Outboard Engines From Japan

Investigation No. 731-TA-1069 (Final)

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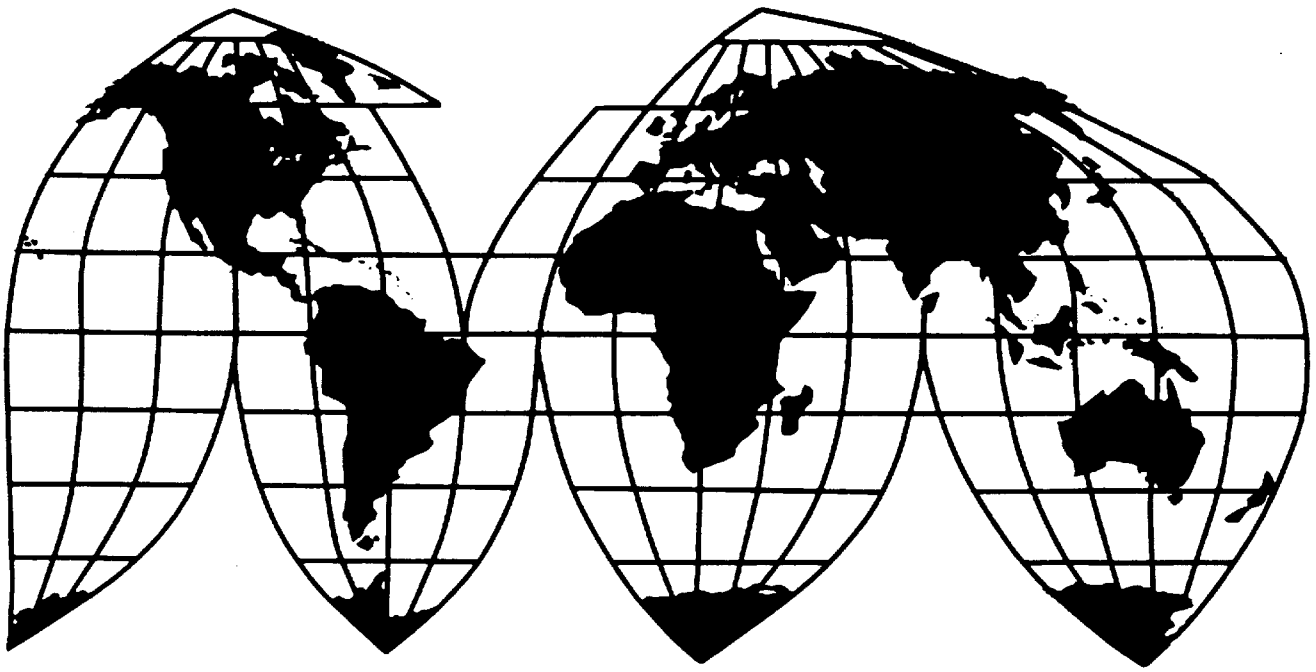
U.S. International Trade Commission



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Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
www.usitc.gov

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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1069 (Final)

OUTBOARD ENGINES FROM JAPAN

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of outboard engines and powerheads, provided for in subheading 8407.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective January 8, 2004, following receipt of a petition filed with the Commission and Commerce by Mercury Marine, a division of Brunswick Corp., Fond du Lac, WI. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of outboard engines from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 23, 2004 (69 FR 51859).[3] The hearing was held in Washington, DC, on December 14, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Stephen Koplan and Commissioner Charlotte R. Lane dissenting.

[3] The Commission revised its schedule and the notice was published in the *Federal Register* of January 10, 2005 (70 FR 1739).

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine[1] that an industry in the United States is not materially injured or threatened with material injury by reason of outboard engines imported from Japan that are sold in the United States at less than fair value.[2]

The petition was filed with the Commission and the Department of Commerce ("Commerce") on January 8, 2004, on behalf of Mercury Marine, a division of Brunswick Corp ("Mercury").[3] Included in the Department of Commerce's scope of investigation are outboard engines whether assembled or unassembled; and powerheads, whether assembled or unassembled. Specifically excluded are four-stroke 75, 90 and 115 horsepower powerheads. The scope does not include parts or components other than powerheads imported separately.[4]

I. BACKGROUND

Outboard engines consist of gasoline-powered spark-ignition, internal combustion engines, principally used in marine propulsion for all types of light recreation and commercial boats. The boats are typically aluminum or fiberglass fishing or pleasure craft.[5] Outboard engines attach to boats and propel them through the water. A complete outboard engine consists of three primary components: the powerhead, the midsection, and the gearcase assemblies. Powerheads contain the internal combustion engine necessary to propel the boat. The midsection contains the steering, tilt/trim mechanisms, and the housing and attachment assembly. The gearcase contains the transmission, drive shaft and propeller (or water-jet system).[6] Outboard engines may be two-stroke or four-stroke carbureted or electronic fuel injected ("EFI") engines, or two-stroke direct-injection engines. We provide a more detailed discussion of these different types of engines in our conditions of competition section.

Outboard engines differ in several respects from inboard engines and inboard-outboard engines (also known as "stern drive" engines). Outboard engines are attached to the boat, whereas inboard and stern drive engines are built into the boat.[7] Inboard and stern drive engines have powerhead and gearcase assemblies, but no midsection. Moreover, they are generally used in larger and heavier vessels than those that use outboard engines.[8]

Domestic production accounted for a significant minority of the U.S. market for outboard engines and powerheads over the period of investigation. Mercury and BRP U.S., Inc. ("BRP") are the only U.S. firms that produced outboard engines during the period of investigation.[9] BRP produces and markets the Evinrude and Johnson brands of engines. During the period, subject imports from Japan, including

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[1] Chairman Koplan and Commissioner Lane determined that an industry in the United States is materially injured by reason of subject imports from Japan and filed Dissenting Views. See Dissenting Views of Chairman Stephen Koplan and Commissioner Charlotte R. Lane. They join in the Commission majority Views with respect to background information, the definition of the domestic like product and the domestic industry (Sections I, II and III).

[2] Whether the establishment of an industry is materially retarded is not at issue in this investigation.

[3] Confidential Staff Report ("CR")/ Public Staff Report ("PR") at I-1. References to "Revised" Tables are references to tables revised in Memorandum INV-CC-008 (Jan. 25, 2005). References to "Staff Tables" are references to tables prepared by Commission staff on January 27, 2005.

[4] CR at I-3-4; PR at I-2-3.

[5] They can include canoes, rafts, inflatable, sail, pontoon, and bass boats.

[6] CR at I-5-7; PR at I-4-6.

[7] CR at I-5-7; PR at I-4-6.

[8] CR at I-5-6; PR at 1-4-5.

[9] CR/PR at III-1 and Table III-1.

imports by U.S. producers, supplied most of the rest of the U.S. market.[10] American Honda Motor Co., Inc. ("Honda"), American Suzuki Motor Corp. ("Suzuki"), Tohatsu America Corp. ("Tohatsu"), and Yamaha Motor Corp. U.S.A. ("Yamaha") are Japanese Respondents that participated in this investigation.[11]

Both boat builder original equipment manufacturers ("OEMs") and dealers purchase outboard engines. The majority of both domestic production and subject imports were sold to OEM boat builders, with the remainder sold to dealers.[12] Brunswick, which owns Mercury, is the largest boat builder in the United States.[13] Genmar Industries ("Genmar") is the largest independent OEM boat builder.[14]

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[15] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[16] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[17]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[18] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[19] The Commission looks for clear dividing lines among possible like products, and disregards minor

[10] CR/PR at Table IV-4 (Revised).

[11] Besides these importers, related Japanese producers and exporters are also respondents in this investigation.

[12] CR/PR at Table I-2.

[13] Tr. at 232-233.

[14] Tr. at 232-233. Joint Respondents' Prehearing Brief at 26.

[15] 19 U.S.C. § 1677(4)(A). Material retardation of the domestic industry was not an issue in this investigation.

[16] Id.

[17] 19 U.S.C. § 1677(10).

[18] See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'").

[19] See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

variations.[20] Although the Commission must accept Commerce's determinations as to the scope of the imported merchandise sold at less than fair value, the Commission determines what domestic product is like the imported articles that Commerce has identified.[21]

B. Product Description

In its final determination regarding subject imports from Japan, Commerce defined the imported merchandise within the scope of this investigation as follows:

> For the purpose of this investigation, the products covered are outboard engines (also referred to as outboard motors), whether assembled or unassembled; and powerheads, whether assembled or unassembled. The subject engines are gasoline-powered spark-ignition, internal combustion engines designed and used principally for marine propulsion for all types of light recreational and commercial boats, including, but not limited to, canoes, rafts, inflatable, sail and pontoon boats. Specifically included in this scope are two-stroke, direct injection two-stroke, and four-stroke outboard engines.
>
> Outboard engines are comprised of (1) a powerhead assembly, or an internal combustion engine, (2) a midsection assembly, by which the outboard engine is attached to the vehicle it propels, and (3) a gearcase assembly, which typically includes a transmission and propeller shaft, and may or may not include a propeller. To the extent that these components are imported together, but unassembled, they collectively are covered within the scope of this investigation. An "unassembled" outboard engine consists of a powerhead as defined below, and any other parts imported with the powerhead that may be used in the assembly of an outboard engine.
>
> Powerheads are comprised of, at a minimum, (1) a cylinder block, (2) pistons, (3) connecting rods, and (4) a crankshaft. Importation of these four components together, whether assembled or unassembled, and whether or not accompanied by additional components, constitute a powerhead for purposes of this investigation. An "unassembled" powerhead consists of, at a minimum, the four powerhead components listed above, and any other parts imported with it that may be used in the assembly of a powerhead.
>
> The scope does not include parts or components (other than powerheads) imported separately.
>
> The outboard engines and powerheads subject to this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at

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[20] See, e.g., Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also, e.g., S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.")

[21] See, e.g., Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission's determination of six domestic like products in investigations where Commerce found five classes or kinds).

subheadings 8407.21.0040 and 8407.21.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of the investigation are five specific models of powerheads.[22]

Commerce's scope includes both the semifinished powerhead as well as the finished complete outboard engine.[23] Except for the subject powerheads, Commerce's scope of investigation does not include parts or components imported separately.

C. Analysis

In the preliminary phase of this investigation, we applied our semifinished like product analysis, described below, and found a single domestic like product coextensive with the scope of the investigation that consisted of both outboard engines and powerheads.[24] Under the semifinished like product analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article, or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the cost or value of the vertically differentiated articles; and (5) the significance and extent of the process used to transform the upstream into the downstream articles. In applying that analysis in the preliminary phase of the investigation, we considered the fact that the record did not reflect any use for powerheads other than as a component in a new or used outboard engine; the fact that the powerhead is the primary component of the outboard engine, and that it contains the engine that provides the power to propel the boat; and that a powerhead comprises 50 percent to 70 percent of the value of the complete outboard engine. Further, we found that the processes used to transform the powerhead into a complete engine involved manufacturing the other subassemblies (the midsection and the gearcase) and assembling them with the powerhead to create an engine.[25]

In the final phase of the investigation, Mercury argued that the Commission should again apply the semifinished like product analysis, and find a single domestic like product that includes all

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[22] 70 F.R. 326, 327 (Jan. 4, 2005). During the preliminary phase of the investigation, and most of the final phase of the investigation, all powerheads imported from Japan were subject to Commerce's investigation. See Outboard Engines from Japan, Inv. No. 731-TA-1069 (Preliminary) USITC Pub. 3673 (March 2004) ("Preliminary Determination") at 5-6. However, during the final phase of the investigation, Mercury requested that Commerce exclude a large percentage of the subject powerheads from the scope of the investigation, namely 75 and 90 horsepower four-stroke carbureted powerheads, and 75, 90 and 115 horsepower four-stroke EFI powerheads. CR at I-4; PR at I-3. Mercury imports these powerheads from Japan. CR at I-29; PR at I-16. Commerce granted Mercury's request, resulting in the current scope of investigation which excludes these specific powerheads.

[23] In these Views, finished complete outboard engines are referred to herein as "outboard engines" and sometimes "complete outboard engines."

[24] Outboard Engines from Japan, Inv. No. 731-TA-1069 (Preliminary), USITC Pub. 3673 at 6-7. Mercury argued that we should include in the domestic like product the domestic counterparts of the powerheads that Commerce has excluded from its scope of investigation. Mercury Posthearing Brief, Appendix A-3-A-6. However, none of these powerheads is domestically produced, CR/PR at Table III-4 and n.2. Thus, no domestically produced 75, 90 and 115 horsepower four-stroke powerheads exist to include in the domestic like product.

[25] Outboard Engines from Japan, Inv. No. 731-TA-1069 (Preliminary), USITC Pub. 3673 at 6-7.

powerheads and outboard engines, including the excluded powerheads.[26] Japanese Respondents argue that powerheads and outboard engines are separate domestic like products regardless of whether the Commission applies the semifinished product analysis or its traditional six factor like product analysis.[27] BRP did not make any domestic like product arguments.

In the final phase of this investigation, we have once again defined the domestic like product to consist of outboard engines and powerheads, coextensive with Commerce's scope of investigation, based on an analysis of the semifinished like product factors.[28] We apply the semifinished analysis here, because Commerce's scope of investigation includes powerheads, a semifinished product that is incorporated into a completed outboard engine that is also within the scope of investigation. Powerheads do not function as finished products, and have only a small separate market or use other than as a component in an outboard engine, namely incorporation into sport jets.

Whether the Upstream Article Is Dedicated to Production of the Downstream Article. Powerheads are predominately but not exclusively dedicated to the production of outboard engines. A small percentage of U.S. production of outboard engine powerheads (ranging from *** percent of production during the period of investigation), was internally consumed for the purpose of producing sport jets.[29]

Whether There Are Perceived to be Separate Markets for the Upstream and Downstream Articles. The vast majority of domestically produced powerheads are incorporated into complete outboard engines by Mercury or BRP, and sold with the complete engine, and not into a separate market.[30] Mercury states that *** percent of its powerheads are used to produce outboard engines.[31] A small percentage are sold as replacement parts, or internally transferred to produce sport jets.

Differences in Physical Characteristics and Functions of the Upstream and Downstream Articles. Powerheads are one of the primary subassemblies of the complete outboard engine. They differ from complete engines because they lack the other two primary subassemblies, namely the gearcase and midsection.[32] An engine derives its most critical attributes from its powerhead - - its horsepower and its engine technology.[33] These two attributes determine the size and other specifications for the gearcase and midsection and other wiring for the engine.[34] Powerheads, therefore, are designed for specific engines, and require matching midsections and gearcases.[35] A powerhead is the main component that permits a complete engine to propel a boat forward.[36]

Differences in Cost or Value of the Vertically Differentiated Articles. The value of a powerhead as a percentage of the value of an outboard engine increases with horsepower and more sophisticated

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[26] Mercury Prehearing Brief at 9. Mercury Posthearing Brief at 3.

[27] Joint Respondents' Prehearing Brief at 117-118.

[28] See, e.g., Carbazole Violet Pigment 23 From China and India, Inv. Nos. 701-TA-437 and 731-TA-1060 and 1061 (Final), USITC Pub. 3744 (Dec. 2004) at 5; Frozen and Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063-1068 (Prelim.), USITC Pub. 3672 at 13 (Feb. 2004); Certain Frozen Fish Fillets From Vietnam, Inv. No. 731-TA-1012 (Prelim.), USITC Pub. 3553 at 7 (Aug. 2002).

[29] CR at I-28; PR at I-16.

[30] CR at I-28; PR at I-16.

[31] Mercury Posthearing Brief, Appendix at A-12-13.

[32] CR at I-29; PR at I-16.

[33] CR at I-7 and n.19; PR at I-6 and n.19.

[34] CR at I-16; PR at I-11.

[35] CR at I-15; PR at I-10.

[36] Mercury Posthearing Brief, Appendix at A-13.

technology.[37] For Mercury's models containing an imported powerhead from Japan, the cost associated with the powerhead as a percentage of the cost of the entire engine ranged from *** percent for the small engines (*** horsepower four-stroke engines) to approximately *** percent for the larger (75, 90 and 115 horsepower four-stroke engines).[38] With the exception of the smaller *** engines, Mercury asserts that powerheads account for approximately *** percent of the cost of the finished engine.[39]

Significance and Extent of the Processes Used to Transform the Upstream Articles into the Downstream Articles. In order to transform a powerhead into a complete engine, the midsection and gearcase must be manufactured and attached to the powerhead. Producing the other subassemblies requires sophisticated production processes. Additionally, a substantial amount of engineering is necessary to design a midsection and lower unit or gearcase to accommodate a particular powerhead.[40] Attaching the subassemblies together is a relatively low-cost operation.[41] As stated above, the powerhead sets the specifications for the rest of the engine.

Conclusion. Based on the record as a whole, we find that the facts do not warrant finding outboard engines and powerheads to be separate like products. Most significant for us is the fact that powerheads are almost exclusively dedicated to the production of complete outboard engines, meaning that no significant independent market for powerheads exists. We also note that, while the cost and process of transforming a powerhead into a finished engine are significant, the powerhead is the most important component that establishes the power level and technology type for the entire engine.

Therefore, we find a single domestic like product, outboard engines and powerheads, that is coextensive with the scope of this investigation.

III. DOMESTIC INDUSTRY

A. In General

Section 771(4) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[42] In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[43] Based on our finding of a single domestic like product in the final phase of this investigation we define the domestic industry to include all domestic producers of outboard engines and powerheads.

B. Related Parties

We also must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.

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[37] Mercury Posthearing Brief, Appendix at A-15.

[38] CR at III-5 and Table III-2.

[39] CR at I-29; PR at I-16. Mercury Posthearing Brief, Appendix at A-14-15.

[40] CR at I-16, I-29; PR at I-16, I-17.

[41] CR at I-15-16; PR at I-11, I-29-30; PR at I-17.

[42] 19 U.S.C. § 1677(4)(A).

[43] See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

Mercury and BRP constitute the entire domestic outboard engine industry.[44] Both Mercury and BRP are related parties because they imported subject merchandise over the period of investigation.[45] In the preliminary phase of the investigation, we did not find that appropriate circumstances existed to exclude either Mercury or BRP from the domestic industry based on the related parties provision, because their interests appeared to lie primarily in domestic production, they did not appear to be shielded from the effects of the subject imports, their data were important to our analysis, and none of the parties had argued in favor of their exclusion from the industry.[46]

In the final phase of this investigation, Japanese Respondents argued that both Mercury and BRP should be excluded from the domestic industry because they both substantially benefitted from their imports of subject merchandise. In particular, Japanese Respondents argued that domestic producers benefit from their subject imports by importing large quantities of four-stroke engines they need to compete in the U.S. market; and because their subject imports of emissions-compliant four-strokes allow them, under applicable environmental regulations, to sell their two-stroke carbureted engines that are not emissions-compliant.[47] Mercury and BRP argued that both domestic producers should be included in the domestic industry. Mercury and BRP both argued that the domestic producers do not import to benefit from unfair trade practices, but rather to continue production and compete in the domestic market.[48] In the final phase of this investigation, we do not find that appropriate circumstances exist to exclude either BRP or Mercury from the domestic industry.

BRP. In 2003, BRP accounted for *** percent of U.S. production of outboard engines.[49] The ratio of BRP's total imports of subject merchandise (complete engines and powerheads) to its total production of outboard engines and separately sold powerheads was *** percent in 2003.[50] It thus appears that BRP has a strong interest in domestic production despite its subject imports.[51] Furthermore, BRP supports the petition.[52] BRP indicated that the "***."[53]

BRP can be viewed as deriving a substantial benefit from importing subject merchandise, because its imports of subject merchandise allow it to offer a full product line, and receive Environmental

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[44] CR/PR at Table III-1. Mercury argues that the Commission should find its engine production using imported powerheads to be domestic production. Mercury Prehearing Brief at 21-24. In the preliminary phase of the investigation, we included Mercury's engine production data using imported powerhead in our domestic industry data. See Outboard Engines from Japan, Inv. No. 731-TA-1069 (Preliminary), USITC Pub. 3673 at 10-12. None of the other parties argues to the contrary in the final phase of this investigation. We do not find that there is any record evidence in the final phase of this investigation that causes us to question our finding in the preliminary phase. Therefore, we have included all of Mercury's production operations, including those in which it transformed imported powerheads into complete outboard engines, in the domestic industry data we have analyzed in the final phase of this investigation. The powerheads and complete engines imported by the domestic industry that are subject to investigation are counted in our data as subject imports.

[45] CR at III-15; PR at III-6.

[46] See Outboard Engines from Japan, Inv. No. 731-TA-1069 (Preliminary), USITC Pub. 3673 at 12-13.

[47] Joint Respondents Prehearing Brief at 134-136, 141-143.

[48] Mercury Prehearing Brief at 24-25; BRP Prehearing Brief at 19.

[49] CR at Table III-1.

[50] CR at III-15 (Revised); PR at III-6.

[51] BRP ***. CR at Table III-7.

[52] CR/PR at Table III-1.

[53] CR at III-15; PR at III-6.

Protection Agency ("EPA") emissions credits. Despite its imports of subject merchandise, however, BRP has ***.[54]

Mercury. In 2003, Mercury accounted for *** percent of U.S. production of outboard engines.[55] The ratio of Mercury's total imports of subject merchandise (complete engines and included powerheads), to its total production of outboard engines and separately sold powerheads, was *** percent in 2003.[56] Mercury is the petitioner in this investigation. Mercury reportedly imports powerheads and complete engines from Japan in order to provide a complete engine line ***.[57] Similar to BRP, Mercury can be viewed as deriving a substantial benefit from importing subject merchandise, because its imports allow it to offer a full product line and receive EPA emissions credits. Notwithstanding its imports of subject merchandise, however, ***.[58]

Based on the above, we do not find appropriate circumstances exist to exclude either producer as a related party, and we define the domestic industry to include all domestic producers of outboard engines and powerheads, namely Mercury and BRP.

IV. NO MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS FROM JAPAN [59]

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[60] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[61] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[62] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[63] No single factor is dispositive, and all relevant

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[54] CR/PR at Table VI-2 (BRP).

[55] CR/PR at Table III-1.

[56] CR at III-15 (Revised); PR at III-6.

[57] CR at III-15; PR at III-6.

[58] CR/PR at Table VI-3 (Mercury). Furthermore, Mercury ***. CR/PR at Table IV-1. Imported powerheads constituted approximately *** percent of Mercury's raw material costs, and *** during the period of investigation. CR/PR at Table VI-3, n.2. Subject powerhead imports would constitute a considerably lower level of raw material costs and COGS, as *** of Mercury's imported powerheads are not subject to investigation. Compare CR/PR at Tabulation, IV-4, and Table IV-3.

[59] There is no issue as to whether the subject imports are negligible. In the most recent 12-month period for which import data are available that precedes the filing of the petition, calendar year 2003, subject imports from Japan were *** percent of all imports of outboard engines and powerheads into the United States, measured in quantity. CR/PR at Table IV-3 (Revised). Because this percentage exceeds the statutory negligibility threshold of three percent of all imports applicable in antidumping investigations, 19 U.S.C. § 1677 (24), we do not find that subject imports from Japan are negligible.

[60] 19 U.S.C. § 1673d(b).

[61] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor ... [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B); see also, e.g., Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[62] 19 U.S.C. § 1677(7)(A).

[63] 19 U.S.C. § 1677(7)(C)(iii).

factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[64]

A. Conditions of Competition

1. Engine Technologies

Outboard engines come in different engine technologies and a broad range of horsepower. They are classified in several different ways. One classification involves the number of strokes the piston makes in the cylinder to complete a power cycle. The piston either makes two-strokes or four-strokes, and outboard engines are classified as either "two-stroke" or "four-stroke" engines. Another type of classification involves the fuel delivery systems. Two-stroke engines may have one of three fuel delivery systems: carbureted, electronic fuel injection ("EFI") or direct injection systems, described in more detail below. Four-stroke engines may have either carbureted or EFI fuel delivery systems.

Two-stroke carbureted engines and two-stroke EFI engines are not compliant with recent EPA and California Air Resources Board ("CARB") regulations, discussed more fully below. Two-stroke carbureted engines and EFI engines run on a premixed blend of gas and oil. The carburetor vaporizes fuel, mixes it with air, and directs gas and oil into the cylinders.[65] Two-stroke carbureted engines historically dominated the U.S. market, accounting for 99 percent of sales in 1995 and 1996.[66] An estimated 25 percent to 30 percent of the fuel of a two-stroke carbureted engine can be unburned and emitted into the environment.[67] Federal environmental regulations will make it difficult to market two-stroke carbureted engines to the U.S. market after model year 2006 (July 2005 to June 2006).[68] EFI engines utilize an electronic control unit to time and meter the flow of fuel into the engine, in lieu of a carburetor. Although two-stroke EFI engines are more efficient than two-stroke carbureted engines, both types of engine are considered "old technology engines" that are not low-emissions.

In contrast, two-stroke direct injection engines are compliant with recent emissions standards. Two-stroke direct injection engines incorporate a direct injection system that sprays fuel directly into the combustion chamber without the use of a carburetor. Because they carefully calibrate fuel usage and burn, these direct injection engines are emissions-compliant. Yamaha's high-pressure direct injection ("HPDI") engines, Ficht engines made by Outboard Marine Corp. ("OMC") (predecessor to BRP), Mercury's OptiMax and BRP's E-TEC engines are all two-stroke direct injection engines.[69]

Four-stroke engines are also emissions-compliant. They control the fuel intake into the engine through valves on each cylinder. The intake valve opens to allow the inflow of air and fuel into the cylinder, after which the exhaust valve opens to release exhaust gases into the atmosphere. Unlike the two-stroke carbureted engine, the lubrication system is separate from the fuel delivery system, and does

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[64] Id.

[65] CR at I-8 and n.21; PR at I-6 and n.21.

[66] CR at I-8; PR at I-6.

[67] CR at I-8; PR at I-6.

[68] CR at II-12, n.20; PR at II-8, n.20. EPA requirements mandate a 75 percent reduction in hydrocarbon emissions (on a corporate average) from model-year 1998 through model-year 2006. Id.

[69] CR at I-9; PR at I-7.

not require pre-mixing of fuel and oil by the boat owner.[70] These design features improve fuel burn and significantly reduce emissions.[71] Four-stroke engines can have carbureted or EFI fuel delivery systems. The use of an EFI system with a four-stroke engine slightly improves the engine's fuel economy. Because four-stroke engines have more parts, are technically more complex, require more machining, and are heavier than two-stroke engines, these engines generally cost more to produce than two-stroke engines.[72]

Outboard engines are also classified by horsepower.[73] They range from two horsepower to 300 horsepower. Although all outboard engines have the same use, to propel a boat through the water, smaller horsepower engines (for example, two to 75 horsepower) would not be able to power the same boats as large horsepower engines (for example, 150 to 300 horsepower).[74] Moreover, there exist many different types of boats and uses for such boats. The type of boat and its intended use influence the engine technology and horsepower.

2. Demand Conditions

As an initial matter, we have considered Mercury's arguments that 2000 data are important as a benchmark for more recent developments.[75] We have considered certain events in 2000 as important conditions of competition, including the high demand in 2000[76] and OMC's bankruptcy and cessation of operations in December 2000. However, the data we rely on for our injury analysis encompass only our normal period of investigation - the three most recent calendar years, plus the interim periods. The 2000 data that we were able to gather in the preliminary phase of the investigation regarding OMC's operations were provided by BRP and were incomplete. Therefore, our data for 2000 would not be entirely comparable to the data gathered with respect to other domestic producers in the final phase of this investigation.[77] Nonetheless, we have taken both the high demand in 2000 and OMC's bankruptcy into account as important conditions of competition.

Demand for outboard engines and powerheads is derived from demand for the boats they are used to power. Boats are typically discretionary purchases by consumers.[78] Demand as indicated by apparent U.S. consumption recovered significantly over the period of investigation, having declined in 2001 from a peak in 2000. It increased by *** percent by value and by *** percent by quantity from 2001 to 2003. Measured by value, it was *** percent higher in interim (January to September) 2004 as compared to

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[70] Many two-stroke engines automatically mix oil with the gasoline. Commission Conference Transcript (Jan. 29, 2004) ("Conference Tr.") at 239-241.

[71] CR at I-9-10; PR at I-7-8.

[72] CR at I-10; PR at I-7. The record reflects, however, that this is not always the case. Yamaha reports that its HPDI 150 two-stroke engine *** than its 150 horsepower four-stroke engine. Yamaha Posthearing Brief, Response to Commissioner Questions at 53-54.

[73] Outboard Engines from Japan, Inv. No. 731-TA-1069 (Preliminary), USITC Pub. 3673, Public Report at I-3. Outboard engines are also classified according to the number of the powerhead's cylinders (one to six). Id.

[74] See Mercury Prehearing Brief at 16.

[75] Mercury Prehearing Brief at 27; Mercury Posthearing Brief at 1.

[76] CR/PR at Table C-4; Yamaha's Posthearing Brief, Exhibit 2 at 4.

[77] Bratsk Aluminum Smelter v. United States, __ F. Supp. 2d __ , Slip Op. 04-75 (Ct. Int'l Trade, June 22, 2004) at 14-15. Moreover, the year 2000 was anomalous and is thus not necessarily an appropriate benchmark year for evaluating recent developments. The year 2000 was a year of high demand, and a year in which the market experienced significant turmoil due to OMC's financial difficulties which led to its bankruptcy and cessation of operations in December 2000. CR/PR at Table C-4; Yamaha's Posthearing Brief, Exhibit 2 at 4.

[78] CR at II-5; PR at II-3.

interim 2003; measured in quantity, it was *** percent higher.[79] In 2003, apparent U.S. consumption measured by value was $***.[80]

The record reflects that the growth in the U.S. market is largely due to increased demand for four-stroke outboard engines over the period of investigation. There has been a shift in demand in favor of these engines because they are reliable, quiet and emissions-compliant, as discussed more fully below. Total U.S. shipments of four-stroke engines (carbureted and EFI) from all sources increased from 2001 to 2003. Measured by value, total U.S. shipments of four-stroke engines increased by *** percent from 2001 to 2003, from $*** in 2001 to $*** in 2002 and further to $*** in 2003. The value of total four-stroke shipments in interim 2004, ***, was not only higher than the value of those shipments in interim 2003, ***, but higher than the value of those shipments in full year 2001 and 2002 as well.[81] Measured by quantity, total U.S. shipments of four-stroke engines increased by *** percent from 2001 to 2003, from *** engines in 2001 to *** engines in 2002 and further to *** engines in 2003. Measured in quantity, these shipments were higher than 2001 levels in both interim 2003 and interim 2004, and higher in interim 2004 ***, than in interim 2003 ***.[82] By contrast, sales of two-stroke engines were largely flat over the period as a whole. The value of total shipments of two-stroke engines grew by approximately *** percent from 2001 to 2003, then decreased *** from interim 2003 to interim 2004.[83] By quantity, total shipments declined marginally from 2001 to 2003 and between the interim periods.[84] The growth that did occur in the two-stroke market was concentrated in direct injection engines.

Thus, as a proportion of the total U.S. outboard engine market, four-stroke engines increased, by value, from *** percent in 2001 to *** percent in 2003, and from *** percent in interim 2003 to *** percent in interim 2004.[85] The proportion of the U.S. market represented by two-stroke engines was a mirror image of the four-stroke share, decreasing by value from *** percent in 2001 to *** percent in 2003, and from *** percent in interim 2003 to *** percent in interim 2004.[86] Of the two-stroke engines, only the emissions-compliant direct injection engines increased their share of the total market, from ***

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[79] Measured by value, apparent U.S. consumption increased from $*** in 2001 to $*** in 2002 and further to $*** in 2003, an increase of *** percent. Apparent U.S. consumption measured by value was *** percent higher in interim (January to September) 2004 as compared to interim 2003. It was $*** in interim 2004 and $*** in interim 2003. Measured in quantity, apparent U.S. consumption increased from *** units in 2001, to *** units in 2002, decreasing *** to *** units in 2003, an overall increase of *** percent. Apparent U.S. consumption measured in quantity was *** percent higher in interim 2004 as compared to interim 2003. It was *** units in interim 2004 and *** units in interim 2003. CR/PR at Table IV-4 (Revised) and Table C-1 (Revised).

[80] CR/PR at Table C-1 (Revised).

[81] CR/PR at Appendix ("App.") D, Table D-2 , D-26 (Staff Table 3).

[82] CR/PR at App. D, Table D-2, D-26 (Staff Table 3).

[83] Total U.S. shipments of two-stroke engines increased in value from $*** in 2001, to $*** in 2002, and decreased to $*** in 2003, an increase of *** percent from 2001 to 2003. Total U.S. shipments of two-stroke engines were valued at $*** in interim 2003 and $*** in interim 2004. CR/PR at App. D., Table D-2, D-23 (Staff Table 3).

[84] Total U.S. shipments of two-stroke engines increased from *** engines in 2001, to *** engines in 2002, and then decreased to *** engines in 2003, a decrease of *** percent from 2001 to 2003. Total U.S. shipments of two-stroke engines measured by quantity were *** in interim 2003 and *** engines in interim 2004. CR/PR at App. D., Table D-2, D-23 (Staff Table 3).

[85] CR/PR at App. D, Table D-2, D-26 (Staff Table 3). By quantity, the market share of four-stroke engines grew from *** percent in 2001 to *** percent in 2003, and from *** percent in interim 2003 to *** percent in interim 2004. Id.

[86] Derived from CR/PR at App. D, Table D-2, D-23 (Staff Table 3). By quantity, two-stroke engine market share fell from *** percent in 2001 to *** percent in 2003, and from *** percent in interim 2003 to *** percent in interim 2004. Id.

percent in 2001 to *** percent in 2003, and from *** percent in interim 2003 to *** percent in interim 2004, by value.[87]

The record contains substantial evidence, including numerous articles and testimony on the record of the positive consumer response to four-stroke outboard engines.[88] Our purchaser data generally confirms that these engines are quiet, reliable and emissions-compliant.[89] Some boaters prefer the speed and acceleration of two-stroke engines. However, boaters who favor durability, reliability and quietness of engine over fast acceleration typically prefer four-stroke engines. For example, pontoon boaters do not need acceleration, but they desire reliable and quiet engines. Salt-water boaters, who venture far from land also prefer four-stroke engines because of their perceived greater reliability and fuel efficiency compared to two-stroke engines.[90]

Both Mercury and the Japanese Respondents agree that recent EPA and CARB emissions standards have increased demand for emissions-compliant two-stroke direct injection and four-stroke engines, and reduced demand for non-compliant two-stroke carbureted and two-stroke EFI engines.[91] Mercury and the Japanese Respondents agree that there has been a shift in technology used in outboards. The low-cost conventional two-stroke engines are being displaced by outboards that are EPA/CARB compliant.[92]

Only a small portion of the market, most notably bass boaters, exhibit a clear preference for two-stroke direct injection engines over four-stroke engines. Purchasers reported that these engines accelerate quickly, but reported that they were inferior to four-strokes in reliability, durability and sound reduction, more often than they reported them superior in these categories.[93] The market share of bass boats has declined, contributing to lower demand for two-stroke direct injection engines relative to four-stroke engines.[94]

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[87] Derived from CR/PR at App. D, Table D-2, D-21 (Staff Table 3). By quantity, the market share of two-stroke direct injection engines grew from *** percent in 2001 to *** percent in 2003, and from *** percent in interim 2003 to *** percent in interim 2004. Id.

[88] "Honda 130 Four-Stroke: No Worries, Be Happy," Powerboat Reports, Oct. 2001. Honda 130 Four-Stroke: Smooth, Quiet and Efficient, Powerboat Reports (Aug. 1998) (articles contained in Joint Respondents' Prehearing Brief, Exhibit 1). Id. at C 7-11, 18-20. Suzuki Posthearing Brief at 9-12. Tr. at 220-21 (Kris Carroll, Grady White) ("[W]e were interested in a supplier that was moving quickly into high-horsepower engines with four-stroke engines. . . [T]his was Yamaha. . . [P]rice is meaningless unless the supplier has the product the customer wants and the reliability that our customers expect. . . Ninety-nine percent of our boats are powered by four-stroke engines. Ninety-eight percent have four-stroke engines of 150 horsepower or greater." Declaration of Tony Zielinski, American Marine and Motorsports Supercenter, dated December 10, 2004.

[89] CR/PR at Table II-4. We discuss how purchasers compared two-stroke carbureted and EFI engines and four-stroke engines, and two-stroke direct injection engines and four-stroke engines, in more detail below in our discussion of substitutability.

[90] Tr. at 224, 254.

[91] Mercury Prehearing Brief at 36. Japanese Respondents' Prehearing Brief at 3. See also CR at I-8, I-10, II-11-12; PR at I-6, I-7-8, II-8-9. The shift in the market is illustrated by the fact that Mercury created capacity for its high performance four-stroke Verado line of outboard engines at the same time that it dismantled capacity for its ***. CR/PR at Table III-3, n.2.

[92] CR at VI-18; PR at VI-6.

[93] CR/PR at Table II-4.

[94] Yamaha Postconference Brief, Exhibit 1, National Marine Manufacturers Association Chart (indicating decrease in bass boat shipments from 2001 to 2002). See also, Yamaha Posthearing Brief, Exhibit 2, Yamaha Business Plans, chart illustrating decreases in bass boat market over time, including 2001 to 2002, and Yamaha Posthearing Brief, Exhibit 2c, Yamaha three year mid-term plan 2000-2002, chart illustrating decreases in bass boat

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OEM boat builders are the largest channel of distribution for outboard engines, followed by boat dealers. Sales to OEM boat builders have increased relative to sales to dealers. OEMs accounted for most of the demand for outboard engines during the period of investigation. During 2003, *** percent of total U.S. shipments of outboard engines were shipped to OEMs, as opposed to *** percent in 2001. In 2003, *** percent of domestic industry U.S. shipments and *** percent of U.S. shipments of imports from Japan were shipped to OEMs, as opposed to *** percent for the domestic industry and *** percent for shipments of imports from Japan in 2001.[95] Dealers often sell boat/engine packages that they receive from the OEMs.[96]

Some of the OEMs are affiliated with either domestic or Japanese engine manufacturers.[97] OEMs may be owned by the engine manufacturer, have an exclusive contract with an engine manufacturer, or be an independent boat builder such as Genmar.[98]

3. Supply Conditions

Mercury and BRP are the only two domestic producers. Mercury accounted for *** percent of domestic production in 2003, and BRP, *** percent.[99]

There are seven known Japanese producers or exporters of outboard engines from Japan to the United States market: Honda Motor Co., Ltd. ("Honda Japan"), Mercury Marine Japan ("Mercury Marine"), which is affiliated with U.S. producer Mercury, Nissan Marine Co., Ltd. ("Nissan"), Suzuki Motor Co. ("Suzuki Japan"), Tohatsu Corp. ("Tohatsu Japan"), Tohatsu Marine, and Yamaha Motor Co. Ltd. ("Yamaha Japan").[100]

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[94] (...continued)
market (***) and slow growth projected through model year ***.

[95] CR/PR at Table I-2 (Shares of total).

[96] CR at 23; PR at I-13.

[97] CR/PR at Table I-2. We note that domestic producers and importers of subject merchandise shipped *** of their shipments of outboard engines to related OEMs during the period of investigation, with the exception of ***. The percentage of domestic producers' shipments to related OEMs was *** in interim 2004 as in interim 2003. CR/PR at Table I-2.

[98] CR at I-20; PR at I-13 and CR/PR at Table I-2. Some independent boat builders expressed concern that Mercury is attempting to gain market share through its parent Brunswick's acquisition of boat companies to which it can direct Mercury engines. Honda Submission dated January 21, 2005, "Jacobs Expresses Concerns Over Brunswick/Mercury Actions."

Mercury's parent corporation, Brunswick, has purchased several OEMs over the period of investigation. Brunswick purchased the Lowe, Lund and Sea Ray boat firms from Genmar in March 2004. It bought the Sea Pro Boats, Inc. and the Sea Boss Boats, LLC boat firms in January 2005. CR at III-2, n.1; PR at III-1, n.1. Brunswick has stated that it hopes that this acquisition *** over time. Mercury Submission dated January 21, 2005, Attachment 1, at 1.

BRP has stated that it will not sell outboard engines to the Sea Pro and Sea Boss boat companies following their acquisition by Brunswick. BRP stated that it has taken this action "to support the independent boat builders and build our common success with dealers that are committing to our brands." BRP states that while Brunswick and Mercury are "continu[ing] to implement their strategy and force dealers to exclusively do business with their brands," it strongly believes in its plan "to support and commonly grow sales with the high quality independent boat builders we do business with." Statement by Roch Lambert, BRP Vice President and General Manager, Outboard Engines, January 5, 2002, attached to Honda Submission dated January 21, 2005.

[99] CR/PR at Table III-1.

[100] CR at VII-3; PR at VII-2. With the exception of Mercury Marine, all of these Japanese producers/exporters were respondents in the investigation and filed a joint prehearing brief with the other Japanese Respondents. Joint
(continued...)

