

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
 OUTBOARD ENGINES FROM JAPAN) Investigation No.:
) 731-TA-1069
) (Final)

Tuesday,
 December 14, 2004

Room 101
 U.S. International
 Trade Commission
 500 E Street, SW
 Washington, D.C.

The hearing commenced, pursuant to notice, at
 9:28 a.m., before the Commissioners of the United States
 International Trade Commission, the Honorable STEPHEN
 KOPLAN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

STEPHEN KOPLAN, COMMISSIONER (presiding)
 DEANNA TANNER OKUN, VICE CHAIRMAN
 MARCIA E. MILLER, COMMISSIONER
 JENNIFER A. HILLMAN, VICE CHAIRMAN
 CHARLOTTE R. LANE, COMMISSIONER
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APPEARANCES (continued):

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WILLIAM R. BISHOP, HEARINGS AND MEETINGS
COORDINATOR

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CHARLES YOST, ACCOUNTANT/AUDITOR
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Congressional Witness:

THE HONORABLE THOMAS E. PETRI, U.S. Congressman,
U.S. House of Representatives,
State of Wisconsin, 6th District

State Witness:

THE HONORABLE JIM DOYLE, Governor,
State of Wisconsin

APPEARANCES (continued):

In Support of the Imposition of Antidumping Duties:On behalf of Mercury Marine ("Mercury"):

PATRICK MACKEY, President, Mercury
DENNIS SHELLER, Vice President, Marine Strategy,
Mercury
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
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WILLIAM A. NOELLERT, Economist,
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APPEARANCES (continued):

In Opposition to the Imposition of Antidumping Duties:On behalf of Yamaha Motor Co., Ltd.; Yamaha Marine Co., Ltd.; Yamaha Motor Corp., USA - ("Yamaha"):

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BENJAMIN SPECIALE, General Manager, Operations,
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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

Of Counsel:

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On behalf of Godfrey Marine:

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Of Counsel:

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APPEARANCES (continued):

In Opposition to the Imposition of Antidumping Duties
(continued):

On behalf of Suzuki Motor Corp.; American Suzuki Motor
Corp. - ("Suzuki"):

LARRY VANDIVER, Marine Marketing Director, Suzuki
JOHN B. WALSH, Esquire, Corporate Legal Office,
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LARRY CARPENTER, President, Master Marine
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KATRINA COGHILL, President, Pearson's Marina

Of Counsel:

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On behalf of Tohatsu Corp.; Tohatsu Marine Corp.; Tohatsu
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JIM MORGENTHALER, General Manager, Tohatsu
SETH KAPLAN, Vice President, Charles River
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Of Counsel:

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APPEARANCES (continued):

In Opposition to the Imposition of Antidumping Duties
(continued):

On behalf of American Honda Motor Co., Inc.; Honda Motor
Co., Ltd. - ("Honda"):

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Division, Honda

JOHN FULCHER, Senior Manager, Marine Group, Honda

TONY ZIELINSKI, President, American Marina

WAYNE LOCKHART, President, Hooked on the Bay

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P R O C E E D I N G S

(9:28 a.m.)

CHAIRMAN KOPLAN: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-1069 (Final) involving Outboard Engines from Japan.

The purpose of this investigation is to determine whether an industry in the United States is materially injured or threatened with material injury by reason of less-than-fair-value imports of subject merchandise.

Before we begin, I would note that the Commission has granted a request from Respondents to hold a portion of this hearing in camera. We will begin with public presentations by Petitioners and Respondents. We will then have a 10-minute, in-camera session by Respondents followed by a 10-minute, in-camera rebuttal presentation by Petitioners, if so desired. Only signatories to the APO will be permitted in the hearing room during the in-camera sessions. Following the in-camera presentations, we will resume with public rebuttal and closing remarks.

Schedules setting forth the presentation of this hearing, notice of investigation, and transcript order forms are available at the secretary's desk.

1 All prepared testimony should be given to the
2 secretary. Do not place testimony directly on the
3 public distribution table. As all written material
4 will be entered in full into the record, it need not
5 be read to us at this time.

6 All witnesses must be sworn in by the
7 secretary before presenting testimony. I understand
8 the parties are aware of the time allocations. Any
9 questions regarding the time allocations should be
10 directed to the secretary.

11 Finally, if you will be submitting documents
12 that contain information you wish classified as
13 business confidential, your request should comply with
14 Commission Rule 201.6.

15 Madam Secretary, are there any preliminary
16 matters?

17 MS. ABBOTT: No, Mr. Chairman.

18 CHAIRMAN KOPLAN: Very well, then. If you
19 would please announce the congressional witness.

20 MS. ABBOTT: The Honorable Thomas E. Petri,
21 United States Congressman, State of Wisconsin, 6th
22 District.

23 CHAIRMAN KOPLAN: Welcome, Congressman. You
24 need to turn the microphone on.

25 MR. PETRI: Thank you. The button is green,

1 so I assumed it was a green light.

2 Thank you very much for giving me the
3 opportunity to appear briefly before you on behalf of
4 Mercury Marine and its 3,400 employees in Wisconsin
5 about the danger posed to the domestic outboard engine
6 industry by the dumping of imported engines from
7 Japan.

8 This case is important to me and to the
9 other residents of central Wisconsin that I represent,
10 which is home to Mercury Marine's headquarters in Fond
11 du Lac, where most of the 3,400 workers are engaged in
12 the production of outboard engines.

13 The company competes in an industry with
14 heavy competition from foreign manufacturers and has
15 worked hard over a number of years to produce engines
16 that can stand the heat of global competition.
17 Mercury's newest product, Verado, is a high-tech,
18 four-stroke engine which generates significant power
19 while operating almost silently. In fact, they are
20 considering, I think, making a little noise simulator
21 because sometimes people can't tell whether it's
22 running or not and keep starting the engine that's
23 already running, so actually, a miracle of technology.
24 The engine produces low emissions, offering long-term
25 compliance with evolving environmental regulations.

1 Mercury has committed itself to being a
2 world-class producer of outboards and has spent five
3 years developing this engine and investing \$100
4 million in the project. Mercury has been a leader in
5 the development of technology to produce the lower-
6 emission engines, and the Verado meets both current
7 environmental requirements and the more stringent
8 standards that are being phased in over the next few
9 years.

10 This is the type of forward-looking
11 innovation that American manufacturers have to pursue
12 if they are going to be successful in the global
13 environment.

14 Today's global marketplace offers U.S.
15 manufacturers a daunting challenge, and the
16 manufacturing sector is undergoing a difficult
17 transition. This has been particularly true in my
18 State of Wisconsin as many companies strive to produce
19 world-class products. Mercury Marine has established
20 itself as a leader in this effort and is well
21 positioned to succeed in a business environment
22 characterized by free trade and open global markets.
23 However, all assumptions about the benefits of free
24 trade and fair competition are out the window when our
25 trading partners don't play by the rules.

1 Mercury filed its petition in this case
2 because it believes that its Japanese competitors were
3 not playing fair. As this process has moved forward,
4 the merits of this position have been established at
5 each level. In February, this Commission determined
6 unanimously that the record showed reasonable
7 indications that the domestic outboard engine industry
8 had been hurt by Japanese dumping. In August, the
9 Commerce Department also found that Japanese engines
10 had been sold in the U.S. market at less than fair
11 value and announced a conditional duty of 22 and a
12 half percent.

13 This dumping could prove to be particularly
14 harmful to Mercury because it allows the competition
15 to gain market share during the transition to a
16 tougher regulatory environment. Mercury's investment
17 in the Verado project has positioned the company to
18 prosper under the new trading rules and environmental
19 rules, and improper dumping has the potential to
20 undercut this effort.

21 I've always believed in free trade and have
22 often supported agreements to keep our markets open in
23 exchange for new overseas opportunities for U.S.
24 producers. I have great confidence that our companies
25 can compete with the best in the world. However, we

1 cannot be foolish enough to think that pursuing a
2 free- and fair-trading arena is enough to make it
3 happen. Markets work best when there are clearly
4 defined rules, and governments must respond
5 appropriately when domestic industries are harmed by
6 competitors who break those rules.

7 Today's hearing provides such an
8 opportunity. It's important that our laws prohibiting
9 dumping be enforced and safeguards be put in place to
10 defend those in harm's way.

11 This case is about protecting a world-class,
12 domestic producer from competitors that are seeking an
13 unfair advantage through dumping. This company,
14 Mercury Marine, is now threatened with further injury
15 if not granted final antidumping relief. We cannot
16 afford to lose more manufacturing jobs to unfair
17 trade; and, therefore, I urge this Commission to
18 listen carefully to today's testimony and study the
19 record developed by these proceedings.

20 Having taken these steps, I believe that you
21 will come to the conclusion that the dumping of
22 imported outboard engines has hurt the domestic
23 industry and threatens further injury if it's allowed
24 to continue. I thank you very much for giving me the
25 opportunity to make this presentation.

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1 CHAIRMAN KOPLAN: We thank you for coming.
2 Let me see if any of my colleagues have any questions.
3 Seeing that they don't, we appreciate very much your
4 testimony.

5 MR. PETRI: Thank you.

6 CHAIRMAN KOPLAN: Thank you.

7 Madam Secretary?

8 MS. ABBOTT: The Honorable Jim Doyle,
9 governor, State of Wisconsin.

10 CHAIRMAN KOPLAN: Welcome, Governor. Your
11 microphone? You may proceed.

12 MR. DOYLE: Well, thank you, Mr. Chairman
13 and members of the Commission. We certainly
14 appreciate the time and focus that you have brought to
15 this very important issue, and I appear before you
16 today to urge you to recognize that our domestic
17 outboard engine industry is in trouble because of
18 unfair trading practices by Japanese manufacturers.

19 We take great pride in Wisconsin that we
20 make very, very good products and that we will compete
21 on a level playing field with anyone in the world.
22 The American outboard industry provides good, family-
23 supporting jobs to workers across the country and
24 nearly 4,000 in Wisconsin alone.

25 Mercury Marine, as you have heard from

1 Congressman Petri, is headquartered in and has
2 outboard production facilities in Fond du Lac,
3 Wisconsin. Bombardier Recreational Products produces
4 the Johnson and Evinrude brands of outboards at its
5 facility in Sturtevant, Wisconsin. Wisconsin's
6 outboard industry workers, like all of Wisconsin's
7 workers, are highly trained, hard working, and
8 committed to producing top-quality products.

9 Mercury Marine and Bombardier Recreational
10 Products also are critically important to hundreds of
11 suppliers in Wisconsin and across the country which
12 also supply good, family-supporting jobs, and having
13 access to domestic outboard manufacturers and emerging
14 technologies is important to the recreational boating
15 industry nationwide.

16 The domestic outboard engine industry is
17 threatened by the aggressive pricing strategies used
18 by Japanese manufacturers who are looking to unfairly
19 gain market share by dumping their products in the
20 United States market. To make matters worse, they are
21 doing this at a very critical time for domestic
22 producers. Environmental standards are being phased
23 in that necessitate very clean-running, outboard
24 engines, and the entire industry is in the midst of
25 developing and producing new technologies to meet

1 these requirements. Mercury Marine has been a leader
2 in developing these new technologies.

3 American manufacturers generally are at the
4 forefront of these efforts, developing new, lower-
5 emissions-technology engines that meet the new
6 environmental regulations without sacrificing
7 performance capabilities, and their efforts have not
8 gone unnoticed. Our manufacturers have earned
9 numerous innovation awards from the marine industry.

10 While the research and development required
11 is costly, it is exactly the type of innovation that
12 American manufacturers should be doing in order to
13 remain competitive in the future, but they cannot
14 continue to do so with foreign manufacturers unfairly
15 depressing prices.

16 In this investigation, the Commerce
17 Department has already preliminarily determined that
18 Japanese producers dump their products into the United
19 States market at more than a 20-percent margin. This
20 dumping has led to a rapid increase in the volume and
21 market share of the Japanese producers directly at the
22 expense of the domestic industry. It is now up to
23 you, and I hope, as you weigh and deliberate and
24 consider, that you will come to the determination that
25 these foreign producers should not be allowed to

1 continue to abuse the open United States market.

2 It would be unfair to allow our American
3 outboard engine manufacturers and their workers,
4 including those in Wisconsin, to fall prey to unfair
5 pricing strategies being used by Japanese
6 manufacturers in a blatant effort to grab market
7 share. And I believe you will find that our domestic
8 producers are in trouble and will be threatened
9 further if not granted final antidumping relief.

10 Much is at stake. Several of you and your
11 staff, I understand, having to Wisconsin to visit our
12 plants. They are modern, state-of-the-art facilities,
13 and we are very proud of them. I know that on a brief
14 visit it is not possible to get to know the
15 communities or the families who depend on the good
16 jobs that the plants provide. These are hard-working
17 people who take great pride in their contributions to
18 their communities and to the American economy.

19 We live in a global economy with both
20 domestic and foreign competition. In Wisconsin, we
21 don't back away from that. We believe, based on the
22 quality of our production facilities, we will not only
23 succeed in such a global market, but, in fact, we will
24 excel. But when some of the competition is unfair, we
25 must stand up and remedy the situation for our

1 workers, their families, and our communities.

2 Obviously, one of my great fears as governor
3 of Wisconsin is to see these great jobs leave because
4 of temporary pricing strategies by Japanese
5 competitors, and when they have successfully gained
6 their share, and when those jobs have left Wisconsin,
7 to then see the prices go back up. I hope that as you
8 weigh this evidence, and I know that you will do it
9 fairly, and you will consider all of the evidence that
10 comes before you, I hope that you will find that this
11 dumping should not be permitted to continue.

12 Mr. Chairman and members of the Commission,
13 Wisconsin workers are relying on you to take the
14 necessary action and issue a finding of material
15 injury to the American outboard engine manufacturers
16 in this matter. We thank you deeply for your
17 consideration, and we hope that as you consider the
18 evidence, you will recognize how important this is to
19 several very important Wisconsin companies and
20 facilities and to the outboard manufacturers across
21 the United States. Thank you very much.

22 CHAIRMAN KOPLAN: Thank you very much for
23 your testimony. Let me see if there are any comments
24 or questions from the dias. If not, we very much
25 appreciate your coming, Governor.

1 MR. DOYLE: Thank you, Mr. Chairman and the
2 Commission.

3 CHAIRMAN KOPLAN: Thank you.

4 MS. ABBOTT: Opening remarks on behalf of
5 the Petitioner will be by Alan William Wolff, Dewey
6 Ballantine.

7 OPENING REMARKS BY COUNSEL FOR THE PETITIONER

8 CHAIRMAN KOPLAN: Good morning.

9 MR. WOLFF: Good morning, Mr. Chairman,
10 Commissioners. I suggest to you that this case is
11 primarily about price. The Japanese producers you
12 price to capture and retain a dominant share of the
13 U.S. market at the expense of domestic producers. As
14 a result, the domestic industry suffered material
15 injury.

16 Japanese sales at less than fair value have
17 extensively undersold the domestic industry's
18 products. Over the period of investigation, the
19 public record shows Japanese underselling in 63
20 percent of the quarterly comparisons examined.
21 Purchaser questionnaire responses cite price most
22 frequently as being one of the top three
23 considerations.

24 The surge in imports in 2001 occurred during
25 a time of transition in the outboard engine industry.

1 The industry was transforming itself to provide newer
2 technologies to meet mandated environmental standards.
3 Of the three classic American brands -- Mercury,
4 Johnson, and Evinrude -- production had ceased for
5 Johnson and Evinrude with the bankruptcy in December
6 2000 of OMC. Thus, 2001 became a pivotal year for the
7 industry. OMC had just exited the market. BRP, the
8 successor to OMC, had not yet begun production.
9 Yamaha discounted heavily, and based on publicly
10 available data, Japanese producers gained 11
11 percentage points of market share in this one year,
12 2001.

13 Focusing on 2001 is important to gain a
14 correct understanding that engine type played almost
15 no role in the Japanese producers' gain in market
16 share. The large, four-stroke engines, a subject that
17 fills pages of Respondents' briefs, did not appear
18 until the middle of that year and then only in two
19 engines, the 200 and 225 horsepower, and only in very
20 small volumes. Large, four-stroke engines do not
21 account for the capture by the Japanese producers of
22 market share. Mercury and Yamaha competed fully by
23 size of engine across the entire product line.

24 Only by ignoring what happened in 2001 can
25 Respondents paint a picture that obscures the relative

1 position of imports during the period of
2 investigation. The key fact is that imports captured
3 a large share of the market that year, and whether the
4 U.S. industry would regain market share would depend
5 primarily on the level of Japanese producers' prices
6 in this market.

7 Subject imports determine price, and prices
8 have remained both suppressed and depressed.
9 Bombardier is not and cannot be the price leader
10 because its market share is too small. You will hear
11 testimony today from Mercury and its customers that
12 sharp underselling by Yamaha was and is directly
13 related to domestic lost sales. There is a direct
14 relationship between underselling by imports and
15 imports' gain and retention of gained market share.

16 Respondents would have you view the
17 competition in the outboard engine market in a very
18 artificial way, that there is really no competition
19 between four-stroke and two-stroke engines on price,
20 but the evidence is clear that there is a high degree
21 of price competition among different engine
22 technologies. Consumers weigh the differences in
23 performance among engine technologies against their
24 particular needs and the relative price of different
25 engines. Nor does any one technology have a monopoly

1 on meeting environmental standards. Two-stroke,
2 direct-injection engines, as well as four-stroke
3 engines, serve this purpose. Purchaser questionnaire
4 responses confirm that competition occurs across
5 technologies.

6 The biggest single loss of share occurred in
7 the OEM segment, and particularly dramatic was the
8 price-driven decision of Genmar, now the nation's
9 largest independent boat manufacturer and the
10 purchaser of OMC's boat divisions, to negotiate
11 reportedly on unprecedentedly large discounts from
12 Yamaha. Price was the sole reason given at the time
13 by Genmar for reducing purchasers from Mercury while
14 increasing the volume purchased from Japanese imports.

15 The harm caused by this underselling by
16 Japanese producers was magnified by the fact that this
17 was time of transition. BRP was attempting to regain
18 some of its former customers, and Mercury was
19 continuing to expend very substantial efforts to meet
20 the new environmental standards. The devastating
21 impact on the finances of the domestic industry is
22 documented in the record. Absent relief, Japanese
23 producers' gains will continue.

24 Japanese producers' current market share is
25 not due to the range of product available or by engine

1 performance -- domestic products are equal in the
2 range of offerings and better in performance than the
3 imports -- but by sales obtained by Japanese producers
4 through price discrimination, price underselling, and
5 utilizing prices at less than fair volume. Thank you
6 very much.

7 CHAIRMAN KOPLAN: Thank you, Mr. Wolff.
8 Madam Secretary?

9 MS. ABBOTT: Opening remarks on behalf of
10 the Respondents will be by William H. Barringer,
11 Wilkie Farr & Gallagher.

12 OPENING REMARKS BY COUNSEL FOR RESPONDENTS

13 CHAIRMAN KOPLAN: Good morning, Mr.
14 Berringer.

15 MR. BERRINGER: Good morning. It's a
16 pleasure to appear today. I'm speaking this morning
17 on behalf of the joint Respondents.

18 The case before you is fairly unique, in
19 that both of the domestic manufacturers are importers
20 and significant importers. It is also unique, in that
21 both of the domestic manufacturers are largely
22 dependent on imports, either engines or powerheads, in
23 order to meet the demand for four-stroke engines.
24 Over the period of investigation, four-stroke engines
25 have become the dominant technology in the market as

1 the market moves to meet the ever-more-stringent
2 emissions standards imposed by the EPA.

3 Indeed, but for the ability of domestic
4 producers to import four-stroke engines, they likely
5 would have sold fewer domestically produced engines
6 because they would have not had the EPA credits
7 generated by these imports to allow them to continue
8 to sell domestically produced, conventional, two-
9 stroke engines at the levels they were sold throughout
10 the POI.

11 In addition, absent imports, the domestic
12 producers would not have had the ability to offer
13 anything approaching a full line of engines of all
14 technologies. According to affidavits submitted by
15 Mercury in the district court litigation against
16 Yamaha in Wisconsin, the inability of Mercury to offer
17 a full line of engines of all technologies would have
18 caused them irreparable harm. According to Mercury,
19 its inability to offer four-stroke engines of mid-
20 range horsepower made from Yamaha powerheads would
21 have resulted in losses across its full product line,
22 including not just engines but also accessories.

23 Thus, Mercury admits that its ability to
24 offer product in the four-stroke market segment is
25 crucial to its success, and much of that product has,

1 in fact, been imported.

2 Notwithstanding its claims in the district
3 court, in this proceeding, Petitioners are claiming
4 that the problem is not its ability to offer the
5 engines using the technology the market wants but
6 price. In making this claim, however, Petitioners
7 ignore the fact that in the segment of the market
8 where import growth is concentrated, four-stroke
9 engines, there is simply no correlation between the
10 prices of imports and the increase in imports.

11 This investigation is not about price; it is
12 about the domestic industry's lack of product in the
13 fastest-growing segment of the market, the four-stroke
14 market, and, in particular, the high-horsepower
15 segment of that market, which, until July 1 of this
16 year, there were no offerings other than imported
17 offerings by the domestic industry.

18 CHAIRMAN KOPLAN: Madam Secretary, we seem
19 to be having a problem with those lights again. Both
20 are on.

21 MR. BARRINGER: That gives me an extra 10
22 minutes, I guess. Right?

23 CHAIRMAN KOPLAN: Nice try.

24 MR. BARRINGER: (Laughter.) Let me turn
25 briefly now to price. In fact, the pricing

1 information that the Commission received shows a very
2 mixed picture of the relative prices between imports
3 and domestically produced products. More important,
4 it is not clear whether, in fact, the Commission has
5 accurate price information. As Respondent witnesses
6 will testify later today, Mercury frequently provides
7 incentives to buy its product which it then tends to
8 separate from the pricing; that is, Mercury has
9 parallel transactions which affect pricing but which
10 it attempts to divorce from the pricing agreement.

11 While we believe this to be the case with
12 respect to all of the OEMs and dealers testifying on
13 Mercury's behalf today, we have specific public
14 examples for two. First, in the SEC filing of
15 Fountain Boats, it has indicated that Brunswick
16 Corporation has a lien of \$18 million on all of the
17 assets of the company because of a secured loan to
18 that company. Second, Florida state records indicate
19 a similar lien on the assets of American Marine
20 Holdings, also held by Brunswick.

21 We believe that a similar loan-lien
22 relationship exists with respect to Miller Boating
23 Center and that other deals between Brunswick and one
24 or more of the other witnesses also exist. We believe
25 that these are part and parcel of how Mercury sells

1 engines, and we believe that they should be included
2 in the Commission's consideration of price
3 competition, and we think that you should ask these
4 witnesses today and Mercury about the terms of these
5 transactions, their relationship with the prices, and
6 how they affect Mercury's ability to sell its product
7 in the market. Thank you very much.

8 CHAIRMAN KOPLAN: Thank you.

9 Madam Secretary, would you call the first
10 panel?

11 MS. ABBOTT: The first panel, in support of
12 the imposition of antidumping duties, please come
13 forward. Mr. Chairman, the witnesses have been sworn.

14 CHAIRMAN KOPLAN: Thank you, Madam
15 Secretary.

16 (Pause.)

17 CHAIRMAN KOPLAN: You may proceed, Mr.
18 Dempsey. Good morning.

19 MR. DEMPSEY: Good morning. I am Kevin
20 Dempsey of Dewey Ballantine, counsel to Mercury
21 Marine. I would like to begin today with a short
22 overview of Petitioners' case.

23 Following the bankruptcy and shutdown of the
24 Outboard Marine Corporation in late 2000, Japanese
25 imports of outboard engines made significant gains in

1 market share through aggressive price undercutting,
2 especially at large, OEM boat builders.

3 Despite the drop in apparent consumption in
4 2001, Japanese market share increased dramatically,
5 from almost 43 percent in 2000 to nearly 54 percent in
6 2001, according to Japanese government export
7 statistics and NMMA wholesale data. And as the
8 Japanese producers' aggressive pricing continued into
9 the most recent period, the Japanese imports' share of
10 the market has remained high.

11 As the Commission found in the preliminary
12 phase of this investigation, the record demonstrates
13 that the increase in subject imports over the POI is
14 not due solely or primarily to imports by the domestic
15 industry, and despite what you will hear later from
16 Respondents, price was one of the main reasons the
17 appear producers gained the share, as is demonstrated
18 by the responses of purchasers to the Commission's
19 questionnaire, a majority of whom listed price as one
20 of the top three factors in purchasing decisions.

21 Indeed, the staff report notes that the
22 subject imports undersold the comparable domestic
23 product in 63 percent of quarterly comparisons. This
24 underselling has suppressed and depressed domestic
25 prices and has resulted in a deterioration in the

1 operating performance of the domestic industry, as it
2 has been unable to regain the market share lost to
3 dumped Japanese imports, and this information is
4 confirmed by contemporaneous press accounts going back
5 to the beginning of the POI.

6 In May 2001, Genmar announced that due to
7 "noncompetitive pricing," the company would be cutting
8 back on Mercury Marine outboard engines. Mr. Irwin
9 Jacobs estimated Mercury engines were priced 10
10 percent higher than the primary competition in the
11 marketplace, which were the Japanese producers, as
12 Bombardier had not yet resumed production.

13 The Japanese producers tried to divert
14 attention from this information by carving up the
15 market by technology in order to argue there is little
16 direct competition between U.S. and Japanese engines,
17 but a large majority of purchasers reported that the
18 different outboard engine technologies are always
19 interchangeable, indicating significant cross-
20 technology competition in the marketplace.

21 Moreover, in terms of the product offerings
22 of the two leading producers, Mercury Marine and
23 Yamaha, in 2001, when the greatest gains in import
24 market share occurred, Mercury had the broader product
25 lineup across the three major technology categories.

1 Thus, differences in product offerings cannot explain
2 the significant Japanese share gains.

3 Over the POI, each company added new product
4 offerings in the lower-emission technologies at
5 different times, but neither had a significant
6 advantage in terms of new-technology engine offerings,
7 especially given the strong, cross-technology
8 competition in the marketplace. Indeed, while Yamaha
9 suggests in its brief that the two-stroke, direct-
10 injection engines are a relic of the past and of no
11 interest to offshore boaters, it is, at the same time,
12 actively promoting its latest direct-injection engine
13 for saltwater fishing on its own Web site. And while
14 Yamaha places great emphasis on the quality issues
15 with the Optimax that were resolved years ago, it
16 ignores the more recent problems that its own engines
17 have faced.

18 As you will hear from several boat builders
19 and dealers in just a few minutes, Mercury's engines
20 are second to none in terms of reliability and
21 performance. It is the dumping by the Japanese
22 producers that is the cause of the injury to the
23 domestic industry today, not any of these other
24 alleged causes.

25 In order to prevent circumvention, the scope

1 of this investigation also includes powerheads. Under
2 the Commission's semi-finished product analysis,
3 powerheads should be included within the same domestic
4 like product as completed engine because they are
5 dedicated principally to the production of outboard
6 engines.

7 To address an oversight in our previous
8 submissions, we filed yesterday a correction noting
9 that a very small percentage of powerheads are used to
10 produce sport jets, a separate product previously
11 noted in Mercury's questionnaire, but this does not
12 change the fact that there is no significant separate
13 market for powerheads sold separately, that there is a
14 high degree of overlap in physical characteristics,
15 that the powerhead is a substantial portion of the
16 cost of an outboard engine, while the cost of final
17 assembly into the engine is low.

18 Finally, the subject imports threaten
19 further additional injury to the domestic outboard
20 industry. While the U.S. market is the largest market
21 for outboard engines in the world, the Japanese
22 industry also has substantial exports to other markets
23 which could be easily shifted to this market in an
24 effort to gain an even larger share, especially as
25 both U.S. and Japanese producers phase out their sales

1 of carbureted, two-stroke engines.

