung facilities have been reported as

[328] **Exhibit C-162**, 2010 LG Electronics Sustainability Report at 38.

[329] **Exhibit C-163**, Construction Economy (Jan. 13, 2011), "Green Management system starts full-fledge in July."

certified Green Businesses.[330] As such, LGE and SEC would presumptively be eligible under this program during the POI.

f. Support for SME "Green Partnerships"

Pursuant to the Framework Act Article 33.1, the GOK may establish and enforce preferential support for joint projects between large enterprises and SMEs. Moreover, pursuant to Article 33.2 of the Framework Act, the GOK may provide assistance in large enterprises' technical guidance, transfer of technology, and dispatch of technical human resources for SMEs.

The text of the Article 33.1 and 33.2 provides in relevant part as follows:

> Article 33 (Support for Medium and Small Enterprises)
>
> The Government may establish and enforce the following measures to facilitate green technology and green management of medium and small enterprises:
>
> 1. Preferential support for joint projects between large enterprises and medium and small enterprises;
>
> 2. Assistance in large enterprises' technical guidance, transfer of technology, and dispatch of technical human resources for medium and small enterprises…[331]

In furtherance of these programs, the GOK has provided funds through the Korean National Cleaner Production Centre ("KNCPC") to large enterprises to encourage the establishment of an "environmentally friendly" supply chain.[332] The KNCPC, operating under the former GOK Ministry of Industry Resources (now the Ministry of Knowledge and

[330] **Exhibit C-164**, *Gong-gam Korea* (April 14, 2011), "The best domestic Green companies gather in one place!" at 1, 2.

[331] **Exhibit C-151**, Framework Act on Low Carbon and Green Growth.

[332] **Exhibit C-165**, *Digital Times* (Aug. 30, 2007), "(Let's find it out) Green Partnership."

Economy), committed KRW 75 billion to develop Green Partnerships between large enterprises and SMEs.[333]

(i) Financial Contribution

KNCPC grants represent a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

(ii) Benefit Conferred

A benefit within the meaning of 19 C.F.R. § 351.504(a) is conferred on the recipient of KNCPC grants in the amount of the grant.

(iii) Specificity

On the basis of information reasonably available to the Petitioner, KNCPC funding is specific both in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)(D). Notably, the funding is limited to large enterprises and SMEs who enter into joint projects solely for the purpose of creating "Green Partnerships" through the adoption, transfer and creation of "green technologies."

(iv) Eligibility for Use of Program During POI

Information reasonably available to the Petitioner indicates that Samsung and LG have benefited from funds distributed under these programs. Both Samsung and LG have struck "green partnerships" and have participated since at least 2003 and through to 2008 in the

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333 *Id.*

Green Partnership "pilot project" with the active financial support of the KNCPC.[334] According to the KNCPC, Samsung was provided with government support of KRW 1.089 billion out of a total of KRW 1.724 billion to all beneficiaries between November 2006 and December 2008.[335]

Information reasonably available to the Petitioner also shows more recent use. The KNCPC reported that Samsung has participated in two further programs: the first is identified as the "Spread and Development of Low Carbon Partnership into Large and Medium/Small enterprise of electrical & electronics industry for addressing climate change and GHGs reduction," for which Samsung SDI Co. Ltd. participated as a principal company for the period December 1, 2009 to November 30, 2011;[336] the second is identified as the "Establishment of low carbon management system for supplier using green partnership framework," for which Samsung Electronics participated as a principal company for two years beginning June 1, 2010.[337]

5. Korea Trade Insurance Corporation ("K-SURE") – Short-Term Export Credit Insurance

a. Background

The Korean Export Insurance Corporation ("KEIC") was established pursuant to the Export Insurance Act of 1968 to operate export and import insurance programs for the purpose of facilitating trade. In 2010, a statutory amendment transformed KEIC into the Korea Insurance Trade Corporation ("K-SURE") and increased the scope of K-SURE's ability to provide

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334 *Id.*

335 **Exhibit C-166**, Korea National Cleaner Production Centre, "Business Report."

336 **Exhibit C-167**, Korea National Cleaner Production Centre, "Business Support."

337 **Exhibit C-168**, Korea National Cleaner Production Centre, "Business Support."

coverage for import, export and overseas trade transactions.[338] As part of its current portfolio, K-SURE offers short-term export credit insurance to South Korean exporters.

K-SURE's "Short-Term Export Credit Insurance" insures against losses arising from default on export receivables.[339] The insurance protects against prescribed political and commercial risks such as payment refusal or buyer's breach of contract where goods are shipped pursuant to an export agreement with a payment period of less than two years. Claims are paid from the Export Insurance Fund.[340] The fund is managed by K-SURE and financed in part by the GOK and in part through the collection of premiums from insured exporters.[341]

In 2009, Short-Term Export Credit Insurance accounted for 99.9 percent of the total amount underwritten by K-SURE for short-term transactions.[342] In 2010, K-SURE recorded a growth of 13% in underwriting performance for Short-Term Export Credit Insurance with 75% of the underwriting in the electric, electronics and petrochemical products industries, with electric and electronics industry being the primary underwritten industry.[343]

The Department has previously determined that the K-SURE short-term export credit insurance program constitutes a countervailable subsidy.[344] The Department has also most

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[338] **Exhibit C-169**, K-SURE website: http://www.ksure.or.kr/english/jsp/about/about_01_01.jsp.

[339] **Exhibit C-170**, K-SURE website: http://www.ksure.or.kr/english/jsp/product/product_01_01.jsp.

[340] *Id.*

[341] *Id.*

[342] **Exhibit C-171**, 2009 K-SURE Annual Report, *Open a New Chapter* at 22.

[343] **Exhibit C-172**, 2010 K-SURE Annual Report at 23.

[344] *Preliminary Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 Fed. Reg. 16,766, 16,782 (Apr. 7, 2003)
(footnote continued next page)

recently initiated an investigation into this program in *Bottom Mount Combination Refrigerator-Freezers*.[345]

b. Financial Contribution

The provision of short-term export insurance involves the making of a financial contribution in the form of a potential direct transfer of funds or liabilities within the meaning of 19 U.S.C. § 1677(5)(D)(i).

c. Benefit Conferred

As the Department has previously determined, insurance premiums charged by K-SURE fail to adequately cover the operating losses and long-term costs of the program, as is evident from the most recent available data published by K-SURE in its 2010 Annual Report. These data show a loss ratio (ratio of the claims paid to the premiums collected) of no less than 169.2 percent, representing a 26.79 percent jump in the loss ration year-over-year.[346] The increase in loss ratio was due in part to a 57% dramatic growth in claims paid-out.[347]

The program therefore confers a benefit within the meaning 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.520 where payouts have been made.

(continued from last page)

and Issues and Decision Memorandum for Final Determination, Import Administration Memorandum (June 16, 2003).

[345] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Initiation of Countervailing Duty Investigation*, 76 Fed Reg. 23,298, 23,300 (Apr. 26, 2011).

[346] **Exhibit C-172**, 2010 K-SURE Annual Report, 30.

[347] *Id.* at 16, 30.

d. Specificity

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because the short-term export insurance provided by K-SURE to South Korean exporters is contingent in law upon export performance.

e. Eligibility for Use of Program During POI

Information reasonably available to the Petitioner indicates that, according to a media report dated February 14, 2009,[348] LGE requested K-SURE to increase its credit limit for export insurance. In response, K-SURE agreed to increase this limit by USD 1 billion. A second media report, dated February 25, 2009,[349] indicated that K-SURE increased LGE's credit for export insurance to Sears, a U.S. retailer, from USD 130 million to USD 400 million. According to a further media report dated May 21, 2009,[350] LGE had receivables amounting to USD 41 million from Circuit City, which went bankrupt in November 2008, and these would be paid to LGE by K-SURE.

It was publically reported as recently as on January 15, 2010[351] that SEC subscribes to insurance from K-SURE for most of its exports. K-SURE and Samsung have allegedly entered into a "Comprehensive Insurance Contract" which covers all SEC's exports and, similar to LGE,

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348 **Exhibit C-173**, *Financial News* (Feb. 14, 2009), "Semiconductor export expected to decrease by 10%."

349 **Exhibit C-174**, *YTN* (Feb. 25, 2009), "Export insurance limit jumped to USD 400 million for SEC & LGE."

350 **Exhibit C-175**, *Korea Economic TV* (May 21, 2009), "SEC & LGE recovers receivables from Circuit City."