Recent EPA and CARB emissions standards have forced a change in supply to the U.S. market.[101] As noted earlier, two-stroke carbureted and two-stroke EFI engines are not emissions-compliant, whereas four-stroke and two-stroke direct injection engines are emissions compliant.[102] Under these regulations, engine manufacturers earn "credits" toward compliance by producing engines that have lower emissions than required. These credits can be used to offset "debits" or "negative credits" that the companies incur when they sell engines that are not emissions-compliant.[103] Therefore, in order to sell their non-compliant two stroke engines above a certain level (which decreases every year), engine producers must earn credits by selling emissions-compliant two-stroke direct injection engines and four-stroke engines or have accumulated credits from past sales.[104]

Mercury reported that it makes decisions regarding product mix adjustments and sales programs based, in part, on its internally monitored EPA credit balances. During the period of investigation, Mercury has been drawing down its yearly EPA credit balances, further compelling Mercury to sell emissions-compliant engines.[105]

Although both the domestic industry and the Japanese Respondents supply a broad array of outboard engines to the U.S. market, there were significant differences in their product offerings over the period of investigation. The most significant difference is that subject imports dominated the U.S. market for four-stroke engines, in particular the market for larger horsepower four-stroke engines. Measured by value, importer shipments of subject imports of four-stroke engines from Japan accounted for *** percent of total shipments of four-stroke engines to the U.S. market in 2003, and *** percent of such shipments measured in quantity.[106] In contrast, measured by value, domestic producers' U.S. shipments of four-stroke engines accounted for only *** percent of total U.S. shipments of four-stroke engines in 2003, and *** percent of such shipments measured in quantity.[107] Nonsubject imports accounted for the remaining shipments of four-stroke engines.[108]

Japanese producers offered four-stroke engines over 115 horsepower much earlier than domestic producers, while domestic producers offered a wider range of direct injection two-stroke engines in larger horsepower sizes. Historically, four-stroke engines were limited to smaller horsepower sizes because the greater weight of these engines had made them impracticable in the higher horsepower sizes.[109]

Over the period of investigation, Japanese producers introduced several models of large horsepower four-stroke engines into the U.S. market. In model year 2001 (July 2000 to June 2001), Honda offered a 130 horsepower four-stroke engine while Mercury, Yamaha and Suzuki offered four-stroke engines with a maximum size of 115 horsepower. In model year 2002 (July 2001 to June 2002), Yamaha and Honda introduced four-stroke engines with 200 and 225 horsepower, and Suzuki added a

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[100] (...continued)
Respondents' Prehearing Brief at 1.

[101] CR at II-11-13; PR at II-8-9.

[102] Mercury Prehearing Brief at 36. Joint Respondents' Prehearing Brief at 3. See also CR at II-11-12; PR at II-8-9.

[103] Joint Respondents' Prehearing Brief at 3. CR at II-11-12 and n.20; PR at II-8 and n.20.

[104] Id.

[105] Mercury's Responses to Commission Questions regarding its EPA emission credit balances for model years 2001-2004 dated January 21, 2005 at 2 and Exhibit 6.

[106] Derived from CR/PR at App. D, Table D-2, D-26 (Staff Table 3).

[107] Derived from CR/PR at App. D, Table D-2, D-26 (Staff Table 3).

[108] CR/PR at App. D, Table D-2, D-26 (Staff Table 3).

[109] Mercury Prehearing Brief at 77.

four-stroke engine with 140 horsepower to its product line.[110] Neither of the domestic producers offered any four-stroke engines over 115 horsepower at this point.[111] Consequently, to round out their product offerings, particularly of four-stroke engines, U.S. producers turned increasingly to subject imports over the period of investigation. Subject imports by U.S. producers accounted for *** percent of all subject imports by value in 2001 and *** percent in 2003; by quantity, *** percent in 2001 and *** percent in 2003.[112]

Mercury stated that in model year 2003 (July 2002 to June 2003), it began to import large four-stroke engines that it sold under its own brand name.[113] Mercury further reports that it continued to import and sell large four-stroke engines under its own brand name in model year 2004 (July 2003 to June 2004) as has BRP in model years 2004 and 2005 (July 2003 to June 2005).[114] BRP does not produce any four-stroke engines. It sources all of the four-stroke engines it sells from overseas, and it has a ***.[115]

In model year 2005, at the very end of the period of investigation, Mercury introduced its Verado product line of high performance four-stroke engines with 200, 225, 250, and 275 horsepower. These engines are wholly domestically produced.[116] However, Mercury has apparently not been able to fully supply demand for its Verado engines.[117] Thus, imports from Japan have dominated the U.S. market for four-stroke engines during the period of investigation.[118]

Most of the shipments by Japanese importers to the U.S. market over the period of investigation have been four-stroke engines. Measured by value, *** percent, and measured in quantity, *** percent of U.S. shipments of subject imports from Japan in 2003 were four-stroke engines.[119] Together, Yamaha and Honda accounted for *** percent of subject imports in 2003.[120] The majority of Yamaha's subject imports were four-stroke engines in every period surveyed, except for 2001, and Honda only supplies four-stroke engines to the U.S. market.[121]

Further, the shipments of imports from Japan in the U.S. market over the period of investigation have increasingly consisted of larger horsepower engines. Measured by value, importers' shipments of subject imports from Japan of four-stroke engines over 115 horsepower to the U.S. market have increased

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[110] Mercury Prehearing Brief at 77.

[111] We note, however, that domestic producers did offer higher-horsepower two-stroke engines during this time. CR/PR at Table III-4.

[112] Derived from CR/PR at Table IV-3 (Revised).

[113] Mercury Prehearing Brief at 77. This appears to be a reference to ***. CR at III-2-3; PR at III-1-2.

[114] Mercury Prehearing Brief at 77.

[115] CR at III-4; PR at III-3.

[116] Mercury Prehearing Brief at 77. September 2004 is the end of the period of investigation. It ended only three months after the introduction of Mercury's Verado product line.

[117] In 2004, Mercury had supply allocations that involved *** horsepower range of its four-stroke engines, which encompasses its Verado engines, and the ***. CR at IV-27; PR at IV-9.

[118] Before the introduction of Mercury's four-stroke Verado line at high horsepowers at the very end of the period of investigation, the domestic industry only offered wholly domestically produced four-stroke engines from *** horsepower. CR/PR at Table III-4. Mercury supplied four-stroke engines in model year 2004 incorporating subject powerheads in *** horsepower four-stroke engines, and powerheads from Japan in 75, 90 and 115 horsepower that Commerce excluded from subject merchandise. CR/PR at Table III-4.

[119] CR/PR at App. D, Table D-2, D-26 (Staff Table 3).

[120] CR/PR at Table IV-1 (Revised). Yamaha and Honda accounted for, respectively, *** percent and *** percent of subject imports in 2003. Id.

[121] Yamaha and Honda Questionnaire Responses.

from *** percent of total importer shipments in 2001, to *** percent in 2002, and further to *** percent in 2003; they were *** percent of total importer shipments in interim 2004 as compared to *** percent in interim 2003.[122]

Mercury is a larger importer of subject merchandise than ***, accounting for *** percent of subject imports, measured by quantity.[123] Domestic producer BRP accounted for *** percent of subject imports, measured in quantity.[124] With the exception of ***, the domestic producers import subject merchandise to supply four-stroke engines to the domestic market.[125] Most of the domestic industry's subject imports in 2003, particularly when measured by value, were complete engines.[126] Mercury's subject imports of powerheads were four-stroke powerheads imported to produce *** horsepower four-stroke outboard engines.[127]

***. Research and development costs for new outboard engine technology are significant. For example, Mercury spent $100 million to develop its new Verado four-stroke engine product line.[128] Mercury has plans to build more of its Verado line of four-stroke engines, and has plans to ***.[129] BRP does not currently make four-stroke engines, but has indicated plans to ***.[130]

Both Mercury and BRP supply a broad array of two-stroke carbureted, EFI and direct injection engines to the U.S. market, in addition to their four-stroke product offerings.[131] In 2003, Mercury made certain four-stroke engines using powerheads imported from Japan (***, 75-115 horsepower) as well as certain four-stroke engines using U.S.-made powerheads (*** horsepower).[132] Most of domestic producers' U.S. shipments in 2003 were two-stroke engines. Measured by value, *** percent of domestic producers' U.S. shipments were two-stroke engines, and by quantity *** percent. Two-stroke carbureted and EFI engines constituted *** percent of domestic producers' U.S. shipments by value and *** percent by quantity in that year.[133]

Mercury and BRP emphasized the development and production of two-stroke direct injection technology over the period of investigation. Mercury's Optimax and BRP's E-TEC engines are both direct injection technology engines. By value, *** percent, and by quantity *** percent, of domestic producers' U.S. shipments in 2003 were two-stroke direct injection engines, a significant increase from *** percent by value, and *** percent by quantity in 2001.[134]

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[122] Derived from CR/PR at App. D, Table D-2, D-26 (Staff Table 4).

[123] CR/PR at Table IV-1.

[124] CR/PR at Table IV-1.

[125] CR at III-2-4; PR at III-1-2.

[126] CR/PR at Table IV-3 (Revised). The value of subject imports by domestic producers of complete engines was $*** in 2003, as compared to the value of subject imports by domestic producers of powerheads in that year, valued at $***. Measured in quantity, domestic producers imported *** complete engines from Japan in 2003, as compared to *** powerheads.

[127] CR/PR at Table III-4.

[128] Mercury Posthearing Brief at 14.

[129] CR at III-3; PR at III-2.

[130] CR at VI-21; PR at VI-7.

[131] CR at III-2, III-4; PR at III-1, III-4.

[132] The value of Mercury's shipments of four-stroke engines using U.S.-made powerheads accounted for *** percent of total four-stroke engine shipments in 2003 (*** percent by quantity). Derived from CR/PR at Table III-4 and App. D, Table D-2, D-26.

[133] CR/PR at App. D, Table D-2, D-23 (Staff Table 3).

[134] CR/PR at App. D, Table D-2, D-21 (Staff Table 3).

In contrast, importers' shipments of two-stroke engines from Japan were a much smaller component of their total shipments in 2003. In 2003, *** percent of importers' U.S. shipments measured by value and *** percent measured in quantity were two-stroke engines.[135] Two-stroke direct injection engines accounted for *** percent of importers' U.S. shipments in 2003 measured by value, and *** percent of those shipments measured by quantity.[136] Shipments of emissions-compliant two-stroke direct injection engines by importers of subject merchandise *** over the period of investigation, in contrast to the *** by domestic producers.[137]

4. Post-OMC Bankruptcy

The U.S. industry, as noted, consists of Mercury and BRP. In March 2001, BRP purchased the engine production facilities previously owned and operated by OMC. OMC had been a major outboard engine manufacturer, as well as an important owner of boat building companies. OMC filed for bankruptcy and ceased operations in December 2000, just before the period of investigation encompassed by our final phase investigation.[138]

OMC's bankruptcy does not appear to be attributable to import competition. OMC filed for bankruptcy partially due to poor management and to problems with the quality of OMC's two-stroke direct injection Ficht engine which resulted in recalls and substantial warranty costs.[139] OMC's Ficht engine was not reliable due to soot formation, fouled sparkplugs and even detonation.[140] As part of its effort to meet the increasingly stringent emissions standards, OMC developed the Ficht engine and had begun to market it in 1998.[141] OMC's difficulties with its engines prior to its bankruptcy negatively affected the public's perception of its engines, and two stroke direct injection engines generally.[142] For

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[135] CR/PR at App. D, Table D-2, D-23 (Staff Table 3).

[136] CR/PR at App. D, Table D-2, D-21 (Staff Table 3).

[137] CR/PR at App. D, Table D-2, D-21(Staff Table 3).

[138] The preliminary phase investigation covered calendar years 2000 through 2002 and interim (January to September) 2003, although data for 2000 was incomplete due to OMC's bankruptcy that year. Outboard Engines from Japan, Inv. No. 731-TA-1069 (Preliminary), USITC Pub. 3673, Public Report at VI-1.

[139] Mercury's counsel acknowledged at the Commission's closed hearing session that ***. Closed Session, Tr. at 414. Witnesses appearing on behalf of Mercury testified that prior to its bankruptcy, OMC was experiencing management and/or product quality problems. Tr. at 135, 141-142, 143-144. "OMC: Two Drops in Much Bigger Buckets," The Eyerdam Report, The Boating News, April 2001, found at http://www.theboatingnews.com, retrieved January 28, 2004 (Brunswick CEO stated that BRP was going to "start a company that has a history of bad performance and jaundice brands"). BRP continues to argue that OMC's bankruptcy was related to unfair import competition. BRP Prehearing Brief at 16. However, a prior OMC executive submitted an affidavit in this case as to OMC's significant problems with the quality of its Ficht engines, and its suppliers, prior to its bankruptcy. Joint Respondents' Prehearing Brief, Exhibit 18, Gowen Affidavit. The fact that the U.S. Department of Labor offered to provide trade adjustment assistance to some of OMC's workers, is not determinative of our analysis of injury under 19 U.S.C. § 1673d(b). TAA is administered under a different statute, with a different statutory scheme, and different purposes and history than our injury analysis. See e.g. Cut-To-Length Carbon Steel Plate from China, Russia, South Africa and Ukraine, USITC Inv. Nos. 731-TA-756 (Review) (Sept. 2003) at n.20. Similarly uninformative is the fact that the bankruptcy trustee recently commenced a legal action against the Japanese Respondents based on the Antidumping Act of 1916.

[140] CR at I-19; PR at I-13. Joint Respondents' Prehearing Brief at 11-12.

[141] Conference Tr. at 165.

[142] Joint Respondents' Prehearing Brief at 20-23 and Exhibit 18. "The Future of Outboard Engine Technology," Boating Industry, March 1, 2002 ("Though concerns over the reliability of DI engines may have been justified in the (continued...)

most of 2001, Mercury was the sole domestic producer of outboard engines and powerheads because BRP did not enter the market until late 2001. OMC's bankruptcy led to intense competition among Mercury, the only remaining domestic producer of outboard engines, and Japanese Respondents, for OMC's 28-percent U.S. market share. The bankruptcy created a significant opportunity for these competitors to increase market share and expand dealer and boat builder networks, resulting in a reallocation of market share among U.S. and Japanese engine producers.[143] Mercury, however, had quality problems with its two-stroke direct injection engines, called the OptiMax.[144] In 2001, Mercury pulled its 200 and 225 horsepower Optimax engines from the market from May to July 2001 due to technical problems. It asserts that the problem was successfully corrected.[145]

Thus, the domestic industry, with production of four-stroke engines limited to horsepowers up to 115 in 2001, and certain negative perceptions concerning the two-stroke engines that it did produce in a broader range of horsepower, including the emissions-compliant two-stroke direct injection engines it had focused on in its development efforts, was not well-positioned in 2001 to hold on to all of OMC's market share.[146] Purchasers reported that both the "old technology" two-stroke carbureted and two-stroke EFI engines were less reliable than four-stroke engines, if they perceived a difference in reliability.[147] These perceptions contributed to increased demand for four-stroke engines.[148] Although Mercury emphasizes that high horsepower four-stroke engines entered the market to only a limited extent in 2001,[149]

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[142] (...continued)
past, future concerns are more likely to be due to consumers' perceptions than reality"). OMC also had problems due to insufficient investment in technology and manufacturing, and supply disruptions. Id. at Exhibit 18.

[143] CR/PR at II-1. "OMC: Two Drops in Much Bigger Buckets," The Eyerdam Report, The Boating News, April 2001, found at http://www.theboatingnews.com, retrieved January 28, 2004 (Brunswick CEO stated that OMC's market share was "going to go looking for a manufacturer" and that it was "available to be won" in 2001). See also Liz Walz, "Igniting Change," Boating Industry, May-June 2003 at 23 (OMC's bankruptcy "ignited a series of changes in the industry. A series that begins with a hole in the market and manufacturers scrambling to fill it. . . .").

[144] Liz Walz, "Igniting Change," Boating Industry, May-June 2003 at 25.

[145] Mercury Posthearing Brief at 13. Mercury argued that Yamaha also has had technical problems with its engines, in particular its large four-stroke engines. Further, Mercury has enhanced the quality of its OptiMax engines. Id. See also CR at I-19; PR at I-13. Nevertheless, the majority of purchasers perceived that two-stroke direct injection engines were inferior to four-stroke engines in durability, even though BRP's redesigned two-stroke engines produced from its new Sturtevant, Wisconsin plant, and its newly designed E-TEC engines, are reportedly high in quality and Mercury's OptiMax engines are reportedly much improved. CR/PR at Table II-4. BRP Prehearing Brief at 8. See Trip Notes, BRP Plant Tour, October 7, 2004.

[146] CR at I-17-18; PR at I-11-12.

[147] CR/PR at Table II-4. We recognize that the warranty data in the record is mixed with respect to whether domestic product or subject imports have been subject to more warranty and recall returns. We note however, that with respect to warranty returns of repairable outboard engines as a share of total purchases, purchasers reported the highest levels of returns for domestically produced two-stroke direct injection engines over all other outboard engines, domestic or imported, in the annual years surveyed. CR/PR at Table F-7.

[148] CR at I-19; PR at I-13. Although Japanese Respondents have emphasized only quality problems with respect to two-stroke direct injection engines, our data reflect that purchasers that perceived a difference between the reliability of four-stroke engines and two-stroke engines, found four-stroke engines superior in reliability to two-stroke carbureted and two-stroke EFI engines, as well as to two-stroke direct injection engines. CR/PR at Table II-4.

[149] Mercury Prehearing Brief at 73.

approximately *** percent of importer shipments of subject imports from Japan to the U.S. market in 2001, measured by value or quantity, were four-stroke engines.[150]

Moreover, BRP had additional obstacles to entering the market once it resumed production in late 2001.[151] Early in the period of investigation, OMC had damaged certain dealer relationships. Before filing for bankruptcy, OMC had left some dealers with engines that they could not sell.[152] OMC dealers also had to perform substantial warranty repairs on old OMC Ficht engines. BRP decided not to honor warranties on OMC's Ficht engines for model year 1999 and for earlier years.[153] BRP did not reach meaningful production levels until after the beginning of the 2003 model year (i.e., July 2002).[154]

Genmar, the largest independent boat dealer, purchased OMC's boat building operations after the bankruptcy. Mercury and Japanese suppliers (mainly Yamaha) competed to obtain the business of these former OMC boat companies. A Genmar representative stated that Mercury attempted to raise its prices by 10 percent in 2001, while Yamaha did not, and also stated that Mercury could not supply the four-stroke engines that the market demanded.[155] As a result, a large portion of the market share previously held by OMC came to be held by Japanese Respondents in 2001. Mercury, the only U.S. producer for most of 2001, increased its market share from 2000 to 2001, but it did not acquire all of the market share previously held by OMC.[156] Although the domestic producers attribute the increased subject import market share to lower prices, the record reflects that a number of non-price factors played a part in Genmar's decision to purchase Yamaha engines, rather than Mercury engines.

5. Substitutability

Market participants had varying views on the extent to which engines of different technologies and horsepower are interchangeable. We recognize that to some degree all outboard engines are

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[150] CR/PR at App. D, Table D-2, D-26 (Staff Table4). These percentages increased over time, to *** percent by value and *** percent in quantity in 2002, and to *** percent by value and *** percent in quantity in 2003. The percentage of these shipments was *** percent by value and *** percent by quantity in interim 2004, as compared to *** percent by value and *** percent by quantity in interim 2003. Id.

[151] "It's Yamaha and Mercury, Genmar and Us, Buckley Declares," The Boating News, March 2002 (Brunswick CEO stated that "Bombardier is a fine manufacturing company but we have to remember that the company that they bought {OMC} was significantly challenged from its quality (and) from its dealer distribution. And in many respects not much of that has changed. . . . what the landscape does is leave them rather skill-wise confined into a niche. But I expect them to do well in that niche and settled down to a, probably, early single digit market share").

[152] Liz Walz, "Igniting Change," Boating Industry, May-June 2003 at 23.

[153] Joint Respondents' Prehearing Brief at 12-13, 82-85. "20% Lose Out," Editorial, Powerboat Reports, June 2001 at 2; "OMC: Two Drops in Much Bigger Buckets," The Eyerdam Report, The Boating News, April 2001, found at http://www.theboatingnews.com, retrieved January 28, 2004.

[154] Joint Respondents' Prehearing Brief at 87. Liz Walz, "Igniting Change," Boating Industry, May-June 2003 at 23.

[155] Tr. at 236-37, 240, 287-88. Mercury argued that in 2001, Mr. Jacobs stated publicly that it rejected Mercury as a supplier in order to obtain more favorable pricing. Mercury Prehearing Brief at 2-3. Mr. Jacobs stated that Mercury attempted to raise its prices in 2001 by 10 percent, when domestic supplies of outboard engines were limited due to OMC's exit, and BRP's slow entry into the market. Tr. at 287-88. Furthermore, Mr. Jacobs stated that Mercury agreed in 2001 to supply Genmar with quality four-stroke engines, but did not fulfill that agreement. Tr. at 235-237. Mr. Jacobs stated that Mercury's failure to supply the four-stroke engines in the full product line-up promised to Genmar was a factor in Genmar's lower purchases of Mercury engines in 2002 and 2003. Tr. at 240-241.

[156] In 2001, Mercury's share of the U.S. market was *** percent by value, a gain of *** percentage points from 2000 levels, and *** percent by quantity, a gain of *** percentage points from 2000. Mercury and BRP Producer Questionnaire Responses (Staff Table 1).

interchangeable in the sense that they can all propel boats through the water. In their questionnaire responses, the two domestic producers responded that outboard engines of different technologies were always interchangeable with each other.[157] In contrast, the four responding importers (besides the domestic producers) found much less interchangeability, and gave answers that varied from "always" interchangeable to "sometimes" interchangeable.[158]

Purchasers also perceive differences between two-stroke engines and four-stroke engines, although not to the extent reported by the importers. In each comparison, a significant number of purchasers, but not a majority, responded that outboard engines of different technologies were "always" interchangeable with each other. However, similar to the importer responses, fewer purchasers found two-stroke and four-stroke engines to be "always" interchangeable than found different types of two-stroke engines or different types of four-stroke engines, "always" interchangeable.[159]

Purchasers were asked to compare the following engines in detail: 1) two-stroke carbureted and EFI engines to four-stroke engines; and, 2) two-stroke direct injection engines to four-stroke engines. When they compared these engines, they reported significant differences between them. Two-stroke outboard engines often were reported to be superior to four-stroke engines in acceleration, speed and low weight, but inferior in durability, fuel economy, reliability, environmental friendliness, and quietness of engine.[160] We find that the record reflects that purchasers generally found four-stroke engines to have more advantages than two-stroke engines. We also recognize that in some market segments, like bass boating, boaters prefer two-stroke engines for their quick acceleration. [161]

We also have considered whether domestic outboard engines are interchangeable with subject imports. We note that 43 of 56 responding purchasers indicated that U.S. produced outboard engines and subject imports are "always" used in the same applications. However, when purchasers were asked detailed questions comparing U.S. outboard engines and subject imports, their responses reflect significant differences. For all purchasing factors, at least one-half of the responding purchasers indicated that U.S. outboard engines and subject imports were "comparable." However, where purchasers did report differences with respect to quality, the U.S. product was often reported to be "inferior." Over thirty percent of responding purchasers indicated that U.S. product was "inferior" to subject imports in regard to product consistency, product range, and quality both meeting and exceeding industry standards.[162]

6. Pricing Considerations

Engine manufacturers often give their purchasers percentage discounts based on volume that apply to all types of engines. All responding producers and importers reported offering discounts,

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[157] CR/PR at Table II-3

[158] No importers responded that four-stroke engines were "always" interchangeable with two-stroke engines. Only one importer reported that two-stroke outboard engines were "frequently" interchangeable with four-stroke engines. In all other cases, importers reported that two-stroke engines were only "sometimes" interchangeable with four-stroke engines. CR/PR at Table II-3.

[159] CR/PR at Table II-3.

[160] CR/PR at Table II-4. A majority of purchasers reported that all two-stroke engines were inferior to four-stroke engines in durability and quietness of engine, and superior in acceleration and low weight. In addition, a majority of purchasers reported that two-stroke carbureted and EFI engines were inferior to four-stroke engines in environmental friendliness, fuel economy, and reliability. Twenty-six purchasers reported that direct injection engines were inferior to four-stroke engines in reliability, 26 reported that they were comparable to four-stroke engines in reliability, and only three purchasers reported that they were superior to four-stroke engines in reliability. CR/PR at Table II-4.

[161] Tr. at 48.

[162] CR at II-18; PR at II-12 and CR/PR at Table II-9.

rebates, incentives and other promotional reductions from the manufacturer's suggested retail price.[163] Producers and importers reported using both short- and long-term contracts for multiple shipments, spot sales, or a combination of these methods. Mercury and Yamaha, respectively the largest domestic producer and the largest importer, both sell their engines commonly through long-term contracts. Yamaha stated that it *** sold engines using long-term contracts, and Mercury stated that it used long-term contracts for approximately *** percent of its sales of U.S.-produced outboard engines.[164] Mercury stated that its contracts with OEMs normally guarantee the level of volume by purchasers, but are flexible in terms of price.[165] Our review of Mercury's submission regarding its long-term contracts with OEMs reflects that purchasers contract to obtain certain volume levels of engines and that changes to the prices in these contracts are dependent on Mercury's changes to its published dealer price.[166] In addition, many of Mercury's long-term contracts also contained terms that help secure OEM and dealer loyalty to Mercury through the use of ***.[167]

Japanese Respondents have argued that certain "parallel transactions" constitute additional discounts to the prices charged by Mercury to its purchasers. Respondents describe these parallel transactions as front-end payments, loans, loan guarantees, back-end payments, or overpayment for assets (also called "earn-outs").[168] We do not consider these transactions to be discounts, but separate financial transactions. Mercury has accounted for them as separate transactions in its financial statements.[169] We note, however, that Mercury could use these "parallel transactions" to strengthen OEM and dealer loyalty to the Mercury brand of engines. We further note that pricing data collected by the Commission are net of all discounts and, to a large extent, were verified by staff.

Engines are often sold in large orders of engine packages.[170] These engine packages encompass engines of various horsepower and technology, ranging from the least expensive to the most complex engine in the product line.[171] These packages are often purchased pursuant to long-term contracts. These contracts may include ***. The widespread use of these engine packages through long-term contractual supply programs, explains to some degree the importance engine manufacturers place on their ability to offer an entire product line.[172]

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[163] CR/PR at V-4.

[164] CR/PR at V-3.

[165] CR/PR at V-3.

[166] Mercury Posthearing Brief, Exhibit 7.

[167] Mercury Posthearing Brief, Exhibit 7.

[168] CR at VI-14; PR at VI-4.

[169] CR at VI-14-17; PR at VI-4-5.

[170] Engine sales and discounts are usually on a program basis, with separate programs for boat builders and dealers. The discount level reflects the distribution channel, sales volume, rated engine power and technology, advertising, and is applicable to the engine maker's entire product line. CR at V-5; PR at V-4.

[171] Mercury has long-term supply agreements, *** with a number of OEMs and some larger dealers. Mercury Posthearing Brief, Responses to Commissioner Questions at C-1-2. For example, ***. Some of these agreements contain terms providing that Mercury is required to pay ***. Mercury Posthearing Brief Exhibit 7.

[172] Mercury and BRP have both acknowledged the importance of being able to provide a complete product line to their customers. In response to Commissioner questions, Mercury stated that more than 90 percent of its customers, both OEMs and dealers, purchase at least some of the resulting 75, 90 and 115 horsepower four-stroke engines that it produces with imports of powerheads from Yamaha, and that its customers purchase a broad spectrum of products. . Mercury Posthearing Brief, Responses to Commissioner Questions at B-2, B-6. In a submission in the Wisconsin litigation, Mercury stated that its "customers demand a full line of engines," and that if it did not sell the imported four-stroke engines, " it is likely that a significant number of Mercury's customers would shift their purchases to a

(continued...)

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[173]

As discussed in conditions of competition, we find that the data from January 2001 to September 2004 provide us with a sufficient historical backdrop against which to analyze the issue of whether the domestic industry is presently injured, although we have considered certain events in 2000 as important conditions of competition. While the domestic industry argues that Japanese Respondents gained market share through aggressive pricing practices, we find, as discussed in the conditions of competition, that the record is mixed as to why the domestic industry was unable to retain most of OMC's market share from 2000 to 2001. Other factors besides price played a role in the loss of that market share, such as negative dealer relationships, and negative perceptions of two-stroke engine quality.[174]

As in the preliminary phase of the investigation, we have relied mainly on value figures in assessing the volume of subject imports, given the wide spectrum of engine sizes covered by the investigation and the wide variation in the unit value of engines of different sizes.[175] We also have considered quantity figures where appropriate.

Measured by value, the volume of subject imports of outboard engines and powerheads increased from $431 million in 2001, to $586 million in 2002, and to $650 million in 2003. It was $536 million in interim 2004 as compared to $452 million in interim 2003. Measured by quantity, the volume of subject

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[172] (...continued)
different engine manufacturer who could offer a full line of engines." Memorandum of Law at 21, in Brunswick Corp. v. Yamaha Motor Co., Ltd, United States District Court, Eastern District Of Wisconsin, attached to Exhibit 21, Joint Respondents' Prehearing Brief. Furthermore, they have stated that they import subject merchandise in large part to offer a complete product line to their customers. CR at III-15; PR at III-6.

[173] 19 U.S.C. § 1677(7)(C)(i).

[174] ***, Mercury has claimed that Japanese Respondents, in particular, Yamaha and Suzuki, gained market share after the OMC bankruptcy due to aggressive price discounting. BRP has argued that it has been unable to compete for prior OMC business due to the incentives and discounts offered by Japanese Respondents.

Yamaha acknowledges that it took over "a large portion of the market share previously held by OMC" but argues that it did not compete with Mercury for this market share based on price. CR at II-2; PR at II-1. Irwin Jacobs, Chief Executive Officer for Genmar testified at the Commission hearing that in 2001 Mercury attempted to take advantage of the decrease in domestic supply caused by the OMC bankruptcy by raising its prices to Genmar by 10 percent. Tr. at 303-04. Mr. Jacobs also testified that Mercury was not able to supply all the four-stroke engines it needed. Tr. at 250-51. Moreover, we find that there is some evidence that Mercury has been hampered in gaining this market share by negative relationships with dealers, either with prior OMC dealers due to its history as a domestic rival competitor to OMC, or with independent dealers who have grown cautious of doing business with a major boat builder as Mercury's parent company has continued to buy boat companies. As for BRP, as discussed earlier, it has been severely hampered in its efforts to gain OMC's prior market share by negative public perceptions of two-stroke direct injection engines, requisite investments in technology to improve those engines, the lack of a customer/dealer base, and most importantly, the lack of a four-stroke engine line, an engine that the public increasingly demands.

[175] Manufacturer's suggested retail prices for outboard engines range from under $1,000 to about $20,000. Average unit values for U.S. shipments of domestic product by producers ranged from $*** to $*** per unit, and average unit values for U.S. shipments of subject imports by importers ranged from $*** to $*** per unit. CR at I-26; PR at I-15.

imports increased from 157,333 units in 2001 to 193,382 units in 2002 to 207,477 units in 2003, and was 157,574 units in interim 2004 as compared to 152,330 units in interim 2003.[176]

As stated earlier, apparent U.S. consumption increased significantly over the period of investigation.[177] Measured by value, it increased from $*** in 2001 to $*** in 2002 and further to $*** in 2003, an increase of *** percent from 2001 to 2003. Apparent U.S. consumption measured by value was *** percent higher in interim (January to September) 2004 as compared to interim 2003. It was $*** in interim 2004 and $*** million in interim 2003. Measured by quantity, apparent U.S. consumption increased from *** units in 2001, to *** units in 2002, decreasing *** to *** units in 2003, for an overall increase of *** percent. Apparent U.S. consumption measured in quantity was *** percent higher in interim 2004 as compared to interim 2003. It was *** units in interim 2004 and *** units in interim 2003.[178]

The U.S. market share held by subject imports increased by approximately *** percentage points over the period of investigation, measured by value, as consumption increased. Total market share held by subject imports increased from *** percent in 2001 to *** percent in 2002 and further to *** percent in 2003, and was *** percent in interim 2004 as compared to *** percent in interim 2003. Measured by quantity, the total market share held by subject imports increased from *** percent in 2001 to *** percent in 2003, though it was *** percent in interim 2004, as compared to *** in interim 2003.[179] The U.S. market share held by the domestic industry decreased by *** percentage points measured by value from 2001 to 2003, and *** percentage points measured by quantity.[180] Nonsubject imports accounted for the relatively small remaining portion of U.S. market share. Their market share increased by *** percentage points measured by quantity and *** measured by value, as consumption increased.[181]

We find the absolute volume of subject imports to be significant, and we find the absolute volume of subject imports to be significant in relation to consumption and production. However, the conditions of competition for this industry and the composition of the imports over the period of investigation reduce the apparent significance of the subject import volume and particularly any increases in volume.

The increase in subject import market share was concentrated in imports of four-stroke engines above 115 horsepower that were not produced in the United States until the end of the period of investigation. The market share of U.S. shipments of these imports (i.e., their share of total apparent U.S. consumption of outboard engines and powerheads) rose from *** percent in 2001 to *** percent in 2003, and from *** percent in interim 2003 to *** percent in interim 2004. By contrast, the market share of shipments of all other subject imports actually declined over the period, from *** percent in 2001 to *** percent in 2003, and from *** percent in interim 2003 to *** percent in interim 2004.[182]

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[176] CR/PR at Table IV-3. Subject imports of outboard engines and powerheads were equivalent to *** percent of domestic production of outboard engines in 2001, *** percent in 2002, and *** percent in 2003. Subject imports of outboard engines and powerheads were the equivalent of *** percent of domestic production of outboard engines in interim 2004 and *** percent in interim 2003. CR/PR at Table IV-6.

[177] As noted in conditions of competition, the increase was a recovery from a drop in demand in 2001, following a peak in 2000. CR/PR at Table C-4; Yamaha's Posthearing Brief, Exhibit 2, at 4.

[178] CR/PR at Table IV-4 (Revised) and Table C-1 (Revised).

[179] CR/PR at Table IV-4 (Revised).

[180] CR/PR at Table IV-4, C-1 (Revised).

[181] CR/PR at Table IV-4, C-1 (Revised).

[182] By quantity, the market share of U.S. shipments of subject imports of four-stroke engines over 115 horsepower increased from *** percent in 2001 to *** percent in 2003 and from *** percent in interim 2003 to *** percent in interim 2004. By contrast, the market share of U.S. shipments of all other subject imports declined over the period, from *** percent in 2001 to *** percent in 2003. The market share of all other subject imports was *** percent in interim 2004 as compared to *** percent in interim 2003. Derived from CR/PR at App. D, Table D-2, D-26, and

(continued...)

These trends reflect the larger market shift, described earlier, from two-stroke to four-stroke engines. As a percent of the total outboard engine market, four-stroke engines grew from approximately *** percent to *** percent of the market, whether measured in quantity or value, over the period of investigation.[183] Overall apparent consumption grew by *** percent from 2001 to 2003, while shipments of four-stroke engines increased by *** percent (by quantity).[184] In contrast, the market share of two-stroke engines dropped from approximately *** percent of the U.S. market in 2001 to *** percent in 2003, whether measured in value or quantity.[185] The market share held by the cleaner two-stroke direct injection engines also increased from *** percent in 2001 to *** in 2002 and to *** percent in 2003, measured by value, and from *** percent in 2001 to *** percent in 2002 and to *** percent in 2003, measured by quantity.[186]

For most of the period of investigation, the domestic industry could supply four-stroke engines in only a limited number of horsepower models, unless they use powerheads or complete engines from Japan. As demand for four-strokes increased, subject imports from Japan dominated the supply of four-stroke engines to the U.S. market throughout the period of investigation. Measured by value, subject imports accounted for *** percent of the four-stroke market in the United States in 2001, *** percent in 2002, *** percent in 2003, and were *** percent in interim 2003 and *** percent of the market in interim 2004. Measured by quantity, subject imports accounted for *** percent of four-stroke shipments to the U.S. market in 2001, *** percent in 2002, and *** percent in 2003; they were *** percent of the market in interim 2003 and *** percent in interim 2004.[187]

We find that most of the growth in consumption discussed above was due to growth in demand for four-stroke engines. Japanese producers had more extensive four-stroke engine offerings than the U.S. producers over most of the period of investigation. As the market moved toward cleaner engines, U.S. producers, which dominated the two-stroke sector, were able to increase their shipments of two-stroke direct injection engines during the period of investigation.[188]

Not only was the increase in subject import market share concentrated in products not made domestically (four-stroke engines above 115 horsepower), as noted above, but the domestic producers themselves were responsible for a large share of the increase. Subject imports by U.S. producers

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[182] (...continued)
Table D-3, D-39 (Staff Table 4).

[183] Measured by value four-stroke engines grew from *** percent of the market in 2001, to *** percent of the market in 2003; they were *** percent of the market in interim 2003 and *** percent in interim 2004. Measured by quantity, four-stroke engines grew from *** percent of the U.S. market in 2001 to *** percent in 2003, and constituted *** percent of the U.S. market in interim 2004. CR/PR at App. D, Table D-2, D-26 (Staff Table 3).

[184] CR/PR at Table C-1 and App. D., Table D-2, D-26 (Staff Table 3).

[185] CR/PR at App. D, Table D-2, D-23 (Staff Table 3).

[186] CR/PR at App. D, Table D-2, D-21 (Staff Table 3).

[187] Derived from CR/PR at App. D, Table D-2, D-26 (Staff Table 3). U.S. product, by contrast, accounted for *** of the four-stroke market in 2001 measured by value, *** percent in 2002, *** percent in 2003, and *** percent in interim 2004. It accounted for *** percent of the four-stroke market in 2001, measured in quantity, *** percent in 2002, *** percent in 2003, and *** percent in interim 2004. Nonsubject imports accounted for the remainder of the market share. Id.

[188] U.S. producer shipments of two-stroke direct injection engines increased as a percentage of their shipments to the U.S. market by value from *** percent in 2001 to *** percent in 2002 and further to *** percent in 2003, and they were *** percent of domestic shipments in interim 2004 as compared to *** percent in interim 2003. By quantity, U.S. producer shipments of two-stroke direct injection engines increased as a percentage of their shipments from *** percent in 2001, to *** in 2002, and further to *** percent in 2003, and they were *** percent of domestic shipments in interim 2004, as compared to *** percent in interim 2003. CR/PR at App. D, Table D-2, D-21 (Staff Table 3).

accounted for *** percent of all subject imports of outboard engines and powerheads in 2001, *** percent in 2002, *** percent in 2003; U.S. producers accounted for *** percent of all subject imports in interim 2004 compared to *** percent in interim 2003.[189] The value of subject imports of complete engines by the domestic industry increased over the period of investigation by *** percent from 2001 to 2003.[190] As discussed in conditions of competition, U.S. producers import subject merchandise largely to compete in the four-stroke market.

U.S. producers' imports of subject merchandise accounted for virtually all of the increase in subject imports' market share over the period of investigation. Subject imports' share of the U.S. market measured by value increased by *** percentage points from 2001 to 2003. However, the value of subject imports by U.S. producers as a share of the U.S. market *** that figure, increasing by *** percentage points from 2001 to 2003.[191]

In sum, we find that certain market factors mitigate the significance of the volume and market share of subject imports during the period of investigation, particularly the increases in volume and market share. The domestic industry, in order to be able to offer four-stroke products which it did not produce, imported an increasing volume of subject imports and accounted for the entire increase in subject imports' market share over the full years of the period of investigation. The market share gains by subject imports over the period appear to reflect in large part movement in the outboard engine market in favor of the types of engines made in Japan (four-stroke engines above 115 horsepower) but not, until recently, in the United States.

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[192]

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[189] CR/PR at Table IV-3 (Revised). Measured by quantity, subject imports by U.S. producers accounted for *** percent of all subject imports of outboard engines and powerheads in 2001, *** percent in 2002, *** percent in 2003, and it was *** percent in interim 2004 as compared to *** percent in interim 2003. CR/PR at Table IV-3 (Revised).

[190] CR/PR at Table IV-3 (Revised).

[191] CR/PR at Table C-1 (Revised). Between interim 2003 and interim 2004, the market share (by value) accounted for by subject imports entered by domestic producers decreased slightly (*** percentage points), whereas the overall subject import market share rose slightly (*** percentage points).

Measured in quantity, U.S. producers accounted for virtually the entire increase in subject imports' share of the U.S. market from 2001 to 2003. Of the *** percentage point increase in subject imports' U.S. market share from 2001 through 2003 measured in quantity, U.S. producers accounted for *** percentage points of the increase. Between interim 2003 and interim 2004, the market share accounted for by subject imports entered by domestic producers declined by an amount similar to the decline in the overall subject import market share. CR/PR at Table C-1(Revised).

[192] 19 U.S.C. § 1677(7)(C)(ii).

We considered the relative importance of price and other factors to outboard engine purchasers for our analysis of price effects. Responding purchasers stated that several factors are important in choosing an outboard engine supplier. Nineteen out of 59 purchasers indicated that dealer/customer demand was the number one factor in their purchasing decisions, and 27 of 59 responding purchasers stated that it was one of the top two factors in their purchasing decisions.[193] Availability and reliability of supply were "very important" factors in their purchasing decisions, as was quality meeting industry standards. In addition to these factors, a significant number of purchasers indicated that product consistency, performance, technical support/service, quality exceeding industry standards, delivery time, product range, discounts offered and price were "very important" factors.[194] We conclude from the data that purchasers found that other factors were often more important than price in their purchasing decisions.