2 At this point, I would like to introduce Mr.
3 Patrick Mackey, the president of Mercury Marine.

4 MR. MACKEY: Chairman Koplan and members of
5 the Commission, good morning. My name is Patrick
6 Mackey. I am the president of Mercury Marine, a
7 division of Brunswick Corporation.

8 Mercury Marine is the leading domestic
9 producer of outboard marine engines, and we have our
10 main operations in Fond du Lac, Wisconsin. Since our
11 company was founded in 1939, Mercury has consistently
12 emphasized quality, innovation, and reliability. That
13 pledge remains as strong today as ever, with almost
14 5,000 U.S. employees living that pledge. Indeed,
15 Mercury set standards for the industry decades before
16 Japanese outboards passed our shores, and we take our
17 motto of "number one on the water" very seriously.

18 When new EPA emission requirements
19 challenged the industry in the mid-1990's, Mercury
20 took the lead in redesigning its products to reduce
21 emissions, not only meeting but dramatically exceeding
22 the standards. Our Optimax, direct-injection,
23 outboard engine concept was created to deliver
24 exceptional performance from a two-stroke outboard
25 with a completely new technology and was the first

1 two-stroke, DI product in the marketplace. With an
2 average of 45 percent better fuel economy and smooth,
3 smokeless, misfire-free operation, the Optimax models
4 are the benchmark for direct-injection, two-stroke
5 outboards.

6 We continue to be the industry leaders.
7 Earlier this year, after more than five years of
8 research and development, at a cost of over \$100
9 million, we rolled out the Verado, a new family of
10 high-performance, four-stroke engines to match two-
11 stroke performance. To design this completely new
12 engine, we assembled a team of international experts
13 to have access to world-class technology.

14 Verado is the world's first supercharged
15 production outboard using an in-line, six-cylinder
16 design that produces the first four-stroke that can
17 really compete with two-stroke in torque and power.
18 Its patented sound-dampening technology results in the
19 quietest engine in its class and, in fact, renders it
20 nearly silent at idle.

21 The Verado has already been recognized as
22 the marine industry's top outboard motor in Field &
23 Stream's annual Best of the Best Awards announced only
24 last month, and this comes on the heels of winning the
25 2004 Hibeck's Innovation Award at the International

1 Boat Builders exhibition and conference in Miami Beach
2 in October.

3 With our mid-sized and smaller four-stroke
4 engines and a full range of traditional two-stroke
5 engines plus direct injected, our extensive product
6 line gives us a platform to compete with Japanese
7 producers, but despite our continuing efforts at
8 innovation, the domestic outboard engine industry has
9 lost significant market share to Japanese imports
10 since 2000, and we are losing money. This is because
11 Japanese producers are dumping outboard engines in
12 this market at prices well below the prices at which
13 we can profitably sell our products. If this
14 continues, we will not regain profitability and will
15 not be able to continue to develop and maintain a
16 complete engine lineup.

17 Just last year, Genmar, one of the largest
18 boat builders in the United States, sent a memo to its
19 dealers admitting that it was able to obtain Japanese
20 outboard engines at prices substantially lower than
21 Mercury's. It says: "Quite frankly, certain engines
22 cost us more than other engines, and Genmar is not
23 able to continue to absorb the significant price
24 differential among the engine manufacturers. Genmar
25 will pass on to the dealer and consumer some of this

1 differential for the Mercury and Mercruiser brands."

2 In 2001, Genmar publicly announced that it
3 would be cutting back on Mercury engine orders because
4 of the cost of the engines in comparison to others in
5 the marketplace. At the same time, Genmar announced
6 that Suzuki would be having a very big year, that
7 Yamaha's business would be up as much as 300 percent,
8 and that Genmar would be offering Honda and Suzuki
9 engines for the first time to its boat divisions.

10 These statements, then, made the facts
11 clear. The Japanese producers have been pricing below
12 us, and that is the reason they have gained and
13 maintained market share. It is thus not surprising
14 that Genmar has taken on such a public role on
15 Yamaha's behalf in this case.

16 Low-emission engines, whether four-stroke or
17 direct-injected, are more complicated and costly
18 engines to produce than traditional two-stroke
19 outboards, but we have not been able to recoup these
20 increased costs in the market because of Japanese
21 pricing. Thus, our margins on low-emission engines
22 have consistently been lower than that for traditional
23 two-strokes.

24 Mercury Marine has an obligation to its
25 shareholders, employees, and customers not to sit back

1 and allow itself to be damaged by such unfair
2 competition. That is why we filed an antidumping case
3 at the beginning of this year and why we are here
4 today.

5 Now, I know we will hear from the other side
6 today that the industry's problems have nothing to do
7 with Japanese dumping of engines, but I ask you to
8 examine their claims very closely because they simply
9 don't stand up to scrutiny.

10 As to quality, our engines not only meet but
11 exceed industry standards, and when we have had issues
12 like those we faced with our three-liter Optimax some
13 years ago, we stepped up to the plate and worked with
14 our suppliers, dealers, and OEMs to quickly identify
15 and address any problems. As a result, our reputation
16 for quality, service, and dependability is second to
17 none. In fact, I have heard from some of our dealers
18 that our more recent, mid-sized, direct-injected,
19 Optimax offerings have taken sales away from
20 comparable-sized, four-stroke engines. And if
21 Japanese imports are of higher quality, why do they
22 have to sell them at such low prices?

23 While no manufacturer offers every variation
24 of outboard engine size in all technologies, Mercury
25 Marine offers the most extensive selection of any

1 company. Yamaha trumpets its 150-horsepower, four-
2 stroke engine but fails to note that this engine was
3 only introduced in mid-2003, long after the Japanese
4 producers had gained significant market share at the
5 expense of the U.S. industry. The 150 four-stroke had
6 nothing to do with those earlier share gains, but very
7 aggressive pricing by Yamaha has allowed it to
8 maintain its position in that market segment.

9 In the end, the case before you comes down
10 to price. We have brought product offerings. We have
11 faced tough traditional problems, but you will find
12 plenty of problems that our Japanese competition has
13 faced as well.

14 Mercury Marine is a great company producing
15 great products. On a level playing field, I am very
16 confident that we can compete successfully with any
17 outboard engine producer in the world, but we cannot
18 stand back and allow our Japanese competitors to gain
19 an unfair advantage through dumping. Thank you.

20 MR. DEMPSEY: Mr. Gene Herman.

21 MR. HERMAN: Chairman Koplan, members of the
22 Commission, good morning. My name is Gene Herman.
23 I'm the president of Local Lodge 1947 of the
24 International Association of Machinists and Aerospace
25 Workers. Local Lodge 1947 represents approximately

1 1,950 union employees at Mercury Marine facilities in
2 Fond du Lac, Wisconsin.

3 We are very proud of the products we make.
4 Some of you and a number of your staff have been
5 through our plants. You can see what a dedicated,
6 highly skilled workforce can do, given the tools to do
7 it. We can compete easily with the Japanese product,
8 but only if it is not being dumped in our market. To
9 our members, what you call "material injury" means
10 lower earnings and lost jobs.

11 While Bombardier has already announced
12 layoffs, we have so far been more fortunate at Mercury
13 Marine, but there is no doubt in my mind that
14 continued unfair competition will result in fewer work
15 hours and be reflected in significantly lower future
16 benefits. If we are not afforded antidumping relief,
17 jobs will disappear, homes will be lost, and families
18 will be devastated. Such developments would be
19 disastrous for our members and their families.

20 Over the past two decades, our union and
21 Mercury Marine, working together, have invested great
22 efforts in developing new and efficient technologies
23 to produce high-performing yet cleaner-running engines
24 to meet tougher environmental standards, and we have
25 worked together to provide good jobs for the workers

1 who actually build these engines in Fond du Lac. We
2 are very proud of these achievements, but if the
3 company cannot sell these engines and get some return,
4 we will not see the investment in new tools and new
5 design in engines for the future.

6 Yamaha's outboard business supports about
7 200 U.S. workers while Mercury Marine supports 5,000
8 workers and their families, as well as thousands of
9 additional jobs at suppliers and in our local
10 community. These jobs provide substantial government
11 revenue in the form of payroll, real estate, income,
12 and sales taxes, and the dollars that Mercury Marine
13 generates stay here in the United States while the
14 dollars that Yamaha makes go back to Japan.

15 Our jobs will be at risk if the dumping
16 isn't stopped. We know that certain low-horsepowers,
17 simple-technology outboards will be produced in China
18 in the future. We are not happy about this, but we do
19 understand the economic pressures that have forced
20 Mercury to take those steps. We are pleased that
21 Mercury will still build its highest-technology
22 products in Wisconsin. With antidumping duties in
23 place, we can be confident that it will continue to
24 make sense for Mercury to reinvest in the United
25 States and support jobs here and not be forced to

1 expand further overseas.

2 We need your help to prevent foreign
3 companies from depriving us of the benefits of our
4 hard work. We thank you for the opportunity to
5 testify here today on behalf of the union I represent.

6 MR. DEMPSEY: Mr. Earl Bentz.

7 MR. BENTZ: Mr. Chairman and members of the
8 Commission, good morning. My name is Earl Bentz, and
9 I am the president of Triton Boat Company in Ashland
10 City, Tennessee.

11 Triton Boat Company is a leading
12 manufacturer of recreational and sporting boats,
13 including tournament bass boats, fish and skis,
14 aluminum, pontoon, and saltwater boats. We offer all
15 brands of outboard engines on our boats. As a result,
16 I am familiar with the quality of all of these
17 companies' product lines and can say that Mercury
18 Marine's outboard engines are second to none in terms
19 of performance and reliability.

20 We are very satisfied with the quality of
21 the product we receive from Mercury, and our company
22 has been very successful selling Mercury products on
23 the back of our boats for many years, especially in
24 the bass boat market, which is a significant part of
25 the recreational boat market in this country and a

1 mainstay for us.

2 The Mercury two-stroke, direct-injected
3 Optimax is the engine of choice for many consumers.
4 The ability to get up on plane quickly in shallow
5 water is critical, and the two-stroke, direct-injected
6 engine's capabilities in this area can't be beat. In
7 my view, there is simply no four-stroke engine today
8 that can compete with the two-stroke, direct-injected
9 engine in terms of power-to-weight ratio and top-end
10 performance, both of which are of great importance to
11 bass fishermen.

12 While there were some issues with the
13 Optimax several years back, just as there were the
14 introduction of direct-injected, two-stroke outboards
15 from other engine manufacturers, these problems were
16 resolved long ago and have not hurt the market
17 acceptance for the Optimax today.

18 In the last two and a half to three years,
19 the quality of the Optimax has been excellent. The
20 number of Optimaxes that we sold in 2003 nearly
21 doubled over that of 2002, and we're on track to a 70-
22 percent increase in Optimax sales in '04 over 2003.
23 Indeed, we sell a large number of Mercury engines
24 because that is what our customers demand. When we
25 first started our company, our dealers were

1 predominantly Johnson and Evinrude, but over time,
2 Mercury was able to sign up more and more of our
3 dealers, and that led us to increase our sales of
4 Mercury motors.

5 Also important in this regard is the breadth
6 of Mercury's product line, which gives us access to a
7 complete set of outboard products to meet the need of
8 our customers in all market segments.

9 A key factor in the market is price. The
10 recreational boat market is very price competitive.
11 Our dealers have to compete against many other boat
12 brands which obtain very favorable engine pricing, so
13 we have to make sure that we keep our dealers
14 competitive in their respective markets. Anyone who
15 says that price is not critically important in this
16 market is simply not facing up to the reality in this
17 business.

18 Thank you for the opportunity to testify
19 here today, and I would be happy to answer any
20 questions that you may have.

21 MR. DEMPSEY: Mr. Lee Kimmell.

22 MR. KIMMELL: Good morning, Mr. Chairman and
23 members of the Commission. My name is Lee Kimmell. I
24 am the chairman and CEO of American Marine Holdings,
25 the parent company of Proline Boats and Donzi Marine.

1 We are one of the largest manufacturers of top-
2 quality, blue-water fishing boats in the United
3 States.

4 We have been a major purchaser of Mercury
5 since the early 1990's and know from experience the
6 high quality and performance of Mercury outboards.
7 The boats we sell enjoy a very high customer
8 satisfaction. Proline, for example, enjoys a 97-
9 percent customer satisfaction rating, and we want to
10 ensure that we continue to build new models that
11 satisfy every niche and need of today's recreational
12 fisherman.

13 Mercury outboards are a key component of our
14 strategy to accomplish that goal. We would never
15 jeopardize our customers' satisfaction by outfitting
16 our boats with low-quality engines.

17 At Proline, we manufacture a wide range of
18 recreational fishing boats, ranging in size from 17 to
19 35 feet. These are all outboard-driven, with an
20 average horsepower of around 180 to 190 horsepower per
21 unit.

22 Donzi outboard fishing boats range in size
23 from 23 to 38 feet, are more speed oriented, and
24 performance is key. The average horsepower for this
25 line of boats is much higher, around 250 horsepower.

1 The heart of our business is boats. We sell
2 a packaged or co-branded product. We have the ability
3 to package several brands on the boats we manufacture
4 based on our customer demand. Currently, over 80
5 percent of the outboards on our boats are built by
6 Mercury, with Honda outboards accounting for much of
7 the rest. We also equip a small number of boats with
8 Yamaha and Suzuki outboards.

9 Historically, we have sold a considerable
10 amount of Mercury Optimax on our fishing boats,
11 especially the 225- and 250-horsepower models. While
12 four-strokes have been growing in the offshore market
13 in recent years, many customers continue to prefer the
14 two-stroke, direct-injection engine for performance
15 reasons. Indeed, among serious competitive fishermen,
16 such as the Southern Kingfish Association, where
17 speed, performance, and reliability are essential,
18 Mercury Optimax engines having exclusively the
19 outboards of choice.

20 Donzi boats have won three of the last six
21 Anglers of the Year and three of the last six Senior
22 Anglers of the Year. The only four-stroke that can
23 challenge the Optimax on performance is the new
24 Mercury Verado, and we have seen a rapid escalation in
25 Verado sales this year as a result.

1 Price is also an important factor in selling
2 boats, and if one, much less several, of our
3 competitors is able to obtain outboard engines at a
4 significant price advantage, we do not compete on a
5 level playing field.

6 One of the major competitors to Proline
7 Boats is Wellcraft, a Genmar boat company. They build
8 their boats just two blocks from where we build our
9 boats, so we know them well. Over the past several
10 years, we have been selling Proline boats with Mercury
11 outboards against Wellcraft boats with Yamaha
12 outboards and have maintained or increased our market
13 share. But the competition has been unduly difficult
14 because Wellcraft has had a significant pricing
15 advantage in recent years that I believe is due
16 primarily to the better engine pricing that Yamaha is
17 providing to Genmar.

18 Yamaha-owned fish boat companies, such as
19 Century and Cobia, also directly compete with Proline
20 and present the same dilemma of packaged pricing that
21 can only be explained by heavily discounted engine
22 pricing.

23 It is because of this competitive reality
24 that I support Mercury's efforts in this case. If
25 antidumping duties are imposed on Japanese engines, I

1 don't believe it will have a negative effect on
2 outboard boat sales. What it will do is help level
3 the playing field so that the U.S. outboard marine
4 industry continues to grow, innovate, and prosper.
5 Thank you.

6 MR. DEMPSEY: Mr. Ed Renken.

7 MR. RENKEN: Good morning. My name is Ed
8 Renken. I am the executive vice president and co-
9 owner of Sea Fox Boat Company in Moncks Corner, South
10 Carolina.

11 We make inshore and offshore boats for
12 saltwater fishing applications. Our products are
13 entry-level boats sold primarily to customers who are
14 very sensitive to price. In this respect, my brother
15 and I are continuing a 47-year family legacy of
16 building boats the average working family can afford.

17 Before the OMC bankruptcy filing in late
18 2000, our boats were factory rigged exclusively with
19 OMC engines. Today, 95 percent of our boats sold with
20 factory-installed outboards are sold with Mercury
21 engines. We use a full range of Mercury engines, from
22 50 to 275 horsepower, but our average outboard is
23 about 150 horsepower.

24 As you might imagine, the bankruptcy of OMC
25 was a major problem for us. We had absolutely no

1 warning that it was coming, and we were just heading
2 into our main boat show season. We started talking
3 immediately to both Mercury and Yamaha and found
4 Mercury to be much more responsive to doing business
5 with us. We were able to get Mercury engines onto our
6 Sea Fox boats for the New York Boat Show in just three
7 weeks. Our focus immediately turned to converting our
8 approximately 55 dealers from OMC to Mercury. All but
9 two of our dealers immediately made the change.

10 Since we began working with Mercury, we've
11 seen a very significant increase in our revenue. In
12 fact, it's over 80 percent. In 2001 and 2002, Sea Fox
13 was ranked by Inc. magazine as one of the 500 fastest-
14 growing private companies in America. The majority of
15 our engine purchases are still the traditional two-
16 stroke, carbureted, EFI technology, although one-third
17 of our engine purchases are now low-emission
18 technology.

19 A significant percentage of the change has
20 come from a shift from traditional two-strokes to
21 direct-injection Optimax rather than four-stroke
22 engines because of the cost factor. At 115
23 horsepower, the difference in cost to the consumer is
24 about 8 percent. For our customer base, this price
25 factor is particularly important.

1 We saw this in 2003 when, due to a shortage
2 in the availability of 115-horsepower, four-stroke
3 engines, we offered special discounted pricing on the
4 135-horsepower Optimax. We found that not only was
5 the consumer willing to accept the direct-injection
6 Optimax motor as a substitute for the 115-horsepower
7 four-stroke; we also picked up some consumers who were
8 considering the 150-horsepower four-stroke. In that
9 year alone, our 135 Optimax sales increased 592
10 percent.

11 It is not technology or quality issues
12 driving the market today. In our opinion, price has
13 more effect on the consumer's decision than any other
14 factor. I believe that the engine manufacturers know
15 this and that they price their engines accordingly.
16 Out of the three major engine manufacturers who
17 produce both direct-injection and four-stroke engines,
18 only one charges less for their four-strokes than
19 comparable, direct-injected motors. That one
20 manufacturer is a Japanese company. Thank you.

21 MR. DEMPSEY: Mr. Reggie Fountain.

22 MR. FOUNTAIN: Chairman Koplán and members
23 of the Commission, good morning. My name is Reggie
24 Fountain, and I am chairman and CEO of Fountain
25 Powerboats.

1 I have been building performance boats for
2 over 25 years, but my experience with outboard engines
3 goes back much further than that.

4 I started boating in 1948 and have been
5 racing boats since 1954 using only Mercury engines.
6 In fact, all winners in boat racing use only Mercury
7 engines.

8 I welcome the chance to come here today to
9 set the record straight on two issues that I
10 understand have been raised by the Japanese outboard
11 manufacturers: the quality of Mercury outboard
12 engines and the relative merit of two-stroke, direct-
13 injection and four-stroke engines.

14 In my many years in the boating industry and the
15 many awards that my boats have won while powered with
16 Mercury engines, I believe I am in a unique position
17 to testify on these questions.

18 As to quality, I can testify that Mercury
19 Marine produces the best-performing outboard engines
20 available and backs up its products with the most
21 extensive network of service centers around the world.
22 I use Mercury engines on all of the boats I build, and
23 I would not do so if there were any questions about
24 their quality.

25 Until this year, all of my boats carrying

1 outboards used Mercury two-stroke and two-stroke,
2 direct-injection, Optimax engines. In fact, I believe
3 the Optimax is a superior product to the traditional
4 four-stroke engines produced by the Japanese
5 companies. It is lighter, has a high horsepower-to-
6 weight ratio, and is very fuel efficient. The Yamaha
7 four-stroke, by comparison, is very low on low-end
8 torque, resulting in much slower acceleration while
9 guzzling gas like a hog.

10 The clear superiority of the Mercury Optimax
11 over the traditional four-stroke engines sold by the
12 Japanese producers can be seen by going to any
13 serious, competitive fishing tournament like the
14 Southern Kingfish Association's national championship.
15 The Optimax is the engine of choice for many of these
16 competitors. Two-stroke, Mercury-powered Fountains
17 have won five of the past 12 Southern Kingfish
18 Association national championships.

19 The superiority of the Mercury direct-
20 injection Optimax to four-stroke engines is clear from
21 a comparison of two similar boats: a 38-foot Fountain
22 using three 250-horsepower Optimaxes and a 36-foot
23 Contenda using three similar-sized Yamaha four-
24 strokes. Even though the Contenda is two foot shorter
25 and half a foot narrower, my boat is able to

1 significantly outpace the Contenda, reaching a top
2 speed of 72 miles per hour compared to only about 55
3 miles per hour for the Yamaha-powered boat. And at
4 the same 55-miles-per-hour speed, the larger Fountain
5 will double, double, the gas mileage of the Contenda
6 due to the superior performance of the Optimax
7 engines.

8 The only real competition to the Optimax is
9 Mercury's new Verado four-stroke engine. This is a
10 much more high-tech, four-stroke engine. The Verado
11 has dramatically more low-end torque, runs more
12 quietly, burns less fuel, and is dramatically faster
13 than a Yamaha four-stroke. Mercury now commands the
14 clear lead in both two-stroke and four-stroke engines,
15 and I'm now putting Verados on more than 50 percent of
16 my new boats this year. I hope this information will
17 help set the record straight.

18 MR. DEMPSEY: Mr. Jeff Miller.

19 MR. MILLER: Members of the Commission, my
20 name is Jeff Miller, and I am the president of Millers
21 Boating Center, one of the largest boat dealerships in
22 central Florida.

23 We have been in the marine business for over
24 20 years and currently offer eight different boat
25 lines. We carry all major types of boats, including

1 bass, bay, offshore, pontoon, deck boats, john boats,
2 runabouts, and utility boats. About half of the
3 outboard engines we buy come as part of a boat-and-
4 engine package from a boat builder, with the other
5 half purchased directly from Mercury.

6 I understand that the Japanese outboard
7 engine producers have argued in this case that
8 consumer demand is shifting strongly in favor of four-
9 stroke engines at the expense of two-strokes,
10 including direct-injection two-strokes like the
11 Mercury Optimax. In my view, this is simply
12 incorrect. While it is true that four-stroke engines
13 are popular for certain types of boats where weight is
14 not a significant issue, for many types of boats,
15 including bass, bay and flats boats, two-stroke
16 engines like the Optimax are the preferred engine due
17 to their light weight and superior performance
18 characteristics.

19 At my dealership, our sales of smaller
20 horsepower engines may be split 50/50 between four-
21 strokes and traditional two-strokes, but from 115
22 horsepower up, the Optimax direct-injection engines
23 outsell the other models. Indeed, as new models of
24 the direct-injection Optimax have come on the market,
25 we have seen a noticeable shift in sales away from

1 four-strokes to the two-stroke, direct-injection
2 engine.

3 For example, Mercury introduced a 115-
4 horsepower Optimax in mid-2003. Prior to that time,
5 about 90 percent of the 115-horsepower engines we were
6 selling on our boats were four-stroke engines because
7 there was a clear preference for a lower-emission
8 engine compared to the traditional two-stroke engine.
9 But once Mercury introduced the 115-horsepower
10 Optimax, we have shifted a lot of our sales at that
11 power range to the direct-injection engine. The two
12 technologies are completely interchangeable, but the
13 performance of the Optimax makes it a real favorite
14 for many boaters in the higher-horsepower ranges.

15 From 2000 through 2001, there were some
16 issues with the 200- and 225-horsepower Optimax
17 engines that took some working through. From my
18 dealership, we made the commitment to train our
19 technicians on the new technology so that they could
20 fix any problem that developed, as they do with any
21 new technology. In fact, I had only one 225-
22 horsepower, Optimax engine that had to be returned,
23 and that was because the customer was not in our area
24 and couldn't bring it in for service, and the 135-to-
25 150-horsepower models have virtually no problems.

1 Of course, as a dealer, I'm selecting a lot
2 of my engines largely through the boat builders that I
3 work with. For the boat builder, if he can get a
4 particular engine cheaper than a competing engine, he
5 is going to put the less-expensive engine on the boat
6 because he knows it will be easier to sell the package
7 to dealers and ultimately to consumers.

8 It is clear that some boat builders are
9 getting better deals on engines from a particular
10 engine company because they are able to offer a much
11 more attractive boat package with one engine than with
12 a competing brand. Ever since the demise of OMC in
13 late 2000, this has been a major factor in the market.
14 Thank you.

15 MR. DEMPSEY: Mr. Andy Wolf.

16 MR. WOLF: Good morning. My name is Andy
17 Wolf of M-W Marine. Our dealership is located outside
18 of Milwaukee, Wisconsin. Our boat lines include
19 Ranger, Lund, Nitro, Centracker, -- and marine.

20 CHAIRMAN KOPLAN: Could you move your
21 microphone just a little closer to you?

22 MR. WOLF: I welcome the chance to testify
23 here today about the market for outboard engines
24 because I have seen firsthand the fierce competition
25 between the U.S. and Japanese outboard companies over

1 the last several years. While we traditionally have
2 sold a lot of Mercury engines, for the last four years
3 we have been selling Yamaha engines as well. Yamaha
4 became a much bigger player in the market following
5 the bankruptcy of OMC in late 2000.

6 In the wake of the OMC shutdown, Yamaha
7 began aggressively marketing itself as a lower-priced
8 competitor to Mercury. We were an OMC dealer at the
9 time, but the OMC failure did not have a major effect
10 on our business because we had other engine lines to
11 cover our needs, but Yamaha's aggressive tactics did
12 affect us through our role as a dealer for Lund, which
13 until recently was a Genmar company. We were forced
14 to become a Yamaha dealer because of Lund Boat
15 Company's threat to set up a local Yamaha dealer with
16 Lund boats.

17 Several years ago, Lund effectively forced
18 us to take on Yamaha engines in order to keep selling
19 their boats as the principal Lund dealer in our area.
20 Evidently, we were still selling many more Mercury-
21 Lund packages than Yahama-Lund packages that a year
22 later, Lund set up that other Yamaha dealer with Lund
23 boats. It was clear to me that a major reason for
24 this was that Lund was getting a much better price on
25 the Yamaha engines than our Mercury product. In fact,

1 in late 2003, Lund explicitly told us that they would
2 add a 2-percent surcharge on Mercury engines packaged
3 with their boats because they said the Mercury engines
4 cost them more.

5 I must say that we would have preferred to
6 have sold mainly Mercury engines on our Lund boats
7 because Mercury's track record of working with dealers
8 is simply much better than Yamaha's. When we have a
9 problem with an engine, something that occurs from
10 time to time with every engine manufacturer, Mercury
11 fixed the problem more quickly than Yamaha. Mercury's
12 service operation simply cannot be beat.

13 Moreover, in terms of engine quality, I
14 believe Mercury's product is better than Yamaha's.
15 For instance, in the direct-injection, two-stroke
16 area, Mercury's Optimax outperforms Yamaha's HPDI in a
17 number of respects. The Optimax is faster, provides
18 better fuel economy, and is simply more reliable than
19 the HPDI. Both direct-injection engines have had some
20 problems, but, again, Mercury's service really stood
21 out, and the Optimax has a very strong reputation. In
22 fact, over the last year, we have sold a tremendous
23 number of 115-horsepower Optimaxes since it came out
24 last year, many more than the competing four-stroke
25 engine at that power range. Thank you.

1 MR. DEMPSEY: Mr. Ron Wilson.

2 MR. WILSON: Good morning and merry
3 Christmas. My name is Ron Wilson of Wilson Marine.
4 Wilson Marine is the premier dealer for Glastron
5 boats, Bayliner Marine, Trophy fishing boats, and
6 Bennington pontoons in southeastern Michigan. We also
7 specialize in selling Starcraft and Monarch boats. We
8 are mainly a pontoon and fishing boat dealer, the
9 majority of which are outboard driven.

