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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(A-201-839)

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value

SUMMARY: We preliminarily determine that bottom mount combination refrigerator-freezers (bottom mount refrigerators) from Mexico are being sold, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Mexico by Samsung Electronics Mexico, S.A. de C.V. (Samsung). Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the Federal Register.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-4929, respectively.

### Preliminary Determination

We preliminarily determine that bottom mount refrigerators from Mexico are being sold, or are likely to be sold, in the United States at LTFV, as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the “Suspension of Liquidation” section of this notice. In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Mexico by Samsung. The critical circumstances analysis for the preliminary determination is discussed below under the section “Critical Circumstances.”

### Background

Since the initiation of this investigation on April 19, 2011 (see Initiation of Antidumping Duty Investigations: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico, 76 FR 23281 (April 26, 2011) (Initiation Notice)), the following events have occurred.

On April 21, 2011, we issued quantity and value (Q&V) questionnaires to four Mexican producers/exporters: Electrolux Home Products, Corp. NV/Electrolux Home Products De Mexico, S.A. de C.V. (Electrolux); LG Electronics Monterrey Mexico, S.A. de C.V. (LGEMM); Controladora Mabe, S.A. de C.V./Mabe, S.A. de C.V. (Mabe); and Samsung to determine which producers/exporters accounted for the largest volume of sales of bottom mount refrigerators from Mexico. On May 13, 2011, Electrolux requested that it be treated as a mandatory respondent in this investigation. On May 18, 2011, we selected the three largest

producers/exporters of bottom mount refrigerators from Mexico as the mandatory respondents in this proceeding. See Memorandum entitled “Selection of Respondents for Individual Review,” dated May 18, 2011. We issued section A of the questionnaire (i.e., the section covering general information) to LGEMM, Mabe, and Samsung on May 20, 2011. We issued sections B through E of the questionnaire (i.e., the sections covering comparison market sales, U.S. sales, cost of production (COP) information, and further manufacturing information, respectively) to these respondents on May 25, 2011. Subsequently, we re-evaluated our resources in the context of our casework and determined that we were able to examine four respondents. Therefore, on May 27, 2011, we included Electrolux as a mandatory respondent in this investigation and issued a questionnaire to Electrolux. See Memorandum entitled “Inclusion of Electrolux Home Products, Corp. N.V. as a Mandatory Respondent,” dated May 27, 2011.

On May 13, 2011, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of bottom mount refrigerators from Mexico are materially injuring the United States industry. See ITC Investigation Nos. 701-TA-477 and 731-TA-1180-1181 (Publication No. 4232).

Also, in May 2011, various interested parties, including Whirlpool Corporation (hereafter, the petitioner), submitted comments on the scope of this and the concurrent antidumping and countervailing duty investigations of bottom mount refrigerators from the Republic of Korea. See “Scope Comments” section of this notice.

We received responses to section A of the questionnaire from the four respondents in June 2011, and to sections B, C, and D of the questionnaire in July 2011. No responses to section E of the questionnaire were necessary.

We issued supplemental questionnaires from July through September 2011, and we received responses to these supplemental questionnaires from July through October 2011.

On July 29, 2011, the petitioner alleged that critical circumstances existed with respect to bottom mount refrigerators produced and exported from Mexico. On August 10, 2011, we requested monthly shipment data from the respondents for the period January 2008 through July 2011 for purposes of this analysis. On August 16, 2011, LGEMM objected to this request, arguing that the petitioner's critical circumstances allegation did not meet the necessary statutory criteria. We responded to LGEMM's objection on August 18, 2011. All four respondents submitted the requisite shipment data between August 24 and 26, 2011. In their submissions, Electrolux, LGEMM, and Samsung provided comments on how the Department should analyze whether critical circumstances exist with respect to their imports or bottom mount refrigerators from Mexico.

On August 1, 2011, the petitioner alleged that Electrolux and LGEMM made third country sales below the COP and, therefore, requested that the Department initiate a sales-below-cost investigation of both respondents. On August 24 and 26, 2011, the Department initiated sales-below-cost investigations of Electrolux and LGEMM, respectively. See the "Cost of Production Analysis" section, below.

On August 11, 2011, the petitioner submitted allegations related to affiliated party transactions and the major input rule with respect to subject merchandise produced and

exported from Mexico by Samsung and LGEMM. On the same date, the petitioner alleged that the “Special Rule for Certain Multinational Corporations” (MNC provision) applies in relation to bottom mount refrigerators produced and exported from Mexico by LGEMM. LGEMM objected to this allegation on August 23, 2011.

Also on August 11, 2011, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be fully extended pursuant to section 733(c)(1) of the Act and 19 CFR 351.205(e). On August 16, 2011, pursuant to sections 733(c)(1)(A) and (c)(2) of the Act and 19 CFR 351.205(f), the Department postponed the preliminary determination until no later than October 26, 2011. See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 76 FR 52313 (August 22, 2011).

On September 6, 2011, we issued a letter to LGEMM requesting that it submit the responses to sections B and D of the Department’s questionnaire that were filed on the administrative record of the investigation of bottom mount refrigerators from Korea, by its Korean affiliate, LG Electronics, Inc. (LGE), along with all of LGE’s subsequent supplemental questionnaire responses. This request was made in the context of the petitioner’s August 11, 2011, allegation (supplemented on September 26, 2011) that the MNC provision applies in relation to bottom mount refrigerators produced and exported from Mexico by LGEMM. LGE/LGEMM complied with this request on September 11, 2011, and with subsequent submissions in September and October.<sup>1</sup>

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<sup>1</sup> We subsequently requested on October 11, 2011, that LGEMM submit LGE’s response to section A of the Department’s questionnaire (filed on the record of the Korea investigation by LGE), along with all subsequent supplemental section A questionnaire responses. LGEMM complied with this request on October 12, 2011.

On September 9, 2011, the petitioner alleged that targeted dumping was occurring with respect to bottom mount refrigerators produced and exported from Mexico by Electrolux, LGEMM, and Samsung.

On September 26, 2011, the petitioner amended its critical circumstances allegation to include only Electrolux, LGEMM and Samsung.

On October 3, 2011, the petitioner alleged that targeted dumping was occurring with respect to bottom mount refrigerators produced and exported from Mexico by Mabe. On October 7, 2011, we rejected as untimely the petitioner's targeted dumping allegation with respect to Mabe.

On October 6, 2011, we requested updated shipment data from Electrolux, LGEMM, and Samsung for consideration in our critical circumstances analysis for the final determination of this investigation.

We received various submissions from interested parties after October 11, 2011, including database corrections from Electrolux and LGEMM. However, these submissions were received too late to be considered for purposes of the preliminary determination. We will consider each of these submissions in our final determination.

#### Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made

by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on October 17, 19, 20, and 21, 2011, Mabe, Samsung, Electrolux, and LGEMM, respectively, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the Federal Register, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the respondents account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the Federal Register. Suspension of liquidation will be extended accordingly.

#### Period of Investigation

The period of investigation (POI) is January 1, 2010, through December 31, 2010. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., March 2011).

#### Scope of Investigation

The products covered by the investigation are all bottom mount combination refrigerator-freezers and certain assemblies thereof from Mexico. For purposes of the

investigation, the term “bottom mount combination refrigerator-freezers” denotes freestanding or built-in cabinets that have an integral source of refrigeration using compression technology, with all of the following characteristics:

- The cabinet contains at least two interior storage compartments accessible through one or more separate external doors or drawers or a combination thereof;
- An upper-most interior storage compartment(s) that is accessible through an external door or drawer is either a refrigerator compartment or convertible compartment, but is not a freezer compartment;<sup>2</sup> and
- There is at least one freezer or convertible compartment that is mounted below an upper-most interior storage compartment(s).