We base our pricing analysis on quarterly pricing data we have gathered for six products in two channels of distribution, OEMs and dealers, from first quarter 2001 to third quarter 2004. We gathered pricing data on Product 2 (carbureted two-stroke, 90 horsepower), Product 3 (carbureted two-stroke 150 horsepower), Product 4 (direct fuel injection two-stroke, 150 horsepower), Product 5 (direct fuel injection two-stroke, 200 horsepower), Product 6 (carbureted four-stroke, 25 horsepower), and Product 7 (EFI four-stroke, 115 horsepower).[195] Two U.S. producers and five importers provided usable pricing data..[196] Pricing data reported by these firms accounted for *** percent of U.S. producers' reported shipments of complete outboard engines and *** percent of U.S. shipments of complete outboard engines imported from Japan in 2003.[197] Our pricing data are net of all discounts.[198] We consider these pricing data to be fairly representative of the pricing in the industry, at least for those products that both U.S. and Japanese suppliers produce.[199] We verified pricing data submitted by both Mercury and Yamaha to ensure the accuracy of our pricing data in this investigation.[200]

Based on the record evidence, we find that subject imports undersold the domestic like product, more often than not, but did not depress or suppress domestic prices to a significant degree. Of the 180 price comparisons, subject imports undersold the domestic product in 63 percent of these comparisons.[201] This percentage suggests that there was mixed underselling and overselling. However, we further find that the effect of any underselling on domestic prices was reduced by other factors. There generally is no correlation between underselling and price trends. Rather than import competition, the price trends may reflect other market dynamics. For example, consistent with the growing demand for four-stroke engines,

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[193] CR at II-8; PR at II-5.

[194] CR at II-8; PR at II-5; and, CR/PR at Table II-1and Table II-2. We found a moderate elasticity of substitution, in the 2 to 4 range, between the domestic product and subject imports. Although BRP estimated an elasticity of substitution of 2.5 to 5, BRP Prehearing Brief at 29, we do not find that it is comparable, as it is limited to the six pricing products for which the Commission gathered pricing data, whereas the staff's analysis encompasses all of the domestic products and the subject imports. CR at II-22-24; PR at II-16**.**

[195] CR at V-6; PR at V-5.

[196] CR at V-6; PR at V-5.

[197] CR at V-25; PR at V-8.

[198] CR at V-6, n.11; PR at V-5, n.11.

[199] As discussed in conditions of competition, we have not taken into account any of the "parallel transactions" that Japanese Respondents have urged us to consider in analyzing our pricing data. We note, however, that Mercury could use such transactions as incentives to strengthen OEM and dealer loyalty to Mercury's line of engines.

[200] Memorandum INV-BB-155 dated December 15, 2004, attaching verification reports of Yamaha's importer questionnaire response, Mercury domestic producer and importer questionnaire response, and BRP domestic producer and importer questionnaire response.

[201] CR at V-25; PR at V-8.

domestic prices for four-stroke engines to OEMs did not decrease in the same manner as prices for two-stroke engines to OEMs. Also, in contrast to the pricing data that show mostly underselling, the majority of purchasers reported that the U.S. product was lower-priced than subject imports.[202] We note that BRP aggressively priced its engines to recapture OMC's market share.[203] BRP had the *** in the market, and this placed some downward pressure on domestic prices.[204] Further, the use of engine packages encompassing engines in a broad spectrum of horsepower and technologies in long-term contracts, reduces the significance of underselling shown in quarterly pricing comparisons of individual engines of specific horsepower and technology.[205]

Regarding price depression, pricing trends were mixed. Prices to OEMs generally declined, and prices to dealers generally increased, with no clear trends or evidence that domestic prices were following prices for subject imports. Prices often fluctuated within narrow ranges.[206]

With respect to sales to OEMs, the largest channel of distribution, domestic prices for carbureted two-stroke engines, (Products 2 and 3), and direct injection two-stroke engines (Products 4 and 5) decreased over the period surveyed. However, except for Product 3, subject imports oversold the domestic product in the majority of comparisons involving Products 2 through 5 sold to OEMs. With respect to four-stroke engines, where underselling was predominant, domestic prices for Product 6 were steady, and the prices for Product 7 increased.[207] With respect to sales to dealers, domestic prices for all products, carbureted two-stroke engines (Products 2 and 3), direct injection engines (Products 4 and 5) and four-stroke engines (Products 6 and 7) increased over the period surveyed.[208] Of the six products surveyed in two channels of distribution, domestic prices went up in seven pricing series over the period of investigation, and went down in five series.[209]

Correlations between sales prices of domestic product and subject imports provided mixed results, with both positive and negative values, indicating no consistent pattern in which domestic and

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[202] CR/PR at Table II-9. BRP argues that purchasers reported that the domestic industry was "inferior" in discounts offered. BRP Prehearing Brief at 31-32. Our pricing data are net of all discounts, and the vast majority of purchasers (39 out of 51) reported that U.S.-produced products and Japanese products were sold with "comparable" discounts. CR/PR at Table II-9.

[203] Tr. at 145 (Ed Renken) (BRP had to price aggressively to recapture market share. "That's the only way BRP can get back in the game right now, . . ."). See also Liz Walz, "Igniting Change," Boating Industry, May-June 2003 at 27 (BRP was aggressive in making engines available. According to a BRP official, "[t]his tactic has been instrumental in helping the company re-gain lost market share").

[204] CR at V-4; PR at V-4. Questionnaire responses ***.

[205] We also note that only a few lost sales and lost revenue allegations were made, and none of them was confirmed. CR at V-28-31; PR at V-9-10.

[206] CR/PR at Figures V-3-V-4.

[207] CR/PR at Tables V-1 to V-6. Mercury has argued that if subject imports have gained market share due to the breadth of their four-stroke offerings or due to their alleged higher quality, then it is not logical for Japanese Respondents to have undersold the domestic product at all. Mercury Posthearing Brief at 6. Mercury's argument ignores the fact that the increase in subject imports was not limited to the products that were underselling the domestic product. For example, the domestic industry did not compete against Japanese Respondents in the four-stroke market above 115 horsepower until a few months before the end of the period of investigation. Furthermore, we acknowledged the existence of some underselling, but we find that the effect of any underselling on domestic prices was reduced by other factors.

[208] CR/PR at Tables V-7-V-12.

[209] CR/PR at Table V-1-V-12. Not only were instances of price increases more numerous, but the magnitude of the increases were generally higher than the decreases.

subject import sales prices tracked each other over the period of investigation.[210] Consistent with the absence of any clear pricing trends, we conclude that the use of engine packages and other aspects of supplier/purchaser relationships may constrain purchasers to some degree from easily switching engine suppliers for reasons based solely on price. As stated above, purchasers often buy a range of engines in large orders based on a long-term program developed through contractual negotiations. Lower prices for one engine would not necessarily be enough to cause a purchaser to change its supplier if prices for other engines in the package remained steady or increased.[211] Adding a second supplier or switching engine suppliers can be disruptive and costly to dealers due to the costs of servicing an additional engine line.[212] All of these reasons may cause a purchaser to hesitate before changing its engine supplier.

We do not agree with BRP that there is a significant correlation between underselling margins and market share over the period of investigation. Although there were instances in which underselling and market share appeared to move together, these two variables also often trended in separate or opposite directions.[213] Accordingly, we do not find any clear evidence of price depression.

Mercury and BRP have both argued that there is price competition across engine technologies. We find, to the contrary, that purchasers perceive clear differences between two-stroke direct injection engines, which are favored for their acceleration and low weight, and four-stroke engines, which are favored for their reliability, and sound reduction. Thus, while there may be some cross-technology price competition, we find it to be limited. Moreover, parties did not provide cross-technology pricing data that was comparable to the pricing data we collected for our analysis of price effects.[214]

Furthermore, we do not find that prices for subject imports are suppressing domestic prices to a significant degree. For the domestic industry, the ratio of cost of goods sold ("COGS") to sales decreased over the period of investigation from *** percent in 2001 to *** percent in 2002, and further to *** percent in 2003. It was *** percent in interim 2004 as compared to *** percent in interim 2003.[215] This indicates that increased subject imports have not been driving the domestic industry into a cost-price squeeze.

Additionally, given that Mercury has expended large amounts of capital to develop new technology, and BRP has been ramping up its production over the period of investigation, we would not necessarily expect the industry to be able to increase its prices immediately to cover its costs fully, but

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[210] CR at V-25 and n.13; PR at V-8 and n.13.

[211] Furthermore, these long-term supply agreements sometimes provide *** that intensifies brand loyalty, and enables its purchasers to buy the engine packages in the first place. ***. Mercury Posthearing Brief, Exhibit 7.

[212] A dealer representative testified at the Commission hearing that "[t]o sell and service an engine line properly, you need to stock parts, set up service bays, and train your service and maintenance people." Tr. at 60.

[213] CR/PR at Appendix H (quarterly movements). See also Honda Posthearing brief at 10 (no consistent correlation on year-to-year basis).

[214] In support of its arguments, Mercury has claimed that Yamaha sold its newly introduced 150 horsepower four-stroke engine in 2003 at prices ten percent lower than its own 150 horsepower two-stroke direct injection engine, in order to gain market share from Mercury's 150 horsepower two-stroke direct injection engine. Mercury Prehearing Brief at 39-41. However, we do not have pricing data that covers Yamaha's 150 horsepower four-stroke engine. Mercury did not ask us to gather such pricing data in its comments on the pricing products in our questionnaires in the final phase of this investigation. Thus, we are unable to compare prices of the two-stroke and four-stroke models. Moreover, Mercury's reported prices for its 150 horsepower two-stroke direct injection product (Pricing Product 4) fluctuated in 2003 and 2004 and displayed no clear downward trend. Finally, Mercury's arguments are based on sales of one engine model in one model year, and we must take all of the evidence on the record into account, and not base our analysis on isolated models, sales or time periods.

[215] CR/PR at Table VI-1. See e.g., Nitrogen Solutions Fair Trade Committee v. United States, Slip Op. 05-13 (Ct. Of Int'l Trade, January 31, 2005) at 24 (Court affirmed Commission's finding of no price suppression where unit COGS increased less than unit net sales value).

that they would continue to recover these costs over the longer term. Also, while the increase in consumption over the period might have been expected to improve the pricing environment more, this growth was balanced by the re-entry of BRP into the domestic market.[216] We thus do not find that subject imports are having significant adverse price effects on domestic prices during the period of investigation.

D. Impact of the Subject Imports[217]

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[218] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[219]

We find that subject imports did not have a significant adverse impact on the domestic industry's performance. There is no correlation between increased subject imports, underselling and any declines in the financial performance of the domestic industry. Although subject import volume has increased, the volume of subject imports in the U.S. market is mitigated by the limited capabilities of U.S. producers vis-a-vis Japanese producers to serve the growing four-stroke portion of the market during most of the period of investigation, and the U.S. producers' own increased volume of subject imports over the period of investigation to enable them to broaden their product offering. Despite some underselling by subject imports, we have found no adverse price effects, and the condition of the domestic industry has improved in terms of increased production, shipments, sales, and gross profit. The domestic industry continues to operate at a loss, but that is due to increased selling, general and administrative ("SG&A") costs that are being incurred by the domestic industry to develop four-stroke and other "clean" engine technologies. We now elaborate on these industry trends.

The domestic industry's production increased overall by *** percent from 2001 to 2003, and it was *** percent higher in interim 2004 as compared to interim 2003. The domestic industry's production capacity increased by *** percent from 2001 to 2002, due to BRP's entry into the market with OMC's engine production facilities, and *** between 2002 and 2003 or in interim 2004.[220] The number of production workers increased irregularly by *** percent from 2001 to 2003, and hours worked increased irregularly by *** percent in this period. Although the number of production workers *** in interim

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[216] Apparent U.S. consumption rose by approximately *** percent from 2001 to 2003 (by value). CR/PR at Table C-1 (Revised). BRP's re-entry into the market increased domestic production capacity (domestic capacity in 2002, after entry of BRP into the market, was *** percent higher than 2001 levels). Calculated from CR/PR at Table III-3

[217] The statute instructs the Commission to consider the "magnitude of the dumping margin" in antidumping duty proceedings as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final antidumping duty determination, Commerce found ad valorem dumping margins for subject imports from Japan of outboard engines and powerheads of 18.98 percent for Yamaha and all others. 70 Fed. Reg. 326, 328 (Jan. 4, 2005).

[218] 19 U.S.C. § 1677(7)(C)(iii); see also, e.g., SAA at 851, 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.")

[219] 19 U.S.C. § 1677(7)(C)(iii); see also, e.g., SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386, 731-TA-812-813 (Prelim.), USITC Pub. 3155 at 25 n. 148 (Feb. 1999).

[220] CR at Table C-1 (Revised).

2004 as compared to interim 2003, the number of hours worked was *** percent higher in interim 2004 as compared to interim 2003.[221]

Shipments by the domestic industry of outboard engines and separately sold powerheads increased by *** percent from 2001 to 2003 measured by value, and *** percent measured in quantity. Shipments by the domestic industry were *** percent higher in interim 2004 as compared to interim 2003, measured by value, and *** percent higher in interim 2004, as compared to interim 2003, measured in quantity.[222] Net sales by the domestic industry of outboard engines and separately sold powerheads increased by *** percent from 2001 to 2003 measured by value, and by *** percent measured in quantity. In interim 2004, net sales were *** percent higher than in interim 2003, measured by value, and *** percent higher than in interim 2003 measured in quantity.[223] The higher increases in value as compared to quantity for shipments and sales reflect the shift in the market away from non-emissions-compliant carbureted two-stroke engines that are less expensive to manufacture toward emissions-compliant two stroke direct injection and four-stroke technology.

COGS and unit COGS also increased over the period of investigation. These increased costs reflect in part the shift in the industry toward "clean" engines, and in part ***.[224] ***.[225] However, sales values increased at a greater rate than total COGS, resulting in a declining ratio of COGS to total sales values, which is a positive development for the industry. [226]

The domestic industry's capacity utilization decreased over the period of investigation by *** percentage points from 2001 to 2003.[227] The decrease in capacity utilization was driven primarily by BRP's re-entry into the market in late 2001, which served to substantially increase domestic production capacity beginning in calendar year 2002.[228] Domestic capacity utilization was *** percentage points higher in interim 2004, (*** percent), than in interim 2003, (*** percent).[229] While the domestic industry's output did not keep pace with the overall consumption increase over the period of investigation, and its capacity utilization was relatively low, we attribute this to the fact that increased consumption has been driven by increased demand for four-stroke engines. The domestic industry made four-stroke engines only in a somewhat limited range of engine models during the period of investigation. Furthermore, with respect to some of the four-stroke horsepower engines it does produce, the domestic industry depends on four-stroke powerheads purchased from Japanese Respondents. Under these circumstances, it is not unexpected that the domestic industry has not benefitted fully from the growing market, and that it is not operating at levels approaching full capacity.

Gross profit for the industry increased from 2001 to 2003 by *** percent and it was *** percent higher in interim 2004 than in interim 2003.[230] However, SG&A costs were high for the industry and

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[221] CR at Table C-1 (Revised).

[222] CR at Table C-1 (Revised).

[223] CR at Table C-1 (Revised).

[224] CR at Table C-1 (Revised). CR at VI-12; PR at VI-2-3.

[225] CR at VI-12; PR at VI-2-3. BRP's reported start up costs are included in "other factory" costs. Expensing start up costs as incurred is appropriate under accounting principles generally accepted in the United States. CR/PR at Table VI-2, n.4.

[226] CR at VI-12; PR at VI-2-3.

[227] CR/PR at Table III-3.

[228] CR at III-7; PR at III-4 and CR/PR at Table III-3.

[229] CR at Table C-1 (Revised).

[230] CR at Table C-1 (Revised).

offset the industry's gross profit, leading to operating losses for the industry. [231] SG&A costs included research and development costs, ***, the overhead for both firms, and other costs.[232] The industry's operating loss ratios decreased by *** percentage points from 2001 to 2003, and by a similar *** percentage points between interim 2003 and interim 2004.[233]

The domestic industry reduced its capital expenditures by *** percent from 2001 to 2003, and they were *** percent lower in interim 2004, as compared to interim 2003.[234] This trend is not surprising given BRP's large investment in 2001 to enable it to commence operations, and in view of the fact that the industry has already expended large amounts of capital to develop new emissions-compliant engines. In contrast, its research and development costs have steadily increased over the period of investigation, and were higher in interim 2004 than in interim 2003.[235] Mercury has stated that it has expended $100 million to develop the Verado line of four-stroke engines.[236]

The domestic industry was active during the period of investigation in developing new four-stroke and emissions compliant technology such as Mercury's Verado line and BRP's E-Tec engines, to enable it to meet the growing demand for four-stroke and two-stroke emissions-compliant engines. We note that the domestic industry has been able to develop this new technology while subject imports have been present in the U.S. market. Subject imports have not significantly impeded the domestic industry from expending significant capital to develop new engine technologies. [237]

In light of our finding that the domestic industry has had a somewhat limited ability to serve the growing market for four-stroke engines, the lack of significant adverse price effects, the lack of any significant correlation between subject imports and any financial performance declines, and positive trends with respect to the domestic industry's sales, shipments, production and gross profit during the period of investigation, we do not find that subject imports have had a significant adverse impact on the domestic industry.[238] [239]

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[231] CR at VI-12-13; PR at VI-2-3.

[232] CR at VI-12; PR at VI-3.

[233] CR/PR at Table C-1 (Revised).

[234] CR/PR at Table VI-7and Table C-1 (Revised).

[235] CR/PR at Table VI-7.

[236] Mercury Posthearing Brief at 14.

[237] BRP argued that its development of its E-TEC line has been impeded by ***. It also argues that aggressive discounting by Japanese Respondents has ***. CR at II-2; PR at II-1; BRP Prehearing Brief at 1-2, 41. We find that BRP has been able to develop new technology in the form of its E-TEC engine line over the period of investigation. CR at III-4; PR at III-3. To the extent that BRP's development efforts have been delayed by ***, we find any material harm that it has suffered during the period of investigation has been due to the difficulties it has had in entering the market and gaining market share. As stated in our discussion of the conditions of competition, BRP has been hampered in its efforts to gain market share due to the persistent questions regarding the reliability of two-stroke direct injection engines, due in large part to OMC's problems with its two-stroke direct-injection engines. It also has been negatively affected by the consequences of OMC's treatment of its dealers prior to filing bankruptcy, and BRP's failure to honor certain warranties. None of these problems is related to pricing competition by subject imports.

[238] Mercury argued that improvements in its financial condition in interim 2004 were attributable to the pendency of the investigation, and an overall improvement in the market for outboard engines. Mercury Prehearing Brief at 62. The petition was filed in January 2004, during the interim (January to September) 2004 period. We find that the positive trends from 2001 to 2003 with respect to domestic industry production, sales, shipments, and gross profit continued into interim 2004 as compared to interim 2003 data. Trends in import volume and apparent consumption also continued. Thus, we do not find that the data regarding the impact of subject imports on the domestic industry have been materially affected by the pendency of the investigation. Therefore, we have not discounted any

(continued...)

V. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[240] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."[241] In making our threat determination, we have considered all factors that are relevant to this investigation.[242]

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[238] (...continued)
postpetition data in conducting our injury analysis. 19 U.S.C. § 1677 (7)(I).

[239] Commissioner Pearson further notes that *** percent of total domestic producer shipments were exported to other markets in 2001, *** percent in 2002, and *** percent in 2003. This represents a substantial portion of domestic production that does not seem to have been adversely affected by competition from subject imports in the U.S. market. CR/PR at Table III-6.

[240] 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

[241] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

[242] 19 U.S.C. § 1677(7)(F). The Commission must consider, in addition to other relevant economic factors, the following statutory factors in its threat analysis:

> (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement and whether imports of the subject merchandise are likely to increase,
> (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
> (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
> (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,
> (V) inventories of the subject merchandise,
> (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,
> (VII) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),
> (VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and
> (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it

(continued...)

We find that the increase in volume and market share of subject imports does not indicate a likelihood of substantially increased subject imports in the imminent future. Although subject imports increased over the period of investigation, and were higher in interim 2004 than in interim 2003, the increase in subject import market share was concentrated in subject imports of high horsepower four-stroke engines not made in the United States until recently, and was attributable to the domestic industry's own imports of subject imports, as discussed above.[243] BRP has characterized its subject imports as a temporary measure while it develops its own four-stroke engine technology. Although Mercury has indicated that it will continue to import some four-stroke powerheads and engines, there is no indication that Yamaha intends to provide substantially more four-stroke powerheads or engines to Mercury, given that it has terminated its agreements to supply outboard engines to boat companies purchased by Brunswick, Mercury's parent company, and in light of other litigation involving Yamaha and Mercury.[244] Further, as discussed below, Japanese Respondents are experiencing significant capacity constraints.

We find that the record does not support a conclusion that unused production capacity or any imminent increases in production capacity in Japan will lead to substantially increased imports in the imminent future.[245] Japanese Respondents are experiencing significant capacity constraints. Respondents were utilizing 98.5 percent of their production capacity in 2003, and 103.3 percent of their production capacity in interim 2004.[246] These rates were substantially above the rates from earlier in the period of investigation, particularly 2001. While the Japanese industry projects an increase in capacity in 2005, this is due to a projected increase by ***.[247] The Japanese industry projects that a declining share of its exports will be directed toward the United States, and only modest increases in exports to the United

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[242] (...continued)
is actually being imported at the time).

Moreover, the Commission shall consider the threat factors "as a whole" in making its determination "whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur" unless an order issues. In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.

Factors I and VII are inapplicable to this investigation.

[243] CR/PR at Table C-1 (Revised).

[244] CR at III-2-3, n. 4, III-15; PR at III-2-1, n.4, III-6.

[245] CR/PR at Table VII-5. Mercury challenged the capacity data submitted to the Commission by Yamaha and Honda. Mercury alleged that the *** reported by Yamaha and Honda are contradicted by public statements in a plant brochure issued by Yamaha and a press release issued by Honda. Mercury Prehearing Brief at 100-102.

Yamaha states that the capacity data shown in its brochure are approximately correct given its capacity to produce nonsubject powerheads and outboard engines in France. Yamaha Posthearing Brief, Answers to Commissioner Questions at 64.

Honda states that there is no *** between its press release and its questionnaire response. Its questionnaire response was based on its actual product mix, *** which differs from its anticipated production of *** at that plant when it began operations. The ***. Honda Posthearing Brief, Response to Question at 1-2. We see no reason to question the Japanese Respondents' explanation of their data.

[246] CR/PR at Table VII-5.

[247] CR/PR at Table VII-3. *** Foreign Producer Questionnaire Response at II-1 ***. ***. CR at VII-3; PR at VII-2-3. *** Foreign Producer Questionnaire Response at II-11 (revised Nov. 19, 2004 ***. ***. CR/PR at IV-1.

States in 2004 and 2005.[248] Japanese Respondents direct most of their exports to countries other than the United States.[249]

Nor do we find that inventory levels indicate a likelihood of substantially increased imports in the imminent future. Japanese producers' ratios of inventories to production and to total shipments were 7.9 percent and 7.4 percent, respectively, in 2001. They declined from those levels between 2001 and 2003 and are not projected to exceed 2001 levels in 2004 or 2005.[250] The ratios of U.S. importers' subject inventories to imports and to U.S. shipments declined between 2001 and 2003, although the interim 2004 ratios as compared to interim 2003 ratios were slightly higher. The largest inventory of subject merchandise held by U.S. importers during the period of investigation was 35,256 units in interim 2004, which constituted *** percent of apparent U.S. consumption in that period.[251]

Given the absence of significant negative price effects by subject imports during the period of investigation, we do not find it likely that subject imports will have significant adverse price effects in the imminent future. As discussed above, factors in addition to price, such as technology preference, quality and reliability, are very important in purchasing decisions and likely to remain so. While subject imports undersold the domestic product to some extent during the period of investigation, there was no evidence that subject imports were depressing or suppressing U.S. prices to any significant degree. As discussed above, we do not find significant correlations between increases in underselling and increases in market share over the period of investigation, nor any clear evidence of price depression or suppression. We do not find that subject imports are entering the United States at prices that are likely to increase demand for further imports because we find that any increase in subject import volume will be caused by the increasing demand for four-stroke engines, rather than subject import prices.

The record reflects that the equipment used by Japanese Respondents to manufacture outboard engines is exclusively used for that purpose, except for ***. Therefore, we do not find that Japanese Respondents have any significant capability to shift their production capacity from other products to the production of outboard engines.

We do not find that subject imports are likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. Mercury and BRP have not been hampered by subject imports in developing and producing new technologies over the period of investigation, and we do not foresee that the situation will change in the imminent future. Mercury spent $100 million to develop its new Verado four-stroke engine product line, which it began to market at the very end of the period investigated. We anticipate that both Mercury and BRP will continue to develop their Verado and E-Tec lines.

There are no antidumping duty findings or orders on outboard engines from Japan in other markets. Finally, we find no evidence of any other demonstrable adverse trends that indicate a probability that the subject imports will materially injure the domestic industry.[252]

We find that the domestic industry is not vulnerable to a threat of material injury by reason of subject imports from Japan. The domestic industry has experienced an improved financial condition over the period of investigation, as apparent U.S. consumption has increased. Based on our consideration of the statutory factors, we find that the domestic industry producing outboard engines and powerheads is not threatened with material injury by reason of subject imports from Japan.

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[248] CR/PR at Table VII-5.

[249] CR/PR at Table VII-5. Yamaha reported that the outboard engines it sells to third countries are much more heavily weighted toward two-stroke technology, because the environmental restrictions are less stringent. Yamaha Posthearing Brief at 15.

[250] CR/PR at Table VII-5.

[251] CR/PR at Table VII-6.

[252] 19 U.S.C. § 1677(7)(F)(I)(IX).

CONCLUSION

For the above-stated reasons, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of outboard engines and powerheads from Japan that are sold in the United States at less than fair value.

DISSENTING VIEWS OF CHAIRMAN STEPHEN KOPLAN AND COMMISSIONER CHARLOTTE R. LANE

Based on the record in this investigation, we determine under section 735(b) of the Tariff Act of 1930, as amended ("the Act"), that a domestic industry is being materially injured by reason of imports from Japan of outboard engines that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV"). We therefore dissent from the Commission's negative determination. While we join the Commission's discussion of, and conclusions regarding, the legal standards in general and the definition of the like product and domestic industry, we write separately in order to set forth our analysis of conditions of competition in this market and material injury.

I. BACKGROUND

On January 8, 2004, Mercury Marine ("Mercury"), a division of Brunswick Corp., filed an antidumping duty petition alleging that outboard engines from Japan were being sold in the United States at LTFV. On March 1, 2004, the Commission preliminarily determined that there was a reasonable indication that LTFV imports of outboard engines from Japan had caused material injury to the domestic industry.[1] Commerce made its preliminary and final determinations of dumping on August 12, 2004 and January 4, 2005, respectively.[2]

II. MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM JAPAN

In making a final determination in an antidumping or countervailing duty investigation, we are to determine whether an industry is materially injured "by reason of" the imports under investigation.[3] In doing so, we consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[4]

A. CONDITIONS OF COMPETITION

In evaluating the impact of subject imports on the domestic industry, the statute directs us to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[5] The conditions of competition in this industry are complex, in part because of the wide range of product offerings, changes in the Environmental Protection Agency ("EPA") and the California Air Resources Board ("CARB") emissions regulations for outboard engines and the complicated relationships between engine manufacturers, boat builders, also known as original equipment manufacturers ("OEMs") and boat dealers.

There are three basic types of outboard engines sold in the U.S. market: two-stroke carbureted, two-stroke direct injection, and four-stroke. Each type is available in a wide range of horsepower ("hp").

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[1] See 69 FR 9643.

[2] See 69 FR 49863 and 70 FR 326.

[3] 19 U.S.C. § 1671d(b).

[4] 19 U.S.C. § 1677(7)(B)(i).

[5] 19 U.S.C. § 1677(7)(C)(iii). The Commission's normal practice is to consider data for the three most recent calendar years, plus interim periods where applicable. We agree with the majority opinion that the appropriate period of investigation in this investigation is the Commission's standard three year period, 2001 to 2003, plus interim data for the first nine months of 2004.

Engine manufacturers, such as Mercury, sell outboard motors to boatbuilder OEMs, and to boat dealers. OEM boat builders are the largest channel of distribution for outboard engines, followed by boat dealers. OEM boatbuilders may be owned by an engine manufacturer, have an exclusive contract with an engine manufacturer, or be an independent boat builder. Dealers often purchase and resell boat/engine packages that they receive from OEMs. The following conditions of competition inform our analysis.

1. Demand Conditions

The purchase of outboard engines is dependent upon the demand for boats powered by such engines, a highly discretionary purchase. Therefore apparent U.S. consumption of such engines tends to track the health of the overall economy. Over the period examined, U.S. apparent consumption of outboard engines (and separately sold powerheads) increased by both quantity and value. By quantity, it rose from *** units in 2001 to *** units in 2002, then fell slightly to *** units in 2003.[6] The increase in apparent consumption by quantity from 2001 to 2003 was *** percent.[7] Apparent consumption was *** percent higher in the first nine months of 2004 than in the first nine months of 2003.[8]

Apparent consumption also rose when measured by value. Such consumption was $*** in 2001, $*** in 2002 and $*** in 2003.[9] The increase between 2001 and 2003 was *** percent.[10] It was *** percent higher in interim 2004 than in 2003.[11]

The parties agree that recent EPA and CARB emissions standards have increased demand for emissions-compliant two-stroke direct injection and four-stroke engines, and reduced demand for non-compliant two-stroke carbureted and two-stroke EFI engines ("dirty" engines).[12] Under these new regulations, engine manufacturers earn "credits" toward compliance by selling engines that have cleaner emissions than required. These credits can be used to offset "debits" or "negative credits" that the companies incur when they sell "dirty" engines.[13] Federal environmental regulations will largely if not completely eliminate sales of two-stroke carbureted engines by 2006.

2. Supply

There are currently only two domestic producers of outboard engines, Mercury and BRP U.S., Inc. ("BRP"). BRP purchased the outboard engine production facilities of Outboard Marine Company ("OMC") which went bankrupt in late 2000. BRP entered the market in late 2001. Over the period examined, seven Japanese manufacturers/exporters exported outboard engines into the U.S. market: Yamaha, Nissan, Suzuki, Honda, Mercury Marine Japan, which is affiliated with U.S. producer Mercury, Tohatsu Corp., and Tohatsu Marine Corp. In addition, Mercury and BRP have imported the subject product from Japan during the period examined. Japanese Respondents argue that the Commission should take into account the fact that the domestic producers, Mercury and BRP, have themselves been responsible for importing the subject product in assessing injury to the domestic industry.[14]

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[6] Confidential Staff Report ("CR")/Public Staff Report ("PR") at Table C-1 (Revised).

[7] CR/PR at Table C-1 (Revised).

[8] CR/PR at Table C-1 (Revised).

[9] CR/PR at Table C-1 (Revised).

[10] CR/PR at Table C-1 (Revised).

[11] CR/PR at Table C-1 (Revised).

[12] See, e.g., Mercury Prehearing Brief at 36.

[13] Joint Respondents' Prehearing Brief at 2-3.

[14] Joint Respondents' Final Comments at 4.

Data collected in this investigation indicates that U.S. producers' reported capacity utilization for outboard engines fell from *** percent to *** percent between 2001 and 2003. Thus, domestic producers of outboard engines possessed excess capacity to produce such engines during the period examined.[15]

3. Substitutability

Domestically produced and subject imported outboard engines are more than moderately substitutable for each other.[16] Furthermore, the record indicates that outboard engine technologies are not a significant restricting factor regarding interchangeability. Both domestic producers indicated their belief that all technologies, carbureted engines, electronic fuel injection engines, direct fuel injection engines, 2-stroke engines and 4-stroke engines are interchangeable.[17] The responses from importers were less definitive regarding interchangeability; however, none of the importers indicated that there was no interchangeability between the various technologies. Finally, a large majority of purchasers indicated that various technologies were interchangeable either "always" or "frequently."[18] A majority of purchasers also responded that 2-stroke direct fuel injection engines were superior or comparable to 4-stroke engines in eight of the ten comparability categories included in the questionnaires.[19]

When asked to compare 2-stroke carbureted or electronic fuel injection engines to 4-stroke carbureted or electronic fuel injection engines, a majority of the purchasers rated the 2-stroke engines either superior or comparable in five of the ten categories included in the questionnaires.[20] When asked about interchangeability between U.S.-produced engines and engines produced in Japan, all of the domestic producers responded that the products were always interchangeable.[21] Half of the importers responding to this question indicated that U.S. produced engines were either always or frequently interchangeable.[22] The remaining half indicated that the products based on country of origin were sometimes interchangeable.[23] There were no questionnaire responses indicating that the products from differing countries of origin were never interchangeable.

In 16 qualitative categories, comparisons of U.S.-produced engines and subject imports from Japan by purchasers resulted in the U.S. product being rated either superior or comparable by a majority of responders in all 16 categories.[24] Although the categories of "product consistency", "product range",

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[15] CR at II-3, PR at II-2.

[16] CR at II-7, PR at II-4. Substitution elasticity measures the responsiveness of relative consumption between U.S. produced product and subject imports to changes in their relative prices. This elasticity factor represents expected switching between U.S. produced product and subject imports as the relative price differentials between those products change. The Commission's staff report estimated a substitution elasticity in the range of 2 to 4. Petitioner argued that a substitution elasticity in the range of 4 to 6 was more appropriate based on the interchangeability and quality responses given on the questionnaires. Domestic producer BRP calculated a range of 2.5 to 5 using the pricing data collected in Commission questionnaires. CR at II-22-II-23, PR at II-16.

[17] CR at II-16 and Table II-3, PR at II-11 and Table II-3.

[18] CR at II-13 and Table II-3, PR at II-9 and Table II-3.

[19] CR/PR at Table II-4.

[20] CR/PR at Table II-4.

[21] CR/PR at Table II-6.

[22] CR/PR at Table II-6.

[23] CR/PR at Table II-6.

[24] CR/PR at Table II-9.

"quality exceeds industry standards" and "quality meets industry standards" received a significant number of inferior ratings for the U.S.-produced product, the number of such ratings was in the minority.[25] A large majority rated U.S.-produced engines as comparable to engines produced in Japan in those categories.[26] Thus, based on the record, we find that there is more than a moderate degree of substitutability between U.S.-produced engines and subject imports.

4. Effect on Domestic Producers of Changing Environmental Regulations

In order to comply with new EPA and CARB requirements, domestic engine manufacturers have incurred the additional expense of developing and promoting engine models that are able to meet the more stringent restrictions placed on outboard engine emissions. In order to do this, Mercury and to a lesser extent, BRP, have invested substantial sums of money in developing both new models of clean-burning two-stroke direct injection engines, such as Mercury's Optimax, and BRP's E-Tech engines, and new models of clean four-stroke engines such as the new Mercury Verado line. Mercury indicated that it has spent over $100 million in the past six years developing the Verado family of engines, stating that "innovative engines are expensive to design and expensive to manufacture."[27]

B. VOLUME OF THE SUBJECT IMPORTS

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[28]

Based on the record in this investigation, we find that the volume of subject imports was large and increased significantly during the period examined, both in absolute terms and relative to production and consumption in the United States. Measured by value, the volume of U.S. shipments of subject imports (outboard engines and powerheads) increased from $535 million in 2001 to $745 million in 2002, and to $785 million in 2003.[29] The increase between 2001 and 2003 was 46.7 percent. The value of U.S. shipments of subject imports was 12.7 percent higher in interim 2004 than in interim 2003. By quantity, U.S. shipments of subject imports also increased, from 151,989 units in 2001 to 190,443 units in 2002 and to 197,807 units in 2003. This resulted in an increase during 2001-03 of 30.1 percent. The quantity of U.S. subject import shipments in interim 2004 was 2.1 percent lower than in interim 2003.[30]

The subject imports share of U.S. apparent consumption rose over the period examined. Subject imports share of U.S. apparent consumption measured in value increased from *** percent in 2001 to *** percent in 2002 then to *** percent in 2003. Subject imports market share was *** percent higher in

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[25] CR/PR at Table II-9.

[26] CR/PR at Table II-9.

[27] CR at VI-12, n. 5, PR at VI-3, n.5, citing Mercury's Posthearing Brief at p. 2.

[28] 19 U.S.C. § 1677(7)(C)(i).

[29] CR/PR at Table C-1 (Revised).

[30] CR/PR at Table C-1 (Revised). We note, however, that the petition was filed on January 8, 2004 and the Commission made its affirmative preliminary injury determination on March 1, 2004. Thus, interim period data may have been influenced by the filing of the petition. See 69 FR 9643. 19 U.S.C. § 1677(7)(I), states that :

> The Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation . . . is related to the pendency of the investigation, and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

interim 2004 than in interim 2003. The domestic industry's share of the U.S. market measured in value decreased from *** percent in 2001 to *** percent in 2002 and further decreased to *** percent in 2003. It was *** lower in interim 2004 than in interim 2003. Nonsubject imports were not a significant factor in the U.S. market because they never exceeded *** percent of the market, measured by value, over the period examined.[31]

Finally, the volume of subject imports from Japan relative to domestic production was also large and increased over the period examined. It was *** percent in 2001, *** percent in 2002, and *** percent in 2003. This ratio was slightly lower in interim 2004 than in interim 2003.[32]

Respondents argued that the Commission should discount the volume and increase in volume of subject imports over the period examined because some of these imports have been brought into the U.S. market by domestic producers.[33] Respondents asserted that "*** in import market share of outboard engines is attributable to *** imports by the domestic producers."[34] Respondents also argued that "{b}ecause domestic producers have been able to import 4-stroke engines during the POI, ***."[35] Petitioner disagreed and argued that "for the period 2001 to 2003, U.S. producers imported only $*** or *** percent of the increase in subject imports of $***."[36]

We note at the outset that it is Commission practice generally to treat subject imports as subject imports regardless of the identity of the importer.[37] In this investigation, domestic producers' U.S. shipments of imports from Japan by quantity ranged from *** percent of domestic consumption in 2001 to *** percent of domestic consumption in 2003, while other importers' shipments of imports accounted for *** percent in 2001 and rose to *** percent of domestic consumption in 2003.[38] In absolute terms, U.S. producers were responsible for less than half of the increase in subject imports during the three-year period examined.[39]

Accordingly, we find that subject import volume was significant during the period examined, both in absolute terms and relative to consumption and production in the United States.

C. PRICE EFFECTS OF THE SUBJECT IMPORTS

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether--

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[31] CR/PR at Table C-1 (Revised). In terms of volume, nonsubject imports market share never exceeded *** percent of apparent domestic consumption over the period examined. Id.

[32] The ratio of U.S. imports of subject engines and powerheads to U.S. production of engines was *** percent in interim 2004 as compared to *** percent in interim 2003.

[33] Joint Respondents' Final Comments at 4.

[34] Joint Respondents' Prehearing Brief at 41, Joint Respondents' Final Comments at 4.

[35] Joint Respondents' Final Comments at 4-5.

[36] Mercury's Final Comments at 6.

[37] In Wooden Bedroom Furniture From China, Inv. No. 731-TA-1058 (Final), USITC Pub. No. 3743 (Dec. 2004), the Commission found a domestic industry to be injured by LTFV imports of merchandise from China despite the fact that domestic producers imported approximately one third of all subject merchandise imported into the United States during the period examined. Id. at 19.

[38] CR/PR at Table C-1 (Revised).

[39] CR/PR at Table IV-3. Subject imports from Japan increased by 50,144 units from 157,333 units in 2001 to 207,477 units in 2003. Domestic producers' imports of subject product from Japan during this period increased by *** units from *** units in 2001 to *** units in 2003. Id.

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[40]

As discussed above, we find that there is more than a moderate degree of substitutability between domestic outboard engines and the subject imports, and that this elasticity of substitution coupled with the significant volume of subject imports creates a nexus between pricing of subject imports and the ability of U.S. producers to market their product.

Not surprisingly for a complex consumer product, the record indicates that there are several important considerations in purchasing decisions. Price is one of these factors. Out of 59 purchasers responding to the Commission's questionnaire, more purchasers (19) listed dealer or customer demand for a particular product as the number one purchasing decision factor. Quality was listed as the number one purchasing decision factor by 15 responding purchasers. Price was the third most frequently reported number one purchasing decision factor, being so listed by only 6 responding purchasers. In all, 33 of the responding purchasers listed price as one of the top three purchasing decision factors . This total was matched only once as 33 responding purchasers also listed availability as among their top three purchasing decision factors. Factors such as specific dealer or customer demand and quality were reported progressively less frequently, totaling 27 and 24 respectively.[41]

Statements and testimony on this issue at the Commission's hearing were mixed; however, the importance of price was confirmed by certain of the witnesses appearing at the hearing. In his opening remarks, Mr. Wolfe, Counsel for Petitioner, pointed out that "(p)rice was the sole reason given at the time by Genmar for reducing purchasers (sic) from Mercury while increasing the volume purchased from Japanese imports." [42] Jeff Miller, President of Miller's Boating Center, testified that "(f)or the boat builder, if he can get a particular engine cheaper than a competing engine, he is going to put the less-expensive engine on the boat because he knows it will be easier to sell the package to dealers and ultimately to consumers."[43] In response to questioning from the Commission, Lee Kimmell, American Marine Holdings, testified that "(f)or us, the choice of engine is price related . . . ."[44]

1. Price Comparisons and Underselling:

The Commission gathered pricing data on six products. Data were reported separately for sales to OEMs and sales to dealers. The share of sales of U.S.-produced outboard engines to OEMs was *** percent in 2003. The instances of underselling and overselling by the subject imports from Japan were mixed; however, there was more underselling than overselling. For all products and channels of distribution there were 180 quarterly comparisons between domestic outboard engines and imports of subject engines from Japan. Of these 180 comparisons the subject imports were priced below the domestic product 113 times, amounting to 63 percent of the pricing comparisons. Margins of underselling ranged from 0.1 percent to 16.1 percent with an average of 5.8 percent.[45] Subject imports from Japan were priced above the domestic product 65 times, or 37 percent of the pricing comparisons.