351 **Exhibit C-176**, *Hankook Ilbo* (Jan. 15, 2010), "Korea Export Insurance Corporation shows its true strength in danger… reassuring safety net for the exporters."

SEC had receivables amounting to USD 115.9 million from Circuit City and these would have been paid by K-SURE.[352]

Given LGE and SEC's historical reliance on K-SURE, the Petitioner believes that, as part of the electronics industry that comprises the vast majority of K-SURE export credits, LGE and SEC would likely be eligible for and users of K-SURE export credits during the POI.

6. Korean Export-Import Bank ("KEXIM") Export Factoring

a. Background

KEXIM is an official GOK export credit agency that provides comprehensive trade financing products to South Korean exporters. The bank primarily extends export loans, trade financing and guarantees to bolster export competitiveness.[353]

KEXIM export factoring is a form of trade finance whereby KEXIM provides short-term discounted loans against the trade receivables of South Korean exporters resulting from open-account transactions, including transactions on a Documents against Acceptance ("D/A") basis.[354] Open-account export transactions involve sales to foreign purchasers on credit, whereby shipping documents are dispatched to the foreign purchaser once the product is exported and the foreign purchaser remits payment directly to the exporter's account. The factoring loans are provided by KEXIM on a non-recourse basis, meaning that KEXIM, and not the exporter, assumes the risk of loss with respect to purchaser default.

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[352] **Exhibit C-177**, 2009 KEXIM Annual Report at 23.

[353] **Exhibit C-178**, KEXIM website: http://www.koreaexim.go.kr/en2/01_exim/01_exim/01.jsp.

[354] **Exhibit C-179**, KEXIM website, online: http://www.koreaexim.go.kr/en2/02_export/03_structure/01.jsp. *See also* **Exhibit 180**, 2010 KEXIM Annual Report, *Making the Right Moves* at 34.

KEXIM's export factoring program is made available for use by two groups of exporters: companies that have produced or have exported a given product for more than one year; or companies that disclose a transactional history with the foreign purchaser.[355] KEXIM will provide financing for up to 80% to 100% of the value of the trade bill at a discounted interest rate (LIBOR + spread). A factoring fee equal to 0.04% to 0.80% of the trade bill amount also is charged.[356]

KEXIM export factoring was introduced in 2005 as the first program of its kind to offer non-recourse terms.[357] The program has evolved into a key financing vehicle as evidenced by the KRW 1,601 billion advanced by KEXIM to exporters in 2009 (a 21.0% increase year-over-year)[358] and by the KRW 2,610 billion advanced to exporters in 2010 (a 63.0% increase year-over-year).[359]

The information reasonably available to the Petitioner shows that South Korea's nine major public lending institutions promised to invest an additional KRW 25 trillion to support lending and a further KRW 55 trillion for guarantees and export insurance,[360] with KEXIM alone reporting as having advanced KRW 22.912 trillion in guarantees in 2010.[361] Moreover, KEXIM notes that its program fills a void made by commercial banks who are unwilling to finance for

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355 *Id.*, KEXIM website.

356 *Id.*

357 **Exhibit C-177**, 2009 KEXIM Annual Report at 24.

358 *Id.*

359 **Exhibit C-180**, 2010 KEXIM Annual Report, *Making the Right Moves* at 34.

360 **Exhibit C-181**, Ministry of Strategy and Finance Press Release (Dec. 30, 2008).

361 **Exhibit C-180**, 2010 KEXIM Annual Report, *Making the Right Moves* at 18.

overseas markets. It notes that Korean exporters often face difficulties in securing appropriate financing for overseas markets and that its financing can meet this gap.[362]

The Department has previously determined that similar KEXIM short-term trade financing is countervailable.[363] Most recently, the Department has initiated an investigation into this program in *Bottom Mount Combination Refrigerator-Freezers*.[364]

b. Financial Contribution

The program represents a direct transfer of funds from government to exporters and producers. As such, the program qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

c. Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(ii) is conferred on the recipient to the extent that the recipient pays a lower discounted rate of interest on the loans as compared to what they would pay on a comparable short-term commercial loan.

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362 *Id*. at 29.

363 *Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 75 Fed. Reg. 55,745 (Sept. 14, 2010); *Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 Fed. Reg. 53,413, 53,419 (Sept. 11, 2006), (unchanged at the final results, see *Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 Fed. Reg. 119 (Jan. 3, 2007)); *Notice of Preliminary Determination of Sales At Less Than Fair Value: Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*: 67 Fed Reg. 31,230 (May 9, 2002); *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 Fed. Reg. 73,176, 73,180 (Dec. 29, 1999).

364 *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Initiation of Countervailing Duty Investigation*, 76 Fed Reg. 23,298, 23,300 (Apr. 26, 2011).

d. Specificity

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because trade financing from KEXIM is contingent in law upon export performance.

e. Eligibility for Use of Program During the POI

It appears that the popularity of the program grew between 2005-2007 when KEXIM began to provide non-recourse trade loans to major South Korean exporters.[365] Companies such as LGE and SEC have been significant users of the program.[366]

As recently as in the notes to its Q3 2010 Consolidated Financial Statements, SEC defined "trade receivables" as amounts due from customers for washers sold or services performed in the ordinary course of business.[367] If collection is expected within one year (or in the normal operating cycle of the Company if longer), they are classified as current assets.[368] This report then contemplated factoring directly as follows:

> "{i}n the event of receivables and factoring, the Company derecognizes receivables when the Company has given up control or continuing involvement."[369]

Samsung would give up control of receivables when it uses KEXIM export factoring.

Petitioner is unable to locate any similar notes in more recent SEC financial reporting. Based on information reasonably available to Petitioner, KEXIM export factoring is available to

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365 **Exhibit C-182**, *Economy Today* (Oct. 16, 2009), "Export bank more like 'large companies banks."

366 *Id.*

367 **Exhibit C-183**, 2010 SEC Q3 Consolidated Financials at 22-23.

368 *Id.*

369 *Id.* at 23.

LGE and SEC during the POI. Given the historical use of the program by producers of LRWs such as LGE and SEC, the Petitioner believes that those producers could have benefited from this program during the POI.

7. Korea Development Bank ("KDB") and Industrial Bank of Korea ("IBK") Short-Term Discounted Loans for Export Receivables

a. Background

The KDB has offered corporate, investment, and international banking services to South Korean industry since 1954. Within KDB's international banking division, several export-related services are provided: advice on documentary credit, negotiation of bills of exchange, collection of bills of exchange and re-negotiation.[370] From the date of its creation until late 2009, KDB operated as a wholly state-owned institution. A recent initiative was commenced in October of 2009 to transfer the policy and development role of KDB to the Korea Finance Corporation but KDB has remained a government-owned policy bank.[371]

The IBK, in addition to offering export insurance as discussed above in the section discussing IBK Preferential Loans to Green Enterprises, has over time extended the scope of its offerings to compete more effectively on both a domestic and global scale.

The GOK continues to support the KDB and IBK. It injected KRW 2,300 billion into five state-run lenders including the KDB and IBK in February 2009 to improve market liquidity.

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[370] **Exhibit C-184**, KDB website, online: http://www.kdb.co.kr/screen/jsp/IHEng/IHEngUPrt02030401E.jsp.

[371] **Exhibit C-185**, KDB website, online: http://www.kdb.co.kr/screen/jsp/IHEng/IHEngUIrs03080001E.jsp.

KDB received KRW 900 billion and IBK received KRW 500 billion in new funding as a result.[372]

More specifically, beginning in 2009, KDB implemented a GOK plan to stabilize domestic markets and to protect exporters from the impacts of the global recession.[373] The KDB Annual Report for 2009 discloses that the bank extended USD 23.5 billion in trade finance in 2009, of which export credit accounted for USD 10 billion. Overall, KDB's credit volume in 2009 represented 9.8 percent of the total South Korean export financing market, a 2 percent lift year-over-year. The bank attributed market share growth to its consistent provision of low-cost, long-term trade finance products.[374] In 2010, KDB offered trade financing of USD 26.8 billion with export financing representing KRW 12.3 billion, a 23% increase over 2009.[375] It represented 8.7% of the market share for export financing.[376]

In respect of IBK, as early as in October 2008, the Ministry of Strategy and Finance announced an expansion to the bank's capital base to create additional loan facility worth KRW 12 trillion to support SMEs.[377] Over the course of 2009, IBK set out to proactively assist struggling mid-size companies, including South Korean exporters. To this end, ramping up

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372 **Exhibit C-186**, GOK Press Release (Feb. 2, 2009).