For purposes of the investigation, a refrigerator compartment is capable of storing food at temperatures above 32 degrees F (0 degrees C), a freezer compartment is capable of storing food at temperatures at or below 32 degrees F (0 degrees C), and a convertible compartment is capable of operating as either a refrigerator compartment or a freezer compartment, as defined above.

Also covered are certain assemblies used in bottom mount combination refrigerator-freezers, namely: (1) any assembled cabinets designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) a back panel, (c) a deck, (d) an interior plastic liner, (e) wiring, and (f) insulation; (2) any assembled external doors designed for use in bottom mount combination refrigerator-freezers that

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<sup>2</sup> The existence of an interior sub-compartment for ice-making in an upper-most storage compartment does not render an upper-most storage compartment a freezer compartment.



incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation; and (3) any assembled external drawers designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation.

The products subject to the investigation are currently classifiable under subheadings 8418.10.0010, 8418.10.0020, 8418.10.0030, and 8418.10.0040 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8418.21.0010, 8418.21.0020, 8418.21.0030, 8418.21.0090, and 8418.99.4000, 8418.99.8050, and 8418.99.8060. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

#### Scope Comments

In accordance with the preamble to the Department's regulations (see Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), in our Initiation Notice we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice.

On May 9, 2011, we received timely comments on the scope of the investigation from Samsung. Specifically, Samsung requested that the Department clarify the current description of a freezer compartment and exclude a certain type of refrigerator-freezer from the scope. These scope requests are as follows:

1. Samsung requested that the Department use the Association of Home Appliance Manufacturers (AHAM) definition to revise the current description of a freezer compartment; and
2. Samsung requested that the Department determine that a certain type of refrigerator with four compartments known as “Quatro Cooling Refrigerators” be excluded from the scope due to its upper-left non-convertible freezer compartment.

On May 18, 2011, Daewoo and LGEMM submitted comments in response to Samsung’s May 9, 2011, submission. In their comments, Daewoo and LGEMM agreed with Samsung that the Department should amend the scope language to use the AHAM definition. Alternatively, LGEMM requested that at a minimum the Department exclude from the scope any refrigerator, regardless of freezing capability, that is specifically designed to store kimchi.

Also, on May 18, 2011, as well as on June 30, 2011, the petitioner submitted comments objecting to the requests filed by Samsung and LGEMM, respectively. As part of these comments, the petitioner proposed a modification to the scope language with respect to the positioning of the freezer in relation to the upper-most compartment. Samsung submitted rebuttal comments on July 25, 2011.

Based on our analysis of these issues, we have preliminarily determined that the scope of this and the concurrent antidumping and countervailing duty investigations on bottom mount refrigerators from Korea remains fundamentally unchanged. We have not modified the description of a freezer compartment in the scope of this investigation to be consistent with the AHAM definition, nor have we excluded kimchi refrigerators or Quatro Cooling Refrigerators from the scope of the investigation. However, as suggested by the petitioner, we have clarified

the scope to eliminate any ambiguity with respect to the inclusion of Quatro Cooling Refrigerators in the scope of investigation.<sup>3</sup> See Memorandum entitled “Scope Modification Requests,” dated October 26, 2011.

### Targeted Dumping Allegations

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: 1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; and 2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. See section 777A(d)(1)(B) of the Act.

On September 9, 2011, the petitioner submitted allegations of targeted dumping with respect to Samsung, LGEMM, and Electrolux and asserted that the Department should apply the average-to-transaction methodology in calculating the margins for these respondents. In its allegations, the petitioner asserted that there are patterns of U.S. sales prices for comparable merchandise that differ significantly among time periods. The petitioner relied on the Department’s targeted dumping test in Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008), and Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) (collectively Nails), as applied in more recent investigations such as Multilayered Wood Flooring from the People’s Republic of China:

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<sup>3</sup> The scope language has been revised as follows: the two references to “**the** upper-most interior storage compartment(s)” have been replaced with “**an** upper-most interior storage compartment;” and the two references in the footnote to “**the** upper-most storage compartment” have been replaced with “**an** upper-most storage compartment.”

Preliminary Determination of Sales at Less Than Fair Value, 76 FR 30656, 30659-60 (May 26, 2011). See Petitioners’ Submission of Targeted Dumping Allegations dated September 9, 2011, at pages 7-11.

#### A. Targeted Dumping Test

We conducted time-period targeted dumping analyses for Samsung, LGEMM, and Electrolux using the methodology we adopted in Nails and most recently articulated in Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 59223 (September 27, 2010) and accompanying Issues and Decision Memorandum at Comment 1 (Coated Paper), and Multilayered Wood Flooring From the Peoples’ Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) (Wood Flooring) and accompanying Issues and Decision Memorandum at Comment 4.

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. See section 777A(d)(1)(B)(i) of the Act, Nails, Coated Paper, and Wood Flooring. In this test we made all price comparisons on the basis of identical merchandise (i.e., by control number or CONNUM). We based all of our targeted dumping calculations on the U.S. net price which we determined for U.S. sales by Samsung, LGEMM, and Electrolux in our standard margin calculations. As a result of our analysis, we preliminarily determine that there is a pattern of U.S. prices for comparable merchandise that differs significantly among certain time periods for Samsung and LGEMM, in accordance with section 777A(d)(1)(B)(i) of the Act and our current practice as discussed in Nails, Coated Paper, and Wood Flooring. We also preliminarily

determine that no such pattern exists for Electrolux. For further discussion of the test and results, see the Department’s memoranda entitled “Preliminary Determination Margin Calculation for Electrolux Home Products, Corp. N.V. and Electrolux Home Products De Mexico, S.A de C.V.” (Electrolux Calculation Memo); “Preliminary Determination Margin Calculation for LG Electronics Monterrey Mexico, S.A. de C.V.” (LGEMM Calculation Memo); and “Preliminary Determination Margin Calculation for Samsung Electronics Mexico, S.A. de C.V.” (Samsung Calculation Memo), dated October 26, 2011.

#### B. Price Comparison Method

Section 777A(d)(1)(B)(ii) of the Act states that the Department may compare the weighted average of the normal value (NV) to export prices (EPs) or constructed export prices (CEPs) of individual transactions for comparable merchandise if the Department explains why differences in the patterns of EPs or CEPs cannot be taken into account using the average-to-average methodology. As described above, we preliminarily determine that, with respect to sales by Samsung and LGEMM for certain time periods there was a pattern of prices that differed significantly.

For Samsung, we find that these differences can be taken into account using the average-to-average methodology because the average-to-average methodology does not conceal differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. Therefore, for the preliminary determination, we find that the standard average-to-average methodology takes into account the price differences because the alternative average-to-transaction methodology yields no difference in the margin or yields a difference in the

margin that is so insignificant relative to the size of the resulting margin as to be immaterial. Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all U.S. sales made by Samsung. See Samsung Calculation Memo.

For LGEMM, we find that these differences cannot be taken into account using the average-to-average methodology because the average-to-average methodology conceals differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. Therefore, for the preliminary determination, we find that the standard average-to-average methodology does not take into account the price differences because the alternative average-to-transaction methodology yields a material difference in the margin. Accordingly, for this preliminary determination we applied the average-to-transaction methodology to all U.S. sales made by LGEMM. See LGEMM Calculation Memo.

For Electrolux, because we did not find a pattern of prices that differed significantly for certain time periods pursuant to section 777A(d)(1)(B) of the Act, we applied our standard average-to-average price comparison methodology to all U.S. sales made by Electrolux pursuant to section 777A(d)(1)(A) of the Act. See Electrolux Calculation Memo.