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[40] 19 U.S.C. § 1677(7)(C)(ii).

[41] CR/PR at Table II-9.

[42] Hearing Transcript ("Tr.) at 24.

[43] Tr. at 56.

[44] Tr. at 69.

[45] CR at V-25, PR at V-8.

Margins of overselling ranged from 0.2 percent to 23.7 percent, averaging 6.8 percent.[46] In the remaining two pricing comparisons, prices of domestic product and subject imports were the same.

Product 2, a carbureted, 2-stroke, 90 horsepower engine, had the *** market share of the 6 products for which data was gathered. Product 2 represented *** units for all six pricing products over the entire period for which data were obtained. Out of a total of 30 quarters of data (15 quarters for sales to OEMs and 15 quarters for sales to dealers), the subject imports from Japan undersold the domestic product in 16 quarters.[47]

Product 7, an electronic fuel injected, 4-stroke,115 horsepower engine, had the *** market share of the 6 products for which data were gathered ***. The subject imports undersold the domestic product in 24 out of 30 quarterly comparisons.[48] For both the domestic product and the subject imports, *** percent of sales of this product occurred in the OEM channel. In the OEM channel, subject imports undersold the domestic product in 14 out of 15 quarters. The underselling in this product category is of particular importance since this is a 4-stroke product, which is the product line for which the Japanese Respondents argued that subject imports are gaining market share due to their lead in 4-stroke technology. With the subject imports consistently underselling the domestic product, the data show market shares for subject imports that are *** of any of the pricing products. Annual market share data derived from the pricing data show that the subject import market share of product 7 was *** in 2003.

Taken as a whole, we find the level of underselling in this investigation to be significant.

2. Price Depression/Suppression:

Respondents claimed that the pricing data show no correlation between market share and relative prices. Petitioner claimed that a correlation exists and that the "Japanese market share surged in 2001 when underselling began in earnest, and has continued to increase from 2002 to 2004 when underselling ***."[49]

Mercury asserted that with respect to Products 2 and 3, the traditional carbureted two-stroke engines, there is a correlation between underselling by subject imports and their market penetration.[50] With regard to Products 4 and 5, two-stroke direct injection engines, Mercury argued that domestic producers had to reduce their prices to compete against Yamaha's four-stroke prices and to maintain market share.[51] With respect to Products 6 and 7, both four-stroke engines, Mercury argued that underselling by subject imports was the ***. It argued that *** underselling of domestic four-stroke engines by subject imports belies Japanese Respondents' claims that the increasing market share of subject imports is primarily due to the natural advantage of Japanese producers in four-stroke engine technology.[52]

Mercury stated that, in addition to underselling the domestic product, subject imports from Japan are depressing domestic prices in the OEM channel of distribution. In contrast to the dealer channel of distribution, in which domestic prices increased and subject import prices for half of the products surveyed increased, domestic industry prices and subject import prices to OEMs both fell for five of the

[46] CR at V-25, PR at V-8.

[47] CR/PR at Tables V-1 and V-7.

[48] CR/PR at Tables V-6 and V-12.

[49] Mercury's Posthearing Brief at 6.

[50] Mercury's Prehearing Brief at 52-54.

[51] Mercury's Prehearing Brief at 55-56.

[52] Mercury's Prehearing Brief at 56-57.

six products surveyed. Mercury contended that the OEM channel of distribution has increased in importance, and the domestic industry has lost market share in this channel of distribution.[53]

BRP similarly argued that Japanese producers, in particular Yamaha, employed "drastic" price reductions and other price and non-price incentives to seize market share that had previously been held by OMC. BRP argued that the Japanese producer pricing suppressed domestic producers' prices and severely limited their sales opportunities.[54] BRP argued that subject imports competed on the basis of price throughout the period examined to retain the market share gains they made in 2001 and to continue to gain further market share. Notwithstanding BRP's entry into the market in late 2001, subject imports continued to gain market share.[55] BRP argued that prices for two-stroke carbureted engines were depressed by underselling by the subject imports in this technology category.[56]

A review of the pricing data reveals that quarterly shifts from underselling to overselling, and significant quarterly reductions in the margins of underselling, are attributable, at least in part, to price reductions by the domestic product. For a significant number of products, the pricing data show shifts from underselling to overselling that are attributable not to increasing prices for the subject imports, but to falling prices for the comparable domestic products.[57]

For example, for pricing Product 2 sold to OEM's, there were two quarters for which the pricing comparisons shifted abruptly from underselling to overselling. In one of these quarters, the price for the subject imports actually declined from the preceding quarter and therefore did not account for the shift at all. However, in both instances the price for U.S.-produced engines declined more than the price of the subject imports, thereby accounting for the entire shift to overselling by the subject imports.

For Product 3 sold to OEM's, there were two quarters for which the pricing comparisons shifted abruptly from underselling to overselling. In both of these quarters there was a larger decrease in the price of the U.S.-produced engines than there were increases in the price of the subject imports.

For Product 4 sold to OEM's, there were three quarters for which underselling shifted to overselling. In all three instances, the shift was due either partially or entirely to decreases in the price for U.S.-produced engines.

For Product 5 sold to OEM's, the shift from underselling to overselling was entirely attributable to a significant drop in the price for U.S. produced product. In the instance of this product, the significant price decline in the *** was never recovered and prices remained lower than the fourth quarter 2001 price throughout the remainder of the period examined, except for one quarter.

For Products 6 and 7 sold to OEMs, there was consistent underselling throughout the period examined. For each of these products, where margins of underselling declined from one quarter to another, the decline was often the result of reductions in the price for U.S.-produced engines.

For sales to dealers, this pattern of declines in U.S. producer prices was the sole or contributing factor to shifts from underselling to overselling, as well as a factor in declines in underselling margins or increases in overselling margins from quarter to quarter, continued consistently except for Product 3.

As discussed above, we find that the instances of underselling are significant and injurious to U.S. producers and the instances of overselling are often attributable to significant reductions in the prices charged for the U.S.-produced engines. For an industry in financial difficulty and facing competition from unfairly traded imports, the price drops that created overselling cannot be ignored and the instances of overselling must be evaluated accordingly.

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[53] Mercury's Prehearing Brief at 57-58.

[54] BRP's Prehearing Brief at 1-2.

[55] BRP Prehearing Brief at 18.

[56] BRP Prehearing Brief at 24-26.

[57] CR/PR at Tables V-1 to V-12.

The comparison of price changes from first quarter 2001 to third quarter 2004 indicates that for five pricing products all in the OEM channel of distribution, domestic prices declined.[58] It is significant that the drop in prices occurred in the OEM market. This market is the larger market for sales of the U.S.-produced engines. U.S. Producers' sales to OEMs were *** percent of their total sales quantity in 2001. This market increased steadily to *** percent in 2003. For the interim 2004 period, the U.S. producers' sales to OEMs were *** percent of their total shipments.[59] These price declines in the OEM market reflect a comparison of the first quarter of 2001 to the third quarter of 2004. In five of the six products priced in the OEM market, prices increased from the fourth quarter of 2003 to the third quarter of 2004. Thus, for those products, the calculated percentage decrease in prices would be even greater when comparing the first quarter of 2001 to the fourth quarter of 2003. This increase in prices in 2004 reflects mostly post-petition data.

The price trends over the period examined in the dealer market reflect domestic price increases. However, the quarterly comparisons that show some significant price increases in the dealer market are impacted by some very low starting numbers for several products. For example, the *** percent increase in the price of Product 2 sold to dealers is based on a first quarter 2001 price of $***. However, the prices in the following quarters of 2001 averaged above $*** per unit. The price increases in the dealer market reflect a comparison of the first quarter of 2001 to the third quarter of 2004. For five of the six products, prices increased from the fourth quarter of 2003 to the third quarter of 2004. Thus, for those products, the calculated increase in prices would be lower when comparing the first quarter of 2001 to the fourth quarter of 2003. This increase in prices in 2004 reflects mostly post-petition data.

In this investigation the Commission was unable to confirm any lost sales or lost revenue allegations.[60] We note that while in some investigations information concerning confirmed lost sales and lost revenue allegations is highly probative, the absence of such confirmed allegations, which normally cover a relatively small percentage of sales, is not dispositive of whether subject imports are adversely affecting U.S. prices or adversely affecting the U.S. industry.[61]

Overall, we believe that the pricing data show that underselling resulted in U.S. price reductions in order to compete against subject imports from Japan, and the overall downward trend in prices over the period examined in the OEM market, which is the largest market for domestic sales; and the trend for prices to increase in all markets after filing of the petition, indicate that there has been some degree of price depression.

The data show that the domestic industry has not raised its prices by amounts sufficient to cover cost increases and meaningfully reduce its *** net operating losses. As discussed more fully below, the domestic industry is clearly unable to raise its prices either to cover its cost increases or to make any significant movement toward profitability. While the record is mixed on the issue of price depression, the pricing information considered in conjunction with the profit squeeze reflected in the financial data for the domestic industry supports a finding that domestic prices have been suppressed by the pricing of subject imports.

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[58] CR/PR at Table V-13.

[59] CR/PR at Table I-2.

[60] CR/PR at Tables V-4 & V-5.

[61] See, e.g., Makita Corp. V. United States, 974 F.Supp. 770, 789 (Ct. Int'l Trade 1997); Acciai Speciali Terni, S.p.A. v. United States, 19 C.I.T. 1051, 1056-57 (1995)("The Commission was not in error in not finding the lack of confirmed lost sales evidence determinative.")

D. IMPACT OF THE SUBJECT IMPORTS ON THE DOMESTIC INDUSTRY.

In examining the effect of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[62] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[63]

Mercury alleged that the domestic industry has suffered significant loss of market share to subject imports from Japan that have undersold the domestic product. Domestic producers, therefore, have suffered financial losses due to depressed and suppressed prices directly attributable to the unfair competition from subject imports.[64] Mercury further asserted that a more accurate picture of the trend in the domestic industry's operating performance can be obtained by removing the start-up costs for BRP, which are one-time expenses related to bringing a new factory into production.[65]

BRP argued that it has ***, suffered layoffs, suffered ***, and has placed several manufacturing facilities on the market due to subject imports pricing practices.[66] BRP argued that it faces additional injury because it has not ***.[67]

Output of domestically produced outboard engines increased between 2001 and 2003. Output increased from *** units to *** units, an increase of *** percent.[68] This change in output is influenced by BRP's startup in 2001. Since BRP was not in full operation in 2001, the comparison over the entire period examined is skewed. From 2002 to 2003, domestic outboard engine output decreased from *** units to *** units, a decline of *** percent. In the interim periods, output increased in interim 2004 as compared to interim 2003.[69] U.S. shipments of domestically produced outboard engines and powerheads increased between 2001 and 2003. Sales rose from *** units to *** units, an increase of *** percent.[70] Similar to the output data, this change in U.S. shipments is influenced by BRP's startup in 2001. In 2002 and 2003, two years that are less influenced by the BRP startup, and therefore more comparable than the beginning to end of the period examined, domestically produced engines and powerheads decreased from *** units to *** units, a decline of *** percent.

U.S. producers' inventories of outboard engines declined steadily from 2001 to 2003. The 2001 engine inventory level ended at *** units. The 2003 engine inventory level ended at *** units.[71] This represents a reduction in engine inventories of *** percent. *** reported powerhead inventories.[72] The level of *** end of period inventories during the period examined ***. Since the quantity of powerhead inventories is relatively small, the change in combined inventories of both engines and powerheads was

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[62] 19 U.S.C. § 1677(7)(C(iii).

[63] 19 U.S.C. § 1677(7)(C)(iii).

[64] Mercury's Prehearing Brief at 25.

[65] Mercury's Prehearing Brief at 62.

[66] BRP's Prehearing Brief at 2, 41-42.

[67] BRP's Prehearing Brief at 40-41.

[68]CR/PR at Table C-1 (Revised).

[69] CR/PR at Table C-1 (Revised).

[70] CR/PR at Table C-1 (Revised).

[71] CR/PR at Table III-8.

[72] CR/PR at Table E-3.

similar to the engine-only data. Over the period examined, total inventories decreased from *** units to *** units, a decrease of *** percent.

Capacity of the domestic industry increased significantly from 2001 to 2003 as would be expected given the startup of BRP in 2001. Capacity utilization for production of complete outboard engines was *** percent in 2001, *** percent in 2002 and *** percent in 2003. These data represent a decline in capacity utilization of *** percentage points from 2001 to 2003 and a further decline of *** percentage points from 2002 to 2003.[73] As discussed earlier, market share of domestically produced outboard engines and powerheads declined over the period examined.

Profits, cash flows and return on investment for the domestic producers paint a bleak picture for this industry. Gross income or (loss), before SG&A expenses, was reported as increasing; it was *** in fiscal years 2001, 2002 and 2003, respectively.[74] SG&A expenses over the same period were ***. Net operating income or (loss) for the industry was *** in fiscal years 2001, 2002 and 2003, respectively.[75] This uneven, but apparent improvement in the net operating income of the industry as well as the apparent improvement in gross income before SG&A expenses is heavily influenced by expenditures for start up of the new BRP plant. The "other factory cost" category of the financial statements included *** in start up costs for BRP in the 2001 data. In addition, there was *** in start up costs reported in the SG&A expense categories.[76] Staff further reported that the expenses in 2002 had been ***.

There is no question that these start up costs were incurred or that they were properly accounted for. Although consistent with generally accepted accounting principles ("GAAP"),[77] we find that when costs are extraordinary, significant and non-recurring in nature, their inclusion in trended data that encompasses a very short period of time can cause serious deviations in the indicated trends. In an industry with a large number of producers, it is often difficult to ascertain all extraordinary, significant and non-recurring costs, or whether such costs are, in fact, non-recurring throughout the period for which data were collected. Indeed, when there are a large number of producers in the data base, it would be reasonable to assume that there may be extraordinary and significant non-recurring costs for any individual producer in any given year, but that such costs might be recurring throughout the industry as other companies experience similar extraordinary and/or non-recurring costs in other years. In this case, however, we are faced with an industry that has only two domestic producers. It is clear that the start up costs of BRP have skewed the trends in income and cash flows. If adjustments are made to normalize the 2001 and 2002 data by removing start up costs, gross income (or loss) before SG&A expenses would have been $***. Net operating income or (loss) over the period examined is restated to be *** in fiscal years 2001, 2002 and 2003 respectively.[78] Thus, the apparent *** growth rate in gross profit or (loss) is *** increasing. On a normalized basis, instead of improvement in net operating income or (loss), we find a *** that has increased from *** to *** or *** percent during 2001-03. Net income for the industry reflects similar trends.

Cash flows were reported to be *** throughout the period examined. Net cash flows as reported were *** for 2001, 2002 and 2003, respectively.[79] If the net cash flows are adjusted to normalize the

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[73] CR/PR at Table C-1 (Revised).

[74] CR/PR at Table C-1 (Revised).

[75] CR/PR at Table C-1 (Revised).

[76] CR/PR at Table VI-2.

[77] CR/PR at Table VI-2, Fn. 4.

[78] The 2001 net operating loss of $*** was restated to exclude $*** in start up costs. The 2002 net operating loss of $*** was restated to exclude the start up related $*** reflected in the reported expenses.

[79] CR/PR at Table VI-5.

extraordinary and non-recurring start up costs of BRP, the net cash flows are ***. Thus, absent the effects of start up costs, the cash flows consistently *** over the period examined.

Returns on investment for the domestic industry were ***. In all time periods of the period examined there were *** returns on investment.[80]

Despite the *** financial picture, the industry continued to make significant capital expenditures and maintained a significant research and development program over the period examined. Total capital expenditures were *** in 2001.[81] This represented disproportionately high capital expenditures by BRP related to its start up. In 2002 and 2003 capital expenditures were steady at $***. Research and development expenditures increased *** over the period examined, increasing from *** in 2001 to *** in 2003. In interim 2004, research and development costs were $*** as compared to $*** in interim 2003.[82]

We note that maintaining a high level of capital expenditures and a research and development program may be argued to be inconsistent with an industry that is suffering significant financial harm. However, it is not uncommon for industries to attempt to maintain research and development budgets and capital expenditures in the face of financial distress in order to remain competitive. The record in this case shows that this industry is a highly competitive and consumer-driven industry that requires market innovation and improvements to survive. Although we find that the industry is suffering financial injury due to unfair competition from subject imports from Japan, we note that the injury might have been even worse and irreversible if the domestic industry had abandoned its research, development of products, development of product improvements, and modernization of its production facilities through capital investment. There is no evidence to indicate that the level of expenses incurred during the period examined, including SG&A expenses, were unreasonable or unnecessary. We determine that due to price suppression attributable to unfairly traded subject imports the domestic industry was unable to make any serious inroads into its negative net operating income or *** cash flows.

CONCLUSION

We find that the domestic industry is facing competition from unfairly traded subject imports from Japan whose pricing practices have caused suppression in prices. We further find that the financial, employment and other indicators of the health of the domestic industry have been negatively impacted to the extent that it has suffered material injury by reason of subject imports from Japan.

For the foregoing reasons, we find that the domestic outboard engine industry is materially injured by reason of LTFV imports from Japan.

[80] CR/PR at Table VI-8.

[81] CR/PR at Table VI-7.

[82] CR/PR at Table VI-7.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed with the Commission and the Department of Commerce ("Commerce") on behalf of Mercury Marine, a division of Brunswick Corp., Fond du Lac, WI, on January 8, 2004, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of less-than-fair-value ("LTFV") imports of outboard engines[1] from Japan. Information relating to the background of this investigation is provided below.[2]

Date	Action	*Federal Register* citation
January 8, 2004	Petition filed with Commerce and the Commission; institution of Commission's investigation	69 FR 2158
February 4, 2004	Commerce's initiation	69 FR 5316
March 1, 2004	Commission's preliminary determination	69 FR 9643
August 12, 2004	Commerce's preliminary determination	69 FR 49863
August 23, 2004	Scheduling of final phase of Commission's investigation	69 FR 51859
December 14, 2004	Commission's hearing[1]	
January 4, 2005	Commerce's final determination	70 FR 326
January 10, 2005	Commission's revised schedule	70 FR 1739
February 2, 2005	Commission's vote	
February 17, 2005	Commission determination to Commerce	

[1] A list of witnesses appearing at the hearing is presented in app. B.

The product, as defined, has not been the subject of any other Commission investigations under sections 701 or 731 of the Tariff Act of 1930 (the Act), under sections 201 or 301 of the Trade Act of 1974, or under section 232 of the Trade Expansion Act of 1962.

SUMMARY DATA

A summary of data collected in the investigation is presented in appendix C.[3] U.S. industry data are based on questionnaire responses of two producers that account for all U.S. production of outboard engines and powerheads during the period of investigation (January 2001 through September 2004). U.S.

[1] For purposes of this investigation, outboard engines (also referred to as outboard motors), include engines, whether assembled or unassembled, and powerheads, whether assembled or unassembled. For a more detailed description of the merchandise subject to this investigation, see the section of Part I entitled *The Subject Product.*

[2] *Federal Register* notices cited in the tabulation since the Commission's scheduling of the final phase of this investigation are presented in app. A.

[3] Also presented in appendix C (table C-4) are data concerning the U.S. market for outboard engines to include the year 2000 and incorporate available information regarding the bankrupt producer, Outboard Marine Corp.

imports are based on questionnaire responses of six importers, including the two U.S. producers, and are believed to account for all subject imports during the period.

MAJOR FIRMS INVOLVED IN THE U.S. OUTBOARD ENGINE MARKET

The U.S. producers of outboard engines include Mercury Marine, a division of the Brunswick Corp. ("Mercury"), and BRP U.S., Inc. ("BRP"). A third U.S. producer went into bankruptcy in December 2000, Outboard Marine Corp. ("OMC"). In addition to Mercury and BRP, four U.S. importers affiliated with Japanese foreign producers supply the market with Japanese outboard engines: American Honda Motor Corp. Inc. ("Honda"), American Suzuki Motor Corp. ("Suzuki"), Tohatsu America Corp. ("Tohatsu"), and Yamaha Motor Corp. U.S.A. ("Yamaha"). There are many purchasers of outboard engines, both original equipment manufacturers ("OEM") boat builders and dealers. Genmar Industries and Tracker Marine are the largest independent OEM boat builders.

NATURE AND EXTENT OF SALES AT LTFV

On January 4, 2005, the Commission received notification of Commerce's final determination that outboard engines from Japan are being, or are likely to be, sold in the United States at LTFV.[4] Commerce's final weighted-average dumping margins for the manufacturers/exporters in Japan are as follows:

Company	Dumping margins[1] (*percent ad valorem*)
Yamaha[2]	18.98
All others	18.98

[1] Commerce's period of investigation was January 1, 2003 through December 31, 2003.
[2] Commerce disregarded sales below cost of production. It compared export prices and constructed export prices to the normal value sales and certain constructed value sales to derive a weighted average margin.

THE SUBJECT PRODUCT

The imported products subject to this investigation, as defined by the Department of Commerce, are as follows:[5]

> *Outboard engines (also referred to as outboard motors), whether assembled or unassembled; and powerheads, whether assembled or unassembled. The subject engines are gasoline-powered spark-ignition, internal combustion engines designed and used principally for marine propulsion for all types of light recreational and commercial boats, including, but not limited to, canoes, rafts, inflatable, sail and pontoon boats. Specifically included in this scope are 2-stroke, direct injection 2-stroke, and four-stroke outboard engines.*

[4] *Outboard Engines from Japan: Notice of Final Determination of Sales at Less than Fair Value*, 70 FR 03925, January 4, 2005.

[5] *Id.*

Outboard engines are comprised of (1) a powerhead assembly, or an internal combustion engine; (2) a midsection assembly, by which the outboard engine is attached to the vehicle it propels; and (3) a gearcase assembly, which typically includes a transmission and propeller shaft, and may or may not include a propeller. To the extent that these components are imported together, but unassembled, they collectively are covered within the scope of this investigation. An "unassembled" outboard engine consists of a powerhead as defined below, and any other parts imported with the powerhead that may be used in the assembly of an outboard engine.

Powerheads are comprised of, at a minimum, (1) a cylinder block, (2) pistons, (3) connecting rods, and (4) a crankshaft. Importation of these four components together, whether assembled or unassembled, and whether or not accompanied by additional components, constitute a powerhead for purposes of this investigation. An "unassembled" powerhead consists of, at a minimum, the four powerhead components listed above, and any other parts imported with it that may be used in the assembly of a powerhead.

The scope does not include parts or components (other than powerheads) imported separately.

Excluded from the scope of the investigation are five specific models of powerheads: 75 horsepower ("HP") carbureted, 75 HP electronic fuel injection ("EFI"), 90 HP carbureted, 90 HP EFI, and 115 HP EFI.[6]

Outboard engines and powerheads are included under the Harmonized Tariff Schedule of the United States ("HTS") statistical reporting numbers 8407.21.0040 and 8407.21.0080 and are free of duty under the general duty rate, applicable to Japan. Table I-1 presents current tariff rates for outboard engines.

Table I-1
Outboard engines and powerheads: Tariff rates, 2004

		General[1]	Special[2]	Column 2[3]
HTS provision	**Article description**	**Rates *(percent ad valorem)***		
8407	Spark-ignition reciprocating or rotary internal combustion engines:			
8407.21.00	Marine propulsion engines:	Free	([5])	35.0
8407.21.0040	Outboard motors less than 22.38 kW[4]			
8407.21.0080	Other outboard motors			

[1] Normal trade relations, formerly known as the most-favored-nation duty rate, applicable to imports from Japan.
[2] The general duty rate of free applies to all preference-eligible countries.
[3] Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.
[4] kW, or kilowatt, is a unit of power equivalent to 1.3405 horsepower. "Less than 22.38kW" is less than 30 horsepower.
[5] General note 3(c)(i) defines the special duty program symbols enumerated for this provision.

Source: Harmonized Tariff Schedule of the United States (2004).

[6] *See* 70 FR 327, January 4, 2005 contained in app. A for a detailed description of the excluded powerheads. The request for exclusion on the specified powerheads was submitted by the petitioner to Commerce on November 17, 2004. Petitioner's amendment of petition, November 17, 2004.

THE DOMESTIC LIKE PRODUCT

The Commission's decision regarding the appropriate domestic product that is "like" the subject imported product is based on a number of factors, including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. During the preliminary and final phases of this investigation, petitioner argued that there is one domestic like product, outboard engines and powerheads, coexistensive with the scope of the investigation.[7] In the preliminary phase of this investigation, counsel for Japanese respondents Tohatsu and Nissan argued that the Commission should define two domestic like products: outboard engines under 25 HP and outboard engines 25 HP and above.[8] In the final phase of this investigation, counsel for combined respondents argued that powerheads and complete outboard engines should be treated as separate like products.[9] Data are presented for powerheads and for complete outboard engines separately in tables C-2 and C-3 in appendix C. In its preliminary determination, the Commission found one like product, coexistensive with the scope of this investigation.[10]

Physical Characteristics and Uses

The product scope, as noted earlier, consists of both the complete outboard engine made of three primary components, the powerhead, midsection, and gearcase assemblies, and any powerheads for the outboard engine sold separately. (Figure I-1 presents a graphic depiction of component parts of an outboard engine.) Describing such engines as "gasoline-powered, spark-ignition internal combustion engines," the scope effectively excludes any similar devices that are electrical, diesel, or turbine powered.[11] Outboard engines, in addition to inboard engines and inboard-outboard engines (also known as "stern drive" engines), are the main means of motorized marine propulsion used worldwide. The type of propulsion system is typically chosen at an early design stage, and principally reflects boat use.[12] Whereas the outboard engine is a completely separate unit designed to attach to and operate completely outside the boat, inboard and stern drive engines are designed to be built into the boat. As such, they have powerhead and gearcase assemblies but no midsection,[13] or housing and attachment assembly, and are generally designed for vessels larger and heavier than those using outboard engines.[14] Inboard and stern drive engines use heavy, iron engine blocks and horizontal crankshafts rather than the lighter

[7] Petitioner's postconference brief, pp. 4-5, prehearing brief, pp. 5-20, and posthearing brief, p. 3.

[8] Tohatsu's and Nissan's postconference brief, pp. 1 and 3.

[9] Joint respondents' prehearing brief, pp. 116-133.

[10] *Outboard Engines from Japan*, Inv. *No. 731-TA-1069 (Preliminary)*, USITC Pub. 3673, March 2004, pp. 7 and 10.

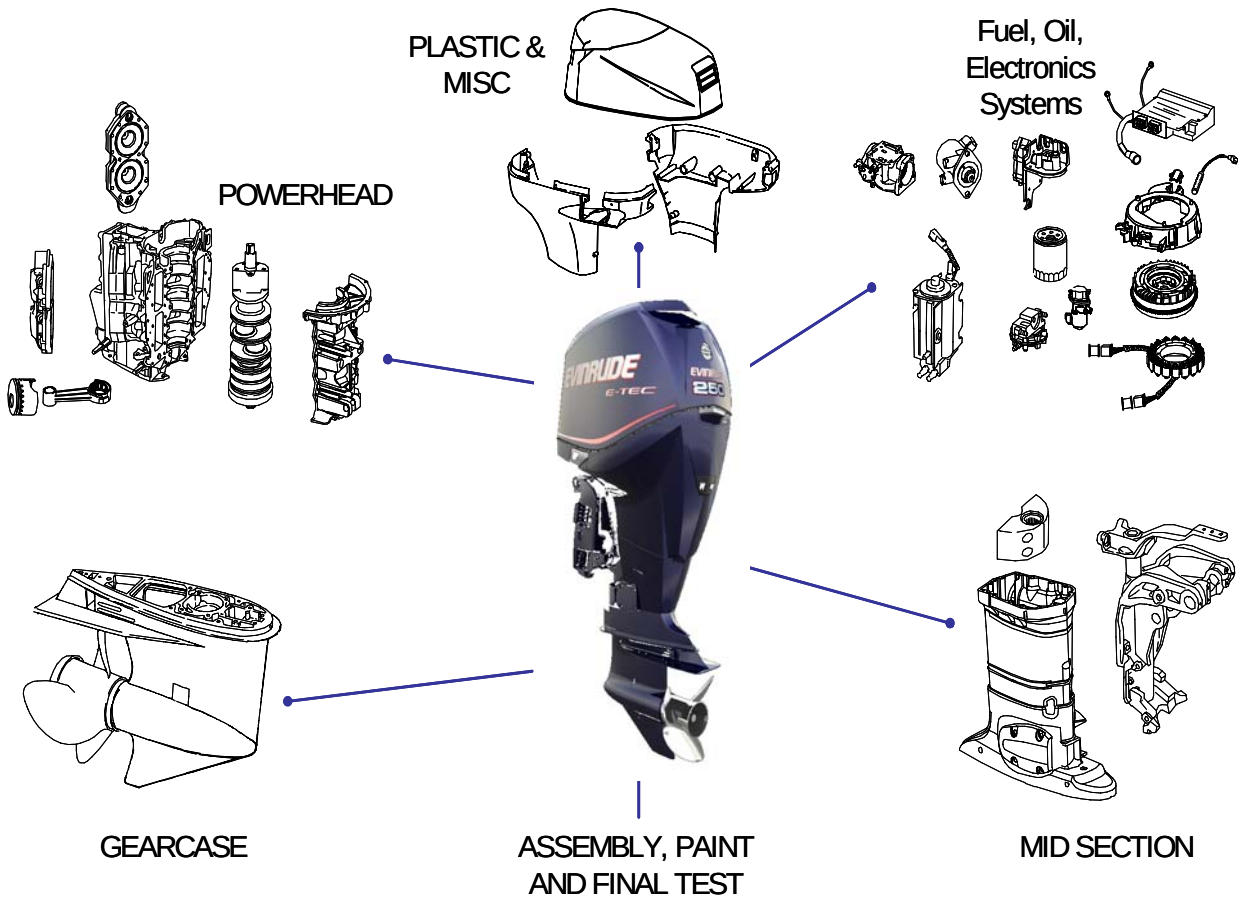
[11] There is no known production of diesel or turbine powered outboard engines in either the United States or Japan.

[12] Conference transcript, p. 87 (Sheller).

[13] The midsection contains the steering and tilt/trim mechanisms.

[14] The stern drive is a hybrid marine engine that combines the built-in powerhead of an inboard with the gearcase assembly of an outboard. The gearcase assembly extends outside the boat in the same fashion as an outboard but is permanently attached to the hull with connections to the inside.

Figure I-1
Outboard engines: Component parts



Source: BRP.

aluminum blocks and vertical crankshafts used for outboard engines.[15] As a result, boats that are rigged for outboard engines cannot accommodate stern drive or inboard engines without significant redesign for future production.[16]

Major components from which the primary components of an outboard engine are made include the cylinder block, pistons, crankshaft, carburetor (or other fuel delivery methods, such as fuel-injection for direct injection engines), and electrical harness for the powerhead; and transmission, drive shaft, and propeller for the gearcase assembly. (Some outboard engines have a gearcase assembly that operates a water-jet system,[17] eliminating the need for a propeller.) Aluminum alloys are typically used in the manufacture of engine blocks and other components because of their light weight, high strength/weight ratio, corrosion resistance, and relative ease of fabrication. Stainless steel is used in the production of

[15] Conference transcript, p. 39 (Dempsey).

[16] Conference transcript, p. 88 (Dempsey).

[17] With a water jet system, a jet of water is expelled from the rear of the boat. The reaction of this action is to propel the boat forward. The water jet itself is essentially a water pump.

certain salt-water engine components, such as bolts and shafting, because of its high resistance to corrosion.[18] Carbon steel is often used for applications requiring hardness and ability to withstand wear.

All outboard engines have the same primary components and are designed for the same purpose. Engines are largely classified according to the number of the powerhead's cylinders (1 to 6), the number of strokes the piston makes in the cylinder to complete a power cycle (2-stroke and 4-stroke),[19] fuel delivery system (carbureted, direct injection, and electronic fuel injection), and HP (2 to over 300). Other important differentiating features include propeller shaft length (15 inches to 30 inches), starting method (electric and manual), control method (remote and tiller), tilt method (power and manual), drive method (propeller and water jet), and water compatibility (salt and fresh).

The five principal outboard engine types discussed in this investigation include 2-stroke engines with three different fuel delivery systems – carbureted, EFI, or direct injection ("DI") – and 4-stroke engines with carbureted or EFI systems. The 2-stroke carbureted engine traditionally dominated the U.S. market for outboard engines, accounting for 99 percent of sales in 1995/96.[20] Two-stroke carbureted engines have an exhaust port and an inlet port on opposite sides of the cylinder wall instead of valves. These ports open and close with the movement of the piston within the cylinder. Two-stroke carbureted engines run on a premixed blend of gas and oil that is directed into the cylinders by a carburetor.[21] The oil, which is needed to lubricate the engine cylinders, is part of the fuel delivery system in these engines because there is no separate lubrication system. At the point in the cycle when both ports are open, each cylinder takes in fuel and air, and at the same time emits exhaust, which allows the fuel entering through the inlet port to also exit the open exhaust port. Consequently, a portion of the air/fuel/oil mixture leaves the cylinder along with the exhaust gases. As a result, an estimated 25 to 30 percent of the fuel of a 2-cycle carbureted engine can be unburned and emitted into the environment.[22] Because these engines cannot meet the increasingly strict emission standards enacted by the Environmental Protection Agency ("EPA") and California Air Resources Board ("CARB"),[23] engine manufacturers have focused on the production of emissions-compliant 2-stroke DI and 4-stroke EFI and carbureted engines.

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[18] Conference transcript, pp. 110-111 (Davis); and staff field trip report, Mercury, October 9, 2004.

[19] Internal combustion engines receive their power from an ignited fuel mixture that drives a piston (connected to a rotating drive shaft) back and forth in a cylinder in successive cycles. For 2-stroke engines, the cycle involves the combustion of the air/fuel mixture following the piston's movement to the top of the cylinder (1st stroke) and the filling of the cylinder with the air/fuel mixture and concurrent purging from the cylinder of the previous combustion's exhaust as the piston moves to the bottom of the cylinder (2nd stroke). For 4-stroke engines, the cycle involves the combustion of the air/fuel mixture following the piston's movement to the top of the cylinder (1st stroke), the consequent movement of the piston to the bottom of the cylinder (2nd stroke), the purging of the combustion's exhaust as the piston returns to the top of the cylinder (3rd stroke), and the filling of the cylinder with another air/fuel mixture as the piston returns to the bottom (4th stroke).

[20] Petitioner's postconference brief, exh. 3, p. 14.

[21] Traditional 2-stroke engines have a carburetor that vaporizes fuel and mixes it with air in the appropriate amount and proportion for combustion in the specific engine.

[22] "Regulatory Impact Analysis: Control of Air Pollution Emission Standards for New Nonroad Spark-Ignition Marine Engines," Environmental Protection Agency, June 1996, pp. 1-13, found at http://www.epa.gov/otaq/regs/nonroad/marine/marnfria.pdf, retrieved February 12, 2004.

[23] For more information, see the section entitled *Distribution and Market Overview* in Part II of this report.

EFI engines utilize an electronic control unit to time and meter the flow of fuel into the engine[24] in lieu of a carburetor. Although 2-stroke EFI engines exhibit improved efficiency compared with 2-stroke carbureted engines, they retain many of the same characteristics of traditional 2-stroke carbureted engines. Like 2-stroke carbureted engines, 2-stroke EFI engines are considered "old technology engines"[25] that are not low-emission.[26]

Direct injection technology, however, demonstrated the most potential for reducing 2-stroke engine emissions to meet EPA and CARB regulations, and is currently the preferred fuel delivery system for these engines. The 2-stroke DI engine incorporates a fuel injection system that sprays fuel either directly into the cylinders or combustion chamber without the use of a carburetor. Unlike the 2-stroke carbureted engine, the fuel does not enter the cylinder through the inlet port, but instead is injected at the top of the cylinder and ignited along with air that has entered through the inlet port with the upward movement of the piston. This system uses an electronic sensing device to deliver the correct amount of fuel into the combustion chamber[27] after the ports are closed. Because fuel usage and burn are carefully calibrated with fuel injection systems, engines incorporating these systems are more fuel efficient and environmentally friendly than a typical carbureted engine.[28] Various fuel injection systems, such as Yamaha's high-pressure direct injection ("HPDI"), Mercury's Optimax, and BRP's E-TEC, have been developed by engine makers for their 2-stroke engines.

Four-stroke outboard engines are similar in design to motor-vehicle engines, with valves on each cylinder controlled by a timing belt attached to a camshaft, and are more complicated to produce. The intake valve opens to allow the inflow of air and fuel into the cylinder, after which the exhaust valve opens to release exhaust gases into the atmosphere.[29] Unlike the 2-stroke carbureted engine, the lubrication system of a 4-stroke engine is separate from the fuel delivery system and does not require pre-mixing of fuel and oil by the boat owner. These design features improve fuel burn and significantly reduce emissions, thus meeting EPA and CARB regulations. Four-stroke engines can be carbureted or incorporate an electronic fuel injection system, which slightly improves the fuel economy of a 4-stroke engine.[30] Because 4-stroke engines have more parts, are technically more complex, require more machining, and are heavier than 2-stroke engines, these engines generally cost more to produce.[31]

Two- and 4-stroke engines exhibit different performance characteristics that lend themselves to specific boat applications, reflecting both customer preferences and boating requirements within a given horsepower range.[32] Two-stroke engines have generally had higher horsepower ceilings than 4-stroke engines.[33] However, technological improvements have largely eliminated this difference, as evidenced by the introduction of a number of 4-stroke engines with ratings of 150 horsepower and above. Two-stroke carbureted engines have also traditionally offered more power for their weight than 4-stroke

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[24] Dictionary of Automotive Terms, found at http://www.100megsfree4.com/dictionary/car-dice.htm.

[25] Hearing transcript, p. 102 (Mackey).

[26] Hearing transcript, pp. 177-178 (Davis).

[27] Dictionary of Automotive Terms, found at http://www.motorera.com/, retrieved February 4, 2004.

[28] *Boating Magazine's Outboard Engines*, petition, vol. II, exh. II-I, p. 121.

[29] *Id*, p. 2.

[30] Hearing transcript, p. 178 (Davis).

[31] Conference transcript, pp. 51 and 79, and conference exhibit 16.

[32] Maximum horsepower ratings for individual boats are determined by the boat builder.

[33] Four-stroke engines generally operated at 150 horsepower or less until 2002. Keith Burton, "Big-Power Outboards," *Go Boating*, February 2004, p. 84.

engines,[34] but emit more hydrocarbons than 4-stroke engines[35] because they burn their lubricating oil as well as gasoline during the combustion process.[36] Four-stroke engines, although heavier and more expensive, are considered quieter (especially at lower speeds), more fuel efficient,[37] smokeless,[38] and generally more reliable than 2-stroke engines.[39] Four-stroke engines are also reportedly noted for their low maintenance, reduced operational costs, and comfort features.[40] On the other hand, 2-stroke engines have been deemed best for portability, lower cost, and high performance,[41] particularly at the top end.

The performance and price gaps, however, are narrowing among 2-stroke DI and 4-stroke engines as a result of technological and design improvements.[42] Many of these developments have focused on reducing the size and weight of 4-stroke engines to increase their competitiveness across a broader range of engine applications.[43] According to the respondents, the 4-stroke engine increasingly equals the 2-stroke engine in acceleration and top end performance.[44] Yamaha, for example, has not only brought down the weight-to-power ratios of its 4-stroke engines, but has also improved their performance in terms of the acceleration and top speed.[45] Figure I-2 presents a graphic presentation of differences in 2- and 4-stroke technologies.

Figure I-2
Outboard engines: 2- and 4-stroke technologies

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The Manufacturing Process

The major processes in the production of outboard engines are metal smelting, casting, machining, and finishing of engine parts; assembly of subassemblies, primary components, and complete engines; painting and other finishing operations; and/or outsourcing of the primary and major components. Although the nature and extent of the production process varies from manufacturer to manufacturer and from model to model, the outboard engines produced by each engine manufacturer share common manufacturing facilities and production workers.[46] Both U.S. and Japanese manufacturing facilities are largely dedicated to the production of outboard engines. However, both U.S. firms produce

[34] Hearing transcript, p. 103 (Mackey).

[35] Conference transcript, p. 54 (Davis).

[36] This oil must be added separately by the engine operator, unlike the 4-stroke engine that has a self-contained oil unit. Conference transcript, p. 200 (Gomes).

[37] Fuel savings for 4-stroke and 2-stroke DI engines compared to a 2-stroke carbureted engine range between 20-35 percent. Yamaha importer questionnaire response, section III-B-14.

[38] Hearing transcript, p. 204 (Wilson).

[39] Hearing transcript, p. 226 (Maxwell) and p. 250 (Zielinski).

[40] Honda importer questionnaire response, section III-B-19.

[41] Conference exhibit 16, Mercury.

[42] Conference transcript, pp. 241-244 (Dyskow and Vandiver), and Keith Burton, "Big-Power Outboards," *Go Boating*, February 2004, p. 88.

[43] Conference transcript, pp. 241-243 (Dyskow and Vandiver).

[44] Conference transcript, p. 156 (Deal).

[45] Hearing transcript, p. 223 (Deal).