10 Up until this year, Wilson Marine used
11 Mercury outboards exclusively to power the outboard
12 boats we sell. We have had a great partnership with
13 Mercury and developed joint servicing arrangements on
14 both boats and engines. We have done very well with
15 the Mercury brand and have seen our boat sales grow
16 significantly over the last years using Mercury power.

17 In terms of engine technology, the product
18 mix on our pontoon boats over the last two years has
19 been 75 percent four-strokes and 25 percent two-
20 strokes based primarily on customer demand. Most of
21 our engines we put on our pontoon boats fall into the
22 50-to-115-horsepower range.

23 The engine of choice on our fishing boats,
24 by contrast, has been the Optimax Mercury direct-
25 injection, two-stroke outboards which provide the

1 added performance needed for these types of boats.
2 The power range for these engines in these boats is
3 generally in the higher horsepower range.

4 One of the boat lines we sell is Bennington,
5 a major pontoon boat builder in the United States.
6 Bennington has traditionally offered us options of
7 having their boats powered by Bombardier, Honda,
8 Mercury, and Yamaha outboards, and we historically
9 have chosen Mercury. Earlier this year, however, we
10 were informed by Bennington that they were partnering
11 with Yamaha, and as a result, they wanted us to switch
12 over to Yamaha outboards on the boats we obtain from
13 them. They said that promoting Yamaha engines on
14 their boats would permit a reduction in their cost.

15 We resisted. We did not want to add another
16 engine line to our dealership. To sell and service an
17 engine line properly, you need to stock parts, set up
18 service bays, and train your service and maintenance
19 people. In short, it represented a significant added
20 cost to our business with no real benefit. We went
21 back and forth with Bennington for quite a while on
22 this but ultimately had to make a very tough business
23 decision.

24 Bennington kept adding on price penalties
25 for ordering their boats with Mercury engines. As a

1 result, we eventually agreed to switch to Yamaha
2 engines on the boats we get from Bennington.
3 Basically, it came down to price. For the same
4 horsepower engine, we were offered a Bennington boat
5 with a Yamaha motor for \$1,000 to \$1,200 less for the
6 same boat with a Mercury motor. At that level of
7 price difference, we could not afford to stay with
8 Mercury power on boats from Bennington. Since August
9 of this year, all of the Bennington pontoons we offer
10 are powered with Yamaha engines.

11 Wilson Marine is still using Mercury power
12 on the fishing boats we sell, and we continue to be
13 very pleased with their quality and performance. We
14 would like to have been able to continue to sell
15 Mercury engines on all of our boats. Thank you.

16 MR. DEMPSEY: Mr. Rick Grover.

17 MR. GROVER: Good morning. My name is Rick
18 Grover of Angler's Marine in Anaheim, California. My
19 wife, Cindy, and I run what we consider to be the best
20 high-performance, bass boat dealership in southern
21 California.

22 Angler's Marine sells Champion, Tracker, and
23 Ranger bass boats. We sell our boats powered
24 primarily with V-6 outboards in the 175-and-above
25 horsepower range. All of the boats we sell our

1 powered with Mercury outboards because the bass boat
2 market is performance driven. There is no bass
3 fisherman who does not want to go fast.

4 Our customers will buy the best technology
5 and the best product available if it performs and
6 delivers the acceleration and speed they want.
7 Mercury outboards perform, and that is why we have
8 been so successful in using them.

9 Southern California is not your typical
10 consumer market. People here expect higher quality.
11 It is a market characterized by Mercedes Benz and
12 Rolls Royce. Mercury outboards more than meet the
13 performance needs of my customers. They are an
14 exceptionally high-quality product, and we believe
15 that any bass boat dealer selling against us without
16 Mercury engines is at a huge disadvantage. That's why
17 I estimate that 90 percent of the bass boats sold in
18 southern California come with Mercury engines on the
19 transom. Even though I have had opportunities to get
20 a Ranger boat with a Yamaha at a lower cost than a
21 Mercury, I have stayed with Mercury outboards because
22 of their overall quality and performance.

23 The primary engine technology we sell on all
24 of our boats is the two-stroke, direct-injected
25 outboard. Ninety-five percent of the bass boats we

1 sell at 17 and a half feet or longer, the heart of our
2 market, are powered by Optimax engines. We have sold
3 and embraced Optimax technology since the day it came
4 out in 1998. These engines have light weight and low-
5 end torque that traditional two-strokes are known for,
6 yet are more fuel efficient and have much lower
7 hydrocarbon emissions.

8 As you may know, California is ahead of the
9 rest of the country in addressing air-pollution
10 concerns. The standard for outboard engine emissions
11 that was established by the EPA to be in effect by
12 2006 in the rest of the country took effect in
13 California in 2001. Mercury Optimax outboards have
14 met those standards, and our business since 2001 has
15 skyrocketed.

16 All of the producers of direct-injected,
17 two-stroke engines experienced some issues with this
18 new technology. I checked our records, however, and
19 we have never had an issue with the Optimax where a
20 problem requiring a powerhead or engine replacement
21 affected more than 2 or 3 percent of our sales, and
22 for the past three years, Optimax quality has been
23 bullet proof.

24 Until Mercury introduced the Verado this
25 year, there was not a four-stroke on the market in the

1 higher horsepower ranges that we sell that would meet
2 our customers' performance needs. I've seen bass
3 boats powered by Honda four-strokes, for example, that
4 are just lead sleds. The Verado four-stroke, in our
5 testing, seems to be as fast as the Optimax and is
6 also extremely quiet. On the other hand, the Optimax
7 is still lighter and has a fuel-consumption advantage
8 at high RPMs. The Verado has additional advantages,
9 such as drive-by-wire and digital throttle, not
10 available on the Optimax.

11 Mercury's new, mid-range, 75-to-115-
12 horsepower Optimax product has all but replaced our
13 mid-range, four-stroke sales because of weight and
14 performance issues on the small bass boats that we
15 also sell. Thank you very much.

16 MR. DEMPSEY: Mr. Rick Davis.

17 MR. DAVIS: Thank you, good morning. My
18 name is Rick Davis. I am vice president of Venture
19 Development and chief technology officer for Mercury
20 Marine.

21 One of the recent major developments in the
22 marine industry has been the Environmental Agency
23 decision to regulate emissions for outboard engines,
24 which will essentially spell the end of traditional
25 two-stroke engines in the U. S. market in 2006.

1 Anticipating this, Mercury Marine began
2 working on developing lower-emission technologies in
3 the late 1980s. Mercury produced its first direct-
4 injection engine in 1988. We were the first to bring
5 the large V-6 direct-injection technology to the
6 market. At the same time, we were developing the two-
7 stroke, direct-injection engine technology, Mercury
8 was also working on developing its own four-stroke
9 engine technology.

10 In 1993, to save on development and
11 manufacturing costs, Mercury and Yamaha entered into a
12 co-development and manufacturing arrangement on small
13 four-stroke engines from 9.9 to 50 hp, which resulted
14 in four-stroke introductions that actually preceded
15 the Optimax. This was an arrangement among equals in
16 terms of what we got and what we gave and was mutually
17 beneficial. But we also improved on designs jointly
18 developed with Yamaha.

19 In fact, we offered a patented electronic
20 fuel injection four-stroke technology down to 30 hp.
21 But, by far, our most significant achievement is the
22 new Verado family of four-stroke engines mentioned
23 earlier. This is an engine developed by Mercury
24 Marine alone and it has many unique and revolutionary
25 features.

1 For example, while the Japanese high-
2 horsepower four-strokes are large displacement V-6
3 engines, the Verado is designed with an in-line 6
4 configuration that is smaller in displacement. To
5 extract maximum power, we added a supercharged and
6 inter-cool system that allows for rapid acceleration
7 at any RPM level.

8 The Verado also incorporates advance
9 features such as electrohydraulic power steering and
10 electronic fly-by-wire throttle and shift, greatly
11 enhancing the control experience of the boat's
12 operator. The current Verado models are available in
13 the 200 to 275 hp range. Mercury plans to unveil a
14 four-cylinder version of Verado covering 135, 150 and
15 175 hp categories early next year.

16 Mercury has always been on the cutting edge
17 of product development by investing several hundreds
18 of millions of dollars and, given relief from Japanese
19 dumping, we will be able to justify continued
20 expenditures.

21 Thank you.

22 MR. DEMPSEY: Mr. Dennis Sheller.

23 MR. SHELLER: Good morning. I am Dennis
24 Sheller, vice president of Marine Strategy at Mercury
25 Marine.

1 In wake of the old OMC bankruptcy in late
2 2000, we saw Japanese producers begin to offer steep
3 discounts and rebates off their base prices,
4 especially at the large OEM and dealer accounts.

5 In an effort to gain and maintain market
6 share, I have personally had a number of customers
7 tell me that the Japanese producers were offering
8 discounted prices seven to ten percent below what we
9 were offering. In the case of one major customer, our
10 inability to meet this level of discount caused us to
11 lose sales of more than 4,000 engines a year just on
12 that one account, and we have suffered similar losses
13 in other major accounts.

14 I think, Kevin, because of time. Okay, the
15 Japanese producers have been particularly aggressive
16 in the pricing of their four-stroke engine products.
17 This has hurt not only our four-stroke models but
18 across the entire product line because the products
19 are competitive across technologies. For many uses,
20 115 hp direct injection two-stroke, or 115 hp four-
21 stroke, are interchangeable.

22 Thus, as the Japanese producer lowers the
23 four-stroke price that not only affects our four-
24 stroke price, but the prices of comparable Optimax
25 direct-injection models.

1 The result of this aggressive underselling
2 by Japanese producers is that Mercury is left between
3 a rock and hard place. Either we drop our price, try
4 to match the Japanese imports, or we lose volume.
5 Neither is a viable option. Without relief from the
6 affects of the Japanese onslaught, the industry will
7 find itself in dire straights.

8 Thank you.

9 MR. DEMPSEY: Thank you, Mr. Chairman. That
10 concludes our public presentation. We will reserve
11 the balance of our time for the confidential session.

12 CHAIRMAN KOPLAN: Thank you, Mr. Dempsey,
13 and thank you to all the witnesses for your
14 presentations this morning. They are extremely
15 helpful. We will begin the questioning with
16 Commissioner Hillman.

17 COMMISSIONER HILLMAN: Thank you very much,
18 and I would join my colleagues in welcoming this
19 panel. We very much appreciate your taking the time
20 to be with us and all of the information that has been
21 presented to us in the pre-hearing briefs and in much
22 of the data that has been submitted.

23 As Mr. Wolf said in his kind of opening
24 statement, this case is about price. So I want to
25 start out, if I can, to try to make sure that I

1 understand how prices really get set in the market
2 because I think that is very important for us to make
3 sure we have an understanding of that.

4 If I can first start with the boat builders,
5 the OEM builders. In terms of, again, your choice of
6 an engine per boat, I am trying to understand whether
7 you are building a boat that will only be used with a
8 certain engine, or whether you are building a boat and
9 you could easily switch between using a Mercury engine
10 or a Yamaha, or somebody else?

11 I am trying to understand. And if you
12 switch engines, how expensive is that to you to rerig
13 the boat to use a different engine?

14 Any of the boat builders, if you could?

15 MR. DEMPSEY: Mr. Kimmell?

16 MR. KIMMELL: Hi, I'm Lee Kimmell, American
17 Marine Holdings. The building of a boat requires a
18 significant capital investment, so that when it is
19 designed and built ideally, it can and will
20 accommodate a variety of different outboard choices.

21 For us, the choice of engine is price
22 related, but it is price related because it is driven
23 by the retail-customer demand to the packaged product:
24 the boat and the engine. The costs of one engine
25 versus another in terms of, I think you asked about

1 leaking and so on and so forth, are reasonably
2 comparable when the engine is first installed. Were
3 it to be changed at a later date, it becomes an
4 extremely expensive proposition. It costs roughly
5 \$1,500 an engine to rerig for a change in choice.

6 COMMISSIONER HILLMAN: Okay, but the boat,
7 itself, is not designed for any particular engine?

8 MR. KIMMELL: Well, at Proline, which is a
9 broad, general recreational fishing boat, that answer
10 is correct.

11 As you migrate to Danzi and much higher
12 performance models, they are designed for less
13 variation in the engines. Several of the engines, in
14 fact, simply do not work because of the technology
15 involved with ventilated bottoms and how we achieve
16 our speeds.

17 COMMISSIONER HILLMAN: Okay. Do you have a
18 sense of what portion of the total market would be of
19 boats that can be readily switched from one engine
20 type to another?

21 MR. KIMMELL: Yes. I would say the vast
22 majority of the market can, in fact, accommodate a
23 broad range of product.

24 COMMISSIONER HILLMAN: Okay. Any of the
25 other boat builders, would you have any other

1 comments?

2 MR. FOUNTAIN: Ma'am, I'm Reggie Fountain.

3 COMMISSIONER HILLMAN: Yes, certainly.

4 MR. FOUNTAIN: You can usually switch these
5 outboards around almost relatively easily. Any boat
6 will take almost any engine regardless of the make,
7 and it is not an expensive proposition to change them.

8

9 In fact, as a boat builder, there is no more
10 expense to put a Yamaha on than a Mercury. If you are
11 going to later change from a Mercy to a Yamaha or a
12 Yamaha to a Mercury, you would have to buy an extra
13 set of retrofit that the boat would control.

14 I think to answer your question is: almost
15 all boats out there will take any of the brands that
16 are available today on the marketplace and price is
17 extremely important.

18 COMMISSIONER HILLMAN: Okay. Then, if I
19 can, come forward to the dealer end of it. When you
20 are selling a boat, do you typically put together a
21 package of the same physical boat with two or three
22 different engine types and offer those different
23 packages in the same style, same brand of boat, but
24 with different engine packages and sell that to your
25 customer?

1 Any of the dealers?

2 MR. WILSON: Ma'am, my name is Ron Wilson
3 from Wilson Marine. When we bring the boat in from
4 the OEM, we pre-bring it in, establishing the motor
5 brand, and we try to sell it to the end consumer
6 packaged that way.

7 While we can switch out controls, harnesses
8 and switch engines, the cost is somewhat prohibitive,
9 and then you end up with a motor that you brought in
10 one particular boat and no boat to put it on, so your
11 inventory costs go up.

12 COMMISSIONER HILLMAN: Okay, but is the
13 customer, is the end user typically making their own
14 decision about what engine to use, or are they looking
15 at the total package that you have already decided and
16 put together for them and said: This is the package we
17 think you should buy.

18 MR. WILSON: That's a good question.
19 Oftentimes, they do rely on the dealer for his
20 expertise. They buy it as a complete package, so they
21 are brand driven once in a while. They'll come in and
22 be asking for a specific engine and/or boat. But,
23 generally, it is up to the dealer and his
24 recommendations. Does that answer your question?

25 COMMISSIONER HILLMAN: Then I'm trying to

1 get back to the issue of price. Does the customer,
2 the boat purchaser, typically know the cost of the
3 engine?

4 MR. WILSON: Typically know the cost of the
5 engine as a stand-alone component? They might. The
6 Internet is a wonderful tool. It oftentimes give
7 customers a range of what the engine, as a stand-alone
8 price point. But, as a complete unit, no. We sell it
9 to the consumer as a complete unit.

10 COMMISSIONER HILLMAN: Okay. I mean if a
11 customer comes in and says: Gee, I really like this
12 boat but it is little too pricey. Why don't you
13 instead order it for me with a Yamaha engine and that
14 will save me X amount of dollars; and, therefore, that
15 is a package that I can afford. I want to figure out:
16 Does that happen?

17 MR. WILSON: Well, one of the other
18 gentlemen better field this because this is my first
19 year having to support another brand.

20 COMMISSIONER HILLMAN: Okay. Mr. Grover?

21 MR. GROVER: Yes, this is Rick Grover.
22 There is a lot more to it than just deciding that all
23 of a sudden you want to get a different engine.

24 You know, as a dealership owner, we have to
25 be able to stock the parts; be able to take care of

1 that consumer in the long haul; we have to have
2 technicians that are trained to be able to service
3 that engine for that customer. It is not a matter of
4 flipping a light and saying: Hey, we are going to
5 change engines. There is a lot more that goes along
6 with that also.

7 What you have to consider, as a consumer,
8 also is the fact that when you take your boat boating
9 in the areas that are also away from where we sell our
10 product, you are going to want to be able to get that
11 engine serviced also, so that is also a consideration.
12 It is kind of a complete package, you know, that comes
13 with everything. So it's not just a matter of
14 switching engines.

15 COMMISSIONER HILLMAN: Okay. But if you are
16 trying to make a package that is more attractive to
17 your customer on price, again, how do you go about
18 doing that?

19 MR. GROVER: Well, the boat --

20 COMMISSIONER HILLMAN:

21 Mr. Renken?

22 MR. RENKEN: Commissioner, I think, from a
23 manufacturer's perspective, it might help you
24 understand the process a little bit better if you
25 understand that we, as the manufacturer, price our

1 boat packages, boat and motor packages together, in
2 what we believe are the most effective ways to sell
3 them at the dealer level.

4 The dealer also brings those in then at his
5 best price; and he is more inclined to lead the
6 customer to that boat and motor package deal rather
7 than have to order something that he doesn't have in
8 stock. So it is possible for the dealer to order
9 another boat, but he does try to lead the consumer to
10 what he has in stock.

11 COMMISSIONER HILLMAN: Okay. Let me go back
12 then. Our pricing data is obviously reflecting the
13 fact that there are discounts; that you are all
14 working off of a suggested retail price; and then
15 taking various discounts for various reasons and
16 pieces.

17 Obviously, we are trying to get to the
18 bottom of this. Just so that I understand it, is the
19 discount that is negotiated with a boat builder, at
20 the end of the day, you add up all these various
21 discounts, the same for each kind of engine, or can it
22 end up being whatever, a 21-percent discount for the
23 four-stroke such and such, but a 16-percent discount
24 for the two-stroke Optimax, and a something other
25 percentage discount for one of the other varieties?

1 I am just trying to make sure I understand
2 how the discounts end up. Does it end up being a set
3 discount per manufacturer, or is it specific to the
4 actual style horsepower, et cetera of the engine?

5 Mr. Sheller?

6 MR. SHELLER: Typically, the discount is
7 across all technologies. That has been standard with
8 the Mercury. There have been other industry
9 participants that will discount according to
10 technology, but Mercury has their discount apply
11 generally across the whole line.

12 COMMISSIONER HILLMAN: And once the discount
13 is set, it is set typically for a one-year period?

14 MR. SHELLER: Yes.

15 COMMISSIONER HILLMAN: Okay.

16 MR. SHELLER: Generally, a one-year program.

17 COMMISSIONER HILLMAN: Okay. Do others want
18 to comment on the issue of these discounts? Would
19 everybody agree that it is generally an entire
20 manufacturer?

21 Okay, given that that yellow light has come
22 on, I am not going to start another line of
23 questioning.

24 Thank you, Mr. Chairman.

25 CHAIRMAN KOPLAN: Thank you.

1 Commissioner Lane. Let me just say that it
2 would be helpful if you continue to identify
3 yourselves each time for the benefit of the court
4 reporter. Thanks.

5 COMMISSIONER LANE: Okay. I am Commissioner
6 Lane.

7 CHAIRMAN KOPLAN: Didn't I just call on you
8 Commissioner Lane? I missed that. Let me do that
9 again. We will now turn to Commissioner Lane for
10 questioning.

11 COMMISSIONER LANE: Thank you. My question,
12 I would like to start with Mr. Mackey, I think. In
13 the opening statement, the Respondent said that
14 Mercury has parallel transactions, apart from price,
15 on pricing the engines. I would like for you to
16 comment on that, expand on that.

17 MR. MACKEY: Certainly. In the opening
18 statements, the comment was made that we had parallel
19 transactions with Mr. Fountain and Mr. Kimmell,
20 specifically.

21 So to address those, we have had a long
22 relationship with both of these gentlemen. Mr.
23 Fountain has testified that it goes back many, many
24 years, close to when I was born. But besides that,
25 Mr. Fountain has been a very faithful customer of

1 Mercury Marine for many, many years. During a time of
2 expansion with Mr. Fountain, he deemed that he could
3 expand much faster if, in fact, we could provide some
4 guarantees as to longevity in the industry.

5 So, in fact, we had no hesitation of
6 stepping up to the banks and saying: If you support
7 Mr. Fountain with his capital, we will stand behind
8 Mr. Fountain. But in return for that, we actually
9 took a lien on all of his property. So that in the
10 event that Mr. Fountain was unsuccessful, in fact our
11 shareholders would be covered and we would not have
12 any outstanding debts in that regard. I think that is
13 what they were referring to, but I mean I am not a
14 hundred percent sure.

15 In terms of Mr. Kimmell, again, during a
16 period of expansion with both Danzi and Proline; and
17 Proline is a very successful company and Danzi is a
18 very successful high-performance company. Again, Mr.
19 Kimmell has gone through major expansion steps and, as
20 a predominant customer with Mercury Marine, again we
21 are prepared to support him and stand behind him in
22 the event that he is securing capital from his lenders
23 to expand. I think that is what they were referring
24 to.

25 COMMISSIONER LANE: Okay, thank you.

1 Mr. Davis, I would like to go to you next.
2 One of the questions that I had prior to your
3 testimony was: Why did the domestic industry seem to
4 be caught by surprise on the environmental-protection
5 standards and why where the Japanese able to perhaps
6 address those concerns prior to the domestic industry?
7

8 And then you testified that Mercury started
9 worrying about this and doing something about it in
10 the 1980s. So I am a little puzzled as to why it has
11 taken this long for the domestic industry to perhaps
12 recognize these lower-emission standards, et cetera?

13 MR. DAVIS: Sure, thank you very much. Rick
14 Davis, VP, engine development. We really weren't
15 taken by surprise at all. As a matter of fact, we
16 worked closely with the EPA to help set a reasonable
17 standard so that the industry could respond to it in
18 fact and meet the required levels.

19 The difference is Mercury, and I believe
20 Bombardier, began it with the larger engines because
21 the larger engines were the bigger contributors to the
22 emission levels. So we began with our V-6 product and
23 we, in fact, as early as 1988, began with a strategy
24 to win the winners. We aligned with Motorola for
25 electronics technology and we aligned with Orbital for

1 direct-engine technology; and we worked together to
2 develop the V-6. That is why we were the first to
3 market with a V-6 product.

4 Again, the largest contributor, but as I
5 also reflected, simultaneously, we entered into an
6 alliance with Yamaha to produce the smaller engines,
7 the 9.9 to 50 hp, because we knew that four-stroke
8 technology was going to be key in the smaller engines.
9 So we were working from both ends. The difference is
10 that we were there first with the big engines and then
11 followed with the four-stroke, if that helps.

12 COMMISSIONER LANE: Okay, thank you. Were
13 the Japanese, then, able to come up with their
14 technology sooner?

15 MR. DAVIS: Well, the Japanese -- as I was
16 saying earlier, the four-stroke technology began with
17 smaller engines and progressed up. So with our
18 alliances with Yamaha, we were very much together with
19 a 9.9 through 50 hp four-stroke technology in the
20 market; and we were there first on the larger, the
21 direct-injected technology at the top.

22 COMMISSIONER LANE: Okay. Which engines are
23 Mercury still producing under the co-development
24 agreement with Yamaha? And could you explain how that
25 agreement is still in effect?

1 MR. DAVIS: Sure. The agreement for co-
2 manufacturing was from the 9.9 to the 50 hp, and we
3 agreed that there would be a minimum time period of
4 five years of co-manufacture; and, after five years of
5 co-manufacture, either partner could opt to build
6 engines on his own.

7 And the option was first taken on the 50 hp,
8 which was the first engine to be agreed to, which is
9 now built freely by both companies. So the 50 is no
10 longer in the agreement; and likewise, the 9.9 hp is
11 no longer in the agreement. So what remains in the
12 agreement today would be the 25 hp and the 40 hp.

13 COMMISSIONER LANE: Okay, thank you.

14 I'm not sure if this question should be
15 directed to you or Mr. Mackey. If the fastest-growing
16 market for outboard engines is the larger horsepower,
17 and Mercury is now producing the Verado at horsepower
18 of over 200 and has unused capacity, why isn't Mercury
19 using more of this unused capacity to produce more
20 Verados?

21 MR. MACKEY: Commissioner, we have just
22 installed the capacity for building Verados. Verado
23 came on stream in April of 2004 in a completely new
24 revolutionary manufacturing facility.

25 We have been ramping up, obviously, from 0

1 up to our current capacity. We are currently running
2 two shifts on the Verado. And in our state-of-the-art
3 casting facility, which is lost foam under pressure,
4 the only one of its kind commercially in operation in
5 the world, we have that running almost seven days a
6 week.

7 So, as Verado continues to get acceptance in
8 the marketplace, we will consider all of the
9 incremental capital investments that we need. Indeed,
10 we plan to bring out and extend the range. Currently,
11 we are making 200, 225, 250 and 275 four-stroke
12 Verados. They have gained astonishingly great
13 creditability very, very quickly in the marketplace.

14 We plan to bring out the 135, 150 and 175
15 starting in April of '05; and then one year later, we
16 will bring out the next generation in that complete
17 family of engines. So the capacity is completely
18 utilized for Verado but, as we gain more sales and
19 more family-types, we will bring more capacity on
20 stream.

21 COMMISSIONER LANE: Okay, thank you.

22 I am going to try one more question. What
23 do you believe accounts for the increasing market
24 power of the boat builders in the outboard-engine
25 market replacing dealers gradually over the period of

1 investigation and importance?

2 MR. SHELLER: I think it is the packaged
3 product and the recognition that the boat and the
4 motor and all of the components that go with it is
5 what the consumer is looking for. That,
6 traditionally, had been someone buying a boat and
7 going out and finding a motor and matching it up.

8 Now, the consumer relies on the boat
9 builder, the engine manufacturer, and the dealer, to
10 do that for him.

11 COMMISSIONER LANE: Okay, thank you.

12 Thank you, Mr. Chairman.

13 CHAIRMAN KOPLAN: Thank you, Commissioner
14 Lane. We are going to hear next from Commissioner
15 Pearson.

16 COMMISSIONER PEARSON: Thank you, Mr.
17 Chairman.

18 Welcome to the panel. I have spent a
19 certain amount of time in boats, occasionally power
20 boats. But I must confess that I know a whole lot
21 more about paddles than I do about outboard engines,
22 so this has been interesting for me.

23 I have no previous experience with a case in
24 which Petitioners have sought duties against a major
25 input to their own domestic production processes. So

1 because of that, I would like to go back and ask about
2 why the petition includes power heads? I know you
3 touched on that but let's discuss it some more please.

4 MR. DEMPSEY: Yes, Kevin Dempsey from Dewey
5 Ballantine. In preparing the petition, one concern
6 that we had was that we could go all the way through
7 the process and if we were able to prevail and obtain
8 an anti-dumping order on completed outboard engines,
9 but only on completed outboard engines, it would be a
10 relatively inexpensive process for the subject
11 producers to, rather than import completed outboard
12 engines, import the three main sub-assemblies
13 separately: the power head, the mid section and the
14 gear case.

15 And simply have a screwdriver assembly
16 plant, a bolting plant in the United States where they
17 would bolt the three assemblies together; and thereby,
18 since the three assemblies would not be covered by the
19 order, evade the anti-dumping order altogether.

20 So in order to provide some protection
21 against circumvention, it was necessary to include the
22 most significant of the three subassemblies: the power
23 head in the scope of the investigation, so that it
24 would be part of the order to prevent this form of
25 circumvention.