373 **Exhibit C-187**, 2008 KDB Annual Report, *Adapt and Prosper,* at 55 "Meeting Needs as a Policy Bank in Times of Crisis."

374 **Exhibit C-188**, 2009 KDB Annual Report, *A Financial Premiere,* at 23 ("Expanding Trade Finance").

375 **Exhibit C-189**, 2010 KDB Annual Report at 37 ("Expanding Trade Finance").

376 *Id.*

377 **Exhibit C-190**, GOK Press Release (Oct. 21, 2008), "Proposed measures to overcome uncertainties in the international financial markets."

financing was considered a pre-emptive measure intended to normalize corporate operations and strengthen the industrial capital base.[378] In 2010, the IBK reported that its SME loans totaled KRW 93,100, showing its commitment to support mid-sized companies in their recovery from the global financial crisis.[379] In particular, the IBK implemented a program known as the "Export Small Giants Plus +500 Program," which provided financing for export promotion.[380] In regards to large enterprises, the IBKs loan value in 2010 amounted to KRW 1,881.8 billion.[381]

The Department has previously determined that short-term export financing in the form of discounted D/A loans issued by KDB and other GOK policy banks are countervailable.[382] Most recently, the Department has found these discounted loans from the IBK and KDB to be countervailable in *Bottom Mount Combination Refrigerator-Freezers*.[383]

b. Financial Contribution

This program represents a direct transfer of funds to South Korean exporters, and as such qualifies as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

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[378] **Exhibit C-160**, 2009 IBK Annual Report at 31.

[379] **Exhibit C-191**, 2010 IBK Annual Report at 27.

[380] *Id.*

[381] *Id.* at 28.

[382] *Notice of Final Affirmative Countervailing Duty Determination: Coated Free Sheet Paper from the Republic of Korea*, 72 Fed. Reg. 60,639-60,641 (Oct. 25, 2007) and Issues and Decision Memorandum for Final Determination, Import Administration Memorandum (Oct. 17, 2007).

[383] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Preliminary Negative Countervailing Duty Determination*, 76 Fed Reg. 55,044 (Sept. 6, 2011) and the accompanying Issues and Decision Memorandum at 16-17.

c. Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(ii) is conferred on the recipient to the extent that the recipient pays a lower discounted rate of interest on the loans as compared to what they would pay on a comparable short-term commercial loan.

d. Specificity

This program is specific within the meaning of 19 U.S.C. § 1677(5A)(B) because this financing offered by KDB and IBK is contingent in law upon export performance.

e. Eligibility for Use of Program During the POI

Information reasonably available to the Petitioner does not allow the Petitioner to determine whether or not each of LGE or SEC, or any other companies in the LG or Samsung group of companies, used KDB or IBK short-term discounted loans on export receivables during the POI for exports of LRWs. However, on its face, KDB and IBK Short-Term Discounted Loans for Export Receivables would be available to these companies and nothing in the publicly available reports of the companies suggests that they have not availed themselves of KDB and IBK Short-Term Discounted Loans for Export Receivables.

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

a. Background

The 21st Century Frontier R&D Program is a mid-term and long-term large-scale R&D project established in 1999.[384] The purpose of the program is to promote greater competiveness

[384] **Exhibit C-192**, GOK Ministry of Knowledge Economy, "Special Report: (Business Opportunities) Logistics."

in science and technology by investing intensively in these sectors.[385] Altogether, the program comprises 22 project areas, each typically having a 10-year time horizon.[386] The project areas include information technology, biotechnology, nanotechnology and new materials.[387] Four initial research projects were to be completed in 2010, with the balance of the projects scheduled to be completed by 2013.[388]

One known project is the Information Display R&D Center, which focuses on developing source technologies for futuristic information displays, including next-generation flat panel technologies.[389] According to the Ministry of Education, Science and Technology, the technologies developed through the Frontier R&D Program and transferred to companies are estimated to bring about a direct economic effect of KRW 4.98 trillion.[390]

The Department has found the 21st Century Frontier R&D Program to be countervailable in prior investigations and administrative reviews, where the program was found to provide long-term interest-free loans in the form of matching funds.[391] The Department has also previously

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385 *Id.*

386 *Id.*

387 **Exhibit C-193**, GOK Ministry of Education, Science and Technology (July 12, 2010), "Press Release: Conference on Achievements of the 21st Century Frontier R&D Program."

388 *Id.*

389 **Exhibit C-194**, Korean Research Institute of Chemical Technology, "Large Government-Run Project." *See also* **Exhibit C-195**, Samsung (Jan. 11, 2005), "SAMSUNG Develops the World's Largest Transmissive Plastic TFT-LCD Panel."

390 **Exhibit C-193**, GOK Ministry of Education, Science and Technology (July 12, 2010), "Press Release: Conference on Achievements of the 21st Century Frontier R&D Program."

391 *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation, Import Administration Memorandum* (June 16, 2003). *See also Dynamic Random Access*
(footnote continued next page)

initiated an investigation into this program in *Bottom Mount Combination Refrigerator-Freezers*,[392] and preliminarily found it to be a countervailable subsidy in its post-preliminary analysis.[393]

b. Financial Contribution

Loans made under the 21st Century Frontier R&D Program projects constitute a direct transfer of funds and as such qualify as a financial contribution under 19 U.S.C. § 1677(5)(D)(i).

c. Benefit Conferred

A benefit within the meaning of 19 U.S.C. § 1677(5)(E)(ii) is conferred on the recipient to the extent that the recipient pays a lower rate of interest on the loans provided under the 21st Century Frontier R&D Program project as compared to what they would pay on comparable commercial loans.

d. Specificity

Given that the 21st Century Frontier R&D Program is geared towards the scientific and high-tech sectors, the program is specific both in law and in fact to an enterprise or industry under 19 U.S.C. § 1677(5A)D.

(continued from last page)

Memory Semiconductors from the Republic of Korea: Issues and Decision Memorandum for the Final Results in the Sixth Administrative Review of the Countervailing Duty Order (Jan. 5, 2011).

[392] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: July 15, 2011 New Subsidy Allegations* at 9-19 (Aug. 16, 2011).

[393] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Post-Preliminary Analysis of New Subsidy Allegations* (Dec. 21, 2011).

e. Eligibility for Use of Program During POI

As discussed in detail in the sections discussing RSTA Article 10(1)(1) and RSTA Article 10(1)(2), above, various investments announced by SEC and LGE with respect to LED would appear on their face to qualify for loans under the Information Display R&D Center Program and the 21st Century Frontier R&D Program. LED technology is a key feature of the LRWs and therefore a key element in the production and sale of the washers.[394] As such, both SEC and LGE would qualify for support under this program on its face.

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

The SEC manufacturing facilities producing LRWs are located in the Gwangju Metropolitan City,[395] including in the Hanam Industrial Complex.[396] The Gwangju City government offers a wide variety of facilities-based subsidies that benefit the production and manufacture of LRWs, including, notably, generous tax reductions and exemptions relating to facilities located within industrial complexes.

Such tax reductions and exemptions are provided under Article 276 of the Local Tax Act, which is a national program administered by the Gwangju Metropolitan City, according to the Department's preliminary findings in *Bottom Mount Combination Refrigerator-Freezers*.[397]

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[394] **Exhibit C-141,** Samsung Product Catalogue, "Samsung Laundry Product Specification" (translation). **Exhibit C-142**, LG Product Catalogue, "LG Laundry Product Specification" (translation).

[395] **Exhibit C-196**, SGEC website, online: http://www.sgec.co.kr/eng/business/introduce.html.

[396] **Exhibit C-197**, Invest Korea website, "Hanam General Industrial Complex."

[397] *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Preliminary Negative Countervailing Duty Determination*, 76 Fed Reg. 55044 (Sept. 6, 2011) and the accompanying Issues and Decision Memorandum at 24.

In its investigation in *Bottom Mount Combination Refrigerator-Freezers*, the Department preliminarily found that Article 276 of the Local Tax Act provided countervailable property, acquisition, and registration tax exemptions for newly established or expanded facilities located within industrial complexes.[398] Furthermore, the Department found that capital gains on the land and buildings associated with such establishment or expansion are exempt from property taxes for the first five years. These findings are consistent with the Department's prior findings on Article 276 in prior investigations.[399]

a. Financial Contribution

Facilities-based tax reductions and exemptions represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii).

b. Benefit Conferred

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of facilities-based tax reductions and exemptions in the amount of the tax revenue foregone.