[46] Mercury produces its line of inboard and stern drive engines at its Stillwater, OK plant. Conference transcript, p. 39 (Dempsey).

in these facilities small amounts of related marine or engine components not subject to this investigation.[47]

Both U.S. producers are vertically integrated, from metal smelting through complete engine assembly, although not all of these manufacturing steps are undertaken at the same manufacturing site. Mercury reported that its core manufacturing abilities included the manufacture of powerheads, midsection, and gearcases, as well as performing steps to ensure corrosion resistance.[48] BRP's core capabilities include precision machining and final assembly (Sturtevant, WI); assembly of electronic engine controllers and the manufacture of fuel injection systems (Delavan, WI); lost foam casting and qualifying machining for aluminum castings (Spruce Pine, NC);[49] and precision steel and aluminum machining and polishing of its gears and connecting rods (Andrews, NC).[50] In general, Mercury and BRP indicated that casting, precision machining, corrosion protection, and finishing steps such as heat treating and hardening are common core manufacturing abilities.[51]

Outboard engines incorporate numerous metal engine components, most of which are cast or forged. Both Mercury and BRP cast many of their own engine components, but generally outsource forged metal engine components.[52] Cast components are generally manufactured using investment casting and die casting, which are highly capital intensive processes.[53] Investment casting is a relatively high cost, low volume process that produces castings of high complexity and dimensional accuracy. Cylinder blocks and heads, for example, are manufactured from aluminum using an investment casting process called lost foam. Both Mercury and BRP produce the metal alloys that are used to cast engine components, but purchase the lost foam patterns[54] that form the shape of the cylinder heads and blocks.[55]

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[47] Mercury, for example, manufactures engine blocks for Harley-Davidson at its outboard engine casting facility. Conference transcript, p. 101 (Rick Davis). It also manufactured sport jets, which represented *** percent of production in 2003. Mercury producer questionnaire response, section II-3. BRP produced marine accessories and electronic modules and injectors on its outboard engine production lines, which accounted for *** percent of 2003 output. BRP producer questionnaire response, section II-3.

[48] Mercury reported that the ***. Mercury producer questionnaire response, section II-4.

[49] BRP is reportedly selling its plants in Delavan, WI, and Spruce Pine, NC. The Valcourt, Quebec plant (which produces ATVs) and the Sturtevant, WI plant will be BRP's main manufacturing sites in North America. Allan Swift, "Bombardier Recreational Products cutting 800 jobs, 600 in Canada," The Canadian Press, November 9, 2004, found at http://www.itc-newsedge.com, retrieved November 10, 2004.

[50] In October 2004, BRP signed a letter of intent to sell its Andrews, NC steel and aluminum precision connecting rod and gear machining facility to Team Industries, Inc., a U.S. firm located in Bagley, MN, but plans to continue to purchase these outboard components from the purchaser of this facility. BRP producer questionnaire response, section II and "Minnesota Firm to Enter Outboard Biz," Boating Industry, October 21, 2004, found at http://www.boating-industry.com, retrieved November 22, 2004.

[51] Mercury and BRP producer questionnaire responses, section II-11.

[52] During the forging process, metal is pressed, pounded, or squeezed under great pressure into high strength parts. This process often involves preheating the metal to a desired temperature before it is worked. Unlike the casting process, the metal used to forge parts is never melted and poured. Forging Facts, Forging Industry Association, found at http://www.forging.org/facts/faq1.htm.

[53] Mercury and BRP producer questionnaire responses, section II-11.

[54] To manufacture a pattern for lost foam casting, plastic (foam) is injected into a metal die to form a pattern. The patterns are dipped into a ceramic slurry and drained, forming a fine ceramic refractory coating. This process is repeated with progressively coarser refractories until a self-supporting mold is formed. Once the mold is dry, it is heated to allow the plastic to burn out. The mold is then fired at a high temperature to remove all residual traces of plastic and to preheat the mold for pouring.

[55] Staff field trip report, BRP, October 10, 2004.

The mold of the component is placed in a container filled with sand, and the molten metal is poured into the mold. The cast component is removed from the mold once the metal has solidified.

***,[56] Mercury employs die casting to produce aluminum cylinder blocks, cylinder heads, crankcases, and gearcases, and designs and builds dies and tooling for this process.[57] Die-casting is a highly automated, high volume process that produces castings of fine detail and near-net shape, which reduces machining needs. In the die-casting process, molten metal is forced into cavities inside metal dies under high pressure and held until the metal solidifies, at which time the die is opened and the casting is ejected.

Following manufacture, cast and forged engine components are machined, unless already purchased in a finished state. Precision machining is another capital intensive operation, accomplished with automated transfer lines for volume production and cell manufacturing that facilitates quick turnover for lower production volumes. Components are machined to close tolerances to ensure optimum fit and performance. Different engine components can be machined on the same flexible machining equipment, such as Mazak and Makino. This machinery incorporates computer numeric control, which enables programmable machining.[58] Machined components often undergo finishing steps, such as heat treating, corrosion protection, hardening, and carburizing,[59] following manufacture.

Machined components are then assembled into the three primary outboard engine components -- powerheads,[60] midsections, and gearcases – or incorporated individually into an outboard engine. Given the individual design and manufacturing specifications of powerheads, production lines are often devoted to a single powerhead line or range of related powerhead lines, which limits production flexibility.[61] Powerheads are also designed and manufactured for a specific engine,[62] and require matching midsections and gearcases. Outboard engine assembly lines, however, are largely automated and can accommodate the assembly of a range of powerheads with a matching range of midsections and gearcases on the same line. The processes used to transform the powerhead into a completed engine are limited to assembling the powerhead, midsection, and gearcase subassemblies together. This assembly operation is relatively low cost compared to the expense of producing the powerhead and other subassemblies.[63]

The range of operations involved in the assembly of the three primary components may differ, however. According to BRP, "the tasks, expertise and parts necessary to incorporate a powerhead into a finished engine may vary," as may "the tasks, expertise and parts needed to complete an engine from a powerhead," as they "depend on the sourcing strategy" for components (e.g., inhouse or outsourced,

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[56] *Id.*

[57] Mercury producer questionnaire response, section II-11.

[58] Conference transcript, pp. 105-106 (Davis); and staff field trip report, Mercury, October 9, 2004.

[59] Carburizing involves the addition of carbon to the surface of low-carbon steels at high temperatures, which improves hardness and wear. "Carburizing," Key To Steel, found at http://www.key-to-steel.com/Articles/Art114.htm.

[60] Mercury imported some powerheads from Japanese manufacturers and assembles them into a complete engine in the United States.

[61] Yamaha reported that it operates *** dedicated solely to production for Mercury Marine. Because the specifications required by Mercury for its powerheads and parts are different than those required by Yamaha, the powerheads for these two manufacturers cannot be produced on the same lines. Yamaha foreign producer questionnaire response, section II-8.

[62] Hearing transcript, pp. 105-106 (Dempsey).

[63] Conference transcript, p. 40 (Dempsey).

individual components or assemblies, "full dressed"[64] powerhead vs. a "short block."[65]).[66] BRP reported that "in general ... a substantial amount of engineering and manufacturing expertise is needed to design a midsection and lower unit to function with a given powerhead and to perform all the necessary steps to make it a 'complete outboard engine.'"[67] Mercury also indicated that "...to integrate the powerhead with the lower unit (mid-section & gearcase), special attention is needed in the design of the adapter plate and mid-section. Close tolerances need to be achieved in machining ... to ensure proper integration with the lower unit."[68]

Outboard engines are generally painted, either during assembly or at the end of the assembly process, and are extensively tested for quality and performance (e.g., leaks, malfunctions, and appearance flaws). Depending on the manufacturer, engines are hot-tested (the engine operates under its own power with fluids) or cold-tested (engine is tested for pressures, torque, etc. without running).[69]

Interchangeability and Customer and Producer Perceptions

Mercury and BRP claimed that outboard engines produced in the United States and Japan are always interchangeable for the same applications.[70] Yamaha also indicated that engines from the United States and Japan are always physically interchangeable.[71] Honda stated that these engines are frequently interchangeable, "providing the mounting is adaptable and the horsepower is sufficient to power (and not over-power) the boat."[72] Suzuki, on the other hand, argued that U.S.- and Japanese-made outboard engines are only somewhat interchangeable, citing physical and technological differences that affect their use in the same applications.[73] For more information regarding interchangeability of the imported and domestically produced outboard engines and powerheads, see the *Substitutability Issues* section of Part II of this report.

U.S. producers and the respondents differed in their perceptions of the quality, technology, and performance characteristics of U.S. and Japanese outboard engines. The respondents contended that consumer preference in the U.S. market has largely shifted to 4-stroke engines,[74] and Yamaha expects the popularity of 4-stroke engines to continue to grow.[75] The respondents alleged that U.S. producers were slow to respond to this market shift, focusing on the development of direct injection technology for their 2-stroke engines sold in the most profitable segment of the market rather than the production of 4-stroke engines.[76] Suzuki claimed that "U.S. manufacturers found themselves seriously lagging in the newest 4-stroke technology that is in strong demand from consumers."[77] Yamaha cited "the serious problems that plagued OMC/Bombardier's and Brunswick's direct injection engines" as another reason for the

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[64] A complete engine with accessories (includes wiring harness, cooling systems, etc.).

[65] A short block includes the engine block, crankshaft, pistons, and connecting rods.

[66] BRP producer questionnaire response, section II-11.

[67] *Id*.

[68] Mercury producer questionnaire response, section II-11.

[69] Staff field trip reports, Mercury and BRP, October 9 and 10, 2004.

[70] Mercury and BRP producer questionnaire responses, section IV-B-17.

[71] Yamaha importer questionnaire response, section III-B-17.

[72] Honda importer questionnaire response, section III-B-17.

[73] Suzuki importer questionnaire response, section III-B-17.

[74] Hearing transcript, p. 226 (Maxwell) and pp. 242-243 (Gowens).

[75] Liz Walz, "New Horizons," *Boating Industry*, November/December 2004, p. 42.

[76] Hearing transcript, p. 242-243 (Gowens).

[77] Suzuki importer questionnaire response, section III-B-19.

movement to 4-stroke engines.[78] Respondents contended that neither Mercury nor BRP have enough variety of engine products, particularly in the 4-stroke range, and technologies that have gained customer acceptance and quality perception.[79] In particular, the respondents noted that Mercury does not yet "produce a lineup of 4-stroke products which covers the full range of horsepowers offered by the Japanese manufacturers," and that Mercury is "still dependent on Yamaha for either powerheads or complete engines for 4-stroke engines of 75 horsepower or more."[80] In the case of BRP, respondents pointed out that it has "concentrated its efforts on direct-injection technology rather than developing a full line of 4-stroke engines."[81]

The petitioner, however, claimed that there is "strong, cross-technology competition in the marketplace."[82] Mercury alleged that there is no clear consumer preference for 4-stroke engines vis-à-vis other low emission engines, citing the predominant use of 2-stroke engines in the bass and coastal fishing boat markets.[83] According to respondents, however, Mercury stated in legal proceedings before the District Court in Wisconsin that "consumers have a clear preference for one or the other type of engine...given the differences in technology and other characteristics of the engines..."[84] BRP contended that "engines of the same horsepower but different technologies are interchangeable."[85] BRP also indicated that most current owners of 2-stroke carbureted outboard engines will switch to 2-stroke DI rather than 4-stroke engines, in part because consumers focus on purchasing an engine that meets their expectations rather than purchasing a specific engine technology.[86]

The petitioner claimed that neither Yamaha nor Mercury have "a significant advantage in terms of new-technology engine offerings."[87] Mercury stated that none of the Japanese engine producers has introduced a full line of new-technology engines, and that only Yamaha offers a range of products similar to that of Mercury.[88] Respondents acknowledged that 2-stroke engines may be preferred in certain segments of the market because of their low cost, high performance, and relative weight.[89] Despite their focus on supplying 4-stroke engines to the U.S. market, however, respondents indicated that neither Honda nor Suzuki experience a disadvantage with their lack of a 2-stroke DI engine in their product line-up.[90]

The petitioner and respondents indicated that both U.S. and Japanese engine makers have experienced some performance problems, primarily related to spark plug fouling, with the roll-out of their new DI engines.[91] For example, the petitioner cited a recall and numerous service bulletins that Yamaha issued on its 4-stroke and 2-stroke DI engines, respectively.[92] The respondents claimed that both

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[78] Yamaha importer questionnaire response, section III-B-13.

[79] Conference transcript, pp. 136 (Jacobs) and 148-151 (Deputy).

[80] Hearing transcript, pp. 231 (Deputy).

[81] Hearing transcript, p. 230 (Deputy).

[82] Hearing transcript, p. 32 (Dempsey). *See* table D-3 in appendix D for a presentation of data relating to U.S. shipments of outboard engines by horsepower and technology.

[83] Petitioner's postconference brief, pp. 31-32.

[84] Honda's posthearing brief, p. 2.

[85] BRP's posthearing brief, p. 1.

[86] Liz Walz, "New Horizons," *Boating Industry*, November/December 2004, p. 42.

[87] Hearing transcript, p. 32 (Dempsey).

[88] Petitioner's postconference brief, p. 34.

[89] Hearing transcript, p. 171 (Davis).

[90] Conference transcript, pp. 247-249 (Terry and Vandiver).

[91] Conference transcript, p. 114 (Davis) and p. 253 (Kalibat).

[92] Petitioner's postconference brief, p. A-11.

Mercury's Optimax and BRP's Ficht direct injection engines experienced numerous technical problems,[93] and that Mercury's quality and reliability problems with its 2-stroke DI engine have led to a poor perception and reputation with customers.[94] The petitioner claimed that there is no technological gap in the production of U.S. and Japanese low-emission 2-stroke or 4-stroke engines,[95] and that Mercury provides low emission engines that are comparable to those of Japanese engine producers.[96]

Channels of Distribution

U.S. and Japanese makers sold most of the subject products to either OEMs, i.e., boat builders, for inclusion in the sale of the boat, or to marine-product dealers that sell the subject products separately. Table I-2 presents basic data on channels of distribution by source, during the period examined.[97] More detailed data on this issue are presented in appendix D.

Table I-2
Outboard engines: Shares of U.S. shipments to OEM/boat builders and dealers, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

U.S. producers shipped primarily to boat builders, which represented about *** percent of their U.S. outboard engine shipments (based on quantity) from U.S. production in 2003, whereas dealers accounted for about *** percent of these shipments.[98] U.S. shipments of imports from Japan, however, were evenly split, with 51 percent of these shipments to boat builders and 49 percent of these shipments to dealers in the same year. During the period of investigation, the trend was for both U.S. producers and importers to sell increasingly to unrelated boat builders. In 2001, U.S. importers were selling about 63 percent of their engines to dealers and U.S. producers were selling about *** percent of their engines to dealers.

Boat builders may purchase engines from a number of different manufacturers, reflecting the type and volume of boats being built, their varying engine requirements, and dealer/customer preference. The majority of boats are designed "to accommodate a variety of different outboard choices."[99] The same boat may be offered with different engine technologies and horsepower, as well as engines from different manufacturers.[100] Some boat builders may source engines from a single supplier, either because of an ownership relationship with an engine maker[101] or because of price incentives offered by an engine maker to obtain such exclusivity.[102]

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[93] Hearing transcript, p. 249-250 (Zielinski) and pp. 244-6 (Gowens).

[94] Hearing transcript, pp. 228-9 (Deputy).

[95] Conference transcript, p. 20 (Wolff).

[96] Petitioner's postconference brief, p. 31.

[97] The first part of the table shows the percentage of U.S. shipments that are sent to the different channels of distribution's source. The second part shows the percentage of U.S. shipments corresponding to the particular channels of distribution.

[98] There were no shipments of outboard engines to related dealers from any sources during the period of investigation.

[99] Hearing transcript, pp. 69-70 (Kimmell).

[100] Hearing transcript, pp. 159-160 (Mackey).

[101] Yamaha's postconference brief, p. 16.

[102] Yamaha submission, January 13, 2004, p. 3.

Boat builders generally ship a "package" consisting of a boat, trailer, and engine to dealers, or pre-rig or rig[103] a boat to operate with a specific engine make. Because rigging is specific to an engine maker, change-out to a different engine requires re-rigging a boat, which is a cost to the dealer.[104] Boat builders have largely taken on rigging from the dealers because of its increased complexity[105] and the efficiencies gained.[106] During 2001 to 2003 U.S. producers' share of the value of total U.S. shipments to OEM/boat builders decreased from *** to *** percent and remained stable during the interim periods (with Mercury's increased sales to related OEMs offsetting decreased sales to unrelated OEMs). Shipments of imports from Japan to unrelated OEMs increased from *** to *** percent of total shipments of imports from Japan and remained steady during the interim periods. Shares of shipments (based on value) to related OEMs ranged from *** to *** percent of total shipments for U.S.-produced outboard engines, and from *** to *** percent for imports of engines from Japan.

Dealers sell both boats and engines directly to consumers,[107] and also provide a broad array of repair and maintenance services and replacement parts for boats and related equipment.[108] Dealers may represent a single engine or boat maker, or offer a number of boat and engine makes.[109] Most dealers offer at least two engine makes, in part a result of the OMC bankruptcy.[110] An engine maker generally authorizes a dealer to provide both engine service and sales.[111] According to the respondents, an engine manufacturer can provide an incentive to boat builders to purchase its engines by authorizing the builders' dealers to provide engine services.[112] Less frequently, dealers may also purchase engines from dealers[113] in the so-called "gray market."[114] Dealers may be single-store or multi-store operations. Multi-store

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[103] Pre-rigging or rigging a boat involves embedding control cables specific to a particular engine maker from the engine to the helm of a boat to enable starting, steering, and stopping, for example. Hearing transcript, p. 128 (Mackey). Rigging components include cables, controls, wiring harnesses, propeller, and other parts required to make a package. The rigging is branded with the name of the engine maker. Hearing transcript, pp. 344-346 (Deputy). This process can also include drilling the holes at the back of the boat where the engine is to be attached. Hearing transcript, p. 129 (Bentz).

[104] Hearing transcript, p. 129 (Bentz). The cost to a dealer to re-rig for an engine change is roughly $1,500 an engine. Hearing transcript, p. 70 (Kimmell).

[105] Hearing transcript, pp. 120-121 (Kimmell).

[106] Hearing transcript, p. 265 (Deputy).

[107] Petition, vol. II, p. 15.

[108] Conference transcript, pp. 174 (Mudgett), 195 (Jacobs), 227 (Jacobs), and 230 (Vandiver).

[109] The addition of an engine make to a dealer's product line may represent a significant additional cost for such items as parts stock, service bays, and personnel training. Hearing transcript, p. 60 (Wilson). Overhead costs are higher when carrying more than one engine make. Hearing transcript, p. 264 (Gootee). A dealer may have to add an engine line if a boat builder switches engine manufacturers or drops an engine option (hearing transcript, p. 60 (Wilson)), or if a boat builder conditions further sales of its boat line on the addition of its engine make (hearing transcript, pp. 57-58 (Wolf)).

[110] Hearing transcript, p. 176 (Wilson and Sheller).

[111] Sales authorization includes guidelines about stocking levels and customer service. Hearing transcript, pp. 189-191 (Wolf, Wilson, and Miller).

[112] Yamaha's postconference brief, p. 18.

[113] Hearing transcript, p. 355 (Zielinski).

[114] Some dealers are reportedly able to obtain discounts on engines from boat builders in the 22-25 percent range. This price differential may spur some boat builders to sell loose engines to dealers. These transactions may intensify competition among dealers because they allow a non-authorized dealer to purchase an engine brand for less than the authorized dealer. Jeff Kurowski, "Dealers Frustrated About Outboard Engine Gray Market," *Boating Industry*, January/February 2003, pp. 27-28.

dealers generally purchase engines in volumes that are similar to those of boat builders.[115] During 2001 to 2003 U.S. producers' share of the value of total U.S. shipments to dealers decreased from *** to *** percent and declined from *** percent during January-September 2003 to *** percent during the comparable period in 2004. The share of shipments of imports from Japan to dealers increased from 65 to 66 percent during 2001 to 2003 and increased from 64 percent during January-September 2003 to 67 percent during the comparable period in 2004.

Data relating to changes in customer base during the period of investigation are presented in table I-3. From 2001 to January-September 2004 U.S. producers increased their customer base of related and unrelated boatbuilders, and the number of dealer customers decreased for *** and increased for ***. During the same period, U.S. importers *** gained unrelated boatbuilder customers, while *** lost those customers. The dealer customer base declined for all U.S. importers.

Table I-3
Outboard engines: U.S. producers' and importers' customers, January-September 2003, and January-September 2004

* * * * * * *

Price

Depending on the model and various features, manufacturers' suggested retail prices for outboard engines range from under $1,000 to about $20,000, generally depending on technology and horsepower. A more or less full line of U.S. and Japanese models are offered in the U.S. market, although to varying degrees by the individual maker. Average unit values for U.S. shipments by producers and importers by technology and horsepower are presented in table I-4, which are based on data presented in appendix D.[116] The data for 2003 indicate that U.S. producers' shipments of outboard engines ranged from $*** to $*** per unit, and shipments of imports from Japan ranged from $*** to $*** per unit. Within a given horsepower range, average unit values of U.S. producers' shipments were highest for 2-stroke DI models, and U.S. importers' average unit values were highest for shipments of 4-stroke EFI models. Pricing practices and prices reported for outboard engines in response to Commission questionnaires are presented in Part V of this report.

Table I-4
Outboard engines: Unit values of U.S. producers' and importers' U.S. shipments, by technology and horsepower, 2003

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[115] Conference transcript, p. 34 (Noellert).

[116] Petitioner's value data in appendix D are estimated and counsel for petitioner argued that the average unit value data presented for the U.S. industry are of limited value if used in comparison with Japanese average unit values as an approximation of relative product prices by horsepower and technology. Petitioner's prehearing brief, pp. 39-40, and posthearing brief, exhibit B, pp. 23-27.

DOMESTIC LIKE PRODUCT ISSUES

During the final phase of this investigation, Japanese respondents argued that powerheads are a separate like product from outboard engines whether considered under the Commission's "semi-finished" product or traditional like product analyses.[117]

In a semifinished product analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles.

Powerheads are predominantly but not exclusively dedicated to the production of outboard engines.[118] A small percentage of U.S. production of outboard engine powerheads (ranging from *** to *** percent of production during the period of investigation) was internally consumed for the purpose of producing sport jets, a non-outboard engine product, as indicated in the tabulation below:[119]

* * * * * * *

Petitioner argued that any separate market for powerheads that does exist is for the purpose of replacement parts and warranty work.[120] Respondents argued that the market for engines is OEM boat builders, dealers, and ultimately consumers, whereas powerheads are sold to engine manufacturers like Mercury, to be incorporated into an engine.[121]

Powerheads and complete engines have some differences in physical characteristics; namely, engines not only include powerheads but also include a midsection assembly and a gearcase assembly.[122] They also have a high degree of overlap in that they both possess the essential elements of the powerhead. In addition, the powerhead cannot function without the engine, and the engine cannot function without the powerhead, but they both have the same function: to propel the boat.[123]

The average unit value of powerheads is less than the average unit value of the engines, because the former is a component of the latter. In 2003 the average unit value of U.S. shipments of powerheads was $***; for engines it was $***. For Mercury's outboard engine models containing an imported powerhead from Japan, the cost associated with the powerhead as a percentage of the cost of the entire engine ranged from *** percent for the small engines (*** HP 4-strokes) to approximately *** percent for the larger (75, 90, and 115 HP 4-strokes) engines.[124]

In order to transform the powerhead into a complete engine, a substantial amount of engineering and manufacturing processes are needed to design a midsection and lower unit to function with a given powerhead and to perform all the necessary steps to make a complete engine. In addition, performance, durability, and regulatory (emissions) testing must be performed by the final assembler.[125] In order to integrate the powerhead with the midsection and gearcase subassemblies, special attention is needed in the design of the adapter plate and mid-section, in terms of close tolerances in machining the thicknesses

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[117] Joint respondents' prehearing brief, pp. 120-133.

[118] Joint respondents' prehearing brief, pp. 120-122.

[119] Petitioner's submission of December 13, 2004. BRP ***.

[120] Petitioner's prehearing brief, pp. 9-10.

[121] Joint respondents' prehearing brief, pp. 123-124.

[122] *Id*., p. 125.

[123] Petitioner's prehearing brief, p. 11.

[124] See Part III for a presentation of data related to the value added to imports of powerheads.

[125] BRP producer questionnaire response, section II-11.

of the plate, alignment of the midsection for various shafts, water passages, exhaust passages, and the shock mount system to ensure proper integration with the lower unit.[126]

As previously indicated, excluded from the scope of this investigation are imports from Japan of five models of powerheads: 75 HP, 4-stroke carbureted and EFI; 90 HP, 4-stroke carbureted and EFI; and 115 HP EFI. U.S. producers do not manufacture 4- stroke powerheads in the three HP categories. However, U.S. producers produced 2-stroke carbureted and DI powerheads in the 75, 90, and 115 HP categories, and shipments of outboard engines containing such 2-stroke powerheads accounted for *** percent of U.S. shipments of U.S.-produced outboard engines during 2003.

[126] Mercury producer questionnaire response, section II-11.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET SEGMENTS/CHANNELS OF DISTRIBUTION

Both U.S. producers and importers sold outboard motors to OEMs and individual dealers. According to data submitted in response to Commission questionnaires, sales to OEMs by both U.S. producers and importers as a share of the U.S. market increased from *** percent of total U.S. shipments in 2001 to *** percent in 2003. The share of sales of U.S.-produced outboard engines to OEMs increased from *** percent in 2001 to *** percent in 2003 while the share of sales of imports of outboard engines from Japan to OEMs increased from 37 percent to 51 percent between 2001 and 2003. All responding importers[1] and U.S. producers sell outboard engines nationally.

The December 2000 bankruptcy of OMC, a leading U.S. producer of outboard marine engines and boats, led to intense competition among the remaining outboard engine suppliers for OMC's 28-percent[2] U.S. market share. The bankruptcy created a significant opportunity for engine suppliers to the U.S. market to increase market share and expand dealer and boat builder networks,[3] resulting in a reallocation of market share among U.S. and Japanese engine producers. ***. BRP reintroduced OMC's Johnson and Evinrude engine brands to the U.S. market in October 2001.[4]

The respondents, however, claimed that OMC dealers were reluctant to source from Mercury, OMC's principal competitor.[5] ***.

Thirty of 63 reporting purchasers indicated that the OMC bankruptcy affected their firm's purchases of outboard engines, with 20 of 62 purchasers reporting that their relative purchases of imported outboard engines increased as a result. Only 4 of 64 reporting purchasers indicated that a new supplier secured contract terms that differed significantly from terms of sales previously experienced by their company and only 10 of 63 reporting purchasers indicated that they had contracts that required that all or virtually all of their purchases be from a single supplier.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. outboard engines producers are likely to respond to changes in demand with large changes in the quantity of shipments of U.S.-produced outboard engines to the U.S. market. The main contributing factors to the large degree of responsiveness of supply are the existence of alternate markets, the availability of unused capacity, the existence of some inventories, and an ability to produce alternate products.

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[1] Since all responding U.S. producers filled out both producer and importer questionnaires, their responses to narrative questions are included in descriptions of responses from "responding producers," but not included in descriptions of "responding importers."

[2] "OMC: Two Drops in Much Bigger Buckets," The Eyerdam Report, *The Boating News*, April 2001, found at http://www.theboatingnews.com, retrieved January 28, 2004. Other sources indicate the OMC's share of the market was smaller, e.g, 23 percent. Rick Barrett, "Despite sale, Bombardier to stay invested in Sturtevant," *Milwaukee Journal Sentinel Online*, August 27, 2003, found at http://www.jsonline.com/, retrieved January 15, 2004.

[3] Conference transcript, pp. 68-69 (Pomeroy).

[4] Liz Walz, "Igniting Change," *Boating Industry*, May-June 2003, p. 24.

[5] Postconference brief of Yamaha, p. 11.

Industry capacity

U.S. producers' reported capacity utilization for outboard engines fell from *** percent to *** percent between 2001 and 2003. This level of capacity utilization indicates that U.S. producers have some unused capacity with which they could increase production of outboard engines in the event of a price change.

Alternative markets

U.S. producers' exports of outboard engines remained unchanged at *** percent of shipments from 2001 to 2003. These data indicate that U.S. producers have the ability to divert shipments to or from alternative markets in response to changes in the price of outboard engines.

Inventory levels

U.S. producers' inventories, as a percentage of total shipments, decreased between 2001 and 2003, from *** percent of their shipments in 2001 to *** percent in 2003. These data indicate that U.S. producers have some ability to use inventories as a means of increasing shipments of outboard engines to the U.S. market.

Production alternatives

U.S. producers have the ability to use at least some of the equipment used to produce outboard engines to produce other products. Mercury is an expert die casting and machining designer of metal and non-metal components. While Mercury's production equipment is specifically tailored to marine applications, its casting facilities could be used for other purposes. It currently supplies castings to Harley-Davidson for their engine blocks and has supplied some castings to Paralis Engine for ATVs.[6]

Subject Imports

Based on available information, the Japanese producers are likely to respond to changes in demand with large changes in the quantity of shipments of outboard engines to the U.S. market. The main contributing factors to the large degree of responsiveness of supply are the existence of alternate markets and some inventories and an ability to produce alternate products moderated by the unavailability of unused capacity.

Industry capacity

Japanese producers' reported capacity utilization for outboard engines increased, from 75.2 percent in 2001 to 98.5 percent in 2003 and increased from 94.7 percent to 103.3 percent between interim 2003 and interim 2004. This level of capacity utilization indicates that Japanese producers have little unused capacity with which they could increase production of outboard engines in the event of a price change.

[6] Conference transcript, p. 101 (Davis).

Alternative markets

Japanese producers' shipments of outboard engines to markets other than the United States (their home market and other export markets) fell from 67.8 percent of shipments in 2001 to 63.5 percent of shipments in 2003, and remained relatively unchanged at approximately 63.0 percent of shipments between interim 2003 and interim 2004. These data indicate that Japanese producers have the ability to divert shipments to or from alternative markets in response to changes in the price of outboard engines.

Inventory levels

Japanese producers' inventories, as a percentage of shipments, declined between 2000 and 2002, falling from 7.4 percent of shipments in 2001 to 6.7 percent in 2003. These data indicate that Japanese producers have some ability to use inventories as a means of increasing shipments of outboard engines to the U.S. market.

Production alternatives

As is the case with U.S. producers, Japanese producers have the ability to use the equipment used to produce outboard engines to produce other products.[7]

U.S. Demand

Based on available information, outboard engine consumers are likely to respond to changes in price with large changes in their purchases of outboard engines. The main contributing factors to the high degree of responsiveness of demand is the high sensitivity of demand to changes in discretionary income, the typically moderate cost share of end-uses, and the moderate substitutability of other products for outboard engines.

Demand Characteristics

Demand for outboard engines depends on the demand for the boats they are used to power and discretionary income of potential boat purchaser.[8] One responding producer and two responding importers indicate that demand for outboard engines has increased since 2001 while one of the remaining importers indicated that demand was unchanged and the other remaining importer indicated that demand had decreased.[9] Citing changes in annual wholesale sales, petitioner indicated that demand fell by 24 percent between 2000 and 2001, increased in 2002 to a level about 6 percent below its level in 2000, and then increased by just over 1 percent between 2002 and 2003.[10]

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[7] Conference transcript, p. 237 (Dyskow).

[8] Conference transcript, p. 32 (Noellert).

[9] Even if the *demand* at a given price for outboard engines in the U.S. market remains the same or decreases, the apparent consumption (*quantity demanded*) of outboard engines may increase (decrease) due to an increase (decrease) in the supply of outboard engines from domestic or foreign sources to the U.S. market.

[10] Conference transcript, p. 31 (Noellert). However, as noted in the previous footnote, at least part of the decrease in engine sales between 2000 and 2003 could be the result of a variation in the timing of domestic supply caused by the OMC bankruptcy and not be an actual decrease in demand. For example, engine sales to dealers in 2000 may have been inflated and sales in 2001 may have been depressed by increased sales by OMC in the fourth quarter of 2000. Irwin Jacobs of Genmar testified that OMC "loaded up" dealers with engines in the fourth quarter of 2000,

(continued...)

Most responding producers and importers indicated that the principal factor affecting demand was the economy.[11] Other demand factors mentioned by responding importers included emissions regulations, changes in the amount of personal recreation time, gasoline prices, interest rates, and bad weather (particularly droughts and floods). One importer indicated that as a result of a downturn in the economy and the fact that boats are primarily purchased with consumer discretionary money, some people can no longer afford "boating" and others choose to fix their old outboards rather than buy a new one.

Substitute Products

While other types of engines cannot be installed on boats using outboard motors without converting the boat, one of two responding producers, all responding importers, and 24 purchasers[12] indicated that there are boats with other types of engines, such as stern drives, inboard motors, jet units, and electric trolling motors, that could be substitutes for boats with outboard engines. This type of substitution would be limited to purchases of new boats, which make up approximately 85 percent of sales of outboard engines.[13] *** responding importers, but *** responding producers and only one of 33 responding purchasers indicated that changes in the prices of these substitute products affect the price of outboard engines. One responding importer also indicated that sellers of outboard engines also face competition for the consumer's discretionary dollars from other industries.

Cost Share

According to responding producers, importers, and purchasers, the proportion of the total cost of a new boat accounted for by outboard engines varies by the type of boat use, but in most cases producers and importers reported that it ranged from 15 percent to 75 percent, while purchasers reported that it ranged from 20 percent to 50 percent. Producers and importers reported that the cost share for most types of boat ranged from 15 percent to 45 percent, but that the cost share for utility, jon (a flat-bottom boat usually less than 20 feet in length), and inflatable boats ranged from 40 percent to 75 percent.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported outboard engines depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there is a moderate level of substitutability between domestically produced outboard engines and import of outboard engines from Japan and other import sources.

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[10] (...continued)
the quarter it filed bankruptcy, by offering extended floor plans into the next year. Hearing transcript, pp. 320-321 (Jacobs). Robert Gowens, formerly of OMC, testified that because OMC was chasing quarterly profits, OMC was discounting engines, driven by product quality issues. Hearing transcript, pp. 271-272 (Jacobs).

[11] Petitioner pointed out that since a boat purchase is generally a substantial purchase for a consumer that is discretionary and therefore income elastic, it is not surprising that boat and engine sales tend to track the overall economy. Conference transcript, p. 32 (Noellert).

[12] In addition, 19 purchasers responded “none” or “NA” and 24 purchasers did not respond to the question.

[13] Conference transcript, p. 89 (Sheller).

Factors Affecting Purchasing Decisions

Purchasers were asked a variety of questions to determine what factors influence their decisions when buying outboard engines. Information obtained from their responses indicates that several factors are considered important by purchasers, including quality and price.

More purchasers (19 of 59) indicated that dealer/customer demand was the number one factor and one of the top two factors (27 of 59 responding purchasers) used in their purchasing decisions, than any other factor. However, more responding purchasers (33 of 59) indicated that availability and price were one of the top three factors used in their purchasing decisions.

Just as many purchasers indicated that availability and reliability of supply were "very important" factors in their purchasing decisions as those that indicated that quality meeting industry standards was a "very important" factor. In addition to these factors, more or just as many purchasers indicated that product consistency, performance, technical support/service, quality exceeding industry standards, delivery time, product range, and discounts offered were "very important" factors in their purchasing decisions as indicated that price was a "very important" factor.

As indicated in table II-1, while price was named by only five of 59 responding purchasers as the number one factor generally considered in deciding from whom to purchase outboard engines, it was named by 10 purchasers as the number two factor and the number three factor by the 17 other responding purchasers. Also, as indicated in table II-2, 36 of 62 of the responding purchasers indicated that price was a "very important" factor in their purchase decisions, while only two responding purchasers indicated that price was "not important." However, only one of the 60 responding purchasers indicated that their firm would "always" purchase the outboard engine that is offered at the lowest price, while 10 responding purchasers indicated that they would "never" purchase the outboard engine that is offered at the lowest price. Forty-three responding purchasers indicated that the lowest-priced outboard engines "sometimes" will win a sale and the remaining six reported "usually."

Quality was named by 15 of the 62 responding purchasers as the number one factor generally considered in deciding from whom to purchase outboard engines, while five other responding purchasers indicated that it was the number two factor, and four additional purchasers indicated that it was the number three factor. Fifty-two of 62 responding purchasers indicated that quality meeting industry standards was a "very important" factor in their purchasing decisions and 42 of 62 responding purchasers indicated that quality exceeding industry standards was a "very important" factor in their purchasing decision. Purchasers named a number of factors they consider in evaluating quality including: consistency, maintenance costs, consumer satisfaction, reputation, overall performance, noise level, emission level, availability of supporting components, durability, and fuel mileage. See appendix F for reported quantity and value of outboard engines returned for warranty claims or recall to producers and importers and the reported quantity of repairable engines returned to purchasers.[14]

Only 6 of 60 purchasers reported that they required suppliers of at least some of their 2003 purchases to become certified or prequalified. Only 5 of 51 purchasers reported that since 2001 one or more suppliers have failed in their attempts to qualify outboard engines. Forty-three of 60 reporting purchasers indicated some suppliers offer a more complete range of outboard engines compared to other suppliers, with 23 of these purchasers naming either Mercury and BRP (or both). Overall, 27 purchasers named Yamaha, 21 purchasers named Mercury, six purchasers named Suzuki, and four named BRP or Honda.

[14] Petitioner indicated that, "since the vast majority of purchasers did not report any warranty data, generally indicating that warranty claims were handled by the engine manufacturer, the most reliable data the Commission has on warranty returns and repairs are the data collected from the engine manufacturers." Petitioner's posthearing brief, p. A-21.

Table II-1
Outboard engines: Ranking of factors used in purchasing decisions as reported by U.S. purchasers

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Affiliation with supplier	4	0	0
Availability[1]	6	14	13
Dealer/customer demand[2]	19	8	0
Extension of credit	0	0	1
Other[3]	0	3	10
Prearranged contracts	2	0	1
Performance	0	1	0
Price[4]	6	10	17
Quality[5]	15	5	4
Range of supplier's product line[6]	2	8	4
Reliability[7]	3	1	1
Technology	2	2	2
Traditional supplier[8]	0	2	1

[1] Includes two instances of "current availability" for the number one factor and one instance of "current availability for the number two factor, and one instance of "inventory availability" as the number three factor.
[2] Includes one instance of "consumer perception of product," one instance of "dealer tells us what to do," one instance of "local market share already in place," and one instance of "product is specified by customer" for the number one factor; one instance of "all my boat companies do business with them," and one instance of "brand image with customer," for the number two factor;
[3] Includes "dealer recommendations," "specialized dealer network services Yamaha," and "compatibility w/ boat lines carried," for the second factor; "brand identity," "consistency," "credibility," "dealer support," "discounts," "innovative design," "quality/price," "high demand product for best," " manufacturer/dealer support" and "warranty" for the third factor.
[4] Includes one instance of "margin," one instance of "profit opportunity," and one instance of "total cost" for the number three factor.
[5] Includes one instance of "must meet our peculiar specs," and "reputation/quality" for the number one factor; one instance of "quality and new technology" as the third factor.
[6] Includes one instance of "product," for the number two factor.
[7] Includes one instance of "dependability" for the number one factor.
[8] Includes one instance of "relationships" for the number two factor.

Note: Does not include one response of "quality/price" as the number three factor.

Source: Compiled from data submitted in response to Commission questionnaires.

Table II-2
Outboard engines: Importance of factors used in purchasing decisions, as reported by U.S. purchasers

Factor	Number of firms reporting		
	Very important	Somewhat important	Not important
Availability	53	9	0
Reliability of supply	52	9	1
Quality meets industry standards	52	8	1
Product consistency	50	11	0
Performance	48	11	2
Technical support/service	45	15	1
Delivery time	43	18	1
Quality exceeds industry standards	42	18	1
Price	36	24	2
Discounts offered	36	21	3
Product range	35	23	3
Delivery terms	28	29	3
U.S. transportation costs	17	25	18
Extension of credit	14	25	22
Minimum quantity requirements	13	21	27
Packaging	12	27	21

Source: Compiled from data submitted in response to Commission questionnaires.

The petitioner indicated that while there are numerous factors in the consumer's purchase process, such as quality and availability, price has become increasingly important during the transition to the production of lower-emission outboard engines.[15] Petitioner also indicated that significant price competition is seen in the purchases by boat builders, and that price is the leading factor in making the sale.[16] However, referring to data showing an increase in sales of Japanese-produced 4-stoke engines during the period of investigation, Yamaha indicated that what is driving the market is not small price differentials between comparable engines, but the migration of the market to 4-stroke engines.[17] Also, several Yamaha dealers indicated that minor differences in price are not important and that they can sell a quality product for a higher price.[18]

[15] Conference transcript, p. 92 (Sheller).

[16] Conference transcript, pp. 92-93 (Dempsey).

[17] Yamaha's postconference brief, p. 45 and exh. 35.

[18] Conference transcript, pp. 154-55 (Deal), p. 167 (Haddon), and p. 174 (Mudgett).