1 It was recognized that that would, in the
2 short term, because Mercury is importing a lot of
3 power heads, it would bear some cost in paying those
4 anti-dumping duties, but it was a cost-benefit ratio.
5 To make the final order have some assurance of
6 protection against circumvention, it was necessary to
7 include the power heads for that purpose.

8 COMMISSIONER PEARSON: Of course, at the
9 time the petition was prepared, you had no knowledge
10 of what the final duty might be and I guess we still
11 don't know.

12 So the presumption was that the cost of
13 assembling the three components in the United States,
14 importing them duty free and assembling them, that
15 that would be a smaller cost than the duty.

16 MR. DEMPSEY: Yes, that's correct, that
17 would be a fairly realistic understanding I think, you
18 know, of what the manufacturing involved in simply
19 assembling the three subassemblies. There is a lot of
20 cost in manufacturing some sub-assemblies, but putting
21 them together in that final step is a relatively low-
22 cost item.

23 Now, how much the dumping -- you were
24 correct, though, since we had no access to the foreign
25 producers' data, we could not know what the dumping

1 margin would be for the completed engine, and the
2 impact of including the power heads in there. But it
3 was felt that -- really, if the power heads were not
4 included at the beginning of the process so that they
5 were part of the investigation throughout, it would be
6 impossible to add them later because you would be
7 expanding the scope of anti-dumping were it to cover a
8 product that had not been investigated.

9 COMMISSIONER PEARSON: Do any of the
10 Japanese manufacturers currently have a U. S.
11 manufacturing facility or assembling facility that
12 might be ready to accomplish this assembly?

13 MR. DEMPSEY: Not as far as I'm aware of,
14 no. I do not believe they have any assembly
15 facilities in the United States.

16 COMMISSIONER PEARSON: So there would be
17 some start-up costs for that type of operation. But
18 your view is that real-world economics are such that
19 such circumvention may well occur?

20 MR. DEMPSEY: With the significant duty
21 across the entire product line for the Japanese
22 producers, given that this is the most significant
23 market for outboard engines in the world, yes, we were
24 concerned that it was quite possible that it would
25 make economic sense to avoid the anti-dumping duties

1 and to set up a screwdriver assembly plant in the
2 United States.

3 COMMISSIONER PEARSON: So why, then, have
4 Petitioners sought to exclude the 75, 90 and 115 hp
5 four-stroke power heads from this investigation? I
6 think that was the request made to Commerce sometime
7 last month?

8 MR. DEMPSEY: Yes, I will begin, and if
9 anyone from Mercury wants to expand upon it.

10 It is no secret that during the course of
11 the anti-dumping investigation that Yamaha, after the
12 preliminary determination by the Commerce Department
13 imposing duties, sought to raise prices on those power
14 heads well in excess of that which is permitted under
15 the contract between Mercury and Yamaha; and absent an
16 agreement by Mercury to pay those very high prices, a
17 92-percent increase, that they were going to simply
18 stop production and shipment of the power heads to
19 Mercury.

20 That opened a very significant commercial
21 dispute between the two companies that has been the
22 subject of litigation in the district court in
23 Wisconsin. While Mercury has prevailed in obtaining a
24 preliminary injunction requiring Yamaha to continue to
25 supply at the contract price, in an effort to resolve

1 that commercial dispute, Mercury has decided that it
2 is in its interests to agree to a narrow exclusion for
3 the particular power heads that were the subject of
4 that commercial dispute; again making a cost-benefit
5 analysis that, while agreeing to an exclusion of some
6 power heads, might provide some opportunity for
7 circumvention because it is limited to a few products
8 rather than the full product line, that the risk of
9 circumvention was not appreciably increased while, on
10 the other hand, it would help resolve a commercial
11 dispute that would allow a continued supply of this
12 component to Mercury.

13 COMMISSIONER PEARSON: Mr. Mackey, could you
14 give me some idea of what percentage of the power
15 heads being imported from China are accounted for by
16 the 75, 90 and 115 hp models?

17 MR. MACKEY: Commissioner, the power heads
18 are imported from Japan.

19 COMMISSIONER PEARSON: Yes, did I say China?

20 MR. MACKEY: Yes.

21 COMMISSIONER PEARSON: Excuse me. Thank
22 you, I forgot. Glad you're paying attention.

23 MR. MACKEY: They are imported from Japan.
24 We currently have a contract that allows us to import
25 up to 18,000 units per year from Yamaha. They

1 manufacture those power heads.

2 We bring them in and, obviously, we
3 manufacturer, we design, manufacture the leg and the
4 gear case, and then we assembly those together. So
5 all of the 75, 90, 115 four-stroke currently that we
6 manufacture, or we sell, the power head originates in
7 the Japanese factory.

8 COMMISSIONER PEARSON: Right, but the 18,000
9 units that you mentioned, is that accounted for
10 completely by the three power heads for which an
11 exclusion --

12 MR. MACKEY: Commissioner, yes, it does. It
13 includes -- the 18,000 covers all of the 75, 90, 115
14 hp range.

15 COMMISSIONER PEARSON: Okay, then, how many
16 power heads remain under the investigation, if these
17 three types are excluded?

18 MR. MACKEY: To the best of my knowledge,
19 there are very few additional power heads imported
20 into this country by the Japanese manufacturers apart
21 from power heads that may be for replacement for
22 warranty repair. In my understanding, that is not a -
23 -

24 MR. DEMPSEY: There is also the 9.9, 15
25 power heads that Mercury has imported.

1 MR. MACKEY: I beg your pardon, yes.

2 MR. DEMPSEY: There are two main categories
3 of power heads.

4 CHAIRMAN KOPLAN: You need to stay with your
5 microphone.

6 MR. DEMPSEY: My apologies, Mr. Chairman.

7 There are two main categories of power heads
8 that Mercury is importing, the small power heads and
9 then the larger 75, 90, 115. The exact numbers, the
10 75, 90, 115s are a substantial portion of those.

11 I don't have the exact numbers and I am not
12 sure I want to give that in a public session. I will
13 certainly provide that. It is a significant portion;
14 and certainly between those sets, it accounts for the
15 vast majority of the power heads imported into the
16 United States currently.

17 COMMISSIONER PEARSON: Okay, the three
18 types, for which an exclusion is being sought, do
19 account for the vast majority?

20 MR. DEMPSEY: Well, it accounts, I think,
21 for a majority of the ones that are imported by
22 Mercury. There are others imported, some amount I
23 think imported by the Japanese producers for other
24 purposes, the numbers for which I don't think are that
25 significant but are you know confidential.

1 COMMISSIONER PEARSON: Okay, but for
2 purposes of the post-hearing, you can provide whatever
3 clarification is possible. I am just trying to
4 understand, if this exclusion is granted, to what
5 extent are we talking primarily about complete engines
6 with power heads really being just a secondary
7 consideration?

8 MR. DEMPSEY: Yes, Commissioner Pearson, we
9 will be happy to provide that in the post-hearing.
10 For the total number of power heads that are imported,
11 a significant portion will be taken out of the case if
12 the exclusion is granted, but I will --

13 COMMISSIONER PEARSON: But we can look at
14 both volume and quantity of value.

15 MR. DEMPSEY: We would be happy to provide
16 that at the post-hearing briefing.

17 COMMISSIONER PEARSON: Thank you very much.
18 Mr. Chairman, my time has expired.

19 CHAIRMAN KOPLAN: Thank you, Commissioner
20 Pearson.

21 Let me stay with this if I could. Mr.
22 Dempsey, with regard to that agreement that is in
23 litigation, was the stated price in the original
24 agreement a fairly traded price or a dump price?

25 MR. DEMPSEY: Chairman Koplan, of course,

1 determining whether a price is dumped or not requires
2 you to know both what the price of a good is being
3 sold at in the United States and the price in the home
4 market.

5 I don't believe that when Mercury entered
6 into that agreement it thought it was negotiating for
7 a dumped price. But it has no knowledge of what the
8 price that similar power heads might be sold for in
9 the Japanese market.

10 So it was not possible for it to know, for
11 Mercury --

12 CHAIRMAN KOPLAN: But this is in the scope
13 now?

14 MR. DEMPSEY: Correct.

15 CHAIRMAN KOPLAN: Okay.

16 MR. DEMPSEY: The extent to which there is a
17 dumping margin attributable to the power heads is
18 something that requires going into confidential
19 information under the Department of Commerce APO, so I
20 am not sure that I am at liberty to provide that.

21 CHAIRMAN KOPLAN: I appreciate that. Can
22 you provide that at a post-hearing session?

23 MR. DEMPSEY: Chairman Koplan, we will
24 provide what information we can. Obviously, there is
25 information that is under the subject of the Commerce

1 Department APO that we cannot provide to the
2 International Trade Commission. But to the extent
3 that I think there is some information that is in the
4 public domain, as a result of the litigation in
5 Wisconsin, we will be happy to provide that.

6 CHAIRMAN KOPLAN: I appreciate that and I
7 know that you will to the extent that you can respond.

8 MR. DEMPSEY: Yes. And just to confirm, we
9 cannot obviously -- we certainly had, at the time of
10 the filing of the case, no knowledge of what margin
11 may or may not be attributed to power heads; and,
12 obviously, the only information we have, as to prices
13 for power heads in Japan, is as a result of
14 information provided under an administrative
15 protective order.

16 CHAIRMAN KOPLAN: Thank you.

17 Let me ask you this. I think this you can
18 probably respond to: Did you coordinate your request
19 to amend the scope with BRP? Is that something that
20 you can answer now or in the post-hearing?

21 MR. DEMPSEY: I will be happy to. Mercury
22 Marine made its determination to request the exclusion
23 for the power heads on its own. I don't believe that
24 it coordinated it in advance with BRP.

25 CHAIRMAN KOPLAN: I'm wondering how, if the

1 exclusion is granted, that would affect our data and
2 from that standpoint, possibly affect them as well?

3 MR. DEMPSEY: Well, Chairman Koplán, I think
4 since I believe Mercury Marine is the only engine
5 manufacturer in the United States importing power
6 heads from Japan, Mercury had provided -- and the same
7 day that we made the request for the exclusion, we did
8 provide to the Commission staff a breakdown of that
9 portion of the power heads that were imported that
10 would fall within the exclusion as separate from those
11 that would not fall within the exclusion.

12 And I believe there are some power heads
13 imported by the Japanese producers for their use that
14 fall within the definition of the Mercury power heads
15 that we have identified to the Commission that would
16 describe all of the power heads that would be subject
17 to the exclusion; and I believe the staff has tried to
18 segregate that data in the Staff Report.

19 We have noted a couple of comments in our
20 pre-hearing brief, but, generally, I think they have
21 done a good job with that.

22 CHAIRMAN KOPLAN: Thank you. Let me stay
23 with you if I could. I just want to give you an
24 opportunity to answer this: Why is it appropriate to
25 selectively exclude those power heads being imported

1 by Mercury from Yamaha, pursuant to the supply
2 agreement, but not excluded completed subject engines
3 imported from Japan by either Mercury or BRP?

4 MR. DEMPSEY: Generally, what the Commerce
5 Department, which, of course, makes decisions on the
6 scope of an investigation and exclusions from the
7 scope, the general practice has been to give
8 significant deference to the Petitioner in the
9 drafting of the scope of an investigation.

10 Obviously, we could have, as many
11 petitioners do in other cases, carved out particular
12 products from the scope of the petition at the outset.
13 We tried to be broad in our description and not carve
14 out particular products to avoid any question about
15 whether we are being selective. We made the decision,
16 as a result of this commercial litigation, to make a
17 narrow exclusion. That is not really all that
18 unusual. You will recall that in a number of other
19 investigations, for instance, in steel-products cases,
20 there are large numbers of --

21 CHAIRMAN KOPLAN: Yes, I do recall those
22 cases.

23 MR. DEMPSEY: Yes, there are large numbers
24 of product-specific exclusions that are made to the
25 scope, both at the beginning of a petition and often

1 in the course of the investigation, to resolve
2 particular commercial issues.

3 So it is not unusual for petitioners to
4 agree to some scope exclusions, and not others, based
5 on commercial reasons.

6 CHAIRMAN KOPLAN: All right. I am going to
7 stay with you a bit more. Respondent's argued on
8 pages 121 and 122, in the joint hearing brief, that
9 Mercury uses Optimax's power heads to produce inboard
10 engines.

11 This morning, you mentioned that you had
12 just submitted a correction, indicating that Mercury
13 uses a small number of power heads to produce sport
14 jets, as I recall. How should I take this fact into
15 consideration in our semi-finished like product
16 analysis?

17 I am wondering that if in your post-hearing
18 brief, you could provide the production quantity of
19 such dual-use power heads during the period of
20 investigation?

21 MR. DEMPSEY: Yes, Chairman Koplan, we did
22 in the submission we filed yesterday include, in
23 revised questionnaire pages, the production quantities
24 for each year of the period of investigation for those
25 power heads, which are basically a modified version of

1 an outboard power head.

2 They are used to produce sport jets, or also
3 are called jet drives. I think we, in our original
4 questionnaire response, defined them as sport jets.
5 They are a power head that is a modified version that
6 then fits with the jet assembly and is fitted into a
7 boat. It is a very small percentage of the total
8 number of power heads that are produced; and that was
9 an oversight that those were not reported earlier; and
10 we will be happy to provide any additional information
11 that you need.

12 In terms of your question about the semi-
13 finished product analysis, one of the tests is the
14 extent to which the semi-finished product is dedicated
15 to the use of the production of the downstream
16 product. It is correct that not 100 percent of the
17 power heads produced by Mercury are dedicated to the
18 use of outboard engines. However, the percentage of
19 power heads produced that are used for this sport-jet
20 product are really very small. It is a couple of
21 percentage points and we think that that does not
22 appreciably change the Commission's analysis that
23 certainly there have been in other cases.

24 In the preliminary phase of the
25 investigation on shrimp, for instance, the Commission

1 determined, under the semi-finished product analysis,
2 to include fresh shrimp within the same-like product
3 as processed shrimp even though there was evidence in
4 the record in that investigation that perhaps as much
5 as 10 percent of the fresh shrimp was sold as fresh
6 shrimp rather than being processed.

7 Here we are talking about a much smaller
8 percentage of the production of outboard-engine power
9 heads that are used for the production of something
10 other than an outboard engine. So we think that
11 certainly the overwhelming percentage of power heads,
12 that are used in the production, are dedicated to the
13 use of the downstream product, the outboard engine;
14 and that is sufficient to meet the semi-finished
15 product analysis test.

16 CHAIRMAN KOPLAN: Thank you, that is
17 helpful.

18 Mr. Renken, if I recall correctly, you
19 testified that following OMC's bankruptcy filing, you
20 immediately considered Mercury and Yamaha and selected
21 Mercury, correct?

22 MR. RENKEN: Correct.

23 CHAIRMAN KOPLAN: Okay. At that time, was
24 that in the beginning of 2001?

25 MR. RENKEN: Chairman, that was actually

1 late December and early January 2001.

2 CHAIRMAN KOPLAN: Late December 2000 and
3 early January --

4 MR. RENKEN: December 2000 and early January
5 2001.

6 CHAIRMAN KOPLAN: Did you receive any
7 proposals from either or both of those producers
8 offering incentives, or what might be considered
9 aggressive pricing in choosing between them?

10 MR. RENKEN: We sought from both
11 manufacturers similar agreements to the one we had
12 with OMC, which I think there are different terms for
13 them in industry marketing agreements, joint marketing
14 agreements, supply agreements that guaranteed a
15 percentage of our purchases for the best possible
16 discounts from manufacturers.

17 CHAIRMAN KOPLAN: Did you receive written
18 bids? Did you get bids from Mercury and Yamaha in
19 writing on this?

20 MR. RENKEN: Not in writing but verbally.

21 CHAIRMAN KOPLAN: Verbally.

22 MR. RENKEN: Yes.

23 CHAIRMAN KOPLAN: Is there anything that you
24 can submit as a business record, in terms of the post-
25 hearing, that would reflect what they were both

1 offering?

2 MR. RENKEN: I could probably find
3 something, Chairman. We acted so quickly.

4 CHAIRMAN KOPLAN: I understand that.

5 MR. RENKEN: We were actually on the plane
6 to Fond de Lac when we found out about the filing, and
7 we had to make a quick decision or else our boat show
8 -- the New York Boat Show starts just after the first
9 of the year, and we were going to be in a lot of
10 trouble. So a lot of it was over the phone.

11 CHAIRMAN KOPLAN: Was this an exclusive
12 long-term agreement that you entered into?

13 MR. RENKEN: Yes, it is. Well, it is not
14 exclusive. I believe it's 80 percent of our
15 purchases.

16 CHAIRMAN KOPLAN: Thank you.

17 Vice Chairman Okun?

18 So, to have the potential to prevent
19 circumvention, it was necessary to include those power
20 heads from the outset.

21 VICE CHAIRMAN OKUN: Thank you, Mr.
22 Chairman, and let me join all my colleagues in
23 thanking all of you for being here this morning. I've
24 enjoyed listening to your testimony. It's a
25 fascinating case. A lot of different things going on

1 out there and I've enjoyed trying to learn a little
2 bit more about it and I will continue to do so today
3 and as this investigation proceeds.

4 Let me start, I guess I'll put this to you,
5 Mr. Mackey, and this is with regard to some
6 information that was provided by Respondents regarding
7 Brunswick, Mercury parent company suing Yamaha in
8 alleged breach of supply agreement. The statements
9 that the Respondents have submitted, what they had to
10 say there versus the Mercury statements with regard to
11 this case on a number of issues of importance seemed
12 to be much different. I'm going to go through a few
13 of them that were referenced, and then if you can just
14 respond.

15 One, in that litigation there was testimony
16 that there has been a dramatic shift in demand for
17 four-stroke engines prompted by the EPA regulations.

18 Two, four-stroke and two-stroke engines are
19 not interchangeable and most companies have a clear
20 preference for one or the other engine types.

21 Three, Mercury would be devastated and
22 irreparably injured if it did not have access to the
23 Yamaha four-stroke powerheads.

24 Four, mid-sized four-stroke engines are an
25 essential part of Mercury's business. Mercury was

1 able to meet demand for this size range based on its
2 supply of power heads from Yamaha.

3 If you could help me understand what was
4 said there versus what you're saying today and how it
5 relates to some of the issues that we'll be
6 considering.

7 MR. MACKEY: Certainly. Good morning,
8 Commissioner.

9 The arrangement that we had with Yamaha
10 going back many years was to supply a quantity of
11 75/90/115 four-stroke engines and that has been in our
12 line-up and indeed has it and it has also been in
13 Yamaha's line-up for the same period of time.

14 As we were moving through the EPA's
15 regulations to move from what's termed as dirty two-
16 stroke engines, carbureted and EFI old technology
17 engines, it was to move to much lower emission engines
18 and accept the regulations and the migration path of
19 getting to the CAFE standard of low emissions. That
20 could be done by either direct injected technology or
21 indeed with four-stroke technology. Either technology
22 is interchangeable in terms of the EPA's requirement
23 of selling.

24 And has already been testified, boat
25 builders make decisions on which technology they want

1 to employ for their particular obligation, whether
2 it's direct injected technology or indeed four-stroke,
3 and boat builders tend to end up designing the boats
4 to carry a particular technology and rigging it in
5 mind of a particular manufacturer, but the consumer
6 coming in can choose to either have a direct injected
7 technology or indeed a four-stroke technology. And as
8 has been evidenced, many times consumers prefer direct
9 injected because they're much lighter, they're much
10 more powerful, they have a better weight-to-power
11 ratio than a four-stroke engine for specific
12 applications.

13 In terms of us being able to supply boat
14 builders when we have a high concentration of their
15 business, we must be able to provide a broad range of
16 product. Not necessarily every single horsepower
17 standard or not every horsepower in every single
18 technology, but we must be able to give them a broad
19 range of technology because there are different
20 applications literally for the same boat.

21 We had an arrangement with Yamaha and that
22 arrangement was to terminate in April of 2006.
23 Because we had the arrangement with Yamaha to
24 terminate in 2006 our research and development plan
25 took that into consideration when we were planning

1 which engineering projects we would work on and with
2 what priority.

3 Now, when we filed the antidumping petition
4 against Yamaha, Yamaha and when the preliminary
5 declaration was made in terms of that there was
6 dumping and the extent of it, Yamaha unilaterally
7 decided to increase the price of the four-stroke
8 engines that we had a contract with them, they decided
9 to increase the price by some 91.6 percent and if we
10 did not agree to that quickly, they would terminate
11 the supply of those products to us.

12 Prior to that our customers obviously,
13 because we could supply them a complete range of
14 product, they would have been put at a significant
15 disadvantage had we allowed Yamaha to just
16 unilaterally violate the contract and impose either a
17 very significant price or indeed terminate the supply
18 because to design, manufacture and task an outboard
19 engine family requires a lot of technical expertise,
20 it requires a lot of investment, and therefore the
21 startup time is relatively long. So for Yamaha to
22 tell us that summarily they were just going to cut us
23 off put us in a very difficult position relative to
24 our customers.

25 Therefore I don't believe, in my opinion,

1 it's inconsistent that we say that because we have a
2 standard product, and if someone intervenes in that on
3 a very short notice basis, we believe that that could
4 do harm to us and indeed to our customers. Hence we
5 sought an injunction and we have got a temporary
6 injunction on that and that's subject to further
7 scrutiny.

8 Does that answer your question,
9 Commissioner?

10 VICE CHAIRMAN OKUN: Part of it.

11 Mr. Dempsey, what would you like to add?

12 MR. DEMPSEY: Vice Chairman Okun, Kevin
13 Dempsey.

14 I want to take issue with one of the
15 statements. I think there's been a lot of
16 mischaracterization of what was said in the Wisconsin
17 litigation about interchangeability. I don't believe
18 Mercury ever said that two-stroke direct injection and
19 four-stroke engines were not interchangeable. They
20 said that Mercury had relied on the supply contract to
21 purchase certain four-stroke powerheads from Yamaha
22 and had in fact designed an engine, engineered and
23 designed specific models of outboard engines around
24 that particular powerhead, including designing the
25 adapter plate and fit so that the connections line up

1 and you can build that particular outboard engine
2 using that particular powerhead. You couldn't simply
3 take that powerhead and substitute any other
4 powerhead, even a powerhead from a different producer
5 of a similar technology. It was designed for a
6 particular powerhead so it was not possible to simply
7 substitute another powerhead. It would be irreparable
8 harm if those particular powerheads that had been the
9 subject of a long-term supply agreement, since 1998,
10 were suddenly cut off.

11 That does not mean that Mercury would not be
12 able to sell direct injection engines as a substitute
13 for four-stroke engines, in fact you heard testimony
14 from several of the dealers here today that in fact
15 when Mercury introduced its 115 horsepower Optimax,
16 its direct injection engine, they did sell a lot more
17 of those in substitute for the 115 horsepower four-
18 stroke. The 115 horsepower four-stroke and Optimax
19 are interchangeable in the marketplace, but in terms
20 of manufacturing the 115 horsepower four-stroke engine
21 at the Mercury factory, one that had been designed
22 around a particular Yamaha powerhead, it's not
23 possible to simply, if that powerhead supply suddenly
24 shut down, to simply bring in another powerhead.
25 First of all, there's no supply agreement with another

1 company in place to bring those in, so there would be
2 irreparable harm. But that does not in any way go to
3 the question of interchangeability of the completed
4 engine.

5 VICE CHAIRMAN OKUN: How about in terms of,
6 I think one of the ways the Respondents have argued
7 this and I'm sure we'll hear this afternoon is with
8 regard to causation which the Commission in our
9 preliminary noted several issues with regard to
10 causation we wanted to look at, and one of them had to
11 do with whether there was a shift in market demand.
12 I've heard some testimony, and I think we'll have some
13 more on that.

14 But also this argument that if you have the
15 domestic industry who wants to have a full product
16 line because it's important to have a full product
17 line, but that includes imports, it's hard to look
18 through this data and say -- One of the things I've
19 been trying to figure out is how to separate out what
20 we are hearing and say where did we see the price
21 competition? Is it the four-stroke versus two-stroke?
22 I think it's that, it's the causation part of the
23 reason I bring up what this litigation had to do,
24 which seems to go to some of that.

25 MR. DEMPSEY: Kevin Dempsey again, Vice

1 Chairman Okun. I'm trying to figure out how much I
2 can say in the public session versus not.

3 Certainly one of the pricing products that
4 the Commission collected data on is the 115 horsepower
5 four-stroke engine manufactured by Mercury using an
6 imported powerhead, and the outboard engines of the
7 same size and technology imported by the Japanese
8 producers. I think if you look at the data for those,
9 the sales, the competition for that product you see
10 competition between the Japanese producers and the
11 domestically produced engine that does include an
12 imported powerhead. There is causation in terms of
13 injury there.

14 I think it is important for your analysis as
15 you found in the preliminary determination and as we
16 argue in our pre-hearing brief, that the engines
17 produced in the United States from the imported
18 powerheads are domestically produced engines. They
19 meet the test of being domestic production. So when
20 you're looking at those engines produced by Mercury
21 you're looking at a domestic product competing with
22 the imported 115 horsepower four-stroke engines by the
23 Japanese producers.

24 VICE CHAIRMAN OKUN: Okay. I appreciate all
25 those comments. My red light's come on. We will have

1 an opportunity in the closed session to talk a little
2 bit more about that pricing.

3 Thank you, Mr. Chairman.

4 CHAIRMAN KOPLAN: Thank you.

5 Commissioner, Miller?

6 COMMISSIONER MILLER: Thank you, Mr.
7 Chairman, and let me join in welcoming all of the
8 witnesses for being here. We appreciate your
9 willingness to join this panel and help educate us
10 about a new product. It's always kind of fun to learn
11 about a new product, and I do have a lot to learn here
12 so it's been very helpful.

13 I do hear a lot about bass fishing in my
14 household, I want to say, but that doesn't mean I've
15 frequented the boat dealers as much as probably some
16 members of my family would like to. So it's useful.
17 The next time we're having those discussions I'll at
18 least know a little more than I have in the past about
19 that part of the fishing climate.

20 I think I'd like to start, I have a lot of
21 questions just to make sure I understand the structure
22 of the industry, so I think I'll start with those
23 kinds of questions.

24 First Mr. Mackey, I heard your response, I
25 believe it was to Commissioner Lane, about the

1 arrangements, the financial assistance you've given a
2 couple of the boat builders that were alluded to by
3 Mr. Barringer this morning and you described it. Is
4 that a common kind of practice in the business? Are
5 there other builders or dealers that you have those
6 kinds of financial, that you've provided that kind of
7 financial assistance to?

8 MR. MACKEY: Good morning, Commissioner.
9 Patrick Mackey.

10 If I could just go back to Commissioner
11 Lane's question, if you don't mind.

12 COMMISSIONER MILLER: Please.

13 MR. MACKEY: Mr. Fountain, when we offered
14 to be a guarantor for Mr. Fountain, Mr. Fountain went
15 and borrowed the money that he needed to expand his
16 business at normal commercial rates. We were simply
17 acting as a guarantor in that position, so we don't
18 consider that as a discount. And I just wanted to
19 clarify that.

20 Moving on, Commissioner, to your question.

21 We have an arrangement, as we said, with Mr.
22 Kimmell and with Mr. Fountain. In terms of other
23 arrangements, there are, in this industry the way it's
24 structured there are supply agreements or there's
25 long-term marketing funds that are put in when the

1 OEM, the boat builder and the engine manufacturer
2 enter into a relationship that is for an extended
3 period of time and sometimes for volume or whatever,
4 and an indication of share. So there may be advance
5 marketing funds put forward and so on. That's all
6 taken into consideration when one is calculating what
7 are all the level of discounts.