#### Fair Value Comparisons

To determine whether sales of bottom mount refrigerators from Mexico to the United States were made at LTFV, we compared the EP or CEP to the NV, as described in the “Export Price/Constructed Export Price” and “Normal Value” sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to weighted-average NVs (for Electrolux, Mabe, and Samsung), and transaction-

specific EPs and CEPs to weighted-average NVs (for LGEMM) in accordance with section 777A(d)(1)(B) of the Act.

All four respondents reported sales of damaged and/or refurbished merchandise in their U.S. and/or comparison markets during the POI. Because the quantity of such sales does not constitute a significant percentage of the respondents' total U.S. and/or comparison market sales made during the POI, we have excluded these sales from our margin analysis for purposes of the preliminary determination. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 FR 76913 (December 23, 2004), and accompanying Issues and Decision Memorandum at General Comment 2.

#### MNC Provision

On August 11, 2011, the petitioner alleged that all of the criteria for invoking the MNC provision have been satisfied with respect to LGEMM. To determine whether sales of LGEMM's bottom mount refrigerators from Mexico to the United States were made at LTFV, we compared the U.S. price to the appropriate NV as required by the MNC provision.

The MNC provision, contained in section 773(d) of the Act, requires the Department to determine if the following three criteria are satisfied:

- (1) Subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in another country or countries;

- (2) Sales of the foreign like product by the company concerned in the home market of the exporting country are nonexistent or insufficient as a basis for comparison with the sales of the subject merchandise to the United States; and,
- (3) The NV of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the NV of the foreign like product produced in the facilities located in the exporting country. (In this comparison, we must adjust the NVs for any differences between the two countries (including taxes, labor, materials and overhead), pursuant to section 773(d) of the Act.)

If the above criteria are satisfied, then the MNC provision instructs the Department to compare U.S. price to the NV at which the foreign like product is sold in substantial quantities from one or more facilities outside the exporting country.

Regarding the first criterion, LGEMM reported that it is owned by LGE in part; LGE produces and sells bottom mount refrigerators in Korea. Thus, the first criterion is satisfied.

Regarding the second criterion, we compared the reported volume of home market sales of bottom mount refrigerators to the reported volume of U.S. sales of bottom mount refrigerators, in accordance with section 773(d)(2) of the Act and 19 CFR 351.404, in order to determine whether there were sufficient sales of bottom mount refrigerators in the home market to compare to sales of bottom mount refrigerators in the United States. We found that LGEMM's Mexican home market was not viable for comparison to sales to the United States. Based on LGEMM's questionnaire response, we determined, pursuant to 19 CFR 351.404, that Canada is the most appropriate third country market for purposes of the comparison of NVs



under the MNC provision because Canada is LGEMM’s largest third country market with respect to sales of bottom mount refrigerators.

Regarding the third criterion, we compared the NV of sales made by LGEMM to Canada (Canadian NV) with the NV of the sales made by LGE in Korea (Korean NV). We used in this comparison only those sales to Canada and Korea made in the ordinary course of trade.<sup>4</sup> We also excluded sales of refurbished merchandise, as discussed in the “Fair Value Comparison” section of this notice. To compare the NVs, we first calculated the Canadian and Korean NVs using our normal methodology under section 773(a) of the Act.

1. Canadian NV

We calculated the Canadian NV based on ex-warehouse or delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for discounts, rebates, and billing adjustments. We also made deductions for movement expenses, including foreign inland freight, foreign brokerage and handling, international freight, Canadian brokerage and handling, Canadian warehousing, and Canadian inland freight expenses. In addition, we made deductions for commissions, advertising expenses, imputed credit expenses, warranties, and packing costs. See LGEMM Calculation Memo for further discussion of the adjustments to the Canadian NV.

2. Korean NV

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<sup>4</sup> We initiated sales-below-cost investigations with respect to LGEMM’s third country sales to Canada and LGE’s home market sales in Korea. See Memorandum entitled “The Petitioner’s Allegation of Sales below the Cost of Production for LG Electronics Monterrey Mexico, S.A. de C.V.”, dated August 26, 2011, and Initiation Notice. Accordingly, we used in our analysis only those sales that passed the sales below cost test. With respect to LGEMM’s affiliated party transactions in Canada, we used in our analysis only those Canadian sales that passed the arm’s-length test, as described in the “Affiliated Party Transactions and Arm’s-Length Test” section of this notice. With respect to LGE’s affiliated party transactions in Korea, LGE reported downstream sales by its affiliated reseller rather than both sales to the affiliate and the affiliate’s downstream sales. Therefore, we used only the downstream sales in our analysis.

We calculated the Korean NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for discounts and rebates. We also made deductions for movement expenses, including inland freight, handling, and warehousing. Regarding inland freight, handling, and warehousing, LGE paid an affiliated company to arrange unaffiliated subcontractors to perform these services. Because LGE's affiliate did not provide the same service to unaffiliated parties, nor did LGE use unaffiliated companies for these services, we were unable to test the arm's-length nature of the expenses paid by LGE. Therefore, we based these expenses on the affiliate's costs.

In addition, we made deductions for direct selling expenses (including bank charges, direct advertising and promotional expenses, imputed credit expenses, and warranties), commissions, and packing costs. See LGEMM Calculation Memo for further discussion of the adjustments to the Korean NV.

Once we had calculated the two NVs, we then matched the NVs, to LGEMM's U.S. sales according to the product-comparison criteria discussed below under the "Product Comparisons" section of this notice. We matched the U.S. sales with the NV at the most similar level of trade (LOT), where possible. See LGEMM Calculation Memo for discussion of our LOT analysis with respect to Canadian sales, and "Level of Trade" section of this notice, below, for discussion of our LOT analysis with respect to Korean sales. Next, we calculated a comparison adjustment for each product-specific NV to determine whether any of the observed differences in value between the NV of products produced and sold in Korea and the NV of products produced in Mexico and sold in Canada were attributable to differences in

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COPs. The comparison adjustment included the costs of materials, labor, fixed and variable overhead, general and administrative (G&A) expense and interest incurred in producing the product. To calculate the comparison adjustment, the Department relied on the submitted cost information except in the following instances where the costs were not appropriately quantified or valued.

1. Mexican-produced Merchandise

We analyzed LGEMM's transactions with affiliated parties in accordance with section 773(f)(2) of the Act (the transactions disregarded rule) to determine whether the prices paid for the inputs used in the production of the merchandise under consideration reflect arm's-length prices. Based on our analysis, we found that the sum of the extended weighted-average prices paid by LGEMM for inputs purchased from LG Chemical America Inc. were at less than the sum of the extended weighted-average market prices. As such, we increased LGE's reported cost of manufacturing (COM) to reflect market prices.

We adjusted LGEMM's reported costs to include research and development (R&D) expenses incurred by its affiliate, LGE. Because LGEMM appears to have benefited from LGE's R&D activities associated with the production of the merchandise under consideration, we added LGE's R&D expenses to LGEMM's reported costs. We also revised LGEMM's CONNUM-specific G&A expenses. We adjusted the denominator of LGEMM's G&A expense ratio for packing expenses and scrap revenue. We applied the revised G&A expense ratio to the reported CONNUM-specific COM to determine the revised G&A expenses. See Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for

the Preliminary Determination – LG Electronics Monterrey Mexico, S.A. de C.V. and LG Electronics USA, Inc.” (LGEMM Cost Calculation Memo), dated October 26, 2011.

