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U.S. International Trade Commission Should Reject Whirlpool Section 201 Petition

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For the second time in three months, the U.S. International Trade Commission (ITC) has launched an investigation under the little-used Section 201 of the Trade Act of 1974, which can trigger costly and disruptive government tariffs and quotas on affected products. The petition triggering the investigation was filed by the Whirlpool Corporation, the dominant U.S. manufacturer that produces washers branded under its own name and other familiar brands like Maytag and Kenmore.

Whirlpool's petition alleges that Samsung and LG "have waged a relentless assault on U.S. manufacturers of large residential washers ('LRWs') and the thousands of American workers they employ" by dumping washers into the U.S. and circumventing antidumping duties. If its petition proves successful, Whirlpool will greatly reduce the presence of its main foreign competitors in the U.S. market, likely raising prices across the board and at the least making it extremely expensive for the average American family to purchase a washer from Samsung or LG.

Rather than insulating Whirlpool and other domestic washer manufacturers from international competition and raising prices for domestic consumers, President Donald Trump and the ITC should reject this petition and allow Americans to have the freedom to choose the home appliances they buy from the full range of products produced here and abroad. Instead of focusing on restricting trade, the Trump Administration and Congress should work to increase the freedom of Americans to buy and sell goods around the world.

The Petitioner's Case

Whirlpool, the petitioner in this case, is the world's top manufacturer of appliances. According to its website, "laundry appliances [make] up the largest share of the company's revenue," and "in 2015, Whirlpool attained its highest annual revenue since 2007."[1] In 2016, Whirlpool sold 9.7 million washers in the U.S., up 18.3 percent from 2013.[2] It is estimated that Whirlpool's brands accounted for 35 percent of washer sales in the U.S. last year; the combined market share of its two major competitors, Samsung and LG, was roughly 35 percent in 2016.[3]

By its revenue numbers, it would seem that Whirlpool is quite successful not just in the washer market, but in selling all of its appliances. Despite this, Whirlpool's Section 201 petition claims that "the domestic industry [has] suffered significant market share loss, deteriorating financial performance, low and declining capacity utilization, and suppressed investment and employment."[4]

Whirlpool claims that this case is about losses for the domestic industry as a whole, but in reality, it is about Whirlpool feeling the pressures of innovation and competition from Samsung and LG. During an antidumping investigation in 2012, it was determined that Whirlpool represented more than 50 percent of all domestic LRW production, a margin of dominance that gives it some monopoly power in a less than competitive domestic market.[5]

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Is This Just Healthy Competition?

Over the past decade, Samsung and LG have entered the U.S. market with a strategy focused on product differentiation and innovation. This started with leading in the production of front-loading washers and has continued in recent years with color offerings, sleek design, and connectivity options. "The strong brand identities of Samsung and LG, which are associated with cutting-edge mobile phones, televisions, and other products, have also contributed to the popularity of their innovative washers and dryers, especially among younger consumers."[6]

Whirlpool's petition also states that "Samsung and LG have continued to offer premium, higher cost features—including large capacity, steam, heater, color, clear lids, etc.—at lower and lower price points. The behavior has destroyed value for innovative washer features."[7] However, the record shows that Whirlpool saw the competition coming from Samsung and LG long before filing this petition.

In 2006, Whirlpool successfully acquired Maytag after facing U.S. government scrutiny pursuant to the antitrust laws. Whirlpool used the growing competition from these two Korean manufacturers to prove that the roughly 70 percent market share in washers achieved by the acquisition would not last. According to a pre-hearing brief submitted by Samsung and LG, "Whirlpool cannot now credibly maintain before a different federal agency that the expected increases were somehow unforeseen. Nor can Whirlpool profess that it has had insufficient time to adjust to foreign competition."[8]

Samsung and LG Creating American Jobs

Due to the growing popularity of Samsung and LG washers, both companies have recently announced that they will be opening new washer manufacturing facilities in the U.S. In June, Samsung announced that it will open a washer plant in Newberry County, South Carolina, that will employ roughly 1,000 people by 2020.[9] LG started construction on its first U.S. washing machine facility in Clarksville, Tennessee, in August. The manufacturing plant will open in 2019 and create 600 new American jobs. LG will also be establishing its North American headquarters in New Jersey and two other facilities in Michigan.[10]

Misuse of Section 201 Investigation

One of the most peculiar aspects of Whirlpool's petition can be found in its remedy recommendations. The company suggests "that the establishment of tariff-rate quotas on LRW imports constitutes an appropriate mechanism" to provide relief. However, if the argument is that Samsung and LG's