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[398] *Id.*

[399] *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 Fed. Reg. 60,639 (Oct. 25, 2007); *Corrosion-Resistant Carbon Steel Flat Products*, 75 Fed. Reg. 55,745, 55,747-48: State or local government reduction in taxes for operation in regional and national industrial complexes determined to be regionally specific under section 771(5A)(D)(iv) of the Act because exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

c. **Specificity**

Based on the Department's preliminary findings in its *Bottom Mount Combination Refrigerator-Freezers* investigation and other prior findings, these tax reductions and exemptions are de jure regionally specific under 19 U.S.C. § 1677(5A)(D)(iv) because eligibility for Article 276 benefits is restricted to companies located within designated industrial complexes within South Korea.[400]

d. **Eligibility for Use of the Program During the POI**

Information reasonably available to Petitioner does not allow Petitioner to determine whether or not each of SEC, LGE, or DWE used the program during the POI. **That said,** Petitioner notes that in the Department's investigation in *Bottom Mount Combination Refrigerator-Freezers*, the Department preliminarily found that both SGEC and DWE reported having received tax reductions or exemptions during 2010. SGEC (now SEC) and DWE facilities establishments or expansions in Gwangju Metropolitan City presumptively would be eligible for use by these programs during the 10-year AUL.

On the basis of the above information, Petitioner believes that the Department has sufficient grounds to initiate an investigation into this RSTA provision in order to confirm whether it provides countervailable subsidies on the production, manufacture or export of subject goods.

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[400] *Id.*

10. GOK Supplier Support Fund Tax Deduction

a. Background

In August 2010, the GOK announced a 7% "tax deduction" for contributions made by large corporations to supplier support funds, as well as "tax exemptions" where a large enterprise makes cash or cash-equivalent payment to SME suppliers to aid in their liquidity.[401]

GOK tax deductions and tax exemptions for Samsung and LG contributions to supplier support funds constitute countervailable subsidies.

b. Financial Contribution

Tax deductions or exemptions for contributions to supplier support funds or direct contributions to SME suppliers represent a foregoing or non-collection of revenue by the GOK that is otherwise due and as such qualify as a financial contribution within the meaning of 19 U.S.C. § 1677(5)(D)(ii).

c. Benefit Conferred

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred to the recipient of tax deductions or exemptions in the amount of the tax revenue foregone by the GOK.

d. Specificity

Information reasonably available to the Petitioner indicates that only "large corporations" qualify for such deductions and exemptions derived from contributions to their supplier base and that only a limited number of the largest South Korean *chaebols* to date have made such

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[401] **Exhibit C-198**, (April 14, 2011) Restriction of Special Taxation Act, Article 8-3. *See also* **Exhibit C-126**, GOK Ministry of Strategy and Finance, Press Release (Aug. 19, 2010), "2010 Tax Revision Plan."

contributions.[402] As such, such reductions or exemptions are specific both in law and in fact to an enterprise or industry under Section 771(5A)(D) of the Act (19 U.S.C. § 1677(5A)(D)).

e. Eligibility for Use of Program During the POI

Information reasonably available to the Petitioner does not allow the Petitioner to determine whether or not each of SEC, LGE, or DWE used this program during the POI. On the basis of the information provided by the Petitioner in section B, above, regarding the use of SME suppliers by South Korean producers such as Samsung and LG and by virtue of the fact that these South Korean producers are "large enterprises, "demonstrate that they would presumptively apply for tax deductions under the Supplier Support Fund Tax Deduction.

D. Conclusion

On the basis of the above information reasonably available to Petitioner, the Department should initiate an investigation with respect to countervailable subsidies benefiting the manufacture, production and export of LRWs from South Korea.

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[402] Whirlpool has secured evidence demonstrating that only a limited number of companies have contributed to "Supplier Support Funds." *See* **Exhibit C-160**, Industrial Bank of Korea, 2009 Annual Report at 30-31, showing that POSCO, Hyundai, SK Group have made contributions. *See also* **Exhibit C-14**, *Korea Times* (Aug. 22, 2010), "LG Electronics Vows to Better Help Suppliers," **Exhibit C-16**, *What Hi-Fi News* (August 16, 2010), "Samsung establishes £500m+ fund to support suppliers, build future," **Exhibit C-15**, Korea Herald (Aug. 16, 2010) "Samsung Electronics to form W1 trillion fund for suppliers," and **Exhibit C-32**, 2010 LG Electronics Sustainability Report, at pp. 52-55 and 74 ("Win-Win Partnership Based on Mutual Trust and Cooperation" / "Fair Trade") showing that Samsung and LG have made such contributions.

XII. MATERIAL INJURY/CAUSATION

A. The Legal Standard

The antidumping statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[403] In assessing whether a domestic industry is materially injured, or threatened with material injury, "by reason of" dumped and/or subsidized imports, the Commission examines the "significance" of the volume and price effects of such imports, and the consequential impact of those imports on the condition of the domestic industry, taking into account the prevailing conditions of competition in the U.S. market for the subject imports and the domestic like product. Under the "by reason of" standard, the Commission must "ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between the subject imports and material injury."[404] At the same time,

> the "by reason of" standard {does not} require that unfairly traded imports be the "principal" cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as non-subject imports, which may be contributing to overall injury to an industry. It is clear that the injury caused by other factors does not compel a negative determination.[405]

The data in these petitions leave no doubt that the volume, increase in volume, and pricing of imports of large residential washers from South Korea and Mexico have been a very significant cause of the period of investigation decline in Whirlpool's large residential washer business. As demand rose over the period, and as imports of "non-subject" washers fell by two-

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403 19 U.S.C. §1677(7)(A).

404 *Certain Coated Paper Suitable for High-Quality Print Graphics Uses Sheet-Fed Presses from China and Indonesia*, Inv. Nos. 701-TA-470-471 (Final), USITC Pub. 4192, at 17.

405 *Id.* at 18.

thirds, there is no credible evidence that the "material injury" Whirlpool ascribes to subject imports was caused by "other factors."

B. The Domestic Industry

In Whirlpool's view, there is no reason to exclude any domestic producer from the definition of the industry under 19 U.S.C. §1677(4)(B) of the antidumping statute. At the same time, Whirlpool notes that because its output of LRWs "constitutes a major proportion" of the total domestic production of the "like product," material injury to its operations is, effectively, material injury to the entire domestic industry within the meaning of 19 U.S.C. §1677(4)(A).

C. Cumulation

Subject to specific exceptions that are not applicable here, the antidumping statute *requires* the Commission to cumulate subject imports from different countries for purposes of its injury analysis where (1) the imports are subject to petitions filed on the same day, and (2) they compete both with one another and with the domestic like product.[406] As these petitions are being filed on the same day, and as Mexican and South Korean LRWs compete with one another and with the domestic like product, cumulation in this case is mandatory.

D. Conditions of Competition

1. Demand and the Price Sensitivity of Demand

Demand for LRWs is shaped to a large degree by the number of washers that reach the end of their operating life in any given period, and the number of purchasers that choose to replace their existing washers with a "better" (*e.g.*, a larger, better performing, more energy

[406] 19 U.S.C. § 1677(7)(G).

efficient, and/or more attractive) model and, to a lesser extent, by the number of new households formed in a given period. Studies of the U.S. appliance market indicate that purchases of a large residential washer are often "discretionary" and are generally sensitive to price.[407] The available data also show that decisions to purchase one brand of washer as opposed to another are very sensitive to changes in relative pricing among competing brands.[408] The results of this year's "Black Friday" promotions prove the point. By Whirlpool's analysis, Samsung and LG "won" Black Friday because they discounted their subject washers more deeply, and offered them at discounted prices for a longer period, than other manufacturers (including Whirlpool). The same point about the significance of the relative pricing of washers is made continuously by retailers when they threaten to deny a producer floor spots if they conclude that its pricing is too high relative to the competition.

A final observation about demand for large residential washers that warrants emphasis is that the price sensitivity of demand is a function of perceived value for the money. Consumers will pay more for a larger washer with more features than a smaller washer with less features, and more for an energy/water efficient washer than one that is not energy/water efficient, *but only within limits*. The price premium for the larger, more featured, more efficient washer must be seen as "worth the money." In other words, consumer purchase decisions turn on (1) the limits on what the consumer can afford, and (2) within those limits, perceptions of the relative values of competing product offerings.

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[407] *See* L. Dale and K.S. Fujita, *An Analysis of Price Elasticity of Demand for Home Appliances*, Lawrence Berkeley National Laboratory, University of California, Berkeley (2008).

[408] *Id*. at iii.