2. Korean-produced Merchandise

We analyzed LGE’s transactions with certain affiliated parties in accordance with section 773(f)(2) of the Act (transactions disregarded rule) to determine whether the prices paid for the inputs used in the production of the merchandise under consideration reflect arm’s-length prices. Based on our analysis, we found that the sum of the extended weighted-average prices paid by LGE for inputs purchased from LG Chemical were at less than the sum of the extended weighted-average market prices. As such, we increased LGE’s reported COM to reflect market prices. We also revised LGE’s reported G&A expense ratio for certain R&D expenses. See Memorandum entitled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – LG Electronics Inc. and LG Electronics USA, Inc.” (LG Cost Calculation Memo), dated October 26, 2011, included at Attachment 8 to LGEMM Calculation Memo.

Next, we converted the COP and NV data to U.S. dollars, and calculated the comparison adjustment as the difference between the Canadian NV COP and the Korean NV COP. We applied the comparison adjustment to the Korean NV. We then multiplied the NVs by the quantity of U.S. product to which the NVs were compared in order to provide for an equitable comparison. Finally, we summed the total value for each market. From these aggregated values, we determined that the Korean value was higher than the Canadian value. Thus, the third criterion for invoking the MNC provision has been satisfied.

Because all of the above criteria for the MNC provision have been satisfied, we are

required to base NV for LGEMM on the prices of sales made by LGE in Korea (see LGEMM Calculation Memo for additional discussion of the Department’s application of the MNC provision methodology).

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Mexico, or in Korea in the case of LGEMM under the MNC provision, during the POI that fit the description in the “Scope of Investigation” section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the comparison market, where appropriate. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise, or there was no viable comparison market, we made product comparisons using constructed value (CV).

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: completed unit or subassembly, unit type, calculated volume, number of compartments, refrigerator door/drawer configuration, other external door/drawer configurations, icemaker and water dispenser feature, door finish, type of compressor, number of evaporators, type of user interface, existence of a through-the-door feature, existence of an interior temperature-controlled sub-compartment, and existence of thin-wall insulation panels.

### Export Price/Constructed Export Price

For certain U.S. sales made by LGEMM and Samsung, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the subject merchandise outside the United States, and CEP methodology was not otherwise warranted based on the facts of record.

For all U.S. sales made by Electrolux and Mabe and certain U.S. sales made by LGEMM and Samsung, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold (or agreed to be sold) in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

A. Electrolux

We based CEP on the packed prices to unaffiliated purchasers in the United States. We used the earlier of shipment or invoice date as the date of sale for Electrolux's CEP sales, in accordance with our practice. See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11.

We adjusted the starting price by the amount of billing adjustments reported by Electrolux. We made deductions for rebates and discounts, as appropriate. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign customs fees, foreign and U.S. inland insurance, U.S. inland freight expenses (i.e., freight from factory to warehouse and freight from

warehouse to the customer), and pre-sale warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., imputed credit expenses, service fees paid to financing agents, advertising expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Electrolux on its sales of the subject merchandise in the United States and the profit associated with those sales. See the Electrolux Calculation Memo.

B. LGEMM

We based EP on the packed prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of billing adjustments reported by LGEMM. We made deductions for discounts and rebates, as appropriate. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign brokerage and handling, and international freight.

We based CEP on the packed, ex-warehouse or delivered prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of billing adjustments reported by LGEMM. We made deductions for discounts and rebates, as appropriate.

We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, U.S. brokerage and handling, U.S. warehousing, and U.S. inland

freight expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., imputed credit expenses, bank charges, advertising expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by LGEMM and its U.S. affiliate on sales of the subject merchandise in the United States and the profit associated with those sales. See LGEMM Calculation Memo.

### C. Mabe

Mabe sold bottom mount refrigerators to unaffiliated U.S. customers during the POI through its affiliated U.S. reseller, General Electric Company (GE).<sup>5</sup> Therefore, we used CEP methodology to calculate Mabe's antidumping margin, comparing Mabe's home market sales to unaffiliated customers to GE's sales to unaffiliated customers in the United States. We based CEP on the packed prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of billing adjustments. We made deductions for discounts and rebates, as appropriate. We reclassified one of Mabe's rebates as a discount, in accordance with the description of this expense in its September 26, 2011, supplemental questionnaire response (SQR).

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<sup>5</sup> See the Memorandum entitled, "Investigation of Bottom Mount Combination Refrigerator-Freezers from Mexico: Finding of Affiliation Between Controladora Mabe S.A. de C.V., Mabe S.A. de C.V., and Leiser S. de R. (collectively "Mabe") and General Electric Company ("GE"), dated September 2, 2011.



In a supplemental questionnaire dated August 19, 2011, we instructed Mabe to report its rebates on a customer-specific basis, but Mabe did not do so arguing that its reporting methodology was reasonable. Based on information reported in Mabe's questionnaire responses, we believe that it is possible for Mabe to report its rebates, at a minimum, on a customer-specific basis and possibly on a product-specific and time period-specific basis. See, e.g., pages 8-9 of the SQR which describes the various rebate programs. Therefore, pursuant to section 776(a)(2)(B) of the Act, we find that Mabe failed to provide information in the form and manner requested by the Department and that it is appropriate to resort to facts otherwise available to account for the unreported information. Moreover, we find that an adverse inference is appropriate because: 1) Mabe had the necessary information within its control and did not report this information; and 2) it failed to put forth the maximum effort to provide the requested information. Therefore, for this preliminary determination, pursuant to section 776(b) of the Act, we find that it is appropriate to apply adverse facts available (AFA) with respect to these rebates. Specifically, as AFA, we based the rebates reported for all of Mabe's U.S. rebate programs on the highest percentage reported for any of the programs. We intend to request additional information concerning Mabe's rebate programs, as well as its rebate reporting methodology, prior to verification for consideration in the final determination.

We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, U.S. brokerage and handling, U.S. inland freight expenses (i.e., freight from port to warehouse and freight from warehouse to the customer), and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities

occurring in the United States, including direct selling expenses (i.e., imputed credit expenses, advertising expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We recalculated credit expenses by subtracting early payment discounts from gross unit price. See discussion below with respect to the calculation of indirect selling expenses and advertising expenses. With respect to the foreign inland freight expense from plant/warehouse to the port of export and inventory carrying costs incurred by Mabe for its U.S. sales to GE, we calculated an average expense. See Memorandum entitled “Preliminary Margin Calculation for Controladora Mabe S.A. de C.V., Mabe S.A. de C.V., and Leiser S. de R.L.,” dated October 26, 2011 (Mabe Calculation Memo) for further discussion.

In its initial questionnaire response dated July 25, 2011, GE reported indirect selling and advertising expense ratios that were derived from a product-line management report. In its SQR, GE revised those ratios by substituting them with ratios that were derived from data in GE’s Appliance Division accounts. As explanation, GE stated that the management report data used for the original ratios cannot be tied into its financial records. Moreover, the appliances-level records are the only available source of data from which GE can produce verifiable indirect selling and advertising ratios.

We have several outstanding questions regarding GE’s claims with respect to both the original and the revised data, including how data was compiled and how expenses were allocated to product lines in the management report, and whether the appliance-level data include expenses that may be otherwise unaccounted for in Mabe’s and GE’s questionnaire responses. Moreover, GE has not explained why it has relied on the management report for other purposes besides the

reporting of indirect selling and advertising expenses, such as in its sales reconciliation and the calculation of rebates. See Exhibit 2 of the SQR and Exhibit 2 of the July 25, 2011, questionnaire response, respectively. Therefore, for the preliminary determination we have used GE's originally-reported indirect selling and advertising expense ratios in the margin calculation for Mabe, as we prefer adjustments to be as product-specific as possible. We intend to ask for additional information concerning these expenses through a supplemental questionnaire to GE, which will be subject to verification, and will reconsider this issue for the final determination. See Mabe Calculation Memo.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by both Mabe and GE on sales of the subject merchandise in the United States and the profit associated with those sales.