1. Statista, "Whirlpool—Statistics & Facts," https://www.statista.com/topics/2309/whirlpool/ (accessed September 8, 2017); According to Whirlpool's website, the company's brands include "Whirlpool, KitchenAid, Maytag, Consul, Brastemp, Amana, Bauknecht, Jenn-air, Indesit and other major brand names." Whirlpool Corporation, "Our Company," http://www.whirlpoolcorp.com/our-company/ (accessed September 11, 2017).
2. Statista, "Automatic Washer and Dryer Unit Shipments in the United States from 2013 to 2016 (in Millions)," https://www.statista.com/statistics/271593/automatic-washer-and-dryer-shipments-in-the-us-since-2009-by-month/ (accessed September 8, 2017).
3. William Mauldin and Andrew Tangel, "Whirlpool to Ask U.S. for Broad Barriers on Washer Imports," *The Wall Street Journal*, May 31, 2017, https://www.wsj.com/articles/whirlpool-to-ask-u-s-for-broad-barriers-on-washer-imports-1496203260 (accessed September 8, 2017).
4. Cassidy Levy Kent, "Petition for Safeguard Relief Pursuant to Sections 201–202 of the Trade Act of 1974—Large Residential Washers," Inside U.S. Trade's World Trade Online, May 31, 2017, https://insidetrade.com/sites/insidetrade.com/files/documents/may2017/wto2017_0172.pdf (accessed September 11, 2017).
5. Ibid.
6. U.S. International Trade Commission, Electronic Document Information System (EDIS), "Joint Prehearing Brief on Behalf of Respondents Regarding Injury," https://edis.usitc.gov/edis3-external/page.svc?page=edis3Central%3AHome (accessed September 11, 2017).
7. Kent, "Petition for Safeguard Relief Pursuant to Sections 201–202 of the Trade Act of 1974—Large Residential Washers."
8. U.S. International Trade Commission, "Joint Prehearing Brief on Behalf of Respondents Regarding Injury."
9. Joyce Lee, "Samsung Announces New U.S. Plant Ahead of Trump Summit with Moon," Reuters, June 28, 2017, https://www.reuters.com/article/us-samsung-elec-us-plant/samsung-announces-new-u-s-plant-ahead-of-trump-summit-with-moon-idUSKBN19J1TM (accessed September 8, 2017).
10. Erik Schelzig, "LG Breaks Ground on $250M Appliance Plant in Tennessee," *U.S. News & World Report*, August 24, 2017, https://www.usnews.com/news/best-states/tennessee/articles/2017-08-24/lg-to-break-ground-on-250m-appliance-plant-in-tennessee (accessed September 11, 2017).

"cheap" washers are injuring Whirlpool, why would Whirlpool want to allow some imports free of penalty? Whirlpool also expresses that it does not recommend restricting imports of LRWs "from country sources of supply that have not injured, and do not threaten to injure, the domestic industry."[11]

Based on Whirlpool's recommendations, it becomes clear that remedies under Section 201 are not an appropriate measure to address the problems that Whirlpool is alleging. Section 201 is a broad measure meant to address injury caused by all imports of a particular product or category of products. It is also meant to restrict these imports from all countries except Canada and Mexico, which require unique findings. Whirlpool is not asking for the broad measures of a Section 201 decision, but rather for narrow remedies more often found in antidumping and countervailing duty cases.

Part of a Worrisome Trend

Whirlpool's large residential washer petition is just the latest case in what is becoming a worrisome trend of requests for special-interest tariffs. After 15 years without a Section 201 petition, the LRW case marks the second one in just three months. The Administration is also pursuing investigations of steel and aluminum imports on the basis of national security under Section 232 of the Trade Expansion Act of 1962.[12] These latter two cases seem to be tabled at the moment but still pose a threat to steel and aluminum users.

Trade cases like Sections 201 and 232 cases result in tariffs benefitting one industry at the cost of others, and those costs are often felt in higher prices for consumers. However, history shows that these broad trade cases can also hurt domestic manufacturers to the point that they have to lay off workers rather than push extra costs on to consumers to maintain competitiveness with the rest of the world.

In 2002, President George W. Bush imposed tariffs of up to 30 percent on a variety of steel imports under Section 201. Despite their early removal following a ruling by the World Trade Organization and threats of sanctions, the steel tariffs had serious negative effects on steel-consuming manufacturers. According to a study by the Consuming Industries Trade Action Coalition, 200,000 Americans lost their jobs due to higher steel prices caused by President Bush's actions: The tariffs provided minimal relief to steel producers at the cost of thousands of U.S. jobs overall.[13]

What Should Be Done

Tariffs meant to protect one industry can, and often do, have significantly damaging effects on the U.S. economy as a whole. Tariffs on washers will result in increased prices for consumers and divert resources that could be spent on other products or invested in other job-creating activities. When evaluating this case and others like it, the International Trade Commission, the Trump Administration, and Congress should:

- **Reject the imposition of tariffs on large residential washers through Section 201 and encourage competition and innovation in the sector by limiting government restrictions.** Tariffs will increase costs for Americans and limit their choices when purchasing washers, thereby decreasing competition in the domestic market. American families deserve the freedom to choose from among the widest possible range of products, no matter where they are made.

- **Refrain in general from abusing U.S. trade law to serve special interests.** Whirlpool's case is an attempt by a domestic producer to obtain special benefits at the expense of American consumers. Such activities typically corrupt both the marketplace and the political system and should be rejected out of hand except in cases of compelling national defense concerns.

11. Kent, "Petition for Safeguard Relief Pursuant to Sections 201–202 of the Trade Act of 1974—Large Residential Washers."
12. Tori K. Whiting and Rachel Zissimos, "Steel Imports Do Not Threaten National Security," Heritage Foundation *Issue Brief* No. 4719, June 16, 2017, http://www.heritage.org/trade/report/steel-imports-do-not-threaten-national-security.
13. Joseph Francois and Laura M. Baughman, "The Unintended Consequences of U.S. Steel Import Tariffs: A Quantification of the Impact During 2002," Trade Partnership Worldwide, LLC, February 4, 2003, updated February 7, 2003, http://www.tradepartnership.com/pdf_files/2002jobstudy.pdf (accessed September 11, 2017).

Rather than focusing on ways to restrict trade, the Trump Administration and Congress should focus on increasing Americans' freedom to trade by lowering tariff and non-tariff barriers and negotiating new trade agreements that expand markets both overseas and at home.

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