8 So yeah, we do participate with several OEMs
9 in terms of having long term arrangements with them in
10 exchange for them being predominantly Mercury, and I'm
11 sure our competition has the same type of thing, for
12 predominantly being there.

13 COMMISSIONER MILLER: Okay. And I
14 understand the dealer loyalty issue is something that
15 our purchasers said was very important. I understand
16 that it's obviously, from what we're hearing and we're
17 going to hear a lot from builders and dealers this
18 afternoon who support Yamaha, I think. So I just want
19 to make sure I understand it. It helps us understand
20 better what we're hearing, frankly, so I think it's
21 important to know.

22 Mr. Renken, at one point in response to
23 another question just a moment ago you were talking
24 about your long-term agreement with Marine and you
25 said it's not exclusive. You said it was about 80

1 percent. You mean the agreement called for an 80
2 percent -- If I'm asking for information that, you
3 said it yourself so I don't think I'm asking for
4 information that you aren't prepared to publicly
5 share. If not, you can do it in any post-hearing
6 submission. Again, I'm just trying to understand the
7 nature of these relationships.

8 MR. RENKEN: Commissioner, I'm Ed Renken.

9 I probably wouldn't have wanted to let that
10 slip, but I did. Not that I mind y'all having it.

11 (Laughter)

12 I just wanted to add something to maybe add
13 a little light to this. These supply agreements are
14 not proprietary to Mercury. Yamaha has them, OMC had
15 them. The earliest recollection I have of one was, it
16 goes back to the early '80s when I was working for my
17 dad with Yamaha stern drives, so they've been around
18 for a long time.

19 COMMISSIONER MILLER: Okay.

20 MR. RENKEN: It's a common practice.

21 COMMISSIONER MILLER: Okay, and that's what
22 I'm trying to understand. That it is a common
23 practice.

24 It's unusual, frankly, to see this many
25 purchasers. Not that it never happens. We certainly

1 have purchasers come in in support of domestic
2 producers, but this is more than the typical case. So
3 you want to understand why. So that's what I'm trying
4 to get at.

5 To the extent you can help us with that, Mr.
6 Dempsey, in the post-hearing submission, I think it's
7 just important for us to understand these
8 relationships.

9 It reminds me a little bit, a lot of the
10 things you were saying remind me of going to a car
11 dealer and whether the car dealer will kind of, what
12 kind of association the car dealer may have with a
13 particular manufacturer.

14 Another aspect of this that struck me that
15 way was when you were answering Commissioner Hillman's
16 questions about what kind of engine goes on a boat.
17 Some of the builders and dealers were responding to
18 that. It kind of reminded me, it used to be that when
19 you went to buy a car you chose everything you wanted
20 as a purchaser and then you got your car two months
21 later. Now you tend to go in and buy one that is all,
22 everything is there, this is what this particular auto
23 is going to look like. Maybe you have an option of
24 doing something special and waiting a long time, but
25 at least in my recent experience that's not the more

1 common.

2 Has that kind of change occurred in this
3 industry as well? That the dealers are presenting a
4 package and maybe in the past they tended to more
5 customize a boat to a purchaser's specifications? And
6 if the dealers want, either dealers or for -- Mr.
7 Mackey looks like he wants to say something. You're
8 welcome to first if you want and then we'll let the
9 dealers and builders respond as well.

10 MR. MACKEY: Patrick Mackey.

11 COMMISSIONER MILLER: Then I'll go to Mr.
12 Fountain.

13 Mr. Mackey, please.

14 MR. MACKEY: Patrick Mackey.

15 Yes, Commissioner, the industry has been
16 changing over some time. There are a lot of boat
17 builders in the industry in the United States, I think
18 at the last count there were well over 1,000 boat
19 builders, so there's boat builders and then there are
20 six engine manufacturers in the outboard side of the
21 business. And so you have boat builders, you can have
22 many engine manufacturers, and obviously there was
23 mixing and matching going on. At one stage the
24 builder built what was termed a blank boat. Then the
25 industry migrated a little bit. Then it was a pre-

1 rigged boat meaning that the controls and cables and
2 so on were embedded into the boat and that would make
3 it specific to a particular engine manufacturer.

4 There are very few dealers in this country
5 that are exclusive to a specific boat company and a
6 specific engine company. Very few. Therefore in a
7 dealer you may have a range of boats, you could have a
8 range of engines, and what the industry seems to be
9 moving to is that the boat builder is, versus the
10 past, is moving much more to the point that they are
11 the integrator of specific technologies into their
12 boat. And that the dealer will sign an agreement with
13 the boat builder. Maybe not exclusively, but for a
14 particular segment, whether it's a pontoon or a bass
15 boat or a runabout or whatever, they will sign up to a
16 specific builder for that.

17 So when you go into a dealer, unlike some of
18 the auto business, you can go into a dealer and you
19 can find several different manufacturers of boats in
20 there, and indeed you may find the same boat from the
21 same manufacturer with two or three different engine
22 technologies on the back of it.

23 So it isn't a homogenous industry. I think
24 it's an evolving industry. But the one thing with the
25 auto industry, even though we could go in and pick the

1 radio or the color and so on and so forth, I'm not
2 sure you could walk into BMW and choose a Mercedes
3 engine, for example. The boat business is slightly
4 different from that respect.

5 COMMISSIONER MILLER: Okay.

6 Mr. Fountain, you wanted to comment?

7 MR. FOUNTAIN: Yes, ma'am.

8 When you go to buy a car it's all put
9 together, it's all pre-engineered. They don't build a
10 car engine usually way off with somebody unrelated to
11 the manufacturer of the car.

12 The same thing's beginning to happen more
13 with boats because it's the best way to do it. What
14 we have here is most of the pre-packaging now I
15 believe is happening at the manufacturing level
16 because in most instances most manufacturers are more
17 able to package the motors with the boats or in the
18 boats, depending on whether they were stern drives or
19 outboards, than the dealer. We're better prepared to
20 do that.

21 So much has been said about my loan from
22 Mercury, I think I would add that I'm a little guy,
23 and we're traded publicly, but we're always running
24 short of funds because I spend millions and millions
25 of dollars on research and development myself so that

1 I can put a boat together with a motor package that is
2 the best for the general public, and that takes a lot
3 more money than we've had.

4 So I think in the past, as I've grown, I've
5 had to get additional financing to do this, and what's
6 happened here is that as I needed those funds I went
7 to the bank and I borrowed money myself so I can
8 continue to develop the products, where we'll assemble
9 the boat and the motor. We'll buy the motor from
10 Mercury, we'll put it in our boat, and then we'll send
11 it out to the general public.

12 Well what Mercury helped me do was to be
13 able to get the loan. I pay all the principle, I pay
14 all the interest. In fact on this deal I think I'm
15 getting the short end because I'm spending millions
16 developing the product and I would say too, at the
17 same time what we're trying to do is to make a better
18 product for our customers and along with what I think,
19 I'd like to make a comment if I could on something
20 that I think Commissioner Lane alluded to earlier
21 about how the Japanese were ahead of the Americans in
22 the motors, outboard motors. They're not ahead.
23 American outboard motors today are more fuel
24 efficient, they are faster, they are quieter in the
25 case of the Verado, they're a better product. But it

1 takes a lot of money to do all this.

2 Then when we pile it all up and put a good
3 product out there, we're trying to get a fair price
4 for it. Sometimes that's hard to do.

5 COMMISSIONER MILLER: I appreciate that, Mr.
6 Fountain, and I hate to cut you off but I know my
7 colleagues are giving me the evil eye because the red
8 light has been on and you can't see it. So I
9 appreciate your answer. I have lots more questions
10 and if my colleagues don't ask them all before it gets
11 back to me, I'll be back with more of them.

12 Thank you.

13 CHAIRMAN KOPLAN: Not an evil eye, I was
14 just going to call for a cloture vote, that's all
15 (Laughter).

16 Commissioner Hillman?

17 COMMISSIONER HILLMAN: Thank you.

18 If I can continue on just to make sure I
19 understand the testimony. Commissioner Miller was
20 asking whether there has been to some degree a move to
21 a greater portion of the boats being sold as a package
22 with a particular boat with a particular set of
23 engines already on it. I thought I saw some nodding
24 heads.

25 Is there a general sense that, again, over

1 these years that a higher portion of the boats being
2 sold today are sold as a completed package?

3 Mr. Bentz, it looks like you were nodding
4 your head in the affirmative. Did you want to say
5 something on that?

6 MR. BENTZ: Yes, ma'am. Approximately 82
7 percent of the boats that we sell are sold as a
8 package with an outboard engine and we package with
9 virtually all brands, both Japanese engines, Johnson
10 Evinrude, and Mercury.

11 COMMISSIONER HILLMAN: But you're saying a
12 higher portion -- Now you're selling the whole package
13 put together for the customer. The customer's not
14 coming in and sort of picking this and choosing that
15 and they want this boat and then they want this engine
16 and they want this color and they want this, that and
17 the other. It is a done package, this is it, take it
18 as it is package. You're saying more --

19 MR. BENTZ: No, ma'am. We offer the
20 consumer a choice, and the consumer makes a choice as
21 to which brand of outboard he wants. And as someone
22 alluded to earlier, all of our boats are designed to
23 perform with Yamahas, Honda, Suzuki, Johnson Evinrude
24 and Mercury.

25 COMMISSIONER HILLMAN: Mr. Kimmell?

1 MR. KIMMELL: Thank you, Commissioner.

2 People often try and draw analogies between
3 the boat business and the automotive business. In
4 this particular instance it's somewhat fraught with
5 peril.

6 Firstly, a car dealer receives from the
7 factory the inventory list that he will be purchasing
8 for the month.

9 Secondly, the factory has no financial
10 obligation regarding the dealer's inventory.

11 In the boat business generally, a
12 manufacturer remains financially responsible for his
13 dealer's unsold inventory.

14 Speaking for my company, I think in general
15 for the others that are represented here, we build
16 only to order. We do not build generally to hold
17 inventory at the factory in the hopes that someone may
18 wish to purchase it.

19 Why has pre-packaging grown enormously? For
20 two reasons. Because we all are now part of the now-
21 generation. No one has a desire to wait for anything
22 any longer. But the truth is, boats, the power that
23 drives them, get progressively more complicated as the
24 technology evolves. And to deliver to the hands of
25 the customer what he wishes to have in a boat that is

1 as well designed and preforms as well as we hope it
2 would requires a great deal of input and knowledge
3 that five and ten years ago wasn't required.

4 But where the engine is mounted, how it is
5 mounted, the kinds of rigging, the sophisticated
6 gauges that provide controls over the engines are all
7 rapidly evolving past the point of where the boat
8 dealer himself wishes to enter the process.

9 COMMISSIONER HILLMAN: That's very helpful
10 testimony. But that goes to the issue that I'm trying
11 to make sure I understand which really gets to where
12 does the price competition really occur for these
13 engines? Is it really now occurring given this
14 increase in the number of packages at the boat builder
15 stage? Is that where you are really deciding whether
16 you're going to buy this product for this price or
17 this product for that price? Would you say there is
18 more price competition in terms of these engines at
19 the builder stage of it? That's where we should be
20 looking to really see the price competition?

21 MR. KIMMELL: I believe the answer to that
22 is correct, but if I could simply remind you of one
23 thing. We do remain financially liable for a dealer's
24 unsold inventory. So if his desire is against the
25 ultimate retail consumer, it's a boat that will remain

1 unsold and a financial liability of mine.

2 COMMISSIONER HILLMAN: Mr. Bentz?

3 MR. BENTZ: Yes, Earl Bentz.

4 Commissioner, someone mentioned earlier that
5 when the consumer walks into a dealer's showroom nine
6 time out of ten or maybe 19 out of 20, the dealer has
7 a tremendous influence on what his customer chooses.
8 If that dealer has a boat in stock, rigged with a
9 given brand of engine, that's what he's going to try
10 to sell rather than having to go through the expense
11 of derigging and rigging another one. He is going to
12 try to sell what he has in inventory so he has a
13 tremendous influence.

14 COMMISSIONER HILLMAN: I appreciate that.

15 Mr. Renken, did you want to add something as
16 well?

17 MR. RENKEN: I just wanted to kind of echo
18 what you've been saying, the price aggressiveness,
19 pricing aggressiveness has been at the OEM level. The
20 outboard manufacturers have realized that their chance
21 of selling an outboard motor on the back of your boat
22 raises exponentially when we hang it on the back of
23 their boat for them and ship it to the dealer that
24 way. So the faster they can get their motor on the
25 back of our transom, they do it at the manufacturer

1 level rather than at the dealer level, the better
2 chance they have of gaining market share. So the
3 pricing aggressiveness has been at the boat
4 manufacturer's level more than anything.

5 COMMISSIONER HILLMAN: Tell me a little bit
6 more about the issue of brands and brand loyalty. And
7 again, I'm trying to understand how much loyalty there
8 is to the brand of the boat or whether the brand
9 loyalty, if you will, is solely to the engine or how
10 much this issue of branding and name recognition is
11 important in this industry, whether on the dealer or
12 boat builder end.

13 Mr. Wilson?

14 MR. WILSON: Ron Wilson.

15 We're in the southeastern Michigan area
16 which is a strong union area. A lot of our customers
17 are tied to the automotive industry. And brand
18 loyalty is very strong as they are, they lean more
19 toward products that are built in the United States.
20 So occasionally we run into that situation now where
21 we're putting a different manufacturer's engine on the
22 back of our pontoons.

23 Going back to that total value concept
24 theory, boat, motor, trailer combination. It really
25 was designed by a manufacturer about 1982-'83. And

1 it's picked up steam ever since where they take a
2 boat, put a motor, throw a trailer, sell it to the
3 dealer in that way. It's been tremendously profitable
4 and popular. Almost every manufacturer does it today.

5 COMMISSIONER HILLMAN: Help me understand
6 how this translates into price. I have to say I step
7 back and sort of think about what I've heard this
8 morning and I've heard a lot of sentiment of loyalty
9 to Mercury. That this is a better engine, it's a
10 great engine, it's this, that and the other. So I'm
11 trying to understand, then how does that translate
12 into price competition? If everybody out there is
13 very loyal to Mercury and thinks Mercury is a
14 tremendous engine, presumably you're willing to pay
15 something for that, either that brand loyalty or for
16 that quality, so it shouldn't surprise me to see
17 Mercury selling at a higher price than the Japanese or
18 anybody else in the market given that you all are
19 loyal to Mercury for either quality reasons or brand
20 reasons or customer loyalty reasons. Help me
21 understand how much is that loyalty worth to you as a
22 portion of price?

23 MR. SHELLER: Can I answer that?

24 COMMISSIONER HILLMAN: I'll start with Mr.
25 Grover and then I'll come back to you, Mr. Sheller.

1 MR. GROVER: I think our competition at the
2 dealer level also comes from the other dealers that
3 sell the same exact products that we sell. My
4 competition in southern California is really amongst
5 the other Ranger dealers that are there, and if they
6 had an unfair price advantage by selling Yamaha
7 outboards I would be at a disadvantage selling against
8 them within the own industry.

9 COMMISSIONER HILLMAN: When you say Ranger
10 dealer, again, I'm trying to understand, that's
11 loyalty to the boat brand as opposed to the engine
12 brand. Correct?

13 MR. GROVER: Yes.

14 COMMISSIONER HILLMAN: Would you say that's
15 where the customer loyalty is, is to the brand of
16 boat? Or is it to the brand of engine?

17 MR. GROVER: I would say that the customer
18 loyalty is actually to both. Bass fishing in
19 particular, and I'm just going to make this little
20 tiny segment of the marketplace that we deal with, is
21 as American as it gets. It's like Nascar. Okay? And
22 I think that the bass fishermen in the United States
23 are extremely loyal to anything that's an American-
24 made product. It's like baseball. It's our sport.
25 And that's why Mercury's extremely popular.

1 COMMISSIONER HILLMAN: Mr. Sheller, on this
2 issue of kind of where, how much of a premium or
3 relationship is there on price versus brand loyalty --

4 MR. SHELLER: Again, Denny Sheller. As Vice
5 President of Marketing for many years for outboards,
6 there is certainly some loyalty not only to the engine
7 brand but the boat brand. But in many cases when the
8 price difference is significant, even someone with a
9 predisposition to buy American product is going to
10 think twice.

11 COMMISSIONER HILLMAN: When you say
12 significant, three percent? Four? Five? What is
13 significant?

14 MR. SHELLER: It really does depend on the
15 total value of the boat. But say it's a \$20,000 boat,
16 you start to get into a \$400 or \$500 range, the
17 consumer's going to make a tough decision. I think
18 our dealers run into that every day.

19 COMMISSIONER HILLMAN: Unfortunately my red
20 light has come on so I will come back on this
21 question. Thank you.

22 CHAIRMAN KOPLAN: Thank you, Commissioner.
23 Commissioner Lane?

24 COMMISSIONER LANE: Thank you.

25 I'd like to go back to Mr. Davis. You

1 touched on your discussions with the EPA and how
2 Mercury chose to concentrate on the mid-size or larger
3 engine. How do the different size engines impact the
4 EPA credit/debit system?

5 MR. DAVIS: Thank you, Rick Davis.

6 Thank you, Commissioner. Yes. I really
7 wasn't broad enough with my first answer.

8 The first thing you must consider is we
9 build a very wide array of horsepower offerings.
10 That's where we're unique in our industry. Everything
11 from a 2.5 horsepower which is a little tiny motor you
12 can put in the trunk of your car, to a 300 horsepower
13 engine which I'm sure you couldn't lift. We build all
14 of those.

15 So when the mandate comes to reduce the CAFE
16 emission average by 75 percent, we had to choose where
17 do you begin? Where do you begin? So we chose to
18 begin with the large engines because it's averaged on
19 tons of emissions emitted over a period of time. The
20 larger engines make more power, burn more fuel, and
21 therefore emit more, if you will, tons of emission
22 over a lifetime.

23 So the large engines would create the most
24 CAFE credits, if you will, to our product line.

25 In other words, if we cleaned up the little

1 engines up to ten horsepower, we would have problems
2 selling the larger; but if we cleaned the larger we
3 created more head room. That's why we didn't begin in
4 the middle, we began at the top of the range with the
5 largest horsepower offering in order to gain the most
6 emission credits.

7 Does that help?

8 COMMISSIONER LANE: Yes, thank you.

9 Now I want to go to somebody to explain to
10 me what is involved when rigging a boat?

11 Mr. Mackey, you smiled so you get picked on.

12 (Laughter).

13 MR. MACKEY: Thank you, Commissioner.

14 Patrick Mackey.

15 I think maybe one of my boat-building
16 partners could better explain rigging a boat rather
17 than us. We, as an engine manufacturer, like most of
18 them, we supply our outboard engines. We also supply
19 the control cables to go from the engine to the helm
20 of the boat so that people can steer it, start it,
21 stop it, and so on and so forth. The technicalities of
22 rigging the boat maybe Mr. Renken or Mr. Bentz might
23 be better equipped to answer it.

24 MR. BENTZ: Yes, ma'am. Earl Bentz.

25 We rig outboards on our bigger salt water

1 boats, our bass boats and aluminum boats. We rig
2 wiring harnesses and controls and ship the engines
3 separately.

4 While the boats, you can interchange from
5 one outboard to another, as a dealer mentioned
6 earlier, the hassles and time that it takes to pull
7 Mercury controls out of a boat, for instance, to
8 install Yamaha, but it can be done but there is a
9 cost. And we do as much of that, including drilling
10 the holes for the mounting of the engine on the back
11 of the boat before we ship the boat to our dealers.
12 That's called a pre-rig. Pre-rigging in advance of
13 bolting the outboard on the back.

14 COMMISSIONER LANE: So if a boat builder
15 switches engine makers there is a cost involved?

16 MR. BENTZ: You mean if a dealer switches
17 engine makers? The dealer that sells to the consumer?

18 COMMISSIONER LANE: Yes, okay.

19 MR. BENTZ: Yes, ma'am. If a boat comes
20 rigged, for instance for a Mercury and the consumer
21 comes in and demands another brand of engine other
22 than a Mercury, there is a cost that dealer will
23 assume.

24 COMMISSIONER LANE: I'm not sure who to ask
25 this question to, but I would like to know the

1 importance of offering a range of horsepower versus a
2 range of technologies to your customers.

3 MR. RENKEN: Commissioner Lane, Ed Renken.

4 I think both are very important. Most boats
5 I think, as you saw in the opening presentation, can
6 take different technologies. The more limiting factor
7 is usually the horsepower. It takes a minimum
8 horsepower and there's a maximum horsepower that can
9 go on that boat. The more open thing is the
10 technology -- four-stroke, two-stroke DI, or two-
11 stroke EFI and carbureted. So I think it's important
12 that you offer both technology and horsepower.

13 Does that answer your question?

14 COMMISSIONER LANE: Yes, thank you.

15 MR. MACKEY: Commissioner Lane? Patrick
16 Mackey.

17 If I could just for a moment, when you were
18 asking the question about the penalty of switching
19 engines. At the boat builder level, if a boat builder
20 chooses to put a Yamaha engine on or chooses to put a
21 Mercury engine on, there is no differential cost in
22 that in terms of rigging. You either rig Yamaha or
23 you rig Mercury. The cost of the controls may be
24 different.

25 If a boat has already been rigged and then a

1 dealer chooses to unrig that boat and re-rig it,
2 obviously there's a cost. But the whole question
3 about engine competition, as time has passed the OEM
4 has certainly gained more of the purchasing power over
5 time relative to the past where blank boats were
6 delivered to a dealer and the dealer would rig a boat
7 at their shop and indeed hang the engine.

8 But the competition is at the boat builder
9 level for share, so to speak, and you probably find
10 that very many of the boat builders for the same boat
11 will actually offer different engine ranges. They may
12 not offer all of the engine types -- Yamaha, Mercury,
13 Honda or whatever through the same dealer, but they
14 could have two different dealers, one carrying a boat
15 brand with a Yamaha engine and another carrying a boat
16 brand with a Mercury engine. So it's the boat builder
17 that really has the purchasing power in this whole
18 thing. That's where the fierce competition goes on.

19 COMMISSIONER LANE: Thank you.

20 Mr. Mackey, you may be the best person to
21 answer this one too, but maybe not.

22 Do Japanese producers who have much larger
23 corporate parents than the domestic producers have an
24 advantage in developing new technologies because
25 financing does not have to come from current industry

1 profits?

2 MR. MACKEY: Patrick Mackey.

3 Commissioner, I think large Japanese
4 integrated manufacturers certainly just in terms of
5 their volume and their size, and maybe if they're able
6 to use basic technology to transpose from one
7 application to another application may indeed carry an
8 advantage over somebody like Mercury Marine. We are
9 very dedicated to the marine industry, therefore all
10 of our research and development is focused on the
11 marine industry and obviously we've got to amortize
12 all of those costs across a very small volume.

13 But as I look around, and for example the
14 comparatives that we typically do is what is the
15 research and development as a percent of sales of the
16 corporation? And typically we find that the percent
17 of research and development versus gross sales
18 normally stays about the same percentage. Some of the
19 big, big companies might invest 2.5 or 3 percent. We
20 would invest maybe around the same amount of money.
21 So from a percentage wise, I'm not sure they have a
22 significant advantage, but obviously from a sheer size
23 point of view and their availability of in-house
24 personnel, then the big Japanese competitors have a
25 clear advantage.

1 COMMISSIONER LANE: Thank you.

2 I see my yellow light coming on so I'll just
3 save my questions for the next round.

4 CHAIRMAN KOPLAN: Thank you, Commissioner
5 Lane.

6 Commissioner Pearson?

7 COMMISSIONER PEARSON: Mr. Dempsey, let me
8 go back just for one last quick, what I hope is a
9 quick question regarding the original structure of the
10 petition. Powerheads were included. Why not leave
11 the powerheads out and rather seek to have as part of
12 the petition the mid sections and lower ends of the
13 engines?

14 MR. DEMPSEY: Kevin Dempsey.

15 In looking at what component was sort of
16 most significant for the outboard engine, sort of
17 where the inherent characteristics between the
18 component and the engine most overlap, we found that
19 it was the powerhead. The powerhead obviously
20 determines the horsepower of the engine and the basic
21 power that can be provided. So in terms of
22 identifying the most significant component, the one
23 that, as long as you covered that one you would have
24 prevented circumvention, and in terms of the percent
25 of the overall value or cost of the engine, the

1 outboard engine, the powerhead was clearly number one.
2 That's why the powerhead was chosen as the central
3 component, that if you covered that you would prevent
4 circumvention through sending the components in.

5 COMMISSIONER PEARSON: Okay, I had gotten
6 the impression that the mid sections and lower ends of
7 the engines were also fairly specific to certain
8 horsepowers, et cetera, et cetera, but --

9 MR. DEMPSEY: Commissioner Pearson, I'm not
10 saying there are not significant specialization of the
11 other parts, but it's a relative question, which has
12 the, of the three components which is sort of the most
13 significant in terms of defining the characteristics
14 of the final complete engine and in terms of the
15 percent of value, the powerhead was the most
16 significant. But I'm not saying that the other
17 components don't have significant value as well, but
18 certainly the powerhead is the largest.

19 COMMISSIONER PEARSON: Okay, that was just
20 for my own curiosity because obviously the petition is
21 what it is.

22 Let me ask some of the folks who have had
23 experience dealing with OMC engines, what factors led
24 to the bankruptcy of OMC?

25 Mr. Renken? You find that humorous? Go

1 ahead.

2 MR. RENKEN: It could be a fun question.

3 Wow. I think there were a lot of problems
4 at OMC, not the least of which was in some ways some
5 bad management. But pricing competition was huge at
6 the time and I know that timeframe is really out of
7 the scope.

8 COMMISSIONER PEARSON: Right, but I asked
9 the question so you may --

10 MR. RENKEN: -- POI, but you asked the
11 question, so --

12 It seemed to me at the time that OMC was
13 constantly fighting a price war with one company or
14 the other and that, I think one of their problems was
15 they were too ready to jump into that fray and
16 discount product too quickly so I think that hurt
17 them. I don't think it was a technology issue at the
18 time.

19 COMMISSIONER PEARSON: That type of pricing
20 approach would be consistent with a firm that is
21 aggressively trying to maintain cash flow at a time
22 when the overall economics might not be very good, so
23 I can appreciate what might have been going on.

24 So how about when BRP brought the Johnson
25 and Evinrude lines back onto the market? Did it price

1 aggressively to try to get its market share back?

2 MR. RENKEN: Ed Renken again.

3 Absolutely, they had to. In the down period
4 Yamaha had taken so much market share that the only
5 way back in the game was through pricing. This is
6 exactly how my brother and I started our current
7 company in 1995. We got in the game by pricing very
8 aggressively. That's the only way BRP can get back in
9 the game right now, in my opinion.

10 COMMISSIONER PEARSON: And BRP continues to
11 price quite aggressively?

12 MR. RENKEN: They price as aggressively as
13 they can.

14 COMMISSIONER PEARSON: Are they currently
15 considered to be the price leaders in the U.S. market?

16 MR. RENKEN: Mr. Commissioner, I would
17 define a price leader as someone who can move pricing,
18 who can move their competitor's pricing. BRP may be
19 the lowest price on some models. To me the price
20 leader, the one who is determining the pricing for the
21 competition, is Yamaha. Yamaha has set the bar. BRP
22 had to come under that bar to even compete.

23 COMMISSIONER PEARSON: Any other comments on
24 price leadership in the marketplace?

25 MR. MACKEY: Commissioner, Patrick Mackey.

1 In terms of BRP from what we see is they
2 haven't gained sufficient market share back since the
3 demise of OMC. Their market share is very low
4 percentage. So they don't really have the power right
5 now to be the price leader in the industry.

6 COMMISSIONER PEARSON: And is it correct to
7 see Yamaha as more of a price leader than some of the
8 other Japanese manufacturers?