2. Supply and the Economics of Production

Large residential washers are assembled by manufacturers from hundreds of parts, components and subassemblies, many of which are purchased from other companies. The economics of supply are, therefore, sensitive to the cost of material inputs. There are, however, also substantial "up front" costs associated with the design and development of a new LRW (*e.g.*, R&D costs, engineering costs, testing costs) as well as with its production (*e.g.*, the cost of setting up a new production line or even a new plant, the costs of tooling, other factory overhead). A producer's ability to sell in sufficient volume to absorb the cost of its "upfront" investment is, therefore, also critical to the economics of large residential washer production.

Lastly, producers support their trade customers' sales efforts in various ways such as rebates and discounts associated with holiday and other promotions, advertising support, volume rebates, allowances, etc. Such promotional support has the effect of lowering the net price to the trade customer, thereby reducing or even eliminating the profitability of the business for the LRW manufacturer. Ultimately, what matters to the manufacturer is the price at which it can sell relative to its cost. When prices are falling (as has been the case with large residential washers) and costs are rising (as has also been the case with large residential washers), the economics of production are challenging.

3. Sales to Retailers and OEM Sales

a. Sales to Retailers

The majority of large residential washers purchased at retail in the United States are sold through four "big box" retailers: Sears, The Home Depot, Lowe's, and Best Buy. Other retailers (such as HH Gregg) also have a national footprint and there are smaller chains (*e.g.*, Bray and Scarff, PC Richards, Menards) that have a significant regional presence. The large retailers regularly review the product lines of their suppliers as part of their process of awarding floor spots to each of them. The product line review takes account of the features and prices of each manufacturer's product offerings relative to the features and prices of competitors' offerings. The loss of floor spots leads inevitably to the loss of sales in the marketplace.

All manufacturers sell their LRWs to retailers at a price that allows the retailer to resell profitably. Additionally, manufacturers typically offer cooperative advertising funds as an incentive for retailers to promote and advertise LRWs at a Minimum Advertised Price ("MAP") established by the manufacturer.[409] When the MAP of a particular LRW is lowered by the manufacturer to stimulate sales (*e.g.*, as part of a holiday promotion), the manufacturer will often reduce its price to the retailer either at the "front end" (*i.e.*, at the time of purchase) or at the "back end" (*e.g.,* through post-sale rebates) in order to allow the retailer a full margin opportunity at the lower retail sale price. In addition, manufacturers offer other forms of financial contributions to their retailers, including year-end rebates based on the volume of sales, funding of sales force incentives, etc.

Retailers routinely track the contribution to their operating margins of the sales of different brands of large residential washers (and other appliances). Whirlpool has been informed that Samsung and LG offer retailers pricing net of all rebates, discounts and other forms of sales support that systematically give the retailers better margins than do Whirlpool's net pricing policies. Because most of the competition between Whirlpool's U.S. production and subject imports occurs over sales to retailers, accurate, product-specific pricing to retailers net of

[409] Retailers ultimately determine the actual advertised prices and retail selling prices at their sole discretion.

all discounts, rebates and other forms of sales support must be the focus of the Department's and the Commission's analyses.

b. OEM Accounts

There are also significant sales of LRWs to two major OEM customers, Sears and GE, to supply, respectively, their "Kenmore" and "GE" branded products. At present, Sears buys many of its "Kenmore" branded large residential washers [source], and GE presently sources certain LRWs from LG. Unlike competition at the retailer level, which involves a continuing process of product line reviews, competition to supply [Sales contract details

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c. The Significance of Holiday Sales

Whirlpool estimates that nearly a third of all LRWs sold in the United States are sold during promotional events that occur on and around several major holidays — President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, and Thanksgiving — although the duration of these promotions now extends beyond the days proximate to those holidays. Samsung and LG have been especially aggressive in their holiday promotional pricing and allowances. This year, Samsung and LG began their "Black Friday" promotions around the November 4th Veterans Day holiday and continued the promotions through the end of the month, and in some cases well into December.

The significance of these holiday promotions raises two antidumping issues. For Commerce, the issue is whether the discounts and allowances offered during such promotional sales events amounts to "targeted dumping." Whirlpool submits that it does. For the Commission, the question is whether quarterly pricing data will obscure the impact of these promotions on market prices. We suspect not, but urge the Commission to keep an open mind on this point.

E. The U.S. Large Residential Washer Industry Has Been Materially Injured within the Meaning of the Antidumping Statute

Table 13, below, provides data on Whirlpool's U.S. production and sales of LRWs for calendar years 2008-2010 and the first three quarters of 2010 and 2011.

TABLE 13
2008-2010 and Jan-Sept 2010 and 2011 Data Relating to Whirlpool's U.S. Production of the Domestic Like Product

	2008	2009	2010	Jan-Sept 2010	Jan-Sept 2011
Production Volume (000 units)	[				]
U.S. Commercial Sales (000 units)	[				]
U.S. Commercial Sales Value ($MM)	[				]
Operating Profit ($MM)	[				]
Operating Profit (%)	[				]
Production Related Workers	[3,247	2,887		2,766	]

Source: **Exhibits 1and 2**

CONTAINS RANGED DATA

The Commission will note that Whirlpool's domestic production rose from 2008 to 2010, and did not fall significantly in the first nine months of 2011 compared to the same period in 2010. This rise reflects (1) the period of investigation rise in demand for HETL washers which Whirlpool pioneered, and (2) the ramp up of domestic production of Whirlpool's "Alpha" line of HEFL washers. Whirlpool's production and sales volume data must be assessed, however, in light of the decline in Whirlpool's imports of HEFL washers from Mexico and Germany; the Commission will find that the increase in Whirlpool's domestic production of HEFL washers is *less* than the POI drop in its imports of such washers from Mexico and Germany.

The Commission will also note that as Whirlpool's domestic production of large residential washers has not declined significantly over the period of investigation, so too has there been no substantial decline in Whirlpool's large washer workforce during the period of investigation. That has been deliberate on Whirlpool's part. Whirlpool has been able to keep its LRW workforce more or less intact over the past three years, but the difference between its production for the domestic market, and what its production for the domestic market should have been given the growth of large washer demand in the United States, is significant.

The key data in Table 13 relate to operating profit. Whirlpool is on course to lose [amount] in 2011 on its sales of large residential washers. The fact is that Whirlpool's efforts to maintain its levels of production and payments to its workers [forecast].

A final point on the condition of the domestic industry: The injury data in these petitions are Whirlpool's data. During the period of investigation, three U.S. producers of large residential washers — Fisher & Paykel, Bosch, and Electrolux — shut down their U.S. LRW operations and laid off their workforce. We expect that when data for all U.S. producers become available, the degree to which the U.S. industry has been "materially injured" will be even more pronounced than is apparent from Whirlpool's data.

F. Whirlpool Has Been Materially Injured "By Reason of" Subject Imports

The volume of, and rise in, subject imports during the period of investigation has been "significant" both absolutely and relative to U.S. production and consumption within the meaning of 19 U.S.C. §1677(7)(c)(i). In addition, Samsung's and LG's pricing has suppressed the price of the domestic like product "to a significant degree" within the meaning of 19 U.S.C. §1677(7)(e)(ii)(II).

Whirlpool recognizes that a temporal coincidence between a decline in the condition of the domestic industry, on the one hand, and, on the other, a "significant" rise in subject imports and/or a "significant" decline in the pricing of subject imports, is not, in and of itself, proof of a causal link between the two. However, where the facts show (1) that the only non-subject imports of consequence are Whirlpool's own rapidly-declining imports from Germany, (2) that Whirlpool has been by far the largest producer of the domestic like product, (3) that Whirlpool has consistently been a leader in *Consumer Reports* quality and performance ratings,[410] and (4) that despite the acknowledged quality and performance of its product, Whirlpool has had to either lower its prices to maintain market share, or maintain its prices and cede market share, the only conclusions that can reasonably be drawn from the evidence are, *first*, that the rise in the volume of subject imports has come largely at Whirlpool's expense, and *second*, that Samsung's and LG's pricing has had a directly adverse impact on Whirlpool pricing. In other words, as the

[410] **Exhibit 34.**

evidence proves, the relationship between injury to Whirlpool's U.S. manufacturing operations, on the one hand, and, on the other, the volume and pricing of subject imports, is causal.