Recent EPA and CARB rulings establishing increasingly stringent emission standards for outboard marine engines effectively preclude the sale of the traditional 2-stroke carbureted engine,[19] and have encouraged sales of 4-stroke engines and newly-designed 2-stroke engines with direct injection systems.[20] To meet these requirements, Mercury indicated that it pursued a three-pronged approach: (1) "early research and eventual co-development of small 4-stroke engines;" (2) "internal development of mid-horsepower 2-stroke direct injected engines;" and (3) "in-house long-term development of very large, revolutionary non-automobile-based 4-stroke marine engines."[21] Mercury's production efforts focused on its larger engines that were the bigger contributors to emission levels.[22] According to Suzuki, this approach built on Mercury's (and OMC's) "extensive knowledge about 2 strokes" and its "extensive capital equipment for 2 strokes."[23] Mercury also entered into an alliance with Yamaha in 1993 to produce smaller 4-stroke engines that met EPA requirements.[24] According to Yamaha, the engines imported from Japan allowed Mercury (as well as BRP) "to generate environmental "credits" that enabled them to continue to sell 2-stroke engines..."[25] The respondents noted that Mercury directed its resources to its most profitable engine segments at that time and relied on imports of 4-stroke engines to complete its product line-up. The respondents also claimed that in 1997, Mercury management "believed this to be a flawed strategy, that 4-strokes were going to be the dominant technology in the market, and that Mercury had to develop its own 4-stroke technology..."[26] Suzuki indicated that many of the Japanese producers, on the other hand, focused on production of 4-stroke engines, in part because of their familiarity with 4-stroke technology.[27]

In their questionnaire responses, *** acknowledged that 2-stroke carbureted engines have been largely replaced by 2-stroke DI and 4-stroke engines in the U.S. market as a result of the more rigid EPA and CARB emission standards. According to the petitioner, EPA estimated that 2-stroke engines will account for 15 percent of wholesale U.S. sales in 2006, down from 47 percent in 2002.[28] Such

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[19] Petition, vol. II, p. 11.

[20] The design of the 2-stroke carbureted engine prevents cost-effective retrofitting with direct injection technology. Conference transcript, p. 103 (Davis). The EPA standards require the overall mix of new marine spark-ignition engines sold by a manufacturer in the United States to emit approximately 75 percent lower hydrocarbon emissions (on a corporate average) from the 1998 model-year level by model-year 2006 (July 2005), thus spurring engine suppliers to the U.S. market to focus production on emissions-compliant engines and/or to develop advanced engines and technologies that meet these standards. Conference transcript, p. 27 (Dempsey). Outboard engine manufacturers can continue to produce 2-stroke carbureted engines and sell these engines in the U.S. market as long as the 75-percent threshold is met for the entire range of the manufacturer's outboard engine production. Liz Walz, "New Horizons," *Boating Industry*, November/December 2004, p. 42. In 1998 the CARB adopted the same standards for spark-ignition marine engines, but accelerated implementation to 2001. "Recreational Marine Engines," CARB, December 17, 2003, found at http://www.arb.ca.gov, retrieved January 30, 2004. The State of California will implement emission standards stricter than the maximum federal level by 2008, with two staged reductions occurring in 2004 and 2008. "Air Board to Reduce Marine Engine Pollution," press release, CARB, December 10, 1998, found at http://www.arb.ca.gov, retrieved February. 5, 2004.

[21] Petitioner's posthearing brief, p. B-18.

[22] Hearing transcript, p. 79 (Davis).

[23] Suzuki's posthearing brief, p. 2.

[24] Hearing transcript, p. 80 (Davis) and pp. 194-195 (Mackey).

[25] Yamaha's posthearing brief, p. 6.

[26] Hearing transcript, p. 242 (Gowens).

[27] Suzuki's posthearing brief, p. 3.

[28] Conference exh. 14, Mercury.

substitution is possible because the different engine technologies are fully interchangeable at a given horsepower level, according to the petitioner.[29]

As indicated in table II-3, both responding producers indicated that the various types of outboard engine technologies were "always" used interchangeably. At least three of the four responding importers indicated that all different types of 2-stroke engine technologies were only "sometimes" used interchangeably with 4-stroke engine technologies, while two of four responding importers indicated that 2-stroke engine technologies were only "sometimes" used interchangeably with other 2-stroke engine technologies. Thirty-eight to 54 percent of responding purchasers indicated that the various types of outboard engine technologies were "always" used interchangeably, and 58 percent to 73 percent of responding purchasers indicated that the various types of outboard engine technologies were at least "frequently" used interchangeably.

Table II-3
Outboard engines: Perceived degree of interchangeability of various types of outboard engine technologies

	Number of U.S. producers reporting				Number of importers reporting				Number of purchasers reporting			
	A	F	S	N	A	F	S	N	A	F	S	N
2-stroke, carb. vs. 2-stoke EFI	2	0	0	0	1	1	2	0	26	10	9	6
2-stroke, carb. vs. 2-stoke DI	2	0	0	0	0	2	2	0	24	8	12	6
2-stroke, carb. vs. 4-stoke carb.	2	0	0	0	0	0	4	0	21	12	9	10
2-stroke, carb vs. 4-stoke EFI	2	0	0	0	0	0	4	0	20	12	8	12
2-stroke, EFI vs. 2-stoke DI	2	0	0	0	0	2	2	0	26	9	12	5
2-stroke, EFI vs. 4-stoke carb.	2	0	0	0	0	0	4	0	21	13	8	10
2-stroke, EFI vs. 4-stoke EFI	2	0	0	0	0	0	4	0	21	12	9	11
2-stroke, DI vs. 4-stoke carb.	2	0	0	0	0	0	4	0	21	13	9	9
2-stroke, DI vs. 4-stoke EFI	2	0	0	0	0	1	3	0	21	10	12	10
4-stroke, carb. vs. 4-stoke EFI	2	0	0	0	1	1	1	0	26	9	7	6

Note.–A=always; F=frequently; S=sometimes; N=never.

Source: Compiled from data submitted in response to Commission questionnaires.

As indicated in table II-4, at least one-half of responding purchasers indicated that 2-stroke engine technologies were "inferior" in comparison to their corresponding 4-stroke technology with regard to durability and quietness and "superior" with regard to acceleration and low weight. In addition, at least one-half of responding purchasers indicated that the 2-stroke-DI technology was "inferior" in

[29] Conference transcript, p. 38 (Dempsey).

Table II-4
Outboard engines: Comparisons between various types of outboard engine technologies as reported by U.S. purchasers

Factor	Number of firms reporting					
	2-stoke DI vs. 4-stroke			2-stroke, carb. or EFI vs. 4-stroke, carb. or EFI		
	S	C	I	S	C	I
Acceleration	31	21	3	31	18	5
Durability	4	21	30	3	19	32
Ease of maintenance	12	27	16	17	20	18
Ease of operation	3	38	14	4	24	27
Environmental friendliness	3	27	25	0	4	51
Fuel economy	7	28	20	2	7	46
Low weight	42	11	2	42	8	5
Quietness of engine	2	10	43	1	5	49
Reliability	3	26	26	4	18	33
Speed	23	32	0	21	29	3

Note.–S=superior; C=comparable; I=inferior.

Source: Compiled from data submitted in response to Commission questionnaires.

comparison to the 4-stroke DI technology in regard to environmental friendliness, fuel economy, and reliability. At least 87 percent of responding purchasers indicated that all 2-stroke engine technologies were at least "comparable" in comparison to their corresponding 4-stroke technology with regard to acceleration, low weight, and speed, but at best "comparable" with all other characteristics aside from ease of maintenance.

As indicated in table II-5, 90 percent and 75 percent of responding purchasers indicated that their relative demand for 2-stroke carbureted and EFI technology engines, respectively, decreased since 2001. On the other hand, 61 percent and 95 percent of responding purchasers indicated that their relative demand for 4-stroke carbureted and EFI technology engines, respectively, increased during the same period. Also, 53 percent of responding purchasers indicated that their relative demand for 2-stroke DI engines increased since 2001, while 40 percent indicated that their relative demand decreased during that period.

Table II-5
Outboard engines: Change in relative demand by engine technology since January 2001

Engine type	Number of U.S. producers reporting			
	Increased	Unchanged	Decreased	Other
2-stroke, carb.	2	3	55	1
2-stoke, EFI	8	9	42	0
2-stoke DI	32	3	24	1
4-stoke, carb.	37	17	7	0
4-stoke, EFI	57	3	0	0

Source: Compiled from data submitted in response to Commission questionnaires

Comparisons of Domestic Products and Subject Imports

As indicated in table II-6, both responding domestic producers indicated that U.S.-produced and imports from Japan of outboard engines are "always" used interchangeably. Two of four responding importers indicated that U.S.-produced and imports from Japan of outboard engines are "sometimes" used interchangeably, while one remaining responding importer indicated that U.S.-produced and imports from Japan of outboard engines are "frequently" used interchangeably. The other remaining responding importer indicated that U.S.-produced and imports from Japan of outboard engines are "always" used interchangeably.

Table II-6
Outboard engines: Perceived degree of interchangeability of product produced in the United States and in other countries

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. Japan	2	0	0	0	1	1	2	0
U.S. vs. other	1	0	0	0	0	1	1	0
Japan vs. other	1	0	0	0	0	1	1	0

Note.–A=always; F=frequently; S=sometimes; N=never.

Source: Compiled from data submitted in response to Commission questionnaires.

Several responding importers and respondents indicated that domestically produced 2-stroke and 2-stroke DI engines are not interchangeable with Japanese-produced 4-stroke engines. Respondents indicated that while 2-stroke and 2-stroke DI engines have some advantages over 4-stroke engines in terms of weight, acceleration, and top-end performance, consumers prefer the 4-stroke model because it does not require mixing gas and oil in precise proportions and has better reliability.[30] Genmar, a boat builder, also indicated that Mercury has consistently ranked near the bottom of the J.D. Power surveys of

[30] Yamaha postconference brief, p. 5.

consumer satisfaction with their engines in three years of surveys (2001, 2002, and 2003), while Bombardier's Evinrude engines recently won the J.D. Power award for excellence among all other two-stroke engine manufacturers.[31] However, petitioner indicated that the Mercury, Evinrude, Yamaha, and Honda engine brands are all in the top quartile of owner satisfaction (above 7.5-with 1 defined as unacceptable, 5 defined as average, and 10 defined as outstanding) and that differences in scores between Yamaha and the domestic producers were smaller for 4-stroke engines than for the traditional 2-stroke engines.[32]

Also, one importer indicated that motor weight and technology are important issues affecting interchangeability and that different technology engines cannot be mixed in a multi-engine installation. Another responding importer indicated that, in general, outboard engines produced in the United States and Japan are interchangeable, provided the mounting is adaptable and the horsepower is sufficient to power (and not overpower) the boat.

As indicated in table II-7, one of two responding producers and one of four responding importers indicated that differences in product characteristics or sales conditions between U.S.-produced and imports from Japan of outboard engines are "sometimes" a significant factor in their firm's sales of outboard engines. The one remaining responding producer indicated that differences in product characteristics or sales conditions between U.S.-produced and imports from Japan of outboard engines are "never" a significant factor in their firm's sales, while two of four responding importers indicated that differences in product characteristics or sales conditions between U.S.-produced and imports from Japan of outboard engines are "frequently" a significant factor in their firms' sales. The remaining responding importer indicated that differences in product characteristics or sales conditions between U.S.-produced and imports from Japan of outboard engines are "always" a significant factor in their firm's sales.

Table II-7
Outboard engines: Perceived significance of differences other than price between product produced in the United States and in other countries

Country pair	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. Japan	0	0	1	1	1	2	1	0
U.S. vs. other	0	0	1	0	2	0	0	0
Japan vs. other	0	0	1	0	0	1	1	0

Note.–A=always; F=frequently; S=sometimes; N=never.

Source: Compiled from data submitted in response to Commission questionnaires.

[31] Conference transcript, pp. 139-140 (Jacobs). Aside from some excerpts of J.D. Power reports available in the public domain, J.D. Power reports are not part of the record in this investigation.

[32] Petitioner's postconference brief, fn. 123, pp. 38-39. Petitioner cites "Designing Surveys" at *http://www.customersat.com/Resources/Articles/designing.asp* as evidence that J.D. Power uses the 10 point scale described above. Although this article makes no specific reference to J.D. Power using this 10 point scale in its outboard motor surveys, it does suggest that J.D. Power has found this type of scale to be advantageous in some of its surveys. The article states that "..a 10-point scale anchored in three places: 10= 'Outstanding,'; 5='Average'; 1='Unacceptable'. After decades of research, CustomerSat and its partner and investor J.D. Power and Associates have found this scale to have the following advantages." E-mail from Kevin Dempsey, Counsel to Mercury, February 11, 2004.

As indicated in table II-8, 43 of 56 responding purchasers indicated that U.S.-produced and imports from Japan of outboard engines are "always" used in the same applications. For all purchasing factors, at least one-half of the responding purchasers indicated that U.S.-produced and imports from Japan of outboard engines are "comparable." In addition, over 30 percent of responding purchasers indicated that U.S.-produced outboard engines are "inferior" to imports from Japan in regard to product consistency, product range, and quality both meeting and exceeding industry standards (see table II-9).

Table II-8
Outboard engines: Usage in same applications of product produced in the United States and in other countries

Country pair	Number of U.S. purchasers reporting			
	A	F	S	N
U.S. vs. Japan	43	6	6	1
U.S. vs. other	12	5	1	1
Japan vs. other	14	5	1	1

Note.–A=always; F=frequently; S=sometimes; N=never.

Source: Compiled from data submitted in response to Commission questionnaires.

Comparisons of Domestic Products and Nonsubject Imports[33]

In their questionnaire responses, one of two responding importers indicated that U.S.-produced and imports from nonsubject sources of outboard engines are "sometimes" used interchangeably. The remaining responding importer indicated that U.S.-produced and imports from nonsubject sources of outboard engines are "frequently" used interchangeably, the only responding producer indicated that U.S.-produced and imports from nonsubject sources of outboard engines are "always" used interchangeably.

Both responding importers indicated that differences in product characteristics or sales conditions between U.S.-produced and imports from nonsubject sources of outboard engines are "always" a significant factor in their firm's sales of outboard engines. The responding producer indicated that differences in product characteristics or sales conditions between U.S.-produced and imports from nonsubject sources of outboard engines are "sometimes" a significant factor in its firm's sales.

Comparisons of Subject Imports and Nonsubject Imports

In their questionnaire responses, one of two responding importers indicated that U.S.-produced and imports from nonsubject sources of outboard engines are "sometimes" used interchangeably. The remaining responding importer indicated that U.S.-produced and imports from nonsubject sources of outboard engines are "frequently" used interchangeably. The only responding producer indicated that U.S.-produced and imports from nonsubject sources of outboard engines are "always" used interchangeably.

[33] Typically, imports of outboard engines from other countries are produced by subsidiaries of U.S. and Japanese producers and are of the same make (brand) as those sold in the United States.

Table II-9
Outboard engines: Comparisons between U.S.-produced and subject Japanese products as reported by U.S. purchasers

Factor	Number of firms reporting		
	U.S. superior	Comparable	U.S. inferior
Availability	10	33	8
Delivery terms	2	44	4
Delivery time	11	39	2
Discounts offered	3	39	9
Extension of credit	4	45	2
Minimum quantity requirements	4	46	2
Packaging	4	43	4
Performance	2	39	11
Lowest price[1]	10	36	6
Product consistency	1	29	22
Product range	6	29	16
Quality exceeds industry standards	1	26	24
Quality meets industry standards	1	35	16
Reliability of supply	14	27	10
Technical support/service	9	30	12
U.S. transportation costs	7	42	1

[1] A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," this means that it rates the U.S. price generally lower than the Japanese price.

Source: Compiled from data submitted in response to Commission questionnaires.

One of two responding importers and the only responding producer indicated that differences in product characteristics or sales conditions between U.S.-produced and imports from nonsubject sources of outboard engines are "sometimes" a significant factor in their firms' sales of outboard engines. The other responding importer indicated that differences in product characteristics or sales conditions between U.S.-produced and imports from nonsubject sources of outboard engines are "frequently" a significant factor in its firm's sales.

ELASTICITY ESTIMATES

This section discusses elasticity estimates for outboard engines.

U.S. Supply Elasticity[34]

The domestic supply elasticity for outboard engines measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of outboard engines. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced outboard engines. Analysis of these factors earlier indicates that the U.S. industry is likely to be able to greatly increase or decrease shipments to the U.S. market; an estimate in the range of 10 to 20 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for outboard engines measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of outboard engines. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of the outboard engines in the production of any downstream products. Based on the available information, the aggregate demand for outboard engines is likely to be elastic; a range of -1.25 to -1.50 is suggested.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.[35] Product differentiation, in turn, depends upon such factors as quality (e.g., chemistry, appearance, etc.) and conditions of sale (availability, sales terms/discounts/promotions, etc.). Considering this information, the elasticity of substitution between U.S.-produced outboard engines and imports of outboard engines is likely to be in the range of 2 to 4. Petitioner suggested that a substitution elasticity in the range of 4 to 6 was more appropriate because a majority of purchasers indicated that all technologies are either "always" or "frequently" interchangeable and that U.S. produced outboard engines and subject imports of outboard engines were "comparable" for all sixteen factors of comparison.[36] However, over 30 percent of responding purchasers indicated that U.S.-produced outboard engines are "inferior" to imports from Japan in regard to product consistency, product range, and quality both meeting and exceeding industry standards (see table II-9). Also, some purchasers testifying in support of the petition have indicated that U.S.-produced outboard engines are superior to imported outboard engines,[37] and that some technologies or outboard engines may be superior to others in regard to

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[34] A supply function is not defined in the case of a non-competitive market.

[35] The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

[36] Petitioners' prehearing brief, Appendix A.

[37] For example: Hearing transcript, p. 51 (Fountain), "...Mercury Marine produces the best-performing outboard engines available..."; p. 117 (Fountain), "They're (the Japanese producers) not ahead. American outboard motors today are more fuel efficient, they are faster, they are quieter in the case of the Verado, they're a better product.", p. 58 (Wolf) "..in terms of engine quality, I believe Mercury's product is better than Yamaha's,"; p. 62 (Grover), "even though I have had opportunities to get a Ranger boat with a Yamaha at a lower cost than a Mercury, I have stayed with Mercury outboards because of their overall quality and performance."

some factors.[38] Also, some purchasers testifying in opposition to the petition indicated that outboard engines imported from Japan were superior.[39]

Also, domestic producer BRP indicated that a more reasonable range would be 2.5 to 5, based on a econometrically estimated point estimate of 3.6 using the price data.[40] However, based on the standard error of this estimate, a 95 percent confidence interval of BRP's estimate would range from 1.96 to 5.20. Also this estimate is based only on data for the six price products reported to the Commission and does not account for substitutability between U.S. produced outboard engines and imports of outboard engines from Japan which were not included in the price data, which presumably would much less substitutable.

[38] Hearing transcript, p. 54 (Miller), "While it is true that 4-stroke engines are popular for certain types of boats where weight is not a significant issue, for many types of boats, including bass, bay and flats boats, 2-stroke engines like the Optimax are the preferred engine due to their light weight and superior performance characteristics."

[39] For example: Hearing transcript, pp 261-262 (Lockhart), "Also, I've had a customer replace a new Mercury on his Boston Whaler in order to get the superior reliability of a Honda 4-stroke...Crestliner now only sells boats equipped with a Mercury, Bombardier, or Honda engine. Because I believe that Honda produces the highest-quality product, I will only order Crestliners packaged with Hondas," p. 220 (Carroll), "Our customer-satisfaction survey showed very clearly that when powered with the Yamaha, satisfaction was significantly than when powered with other engines. Yamaha was the only logical choice for this reason alone. However, there was an additional reason: The domestic engine suppliers did not have the 4-stroke engines that our customers prefer," p. 223 (Deal), "...a major reason that we buy exclusively from Yamaha is that neither of the domestic producers offers anything close to the range of 4-stroke product offerings that Yamaha does."

[40] BRP's prehearing brief, p. 29.

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

U.S. PRODUCERS

Domestic producers' plant locations, positions on the petition, and individual shares of U.S. production in units are presented in table III-1. Mercury, producing the "Mercury" brand, and BRP, producing the "Johnson" and "Evinrude" brands, are the only two U.S. manufacturers of outboard engines and their primary components following the December 2000 bankruptcy of OMC. Both companies also imported powerheads and/or engines from Japanese producers, but sell them under their own brands. There is no separate production of primary components in the United States by any other manufacturers.

Table III-1
Outboard engines and powerheads: U.S. producers, locations of production facilities, positions with respect to the petition, and shares of U.S. production, 2003

Company	Locations of production facilities	Position with respect to the petition	U.S. production of engines *(quantity)*	Share of total *(percent)*
BRP[1]	Sturtevant, WI Andrews, NC Delavan, WI Spruce Pine, NC	Support	***	***
Mercury[2]	Fond du Lac, WI	Petitioner	***	***
Total			***	100.0

[1] BRP is a wholly owned subsidiary of BRP Holdings (USA) Inc., Wilmington DE, which is wholly owned by Bombardier Recreational Products Inc., Valcourt, Canada. BRP was sold in December 2003 by Bombardier, Inc. to private owners.
[2] Mercury is a wholly owned division of Brunswick Corp., Lake Forest, IL.

Source: Compiled from data submitted in response to Commission questionnaires.

COMPANY PROFILES

Mercury, a wholly owned division of the Brunswick Corporation,[1] is the world's largest marine propulsion systems manufacturer, producing such products as outboard, stern drive, and inboard engines; jet drives; and propellers.[2] Mercury supplies a wide range of outboard engines to the U.S. market, including 2-stroke carbureted, 2-stroke EFI, 2-stroke DI, and 4-stroke engines ranging between 2.5 to 300

[1] In addition to marine engines, Brunswick manufactures a large line of boats, fitness equipment, and bowling and billiards equipment. Brunswick home page, found at http://www.brunswick.com/index.html. Its boat companies include Baja Marine, Boston Whaler, Brunswick Family Boat Co., Crestliner, Hatteras Yachts, Lowe Boats, Lund Boat Company, and Sea Ray Boats, Inc., all of which use outboard engines. Mercury producer questionnaire response, section I-3. Brunswick agreed to purchase the Lowe, Lund, and Sea Ray aluminum boat firms from Genmar in March 2004. "Brunswick buys Genmar's aluminum brands," Boating Industry, March 8, 2004, found at http://www.boating-industry.com/output.cfm?ID=786817, retrieved November 3, 2004. In January 2005, Brunswick announced its purchase of Sea Pro Boats, Inc. and Sea Boss Boats, LLC, which manufacture the Sea Pro, Sea Boss, and Palmetto boat brands. These boat lines will join Brunswick's Boston Whaler brand to form a new Saltwater Boat Group. "Brunswick Acquires Sea Pro, Palmetto and Sea Boss Boats; Forms New Saltwater Boat Group," PR Newswire, January 3, 2005, found at http://itc.newsedge-web.com., retrieved January 13, 2005.

[2] See Mercury home page claim that it is the largest manufacturer, found at http://www.brunswick.com/engines.html.

horsepower, and ***.[3] [4] ***.[5] Mercury introduced a line of improved performance, higher horsepower, supercharged 4-stroke engines in February 2004.[6] The Verado line includes four engines rated at 200 horsepower and above that incorporate powerheads produced by Mercury at its Fond du Lac, WI, facility.

In addition, Mercury is a partner with ***.[7] Mercury indicates that these sourcing arrangements are "based on providing a complete outboard engine line given limited financial resources."[8] Mercury is also in the process of ***.[9] ***.[10]

BRP, formerly known as Bombardier Motor Corporation of America ("BMCA"),[11] is a Canadian-owned manufacturer of outboard engines. BMCA purchased the outboard engine assets of OMC (the

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[3] ***. Mercury entered into a co-development program with Yamaha in 1993 for the production of small (9.9 to 50 horsepower) 4-stroke engines, in which the partners each agreed to "take the lead on the design and development of different size powerheads." For each powerhead designed under this arrangement, manufacture of its specific components was allocated between the two partners "*** for the powerhead." The company responsible for designing the powerhead also negotiated "***." Mercury producer questionnaire response, section I-5. This arrangement not only reduced production and development costs for each partner, but also gave Mercury timely access to 4-stroke engine production. Conference transcript, pp. 58-59 (Dempsey). Engines developed under this agreement were subject to a 5-year minimum co-manufacture window, after which time Mercury chose to produce some of the engines on its own; other engines are still being co-produced. Conference transcript, pp. 67 and 72 (Davis). The first powerhead to be developed separately was the 50 HP engine, which both Yamaha and Mercury now produce independently. The 9.9 HP powerhead is also no longer part of the agreement. The two powerheads remaining subject to the agreement are the 25 HP and 40 HP powerheads. Hearing transcript, pp. 80-81 (Davis).

[4] Mercury and Yamaha have been engaged in a breach of contract lawsuit since September 2004. Yamaha indicated in July 2004 that it would raise the prices of its 75, 90, and 115 horsepower 4-stroke powerheads supplied to Mercury under their co-production agreement by 91.6 percent "as part of Yamaha's on-going efforts to restructure its prices in Japan and the United States to meet the requirements of the current business climate." "Yamaha raises price of powerheads sold to Brunswick," Boating Industry, July 23, 2004, found at www.boating-industry.com, retrieved July 27, 2004. Consequently, Brunswick filed an anticipatory breach of contract lawsuit, citing "an agreement until 2006 for them to supply these engines at an established price." "Brunswick sues Yamaha," Boating Industry, September 27, 2004, found at www.boating-industry.com, retrieved September 28, 2004. A judge ultimately ruled in October 2004 that Yamaha must continue to honor its contract with Brunswick and that Mercury's bond will be raised from $8 million to $9.8 million a month, which protects Yamaha from any default in payment by Brunwick. The ruling also included a provision that sends the dispute to arbitration. "Judge rules in Mercury/Yamaha dispute," Boating Industry, October 18, 2004, found at www.boating-industry.com, retrieved October 19, 2004, and "Wisconsin judge orders Yamaha to hold prices on Mercury outboard engines," Milwaukee Journal Sentinel, October 20, 2004, found at www.itc.newsedge-web.com, retrieved Oct. 22, 2004. Mercury subsequently narrowed the scope of its antidumping petition in November 2004 to exclude the powerheads in question in an attempt to resolve the commercial dispute. Hearing transcript, pp. 87-88 (Dempsey). Earlier in the year, Yamaha announced the termination of its agreements, effective June 30, 2004, to supply outboard engines to the Lund, Lowe, and Crestliner boat lines because of their purchase by Brunswick from Genmar in March 2004. "Yamaha Marine Group Announces Termination of O.E.M. Agreements with Lund, Lowe, and Crestliner," PRNewswire, April 1, 2004, found at www.itc.newsedge-web.com, retrieved April 2, 2004.

[5] Mercury producer questionnaire response, section II-9.

[6] Mercury's postconference brief, pp. 34-35 and hearing transcript, p. 35 (Mackey).

[7] ***. Mercury producer questionnaire response, section II-9.

[8] Mercury importer questionnaire response, section II-4.

[9] Mercury producer questionnaire response, section I-4.

[10] "Brunswick to build more boat, engine plants," Boating Industry, January 29, 2004, found at http://www.boating-industry.com/output.cfm?id=773533, retrieved November 3, 2004.

[11] In December 2003, BMCA was acquired by Bombardier Recreational Products, Inc., as part of Bombardier's recreational products division. BRP producer questionnaire response, section I-4.

Johnson and Evinrude brands) in March 2001;[12] the successor company BRP produces and sells these engines in the United States. BRP supplies a broad line of 2-stroke, 2-stroke DI, and 4-stroke engines to the U.S. market, although ***. The former BMCA entered into a supply agreement with Suzuki[13] that was initiated by OMC to ***.[14]

BRP's business strategy has focused on the development of additional 2-stroke DI engine models and its E-TEC technology for its entire engine line (Evinrude) produced in the United States.[15] BRP's E-TEC line currently is applied to engines ranging from *** HP, although its technology could be applied to engines in the range of *** HP.[16] BRP also continues to support marketing and brand development of its ***.[17]

U.S. VALUE-ADDED TO IMPORTS OF POWERHEADS

Data relating to the value added by Mercury to imports of powerheads from Japan are presented in table III-2. For Mercury's models containing an imported powerhead from Japan, the cost associated with the powerhead as a percentage of the cost of the entire engine ranged from *** percent for the small engines (*** HP 4-strokes) to approximately *** percent for the larger (75, 90, and 115 HP 4-strokes) engines.[18] Mercury sources powerheads from Japan and most of the other parts from the United States. Mercury uses the same production workers for producing all of its engines.[19] Tables with data of interest on this issue include III-4 and D-2.

Table III-2
Outboard engines: Unit values and source of materials and U.S. value-added for Mercury's production of complete outboard engines incorporating imports of powerheads from Japan, 2003

* * * * * * *

In order to incorporate the powerhead into a complete engine, Mercury assembles the powerhead with the midsection and gearcase subassemblies produced in its U.S. facilities. Mercury has made significant capital investments in its facilities in Fond du Lac, WI, averaging $*** million a year during the period of investigation. For the midsection assembly, the technical expertise necessary involves:

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[12] BRP did not reopen several OMC facilities, including those in Waukegan, IL; Burnsville, NC; and Calhoun, GA, but instead purchased a new facility in Sturtevant, WI and invested *** in equipment, machinery, and plant modifications for production of outboard engines. Preliminary phase BRP producer questionnaire response, section II-2.

[13] The BMCA arrangement with Suzuki was similar to that of OMC, which had previously entered into a supply agreement with Suzuki in 1997 for 2- and 4-stroke engines. "Outboard Marine Corporation and Suzuki Marine Announce Supply/Purchase Agreement," June 17, 1997, and "Suzuki to supply boat engines to U.S. marine product maker," June 17, 1997, Recreational Boat Building Industry, found at http://www.rbbi.com, retrieved February 2, 2004. BRP believes that OMC purchased 4-stroke engines from Suzuki "***." BRP importer questionnaire response, section II-4.

[14] ***. BRP producer questionnaire response, section II-9.

[15] BRP importer questionnaire response, section II-4.

[16] *Id* and Liz Walz, "New Horizons," *Boating Industry*, November/December 2004, p. 44.

[17] BRP importer questionnaire response, section II-4. Its parent, BRP Inc., ***. BRP and ***. BRP producer questionnaire response, section III-14.

[18] These data exclude SG&A costs. The percentages including SG&A costs are *** percent for the smaller powerheads and *** percent for the larger powerheads.

[19] Mercury producer questionnaire response, section II-5.

(1) casting high strength, low pressure, safety-sensitive aluminum transom and swivel brackets; (2) producing various low corrosion aluminum alloys and solution heat-treating cast aluminum alloys; and (3) machining, assembling, and welding safety-sensitive steel steering arm assemblies. For the gearcase assembly, the technical expertise involves: (1) high-pressure die casting closely toleranced aluminum gearcases; (2) designing and building complex dies and tooling for the casting processes; (3) producing various low-corrosion aluminum alloys; (4) inertia-welding high-strength drive shaft and propshaft components; (5) generating and gear-tooth grinding complex spiral bevel-gear teeth patterns; and (6) machining closely toleranced hardened steel-bearing quality gear set components.

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

The U.S. industry's production, capacity, and capacity utilization data for outboard engines and powerheads combined are presented in table III-3. Industry capacity grew from 2001 to 2002, then remained constant for the rest of the period. Production increased less than capacity from 2001 to 2002, causing a decrease in capacity utilization. Production and capacity utilization decreased in 2003. From January-September 2003 to January-September 2004, capacity remained steady and production increased, resulting in an increase in capacity utilization. Capacity and production for BRP were both low in 2001 because it began operations in October of that year. Capacity utilization for BRP during 2001 was high during the startup phase but then declined to low levels for the remainder of the period of investigation. Data for powerheads can be found in appendix E, table E-1. When asked to describe the constraints that limit capacity in its production facilities, BRP responded that "***." Mercury replied "***."

Table III-3
Outboard engines: U.S. production capacity, production, and capacity utilization, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

The U.S. producers' specific product offerings, by technology, source of powerhead, and horsepower, for model year 2003, are listed in table III-4. The U.S. industry's production, by source of powerhead, is presented in table III-5. Mercury was the only firm importing powerheads from Japan (Yamaha). Its production using imported powerheads was *** percent of its total outboard engine production in 2003. Data on production, U.S. shipments, and inventories of complete engines with U.S.-produced powerheads and with imported powerheads may be found in appendix E, table E-2.

Table III-4
Outboard engines: U.S. producers' product offerings, by technology, horsepower, and source of powerhead, model year 2004 (July 2003-June 2004)

Horse-power	2-stroke, carbureted	2-stroke, EFI	2-stroke, direct injection	4-stroke, carbureted	4-stroke, EFI
6	X				
8	X				
9.9	X			X	
15	X			X	
20	X				
25	X			X	
30	X			X	X
40	X		X	X	X
50	X		X		X
60	X				X
75	X		X	X[2]	
90	X		X	X[2]	
100			X		
115	X		X		X[2]
125	X				
135	X		X		
150	X	X	X		
175	X	X	X		
200	X	X	X		
225	X	X	X		
250	X	X	X		
300		X			

[1] Engines produced from imports of subject powerheads from Japan.
[2] Engines produced from imports of excluded powerheads from Japan.

Note.–Model year 2004 predates the introduction of the Verado 4-stroke line.

Source: Compiled from data submitted in response to Commission questionnaires.

Table III-5
Outboard engines: U.S. producers' production, by source of powerhead, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

U.S. PRODUCERS' U.S. SHIPMENTS AND EXPORTS

Table III-6 presents U.S. producers' shipments during the period of investigation for outboard engines and powerheads combined. U.S. shipments increased *** from 2001 to 2002, then declined somewhat in 2003. U.S. shipments increased from January-September 2003 to January-September 2004. The unit value of U.S. shipments increased steadily throughout the period examined. The increase is attributable in part to the increase in 2-stroke EFI and DI engines, the increase in the 4-stroke engines, the increase in larger horsepower sizes, and the decrease in carbureted engines in smaller sizes sold during the period examined.[20] Mercury was the only firm reporting transfers to related firms (boat builders). In addition to serving the U.S. market, both Mercury and BRP export *** quantities of outboard engines to many countries throughout the world. Exports accounted for about *** percent of total shipments in 2003.[21]

Table III-6
Outboard engines and powerheads: U.S. producers' shipments, by types, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Other than direct imports, there were no purchases of outboard engines by U.S. producers from other entities. Detailed information on U.S. shipments by technology and horsepower is presented in appendix D.

U.S. PRODUCERS' IMPORTS

Data on U.S. producers' production, subject imports, and ratio of subject imports to production, including powerheads and complete engines, are presented in table III-7. Mercury's ratio of imports to production was *** lower than that for BRP (*** percent compared with *** percent in 2003).

With respect to reasons for importing, BRP reportedly imports ***. BRP indicated that the "***."[22] Mercury reportedly imports powerheads and complete engines from Japan in order to ***.[23]

Table III-7
Outboard engines and powerheads: U.S. producers' production, imports, and ratios of imports to production, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Figures III-1 and III-2 present graphic presentations of the composition of U.S. producers' shipments of domestic production and imports of complete engines, by technology, horsepower, and source.

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[20] Harris Ellsworth submission, November 15, 2004 and posthearing brief, exh. A, p. 4.

[21] Major export markets include ***. Mercury producer questionnaire response, section II-14.

[22] BRP importer questionnaire response, section II-4.

[23] Mercury importer questionnaire response, section II-4.

Figure III-1
Outboard engines: U.S. producers' U.S. shipments, by technology and source, 2003

* * * * * * *

Figure III-2
Outboard engines: U.S. producers' U.S. shipments, by horsepower and source, 2003

* * * * * * *

U.S. PRODUCERS' INVENTORIES

U.S. producers' inventories of outboard motors are presented in table III-8. U.S. producers' inventories declined from 2001 to 2002 as the industry sold off inventory to meet demand that exceeded production in 2002. Inventories declined further in 2003, but as a ratio to production and shipments they increased slightly. Between January-September 2003 and January-September 2004 the industry appeared to be building inventories again. Information on inventories of powerheads may be found in appendix E, table E-3.

Table III-8
Outboard engines: U.S. producers' end-of-period inventories, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

U.S. employment information for outboard motors is presented in table III-9. When asked whether it had experienced any plant shutdowns or intra-company changes that had adversely impacted the production quantity of outboard motors, BRP reported that it experienced a reduction of *** full time positions in ***. ***.[24] As table III-9 demonstrates, total industry employment declined steadily from 2001 to 2003, then rose *** between January-September 2003 and January-September 2004. Unit labor costs rose steadily throughout the period of investigation while productivity fluctuated. BRP's unit labor costs were ***. Employment information on powerheads is presented in appendix E, table E-4.

Table III-9
Outboard engines: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

[24] Harris Ellsworth submission of November 29, 2004.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

Importers' questionnaires were sent to seven firms identified as possible importers as well as two firms receiving producers' questionnaires. Six firms responded that they imported subject merchandise during January 2001 through September 2004, accounting for virtually all imports of outboard engines during the period examined.[1] Both U.S. producers imported the subject product from Japan, in addition to Honda, Suzuki, Tohatsu, and Yamaha.

Of all the importers, only Mercury added production value to the imported product. As noted previously, ***. In addition to importing directly from their parent companies, Yamaha imported outboard engines from ***; Suzuki imported from ***; and Tohatsu imported from ***. Mercury imported some of its ***-produced engines and powerheads *** and some ***-produced engines through its ***. BRP imported ***. Table IV-1 presents data from the responding firms relating to imports of outboard engines from Japan and all other sources.

Table IV-1
Outboard engines and powerheads: U.S. importing firms and their imports into the United States, by country sources, 2003

* * * * * * *

Table IV-2 summarizes U.S. importers' product offerings by technology and horsepower for model year 2004.

[1] One firm, ***, moved and left no forwarding address. ***. E-mail from Diane Mazur, October 13, 2004. ***. E-mail from ***, October 20, 2004.

Table IV-2
Outboard engines: U.S. importers' product offerings from Japan, by technology and horsepower, model year 2004 (July 2003-June 2004)

Horsepower	2-stroke, carb	2-stroke, EFI	2-stroke, DI	4-stroke, carb	4-stroke, EFI
2				X	
2.5	X				
3.3	X				
3.5	X				
4	X			X	
5	X			X	
6				X	
8	X			X	
9.8	X			X	
9.9	X			X	
15	X			X	
18				X	
20				X	
25	X			X	
30				X	
40	X			X	X
50	X		X	X	X
60	X			X	X
70	X		X		X
75	X			X	
80	X			X	
85	X				
90	X		X	X	X
100				X	
115	X			X	X
120	X				
125					
130	X				X
135					X
140	X				X
150	X	X	X		X
175	X		X		
200	X	X	X		X
225	X	X	X		X
250	X	X	X		X
300			x		

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. IMPORTS

U.S. imports of outboard engines and powerheads combined are based on responses to Commission questionnaires and are presented in table IV-3.[2] At petitioner's request, Commerce excluded imports of 75, 90, and 115 hp powerheads from Japan from the scope of the investigation.[3] Those powerheads are not included in the data in table IV-3, but are summarized below:

* * * * * * *

[2] Official Commerce statistics are of limited value in this investigation, particularly with respect to import quantities. While the HTS statistical reporting numbers 8407.21.0040 and 8407.21.0080 cover imports of outboard engines and powerheads, imported engine parts assembled with domestic inputs into a complete outboard engine in a Foreign Trade Zone ("FTZ") are also included in official statistics, resulting in a distortive effect on quantity. As an example, ***. Official Commerce statistics are presented in the tabulation below:

Source	2001	2002	2003	Jan.-Sept. 2003	Jan.-Sept. 2004
	Quantity (*units*)				
Japan	176,151	211,990	289,389	206,319	252,802
All other sources	9,133	29,610	70,377	52,634	56,163
Total imports	185,284	241,600	359,766	258,953	308,965
	Value; landed, duty-paid ($*1,000*)				
Japan	455,562	595,031	683,112	482,890	569,729
All other sources	3,419	10,579	25,610	19,442	19,827
Total imports	458,981	605,610	708,722	502,332	589,556

[3] *Outboard Engines from Japan: Notice of Final Determination of Sales at Less than Fair Value*, 70 FR 03925, January 4, 2005.

Table IV-3
Outboard engines and powerheads: U.S. imports, by sources, 2001-03, January-September 2003, and January-September 2004

(Quantity=*units*; value=*1,000 dollars*, unit values, and period changes=*percent*, except where noted)

Source	Calendar year			January-September		Period changes			
	2001	2002	2003	2003	2004	2001-03	2001-02	2002-03	Jan.-Sept. 2003-04
	Quantity (*units*)								
Japan, subject:									
U.S. producers--Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Subtotal U.S. producers	***	***	***	***	***	***	***	***	***
U.S. importers--Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Subtotal U.S. importers	***	***	***	***	***	***	***	***	***
Total Japan, subject: Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total Japan, subject	157,333	193,382	207,477	152,330	157,574	31.9	22.9	7.3	3.4
All other sources:									
U.S. producers--Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Subtotal U.S. producers	***	***	***	***	***	***	***	***	***
U.S. importers--Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Subtotal U.S. importers	***	***	***	***	***	***	***	***	***
Total all other sources: Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total all other sources	***	***	***	***	***	***	***	***	***
Total imports:									
Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***

Table continued on next page.

Table IV-3--*Continued*
Outboard engines and powerheads: U.S. imports, by sources, 2001-03, January-September 2003, and January-September 2004

(Quantity=*units*; value=*1,000 dollars*, unit values, and period changes=*percent*, except where noted)

Source	Calendar year			January-September		Period changes			
	2001	2002	2003	2003	2004	2001-03	2001-02	2002-03	Jan.-Sept. 2003-04
	Value (*$1,000*)								
Japan, subject: U.S. producers--Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Subtotal U.S. producers	***	***	***	***	***	***	***	***	***
U.S. importers--Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Subtotal U.S. importers	***	***	***	***	***	***	***	***	***
Total Japan, subject: Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total Japan, subject	431,479	586,320	649,642	451,660	536,374	50.6	35.9	10.8	18.8
All other sources: U.S. producers–Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Subtotal U.S. producers	***	***	***	***	***	***	***	***	***
U.S. importers–Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Subtotal U.S. importers	***	***	***	***	***	***	***	***	***
Total all other sources: Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total all other sources	***	***	***	***	***	***	***	***	***
Total imports: Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***

Table continued on next page.