D. Samsung

We based EP on the packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign inland insurance, foreign brokerage and handling expenses, and U.S. customs duties (including merchandise processing fees and customs broker fees incurred in Mexico).

We based CEP on the packed prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of billing adjustments reported by Samsung. We made deductions for discounts and rebates, as appropriate. We reclassified Samsung's early

payment rebate as a discount, in accordance with the description of this expense in the October 5, 2011, supplemental questionnaire response.

In a supplemental questionnaire dated September 27, 2011, we instructed Samsung to report its rebates on as customer-specific, product-specific and time period-specific basis as possible. However, Samsung declined to report its U.S. rebates as instructed. While Samsung reported its U.S. rebates on a customer-specific basis, based on information reported in Samsung's supplemental questionnaire responses, we believe that it is possible for Samsung to report certain rebates (i.e., REBATE3U and REBATE4U) on a product-specific and possibly a time period-specific basis, as well.<sup>6</sup> Therefore, pursuant to section 776(a)(2)(B) of the Act, we find that Samsung failed to provide information in the form and manner requested by the Department and that it is appropriate to resort to facts otherwise available to account for the unreported information. Moreover, we find that an adverse inference is appropriate because: 1) Samsung had the necessary information within its control and did not report this information; and 2) it failed to put forth the maximum effort to provide the requested information. Therefore, for this preliminary determination, pursuant to section 776(b) of the Act, we find that it is appropriate to apply adverse facts available (AFA) with respect to these rebates. Specifically, as AFA, we recalculated both of these rebates by assigning the highest customer-specific rebate percentage reported for each rebate program to all POI U.S. sales that were eligible for a rebate under that particular rebate program. We intend to request additional information concerning Samsung's rebate programs, as well as its rebate reporting methodologies, prior to verification for consideration in the final determination.

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<sup>6</sup> See, e.g., Exhibit SC-4 of Samsung's September 21, 2011, supplemental questionnaire response and Exhibit 1 of its October 5, 2011, supplemental questionnaire response.

We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign warehousing expenses, foreign inland insurance, foreign brokerage and handling expenses, ocean freight, U.S. customs duties (including merchandise processing fees and customs broker fees incurred in Mexico), U.S. inland insurance, U.S. inland freight expenses (i.e., freight from port to warehouse and freight from warehouse to the customer), and post-sale warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., imputed credit expenses, advertising expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We recalculated credit expenses by subtracting early payment discounts from gross unit price. We recalculated U.S. inventory carrying costs by using the Mexican peso short-term interest rate, consistent with our practice to match the currency of the interest rate to the currency of the cost being imputed. See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not to Revoke Antidumping Duty Order in Part, and Final No shipment Determination, 76 FR 50176 (August 12, 2011), and accompanying Issues and Decision Memorandum at Comment 5.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Samsung and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales. See Samsung Calculation Memo.

## Normal Value

### A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act.

In this investigation, we determined that Mabe's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1)(B) of the Act.

In this investigation, we determined that neither Electrolux's nor LGEMM's aggregate volume of home market sales of the foreign like product was sufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, where appropriate, we used sales to the respondent's largest third country market, comprised of merchandise that is similar to the subject merchandise exported to the United States, as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. We used Canada as the third country market for Electrolux. Although Canada is LGEMM's largest third country market (comprised of merchandise that is similar to the subject merchandise exported to the United States) we performed the analysis discussed above under the "MNC

Provision” section of this notice to determine the appropriate comparison market for LGEMM.

As a result of our analysis, we determined Korea to be the appropriate comparison market for LGEMM. Furthermore, we determined that Samsung’s aggregate volume of home and third country market sales of the foreign like product were insufficient to permit a proper comparison with U.S. sales of the subject merchandise.<sup>7</sup> Therefore, we used CV as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

B. Affiliated Party Transactions and Arm’s-Length Test

During the POI, Mabe sold foreign like product to affiliated customers. To test whether these sales were made at arm’s-length prices, we compared on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all applicable billing adjustments, discounts and rebates, movements charges, direct selling expenses, and packing expenses. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm’s-length. See 19 CFR 351.403(c); see also e.g., Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 39615 (August 7, 2009), unchanged in Stainless Steel Sheet and Strip in Coils form Japan: Final Results of Antidumping Duty Administrative Review, 75 FR 6631 (February 10, 2010). Sales to affiliated customers that were not made at arm’s-length prices were excluded from our analysis

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<sup>7</sup>On July 8, 2011, the petitioner disputed Samsung’s claim that it did not have a viable third country market during the POI and requested that Samsung report its third country sales. Based on our review of the record, we found no basis to require Samsung to report this data for consideration in the preliminary determination. However, we intend to verify Samsung’s claims for purposes of the final determination.

because we considered them to be outside the ordinary course of trade. See section 771(15) of the Act and 19 CFR 351.102(b)(35).

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. Id.; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e., the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (i.e., NV based on either home market or third country prices),<sup>8</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

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<sup>8</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A expenses, and profit for CV, where possible.



When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See, e.g., OJ from Brazil, 75 FR at 51001.

In this investigation, we obtained information from all four respondents regarding the marketing stages involved in making the reported comparison market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Electrolux

Electrolux sold bottom mount refrigerators only to retailers and builders/wholesalers in both the Canadian and U.S. markets. Electrolux reported that it made CEP sales in the U.S. market through the following four channels of distribution: (1) the customer picks up the merchandise from its El Paso warehouse; (2) its U.S. affiliate (i.e., Electrolux Major Appliances North America (UWA)) delivers the merchandise from the El Paso warehouse to the customer; (3) the customer picks up the merchandise from a UWA regional distribution center (RDC); and (4) UWA delivers the merchandise from the RDC to the customer. For purposes of examining the different selling activities reported by Electrolux for sales made

through each U.S. channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities Electrolux performed in each channel, exclusive of the selling activities performed by its U.S. affiliate, and found that either there is no difference in the selling functions performed by Electrolux between the channels (i.e., freight and delivery services) or Electrolux did not perform the selling function at all (i.e., sales and marketing, inventory maintenance and warehousing, and warranty and technical support) for each channel. As a result, we found that Electrolux performed the same selling functions for all four U.S. distribution channels. Accordingly, we determined that all CEP sales constitute one LOT. With respect to the Canadian market, Electrolux reported the following three channels of distribution: (1) its Canadian affiliate (i.e., Electrolux Canada Corp. (CDW)) delivers the merchandise from the El Paso warehouse to the customer; (2) the customer picks up the merchandise from CDW's RDC; and (3) CDW delivers the merchandise from the RDC to the customer. In determining whether separate LOTs exist in the Canadian market, we compared the selling functions performed by Electrolux and its affiliates CDW and UWA on behalf of the Canadian sales. For purposes of examining the different selling activities reported by Electrolux and its affiliates for sales made through each Canadian channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities Electrolux and its affiliates collectively performed in each channel, and found that there is no difference in the selling functions performed between the channels. As a result, we found that Electrolux performed the same selling functions for all three Canadian market distribution channels. Accordingly, we determined that all Canadian sales constitute one LOT.