1. The Volume and Increase in Volume of Subject Imports Have Been "Significant"

The point of sale data collected by NPD, [Source detail], leave no doubt that there has been a very substantial increase in subject imports over the past three years. As the data in Table 14 indicate, imports of large residential washers from South Korea and Mexico rose by 1.26 million units (or 101 percent) from 2008 to 2010, and their share of the U.S. market increased by nearly 16 percentage points:

TABLE 14
Imports of Large Residential Washers and U.S. Market Share Trends

	2008	2009	2010	Jan-Sept 2010	Jan-Sept 2011
Volume (MM units)					
Subject Imports	1.248	1.836	2.511	1.952	1.505
Non-Subject Imports	0.514	0.419	0.286	0.216	0.131
U.S. Producer Shipments	4.531	4.263	4.269	3.107	3.189
Total Apparent Domestic Consumption	6.294	6.519	7.066	5.275	4.826
Market Share (%)					
Subject Imports	19.8%	28.2%	35.5%	37.0%	31.2%
Non-Subject Imports	8.2%	6.4%	4.0%	4.1%	2.7%
U.S. Producer Shipments	72.0%	65.4%	60.4%	58.9%	66.1%

Source: **Exhibit 1**

Moreover, the data in Table 14 understate the extent to which subject imports have gained market share at the U.S. industry's expense because they include data for only the first three quarters of 2011. Subject imports were promoted very aggressively in this year's "Black Friday" sales. Based on both NPD data and [Source detail], Whirlpool estimates Samsung's and LG's market shares increased by a stunning nine percentage points and 21 percentage points, respectively.

TABLE 15 Black Friday 2011 Market Share Gains for LG and Samsung[411]		
	Nov. 2010-Oct. 2011	Nov. 2011
LG	25%	46%
Samsung	16 %	25 %

2. Subject Imports Have Suppressed and Depressed U.S. Product Prices to a Significant Degree

Prices for large residential washers fell sharply over the period of investigation. In 2008, Whirlpool's analysis indicates that 45 percent of all HEFL washers sold at or above a $1,099 retail price point; by December of 2010, that figure had dropped to only 12 percent. The drop in the pricing of heavily-featured HEFL models has had a ripple effect. Lower prices for HEFL washers, for example, suppress the prices that consumers are willing to pay for less featured HETL and CTL washers.

The cause and effect relationship between the drop in Samsung's and LG's pricing and the decline in Whirlpool's prices is evident from an analysis of price trends for the different types of washers Whirlpool produced in the United States over the period of investigation. Where Samsung and LG do not offer comparable washers, prices have remained relatively firm. Where Samsung and LG offer the same type of washer, prices fall sharply. Thus:

- Price drops by Samsung and LG forced Whirlpool to lower the introductory MAP price of its U.S.-made "Alpha" line of HEFL washers by $200 when the Alpha entered the market in 2010. The "Alpha" platform has never recovered. Subsequent efforts to raise Alpha prices have met stiff resistance.

[411] These market share estimates are based on [calculations

].

- When neither Samsung nor LG were selling HETL washers under their own brand, prices remained firm [competitive conditions].
- By contrast, there was a sharp decline in the price of Whirlpool's larger-capacity "Oasis" HETL washers when Samsung and LG entered the market with their competing brands of similar HETL washers.
- But because Samsung did not offer smaller HETL washers to compete with Whirlpool's "VMW" product line, and LG only introduced one such washer in Q3-2011, the prices for Whirlpool's "VMW" line of HETL washers have fared relatively better.

Because the downward pressure on Whirlpool's pricing has come at a time of rising costs, they have led to [ ] losses which, in turn, [injurious impact]. By forcing down the prices of feature-laden washers, Samsung and LG have contributed to a "cost/price squeeze" that is [forecast].

G. Suggested Products for the Commission's Price Analysis

Due to the unique characteristics of the U.S. appliance market, both in terms of feature differences among individual models as well as the differences in the manner in which individual producers report and apply their direct and indirect discounts offered to OEMs and retailers, the Commission should replicate the pricing analysis that it developed for the final stage of the *Bottom Mount Combination Refrigerator Freezer* investigation, 701-TA-477 & 731-TA-1180-1181 (Final). Whirlpool believes that the only way the Commission will be able to assess relative pricing in a way that takes account of feature differences that are significant to the market is to collect data in the following manner:

1. Aggregate pricing data for all SKUs that fall under the applicable product definition ("Product A" reporting);

2. Separately collect for each product definition, for each quarter during the period, data for the highest-volume SKU falling within the product definition. ("Product B" reporting);

3. In addition, for both the "Product A" and "Product B" reporting, the Commission should collect specification sheets for each of the relevant SKUs that fall under the product definition.

Furthermore, with respect to reporting of direct and indirect discounts, Whirlpool requests that the Commission collect pricing data that includes reporting instructions similar to those adopted in the *Bottom Mount Combination Refrigerator Freezer* investigation. Specifically, the Commission should instruct questionnaire respondents to:

> Report the U.S. f.o.b. sales value and quantity on an invoice basis (i.e., the quantity-weighted total of the prices indicated on the invoice for the product in question), and net of returns in two ways:
>
> *First*, report the quarterly sales prices net of direct discounts (*i.e.,* all discounts, incentives, allowances, rebates, promotional amount, cash incentives for retail sales personnel (SPIFFs) or other sales support, and/or any other form of payment or allowance to a retailer) that are tied to sales of the specific LRW(s) for which pricing data are requested, whether or not such discounts are given on the sales price to the customer or are in the form of a post-sale discount, rebate or other type of sales support after the customer resells the product to its customer. In reporting these sales values, do not deduct discounts, incentives, allowances, rebates and other sales support that are not product-specific in nature.
>
> And *second*, report quarterly sales prices net of discounts described in the paragraph immediately above and also net of indirect discounts (*i.e.,* any discounts, incentives, allowances, rebates, promotional amount, cash incentives for retail sales personnel (SPIFFs) or other sales support, and/or any other form of payment or allowance to a retailer) that, while not specifically tied to the products in question, are properly allocable to sales of such products because sales of such products were part of the basis on which the discount, incentive, allowance, etc. was given. In each case, the basis for the allocation of these allocated discounts, rebates, etc. should be the value of sales of the pricing product at issue as a percentage of the value of all the products sold by your firm to a customer that also qualified for the same discount, rebate, etc. Thus, for example, the value of a discount given to a customer because it reached an annual LRW sales target would be allocated over LRW sales to that customer.

These instructions are particularly important because any difference in how a given respondent allocates indirect or "back-end" allowances across a range of products could drive significant distortions in the comparative pricing analysis.

With these points in mind, Whirlpool proposes that the Commission collect data on the following products for its quarterly pricing analysis:

Product 1: (A) Front loading, high efficiency washer; rated DOE capacity greater than or equal to 4.2 cubic feet; steam cycle(s) included; water heater included; LCD display; any non-white finish. <u>Report data for all your SKUs that fall under this definition, and supply a specification sheet for each.</u>

(B) For <u>each</u> quarter during the period, report data for Product 1 A, but <u>only</u> for your highest-volume SKU falling within this product definition. Also identify the specific SKU number, and supply a specification sheet for that SKU.

Product 2: (A) Front loading, high efficiency washer; rated DOE capacity greater than or equal to 3.7 cubic feet but less than 4.2 cubic feet; steam cycle(s) not included; water heater included; white finish. <u>Report data for all your SKUs that fall under this definition, and supply a specification sheet for each.</u>

(B) For <u>each</u> quarter during the period, report data for Product 2 A, but <u>only</u> for your highest-volume SKU falling within this product definition. Also identify the specific SKU number, and supply a specification sheet for that SKU.

Product 3: (A) Front loading, high efficiency washer; rated DOE capacity of greater than or equal to 3.2 cubic feet but less than 3.7 cubic feet; steam cycle(s) not included; water heater included; white finish. <u>Report data for all your SKUs that fall under this definition, and supply a specification sheet for each.</u>

(B) For <u>each</u> quarter during the period, report data for Product 3 A, but <u>only</u> for your highest-volume SKU falling within this product definition. Also identify the specific SKU number, and supply a specification sheet for that SKU.

Product 4: (A) Top loading, high efficiency washer; rated DOE capacity of greater than or equal to 3.7 cubic feet but less than 4.2 cubic feet; steam cycle(s) not included; water heater not included; lid includes glass material; white finish. Report data for all your SKUs that fall under this definition, and supply a specification sheet for each.

(B) For each quarter during the period, report data for Product 4 A, but only for your highest-volume SKU falling within this product definition. Also identify the specific SKU number, and supply a specification sheet for that SKU.

Product 5: (A) Top loading, high efficiency washer; rated DOE capacity of greater than or equal to 4.2 cubic feet; steam cycle(s) not included; water heater included; lid includes glass material; any non-white finish. Report data for all your SKUs that fall under this definition, and supply a specification sheet for each.