Table IV-3--*Continued*
Outboard engines and powerheads: U.S. imports, by sources, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

During 2001-03, subject imports from Japan increased by 31.9 percent based on quantity, and 50.6 percent based on value. From January-September 2003 to January-September 2004, subject imports from Japan again increased by 3.4 percent based on quantity, and 18.8 percent based on value. U.S. producers' imports of subject product from Japan accounted for *** percent of total imports based on quantity and *** percent based on value, during 2003. Imports from all other sources more than *** between 2001 and 2002, and more than *** between 2002 and 2003. There was a slight decrease of imports from nonsubject sources from January-September 2003 to January-September 2004. The average unit value of imports of complete engines from Japan increased steadily throughout the period of investigation. The increase is attributable in part to the increase in 4-stroke engines in larger horsepower sizes and the decrease in carbureted engines in smaller sizes sold during the period.

APPARENT U.S. CONSUMPTION AND U.S. MARKET SHARES

Table IV-4 presents apparent U.S. consumption and U.S. market shares for outboard engines and powerheads combined during the period of investigation. Figure IV-1 presents a graphic depiction of market shares during the period. Apparent consumption increased from 2001 to 2003, and again between January-September 2003 and January-September 2004. The U.S. producers' market share declined from 2001 to 2003, while U.S. importers of Japanese outboard engines increased market share during the same period. Measured in terms of quantity, imports from other sources increased market share *** as subject imports from Japan from 2001 to 2003. From January-September 2003 to January-September 2004, the U.S. industry increased market share at the expense of subject imports from Japan, measured in terms of quantity, while the market share of imports from all other sources remained fairly stable.

Figures IV-2 and IV-3 present information collected on U.S. producers' and importers' shipments of outboard engines by technology and horsepower during the period of investigation.

Table IV-4
Outboard engines and powerheads: U.S. producers' and importers' U.S. shipments, and apparent U.S. consumption, 2001-03, January-September 2003, and January-September 2004

Item	Calendar year			January-September	
	2001	2002	2003	2003	2004
			Quantity (*units*)		
U.S. producers' U.S. shipments: Powerheads	***	***	***	***	***
Complete engines produced from-- US. powerheads	***	***	***	***	***
Japan powerheads	***	***	***	***	***
Total U.S.	***	***	***	***	***
U.S. shipments of imports from-- Japan: Powerheads, subject	***	***	***	***	***
Complete engines	***	***	***	***	***
Total Japan	151,989	190,443	197,807	150,401	147,240
Complete engines All other sources	***	***	***	***	***
Total shipments of imports	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***
			Value (*$1,000*)		
U.S. producers' U.S. shipments: Powerheads1	***	***	***	***	***
Complete engines produced from-- US. powerheads	***	***	***	***	***
Japan powerheads	***	***	***	***	***
Total U.S.	***	***	***	***	***
U.S. shipments of imports from-- Japan: Powerheads, subject	***	***	***	***	***
Complete engines	***	***	***	***	***
Total Japan	535,227	744,957	784,991	564,220	636,043
Complete engines All other sources	***	***	***	***	***
Total shipments of imports	***	***	***	***	***
Apparent U.S. consumption	***	***	***	***	***

Table continued on next page.

Table IV-4--*Continued*
Outboard engines and powerheads: U.S. producers' and importers' U.S. shipments, and apparent U.S. consumption, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Figure IV-1
Outboard engines: U.S. shipments, by source and technology, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Figure IV-2
Outboard engines: U.S. shipments, by source and technology, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Figure IV-3
Outboard engines: U.S. shipments, by source and horsepower, 2003

* * * * * * *

The data show a trend toward decreased shipments of 2-stroke carbureted engines over the entire period of investigation, and a decline in 4-stroke carbureted engines from January-September 2003 to January-September 2004. Shipments of 4-stroke EFI engines increased during the investigation period, especially by U.S. importers. Shipments of 2-stroke DI engines increased for U.S. producers. The data show that U.S. importers have concentrated their engine shipments (in terms of quantity) in the very low and high end horsepower ranges, and that U.S. producers have concentrated their shipments in the mid-horsepower ranges.

Table IV-5 presents data concerning U.S. shipments of outboard engines, by technology and horsepower, by U.S. producers and U.S. importers of product from Japan. Figures IV-4 and IV-5 also present U.S. shipments of outboard engines by technology and horsepower. During 2003, for both domestic producers and importers, *** percent, respectively, of U.S. shipments of 2-stroke and 4-stroke carbureted engines were 90 horsepower or less; *** percent of shipments of 2-stroke direct injection engines were 115 horsepower and greater; and *** shipments of 2-stroke EFI engines were 150 horsepower and greater. With respect to 4-stroke EFI engines, *** percent of U.S. producers' shipments were 60 horsepower or less, while *** percent of shipments of imports from Japan were 115 horsepower and greater.

Table IV-5
Outboard engines: U.S. producers' and U.S. importers' U.S. shipments, by technology and horsepower, 2003

* * * * * * *

Figure IV-4
Outboard engines: U.S. shipments, by technology and horsepower, 2003

* * * * * * *

Figure IV-5
Outboard engines: U.S. shipments, by technology, horsepower, and emissions, 2003

* * * * * * *

Short Supply Issues

In the outboard engine market there are fluctuations in the availability of supply of certain engines at certain times of the year. Mercury, which accounted for *** percent of U.S. production during 2003, responded to these fluctuations by placing customers on allocation on limited occasions involving limited quantities. In 2002 allocations involved a total of *** 4-stroke engines in the *** HP range. In 2003 Mercury's allocations involved a total of *** engines in that same HP range. In 2004, allocations involved *** engines in the *** HP range of its 4-stroke engines.[4] [5]

Yamaha, which accounts for *** percent of subject imports from Japan, handles issues of short supply quite differently. It had no allocation program, but rather responded to the issue in one of three ways: ***.[6] As a further measure of the effect of order backlogs and lack of supply of various engines, the Commission collected data from U.S. producers and importers on their order book sales from January 2001 to September 2004. Figure IV-6 presents the data collected and shows that there are wide fluctuations in orders by time of year by U.S. importers, primarily by ***; however, these data may be of limited value because ***. In addition, ***.[7]

Figure IV-6
Complete outboard engines: U.S. producers' and importers' order book sales, as of the end of the quarter, January 2001-September 2004

* * * * * * *

RATIO OF SUBJECT IMPORTS TO U.S. PRODUCTION

Data on ratios of U.S. imports of outboard engines and powerheads combined to U.S. production of engines are presented in table IV-6. The ratio of subject imports from Japan to U.S. production remained unchanged from 2001 to 2002, and increased in 2003. The ratio during January-September 2004 declined from the comparable period in January-September 2003.

[4] Mercury importer questionnaire response, section II-7.

[5] In addition to the allocation solution, Mercury also offered to substitute the 90HP engine at a $*** discount for the 115HP engine in March 2001 when it was in short supply, or to delay orders until the 2002 model year. Yamaha's posthearing brief, exh. 1, p. 25, and exh. 7.

[6] Yamaha importer questionnaire response, section II-7.

[7] Yamaha importer questionnaire response, section II-6.

Table IV-6
Outboard engines and powerheads: Ratio of U.S. imports of powerheads and engines to U.S. production of engines, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Raw materials and parts[1] made up about *** percent of the cost of goods sold for domestic producers of outboard engines in 2003. Petitioners indicated that there were no significant changes in input costs for Mercury over the period of investigation.[2] Pure aluminum is the main raw material for producing outboard engines. The average monthly spot price of aluminum ingot as measured by the London Metal Exchange (LME) fell from $0.73 per pound in January 2001 to $0.58 per pound in August 2001, fluctuated between $0.58 per pound and $0.65 per pound until July 2004, and then rose to $0.78 per pound in August 2004 (see figure V-1). The 3-month forward price for pure aluminum followed a similar trend.

Transportation Costs to the U.S. Market

Transportation costs for outboard engines from Japan to the United States in 2003 (excluding U.S. inland costs) are estimated to be approximately 1.4 percent of the total cost for outboard engines. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.

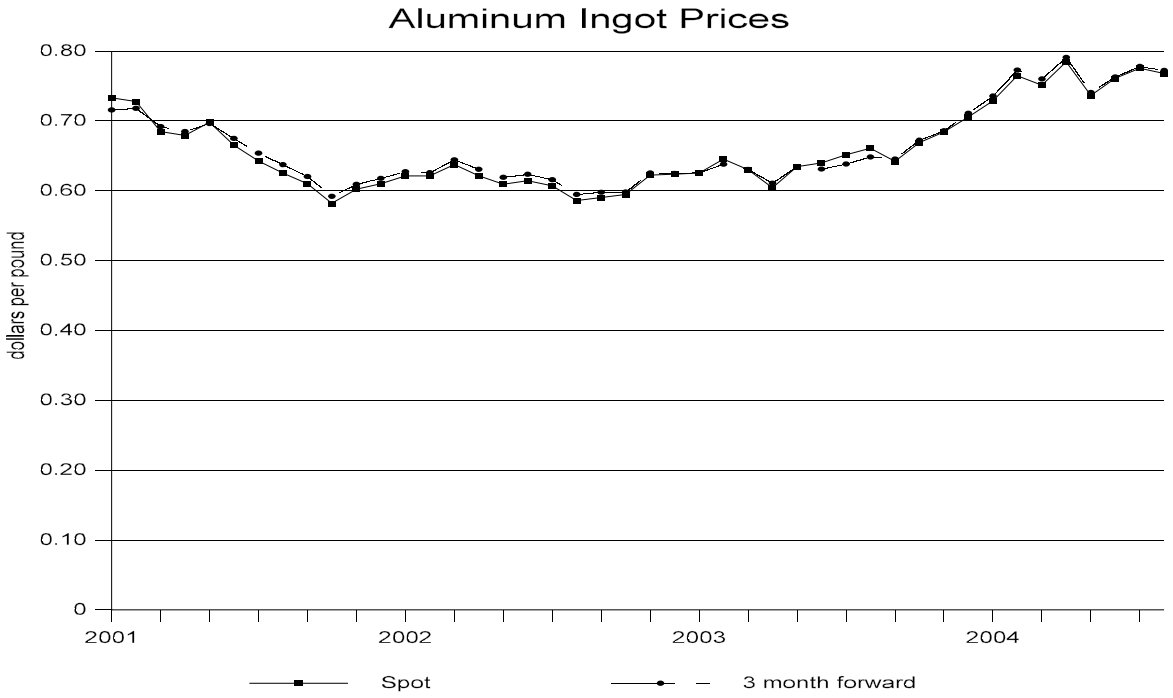
U.S. Inland Transportation Costs

U.S. inland transportation costs for outboard engines comprise a small portion of the cost of both the U.S. and imported product. Producers and importers reported that transportation costs make up about 1.0 percent to 2.0 percent of the total cost of outboard engines on average.

[1] U.S. producers were unable to estimate raw material costs separate from parts in their questionnaire responses.

[2] Petitioner's postconference brief, p. A-9.

Figure V-1
Aluminum ingot: LME spot and 3-month forward prices, by month, January 2001-August 2004

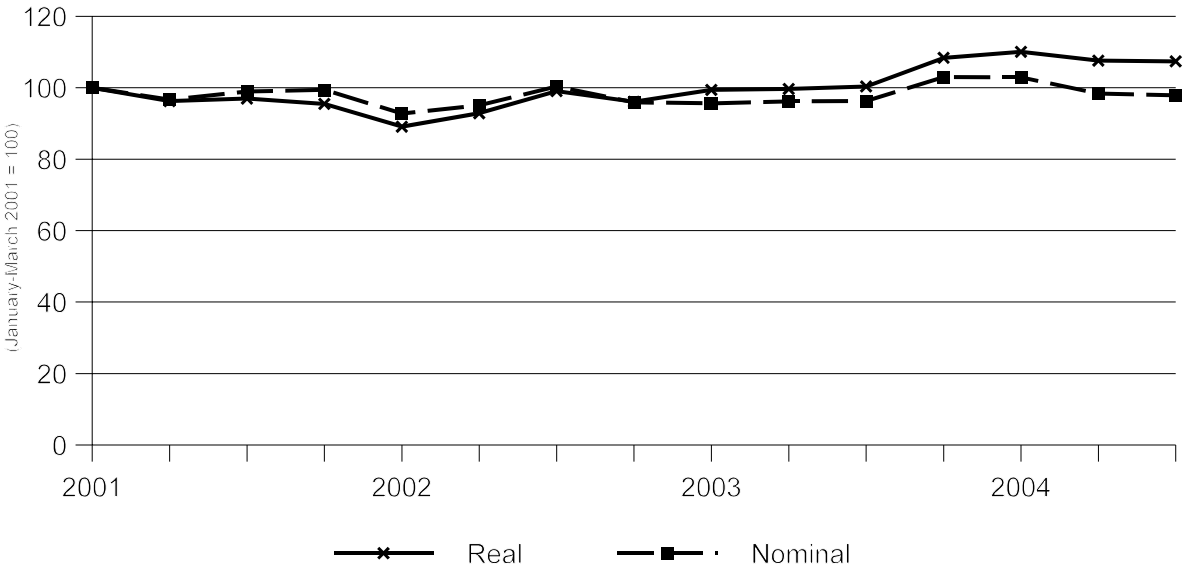


Source: London Metal Exchange.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Japanese yen appreciated overall relative to the U.S. dollar from the first quarter of 2001 to the third quarter of 2004 while the real value appreciated. Overall, the nominal value of the Japanese yen appreciated 7.4 percent relative to the U.S. dollar from the first quarter of 2001 to the third quarter of 2004 (figure V-2). The real value of the Japanese yen depreciated 2.1 percent vis-a-vis the U.S. dollar in that time period.

Figure V-2
Exchange rates: Indices of the nominal and real exchange rates between the Japanese yen and the U.S. dollar, by quarters, January 2001-September 2004



Source: International Monetary Fund, *International Financial Statistics*, November 2004.

PRICING PRACTICES

Producers and importers reported using contracts (both short and long term) for multiple shipments, spot sales, or a combination of these methods. *** indicated they mostly sell outboard engines through short-term contracts, while *** reported only selling through spot sales. *** mostly sold using long-term contracts, while *** used long-term contracts for about *** percent of its sales of U.S.-produced outboard engines and *** percent of its sales of imports of outboard engines from Japan, and spot sales for most of the remaining sales. Mercury indicated that its contracts with OEMs normally guarantee the level of volume by purchasers, but are flexible in terms of price.[3]

All responding producers and importers sold outboard engines on an f.o.b. basis, although ***. All responding producers and importers indicated that the seller usually arranges for transportation. *** indicated that most of their sales were produced to order, while *** indicated that most of their sales were from inventory. Producers reported lead times ranging from *** days from inventory, while importers reported lead times ranging from *** days from inventory. *** responding importers indicated lead times ranging from three to five months for engines produced to order.

Thirty-six responding purchasers indicated that they considered some firms to be price leaders in the outboard engine market between January 2001 and September 2004. Mercury was named by 19 of the purchasers, Yamaha was named by 15 of the purchasers, BRP was named by eight purchasers, Honda was named by three purchasers, and Suzuki and Tohatsu were named by two purchasers. Petitioner indicated that although BRP has in some cases offered the lowest price in the market, BRP does not have a large enough market share to be a price leader and was simply responding to the price leadership of

[3] Hearing transcript, pp. 157-158 (Mackey) and petitioner's posthearing brief, p. C-5.

Yamaha.[4] Respondents indicated that to the extent there was competition based on prices, BRP was the downward price leader.[5]

Sales Terms and Discounts

All responding producers and importers reported offering discounts, rebates, incentives, and other promotional reductions from the manufacturer's suggested retail price ("MSRP") or list price. The percentage discount is typically the same for all engines and is higher for customers who purchase larger volumes of sales.[6] Engine sales to OEMs and dealers are generally discounted off MSRP on a program basis, with separate programs for boat builders and dealers. The discount level reflects the distribution channel, sales volume, rated engine power and technology, seasonal specials, and advertising, and is applicable to the engine maker's entire product line.[7] Other rebates and discounts reported by producers and importers include: early order discounts, seasonal stocking discounts, registration discounts and rebates, co-operative advertising reimbursements, retail bonuses, special promotion rebates and discounts, performance bonuses, cash in advance discounts, free freight, and discounts for prepaid freight.

Boat builders generally receive larger base discounts than those offered to dealers, and total program discounts are also usually higher for OEMs. OEMs may also receive special discounts for exceeding program targets.[8] According to industry reports, engine makers discount engine sales to boat builders by an estimated 32 to 35 percent, whereas full-line retail engine dealers receive lower discounts of an estimated 18 to 19 percent.[9] [10]

PRICE DATA

The Commission requested U.S. producers and importers of outboard engines to provide quarterly data for the total quantity and value of outboard engines that were shipped to unrelated OEMs

[4] Hearing transcript, pp. 136-137 (Renkin and Mackey).

[5] Joint respondents' prehearing brief, p. 71.

[6] Conference transcript, p. 86 (Sheller and Pomeroy) and p. 216 (Jacobs and Deputy).

[7] Conference transcript, pp. 44-46 (Sheller).

[8] Petition, vol. II, pp. 15-16.

[9] Yamaha questioned whether comparing average prices reflects the relative competitive position in the market of the various engine manufacturers because of volume discounts. They indicated that the relevant question is how prices of two companies' products compare for customers buying similar volumes. Yamaha's postconference brief, p. 39. Yamaha also indicated that pricing of individual models is not what is relevant, since boat builders obtain discounts on a entire model line and not for individual engines. *Id.*, p. 40.

However, underselling by subject importers by its nature occurs when subject importers provide greater discounts (whether for volume or other criteria) to at least some of their purchasers than discounts provided by producers to their purchasers.

[10] Jeff Kurowski, "Dealers Frustrated About Outboard Engine Gray Market," *Boating Industry*, January/February 2003, pp. 27-28.

and dealers in the U.S. market.[11] Data were requested for the period January 2001 to September 2004. The products for which pricing data were requested are as follows:

***Product 1*.–**Carbureted 2-stroke, 9.9 horsepower, 15" shaft length, electric start, steering connector kit, power trim, oil injection.

***Product 2*.–**Carbureted 2-stroke, 90 horsepower, 20" shaft length, electric start, steering connector kit, power trim, oil injection.

***Product 3*.--**Carbureted 2-stroke V-6, 150 horsepower, 20" shaft length, electric start, steering connector kit, power trim, oil injection.

***Product 4*.–**Direct fuel injection 2-stroke V-6, 150 horsepower, 20" shaft length, electric start, steering connector kit, power trim, oil injection.

***Product 5*.–**Direct fuel injection 2-stroke V-6, 200 horsepower, 25" shaft length, electric start, steering connector kit, power trim, oil injection, not counter-rotation.

***Product 6*.–**Carbureted 4-stroke, 25 horsepower, 20" shaft length, propeller, remote fuel tank, electric start, steering connector kit, power trim.

***Product 7*.–**EFI 4-stroke, 115 horsepower, 20" shaft length, electric start, steering connector kit, power trim.

Two U.S. producers and five importers provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.[12] These prices are presented below (tables V-1 through V-12 and figures V-3 and V-4).

Table V-1
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 sold to OEMs, and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

[11] The Commission requested U.S. producers and importers to provide total values that were net of all discounts, allowances, rebates, prepaid freight, and the value of all returned goods. Even though the data used to calculate unit values are based on f.o.b. shipment values which do not include U.S. transportation costs by definition, data from which discounts, allowances, or rebates for freight are subtracted from this f.o.b. value are used in the price data since it is not clear to what extent these discounts, allowances, or rebates are a marketing device as opposed to being directly tied to actual U.S. transportation costs. Parties were encouraged to comment on the extent to which discounts, allowances, or rebates are a marketing device as opposed to being directly tied to U.S. transportation costs in their prehearing briefs. Petitioner indicated that purchaser questionnaire responses establish that "free freight" incentives are used for marketing purposes to encourage additional engine purchases and therefore should be included in the Commission's analysis. Petitioner's prehearing brief, p. 45. Respondents did not comment on the extent to which discounts, allowances, or rebates are a marketing device.

[12] No importers reported data for product 1; only *** provided price data for its ***. Therefore, product data were not included in the tables, graphs, and discussion.

Table V-2
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-3
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 4 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-4
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 5 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-5
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 6 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-6
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 7 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-7
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-8
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-9
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 4 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-10
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 5 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-11
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 6 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Table V-12
Outboard engines: Weighted-average f.o.b. prices and quantities of domestic and imported product 7 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * * * *

Figure V-3
Outboard engines: Weighted-average f.o.b. prices of domestic and imported products 2-7 sold to OEMs, by quarters, January 2001-September 2004

* * * * * * *

Figure V-4
Outboard engines: Weighted-average f.o.b. prices of domestic and imported products 2-7 sold to dealers, by quarters, January 2001-September 2004

* * * * * * *

Pricing data reported by these firms accounted for *** percent of U.S. producers' reported shipments of complete outboard engines and *** percent of U.S. shipments of complete outboard engines imported from Japan in 2003.

Price trends for both U.S.-produced outboard engines and imports of outboard engines from Japan were mixed, varying by product, country of origin, and channel of distribution. Prices to OEMs generally declined from January 2001 to September 2004, except for prices of product 5 imported from Japan and product 7 produced in the United States. Prices to dealers generally increased except for prices of products 2, 5, and 6 imported from Japan. A summary of price changes for each product, by channel of distribution and country, is shown in table V-13. Correlations between weighted-average sales prices of U.S.-produced products and the corresponding weighted-average sales prices of imports from Japan were also mixed, with both positive and negative values.[13]

Table V-13
Outboard engines: Summary of weighted-average f.o.b. prices for products 2 through 7

* * * * * * *

Price Comparisons

Overall there were 180 instances where prices for domestic outboard engines and imports of subject outboard engines from Japan could be compared. Of these 180 comparisons, there were 113 instances (63 percent) where the subject imported product was priced below the domestic product. Margins of underselling averaged 5.8 percent, ranging from 0.1 percent to 16.1 percent. In 65 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 6.8 percent, ranging from 0.2 percent to 23.7 percent. In two instances, the domestic product and imported product were priced the same.

Of the 90 comparisons of prices for sales to OEMs, there were 54 instances where the subject imported product was priced below the domestic product. Margins of underselling averaged 5.9 percent, ranging from 0.1 percent to 14.4 percent. In 35 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 5.9 percent, ranging from 0.2 percent to 23.5 percent. In one instance, the domestic product and imported product were priced the same.

Of the 90 comparisons of prices for sales to dealers, there were 59 instances where the subject imported product was priced below the domestic product. Margins of underselling averaged 5.7 percent, ranging from 0.8 percent to 16.1 percent. In 30 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 7.8 percent, ranging from 0.5 percent to 23.7 percent. In one instance, the domestic product and imported product were priced the same.

[13] Correlations between prices for domestic products 2, 3, 4, 5, 6, and 7 and their corresponding subject Japanese pricing products were 0.19, 0.05, 0.26, -0.01, -0.53, and 0.98, respectively, for sales to OEMs and -0.72, 0.70, 0.50, -0.78, 0.12, -0.28 for sales to dealers. These correlations do not necessarily imply causation and these price trends may track one another for reasons having nothing to do with each other's prices, such as macroeconomic trends or prices of other substitute or downstream goods.

Citing annual weighted averages of underselling and import market share for products 2-7, respondents asserted that there is not a positive correlation between underselling by imports and import performance in the market where underselling exists.[14] Citing annual instances of underselling across all pricing products, petitioner asserted that Japanese market share surged in 2001 when underselling began in earnest and has continued to increase from 2002 to 2004 as underselling has increased, and argued that quarterly fluctuations in market share and margins of underselling for *** are highly correlated, ***.[15] Citing price data aggregated into time periods during which there were either mostly overselling or underselling, BRP argued that there are strong relationships between overselling/underselling and Japanese market shares.[16] BRP also argued that the estimation of elasticities of substitution in their prehearing brief demonstrates a clear relationship between relative price changes and relative market shares.[17] However, these interval estimates of elasticities varied by estimation technique, product, and channel of distribution and in some cases included negative values (see tables G-1 and G-2 in appendix G.) Import volumes, market shares, and margins of underselling/(overselling) for products 2-7 are presented in appendix H in tables H-1 to H-12 and figures H-1 to H-12. The degree to which quarterly margins of underselling/(overselling) and market shares for products 2-7 (whether measured by quantity or value) move together varies by product, channel of distribution, and time period.

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of outboard engines to report any instances of lost sales or revenues they experienced due to competition from imports of outboard engines from Japan during January 2000 to September 2004. The only responding non-petitioning U.S. producer reported that ***. The *** usable lost sales allegations totaled over $*** for *** engines and the *** usable lost revenue allegations totaled $*** for *** engines.[18] Staff attempted to contact all purchasers named in these allegations and received responses from two purchasers; a summary of the information obtained follows (tables V-14 and V-15).

Table V-14
Outboard engines: U.S. producers' lost sales allegations

* * * * * * *

Table V-15
Outboard engines: U.S. producers' lost revenue allegations

* * * * * * *

[14] Yamaha asserted that there is a negative correlation between underselling and both absolute and relative import volumes, while Honda asserted that there is no correlation between underselling and market share changes. Yamaha's posthearing brief, exh. 1, pp. 18-19 and Honda's posthearing brief, pp. 10-12.

[15] Petitioner's posthearing brief, p. 6.

[16] BRP's posthearing brief, pp. 3-7.

[17] BRP's posthearing brief, p. 7 and BRP's prehearing brief, pp. 28-30 and exhibit 12.

[18] ***.

*** disagreed with the lost sales allegation involving ***. He indicated that Mercury materially breached their agreement with *** by delivering engines with performance-related problems that did not meet market requirements. ***.

*** disagreed with the lost sales allegation involving ***. He indicated that his company's purchases of Yamaha engines during the time period of the allegation were based on the quality of the product and that the Japanese engines were priced equal or slightly less than the competing domestic product. *** also indicated that his company's purchases of domestically produced engines during the time period of the allegation were about the same as they typically are and that any difference in purchases would have been due to the level of his inventory of domestically produced engines.[19]

*** disagreed with the lost sales allegation involving his dealership. However, he indicated that he purchased fewer engines from Mercury and more from Suzuki because Mercury lowered its discount of *** percent in 2001 to *** percent in 2002 and 2003, while Suzuki kept its discount structure (***[20]) the same. *** indicated that Mercury's lower discount in 2002 and 2003 was for the same volume of engines as their 2001 discount. He indicated that Mercury lowered its discount to take advantage of the OMC bankruptcy and that Mercury offered a ***-percent discount on some engines late in the model year.[21]

***.[22]

[19] Staff telephone interview with ***.

[20] ***.

[21] Staff telephone interview with ***.

[22] Staff telephone interview with ***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Two firms[1] provided usable financial data on their U.S. operations producing outboard engines. These reported data represent all of U.S. producers' outboard engine shipments in 2003. BRP (formerly Bombardier) produces outboard engines and their primary components at plants in Wisconsin and North Carolina.[2] Mercury reported that it makes some other products in the same facilities in Wisconsin in which it produces outboard engines, powerheads, and certain parts for outboards; these other products are ***, which are completed in Mercury's other plant in Oklahoma.

OPERATIONS ON OUTBOARD ENGINES

Results of BRP's and Mercury's combined operations on outboard engines are presented in table VI-1 and then separately for each firm in tables VI-2 and VI-3, respectively.

Table VI-1
Outboard engines: Combined results of operations of BRP and Mercury, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Table VI-2
Outboard engines: Results of operations of BRP, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

[1] These are BRP, which has a fiscal year that ends ***, and Mercury, which has a fiscal year that ends ***. *** reported transfers of engines to related parties, while ***. *** also reported commercial sales of powerheads for outboard engines. Differences between the trade and the financial sections primarily are due to ***. Commission staff verified the questionnaire responses of Mercury and BRP (memorandum INV-BB-155, December 15, 2005) and changes are incorporated herein.

[2] BRP was spun off from Bombardier on December 18, 2003 to a small group of investors. *See*, BRP producers' questionnaire response, p. 4 and exh. A. Bombardier purchased certain assets of OMC in March 2001; OMC filed for bankruptcy protection in December 2000 and ceased production at that time. Bombardier initially sold outboard engines that it purchased from OMC's inventory from bankruptcy, but in the period from March 2001 to October 2001, Bombardier brought its new production unit at Sturtevant, WI on line. Bombardier (and BRP) incurred start-up costs during the period as it ramped up outboard engine production at its new plant, as well as when it began the production of new types of outboard engines. In its press release of November 9, 2004, BRP announced a restructuring of its operations, including a reduction of its U.S. workforce by 100 jobs and its intention to sell (but retain as independent suppliers under a "strategic partnership") its outboard engine parts plants in Delavan, WI and Spruce Pine, NC. Reasons cited in the press release were the rise in the Canadian dollar against the U.S. dollar, and the increase in commodity prices, including the cost of oil. BRP press release filed with SEC Form 6-K on November 11, 2004. BRP supplemented its statement citing as a critical factor the ***. *See*, Harris Ellsworth submission, November 29, 2004. It also announced the sale of its engine components plant at Andrews, NC in October 2004. BRP's prehearing brief, p. 37.

Table VI-3
Outboard engines: Results of operations of Mercury, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Both companies reported commercial sales of separately sold powerheads in each period examined; such sales, which generate revenue, are contrasted with replacement under warranty, which represent an expense. Powerheads often are sold as separate units to insurance companies to replace existing units where an insurance carrier may require replacement of the powerhead only under an insurance policy as a less costly alternative to replacing the entire engine. Sales of powerheads also are made to individuals wishing to repower an existing engine. Sales of powerheads are more profitable for both BRP and Mercury because the structure of discounts and rebates does not apply to powerheads as it does to outboard engines. Table VI-4 presents the results of operations of both firms on separately sold powerheads for outboard engines.

Table VI-4
Separately sold powerheads for outboard engines: Combined results of commercial operations of BRP and Mercury, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Table VI-5 presents data on the combined results of operations of both U.S. producers on outboard engines and commercial sales of separately sold powerheads.

Table VI-5
Outboard engines and separately sold powerheads for outboard engines: Combined results of operations of BRP and Mercury, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Both the quantity and value of sales of outboard engines increased between 2001 and 2002, accounted for by BRP, which was ramping up production and sales from its new engine assembly facility in Sturtevant, WI. Although the sales quantity decreased from 2002 to 2003, increased average unit values of both commercial sales and transfers/internal consumption led to an increase in sales value overall. The total value of sales of outboard engines increased between January-September 2003 and the same period in 2004 because of a combined increase in quantity and average unit value of sales.

The total value of cost of goods sold ("COGS") of BRP and Mercury together increased between 2001 and 2003 as well as between January-September 2003 and January-September 2004. The average unit value of COGS increased *** between 2001 and 2002, as the absolute change in costs was greater than the absolute change in volume. The average unit value of COGS increased between 2002 and 2003 as well as between January-September 2003 and the same period in 2004. Concerning this increase, Mercury stated that there has been a technology shift as the share of traditional 2-stroke outboards

(carbureted and EFI together) have declined.[3] Mercury also stated that it "***."[4] Comparing BRP and Mercury with respect to the unit values of the component of COGS indicates that ***. Because sales values increased at a greater rate than total COGS, the ratio of COGS to total sales values declined.

Gross profit increased between 2001 and 2003, as well as between January-September 2003 and the same period in 2004, as the increase in sales values was greater than the increase in COGS (***). However, selling, general, and administrative ("SG&A") expenses, which include salaries and corporate overhead costs[5] as well as some of the discounts and rebates, remained at a high level *** or increased ***. These reflect the ***. ***. SG&A costs offset the gross profit, leading to an operating loss for the industry. Changes in net income before taxes were similar to those of operating income, as were changes in cash flow.

Discounts and Rebates on Outboard Engines

The Commission requested producers and importers to quantify, by program, the discounts and rebates they granted OEMs and dealers. BRP and Mercury provided data for more than 20 programs, representing all of their discounts and rebates applicable to outboard engines. There are four major programs that individually account for the largest value, although there are a myriad of additional programs, including "free flooring" (an interest free period during which the engine is in the dealers' showroom) and early order discount (to encourage an OEM or dealer to order a specified number of engines in advance to enable the producer to schedule its production runs more evenly). The four major programs are (1) a base or standard discount; (2) a quantity discount, which related to a specific volume commitment level; (3) a co-op accrual rebate, which is money provided a dealer or OEM for advertising; and (4) a registration rebate for the registration of an engine warranty by the dealer at the time of retail sale. Several of the programs are stated on the sales invoice, and because the discount is deducted from the engine's list price on the invoice, the discount is termed "off-invoice." Other discounts and rebates are accrued over time and credited to the OEM or dealer provided that firm meets certain performance criteria. The programs are typically calculated as a percent of the engine's list price, although several programs, such as the early order discount and free freight, may be for a specific dollar amount per engine that depends on the horsepower rating.

The total of discounts and rebates reported by BRP and Mercury was added to net sales of outboard engines from table VI-1 to derive a value for total gross sales, and the ratio of total discounts and rebates to total gross sales was then calculated (table VI-6).

Table VI-6
Outboard engines: Discounts and rebates, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

[3] Petitioner's prehearing brief, pp. 58-59.

[4] Petitioner's posthearing brief, app. A, p. A-18. These comments were made in the context of its arguments regarding price suppression and depression.

[5] Mercury's SG&A included the following categories of costs (with the approximate percentages of the total): ***. With respect to R&D, Mercury stated that it has spent over $100 million in the past six years developing the Verado family of engines (hearing transcript, pp. 35 and 186 (Mackey)), and that "innovative engines are expensive to design and expensive to manufacture" (Petitioner's posthearing brief, p. 2).

Other Transactions

Respondents highlighted certain other transactions, which they termed "parallel transactions," that are nominally separate from the engine supply agreements, but which respondents believe provide a sufficient benefit and inducement for a boat builder to enter into a supply agreement. Respondents stated that such benefits should be reflected in the engine price because they are disguised discounts, and affect the Commission's pricing comparisons.[6] These parallel transactions were described as front-end payments, loans, loan guarantees, back-end payments, or overpayment for assets (also called "earn-out" or "earn-back").[7] Mercury's transactions with *** were given as examples of loans, loan guarantees, and front- and back-end payments, while Mercury's purchases from Genmar of *** boat companies were given as examples of asset overpayments.

Mercury made ***. These ***. In the case of ***, Mercury agreed to remit *** in Mercury's discount account ("sales adjustment account") for model years 2000 and 2001.[8] In the case of ***, the advance marketing funds were calculated at *** percent of the dealer list price of *** engine purchases made by *** over the contractual period, which were discounted to the present value at approximately *** percent.[9] In both instances the discount was based on the customer's purchases meeting a specified minimum volume or value, and the discount was accrued and applied as customary by Mercury. Also, the "advance marketing funds" were subject to collateralization documentation and the discount did not apply (the buyer was obligated to refund the discount with interest) should the buyer fail to meet its purchase commitments.[10]

Mercury and its parent Brunswick have provided loans and loan guarantees or credit lines to boat builder OEMs, such as ***.[11] However, these programs do not appear to constitute disguised discounts as respondents claimed. In the case of ***, where Brunswick holds an interest-bearing promissory note secured by a mortgage, security agreement, and financing statement, the agreement calls for a quarterly reduction of principal based on the buyer meeting its qualified purchase volume and a reduction in accrued interest based on the extent to which the buyer exceeds its minimum purchase commitments.[12] Discounts of approximately *** percent appeared to be properly accrued and included in Mercury's sales' discounts account as well as its questionnaire response.[13]

Brunswick guaranteed a $*** loan by Bank of America to ***; the loan is secured as is the loan guarantee, and both are disclosed in *** audited financial statements, as is the engine supply agreement.[14] With respect to discounts, ***.[15] There is no indication that the loan guarantee by Brunswick was anything other than as documented, that it was outside the realm of normal business practice, or that *** have not been accounted for.

---

[6] Yamaha's posthearing response brief, p. 2.

[7] *Id.*, p. 2. Respondents discussed boat company financing and boat company purchases together and separately in the context of "off-contract incentives." Yamaha's posthearing brief, exh. 1, pp. 8 and 24, and exh. 19.

[8] ***. Staff telephone interview with *** and ***, January 5, 2005. Also, *see* staff verification report of Mercury's questionnaire response, memorandum INV-BB-155, December 15, 2004. The amount of the note, $***, was identified in Mercury's posthearing brief, exh. 7 (item #9); the amortized amounts–***, included in Yamaha's posthearing brief, exhibits 1 and 23.

[9] Petitioner's posthearing brief, exh. 4. The discount for volume purchased of *** appears to be Mercury's ***.

[10] *Id.*, exh. 4. Also see Petitioner's posthearing brief, exh. 7 for other examples of marketing funds provided to purchasers of outboard engines ***.

[11] These are summarized in Mercury's posthearing brief, exh. 7; and app. C, pp. C-1, 2, and 9.

[12] Also, *see* Yamaha's posthearing brief, exh. 1, p. 7, and exh. 23 (*** draft financial statements and notes).

[13] Verification report for Mercury, Memorandum INV-BB-155, December 15, 2004.

[14] Mercury's posthearing brief, exh. 7 (item #8).

[15] See notes 4 (long-term debt and pledged assets) and 6 (commitments and contingencies) to *** quarterly financial statements in Petitioner's posthearing brief, exh. 7 ***.

Brunswick purchased four boatbuilder OEMs from Genmar ***[16] ***, and each transaction included a certain amount that was termed "earn-out".[17] There does not seem to be a question that (1) the accounting for boat companies is separate from the accounting for engines, and, (2) that the earn-out of $*** on purchases of *** was "potential" (namely linked to the sales performance of the boat companies following purchase, and not as a disguised discount on engines).[18] Substantial testimony and argument has been devoted to Brunswick's purchase of Hatteras Yachts, Inc. ("Hatteras") and the funds associated with that purchase, as well as with monies relating to *** between Mercury and Genmar arising from Mercury's engine supply contract. For example, Genmar described the Hatteras sale price as $85 million plus a $20-million earn-out, stating that the earn-out was provided in the form of a loan and ultimately forgiven; Genmar also stated that Brunswick paid more than its initial bid because it tied the purchase of Hatteras to the sale of Mercury's engines.[19] Mercury explained the engine sales contract and negotiations in a very different way,[20] and provided documentation for the $80-million Hatteras purchase,[21] the ***,[22] as well as a detailed explanation and documentation of the $20-million earn-out ***,[23] and ***.[24] The boat company purchase contracts and the accounting records submitted by Mercury/Brunswick show how the $20-million earn-out was ***; Brunswick chose to pay ***. These records show that Brunswick ***. Last, these records show the origin of the *** and how discounts on the underlying engine contract were accrued thereto and accounted for in Mercury's records and in its questionnaire response.[25]

Variance Analysis

No variance analysis is presented here. A variance analysis provides an assessment of changes in profitability as related to changes in pricing, cost, and volume. However, a variance analysis is sensitive to price, cost, and volume changes due to the product mix of subject merchandise, both within a company and between companies. In this investigation, subject merchandise consists of a multitude of different types of outboard engines. Each of these has a different pricing and cost structure. In addition, the product mix continues to change as the two U.S. firms increase the production and sales of 4-stroke relative to 2-stroke and direct injection relative to carbureted outboard engines to meet air quality requirements. Therefore, a variance analysis in this investigation may not accurately represent actual volume, cost, and price changes in the industry during the reporting period. Notwithstanding the foregoing and based on the data presented herein, a variance analysis would indicate that the industry's operating loss declined between 2001 and 2002 as well as between January-September 2003 and the same period in 2004 because unit sales values increased (a favorable price variance) and the increase in sales values was greater than the increase in costs (unfavorable net cost/expense and volume variances). Between 2002 and 2003, the unfavorable net cost/expense variance was slightly more than the favorable variances on price and volume.

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[16] Petitioner's posthearing brief, exh. 56.

[17] Joint respondents' prehearing brief, p. 102, note 306 with respect to ***. With respect to ***, *see* hearing transcript, p. 236 (Jacobs). Counsel for petitioner stated that ***. Hearing transcript (closed session), p. 436 (Wolff). Mercury further described and defined earn-out in its posthearing brief, app. H and exhibits 34, 54, and 55.

[18] Yamaha's posthearing brief, p. 13, note 38.

[19] Hearing transcript, pp. 236-237 (Jacobs).

[20] Petitioner's posthearing brief, app. B, pp. 20-23, and exh. 12. Also *see* exh. 11.

[21] *Id.*, exhibits 31, 32, 35, 37, 38, 39, 40, and 41.

[22] *Id.*, exh. 32 (paragraph 6.11 defines ***), and exh. 33.

[23] *Id.*, exhibits 38 and 46. *See* also articles on earn-outs in exh. 34.

[24] *Id.*, exh. 30, and exhibits 42-51.

[25] *See* also Petitioner's posthearing response brief, pp.3-8; *see* also Yamaha's posthearing response brief, pp. 3-7.

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

U.S. producers and respondents stated that there has been a shift in technology used in outboard engines. The low-cost conventional 2-stroke engines are being displaced by outboard engines that are EPA/CARB compliant. Mercury stated that its R&D expenses are largely devoted to building a new family of engines, the Verado. It also stated that its ratio of R&D to SG&A has increased during 2001-03.[26] The responding firms' data on capital expenditures and research and development ("R&D") expenses are shown in table VI-7.