Finally, we compared the CEP LOT to the Canadian market LOT and found that the selling functions performed for Canadian market sales are either not performed for CEP sales or are performed at a significantly higher degree of intensity compared to the selling functions performed for U.S. sales. Specifically, we found that three of the four selling functions (i.e., sales and marketing, inventory maintenance and warehousing, and warranty and technical support) are performed by Electrolux in the Canadian market but not in the U.S. market, and the remaining selling function (i.e., freight and delivery services) was performed by Electrolux in the Canadian market at a higher degree of intensity than in the U.S. market. Therefore, we determined that the NV LOT is at a more advanced stage of distribution than the CEP LOT and that no LOT adjustment was possible. Accordingly, we granted a CEP offset in accordance with section 733(a)(7)(B) of the Act. The CEP offset was calculated as the lesser of: (1) the indirect selling expenses incurred on the third country sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

## 2. LGEMM

LGEMM sold bottom mount refrigerators to original equipment manufacturers (OEMs), retailers and end users in the U.S. market. LGEMM reported that it made CEP sales in the U.S. market through the following two channels of distribution: (1) LGEMM's U.S.

affiliate, LG Electronics USA (LGEUS), delivers the merchandise to the customer from one of its RDCs; and (2) the merchandise does not enter LGEUS' RDC but rather the merchandise is shipped from LGEMM to a trucking transit point where the customer takes delivery of the merchandise. LGEMM also reported that it made EP sales in the U.S. market through a single channel of distribution (i.e., shipments of merchandise from LGEMM directly to the customer). For purposes of examining the different selling activities reported by LGEMM for sales made through each U.S. channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities LGEMM performed in each channel, exclusive of the selling activities performed by its U.S. affiliate, LGEUS, and found that either there is no difference in the selling functions performed by LGEMM between the channels (i.e., sales and marketing, freight and delivery services, warranty and technical support) or LGEMM did not perform the selling function at all (i.e., inventory maintenance and warehousing) for each channel. As a result, we found that LGEMM performed the same selling functions for all three U.S. distribution channels. Accordingly, we determined that all CEP and EP sales constitute one LOT.

As discussed above under “MNC Provision” section, we determined that the appropriate comparison market for LGEMM's sales to the United States was Korea. With respect to the Korean market, LGE reported that it made sales through three channels of distribution (i.e., sales to construction companies, sales to unaffiliated retailers, and sales to unaffiliated retailers for which LGE was responsible for delivery and installation at the end-

user's residence). Additionally, LGE reported a fourth channel of distribution for sales made to unaffiliated end-user customers by its affiliated retailer, HiPlaza. For its sales, LGE reported that it performed the following selling functions for sales to all home market customers: sales forecasting, product development/market research, advertising, sales promotion, packing, inventory maintenance, order input direct sales personnel/sales support, warranty services, payment of commissions, and freight and delivery arrangement. In addition to these activities, LGE reported that its affiliated retailer maintained an extensive retail presence in Korea during the POI and performed the following additional selling functions for its sales: sales forecasting, advertising, sales promotion, order input, direct sales personnel/sales support, and the payment of commissions.

We grouped these selling activities into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, we found that LGE performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing at the same relative level of intensity for all three of its reported sales channels in the home market. Regarding sales made by HiPlaza, HiPlaza also performed substantial sales and marketing activities for sales to its unaffiliated customers. We found that the nature and extent of these activities are sufficient to determine that the sales made by HiPlaza were at a more advanced stage of distribution than those made by LGE. Accordingly, we preliminarily determined that LGE had two LOTs in the Korean market.

Finally, we compared the U.S. LOT to the Korean LOTs and found that the selling functions performed for Korean customers (in both Korean LOTs) are substantially greater

and/or are performed at a higher level of intensity than those performed for U.S. customers. For example, LGEMM did not perform any inventory maintenance and warehousing activities for sales to U.S. customers, whereas LGE performed this function for sales to Korean customers at a high level of intensity. Similarly, LGEMM performed sales and marketing and warranty and technical support activities for sales to U.S. customers at a low level of intensity, whereas LGE performed these functions for sales to Korean customers at a high level of intensity. Therefore, we preliminarily determined that sales to Korea during the POI were made at different LOTs than sales to the United States. As a result, we matched U.S. sales with Korean sales at the most similar LOT. Additionally, because the home market LOTs are at a more advanced stage of distribution than the U.S. LOT and no LOT adjustment is possible, we determined that a CEP offset is warranted. Accordingly, we granted a CEP offset in accordance with section 773(a)(7)(B) of the Act. The CEP offset was calculated as the lesser of: (1) the indirect selling expenses incurred on the Korean sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

### 3. Mabe

Mabe sold bottom mount refrigerators to distributors, wholesalers, retailers, and end users in the home market, and its U.S. affiliate GE did the same in the U.S. market. GE reported that it made CEP sales in the U.S. market through the following two channels of distribution: (1) the customer picks up the merchandise from GE's warehouse; and (2) GE delivers the merchandise to the customer. For purposes of examining the different selling activities reported by Mabe for sales made through each U.S. channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) sales and

marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities Mabe performed in each channel, exclusive of the selling activities performed by its affiliate GE, and found that either there is no difference in the selling functions performed by Mabe between the channels (i.e., freight and delivery services) or Mabe did not perform the selling function at all (i.e., sales and marketing, inventory maintenance and warehousing, and warranty and technical support) for each channel.

As a result, we found that Mabe performed the same selling functions for both U.S. distribution channels. Accordingly, we determined that all CEP sales constitute one LOT.

With respect to the home market, Mabe reported the following two channels of distribution: (1) the customer picks up the merchandise from Mabe's distribution warehouse; and (2) the customer picks up the merchandise from Mabe's plant. In determining whether separate LOTs exist in the home market, we compared the selling functions performed by Mabe on behalf of the home market sales made to its different customer categories. For purposes of examining the different selling activities reported by Mabe for sales made through each home market channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities Mabe performed in each channel, and found that there is no difference in the selling functions performed between the channels. As a result, we found that Mabe performed the same selling functions for both home market distribution channels. Accordingly, we determined that all home market sales constitute one LOT.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for home market sales are either not performed for U.S. sales or are performed at a significantly higher degree of intensity compared to the selling functions performed for U.S. sales. Specifically, we found that three of the four selling functions (i.e., sales and marketing, inventory maintenance and warehousing, and warranty and technical support) are performed by Mabe in the home market but not in the U.S. market, and the remaining selling function (i.e., freight and delivery services) was performed by Mabe in the home market at a higher degree of intensity than in the U.S. market. Therefore, we determined that the NV LOT is at a more advanced stage of distribution than the CEP LOT and that no LOT adjustment was possible. Accordingly, we granted a CEP offset in accordance with section 773(a)(7)(B) of the Act. The CEP offset was calculated as the lesser of: (1) the indirect selling expenses incurred on the home market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

#### 4. Samsung

Samsung had no viable home or third country market during the POI. Therefore, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive selling, general and administrative expenses and profit. (See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 47081 (August 4, 2004) (Shrimp from Brazil), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004)). In accordance with 19 CFR 351.412(d), the Department will make its LOT



determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Because it is not possible in the instant case to make an LOT determination on the basis of sales of the foreign like product in the home or third country market, the Department may use sales of different or broader product lines, sales by other companies, or any other reasonable basis. Because we based the selling expenses and profit for Samsung on the weighted-average selling expenses incurred and profits earned by the other three respondents in the investigation on their comparison market sales (i.e., home market sales for Mabe, Canadian market sales for Electrolux, and Korean market sales for LGEMM), we could not determine the LOT of the sales from which we derived selling expenses and profit for CV. As a result, we could not determine whether there is a difference in LOT between any U.S. sales and CV. Therefore, we did not make a LOT adjustment or CEP offset to NV in the case of Samsung. See “Calculation of Normal Value Based on Constructed Value” section of this notice below.

D. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that Mabe’s sales of bottom mount refrigerators in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether Mabe’s sales were made at prices below their respective COPs.