(B) For each quarter during the period, report data for Product 5 A, but only for your highest-volume SKU falling within this product definition. Also identify the specific SKU number, and supply a specification sheet for that SKU.

Whirlpool believes that this list of products will provide the Commission with a good cross-section of products in the market, including major examples of head-to-head competition between subject imports and the domestic like product for specific LRWs with similar sets of characteristics.

H. Subject Imports' Market Share Gains and Pricing Have Come at Whirlpool's Direct Expense

The U.S. market for large residential washers is a market in which subject imports and Whirlpool are, by far, the largest sources of supply. Under these circumstances, a significant part of the market share gains by subject imports came at Whirlpool's direct expense. Where a sale is made through a bid process in which the competition between Whirlpool and subject imports is direct, evidence of the "lost sale" is similarly direct. Where the sales are at the retail level and producers compete for spots on the retailer's floor or for consumer sales, the evidence of lost sales is indirect, but the cause and effect relationship between gains by subject imports at the expense of domestic industry is equally apparent.

1. Lost Sales through Retailers

Whirlpool does not claim that every retail level sale of a subject washer has been a "lost sale" to the domestic industry, but it does contend that "but for" the dumped imports, the volume of Whirlpool's sales of U.S.-made washers would have been significantly greater than it was during the period of investigation. The data show that the market share gains that subject imports have made have displaced sales of Whirlpool's (and other domestic manufacturers') U.S.-made washers. More specifically, the evidence shows that (1) by repatriating off-shore production of HEFL washers, Whirlpool succeeded in offsetting with U.S.-made washers some (but not all) of the drop in its own imports from Mexico and Germany, but (2) Whirlpool was not able to recapture with its U.S. production the market share gains that Samsung and LG had made with their HEFL washers, which have remained "lost" to Whirlpool.

The gains that Samsung and LG made this year with their "Black Friday" sales promotions at [customers] provide recent, very specific instances in which Whirlpool lost sales of U.S.-made HEFL and HETL washers through the retail channels to subject imports:

- During the November 2011 "Black Friday" sales promotion at [customer], LG aggressively promoted its HEFL model WM3360HVCA down from a regular retail price of $1,199 to a promotional retail price of $699. This LG unit, which competes directly with U.S.-made Maytag model MHW6000XG, [event], resulting in significant lost sales opportunities for Maytag (whose competing SKUs carried a retail price in the $873 range during the same period).
- During the November 2011 "Black Friday" sales event at [customer] and certain other customer accounts, Samsung aggressively promoted its HEFL model WF520ABP down from an average retail price for Q3-2011 of approximately

$1,076 to a promotional retail price of $769. This Samsung unit, which competes directly with U.S.-made Whirlpool models WFW97HEXR and WFW97HEXL, reportedly sold 9,267 units in November 2011, resulting in significant lost sales opportunities for Whirlpool (whose competing SKUs carried a retail price in the $959 to $1,145 range during the same period).

- Also during the November 2011 "Black Friday" sales event at [customer], Samsung aggressively promoted its HEFL model WF350ANW down from an average retail price of approximately $770 (October 2011) to a promotional retail price of $484 (November 2011). This Samsung unit, which competes directly with U.S.-made Whirlpool model WFW94HEXW, reportedly sold 30,431 units in November 2011, resulting in significant lost sales opportunities for Whirlpool (whose competing SKU carried a retail price in the $864 range during the same period).

- Finally, during the November 2011 "Black Friday" sales event at [customer] and certain other customer accounts, Samsung aggressively promoted its HETL models WA5471ABW and WA5471ABP down from average retail prices for Q3-2011 in the $786 to $861 range, to promotional retail prices of $669 and $715, respectively. These Samsung units, which compete directly with U.S.-made Whirlpool models WTW8800YW and WTW8800YC, and U.S.-made Maytag models MVWB950YW and MVWB950YG, reportedly sold 11,268 units in November 2011, resulting in significant lost sales opportunities for Whirlpool (whose competing SKUs carried retail prices in the $802 to $902 range during the same period).

Other aggressive promotions by Samsung and LG have had a similar effect on Whirlpool's domestic LRW business.

- In the late summer of 2011, Samsung offered extremely aggressive pricing to retailers such as [customer], offering 35% off of a $999 MAP on its WF331ANW and WA5451ANW washers, and 35% off of an $1199 MAP for its WA5471ABP washer. Then, one month later, it offered [promotional terms]. These promotions resulted in significant lost sales for Whirlpool's competing, U.S.-made WFW94HEXW, MHW6000YW, MVWB950YW, WTW8800YW, MVWB950YG, and WTW8800YC washer models.

- Also in the summer of 2011, LG offered extremely aggressive pricing to the various retailers, including [entities]. According to Whirlpool intelligence, in August 2011, LG sold its WT4801CW HETL washer at a promotional MAP of $499 (down from $699 MAP), along with a $50 consumer rebate. This promotion resulted in lost sales for Whirlpool's competing , U.S.-made, MVWX700XW and WTW5700XW washer models.

2. Lost OEM Sales

Unlike competition for sales of branded Whirlpool, Samsung and LG washers through retailers to consumers, competition between producers to supply washers to OEM customers is head-to-head. Whirlpool's recent loss of a [contract] was the result of a competitive bidding process. Whirlpool lost the bid for [type] washers because, according to [customer], its pricing was, on average, significantly higher than subject import pricing for the [brand] products at issue. The lost [brand] sales represented approximately [amount] units [duration]. Over the term of the contract, this single sale lost to [co.] represented approximately $[amount] million in revenue that, but for [co.]'s dumping, Whirlpool would have realized.

Specifically, Whirlpool alleges as follows:

- In 2011, Whirlpool bid to supply [details of lost sale].
- Also in 2011, Whirlpool bid to supply [details of lost sale].

The loss of the [brand] LRW business through a competitive bidding process was, in fact, the second time this occurred during the period of investigation. Whirlpool also lost significant sales volumes to [co.], when bidding was conducted for the [brand] business:

- The bidding process for the [details of lost sale]

3. Lost Revenues/Price Suppression

NPD point-of-sale data show how quarter-by-quarter changes in Samsung's and LG's large residential washer prices forced Whirlpool to lower its prices to retailers to the point where it is incurring [trend] losses [period]. One clear example of that phenomenon relates to the launch of Whirlpool's "Alpha" HEFL line in Clyde, Ohio:

- In 2008, Whirlpool made the decision to invest in the next generation of premium HEFL washers — its so-called "Alpha" line — and bring the production to Clyde, Ohio for launch in late-2010. This commitment represented a major investment in U.S manufacturing at a time when such investments were much needed. Whirlpool's investment was predicated on a carefully considered business plan in which premium HEFL washers would remained positioned in the market at $1199 MAP (Maytag MHW6000XW and Whirlpool WFW94HEXW), $1299 MAP (Maytag MHW6000XG/R and Whirlpool WFW94HEXL/R), $1399 (Maytag MHW7000XW and Whirlpool WFW95HEXW), $1499 (Maytag MHW7000XG/R and Whirlpool WFW95HEXL/R), $1599 (Whirlpool WFW97HEXW), and $1699 (Whirlpool WFW97HEXL/R).

- In 2010, in a direct assault on the Alpha launch, LG [lost revenue details

].

- Samsung initiated a similar attack on the Alpha line at [

  lost revenue details

  ].

- During the period from Q2-2010 to Oct/Nov-2011, LG lowered the average retail price on its HETL model WT5001CW from $775 to $665. In order to remain competitive with this product, Maytag's retail selling prices on comparable model MVWB850YW needed to be reduced from an average retail price of $807 in Q3-2011 to an average retail price of $729 in Oct/Nov-2011. As a result of this price reduction, Whirlpool lost significant sales revenue.

- During the period from Q2-2011 to Oct/Nov-2011, Samsung lowered the average retail price on its HETL model WA5451ANW from $825 to $694, thus requiring Whirlpool to reposition its newly-introduced competing models (MVWB950YW and WTW8800YW) to average retail prices as low as $840 and $802, respectively, in Oct/Nov-2011.

- During the November 2011 "Black Friday" sales promotion at [customer], LG aggressively promoted its HETL model WT4801CW down from a regular retail price of $699 to a promotional retail price of $499. In response to this action, and in an effort to maintain a floor spot for its competing U.S.-made Maytag model MVWX700XW, Whirlpool promoted its product from a retail price level of $749 down to $499, resulting in significant lost revenues.