Table VI-7
Outboard engines and powerheads for outboard engines: Value of capital expenditures and R&D expenses of BRP and Mercury, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

ASSETS AND RETURN ON INVESTMENT

The Commission's questionnaire requested data on assets used in the production, warehousing, and sale of outboard engines to compute return on investment ("ROI") for 2000-03. The data for total net sales and operating income during 2001-03 are from table VI-1 (as noted in the table, sales and operating income for 2000 are for ***, from that firm's preliminary phase questionnaire response). Operating income was divided by total net sales, resulting in the operating income ratio. Total net sales was divided by total assets, resulting in the asset turnover ratio. The operating income ratio was then multiplied by the asset turnover ratio, resulting in ROI; the expanded form of this equation shows how the profit margin and total assets turnover ratio interact to determine the return on investment.

The industry's total assets and its ROI are presented in table VI-8. The total assets utilized in the production, warehousing, and sales of outboard engines increased from 2000 to 2001, largely attributable to the inclusion of ***. Total assets were lower in 2003 compared with 2001 because the values of accounts receivable and net book value of fixed assets fell between the two years. Except for 2000 (which is ***), the combined operating loss remained at a high level, and ROI followed the trends in the operating income ratio.

[26] Petitioner's posthearing brief, app. A, p. A-18.

Table VI-8
Outboard engines: Value of assets used in the production, warehousing, and sale, and return on investment, fiscal years 2000-03

* * * * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of outboard engines from Japan since January 1, 2001, on their firm's growth, investment, and ability to raise capital, or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are as follows:

Actual Negative Effects

BRP

***.[27]

Mercury

***.

Anticipated Negative Effects

BRP

***.[28] ***.

Mercury

***.

[27] See pages VI-12 and VI-13 of the preliminary phase staff report, Memorandum INV-BB-019, February 13, 2004. Also, see BRP's submission, November 29, 2004.

[28] *Id*., pp. VI-12 and VI-13, and BRP's submission, November 29, 2004.

PART VII: THREAT CONSIDERATIONS

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that--

> In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors[1]--
>
> (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,
>
> (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
>
> (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
>
> (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,
>
> (V) inventories of the subject merchandise,
>
> (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,
>
> (VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission

[1] Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "The Commission shall consider [these factors] . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition."

under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).[2]

Subsidies are not relevant to this investigation; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

GLOBAL DEMAND

Table VII-1 presents data on estimated global demand for outboard engines during 2003. Total world consumption of outboard engines during 2003 is estimated at *** units, and U.S. consumption represented approximately *** percent of estimated worldwide shipments during that period.

Table VII-1
Outboard engines: Worldwide consumption, 2003

* * * * * * *

THE INDUSTRY IN JAPAN

There are seven known manufacturers/exporters of outboard engines in Japan: Honda Motor Co., Ltd. ("Honda Japan); Mercury Marine Japan ("Mercury Marine"), which is affiliated with the U.S. producer Mercury; Nissan Marine Co., Ltd. ("Nissan"); Suzuki Motor Co. ("Suzuki Japan"); Tohatsu Corp. ("Tohatsu Japan"); Tohatsu Marine Corp. ("TMC"); and Yamaha Motor Co. Ltd. ("Yamaha Japan"). Data on the seven firms' production and exports of outboard engines and powerheads to the United States during 2003 are presented in table VII-2. Yamaha Japan was dominant, with *** percent of the production and *** percent of the exports to the United States in 2003. TMC and Honda Japan together shared about *** percent of the production. TMC and Yamaha Japan shipped a portion of their production to ***. TMC also shipped its production to Tohatsu Japan, which exported complete engines

[2] Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

to the United States and other countries. Tohatsu Japan had *** production levels of its own, but mainly relies on TMC's production for its shipments. TMC did not have its own customers beyond *** and Tohatsu Japan. Tohatsu Japan shipped some of its purchases from ***, which is also an exporter to the United States. Nissan has no production of outboard engines in Japan but had a small amount of home market sales and sales to other export markets during the period of investigation. Mercury Marine acted as the exporter for much of Mercury's imports of the subject product from 2002 to 2004. In 2001 Mercury Marine ***.[3]

Table VII-2
Outboard engines and powerheads: Japanese producers' production and exports to the United States, 2003

* * * * * * *

Data concerning the industry in Japan are shown in tables VII-3-VII-5. Total production capacity for outboard engines fluctuated upward from 2001 to 2003 (table VII-4). Capacity is expected to increase further in 2005 after a decrease in 2004. Capacity utilization fluctuated upward from 2001 to 2003, and increased again from January-September 2003 to January-September 2004. Capacity utilization was expected to decrease in 2005 from a projected high in 2004. Total industry capacity in Japan is about *** percent of total capacity in the United States. The home market was small and accounted for approximately *** percent of total shipments of the subject product in 2003. Although the United States was a substantial export market, other export markets were dominant.[4] The ratio of inventories to production and shipments fluctuated downward from 2001 to 2003, but increased from January-September 2003 to January-September 2004.

Table VII-3
Powerheads: Data for producers in Japan, 2001-03, January-September 2003, January-September 2004, and projected 2004-05

* * * * * * *

Table VII-4
Outboard engines: Data for producers in Japan, 2001-03, January-September 2003, January-September 2004, and projected 2004-05

* * * * * * *

[3] ***.

[4] Other export markets included Asia, Europe, Oceana, Australia, South America, and Canada. Foreign producer questionnaire responses, section II-11, fn. 6.

Table VII-5
Outboard engines and powerheads: Data for producers in Japan, 2001-03, January-September 2003, January-September 2004, and projected 2004-05

Item	Actual experience					Projections	
				January-September			
	2001	2002	2003	2003	2004	2004	2005
Quantity (*units*)							
Capacity	582,524	579,680	573,728	438,214	434,707	582,288	647,629
Production	438,159	544,495	565,393	414,819	448,987	600,353	613,658
End of period inventories	34,718	36,822	37,994	32,575	38,485	43,545	43,429
Shipments:							
Internal consumption/ transfers	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to–							
The United States	151,489	201,831	206,158	149,804	157,983	210,683	210,056
All other markets	291,978	312,413	333,905	256,408	271,805	364,625	376,289
Total exports	443,467	514,244	540,063	406,212	429,788	575,308	586,345
Total shipments	470,837	542,796	565,383	426,232	452,255	604,745	609,915
Value (*$1,000*)							
Exports to the United States	419,309	606,513	633,083	469,858	527,591	710,218	693,771
Unit value (*dollars per unit*)							
Exports to the United States	2,768	3,005	3,071	3,136	3,340	3,371	3,303
Ratios and shares (*percent*)							
Capacity utilization	75.2	93.9	98.5	94.7	103.3	103.1	94.8
Inventories to production	7.9	6.8	6.7	5.9	6.4	7.3	7.1
Inventories to total shipments	7.4	6.8	6.7	5.7	6.4	7.2	7.1
Share of total quantity of shipments:							
Internal consumption/ transfers	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to–							
The United States	32.2	37.2	36.5	35.1	34.9	34.8	34.4
All other markets	62.0	57.6	59.1	60.2	60.1	60.3	61.7
All export markets	94.2	94.7	95.5	95.3	95.0	95.1	96.1

[1] Capacity is based upon differing hours and weeks. The following are what were reported by company:***.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. INVENTORIES OF PRODUCT FROM JAPAN

U.S. importers' inventory holdings for outboard engines and powerheads combined are shown in table VII-6. The inventories of imports from Japan decreased from 2001 to 2003, both in absolute units and as a ratio to imports and shipments of imports. From January-September 2003 to January-September 2004 there was a large increase in inventory holdings of imports from Japan.

Table VII-6
Outboard engines and powerheads: U.S. importers' end-of-period inventories, 2001-03, January-September 2003, and January-September 2004

Item	Calendar year			January-September	
	2001	2002	2003	2003	2004
Imports from Japan:					
Inventories (*units*)	31,628	29,025	28,654	24,577	35,256
Ratio of inventories to imports (*percent*)	20.1	15.0	13.8	16.1	22.8
Ratio of inventories to U.S. shipments of imports (*percent*)	20.8	15.2	14.5	12.3	18.3
Imports from all other sources:					
Inventories (*units*)	***	***	***	***	***
Ratio of inventories to imports (*percent*)	***	***	***	***	***
Ratio of inventories to U.S. shipments of imports (*percent*)	***	***	***	***	***
Imports from total sources:					
Inventories (*units*)	***	***	***	***	***
Ratio of inventories to imports (*percent*)	***	***	***	***	***
Ratio of inventories to U.S. shipments of imports (*percent*)	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. IMPORTERS' OUTSTANDING ORDERS

Six U.S. importers reported that they had arranged for the importation of outboard engines after September 30, 2004. Their outstanding orders are presented in table VII-7.

Table VII-7
Outboard engines and powerheads: U.S. importers' outstanding orders of product from Japan as of September 30, 2004

* * * * * * *

DUMPING IN THIRD-COUNTRY MARKETS

There are no known antidumping orders or any other trade remedies against outboard motors in any other countries.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1069 (Final)]

Outboard Engines From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1069 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value (LTFV) imports from Japan of outboard engines, provided for in subheading 8407.21.00 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''outboard engines (also referred to as outboard motors), whether assembled or unassembled; and powerheads, whether assembled or unassembled. The subject engines are gasoline-powered spark-ignition, internal combustion engines designed and used principally for marine propulsion for all types of light recreational and commercial boats, including, but not limited to, canoes, rafts, inflatable, sail and pontoon boats. Specifically included in this scope are two-stroke, direct injection two-stroke, and four-stroke outboard engines.

Outboard engines are comprised of (1) a powerhead assembly, or an internal combustion engine, (2) a midsection assembly, by which the outboard engine is attached to the vehicle it

Continued

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 12, 2004.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that outboard engines from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 8, 2004, by Mercury Marine, a division of Brunswick Corp., Fond du Lac, WS.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on December 2, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on December 14, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 8, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 10, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 9, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 21, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 21, 2004. On January 19, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 21, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

propels, and (3) a gearcase assembly, which typically includes a transmission and propeller shaft, and may or may not include a propeller. To the extent that these components are imported together, but unassembled, they collectively are covered within the scope of this investigation. An ''unassembled'' outboard engine consists of a powerhead as defined below, and any other parts imported with the powerhead that may be used in the assembly of an outboard engine.

Powerheads are comprised of, at a minimum, (1) a cylinder block, (2) pistons, (3) connecting rods, and (4) a crankshaft. Importation of these four components together, whether assembled or unassembled, and whether or not accompanied by additional components, constitute a powerhead for purposes of this investigation. An ''unassembled'' powerhead consists of, at a minimum, the four powerhead components listed above, and any other parts imported with it that may be used in the assembly of a powerhead.

The scope does not include parts or components (other than powerheads) imported separately.''

Issued: August 17, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19248 Filed 8–20–04; 8:45 am]

BILLING CODE 7020–02–P

Notices

Federal Register

Vol. 70, No. 2

Tuesday, January 4, 2005

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–865]

Notice of Final Determination of Sales at Less Than Fair Value: Outboard Engines From Japan

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

EFFECTIVE DATE: January 4, 2005.

FOR FURTHER INFORMATION CONTACT: James Kemp or Shane Subler at (202) 482–5346 or (202) 482–0189, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Final Determination

We determine that outboard engines from Japan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was published on August 12, 2004. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Outboard Engines from Japan, 69 FR 49863 (August 12, 2004) (Preliminary Determination).* Since the publication of the preliminary determination, the following events have occurred:

In September and October 2004, the Department of Commerce (the Department) verified the questionnaire responses submitted by Yamaha Motor Company, Ltd., Yamaha Marine Company, Ltd., and Yamaha Motor Corporation, U.S.A. (collectively Yamaha). The sales and cost verification

reports were issued on November 1, 2004. On November 10, 2004, we received case briefs from (1) the petitioner; [1] (2) BRP U.S. Inc. and Bombardier Recreational Products Inc. (collectively, BRP), a domestic interested party; (3) American Honda Motor Co., Inc., and Honda Motor Co., Ltd., American Suzuki Motor Corporation and Suzuki Motor Corporation, Tohatsu Corporation, Tohatsu Marine Corporation, and Tohatsu America Corporation, Nissan Marine Co., Ltd. (collectively, the Other Japanese Parties); and (4) Yamaha.[2] On November 17, 2004, we received rebuttal briefs from the petitioner, BRP, and Yamaha. Since no request was made for a public hearing, a public hearing was not held.

Scope of Investigation

For the purpose of this investigation, the products covered are outboard engines (also referred to as outboard motors), whether assembled or unassembled; and powerheads, whether assembled or unassembled. The subject engines are gasoline-powered spark-ignition, internal combustion engines designed and used principally for marine propulsion for all types of light recreational and commercial boats, including, but not limited to, canoes, rafts, inflatable, sail and pontoon boats. Specifically included in this scope are two-stroke, direct injection two-stroke, and four-stroke outboard engines.

Outboard engines are comprised of (1) a powerhead assembly, or an internal combustion engine, (2) a midsection assembly, by which the outboard engine is attached to the vehicle it propels, and (3) a gearcase assembly, which typically includes a transmission and propeller shaft, and may or may not include a propeller. To the extent that these components are imported together, but unassembled, they collectively are covered within the scope of this investigation. An ''unassembled'' outboard engine consists of a powerhead as defined below, and any other parts imported with the powerhead that may be used in the assembly of an outboard engine.

Powerheads are comprised of, at a minimum, (1) a cylinder block, (2) pistons, (3) connecting rods, and (4) a crankshaft. Importation of these four components together, whether assembled or unassembled, and whether or not accompanied by additional components, constitute a powerhead for purposes of this investigation. An ''unassembled'' powerhead consists of, at a minimum, the four powerhead components listed above, and any other parts imported with it that may be used in the assembly of a powerhead.

The scope does not include parts or components (other than powerheads) imported separately.

The outboard engines and powerheads subject to this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8407.21.0040 and 8407.21.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of the investigation are five specific models of powerheads.

The specific characteristics for each excluded powehead are described below.

1. 75 Horsepower Carbureted Powerhead: the engine type is four-stroke inline four cylinder internal combustion engine; the valve train consists of sixteen valves and twin cam with timing belt and tensioner; the crankcase is of high-pressure die-cast aluminum; the block is of high-pressure die-cast aluminum with iron cylinder liners; displacement 1.596 liters; bore and stroke 79 mm x 81.4 mm; compression ratio 9.6: 1; fuel supplied by four individual carburetors fitted to left side (as viewed from rear) of engine; power output 55.9 kW at 5000 RPM; fuel consumption 28.0 L/H Max at 6000 RPM; maximum height 539 mm; maximum width 435 mm; maximum length 646 mm; and weight (dry) 180.5 lbs./81.6 kg.

2. 90 Horsepower Carbureted Powerhead: the engine type is four-stroke inline four cylinder internal combustion engine; the valve train consists of sixteen valves and twin cam with timing belt and tensioner; the crankcase is of high-pressure die-cast aluminum; the block is of high-pressure die-cast aluminum with iron cylinder liners; displacement 1.596 liters; bore and stroke 79 mm x 81.4 mm; compression ratio 9.6: 1; fuel supplied by four individual carburetors fitted to left side (as viewed from rear) of engine; power output 67.1 kW at 5500 RPM; fuel consumption 31.5 L/H Max at 6000 RPM; maximum height 539 mm; maximum width 435 mm; maximum length 646 mm; and weight (dry) 180.5 lbs./81.6 kg.

3. 75 Horsepower Electronic Fuel Injection Powerhead: the engine type is four-stroke inline four cylinder internal combustion engine; the valve train consists of sixteen valves and twin cam with timing belt and tensioner; the crankcase is of high-pressure die-cast aluminum; the block is of high-pressure die-cast aluminum with iron cylinder liners; displacement 1.596 liters; bore and stroke 79 mm x 81.4 mm; compression ratio 9.6: 1; fuel supplied by single throttle body multi-point electronic fuel injection; power output 55.9 kW at 5000 RPM; fuel consumption 29.0 L/H Max at 6000 RPM; maximum height 539 mm; maximum width 435 mm; maximum length 646 mm; and weight (dry) 183.0 lbs./83.0 kg.

4. 90 Horsepower Electronic Fuel Injection Powerhead: the engine type is four-stroke inline four cylinder internal combustion engine; the valve train consists of sixteen valves and twin cam with timing belt and tensioner; the crankcase is of high-pressure die-cast aluminum; the block is of high-pressure die-cast aluminum with iron cylinder liners; displacement 1.596 liters; bore and stroke 79 mm x 81.4 mm; compression ratio 9.6: 1; fuel supplied by single throttle body multi-point electronic fuel injection; power output 67.1 kW at 5500 RPM; fuel consumption 33.0 L/H Max at 6000 RPM; maximum height 539 mm; maximum width 435 mm; maximum length 646 mm; and weight (dry) 183.0 lbs./83.0 kg.

5. 115 Horsepower Electronic Fuel Injection Powerhead: the engine type is four-stroke inline four cylinder internal combustion engine; the valve train consists of sixteen valves and twin cam with timing belt and tensioner; the crankcase is of high-pressure die-cast aluminum; the block is of high-pressure die-cast aluminum with iron cylinder liners; displacement 1.741 liters; bore and stroke 79 mm x 89 mm; compression ratio 9.7: 1; fuel supplied by multi-point electronic fuel injection with four individual throttle bodies; power output 85.8 kW at 5500 RPM; fuel consumption 38.0 L/H Max at 5500 RPM; maximum height 539 mm; maximum width 444 mm; maximum length 637 mm; and weight (dry) 189.0 lbs./85.7 kg.

Period of Investigation

The period of investigation (POI) is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition (*i.e.,* January 2004) involving imports from a market economy, and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

[1] The petitioner in this investigation is Mercury Marine, a division of Brunswick Corporation.

[2] On December 6, 2004, we rejected the case briefs submitted by Yamaha and the Other Japanese Parties because they contained new factual information. After making the revisions requested by the Department, Yamaha and the Other Japanese Parties resubmitted the briefs on December 7, 2004.

Scope Issues

Outboard Engines Under 25 Horsepower

In the preliminary determination, we analyzed parties' comments regarding the appropriateness of including engines of 25 horsepower or less in the scope of investigation and determined that the engines were within the scope. *See Preliminary Determination* at 49864. For the final determination, we affirm our decision in the preliminary determination and continue to find that these engines are included in the scope of the investigation. No parties commented on this issue for the final determination.

Powerheads Imported as Replacement Parts

In the preliminary determination, we found that engines imported for the purpose of repairing outboard engines previously sold are properly included in the scope of the investigation. *See Preliminary Determination* at 49865. The Other Japanese Parties submitted a case brief arguing that the Department should exclude these engines from the scope for the final determination. The petitioner and BRP submitted rebuttal briefs on this issue. After analyzing the parties' arguments, we continue to find that engines imported for the purpose of repair are properly included in the scope of the investigation for the reasons outlined at Comment 2 of the *Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary for Import Administration, RE: Issues and Decision Memorandum for the Final Determination of the Investigation of Outboard Engines from Japan (Decision Memorandum),* dated December 27, 2004.

Treatment of Powerheads as a Separate Class or Kind

In the preliminary determination, we found that completed engines and powerheads constituted the same class or kind of merchandise. *See Preliminary Determination* at 49865. Yamaha and the Other Japanese Parties submitted case briefs arguing that the Department should find that powerheads are a separate class or kind from completed outboard engines. The petitioner and BRP submitted a rebuttal brief on this issue. After analyzing the parties' arguments, we continue to find that completed engines and powerheads constitute the same class or kind of merchandise for the reasons outlined at Comment 1 of the *Decision Memorandum.*

Amendment to the Scope of Investigation

In a separate November 17, 2004, submission, the petitioner requested that the Department exclude certain models of powerheads from the scope of the investigation. On November 23, 2004, Yamaha submitted comments on the petitioner's request.[3] The petitioner submitted a response to these comments on November 30, 2004. After analyzing the parties' arguments, we accepted the petitioner's proposed scope amendment to exclude certain powerhead models for the reasons outlined at Comment 17 of the *Decision Memorandum.* For a description of the excluded powerheads, see the *Scope of Investigation* section of this notice.

Verification

As provided in section 782(i) of the Act, we conducted verification of the cost and sales information submitted by Yamaha. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties to this proceeding are listed in the appendix to this notice and addressed in the *Decision Memorandum* hereby adopted by this notice. The *Decision Memorandum* is on file in room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at *http://www.ita.doc.gov/frn.* The paper and electronic versions of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and our analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margin for Yamaha. These adjustments are discussed in the *Decision Memorandum and the Memorandum from James Kemp and Shane Subler, International Trade Compliance Analysts, through Constance Handley, Program Manager, RE: Final Determination Analysis Memorandum for Yamaha Motor Company, Ltd., Yamaha Marine Company, Ltd., and Yamaha Motor Corporation,* USA, dated December 27, 2004.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of outboard engines exported from Japan, that are entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary determination. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following weighted-average dumping margin exists for Japan:

Manufacturer/exporter	Margin (percent)
Yamaha	18.98
All others	18.98

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Japan are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to complywith the regulations and the terms of an APO is a sanctionable violation.

[3] On December 6, 2004, we rejected Yamaha's comments because they contained new factual information submitted after the Department's regulatory deadline. The date of Yamaha's revised submission is December 7, 2004.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 27, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Issues Covered in Decision Memorandum

1. Class or Kind.
2. Powerheads Imported for Repair Purposes.
3. Treatment of Non-Dumped Sales.
4. Level of Trade (LOT) Adjustment for Yamaha's Sales to Original Equipment Manufacturer (OEM) Customers.
5. Surrogate Prices for Yamaha's CEP Sales to Its Affiliated Boat Builders.
6. Per-Unit Cap on the CEP Offset.
7. Home Market Levels of Trade.
8. Adjustments to U.S. Price.
9. Reported Home Market Payment Dates.
10. Certain Home Market Sales within the Ordinary Course of Trade.
11. Credit Expenses for Export Price Sales.
12. Reporting of the REBATE4U Field.
13. Minor Corrections Submitted at Verification.
14. Application of LOT Adjustment.
15. Home Market Consignment Sales.
16. Packing Costs.
17. Amendment to Scope.
18. Yamaha's Standard Cost System.
19. Certain Excluded Costs.
20. Parent Company G&A Expenses.
21. Affiliated Supplier Inputs.

[FR Doc. E4–3925 Filed 1–3–05; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1069 (Final)]

Outboard Engines from Japan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: January 5, 2005.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 12, 2004, the Commission established a schedule for the conduct of the final phase of the subject investigation (69 FR 51859, August 23, 2004). Under section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)) (the Act), the Commission's final injury determination is to be made by the 45th day after the day on which the administering authority makes its final affirmative antidumping determination. Commerce's final determination was published in the **Federal Register** on January 4, 2005 (70 FR 326). Accordingly, the Commission hereby gives notice that it is revising the schedule for its final determination.

The Commission's new schedule for the remainder of the investigation is as follows: the final staff report will be placed in the nonpublic record and released to the parties on January 19, 2005; the Commission will make its final release of information on January 25, 2005; and final party comments are due on January 27, 2005.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the

Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 5, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–496 Filed 1–7–05; 8:45 am]

BILLING CODE 7020–02–P

APPENDIX B

HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Outboard Engines from Japan

Inv. No.: 731-TA-1069 (Final)

Date and Time: December 14, 2004 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

CONGRESSIONAL WITNESS:

The Honorable Thomas E. Petri, U.S. House of Representatives, State of Wisconsin, 6th District

STATE WITNESS:

The Honorable Jim Doyle, Governor, State of Wisconsin

OPENING REMARKS:

Petitioner (**Alan Wm. Wolff**, Dewy Ballantine LLP)
Respondents (**William H. Barringer**, Willkie Farr & Gallagher LLP)

In Support of the Imposition of Antidumping Duties:

Dewey Ballantine LLP
Washington, D.C.
on behalf of

Mercury Marine ("Mercury")

Patrick Mackey, President, Mercury

Dennis Sheller, Vice President, Marine Strategy, Mercury

In Support of the Imposition of
Antidumping Duties:

Rick Davis, Vice President, Engine Development; *and* Chief Technology Officer, Mercury

Joseph Pomeroy, General Counsel, Mercury

Gene Herman, President, Local 1947, International Association of Machinists and Aerospace Workers

Earl Bentz, President, Triton Boat Company

Lee Kimmell, Chairman and CEO, American Marine Holdings

Reggie Fountain, Chairman and CEO, Fountain Powerboats

Ed Renken, Executive Vice President, Sea Fox Boats

Rick Grover, Owner, Angler's Marine

Jeff Miller, President and General Manager, Millers Boating Center

Andy Wolf, Owner, M-W Marine

Ron Wilson, Owner, Wilson Marine

William A. Noellert, Economist, Dewey Ballantine LLP

Alan Wm. Wolff)
Kevin M. Dempsey) – OF COUNSEL
David A. Yocis)

In Opposition to the Imposition of
Antidumping Duties:

Willkie Farr & Gallagher, LLP
Washington, D.C.
on behalf of

Yamaha Motor Company, Ltd.)
Yamaha Marine Company, Ltd.) – ("Yamaha")
Yamaha Motor Corporation, USA)

Russell D. Jura, Executive Vice President and General Counsel, Yamaha

Philip Dyskow, President, Marine Group, Yamaha

Benjamin Speciale, General Manager, Operations and Planning, Marine Group, Yamaha

Irwin Jacobs, Chairman, Genmar Holdings

Kris Carroll, President, Grady White

Joan Maxwell, President, Regulator Marine

Scott Deal, President, Maverick

Tom Gootee, President, Gootee Marine

Robert Gowens, Consultant, Gowens Consulting

William H. Barringer)
Christopher Dunn)
) – OF COUNSEL
Robert DeFrancesco)
Rebecca Griffin)

In Opposition to the Imposition of Antidumping Duties (continued):

Barnes & Thornburg
Washington, D.C.
on behalf of

Godfrey Marine

Robert Deputy, President, Godfrey Marine

Randolph Stayin) – OF COUNSEL

Buchanan Ingersoll P.C.
Washington, D.C.
on behalf of

Suzuki Motor Corporation)
) – ("Suzuki")
American Suzuki Motor Corporation)

Larry Vandiver, Marine Marketing Director, Suzuki

John B. Walsh, Esq., Corporate Legal Office, Suzuki

Larry Carpenter, President, Master Marine Services, Inc.

Katrina Coghill, President, Pearson's Marina

John H. Korns) – OF COUNSEL

In Opposition to the Imposition of Antidumping Duties (continued):

Adduci, Mastriani & Schaumberg L.L. P.
Washington, D.C.
on behalf of

Tohatsu Corporation)
Tohatsu Marine Corporation) – ("Tohatsu")
Tohatsu America Corporation)
Nissan Marine Co., Ltd.

Jim Morgenthaler, General Manager, Tohatsu

Seth Kaplan, Vice President, Charles River Associates

Barbara Murphy)
) – OF COUNSEL
William Sjoberg)

Gibson, Dunn & Crutcher, LLP
Washington, D.C.
on behalf of

American Honda Motor Co., Inc.)
) – ("Honda")
Honda Motor Co., Ltd.)

Wade Terry, Vice President, Power Equipment Division, Honda

John Fulcher, Senior Manager, Marine Group, Honda

Tony Zielinski, President, American Marina

Wayne Lockhart, President, Hooked on the Bay

Donald Harrison)
Chris Wood) – OF COUNSEL
Greg Gerdes)

APPENDIX C

SUMMARY DATA

Table C-1
Complete outboard engines and separately sold powerheads: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

(Quantity=units, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per unit; period changes=percent, except where noted)

	Reported data					Period changes			
				January-September					Jan.-Sept.
Item	2001	2002	2003	2003	2004	2001-03	2001-02	2002-03	2003-04
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
U.S. producers' share (1):									
Powerheads	***	***	***	***	***	***	***	***	***
Complete engines (with U.S.-produced powerheads)	***	***	***	***	***	***	***	***	***
Complete engines (with imported powerheads)	***	***	***	***	***	***	***	***	***
Total U.S. producers	***	***	***	***	***	***	***	***	***
U.S. importers' share (1):									
Japan (subject)--									
Imported by U.S. producers:									
Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
Imported by other importers:									
Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
Imported by all importers (total subject):									
Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
All other sources--									
Imported by U.S. producers	***	***	***	***	***	***	***	***	***
Imported by other importers	***	***	***	***	***	***	***	***	***
Total from all other sources	***	***	***	***	***	***	***	***	***
Total imports:									
Imported by U.S. producers	***	***	***	***	***	***	***	***	***
Imported by other importers	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
U.S. producers' share (1):									
Powerheads	***	***	***	***	***	***	***	***	***
Complete engines (with U.S.-produced powerheads)	***	***	***	***	***	***	***	***	***
Complete engines (with imported powerheads)	***	***	***	***	***	***	***	***	***
Total U.S. producers	***	***	***	***	***	***	***	***	***
U.S. importers' share (1):									
Japan (subject)--									
Imported by U.S. producers:									
Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
Imported by other importers:									
Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
Imported by all importers (total subject):									
Powerheads	***	***	***	***	***	***	***	***	***
Complete engines	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
All other sources--									
Imported by U.S. producers	***	***	***	***	***	***	***	***	***
Imported by other importers	***	***	***	***	***	***	***	***	***
Total from all other sources	***	***	***	***	***	***	***	***	***
Total imports:									
Imported by U.S. producers	***	***	***	***	***	***	***	***	***
Imported by other importers	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***

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Table C-1--Continued
Complete outboard engines and separately sold powerheads: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

(Quantity=units, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per unit; period changes=percent, except where noted)

	Reported data					Period changes			
				January-September					Jan.-Sept.
Item	2001	2002	2003	2003	2004	2001-03	2001-02	2002-03	2003-04
U.S. shipments of imports from--									
Japan (subject):									
Imported by U.S. producers:									
Powerheads:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Complete engines:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Total:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Imported by other importers:									
Powerheads:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Complete engines:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Total:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Imported by all importers (total subject):									
Powerheads:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Complete engines:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Total:									
Quantity	151,989	190,443	197,807	150,401	147,240	30.1	25.3	3.9	-2.1
Value	535,227	744,957	784,991	564,220	636,043	46.7	39.2	5.4	12.7
Unit value	$3,521	$3,912	$3,968	$3,751	$4,320	12.7	11.1	1.5	15.1
Ending inventory quantity	31,628	29,025	28,654	24,577	35,256	-9.4	-8.2	-1.3	43.5
All other sources:									
Imported by U.S. producers:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Imported by other importers:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Total:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***

Table continued on next page.

Table C-1--Continued
Complete outboard engines and separately sold powerheads: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

(Quantity=units, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per unit; period changes=percent, except where noted)

	Reported data					Period changes			
				January-September					Jan.-Sept.
Item	2001	2002	2003	2003	2004	2001-03	2001-02	2002-03	2003-04
U.S. shipments of imports from--									
All sources (total):									
Imported by U.S. producers:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Imported by other importers:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Total:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
U.S. producers':									
Average capacity quantity (2)	***	***	***	***	***	***	***	***	***
Production quantity (2)	***	***	***	***	***	***	***	***	***
Capacity utilization (1) (2)	***	***	***	***	***	***	***	***	***
U.S. shipments (3) of--									
Powerheads:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Complete engines (with U.S.-produced powerheads):									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Complete engines (with imported powerheads):									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Total complete engines:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Complete engines + powerheads:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers (2)	***	***	***	***	***	***	***	***	***
Hours worked (1,000s) (2)	***	***	***	***	***	***	***	***	***
Wages paid ($1,000s) (2)	***	***	***	***	***	***	***	***	***
Hourly wages (2)	***	***	***	***	***	***	***	***	***
Productivity (units/1,000 hours) (2)	***	***	***	***	***	***	***	***	***
Unit labor costs (2)	***	***	***	***	***	***	***	***	***
Net sales:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***	***	***	***
Unit operating income or (loss)	***	***	***	***	***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***	***
Operating income or (loss)/ sales (1)	***	***	***	***	***	***	***	***	***

(1) "Reported data" are in percent and "period changes" are in percentage points.
(2) Data are for complete outboard engines only.
(3) To avoid double-counting, U.S. producers' shipments exclude powerheads used to produce complete engines.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires.

Table C-2
Complete outboard engines: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

***** ***** ***** ***** ***** ***** *****

Table C-3
Powerheads: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

***** ***** ***** ***** ***** ***** *****

Table C-4
Outboard engines and separately sold powerheads: Summary data concerning the U.S. market, 2000-03, January-September 2003, and January-September 2004

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APPENDIX D

DETAILED U.S. SHIPMENT DATA REGARDING TECHNOLOGY, HORSEPOWER, AND CHANNELS OF DISTRIBUTION

Table D-1
Complete outboard engines: U.S. producers' U.S. shipments and U.S. shipments of imports, by channels of distribution, technology, and horsepower, 2001-03, January-September 2003, and January-September 2004

***** ***** ***** ***** ***** ***** *****

Table D-2
Complete outboard engines: U.S. producers' U.S. shipments of imports, by technology, 2001-03, January-September 2003, and January-September 2004

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Table D-3
Complete outboard engines: U.S. producers' U.S. shipments and U.S. shipments of imports, by horsepower, 2001-03, January-September 2003, and January-September 2004

***** ***** ***** ***** ***** ***** *****

APPENDIX E

ADDITIONAL U.S. PRODUCER DATA REGARDING POWERHEADS

Table E-1
Powerheads: U.S. production capacity, production, and capacity utilization, 2001-03, January-September 2003, and January-September 2004

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Table E-2
Outboard engines: U.S. producers' production, shipments, and inventories, by source of powerhead, 2001-03, January-September 2003, and January-September 2004

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Table E-3
Powerheads: U.S. producers' end-of-period inventories, 2001-03, January-September 2003, and January-September 2004

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Table E-4
Powerheads: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2001-03, January-September 2003, and January-September 2004

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APPENDIX F

WARRANTY AND RECALL RETURN DATA

Table F-1
Outboard engines: Warranty and recall returns of U.S.-produced powerheads as reported by U.S. producers

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Table F-2
Outboard engines: Warranty and recall returns of U.S.-produced outboard engines with U.S.-produced powerheads as reported by U.S. producers

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Table F-3
Outboard engines: Warranty and recall returns of U.S.-produced outboard engines with powerheads imported from Japan as reported by U.S. producers

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Table F-4
Outboard engines: Warranty and recall returns of imports of powerheads from Japan as reported by importers

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Table F-5
Outboard engines: Warranty and recall returns of outboard engines imported from Japan as reported by importers

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Table F-6
Outboard engines: Warranty returns of U.S.-produced and Japanese imports of repairable outboard engines as reported by purchasers

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Table F-7
Outboard engines: Warranty returns of U.S.-produced and Japanese imports of repairable outboard engines as a share of total purchases as reported by purchasers

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APPENDIX G

SUBSTITUTION ELASTICITY ESTIMATES

BRP argued that the estimation of elasticities of substitution in their prehearing brief demonstrates a clear relationship between relative price changes and relative market shares.[1] However, these interval estimates of elasticities varied by estimation technique, product, and channel of distribution and in some cases included negative values. See Part V for a more detailed discussion of market shares and margins of underselling. Tables G-1 and G-2 present estimated substitution elasticities by product for sales to OEMs and dealers.

[1] BRP's posthearing brief, p. 7 and BRP's prehearing brief, pp. 28-30 and exhibit 12.

Table G-1
Outbound engines: Estimated substitution elasticities by product for sales by OEMs

Product/estimation method	Point estimate		Interval estimate[1]		Test statistic for hypothesis that coefficient is zero
	Coefficient	Standard error	Lower limit	Upper limit	
Product 2:					
Ordinary least squares	8.09	1.64	4.87	11.31	4.93
SUR1[2]	9.12	0.44	8.26	9.98	20.80
SUR2[3]	8.50	0.53	7.45	9.55	15.93
Product 3:					
Ordinary least squares	6.76	1.37	4.07	9.45	4.92
SUR1[2]	8.25	0.33	7.61	8.89	25.10
SUR2[3]	7.77	0.45	6.89	8.65	17.24
Product 4:					
Ordinary least squares	5.04	5.04	-4.84	14.92	1.00
SUR1[2]	7.06	1.68	3.77	10.35	4.21
SUR2[3]	5.97	0.77	4.46	7.48	7.76
Product 5:					
Ordinary least squares	8.57	2.86	2.97	14.17	3.00
SUR1[2]	7.50	0.48	6.55	8.45	15.54
SUR2[3]	8.26	0.46	7.37	9.15	18.11
Product 6:					
Ordinary least squares	3.40	2.86	-2.20	9.00	1.19
SUR1[2]	2.66	2.24	-1.72	7.04	1.19
SUR2[3]	8.67	0.59	7.52	9.82	14.81
Product 7:					
Ordinary least squares	2.21	2.83	-3.34	7.76	0.78
SUR1[2]	2.78	0.79	1.22	4.34	3.50
SUR2[3]	3.28	0.30	2.70	3.86	11.06

[1] Staff calculations based on a 95 percent confidence interval and a critical value of 1.96.

[2] Seemingly unrelated regression (SUR) estimation is an econometric technique used when several regression equations which do not interact but may be affected by the same outside shocks (such as changes in demand due to fluctuations in GDP growth) are estimated using a large single regression to minimize the variability (standard error) in the estimated coefficients. Note that the standard errors reported for the SUR estimates are lower than those for the ordinary least squares estimates. Kennedy (2003), p. 192.

[3] "SUR2" differs from "SUR1" in that a one quarter lag of the dependent variable (the natural log of the ratio of imports to domestic shipments) is included as an explanatory variable.

Source: BRP's prehearing brief, exh. 12, pp. 4-5 and staff calculations (as noted in footnote 1).

Table G-2
Outboard engines: Estimated substitution elasticities by product for sales by dealers

Product/estimation method	Point estimate		Interval estimate[1]		Test statistic for hypothesis that coefficient is zero
	Coefficient	Standard error	Lower limit	Upper limit	
Product 2:					
Ordinary least squares	5.57	1.73	2.18	8.96	3.22
SUR1[2]	4.50	0.56	3.40	5.60	8.03
SUR2[3]	4.52	0.54	3.47	5.57	8.44
Product 3:					
Ordinary least squares	1.79	3.31	-4.71	8.29	0.54
SUR1[2]	3.67	1.92	-0.10	7.44	1.91
SUR2[3]	11.96	0.46	11.07	12.85	26.23
Product 4:					
Ordinary least squares	4.10	3.42	-2.60	10.80	1.20
SUR1[2]	3.44	0.48	2.49	4.39	7.11
SUR2[3]	4.00	0.26	3.49	4.51	15.25
Product 5:					
Ordinary least squares	-1.24	3.54	-8.18	5.70	-0.35
SUR1[2]	-0.83	0.55	-1.91	0.25	-1.50
SUR2[3]	-0.91	0.78	-2.43	0.61	-1.17
Product 6:					
Ordinary least squares	4.70	2.34	0.12	9.28	2.01
SUR1[2]	3.71	0.65	2.44	4.98	5.73
SUR2[3]	3.81	0.18	3.46	4.16	21.24
Product 7:					
Ordinary least squares	1.48	1.97	-2.39	5.35	0.75
SUR1[2]	-0.11	0.79	-1.65	1.43	-0.14
SUR2[3]	1.32	0.93	-0.50	3.14	1.42

[1] Staff calculations based on a 95 percent confidence interval and a critical value of 1.96.
[2] Seemingly unrelated regression (SUR) estimation is an econometric technique used when several regression equations which do not interact but may be affected by the same outside shocks (such as changes in demand due to fluctuations in GDP growth) are estimated using a large single regression to minimize the variability (standard error) in the estimated coefficients. Note that the standard errors reported for the SUR estimates are lower than those for the ordinary least squares estimates. Kennedy (2003), p. 192.
[3] "SUR2" differs from "SUR1" in that a one quarter lag of the dependent variable (the natural log of the ratio of imports to domestic shipments) is included as an explanatory variable.

Source: BRP's prehearing brief, exh. 12, pp. 4-5 and staff calculations (as noted in footnote 1).

APPENDIX H

VOLUME, MARKET SHARES, AND MARGINS OF UNDERSELLING/(OVERSELLING) FOR PRICE DATA

Table H-1
Outboard engines: Volume and market share of imported product 2 sold to OEMs, and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-2
Outboard engines: Volume and market share of imported product 3 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-3
Outboard engines: Volume and market share of imported product 4 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-4
Outboard engines: Volume and market share of imported product 5 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-5
Outboard engines: Volume and market share of imported product 6 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-6
Outboard engines: Volume and market share of imported product 7 sold to OEMs and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-7
Outboard engines: Volume and market share of imported product 2 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-8
Outboard engines: Volume and market share of imported product 3 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-9
Outboard engines: Volume and market share of imported product 4 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-10
Outboard engines: Volume and market share of imported product 5 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-11
Outboard engines: Volume and market share of imported product 6 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Table H-12
Outboard engines: Volume and market share of imported product 7 sold to dealers and margins of underselling/(overselling), by quarters, January 2001-September 2004

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Figure H-1
Outboard engines: Market shares and margins of underselling/(overselling) of imported products 2-7 sold to OEMs, by quarters, January 2001-September 2004

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Figure H-2
Outboard engines: Market shares and margins of underselling/(overselling) of imported products 2-7 sold to dealers, by quarters, January 2001-September 2004

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