Because Electrolux did not have a viable home market, on August 1, 2011, the petitioner alleged that it made third country sales below the COP and, therefore, requested that the Department initiate a sales-below-cost investigation. On August 24, 2011, the Department

initiated a sales-below-cost investigation of Electrolux. See Memorandum entitled “The Petitioner’s Allegation of Sales below the Cost of Production for Electrolux Home Products, Corp. N.V. and Electrolux Home Products, Inc.,” dated August 24, 2011.

As discussed above in the “MNC Provision” section of this notice, we have determined it appropriate to use the sales of bottom mount refrigerators produced and sold by LGE in Korea as the basis for LGEMM’s NV. Based on our analysis of an allegation contained in the petition concerning bottom mount refrigerators from Korea, we found that there were reasonable grounds to believe or suspect that LGE’s sales of bottom mount refrigerators in Korea were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether LGE’s sales were made at prices below their respective COPs.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for G&A, interest expenses, and comparison market packing costs. See “Test of Comparison Market Sales Prices” section below for treatment of comparison market selling expenses. Based on the review of record evidence, none of the respondents appeared to experience significant changes in the COM during the POI. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

We relied on the COP data submitted by the respondents. We adjusted LGEMM’s, Mabe’s, and Samsung’s COP data as follows:

A. LGEMM

We made adjustments to COP as discussed above under the “MNC Provision” section of this notice.

B. Mabe

We revised Mabe’s G&A expense ratio to include employee profit sharing expenses in the numerator of the ratio. We applied the revised G&A expense ratio to the reported CONNUM-specific COM to determine the revised G&A expenses. See Memorandum entitled, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Controladora Mabe S.A. de C.V., Mabe S.A. de C.V., and Leiser S. de R.L.”

C. Samsung

We analyzed Samsung’s transactions with certain affiliated parties in accordance with section 773(f)(2) of the Act (transactions disregarded rule) to determine whether the prices paid for the inputs used in the production of the merchandise under consideration reflect arm’s-length prices. Where market prices were not available, we relied on the affiliate’s COP as the market price. Based on our analysis, we found that the sum of the extended weighted-average prices paid by Samsung for inputs purchased from certain affiliates were at less than the sum of the extended weighted-average market prices. As such, we increased Samsung’s reported COM to reflect market prices.

Because Samsung appears to have benefited from its parent’s R&D activities associated with the production of the merchandise under consideration, we adjusted Samsung’s reported costs to include R&D expenses incurred by its parent, Samsung Electronics Co. Ltd, for home

appliances. We derived those expenses from the worksheets Samsung provided in reporting its affiliated parties' costs of inputs. We reduced the parent's R&D expenses for fees paid to the parent which were included in the reported costs.

We revised Samsung's G&A expenses to exclude offsets related to selling activities, financial income items, and prior year-adjustments.

See Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Samsung Electronics Mexico S.A. de C.V." (Samsung Cost Calculation Memo), dated October 26, 2011.

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses. In determining whether to disregard comparison market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

## 3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the

below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of respondents' comparison market sales during the POI were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### E. Calculation of Normal Value Based on Comparison Market Prices

##### Electrolux

We calculated NV based on packed prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for discounts, rebates, and billing adjustments. We also made deductions for movement expenses, including inland freight, customs fees, brokerage and handling, insurance, and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for warranties, advertising and service fees paid to financing agents.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison market sales or the indirect selling expenses deducted from the starting price in calculating CEP. See Electrolux Calculation Memorandum.

#### LGEMM

We calculated NV based on LGE's sales in its Korean home market. We made adjustments for movement expenses under section 773(a)(6)(B)(ii) of the Act, as described in the "MNC Provision" section, above.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including bank charges, direct advertising and promotional expenses, and warranties), and commissions. Regarding advertising expenses, LGE characterized certain home market advertising expenses as being direct in nature; however, we have reclassified these expenses as indirect because they are not product-specific (i.e., they relate to a broader class of merchandise than is covered by this investigation). See LGEMM Calculation Memo for further discussion.

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (i.e., imputed credit

expenses, bank charges, direct advertising and promotional expenses, and warranties).

For all price-to-price comparisons, where commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV for the lesser of: 1) the amount of commission paid in the comparison market; or 2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the comparison market. See 19 CFR 351.410(e).

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the Korean market sales or the indirect selling expenses deducted from the starting price in calculating CEP. We reclassified certain advertising expenses as indirect, as discussed above. We also reclassified certain expenses incurred by LGE's affiliated retailer in maintaining its retail presence in the Korean market as indirect selling expenses because these expenses related to rent, sales staff salaries, and other overhead expenses and did not result from or bear a direct relationship to particular sales. We also recalculated LGE's home market inventory carrying costs using the company's reported COM, revised as stated above. See the LGEMM Calculation Memo for further discussion.

Mabe

We calculated NV based on ex-warehouse or delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for discounts and rebates. We also made deductions for movement expenses, including inland freight and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit, warranties and royalties.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison market sales or the indirect selling expenses deducted from the starting price in calculating CEP. See Mabe Calculation Memo for further discussion.

#### F. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we based Samsung's NV on CV because it had no viable home or third country market.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Samsung's cost of materials and fabrication for the foreign like product, plus amounts for G&A and U.S. packing costs. We calculated the cost of materials and fabrication, G&A and interest based on the methodology described in the "Calculation of COP" section of this notice. For further details, see Samsung Cost Calculation Memo.



Because Samsung does not have a viable comparison market, the Department cannot determine selling expenses and profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Therefore, we have relied on section 773(e)(2)(B) of the Act to determine Samsung’s selling expenses and profit. In so doing, we used the weighted-average selling expenses and profit rates calculated for the other respondents in this investigation.

In situations where selling expenses and profit cannot be calculated under the preferred method, section 773(e)(2)(B) of the Act sets forth three alternatives. The statute does not establish a hierarchy for selecting among these alternative methodologies. See SAA at 840. Nonetheless, we examined each alternative in searching for an appropriate method.

Alternative (i) of section 773(e)(2)(B) of the Act specifies that selling expenses and profit may be calculated based on “actual amounts incurred by the specific exporter or producer ... on merchandise in the same general category” as subject merchandise. In considering this alternative, we examined the financial statements of Samsung. The sales revenues reported in Samsung’s financial statements include sales to markets other than Mexico and include sales to affiliated parties.

Because there is insufficient information on the record of this case to determine the sales of the same general category of merchandise in the foreign country exclusive of the affiliated party sales, we determined that the selling expenses and profit calculated using Samsung’s financial statements may not reflect the actual selling expenses and profit incurred by Samsung for sales to customers in the home market. Therefore, we did not rely on alternative (i) for purposes of this preliminary determination.

We considered relying on alternative 773(e)(2)(B)(ii) of the Act (alternative (ii)) which states that selling expenses and profit may be calculated based on the actual amounts incurred and realized by exporters or producers that are subject to the investigation in connection with sales for consumption in the foreign country. However, because Mabe is the only other respondent with viable home market sales, the Department cannot calculate profit under alternative (ii) because doing so would reveal the business-proprietary nature of that information. See Shrimp from Brazil.

Pursuant to alternative (iii) of section 773(e)(2)(B) of the Act, the Department has the option of using any other reasonable method to calculate CV profit as long as the result is not greater than the amount realized by exporters or producers “in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise” (i.e., the “profit cap”). As a reasonable method, we relied on the weighted average of the profit and selling expenses incurred by the three other respondents in this investigation. Specifically, we calculated weighted-average selling expenses incurred and profit realized on home market sales by Mabe, and Canadian sales by Electrolux, and Korean sales by LGEMM’s affiliate, LGE.