In sum, the net effect of LG and Samsung's discounted pricing, and their targeted assault on Whirlpool's Alpha launch, has been to undercut an important investment in American

[412] According to NPD: the pricing for Samsung model WF419AAW dropped from $934 in Q1-2010 to $611 in Q4-2010; the pricing for Samsung model WF448AAW dropped from $1115 in Q1-2010 to $909 in Q4-2010; and the pricing for Samsung model WF520ABP dropped from $1286 in Q2-2010 to $1193 in Q4-2010.

manufacturing and cause [condition] operating losses for Whirlpool's LRW business in the United States.

XIII. THREAT OF MATERIAL INJURY

The threat of continued material injury by reason of imports of large residential washers from South Korea and Mexico is evident from two very recent events. *First*, the loss of the [sales] represents the loss of approximately $[amount] million dollars in HEFL and HETL sales [duration]. *Second*, the volume and pricing of LG's and Samsung's Black Friday/Q4 2011 sales will have a lasting impact on the volume of Whirlpool's sales opportunities and, more generally, on market prices for large residential washers, going forward. Neither of these developments are yet reflected in the financial results of Whirlpool's large residential washer operations through September 30, 2011, but their impact is both certain and materially adverse.

More generally, Samsung and LG have been explicit about their determination to displace Whirlpool as the world's largest appliance manufacturer. Samsung and LG have each stated that the rise in their shipments to the United States is part of a campaign to greatly increase their presence in the U.S. market for premium appliances, and to do so at any cost:

> **KOREA TIMES:**[413]
> "LG Electronics, which competes with the likes of Whirlpool … aims to be the industry's undisputed kingpin by 2014."

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[413] "LG Eyes Top Spot in Home Appliances," *Korea Times* (Jan. 11, 2011), attached at **Exhibit 35.**

CONSUMER ELECTRONICS:[414]

"Samsung, LG Take Aim at Whirlpool with Smart Appliances"

"The Korean companies aim to parlay their expertise in tech products to develop computer-like household appliances... Samsung Electronics wants to become the biggest large household-appliance brand by making refrigerators smarter."

"The next year or two will determine which company leads' says Mark Ishac, a managing director at Zpryme Research & Consulting in Austin, Texas. 'Samsung could take share from the more traditional companies. They could certainly make waves."

WALL STREET JOURNAL:[415]

"'We'd made a massive investment (to help boost the home appliance business) last year' …{said Samsung} … 'The investment in 2010 nearly totaled around a trillion won … and we expect that will eventually pay off somewhat.'"

REUTERS:[416]

"Samsung targets $30 billion in 2015 home appliance sales"

"Samsung's home appliance business continued to lose money in the third quarter."

SAMSUNG Q2-2010 EARNINGS CALL:[417]

"We will make continuous efforts to make the {appliances} business globally competitive in the next one, two, three years, at which point, we expect division is to be profitable."

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414 "Samsung, LG Take Aim at Whirlpool with Smart Appliances," *Consumer Electronics* (Jan. 26, 2011), attached at **Exhibit 36**.

415 "Samsung, LG Expect Home Appliance Sales to Rise," *The Wall Street Journal* (Jan. 11, 2011), attached at **Exhibit 37**.

416 "Samsung Targets $30 Billion in 2015 Home Appliance Sales," *Reuters* (Jan. 10, 2011), attached at **Exhibit 38**.

417 Samsung Q2-2010 Earnings Call Transcript at 7, attached at **Exhibit 49.**

A. The Legal Standard

The antidumping statute instructs the ITC to assess threat of material injury by reason of dumped imports by reference to, *inter alia*:

- The extent to which there is unused production capacity in the country of export;
- The rate of increase in the volume or market penetration of the subject imports;
- The pricing of the subject imports (*e.g.*, are they likely to have a significant depressing or suppressing effect on domestic prices); and
- The actual and potential negative effects of the imports on product research and development by the U.S. industry.

Under these criteria, the threat posed to Whirlpool and other domestic producers by Samsung's and LG's imports from South Korea and Mexico is real, substantial, and imminent.

B. Capacity

In order to meet their very aggressive growth targets, Samsung and LG have been expanding their production capabilities in both South Korea and Mexico. Precise data on their capacity expansion are *not* publicly available. However, the magnitude of the expansion is evident from Samsung's public disclosure of its one trillion won investment in home appliances.[418] Consistent with these ambitions, according to Samsung Mexico's 2010 financial statement, "the washing machine production line was expanded with a view to increasing the Company's market share … as part of the global growth strategy."[419]

[418] **Exhibit 37**.

[419] **Exhibit 33** at 2.

It should be readily apparent that neither company could project the appliance sales growth it does without the capacity to do so in place or planned. LG, for example, has a reported worldwide capacity for "Home Laundry Appliances," including washers and dryers, of 8 million units.[420] By comparison, Whirlpool's estimates that U.S. producer shipments of LRWs is in the 4.3 million unit range. Assuming, conservatively, that the LG capacity figure is split 60-40 between washers and dryers, then LG's 4.8 million unit capacity for washers represents more than *100 percent* of estimated U.S. producer shipments in the United States.

C. Rate of Increase of Imports from South Korea and Mexico

By Whirlpool's estimate, the volume of subject imports from South Korea and Mexico has increased by 101 percent (*i.e.*, from 1,248,181 in 2008 to 2,510,604 in 2010). Given Samsung's and LG's stated intention of displacing Whirlpool as the largest supplier of appliances to the United States, there is reason to believe that, without the discipline imposed by the antidumping and countervailing duty laws, the volume of subject imports from both countries will continue to increase at these rates for the foreseeable future.

TABLE 16
Subject Imports from South Korea and Mexico

	2008	**2009**	**2010**	**% Δ**
South Korea	839,132	1,217,247	1,549,702	85%
Mexico	409,049	618,486	960,902	135%
Total Subject Imports	1,248,181	1,835,733	2,510,604	101%

Source: **Exhibit 4**

420 *Euromonitor International,* "LG Corp—Consumer Appliances—South Korea" (March 2011), at 2.

D. Import Pricing

As the NPD data in Table 17, below, indicate, both Samsung and LG systematically lowered the prices of their large volume U.S. sales of subject LRWs over the past three years:

TABLE 17
Illustrative Retail Pricing for Samsung and LG Large Residential Washer SKUs Sold During POI

	BEGIN DATE / AVG. PRICE	**END DATE / AVG. PRICE**	**$ DECLINE / % DECLINE**
Samsung			
WF448AAP	**2008-Q2** $1,298	**2010-Q4** $779	$519 40.0%
WF448AAW	**2008-Q2** 1,219	**2010-Q4** $909	$310 25.4%
WF218ANW	**2008-Q2** $665	**2010-Q3** $532	$133 20.0%
WF220ANW	**2010-Q2** $580	**2011-Q3** $477	$103 17.8%
WF330ANW	**2010-Q1** $714	**2010-Q4** $584	$130 18.2%
LG			
WT5001CW	**2010-Q2** $775	**2011-Q2** $696	$79 10.2%
WM2487HWMA	**2008-Q1** $1,127	**2009-Q3** $870	$257 22.8%
WM2801HLA	**2009-Q1** $1,275.21	**2010-Q3** $674.30	$601 47.1%
WM2301HR	**2009-Q2** $819.43	**2010-Q4** $548.19	$271 33.1%

Source: NPD

There is no reason to believe that this trend will change without antidumping orders on subject imports from South Korea and Mexico, and a countervailing duty order on subject imports from South Korea.

E. The Foreseeable Effects of Continued Dumping of Large Washers from South Korea and Mexico on the U.S. Industry

As the volume of subject imports has increased, and as Samsung and LG have continued to lower the prices of their large selling subject LRW models, Whirlpool's LRW business has incurred losses [conditions]. The plainly foreseeable effects of continued unfair import competition from Samsung and LG are conditions that [trend] U.S. production of large residential washers.

XIV. CONCLUSION

As these petitions demonstrate, there is compelling evidence that the 2008-2011 rise in imports of large residential washers from South Korea and Mexico has been driven by a combination of dumping and government subsidies, and the effect of the unfairly traded imports has been to "materially injure" the U.S. industry that produces the "like product." Even more injury will be inflicted in the future if these unfair trade practices are allowed to continue.

Accordingly, Whirlpool — which accounts for the vast majority of production of the domestic like product — petitions the Department and the Commission to initiate antidumping investigations of subject imports from South Korea and Mexico, and to initiate a countervailing duty investigation of subject imports from South Korea.

Respectfully submitted,

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