9 MR. SHELLER: I think we've -- This is Denny
10 Sheller. I think we've seen both. I think we've seen
11 in some situations it has been Yamaha, in some
12 situations it has been Suzuki.

13 COMMISSIONER PEARSON: Okay. Shifting gears
14 a bit, does Mercury, it's probably fair to say that
15 Mercury competes with the Japanese engines not only in
16 the United States but in some other countries. Mr.
17 Mackey, could you describe the price competition that
18 your firm faces with the Japanese manufacturers in
19 some other major markets?

20 MR. MACKEY: Thank you, Commissioner.
21 Patrick Mackey.

22 Yeah, we do compete with Japanese
23 competition all over the world. We have sales offices
24 in over 160 countries around the world and the price
25 competition in this country is fierce, but equally

1 there's price competition everywhere that we look --
2 Australia, the U.K., France. We're seeing price
3 competition now even more so than we had even one year
4 ago.

5 We're looking at heavy discounting in the
6 Australian market which is not a very big market, but
7 it uses large engines and so on. It's a very important
8 market. We see heavy discounting going on there. We
9 see heavy discounting going on in the major countries
10 of Europe right now and we're trying to respond to
11 those as best we can.

12 COMMISSIONER PEARSON: So if we were to talk
13 about a global supply/demand balance for outboard
14 engines, is the market fairly well unbalanced now or
15 do we have a situation in which production capacity
16 significantly exceeds the demand? How would you
17 characterize the global market overall?

18 MR. MACKEY: Patrick Mackey again,
19 Commissioner.

20 As I look at the global supply and demand I
21 think our Japanese competitors have added capacity
22 over the last couple of years. Yamaha, for example,
23 have built a new factory in southern Japan to make the
24 traditional carbureted two-stroke engines which still
25 will be an important player for them in foreign

1 markets. It obviously will diminish in importance in
2 the United States as we get to the deadline on
3 emissions. We have seen them take the freed-up
4 capacity in Japan that was making the carbureted two-
5 stroke, and now that's making HPDI product and indeed
6 four-stroke product.

7 So we have added our own capacity in Verado.
8 So right now there is some capacity available and I
9 think there's probably more capacity available to our
10 competitors than there is to us right now. We've had
11 to go and spend an enormous amount of money to put in
12 additional capacity for our Verado line, and indeed we
13 are now having to spend money to put in capacity in
14 China, as we've said, and our TMC joint venture. So
15 we're trying to catch up because there seems to be a
16 lot of capacity there that's putting a lot of pressure
17 on and we need to be able to respond to it.

18 COMMISSIONER PEARSON: I recognize that our
19 laws deal only with the United States, but as you look
20 at the pricing that's going on in other markets, would
21 you argue that the Japanese are dumping in all
22 markets, or is the price competition in the United
23 States particularly intense?

24 MR. MACKEY: Commissioner, I'm obviously not
25 qualified, but what my lawyers tell me, the technical

1 definition of dumping is to do with dumping where we
2 have a domestic producer. Right now there are no
3 engines, no manufacturing facilities in Australia.
4 There's a manufacturing facility owned by one of our
5 competitors in France. So there aren't many engine
6 manufacturing facilities outside the United States or
7 indeed Japan. So again, technically dumping can't
8 occur if they don't have it. At least that's my
9 understanding.

10 COMMISSIONER PEARSON: My time has expired.
11 Thank you, Mr. Chairman.

12 CHAIRMAN KOPLAN: Thank you, Commissioner
13 Pearson.

14 I'm just going to start with a brief
15 observation. I don't know if I can relate to the
16 analogy that bass fishing is like baseball. I'm from
17 Boston, and I would bet that it hasn't taken any of
18 your customers 86 years to land one.

19 (Laughter).

20 CHAIRMAN KOPLAN: Now if I may move on to
21 the substance of my questions.

22 If I could turn to the dealers and boat
23 builders, if I could see by a show of hands, this is a
24 follow-up to what I asked Mr. Renken at the end of my
25 first round. Were any of the other domestic witnesses

1 customers of OMC's side of the business that
2 encompassed powerheads and engines when it went
3 bankrupt at the end of 2000?

4 I see there are two hands that are up.

5 Let me ask you this question. If so, what
6 was the nature of the competition for your business
7 and what was the result? Was your decision based on
8 price or other factors?

9 MR. BENTZ: First, up until 1996 I was an
10 employee of Outboard Marine Corporation.

11 CHAIRMAN KOPLAN: I'm sorry if you could
12 just --

13 MR. BENTZ: Excuse me. Earl Bentz, Triton
14 Boats. Sorry.

15 CHAIRMAN KOPLAN: Thank you.

16 MR. BENTZ: Up until April of 1996 I was an
17 employee of OMC and Triton Boats and I resigned from
18 the company to -- Excuse me, OMC and Stratus Boats at
19 the time. I was actually President of their Fishing
20 Boat Group. I resigned in April of 1996 because of
21 the management change at OMC.

22 The management of OMC at the time was going
23 in a direction that I felt was not going to be
24 beneficial for the company, and we started Triton
25 Boats, as I said in my statement we were nearly 100

1 percent Johnson and Evinrude because that's the
2 dealers that followed me to Triton from Stratus were
3 Johnson and Evinrude. And because of the quality
4 issues that Johnson and Evinrude had, the lack of
5 quality, and Mercury's aggressive nature to sign our
6 dealers, we quickly became predominantly Mercury in a
7 short period of time.

8 About the middle of 2000 Johnson and
9 Evinrude, we saw some things going on in the
10 marketplace that were red flags to us, and we started
11 pulling more of our business away from Johnson and
12 Evinrude and encouraging our dealers, which frankly we
13 don't make a practice of doing, but we were not
14 blindsided by their bankruptcy. Encouraged our
15 dealers to align themselves frankly with Yamaha and
16 Mercury at the time, because we were packaging with
17 Yamaha at that time as well.

18 Does that answer your question?

19 CHAIRMAN KOPLAN: Was the competition price
20 wise on an even keep between Yamaha and Mercury at
21 that time?

22 MR. BENTZ: Yes, sir, it was pretty
23 competitive.

24 CHAIRMAN KOPLAN: Okay.

25 Did the fact that it took BRP ten months to

1 get up to speed, stepping into OMC's shoes, factor
2 into this at all?

3 MR. BENTZ: Yes, sir. The bankruptcy of
4 Johnson and Evinrude, many dealers lost confidence not
5 to mention a lot of money. Because of the bankruptcy
6 laws, in this case the owners of Johnson and Evinrude
7 were able to come back to these dealers 90 days prior
8 to the bankruptcy and collect warranty payments and
9 other volume level discounts that they had paid, so it
10 left a bad taste in a lot of dealers' mouths or a lot
11 of consumers that had product that had problems.
12 Johnson and Evinrude has done a good job in reshaping
13 their engines, re-engineering their engines, but
14 they've had a very difficult time getting entrance
15 back into the market in this country.

16 CHAIRMAN KOPLAN: Thank you for that.

17 Mr. Kimmell, you had your hand up, I
18 believe.

19 MR. KIMMELL: Lee Kimmell, Proline and
20 Danzi. We did at one point in the mid to later '90s
21 have a substantial portion of our volume with OMC. It
22 was uniquely price driven. They were offering us
23 substantial discounts below what were available from
24 either Mercury or Yamaha.

25 We saw a rapid diminution in the desire of

1 both our wholesale and retail customer to have the
2 product and we migrated away from them for that
3 reason.

4 CHAIRMAN KOPLAN: Independent of the
5 bankruptcy?

6 MR. KIMMELL: Completely independent of the
7 bankruptcy. We felt that the company was terribly
8 flawed. The product itself was flawed. We believed
9 that the strategy or course of direction it was on was
10 flawed. And even with the change or a couple of
11 substantial changes in management, all of which would
12 have conceivably been hopeful, we didn't believe that
13 there was any management who had the capacity to solve
14 the problems and resurrect the product to a point
15 where our customers were going to demand it.

16 CHAIRMAN KOPLAN: So when you migrated away,
17 what was the competition for your business? Where was
18 it coming from?

19 MR. KIMMELL: From Mercury, potentially
20 Yamaha, and Honda.

21 CHAIRMAN KOPLAN: Were they all bidding for
22 your business? Did you seek out each of them to find
23 out what the best deal might be for you?

24 MR. KIMMELL: We attempted to. I must say,
25 Mr. Chairman, in my experience I've never seen an

1 engine manufacturer that wasn't interested in doing
2 more.

3 CHAIRMAN KOPLAN: And what was the end
4 result again?

5 MR. KIMMELL: The end result is that from a
6 period of '95, '96, our business gravitated from
7 approximately 60/40 Mercury/OMC as of today has
8 gravitated to in excess of 80 percent Mercury and it
9 has been at that level since somewhere in the '98, '99
10 realm. I probably at this point should add that I do
11 not have any kind of an agreement with Mercury that
12 would demand or require that level of penetration. If
13 I could speak very briefly to that.

14 CHAIRMAN KOPLAN: Sure.

15 MR. KIMMELL: The references that were made
16 earlier, Mercury holds a second mortgage on one of our
17 three production facilities. That second mortgage is
18 subject to a senior mortgage from the U.S. Department
19 of Agriculture, the Rural Development Authority. They
20 have no other lien on any other asset of the company.

21 The relationship is not of financial
22 significance to the company and it has had absolutely
23 no affect whatsoever on my ability or willingness to
24 appear today before you to provide my testimony or to
25 answer questions.

1 CHAIRMAN KOPLAN: I appreciate your candor
2 and I thank you for your answer.

3 Mr. Mackey, on page 99 of Respondent's joint
4 pre-hearing brief they state, and I quote, "The shift
5 in consumer demand from two-stroke to four-stroke
6 engines is reflected in real market share changes over
7 the period of investigation."

8 Later on the same page their brief states
9 that, and I quote, "Even more importantly as detailed
10 above, this shift in demand was concentrated into
11 higher horsepower, 74 horsepower and above ranges
12 where the profit margins are greatest."

13 Could you respond? Is that where the profit
14 margins are the greatest?

15 MR. MACKEY: Thank you, Chairman. Patrick
16 Mackey.

17 Yeah, I think it is fair to say that the
18 profit margins are much more substantial above 75
19 horsepower. Our V-6 technology, for example, our
20 Optimax technology, our large four-stroke technology,
21 that's in fact where you can get much greater profits
22 or margins. On the lower engines way down at 2.5
23 horsepower right up into the 20-30 horsepower, there
24 really isn't much margin there. So it's very
25 important if you're forming a relationship to make

1 sure that that relationship is reflective of the
2 horsepower size.

3 CHAIRMAN KOPLAN: Thanks. Tell me, would
4 you agree that we should be looking at trends in terms
5 of value rather than volume because of differences in
6 product mix?

7 MR. MACKEY: Chairman, I think you probably
8 need to look at both. Volume plays a very large part
9 in all of our cost structures and our absorption cost
10 is very determined by the volume that goes through it.
11 So it's not simply volume, but obviously both of these
12 things go together to give one a sustainable business
13 case or in fact the opposite.

14 CHAIRMAN KOPLAN: Thank you very much.

15 Vice Chairman Okun?

16 VICE CHAIRMAN OKUN: Thank you, Mr.

17 Chairman.

18 Before I forget, for post-hearing Mr.
19 Dempsey and Mr. Wolff, could you go ahead and provide
20 for us just a rundown on the relationships that have
21 been described, the liens and the second mortgages
22 that Mercury has with anyone that you can provide
23 information on just so I can be sure I understand it?

24 MR. DEMPSEY: This is Kevin Dempsey. We'll
25 be happy to provide that information for the post-

1 hearing.

2 VICE CHAIRMAN OKUN: I appreciate that.

3 I want to just go back briefly, I appreciate
4 the information that I heard in response to the
5 Chairman's question regarding the shift from OMC to
6 the other companies, and I did want to go back,
7 though, was it Mr. Bentz, well actually I'm not sure
8 who testified, I think it was you, Mr. Bentz, in terms
9 of then talking a little bit about BRP or Bombardier,
10 their ability to get into this market once they were
11 up and running. Was it you who was, were you talking
12 about that?

13 MR. BENTZ: Yes, ma'am.

14 VICE CHAIRMAN OKUN: Is there anything
15 else, and I would be interested in hearing from others
16 who have information on that, telling me a little bit
17 more about how you perceive BRP in terms of its
18 ability both when it first came into the market and
19 then over the period in terms of their pricing. I
20 heard what you were talking about in terms of them,
21 how they had to price in that they were small players,
22 but I wonder if there is any other information that
23 you can provide in terms of how they're positioned at
24 this point in the market.

25 MR. BENTZ: Yes, Earl Bentz. I'll just

1 share with you what I know.

2 We went from doing substantial business with
3 Johnson and Evinrude years prior to the bankruptcy to
4 less than 30 percent the year of their bankruptcy, to
5 zero in 2001, 2001 calendar year that is, and I had
6 many meetings with the executives at BRP about their
7 strategy and plan to get back into the outboard
8 business. They re-engineered the product, they had
9 product that was foreign proved in quality. They were
10 competitive in price. But there were some other
11 issues they had to address, one of which was
12 warranties. They felt that, and the suggestion of
13 myself and other builders perhaps that they had to
14 offer extended warranties as standard part of the
15 engine. The 150, for instance, I think they were the
16 first to come with a two or three year warranty as
17 compared to their previous one year warranty that was
18 standard, just to try to gain entrance back into the
19 market and get acceptance by the consumers. So it was
20 more than just price.

21 Their prices were, there was a tremendous
22 pressure on price, especially in the bass boat
23 industry that we play in.

24 VICE CHAIRMAN OKUN: Okay. Is there anyone
25 else who could comment on that? And I guess maybe

1 I'll ask it this way. One of the issues that I know
2 we'll hear more of this afternoon from the Respondents
3 is that for BRP, or for Mercury, when OMC exited the
4 market, because of the dealer loyalty which I've heard
5 a lot about this morning from you all, that Mercury
6 wasn't going to get all those sales because of, if you
7 were dealing with someone else you weren't going to go
8 to Mercury, and there were just as strong feelings
9 from others who aren't the bass fisher boat,
10 fishermen, who didn't want a Mercury.

11 I wondered if folks could comment on that.
12 Again, one of the issues we identified in the
13 preliminaries was the change in OMC exiting the
14 market, what happened to that market share? That's
15 where we see a big switch in the market share to the
16 Japanese. Was it really going to go to MERCURY or BRP
17 to come back in when you have such strong feelings out
18 here from the dealers?

19 Maybe I could ask -- I'm not sure who to ask
20 the question of. Who do I have back here?

21 MR. SELLER: It's Denny Sheller.

22 VICE CHAIRMAN OKUN: Mr. Sheller.

23 MR. SELLER: I think what we found is there
24 were some strong sentiments on the side of some OMC
25 dealers and certainly some Mercury dealers, but that's

1 only probably with the extreme ends of the business.
2 The largest part of the business was going to be
3 determined not by traditional sentiments, but by
4 economics and what worked best for the dealer and the
5 boat builder.

6 So I think the stories that we hear about
7 the dealer who wouldn't have anything to do with
8 Mercury or Yamaha or whatever were just the very
9 fringes of what actually happened throughout the
10 industry.

11 Does that help answer the question?

12 VICE CHAIRMAN OKUN: It helps.

13 Mr. Renken?

14 MR. RENKEN: Vice Chairman, Ed Renken again.

15 Just two quick things. Out of the 55
16 dealers I had, I had two dealers who were extremely
17 loyal to OMC who refused to make the switch. I
18 believe one of them is currently out of business and
19 the other one is struggling along.

20 But again, to me the important thing was not
21 the loyalty at the dealer level. To me what happened,
22 what kicked into high gear at this time was the drive
23 to get the OEM transoms. And quite frankly, we OEMs
24 aren't quite as loyal to brand name as we are to
25 bottom line. So at that time it became attractive for

1 a lot of manufacturers to go with one or the other.

2 VICE CHAIRMAN OKUN: Let me then ask the
3 OEMs to comment on that because one of the things I'm
4 trying to understand is that where at the OEM level,
5 if there's not this dealer loyalty what the price
6 competition was during this period with regard to
7 sales by Mercury trying to get into those slots or
8 into the OEM business. Or with BRP.

9 But if you could answer for me, one of the
10 other things I've heard though is you as an OEM have
11 to be responsive to what you hear from the dealers.
12 If they want something in particular, that's what
13 you're responsive to. I'm trying to understand that,
14 how it relates to price versus dealer loyalty out
15 there. How you as an OEM made those decision with who
16 to buy from during this period.

17 MR. RENKEN: Ed Renken again.

18 Vice Chairman, I made our decision based on
19 several factors. Again, we needed to make a quick
20 decision. We were a little bit unique in that we
21 didn't buy anybody else's engines. I didn't have
22 three Yamahas sitting on the floor and a couple of
23 Suzukis, I had nobody else's engines there.

24 So January 2nd or 3rd when the boat shows
25 started, I had a real problem. So a lot of our

1 discussions took place quickly and they took place
2 over the phone.

3 Mercury probably had the edge up because we
4 had had some discussion with them before we signed the
5 supply agreement with OMC, so we already had a base to
6 start from with them.

7 I would offer this, too. I don't know how
8 much any of the other OEMs here got pressured or
9 aggressively pursued by Yamaha. I think that a lot of
10 those who did get aggressively pursued by Yamaha are
11 probably sitting on that side of the aisle today
12 because Yamaha got them with their very aggressive
13 programs at the time.

14 VICE CHAIRMAN OKUN: Yes, on the back row?

15 MR. WILSON: Ron Wilson.

16 I'm not OEM, I'm a dealer, but sometimes you
17 have no choice. That's the situation I'm running into
18 with our Pontoon brand. They've chosen for me as to
19 what brand.

20 Then we've been assessed some higher pricing
21 that every boat dealer going wants best cost position
22 for his customer. So sometimes it's not an OEM
23 decision. They're going to tell a dealer what they're
24 going to get.

25 VICE CHAIRMAN OKUN: Mr. Mackey, you wanted

1 to comment?

2 MR. MACKEY: Commissioner, just to put it
3 from my perspective. In 2001 when OMC went into
4 liquidation, during that period of 2001 we actually
5 gained a very significant market share over 2001.
6 Then what began to happen at that time, and I believe
7 our competitors gained some market share as well, but
8 what began to happen at that point in time is there
9 was a migration away from Mercury. There were several
10 big customers, take Genmar Marine, for example, we had
11 a longstanding agreement with them and that share, we
12 gained a lot of share, that share began to migrate to
13 Yamaha and it was fundamentally on a pricing position.

14 As I mentioned in my opening statement, the
15 offerings that came from Yamaha or the other Japanese
16 suppliers actually made it very lucrative for them to
17 exit not totally, but exit quite a lot of their
18 business away from Mercury Marine. We have seen that
19 over and over again.

20 So OMC going out of business put a lot of
21 share into play, and obviously everybody responded to
22 that. Therefore there was no reluctance in people to
23 sign up Mercury. There wasn't this cult out here that
24 we're going from OMC, we couldn't go to another
25 American manufacturer. In fact a lot of people came.

1 And subsequent to that they have been drifting away
2 again based fundamentally on price.

3 VICE CHAIRMAN OKUN: My red light's come on
4 so I won't have time to follow up on some of those
5 issues, but if my colleagues don't I'll be back for
6 another round. Thank you.

7 MR. DEMPSEY: Mr. Chairman? I apologize,
8 but I believe one of our witnesses, Mr. Grover, is
9 going to have to leave in just a few minutes because
10 he has a flight to catch.

11 (Laughter).

12 CHAIRMAN KOPLAN: Was that Mr. Grover?

13 MR. DEMPSEY: Yes, it is. I was going to
14 see if there were, if we could get permission to allow
15 him to leave.

16 (Laughter).

17 MR. DEMPSEY: If you had any more questions.

18 CHAIRMAN KOPLAN: Are you in a position to
19 stop him in case somebody --

20 (Laughter).

21 MR. DEMPSEY: Apparently not, Mr. Chairman.

22 CHAIRMAN KOPLAN: Is there anyone from the
23 dias that -- Mr. Grover? Could you wait just a
24 second? Thank you very much.

25 Do any of my colleagues have any remaining

1 colleagues of Mr. Grover?

2 Mr. Barringer, did you have any questions of
3 Mr. Grover?

4 He stepped out?

5 Does staff have any questions of Mr. Grover?

6 MS. MAZUR: No, Mr. Chairman.

7 CHAIRMAN KOPLAN: Mr. Grover, have a nice,
8 safe trip back.

9 (Laughter).

10 Commissioner Miller?

11 COMMISSIONER MILLER: Thank you.

12 Let me see, I lost my train of thought there
13 for a minute.

14 CHAIRMAN KOPLAN: I'm glad you've got this
15 round.

16 (Laughter).

17 COMMISSIONER MILLER: There have been a
18 couple of things I've heard that I want to ask further
19 questions about. Let me start with the one that I
20 think the Vice Chairman's questions prompted for me.
21 And some of Mr. Mackey's answers in particular.

22 In talking about the long-term contracts,
23 and just now you were talking about Genmar and you had
24 a longstanding arrangement I think was the word you
25 used. I understand from our staff report we've seen

1 that long-term contracts are something that Mercury
2 Marine uses a fair amount in its business as do some
3 of the other producers.

4 Help me understand how flexible those
5 contracts are. You've just said that some of your
6 customers have migrated away from them. Help me
7 understand, do they fix quantities or price? Do they
8 have release clauses? To what degree do they help you
9 in terms of price competition for that matter, and
10 protect you from some of it? I guess I would ask that
11 question. I probably know the answer to that. So I'm
12 more interested in the terms of them to the extent you
13 can share that publicly, and if not publicly, in any
14 post-hearing submission.

15 MR. MACKEY: Thank you, Commissioner.
16 Patrick Mackey.

17 Again, I can't get into the next numbers but
18 the typical contract, first of all I would say
19 virtually all of our contracts, even if they're longer
20 term, none of them are exclusive. Very few people
21 ever sign up to an absolute 100 percent exclusivity.
22 They tend to keep more than one engine player in their
23 business.

24 The OEM really makes a decision, primarily
25 how the engines are going to be put on the boats and

1 what boats they're going to be put on. So the pricing
2 power remains with the OEM.

3 The contracts are normally there from an
4 engine manufacturer point of view obviously to try and
5 guarantee and predict the level of volume so that the
6 factories can be loaded or the factories can run more
7 efficiently. So the advantage of getting a long-term
8 contract based on certain volumes or share or
9 whatever, then that actually brings with it many
10 benefits to the engine company, and the engine
11 companies compete for those, particularly the bigger
12 volume OEMs.

13 As I mentioned before, there are many many
14 OEMs in North America, but the power is concentrated
15 down into a few significant OEMs and therefore it's
16 very important to get that long-term relationship with
17 those OEMs.

18 COMMISSIONER MILLER: To the extent in any
19 post-hearing submission, Mr. Dempsey, you can help us
20 understand the terms of those contracts, their
21 flexibility on price and quantity. To the extent that
22 that is sensitive information, I'd appreciated it.

23 MR. DEMPSEY: We'll be happy to do that.

24 COMMISSIONER MILLER: It was another comment
25 I heard you make in response to Commissioner Lane in

1 her last round of questioning that I wanted to come
2 back to.

3 You said in response to her that a boat
4 builder will offer the same boat with a Yamaha and a
5 Mercury Marine engine. That goes on, and you've just
6 mentioned again, all the different boat builders out
7 there, the OEMs.

8 How common is it really for a boat builder
9 to offer and to build the boat with two different
10 engines, one from Yamaha and one from Mercury Marine?
11 And if they are doing so, are they doing so with the
12 exact same technology, horsepower, and just one says
13 Yamaha and one says Mercury Marine? Or are they doing
14 it in offering a range of horsepower or a range of
15 technology?

16 I'll direct the question to the builders in
17 a minute, but first I'd like your answer or the answer
18 of someone from Mercury.

19 MR. MACKEY: Patrick Mackey.

20 In the United States there are maybe two
21 camps. There are some boat companies that are owned
22 exclusively by companies that have also engine
23 manufacturing facilities. Yamaha-owned boat companies
24 and Brunswick-owned boat companies. They tend
25 obviously to follow their own internal program.

1 In terms of what we term as the independent
2 boat builders, many boat builders will supply exactly
3 the same boat but with both different technologies and
4 technologies from different manufacturers. Therefore,
5 in Mr. Bentz's case, for example, you can get a Triton
6 bass boat that carries a Yamaha engine, or you can get
7 the same Triton bass boat that carries a Mercury
8 engine. You may even get that bass boat that carries
9 four-stroke power. You can get it that carries direct
10 injected power.

11 So it depends on the objectives of the
12 particular builder, what their preference is in terms
13 of their different offerings through their wide
14 dealership. But it is certainly not unusual that the
15 same boat will be offered with different power and
16 indeed different technology.

17 COMMISSIONER MILLER: Okay, let me go to Mr.
18 Bentz. Could you talk a little bit about why and how,
19 the kind of offerings your company would put forward
20 on the same boat with different branded engines?

21 MR. BENTZ: Yes, ma'am. Earl Bentz, Triton
22 Boats.

23 We let ultimately the consumer make the
24 decision as to what brand of outboard or what
25 technology he gets. We offer on the same boat in many

1 cases both four-stroke technology with Mercury or
2 Yamaha or Honda or Suzuki or Johnson and Evinrude.
3 The same is true with HPDI or Optimax or ficked
4 technology from BFI today. But ultimately the
5 consumer makes the decision as to what brand of
6 outboard he wants on the back of our boat.

7 COMMISSIONER MILLER: When you say the
8 consumer, who are you talking about? Are you talking
9 about your dealer or the end user who's come in?
10 Again, I'm trying to square what you just said with
11 this idea of packages.

12 MR. BENTZ: Well ultimately it all goes back
13 to the consumer because the dealer's not going to
14 stock something that he's not going to sell. Again,
15 particularly in the bass market that we deal in, it's
16 very price sensitive. Price has an awful lot to do
17 with it. The dealer decides what he puts in
18 inventory, engine availability and other things.

19 We build to order and if the dealer orders
20 Yamaha --

21 COMMISSIONER MILLER: So you're building to
22 order. You're not building a package.

23 MR. BENTZ: Yes, ma'am. We build a package,
24 and we ship the 21 foot Triton boat with a 225 Optimax
25 Mercury or if the dealer chooses to stock Yamaha, then

1 that's what we provide for him.

2 They are packages. The package is built to
3 order.

4 COMMISSIONER MILLER: Right.

5 Mr. Renken, as another OEM do you want to
6 respond to my question? I'm trying to remember, does
7 your company offer the same boat with a Yamaha or a
8 Mercury Marine engine?

9 MR. RENKEN: Ed Renken.

10 We do not offer Yamaha at all. We are, like
11 I said, we're 95 percent of what we're hanging is
12 Mercury so I'm not sure I'd really be the best one to
13 answer that.

14 COMMISSIONER MILLER: I recalled others
15 saying specifically, like Mr. Fountain I know said he
16 was 100 percent Mercury Marine. You, what stuck with
17 me was another number that I --

18 Mr. Kimmell? Then I'll come back to Mr.
19 Sheller.

20 MR. KIMMELL: Is the question do we offer
21 other engines?

22 COMMISSIONER MILLER: I'm trying to
23 understand, to a certain degree, I'm really asking
24 this question because of the discussion about the two-
25 stroke versus the four-stroke engine. Are you going

1 to offer the same boat with a two-stroke engine, a
2 four-stroke engine, a Yamaha engine, a Mercury Marine
3 engine, a variety of horsepower? I'm just trying to
4 get straight the degree to which --

5 MR. KIMMELL: The short answer is yes.

6 COMMISSIONER MILLER: Okay.

7 MR. KIMMELL: Again, a little over ten years
8 ago the manufacturers made fiberglass and that's what
9 they shipped to dealers and it was the dealers'
10 responsibility to install an engine. Roughly ten
11 years ago the large engine manufacturers began to
12 develop their OEM strategy. Mr. Mackey just spoke
13 about some of the advantages to him. There were in
14 fact also advantages to the manufacturers as well
15 because the product became a cobranded product. We
16 had an investment, if you will, in the branding of the
17 engine on the back of the boat because you really sold
18 the consumer a functioning, operating vehicle for the
19 water.