In the instant case, the profit cap cannot be calculated using the available data (i.e., Electrolux, LGEMM, and Mabe), because LGEMM’s and Electrolux’s data would not result in a profit cap that is reflective of sales in the foreign country. Furthermore, using Mabe’s home market data, the only information we have to allow us to calculate the amount normally realized in connection with the sale of merchandise in the same general category for consumption in the home market, would reveal the business-proprietary nature of that

information. Therefore because there is no other information available on the record, as facts available, we are applying option (iii), without quantifying a profit cap.

For comparisons to EP, we made circumstances-of-sale adjustments for direct selling expenses. We deducted the weighted-average direct selling expenses of the other three respondents, as described above, and added U.S. direct selling expenses. For comparisons to CEP, we deducted from CV the weighted-average direct selling expenses incurred by the other three respondents on their comparison market sales.

#### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Critical Circumstances

On July 29, 2011, the petitioner filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206, that critical circumstances exist with respect to imports of the merchandise under investigation. The petitioner subsequently amended its allegation to include only Electrolux, LGEMM and Samsung. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioner submitted its critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) (i) there is a history of dumping and material injury by reason of dumped imports in the United

States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department’s regulations provides that, in determining whether imports of the subject merchandise under investigation have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the “relatively short period” of time may be considered “massive.” Section 351.206(i) of the Department’s regulations defines “relatively short period” as normally being the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined the evidence presented in the petitioner’s submission of July 29, 2011, the ITC preliminary injury determination, and the respondents’ shipment volume submissions.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the

United States or elsewhere to be sufficient. See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova, 65 FR 70696 (November 27, 2000). The petitioner did not identify any proceedings with respect to Mexican-origin bottom mount refrigerator products, nor are we aware of any existing antidumping duty order in any country on bottom mount refrigerators from Mexico. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Mexico pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP transactions sufficient to impute knowledge of dumping. See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from Indonesia, 71 FR 15162 (March 27, 2006) unchanged in Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia, 71 FR 47171 (August 16, 2006).

For Electrolux, we calculated a preliminary margin of 19.80 percent, which meets the threshold for imputing importer knowledge of dumping for CEP sales. Therefore, we find that the importer knowledge criterion, as set forth in section 733(e)(1)(A)(ii) of the Act, has been met for Electrolux. For LGEMM, we calculated a preliminary margin of 16.44 percent, which meets the 15-percent threshold necessary to impute knowledge of dumping for CEP sales,

which are the vast majority of LGEMM’s U.S. sales. Therefore, we find that importers of subject merchandise produced and/or exported by this company knew or should have known that this company was selling the subject merchandise at less than fair value. Finally, with regard to Samsung, we also find that importers of subject merchandise produced and/or exported by this company knew or should have known that this company was selling the subject merchandise at less than fair value because the preliminary dumping margin calculated for it, i.e., 36.46 percent, is above the 15-percent and 25-percent thresholds for imputing importer knowledge of dumping CEP and EP sales, respectively. Therefore, we find that the importer knowledge criterion, as set forth in section 733(e)(1)(A)(ii) of the Act, has met for Samsung.

In addition, if the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. In the present case, the ITC preliminarily found reasonable indication that an industry in the United States is materially injured by imports of bottom mount refrigerators from Mexico. Based on the ITC’s preliminary determination of injury, and the preliminary dumping margins for Electrolux, LGEMM, and Samsung, the Department finds that there is a reasonable basis to conclude that the importer knew or should have known that there was likely to be injurious dumping of subject merchandise by these companies.

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing

of the petition (i.e., the “base period”) to a comparable period of at least three months following the filing of the petition (i.e., the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

The Department requested and obtained from each of the respondents monthly shipment data from January 2008 to July 2011. To determine whether imports of subject merchandise have been massive over a relatively short period, we compared, pursuant to 19 CFR 351.206(h)(1)(i), the respondents’ export volumes for the four months before the filing of the petition (i.e., December 2010 – March 2011) to those during the four months after the filing of the petition (i.e., April through July 2011). These periods were selected based on the Department's practice of using the longest period for which information is available from the month that the petition was filed through the effective date of the preliminary determination. According to the monthly shipment information, we found the volume of shipments of bottom mount refrigerators increased by more than 15 percent for Electrolux, LGEMM, and Samsung.

For purposes of our “massive imports” determination, we also considered the impact of seasonality on imports of bottom mount refrigerators based on interested party comments and information contained in the ITC’s preliminary determination. In order to determine whether the seasonality factor accounted for the increase in imports observed for each of the respondents in the post-petition filing period (the comparison period), we analyzed company-specific shipment data for a historical three-year period, where possible, using the same base and comparison time periods noted above. As a result of this analysis, we found that there is a

consistent pattern of seasonality, as shipments during the April - July time period were consistently higher than those in the December - March time period.

Furthermore, with respect to Electrolux and LGEMM, we found that the percentage increase in shipments during the comparison period is not related to the filing of the petition but rather to the consistent seasonal trends in the industry because the shipment increases observed in the April – July time period from year to year were relatively consistent or decreased. Therefore, we preliminarily find that imports from these companies during the period after the filing of the petition have not been massive in accordance with section 733(e)(1)(B) of the Act. However, with respect to Samsung, we found that the percentage increase in shipments during the comparison period is not entirely related to seasonal trends but also associated with the filing of the petition because the shipment increase observed in the April – July period between 2010 and 2011 was substantial. Accordingly, we preliminarily find that imports from Samsung during the period after the filing of the petition have been massive in accordance with section 733(e)(1)(B) of the Act. See Memorandum entitled “Antidumping Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from Mexico – Preliminary Determination of Critical Circumstances,” dated October 26, 2011 (Critical Circumstances Memo).

In summary, we find that there is a reasonable basis to believe or suspect importers had knowledge of dumping and the likelihood of material injury with respect to bottom mount refrigerators produced and exported from Mexico by Electrolux, LGEMM, and Samsung. In addition, we find that there have been massive imports of bottom mount refrigerators over a relatively short period from Samsung, irrespective of seasonality. However, we do not find



that there have been massive imports of bottom mount refrigerators over a relatively short period from Electrolux and LGEMM due to seasonality. Given the analysis summarized above, and described in more detail in the Critical Circumstances Memo, we preliminarily determine that critical circumstances do not exist with respect to imports of bottom mount refrigerators produced in and exported from Mexico by Electrolux and LGEMM. We preliminarily determine that critical circumstances do exist with respect to imports of bottom mount refrigerators produced in and exported from Mexico by Samsung.

#### Verification

As provided in section 782(i) of the Act, we will verify information relied upon in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing Customs and Border Protection (CBP) to suspend liquidation of all imports of subject merchandise from Samsung that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the Federal Register. In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise from Electrolux, LGEMM, Mabe, and “All Others” that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register.

We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

<u>Exporter/Manufacturer</u>	<u>Weighted-Average Margin Percentage</u>	<u>Critical Circumstances</u>
Electrolux Home Products, Corp. NV/ Electrolux Home Products De Mexico, S.A. de C.V.	19.80	No
LG Electronics Monterrey Mexico, S.A. de C.V.	16.44	No
Controladora Mabe, S.A. de C.V./ Mabe, S.A. de C.V.	36.21	NA
Samsung Electronics Mexico, S.A. de C.V.	36.65	Yes
All Others	28.02	NA

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Disclosure

The Department will disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. See 19 CFR 351.224(b).

#### Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal

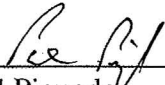
briefs must be filed five days from the deadline date for case briefs. See 19 CFR 351.309(d).

A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Case briefs must present all arguments that continue to be relevant to the Department’s final determination, in the submitter’s view. See 19 CFR 351.309(c)(2). Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. See 19 CFR 351.310(c). If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to sections 733(f) and 777(i) of the Act and 19 CFR 351.205(c).

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

10/26/2011  
(Date)