20 The engine itself can and often does have a
21 variety of impacts on the performance of the boat.
22 Equally, the customer has his own notions, often well
23 developed notions, of how he wishes to use the
24 product, where, under what kinds of conditions, and
25 given those, what he expects the performance of the

1 boat to be.

2 So why is there a wide variety? Because
3 within his tolerance of acceptable performance, the
4 product offerings have a direct impact on the price he
5 pays. The consumer believes that price to be critical
6 in his decision.

7 COMMISSIONER MILLER: I appreciate your
8 answers. The red light's on. Thank you.

9 CHAIRMAN KOPLAN: Thank you, Commissioner.
10 Commissioner Hillman?

11 COMMISSIONER HILLMAN: Thank you.

12 First a couple of quick follow-ups on some
13 legal issues that I might ask Mr. Dempsey, for you to
14 look at for the post-hearing brief. But let me just
15 ask one.

16 In response to Commissioner Pearson on the
17 issue of the exclusion that you're now seeking for the
18 75 to 115 horsepower four-stroke engines. You
19 mentioned in response to him the issue of the
20 litigation that's occurred in Wisconsin over breach of
21 contract.

22 Was seeking the exclusion specifically
23 required as a result of that litigation, or directly
24 legally connected to the litigation?

25 MR. DEMPSEY: Let me just -- Kevin Dempsey.

1 Let me ask Joe Pomeroy, the General Counsel at Mercury
2 to answer that.

3 COMMISSIONER HILLMAN: Mr. Pomeroy?

4 MR. POMEROY: Good morning, Commissioner
5 Hillman.

6 No. We had what we believed to be a very
7 sound and solid contract with Yamaha. As a direct
8 result of our initiation of the dumping action, Yamaha
9 notified us that it would no longer perform according
10 to the terms of the contract. It felt like it was
11 excused from the terms of the contract. And unless we
12 agreed to an increased price of 92 percent they were
13 going to withhold all supply of product.

14 We therefore initiated litigation in the
15 United States District Court seeking an injunction,
16 asking that they perform according to the terms. The
17 Federal District Court judge that heard the briefing
18 on the matter decided that that was a correct outcome
19 and entered the injunction and declared that in his
20 opinion it was more likely than not that an
21 arbitration panel would find that Yamaha was in breach
22 of the contract for doing that.

23 We looked at the situation and without
24 disclosing any confidential decisionmaking there was
25 an avenue available we felt to remove any dispute from

1 either the courts or the arbitration panel, and that
2 was to simply exclude the 75/90/115 powerheads from
3 the litigation. It was not dictated by the judge's
4 decision, in fact more or less the opposite, but we
5 felt we could simply as a practical matter obviate the
6 dispute altogether.

7 COMMISSIONER HILLMAN: I appreciate that
8 answer. Thank you very much.

9 The two issues, Mr. Dempsey for briefing if
10 you could.

11 In your brief you have basically urged the
12 Commission to take into account the year 2000 and its
13 data in terms of looking at volume trends, price
14 trends, et cetera. The Japanese Respondents have
15 obviously focused only on the more traditional 2001-
16 2003 plus the interim.

17 Two things. One, if you could brief the
18 issue of why it is we should break from our normal
19 practice and take into account the 2000 year data.
20 Again, it's not what we would normally do so I want to
21 understand as a legal matter why we should do that and
22 what precedent there would be for it.

23 And secondly, should we notwithstanding what
24 I'm sure will be a very compelling argument, decide
25 that we want to only focus on the 2001 period onward,

1 would you then brief the volume, price and impact
2 issues, assuming we are not focusing on the 2000 year
3 data?

4 MR. DEMPSEY: Yes.

5 COMMISSIONER HILLMAN: I would like to see
6 how you would lay out your arguments in terms of the
7 volume, price and impact injury issues in the absence
8 of focusing on the 2000 data.

9 MR. DEMPSEY: Kevin Dempsey.
10 We'd be happy to do that.

11 COMMISSIONER HILLMAN: And then a second
12 issue would be the issue of your own direct imports.
13 Should the Commission view the competitive impact of
14 subject imports brought in by the domestic industry
15 differently than it would other subject imports? In
16 other words, am I supposed to say these imports are
17 injurious but these, because you're bringing them in,
18 are somehow less injurious? And again, is there a
19 legal precedent for us to make that kind of decision
20 in terms of how we weight the impact of imports?

21 If that issue could be briefed as well.

22 MR. DEMPSEY: We'd be happy to do so.

23 COMMISSIONER HILLMAN: If I can then come
24 back, once again, to this issue of making sure I
25 understand the issue on pricing. We have had a lot of

1 discussion about sort of where the pricing competition
2 occurs.

3 If I look at our pricing data it clearly
4 shows that prices to the OEM boat builders are
5 significantly below the prices to dealers for the
6 exact same products. Why is that the case?

7 Mr. Mackey?

8 MR. MACKEY: Thank you, Commissioner.
9 Patrick Mackey.

10 In terms of the difference in price,
11 obviously the boat builder has got to be able to make
12 a profit, and therefore the discounts to a boat
13 builder are going to be higher than the discounts to a
14 dealer. The boat builder is rigging the issue,
15 they're using their manufacturing facilities to rig
16 the engine. They're using their personnel and their
17 design. Therefore they need to be able to make a
18 profit on it. It's simply, that's the way that it's
19 distributed.

20 COMMISSIONER HILLMAN: And that has always
21 been the case?

22 MR. MACKEY: It essentially has migrated to
23 that. At one point in time boats were almost blank,
24 then we started pre-rigging as it was called, i.e.
25 putting in controls. And now more and more of the

1 boat builders are actually doing the integration. But
2 virtually every reputable boat builder is rigging the
3 boat and either hangs the engine at their own factory
4 or indeed has it delivered to their specified dealer
5 to hang the engine on according to their procedures.

6 COMMISSIONER HILLMAN: If I look over our
7 period of investigation, again, there are some
8 exceptions but as a general matter prices, again this
9 is domestic product prices, have decreased to the OEMs
10 over this period but have increased to the dealers.
11 Why that diverging trend in prices between OEMs and
12 dealers?

13 Mr. Sheller?

14 MR. SHELLER: Yes, this is Dennis Sheller.

15 Again, I think the boat builder has incurred
16 some of the cost that the manufacturer had
17 traditionally incurred, number one, the cost of
18 capital; and number two, they have a repurchase
19 responsibility. But I think they've also taken over
20 some of the costs that the dealer had traditionally in
21 the previous pricing scenario, they've taken over some
22 of the cost in the, in a lot of the pricing scenarios
23 the dealer was doing a lot of the rigging and now that
24 is going on more at the builder level, so a lot more
25 of the cost is being taken over at the builder level.

1 COMMISSIONER HILLMAN: Mr. Mackey?

2 MR. MACKEY: Patrick Mackey.

3 Again Commissioner, the simple fact of
4 economics. The boat builder amalgamates the volume.
5 The dealer has a finite volume that they can deal with
6 but the boat builder is taking the input from all of
7 the dealers. So the boat builder ends up with
8 significantly more purchasing power, and obviously,
9 economics, he who has the most power calls the tune,
10 quite frankly.

11 COMMISSIONER HILLMAN: Okay.

12 The last couple of questions on this issue
13 of quality. A number of you have mentioned that there
14 was a period, again, some years ago as you describe it
15 when there were problems with the Mercury Optimax
16 engine, some period of time.

17 I'm trying to make sure I understand when
18 that was and what portion of Mercury's sales it would
19 have affected. If any of the boat builders or dealers
20 even want to comment on when did they start
21 experiencing problems with the Mercury engines, how
22 long did those problems persist in the market, and
23 what portion of Mercury's product was affected by it?

24 MR. DAVIS: I could take that. Rick Davis,
25 Mercury.

1 The problem occurred with one of our Optimax
2 platforms and that would be the three liter engine,
3 from which we derive the 200 and 225 horsepower
4 Optimax. This problem occurred during the 2001
5 calendar year. The problem was essentially arrived
6 from components arrived from one of our suppliers that
7 were sensitive to high levels of temperature and
8 saltwater exposure. It affected our injectors. We
9 had to stop production and get the injectors fixed and
10 get the production started properly.

11 The second problem with the same, at the
12 same time, was a spark plug fouling issue that
13 followed the engine that required calibration. So we
14 stopped production, fixed the problem, went back into
15 production.

16 COMMISSIONER HILLMAN: And both problems
17 were the same engine, the three liter high horsepower
18 --

19 MR. DAVIS: Yes.

20 COMMISSIONER HILLMAN: So the problem
21 existed for how long?

22 MR. DAVIS: The problem existed for about a
23 six to seven month period.

24 COMMISSIONER HILLMAN: Again, if there are
25 numbers that could be put on the record just to help

1 us understand how to put this in perspective in terms
2 of the total mix that Mercury had out in the
3 marketplace.

4 MR. DAVIS: We'd be happy to do that.

5 COMMISSIONER HILLMAN: A last question is, a
6 number of the Respondents and others have in reference
7 to quality issues or other things have mentioned JD
8 Power, Field and Stream, sort of other publications.
9 How important are those and for what purpose?
10 Specifically I'm interested in the JD Power
11 publications. Who looks at those? Is it a dealer,
12 OEM issue? Or does your average consumer know or care
13 about what JD Powers says?

14 Mr. Mackey?

15 MR. MACKEY: Thank you, Commissioner.
16 Patrick Mackey.

17 JD Power in the boating industry is a
18 relatively new phenomenon. It has been in the auto
19 industry for a long time. JD Power has been in the
20 boating industry for three years.

21 I look at JD Power and my company and I take
22 it extremely seriously because that is voice of the
23 customer input to me. Therefore, what they're
24 collecting in an unbiased way, that provides me with
25 information on the problems I may have, what I need to

1 be doing about them, and moving forward to give the
2 consumer a much better product going forward. But I'm
3 not sure right now that the big majority of end
4 consumers, i.e. the people that buy the boat, us JD
5 Power in a very important way to buy it. JD Power, as
6 I said, is much more established in the auto industry
7 than it is in the marine industry.

8 COMMISSIONER HILLMAN: I appreciate those
9 answers. Thank you.

10 CHAIRMAN KOPLAN: Thank you, Commissioner.
11 Commissioner Lane?

12 COMMISSIONER LANE: I have some questions of
13 the dealers and I apologize if you all have answered
14 this question before, but do dealers carry both
15 Mercury engines, the BRP engines, and maybe a variety
16 of Japanese engines, all at the same time?

17 MR. WOLF: Andy Wolf from M-W Marine.

18 Originally we were an OMC dealer, 35 years
19 ago. We immigrated to Mercury product in about 1980
20 due to other factors that were affecting us in our
21 market area. So we ended up with two product lines.

22 Honda came into the country with four-
23 strokes and we had a few customers who had Honda
24 automobiles who liked the product, they were asking
25 for four-stroke product.

1 We took on the Honda line, so we were pretty
2 well covered with everything that was out there in the
3 marketplace.

4 The Honda line was a very small part of our
5 business because that product was quite a bit more
6 expensive. So even though a consumer at that time had
7 an opportunity to buy the highest four stroke
8 technology available at the time, very very few took
9 advantage of it because price is a very important
10 factor in purchasing.

11 The next thing that happened when OMC went
12 out in 2000 was we weren't really left in a bad
13 position because we had the other product lines to
14 carry us. But Lund came to us, we were a Lund dealer.
15 And although we had been asked to take on Yamaha
16 previously, because obviously most motor manufacturers
17 or boat manufacturers want to have a presence in every
18 market. We were a fairly good-sized dealership. We
19 didn't feel we needed another product line because we
20 were very content with what we had.

21 So we declined to take them on until 2001
22 when Lund told us that they would like us to take on
23 Yamaha because it was going to be an important part of
24 their business and we needed to make sure that we
25 could sell more Lunds because they would produce more

1 engines for us to put on some of their products that
2 they're going to manufacture. Or they would set up a
3 present Yamaha dealer in our territory. They would
4 set up a present Lund dealer in our territory.

5 Obviously in order to protect ourselves with
6 all the marketing we have done in our area, we wanted
7 to make sure that wasn't going to happen if we could
8 keep that from happening. We took on the line. But
9 at that time we didn't realize what the real strategy
10 was. It was, if I would have known that I wouldn't
11 have taken on Yamaha. The real strategy was that they
12 wanted to switch a lot of the dealers over to Yamaha
13 to sell more Yamahas because they were evidently
14 getting a better buy on Yahamas.

15 In the process, a year later when we did not
16 sell enough Lund/Yamaha packages, Genmar did set up
17 that other Yamaha dealer because they were not happy
18 with our performance. So now we have more Lund
19 dealers in our market area. That's one way where OEMs
20 can regulate the market depending on how they want to
21 manipulate the system.

22 COMMISSIONER LANE: Yes, sir.

23 MR. WILSON: Ron Wilson.

24 When you're doing a volume of business while
25 the OMC failure caused a lot of dealers to want to

1 multi-source, it's all about turns of inventory if
2 you're going to look at money doing volume in the boat
3 business. If you're able to single-source a motor and
4 you're able to step through technologies, you're able
5 to step through horsepower ranges and have all these
6 possibilities for the end consumer on one brand of
7 boat, it really improves the profitability to the
8 dealer, versus having one boat, multiple brands, you
9 don't have the right flavor in stock, and now you're
10 ordering one in.

11 COMMISSIONER LANE: Are these two answers
12 then basically typical of the industry, that dealers
13 will basically have one line of engine?

14 MR. WILSON: Ron Wilson.

15 It's been my, I guess as I look around the
16 industry a lot of dealers, because of the OMC debacle,
17 have two brands of motors. So they have kind of a
18 backup plan that they may not have had when they
19 didn't see the OMC thing coming.

20 COMMISSIONER LANE: Yes, sir.

21 MR. SHELLER: Dennis Sheller.

22 I think you find that most dealers have at
23 least two brands or more. I can't remember exactly
24 what the percentages were, but a significant portion
25 of the dealers represent at least two brands of

1 outboards.

2 COMMISSIONER LANE: Would those typically be
3 both domestic or both from Japan or are there some
4 that would have a domestic and a Japanese?

5 MR. SHELLER: I think you'd find that most
6 of them would have a domestic and a Japanese, but as
7 many dealers as there are, as many segments as they
8 serve, I think you'd see virtually every combination.

9 Mr. Wilson has a couple of brands, Mr. Wolf
10 explained that he does. I think you'd find that most
11 dealers would represent at least some portion of their
12 business, at least a couple of brands.

13 COMMISSIONER LANE: Thank you.

14 Now I'd like to have somebody explain to me
15 the differences between EFI and DI fuel delivery
16 systems. Do the EFI systems incorporated on a two-
17 stroke engine comply with the EPA standards for
18 emission reduction?

19 MR. DAVIS: This is Rick Davis, I'll take
20 that one. It is confusing. It's almost the same
21 letters, right? EFI or DFI, with regard to a two-
22 stroke engine, EFI means electronic fuel injection.
23 The fuel is put into the, if you will, the crank case
24 of the engine and therefore it can be, it's not as
25 fuel efficient. Therefore it doesn't give you the EPA

1 emission credits nearly to the degree that a DFI --
2 DFI means direct fuel injection. Here the fuel is put
3 into the cylinder head so it goes directly into the
4 cylinder and is burned. Therefore, the emission
5 levels are very low and the fuel consumption is very
6 good.

7 You can also put EFO on the four-stroke,
8 however. An EFI four-stroke engine is slightly more
9 fuel efficient than a carbureted four-stroke. So it
10 gets a little confusing.

11 But on the two-stroke, EFI and DFI are both
12 widely used. But for the low emission, that would be
13 direct fuel injection.

14 COMMISSIONER LANE: Thank you.

15 MR. DAVIS: And Mercury calls that Optimax,
16 by the way.

17 COMMISSIONER LANE: Thank you.

18 Once again I'm not sure who to address this
19 to, but the average unit values of U.S. shipments
20 increased steadily during the investigation period.
21 Would you explain the reason for such an increase?

22 MR. DEMPSEY: Commissioner Lane, this is
23 Kevin Dempsey, Dewey Ballantine, perhaps I can shed
24 some light on that.

25 I think the increase in AUVs overall over

1 the POI, both for domestic product and for Japanese
2 product, is related to a shift in product mix. That
3 at the beginning of the POI you had a higher
4 percentage of the lower cost traditional two-stroke
5 engines and you've seen a migration over the POI by
6 all the producers to producing more higher cost, low
7 emission engines, be it direct fuel injection or four-
8 stroke. So that change in product mix in terms of
9 technologies from the old higher emission technology
10 to the new lower emission technologies has resulted in
11 an increase in average unit values over the period.

12 COMMISSIONER LANE: Thank you.

13 Mr. Chairman, that's all I have.

14 CHAIRMAN KOPLAN: Thank you, Commissioner.

15 Commissioner Pearson?

16 COMMISSIONER PEARSON: You've indicated that
17 this is primarily a price case, but how strong a price
18 case is it anyway? Yes, there's 63 percent
19 underselling, but wouldn't we expect in any open and
20 competitive marketplace that one firm is going to have
21 to undersell on about half of its sales? You expect
22 kind of a 50 percent underselling is more or less
23 normal, I would think. And in this case, especially
24 with the testimony that's been presented regarding
25 Mercury's superior quality and performance

1 characteristics, the underselling might be even less
2 surprising.

3 So please address that if you could.

4 MR. WOLFF: Commissioner Pearson, Alan
5 Wolff.

6 The Respondents have said repeatedly that
7 the four-stroke engine was the engine of choice, the
8 market is migrating towards that. It is the more
9 costly engine to produce and it has been marketed as a
10 superior product. If it were a superior product in
11 fact it should be higher priced and in fact it's often
12 at a lower price.

13 In the APO session we'll address in greater
14 specificity exactly where the underselling takes
15 place.

16 The underselling, I might say, and I should
17 say the vigorous price competition which on the public
18 record has taken place not just in the four-stroke
19 segment or the four-stroke versus direct injection but
20 also in the traditional carbureted section. The
21 market is basically one that is driven by price.

22 A lot of that competition takes place at the
23 OEM level, but it does feed through to the dealers in
24 that the end consumer looking at a package of a boat,
25 a number of our witnesses have testified, on a \$20,000

1 boat if there's a \$500 advantage that will mean a lot
2 to quite a large segment of the market, and that plays
3 through and often overwhelms the technology because
4 these technologies are competing directly.

5 MR. DEMPSEY: Commissioner Pearson, Kevin
6 Dempsey, just to follow up on that.

7 I agree with everything that Mr. Wolff just
8 said about the aggressive price competition is what
9 has really driven things in this market. But as a
10 result of that price competition you have seen
11 significant volume affects, so I would not say that
12 you just look at price. You see substantial volume in
13 terms of market share gain and an increase in absolute
14 volumes from the Japanese producers over the period of
15 investigation, so I think both come into play in this
16 case.

17 COMMISSIONER PEARSON: Looking at our
18 pricing products over the period of investigation, we
19 see some price increases for both domestic and
20 imported engines, so one doesn't obviously, at least I
21 don't obviously see price depression. Even price
22 suppression doesn't just jump out and whack me over
23 the head.

24 Again, on the record, we may get into this
25 in the confidential session, but on the record are we

1 seeing your strong price case?

2 MR. WOLFF: Commissioner Pearson, Alan
3 Wolff, Dewey Ballantine.

4 There is clear evidence on the record of
5 price suppression and price depression. There is, as
6 Mr. Dempsey testified, a change in product mix that's
7 taking place throughout this period, and --

8 COMMISSIONER PEARSON: Of course, but --

9 MR. WOLFF: -- price is --

10 COMMISSIONER PEARSON: -- within the
11 individual pricing products. Which is what I was
12 trying to make specific reference to that. I
13 understand you get the product mix issues if you're
14 looking at average unit values. But as we review the
15 pricing products, as I understand them, I'm just
16 having a hard time finding the price depression. In
17 private you talked to me about price suppression.
18 Maybe we'll see a little of that. I'm not completely
19 sure.

20 MR. WOLFF: In the closed session we can get
21 into that in greater detail with the data that's on
22 the record.

23 COMMISSIONER PEARSON: Thanks.

24 Let me ask a couple of questions about
25 impact then, if I could.

1 There's a lot of stuff going on in the
2 marketplace. We've got BRP coming out of bankruptcy
3 having some affect on pricing. We have new
4 environmental requirements that have created
5 significant costs for research and development plus
6 creating higher manufacturing costs. Then you've got
7 the question of are consumers really eager to pay for
8 those higher costs?

9 The EPA might love improved environmental
10 performance but they don't buy many outboards. It's
11 the guys out there in rural Wisconsin who buy the
12 outboards. People all over the country, obviously.

13 So is the industry, is the financial
14 performance being hurt more by these other factors,
15 the difficulty of passing along the cost increases to
16 a reluctant marketplace than by subject imports?

17 MR. DEMPSEY: Commissioner Pearson, Kevin
18 Dempsey.

19 We can go into this further in the APO
20 session, but I think it is fair to say because of the
21 EPA regulations and the move towards the low emission,
22 higher cost engines, that cost more to manufacture,
23 you have seen as the Commission found in its
24 preliminary determination I think clear evidence that
25 domestic producers have not been able to raise prices

1 sufficiently to cover these increased costs. They
2 haven't been able to raise prices to cover those
3 increased costs because of the competition from
4 Japanese imports. That is price suppression. That is
5 yes, you take as a condition of competition the impact
6 of the EPA regulations, but it's not the EPA
7 regulations themselves that are the cause of the
8 injury, it's the fact that the industry has been
9 unable to recover those increased costs due to the
10 price competition from the imports.

11 COMMISSIONER PEARSON: Okay, any other
12 thoughts on impact? Mr. Wolff?

13 MR. WOLFF: Alan Wolff, Dewey Ballantine.

14 The fact is that we are losing money and the
15 full financial details will be in the latter session,
16 but clearly absent the subject imports price
17 competition that would not be the case.

18 In other words, if someone wanted to buy a
19 boat, then they're going to have to pay a price that
20 allows you to recoup your investment and your direct
21 cost and give you some margin of profit. Absent the
22 price competition we would not be in a loss position.

23 COMMISSIONER PEARSON: Okay, thank you very
24 much.

25 Mr. Chairman, I have no further questions.

1 CHAIRMAN KOPLAN: Thank you, Commissioner
2 Pearson.

3 I have a few matters left.

4 Mr. Sheller, let me quote from chapter six
5 at page 12 of the public version of our staff report
6 where it says, "Gross profit increased between 2001
7 and 2003 as well as between January to September 2003
8 and the same period in 2004 as the increase in sales
9 values was greater than the increase in COGS."

10 It also states that "SG&A costs offset the
11 operating profit leading to an operating loss of the
12 industry."

13 Can you explain why the domestic industry's
14 SG&A costs were so high over the POI? Is that
15 attributable to R&D?

16 Mr. Mackey?

17 Or was it attributable to legal fees?

18 MR. MACKEY: Mr. Chairman, Patrick Mackey.
19 Thank you.

20 I think you may be right, legal fees
21 certainly play a role in this.

22 CHAIRMAN KOPLAN: Any post-hearing
23 submission on that will be --

24 (Laughter).

25 MR. MACKEY: But certainly the SG&A costs

1 have gone up over the period for a number of reasons.
2 One is the cost of health care in the United States is
3 a significant factor in our whole cost of goods sold.
4 We are investing in technology and I would make the
5 point that when I invest in technology to develop an
6 engine platform, that's a significant amount of money
7 into develop an engine platform for a marine
8 environment. I would put it that it is much more
9 difficult than to invent or design an engine platform
10 for an automobile environment because a marine
11 environment engine is subject to very arduous loads,
12 it's running at wide open throttle most of the time
13 whereas in an automobile the engine is running at
14 about 20 percent of its capacity most of the time.
15 But our cost of development is proportionately very
16 high, and then we have a very finite number of engines
17 that we can amortize that cost over.

18 If we look at, from an SG&A point of view,
19 what continually concerns me is if I cannot recoup all
20 of the research and development costs, because I
21 cannot pass them on to the consumer, then at the end
22 of the day I will not be able to justify significant
23 investment. I would remind you that we have just
24 invested over \$100 million to design an engine
25 platform, and when you look at the size of the

1 outboard engine market compared to the automobile
2 engine market, so to speak, we have a fraction of
3 their volume that we can recoup our costs.

4 But the things that were driving us where
5 health care costs, research and development and so on,
6 and we have been working in conjunction with all of
7 our colleagues and in particular in support from our
8 union to try and drive down those costs, to try and
9 put us back into profitability.

10 But we find it extremely difficult to recoup
11 our costs simply because the competitive pricing out
12 in the market doesn't allow us to capture the volume.

13 CHAIRMAN KOPLAN: Thank you, that's helpful.

14 This is for Mr. Dempsey or Mr. Noellert.

15 Although the U.S. producers and importers
16 warranty data did not show much difference between
17 domestic and imported engine quality, the purchases
18 data did seem to indicate a large difference with
19 respect to the domestic two-stroke DI engines.

20 Do you have any comment on the purchasers'
21 warranty data? I'm referring to tables F-6 and F-7 in
22 the staff report that deal with warranty returns of
23 U.S. produced and Japanese imports of repairable
24 outboard engines.

25 Those tables are BPI so we can't get into

1 the specifics here, but if you can say anything to
2 that now and if you could elaborate on it either post-
3 hearing or this afternoon I'd appreciate it.

4 MR. NOELLERT: Chairman Koplan, this is Bill
5 Noellert from Dewey Ballantine.

6 We looked at those numbers and you are
7 correct on the percentages being higher on the
8 purchasers data, but also the incidences that they're
9 looking at are extremely low. We just don't think
10 it's a very robust database to make any significant
11 conclusions. We just think it's a result of being a
12 very few cases from a number of individual purchasers,
13 but we can get into that more in an APO release.

14 CHAIRMAN KOPLAN: I'd appreciate that. I
15 don't know whether any of the purchasers want to
16 comment on that in any fashion now or whether you
17 prefer to include that in your post-hearing.

18 Mr. Dempsey?

19 MR. DEMPSEY: We'll certainly cover that in
20 our post-hearing submission.

21 CHAIRMAN KOPLAN: Thanks.

22 This is for Mr. Wolf or Mr. Wilson. Could
23 you explain the dealer authorization process used by
24 your firm and what benefits this authorization confers
25 to dealers as well as to engine makers? I'll tell you

1 what I'm interested in. I'm interested in whether is
2 authorization necessary to sell an engine make or only
3 to service an engine make? Do dealers usually obtain
4 authorization to service outboard engines from one or
5 many producers? How might this affect a dealer's
6 engine purchasing decisions, and what is the cost, if
7 any, of this authorization to dealers?

8 MR. WILSON: Wow.

9 CHAIRMAN KOPLAN: Do you want me to go
10 through it with you one at a time?

11 MR. WILSON: I'm not one of the brightest
12 bulbs on the tree, so maybe we can go one at a time
13 and I can respond to it.

14 CHAIRMAN KOPLAN: I think you are one of the
15 brightest bulbs on the tree, so let me go back.

16 Is authorization necessary to sell an engine
17 make or only to service an engine make? That's the
18 first part.

19 MR. WILSON: Okay. When we sign up with an
20 OEM you do sign up also, if you don't represent that
21 motor, they come in and you set up a set of guidelines
22 that talks about stocking levels, talks about what's
23 reasonable, normal and customary in the treatment of
24 the client.

25 CHAIRMAN KOPLAN: Mr. Wolf? Mr. Andy Wolf.

1 MR. WOLF: Yes, generally. Andy Wolf.

2 Generally if we sign a sales agreement we
3 also sign a service agreement to take care of and
4 support the customer. Generally we go by the
5 guidelines, by the factory, whatever they allow us to
6 charge for certain services.

7 CHAIRMAN KOPLAN: Thanks.

8 Mr. Miller, did you want to add anything?

9 MR. MILLER: Mr. Commissioner, I can add to
10 that. I've been kind of quiet because we are strictly
11 a Mercury dealer -- by choice, I will add. So some of
12 your other questions and comments earlier comparing
13 one to the other we have not had an opinion on.

14 We are not contractually held to that and
15 Brunswick does not have a lien on our company, as was
16 mentioned earlier by the other side. I'll add, we do
17 need to ask for a preauthorization for certain
18 warranty repairs, however through Mercury Marine we're
19 what's called a premier dealer and we have the
20 authority to do what is best and I would say 95
21 percent of the cases on our own account.

22 CHAIRMAN KOPLAN: Thank you.

23 Now coming back to the second part of the
24 question. Do dealers usually obtain authorization to
25 service outboard engines from one or many producers?

1 MR. WILSON: If you represent -- Ron Wilson.

2

3 If you represent the franchise and you have
4 authorization to retail the boat, you have
5 authorization to repair the boat -- motor.

6 CHAIRMAN KOPLAN: Anybody else? The rest of
7 you agree with that, I take it. Okay.

8 How might this affect a dealer's engine
9 purchasing decisions?

10 MR. WILSON: Ron Wilson.

11 We're driven by the, it seems like in the
12 marine industry one of the weak links in our industry
13 is what happens to the customer when it breaks? So we
14 have positioned our dealerships strongly on that note.

15 The way we look at service, boy, I don't
16 want to --

17 Go back and replay that for me again so I
18 make sure I say the right thing.

19 CHAIRMAN KOPLAN: Sure.

20 (Laughter).

21 CHAIRMAN KOPLAN: I don't want to ask the
22 wrong question, right. Thank you, Madame Vice
23 Chairman.

24 How might this affect a dealer's engine
25 purchasing decisions? That was the question.

1 MR. WILSON: Yes, there are some products
2 out there that sometimes have some challenges. For
3 example, I think the old OMC was a good example of
4 that. You would not necessarily choose, if you were
5 watching our industry at all back as that bankruptcy
6 unfolded, you would probably choose not to represent
7 that engine line due to the failure or the inability
8 to service the consumer as he experienced his
9 challenges. So it does.

10 CHAIRMAN KOPLAN: If anyone disagrees with
11 that you can jump in.

12 If not, the last part, what is the cost if
13 any of this authorization to dealers?

14 MR. WILSON: Ron Wilson.

15 No cost.

16 CHAIRMAN KOPLAN: No cost attributable.

17 MR. WILSON: Yeah.

18 CHAIRMAN KOPLAN: Okay.

19 Mr. Wolf? I see Mr. Dempsey is urging you
20 to take your microphone.

21 MR. WOLF: There is no cost. But going back
22 to the last question, how do we look at selling
23 products from a service angle. We try to sell the
24 products that we know we will get the proper support
25 from the factory, and therefore that will determine in

1 many cases what products we push. We're left out by
2 ourselves to take care of customers many times when a
3 customer has a problem, and if you have a product line
4 that you have difficult getting warranty authorization
5 for, it ends up going out of your own pocket so
6 therefore it's important to make sure that you have
7 good support from the factory level.

8 CHAIRMAN KOPLAN: Thank you very much.
9 I'll turn to Vice Chairman Okun.

10 VICE CHAIRMAN OKUN: Thank you, Mr.
11 Chairman. I do have a few more questions.

12 Let me start, Mr. Dempsey or Mr. Wolf, with
13 this question which is Mr. Robert Gowens, the former
14 president of Evinrude and Johnson Division of OMC
15 Corporation provided a detailed and lengthy affidavit
16 that the Respondents submitted regarding market
17 conditions faced by OMC as well as some comments about
18 Mercury and it's four-stroke. We will hear from him
19 this afternoon, but he is listed as President of
20 Gowens Management Service, a management consulting
21 firm with several clients.

22 I wonder if you have any comments on whether
23 you know his clients, whether you have anything to say
24 about Mr. Gowens before we hear from him this
25 afternoon.

1 MR. DEMPSEY: This is Kevin Dempsey.

2 I do not have any information on who his
3 clients are, no.

4 VICE CHAIRMAN OKUN: Okay.

5 Mr. Mackey, let me turn to you because at
6 the end of our conversation which you won't remember
7 because it was many many questions ago so I'll refresh
8 your memory. But we were talking about when the
9 market shares shift to Yamaha and how Mercury had
10 tried to get that business and what was going on with
11 the boat builders at that time and with Genmar in
12 particular which you reference.

13 One of the things that Mr. Gowens says in
14 his affidavit is that when George Buckley became CEO
15 of Mercury he was aware of the opinion that Mercury
16 had followed a flawed strategy for refusing to
17 recognize the importance of four-stroke technology.
18 I think of this as instead of the "miss the boat"
19 analogy, "miss the engine" analogy. I wondered if you
20 wanted to tell me your version of that and also
21 whether there are any internal documents that would
22 counter Mr. Gowens' report of what was going on at
23 Mercury at this time.

24 MR. MACKEY: Thank you, Commissioner.
25 Patrick Mackey.

1 In terms of four-stroke technology, just to
2 set the record straight, in the small four-stroke
3 Mercury and Yamaha both and together actually began
4 the small four-stroke engine development program way
5 back in 1993. That pertains to this day, as Mr. Davis
6 has testified. So Mercury and Yamaha had the same
7 four-stroke.

8 Then when the 75/90/115 four-stroke came
9 into the market, Yamaha designed that particular
10 engine based on a Ford engine. So they took a Ford
11 engine and modified it and that became the 74/90/115
12 four-stroke. And because Mercury was working on the
13 direct injected technology at that point in time, it
14 is my understanding that an arrangement was arrived at
15 between Mercury and Yamaha because it was mutually
16 beneficial, that in fact Mercury would purchase from
17 Yamaha the 75/90/115 that they had developed off this
18 Ford engine base and that was mutually beneficial.

19 I can't comment to Mr. Gowens' rationale,
20 but in fact Mr. Peter Larson who was the CEO of
21 Brunswick began the process of moving into developing
22 what's now common called the high horsepower four-
23 stroke engine and that started some six, seven years
24 ago, in fact before I joined the company.

25 When Mr. Buckley arrived to be CEO of

1 Brunswick Corporation after Mr. David Jones had left
2 Mercury and gone to work for OMC, Mr. Buckley began to
3 accelerate the whole process of developing high
4 horsepower four-stroke engines. In fact it was that
5 beginning between Mr. Buckley and Mr. Larson that has
6 led us in fact to bring out our Verado engine.

7 Again I would point out that to develop a
8 complete engine platform is a very technically
9 complicated process and it takes a significant period
10 of time. In the four to five year range.

11 So Yamaha in fact brought out their high
12 horsepower, the 225 engine, back in 1991. And yes,
13 they had a 200, 225 offering. But again, that was for
14 a very small part of the market.

15 Prior to that Honda has had four-stroke
16 engines in the marketplace for a very long time. So
17 the whole migration to four-stroke, Honda were there,
18 people had the capability of buying it, they chose not
19 to buy it. Then of course the sales of four-stroke
20 accelerated. But I would put it to you that the sales
21 of four-stroke accelerated simply because of price.

22 VICE CHAIRMAN OKUN: Okay, along that same
23 line I know that in some of the questions, I think
24 Commissioner Hillman at the end had asked you about
25 the JD Power, she'd also referenced Field and Stream.

1 I guess I would like the panel to comment on a couple
2 of things.

3 One is, if I look through the Respondents'
4 exhibits there's a fair amount of material from these
5 magazines that at least illustrate to me that there
6 was a debate going on out there. That if you're a
7 dealer, you are talking to your customers of, I'm not
8 saying they weren't two-stroke versus four-stroke
9 competing, but there was a debate out there about what
10 is a superior engine, and that for some, for a bass
11 fisherman who wanted a fast two-stroke, it was still
12 probably good; four-stroke brought some other
13 advantages.

14 I'm trying to understand what was going on
15 in the marketplace, again, relating to this period
16 after OMC's bankruptcy when Yamaha is in the market,
17 and I've heard about the price competition, but I also
18 understand that during that period you're coming off
19 the problems with Optimax which you've talked about,
20 the four-stroke, your Verado was not in existence yet,
21 and I'm just trying to get a sense from the folks who
22 are buying the boats out there, did they see this as a
23 real debate, that Mercury was not seen as offering --
24 I mean if you were going to go with a Mercury you
25 stayed with Mercury. But if you were debating the

1 two, there were reasons, non-price reasons to choose a
2 Yamaha at this time in the market.

3 I know most of you stayed with Mercury so
4 it's a hard question to ask, but maybe for you, Mr.
5 Dempsey and Mr. Wolff for post-hearing, to look at the
6 data we have on the record.

7 But if anyone wants to comment on it, a very
8 long question. Just the debate that was going on. In
9 other words, is it real in your minds that there is a
10 debate out there about what was the better technology
11 during this period of investigation? For the OEMs or
12 for the dealers.

13 MR. RENKEN: Vice Chairman, Ed Renken.

14 I would say there is a debate out there.
15 I'm not sure how informed the debate is on the
16 consumer level.

17 VICE CHAIRMAN OKUN: Does it matter, I
18 understand why you don't think the car dealer is a
19 good analogy. I've heard those comments.

20 But it struck me that this could be a market
21 where people pick up this magazine and someone's
22 saying this is the better one, and they come into
23 their dealer and say hey, I heard for this that I
24 ought to pick a Mercury, or I ought to pick this
25 Yamaha. The perception is important here in terms of

1 what dealers are then requesting in these packages.

2 I didn't mean to interrupt you, but just --

3 MR. RENKEN: I would agree with you on that.

4 I am fond of saying perception is reality in sales.

5 What the consumer perceives to be true for all intents

6 and purposes has to be true to him until you can

7 convince him otherwise.

8 But I think the biggest way the consumer is
9 persuaded that his perception is wrong, is price.

10 Price at the end determines whether or not what he

11 came in -- I've seen it a hundred times. A customer

12 will come in and say I've got to have this boat with

13 this brand motor on it or this type of technology

14 motor on it. When you start to talk to him and you

15 start talking about price and his payments are 15, 20,

16 25, 30 more a month different, then all of a sudden

17 that demanding tone dies down and he begins to accept,

18 well maybe this technology is as good as this other

19 one.

20 You're right. Price to me starts to change

21 all of that.

22 VICE CHAIRMAN OKUN: Mr. Wolf? You had your

23 hand up, did you want to comment?

24 MR. WOLF: Andy Wolf.

25 In our fishing market we found that the bass

1 fisherman and the wall-eye fisherman are two different
2 type of users. The bass fisherman we found in our
3 area tended to do with the carbureted, less expensive
4 engine than the wall-eye fisherman. The wall-eye
5 fishermen tend to go out in bigger water, they travel
6 real far in rough conditions, they go out in bigger
7 boats that handle the water better, but they also
8 travel a long way and they need fuel economy. So for
9 them, they don't have as much of a choice to buy the
10 less expensive engine if they're fishing
11 competitively. So they buy the Optimax because they
12 need the fuel economy to get to where they're going
13 and coming back.

14 But if they were given an even platform
15 where they had choices of different engines, of having
16 that fuel economy, they would then probably choose
17 price if one had a definite price advantage over the
18 other, as long as they were all acceptable, brand-name
19 products.

20 VICE CHAIRMAN OKUN: Okay. Any other
21 comments? My time's getting ready to expire, but Mr.
22 Mackey?

23 MR. MACKEY: Commissioner, thank you.
24 Patrick Mackey.

25 Just to put it in perspective, the debate on

1 direct injected versus four-stroke still goes on to
2 this day but it's always apples and oranges that are
3 comparing and people are trying to get one shoe to fit
4 all sizes.

5 The reality, when I look at it from my
6 perspective, when I roll up all of the voice of the
7 customer that I'm getting from dealers and builders, I
8 need to make decisions about where I'm going to spend
9 my precious research and development dollars.

10 While we were investing a lot of money on
11 four-stroke, high horsepower technology, at the same
12 time I was reinvesting in the Optimax technology and I
13 brought out three derivations of the Optimax in '03
14 and then I bring out the four-stroke in '04, '05. So
15 I need to have all of the technologies available
16 because that's what's required in the marketplace.

17 VICE CHAIRMAN OKUN: I appreciate those
18 comments from all of you. Thank you.

19 CHAIRMAN KOPLAN: Thank you, Vice Chairman.
20 Commissioner Miller?

21 COMMISSIONER MILLER: Let me just ask if
22 there is anybody else who wants to respond to this
23 question or add any comments in response to the Vice
24 Chairman's question because frankly it's the one area
25 that I would like to hear more discussion as well, and

1 I sort of had some questions.

2 Mr. Wilson?

3 MR. WILSON: Ron Wilson.

4 A lot of times the customer doesn't even get
5 a chance to run this equipment. Unlike the car
6 business where they go into a car lot and you always
7 go on a demo ride, there are very few boat dealers
8 that have a lake out their back door. So it really
9 relies on what the dealer kind of tells the customer
10 relative values are.

11 So when you look at both those product
12 groups, they're very very close. When you then
13 install the price equation, guess what happened to the
14 perceived value? If you shrink the dollars the value
15 goes up, right? I mean that's the laws of business
16 balance.

17 So when you've got relative product, good
18 product that's close but you shrink the dollars on one
19 side it's a no-brainer. That's why on our decision,
20 as tough as it was, we had to make a decision. Boy,
21 you get into a \$1,000, \$1,200 price stratification on
22 the same size both with the same equipment, with good
23 product which one is the consumer going to choose?

24 COMMISSIONER MILLER: But Mr. Wilson,
25 actually I was going to ask you this question because

1 you said your Pontoon boats are, if my notes are
2 correct, you said 75 percent of them you sell with a
3 four-stroke engine and 25 with the two-stroke DI, the
4 direct injection, I assume. But then on your fishing
5 boats you sell the Optimax, the two-stroke.

6 Why on your Pontoons do you sell so many
7 more four-stroke?

8 MR. WILSON: Ron Wilson.

9 Great question and we haven't figured this
10 one out yet either. A lot of it is consumer demand.
11 They're coming in the doors for the first time in a
12 long time really excited about some new stuff, and
13 it's four-stroke technology, and wherever they go in
14 anyone's boat dealership, that seems to be the
15 resounding theme. Clean water. Let's go after that
16 clean water. So a lot of people are -- and of course
17 the four-stroke technology is very quiet. It's a joy
18 to have on the back of your boat. You guys might even
19 want to get into boating. That guy with the rowboat
20 paddle, we might want to get him converted.

21 But you get into the Optimax technology
22 which is often utilized in off-shore fishing boats, a
23 lot has to do with the fuel economy and weight.
24 Weight is not a good thing when you're out a long way
25 off-shore necessarily. If that was a good thing,

1 airplanes would weight a lot more.

2 So we try to strip the weight out and the
3 Optimax technology by design weighs less and gives us
4 better furl economy.

5 COMMISSIONER MILLER: Let me stick with Mr.
6 Wilson for one more minute. I'm trying to make sure
7 if I understand, I'm still not sure I know the
8 answers.

9 MR. WILSON: Do I sound like a sales person?

10 COMMISSIONER MILLER: Yeah, you do.

11 (Laughter).

12 COMMISSIONER MILLER: You got it, and I'm
13 not sold yet.

14 (Laughter).

15 COMMISSIONER MILLER: So your Pontoon boat
16 buyers are -- What you just said is that your Pontoon
17 boat buyers are sort of more subject to the whims of
18 whatever fancy technology can be sold to them but your
19 fishermen they know what they want because they have -
20 - That's kind of what I heard.

21 MR. WILSON: Actually, the four-stroke
22 technology is just wonderful technology. It's
23 vibration free, it's smokeless for the greatest
24 extent, noise is way, way down. When you're
25 entertaining that's a good thing.

1 COMMISSIONER MILLER: Now you got to what I
2 figured was going to be your answer. On the Pontoon
3 boat you want a quieter engine.

4 MR. WILSON: Conversely, depending --

5 COMMISSIONER MILLER: On a fishing boat they
6 like a lot of noise. That doesn't make much sense to
7 me either.

8 MR. WILSON: No, actually, they have the
9 opinion -- you hit the opinion thing real hard.
10 Conversely, we've sold Pontoon boats with two strokes.
11 It goes to again, best cost advantage. It depends on
12 the brand of the boat, it depends on what the consumer
13 really is going to use it. We have a lot of customers
14 wander in our showroom and they don't care -- you
15 could put trained gerbils on there and they'd buy it
16 as long as they got the brand of the boat with the
17 way-cool stereo and all the other stuff that they
18 really want.

19 COMMISSIONER MILLER: Let me try Mr.
20 Kimmell. You were wanting to make a comment.

21 MR. KIMMELL: I have. Particularly,
22 Commissioner, as your questions relate to larger
23 engines. We're really not talking about first-time
24 boat buyers. The vast preponderance of these sales
25 are to existing boat owners.

1 COMMISSIONER MILLER: The biggest.

2 MR. KIMMELL: Correct. Well, the majority
3 of sales in the business altogether is not generally
4 to first-time boat buyers. So the retail customer
5 already believes that he had some knowledge. He has a
6 satisfaction level plus or minus with what he's owned,
7 and he has a relationship with the dealer from whom he
8 purchased the prior product. All of those are
9 critical components in his being, if you will, steered
10 in one direction or the other.

11 But you asked a question about technology
12 and the question is in a vacuum, because what does the
13 technology mean and what does it do for how he wants
14 to use it? Quiet is always a good thing, but can he
15 get the performance he wants? Can he get the range he
16 wants? Is it the best application for the boat that
17 he thinks he can afford and wants to buy?

18 So the latest and the greatest may really be
19 a very bad idea for that customer. And that's the job
20 of the dealer, not to incent him to buy what is the
21 cheapest at all points in time but to buy what is best
22 suited for him. And if in fact his determination is
23 really primarily price dependent, then price is the
24 end all and the be all.

25 COMMISSIONER MILLER: That application

1 driven, that makes a lot of sense to me.

2 I want to say, our record does show that
3 there has been pretty strong growth in consumption of
4 the four-stroke engine since 2001. That's in our
5 record. I'd love to hear your comment, Mr. Herman.
6 Let me come back to you in a minute.

7 A moment ago I heard Mr. Mackey comment that
8 you thought the sales of the four-stroke had
9 accelerated solely because of price. That's what I'm
10 trying to understand. Have the sales of four-stroke
11 accelerated because there's some element related to
12 the application that desires those four-stroke, or as
13 you contend, is it because of price?

14 Then if it's because of price, let me ask
15 this follow-up question. Our price data only compares
16 the same technology to the same technology. Is that
17 right? I mean should we be comparing prices across
18 technologies rather than just within technology?

19 COMMISSIONER MILLER: Mr. Mackey?

20 MR. MACKEY: Patrick Mackey. In terms of
21 the growth in four-stroke, I will go back to the point
22 that four-strokes have been in the market for a long
23 time. Now, do our-strokes meet EPA regulations? Yes.
24 Are they quieter -- yes -- than traditional carbureted
25 two-strokes? They do have advantages, and they have

1 application-specific advantages, but they have always
2 had those advantages and application-specific
3 advantages. The acceleration happened at a time when
4 OMC went out of business, and then there was fierce
5 competition to sign up OEMs, and that was a price
6 position from the middle of '01 right through up until
7 recent times. That price competition is there.

8 On your follow-up question, should you be
9 comparing cross-technologies, the point I would make
10 is that to build a four-stroke engine or a low-
11 emission engine, but to build a four-stroke engine, it
12 takes more parts, and it costs more money to build a
13 four-stroke engine. Therefore, one would assume that
14 a four-stroke engine going into the market that was
15 EPA compliant that costs significantly more to build
16 would actually be a higher price in the marketplace.

17 When you look at the introduction of four-
18 strokes over the last two to three years, you will
19 find that they have been introduced to the market --
20 with the exception of Mercury's Verado, you will find
21 that they have been introduced to the market at an
22 absolute price which is very comparable to the
23 existing two-stroke technology. That means that
24 people developing it are either subsidizing it, but
25 certainly there isn't a return on the investment or a

1 return on the effort going in. So I would put it to
2 you, it really is a price acceleration.

3 COMMISSIONER MILLER: Mr. Dempsey?

4 MR. DEMPSEY: Commissioner Miller, just to
5 follow up on that, I think, as we've said in our
6 brief, and unfortunately because the pricing data is
7 specific to technologies, it's hard to do that, but
8 looking at some specific examples of introductions of
9 new four-stroke technology and looking at what price
10 data there is, you can see that, in fact, there is
11 cross-technology price competition, and as Mr. Mackey
12 said, it's that coming in with the four-stroke price
13 at or below the DI price that has really accelerated
14 the sales of four-stroke.

15 COMMISSIONER MILLER: I appreciate your
16 answers. Thank you.

17 CHAIRMAN KOPLAN: Thank you, Commissioner.
18 I thought Mr. Herman had his hand up.

19 COMMISSIONER MILLER: Well, he did, and I
20 ran out of time, but I would be happy if my colleagues
21 would like to hear a comment from him because I would
22 as well. Mr. Herman?

23 MR. HERMAN: Thank you very much,
24 Commissioner Miller. Gene Herman here.

25 You asked a question about why so many

1 pontoon boats have four-strokes? I actually use a
2 boat. I duck hunt, and I fish. I'm toying with the
3 idea of getting a pontoon boat. If you get a pontoon
4 boat, you put a four-stroke on it because they are
5 quiet, there is no oil smell, and they are heavy, and
6 they don't shoot out of the hole, but you don't race
7 with pontoon boats; they call them party barges.

8 Now, I duck hunt and fish, and there I have
9 two-stroke. When you get up in the morning and go
10 fishing, you want to be the first one out there. You
11 don't want to be the last one in your party barge, so
12 you want to go fast. Okay? When I go out to the
13 marsh where I hunt, you don't want to fool around
14 there either. You get there in the dark, and you
15 leave when it's almost dark, so you need to get back
16 and so forth, so you go fairly fast. But really, if
17 you're going to buy a four-stroke, it's for a pontoon
18 boat.

19 That's basically what it is, or if you're
20 not, let's say, in a hurry to go anyplace because they
21 are slow, and when you kick them in, it takes a long
22 time to get the boat up on plane, so if you're in
23 shallow water, that means you're bouncing along the
24 rocks or the bottom for a while.

25 With a two-stroke, when you put the throttle

1 down, it jumps almost out of the water like a duck,
2 and it goes fast, so that's the reason, if you have a
3 pontoon boat, you generally put a four-stroke on it.
4 It's nice for the family.

5 COMMISSIONER MILLER: Thank you. I
6 appreciate that.

7 CHAIRMAN KOPLAN: Thank you, Commissioner.
8 Let me see if there is another round from the dais.

9 COMMISSIONER HILLMAN: I just have one for
10 the record. Mr. Dempsey, you put on the record this
11 issue of the various recalls and other things
12 connected to Yamaha and Honda, and as I did in terms
13 of asking you to help us put this in some sort of
14 context in terms of quantity, how significant are
15 these, I asked that with respect to your Optimax
16 three-liter engine. I would ask you if you have any
17 data to put that on the record as well to help me
18 understand whether this is a big deal, or this is just
19 one little niche product for two days that there might
20 have been an issue over, but I need some context in
21 terms of how to read these other data with respect to
22 Yamaha and Honda.

23 MR. DEMPSEY: Commissioner Hillman, Kevin
24 Dempsey. We would be happy to go into that further
25 and provide what data we can get. I think, as you see

1 from the timeline, that problem with the Yamaha HPDI
2 was over an extended period of time, but we'll try to
3 get more data on that.

4 COMMISSIONER HILLMAN: And if there is any
5 way to quantify that effect, that would be very
6 helpful.

7 And with that, Mr. Chairman, given the
8 lateness of the hour and the emptiness of my stomach,
9 I have no further questions.

10 CHAIRMAN KOPLAN: Thank you, Commissioner.
11 Commissioner Lane?

12 COMMISSIONER LANE: I just have two
13 questions, and I want to pretend that I am a consumer,
14 and I'm going to buy a boat. So if I go into a
15 dealer, am I going to be able to find two boats that
16 are the same size and have two different engines, one
17 a domestic engine, one a Japanese engine, the same
18 size, and then I just have to choose between the two?
19 Is that an option that I would find if I walked into a
20 dealer: same size boat, same size engine, just
21 different brand engine?

22 MR. WOLF: Andy Wolf. Yes. Generally, if
23 you go into most dealerships, you'll find a pretty
24 broad selection of product, and what a dealer will do
25 -- let's say he has 30 boats in his showroom. He may

1 have as many of the models available that he can put
2 into his showroom with an engine on it.

3 If you happen to be coming in looking for a
4 certain boat that has a Mercury on it, but you would
5 prefer a Yamaha, the dealer can quote you the price of
6 the Yamaha in lieu of the price of the Mercury or the
7 Honda or the Bombardier, whichever you prefer, if they
8 handle all of those lines. If you find that that
9 dealer does not handle those lines, you can go to
10 another dealer who will have similar products, --
11 length, width, person capacity, performance -- and if
12 they happen to handle that other brand of engines, you
13 can then get a competitive price from them.

14 COMMISSIONER LANE: Okay. Let's pretend
15 that I walk into the dealership, and there are two
16 boats there the same size, and one has a Mercury
17 engine on it, and the other has a Yamaha engine the
18 same size. Now, you, as the dealer, what are you
19 going to tell me as to which boat I should buy?

20 MR. WOLF: Are you asking which engine
21 should you buy?

22 COMMISSIONER LANE: No. I'm asking you
23 which boat. Okay. There are two boats. They are the
24 same size. One has a Yamaha; one has a Mercury.

25 MR. WOLF: I would have to find out -- they

1 may be both 16-foot boats, but they may have totally
2 different interiors designed for different
3 applications, so I would have to find out from you
4 exactly what is the reason that you want to buy a boat
5 -- what do you want it to do, and what are you going
6 to do with it? -- before I can give you
7 recommendations. It's sort of like checking a patient
8 to find out what the problem is before we can
9 recommend a cure.

10 COMMISSIONER LANE: Okay. So it would be
11 unlikely that there would be two boats with the same
12 interior and just have two different engines, a Yamaha
13 and a Mercury engine, the same size.

14 MR. WOLF: Well, let's say that you decided
15 that you like the interior features of one boat, but
16 you wanted it with a different engine. Then I would
17 have to ask you the question as to, are you going to
18 use this boat for what application? Are you going to
19 be taking a lot of people with you? Are you going to
20 be in it by yourself or maybe with one other person?
21 Are you using it for some water sports as well as just
22 fishing? So the applications make a big difference.

23 Are you going to use it for trolling a lot
24 because then you might want to decide whether going
25 with a four-stroke, which doesn't smoke and is a

1 little bit quieter, or going with a two-stroke that
2 gives you a better performance so that you can get
3 that boat up on top and get the skier out and get to
4 your fishing spot and so forth?

5 And then it comes down to price. Is this
6 engine going to cost more or this engine going to cost
7 less?

8 COMMISSIONER LANE: Okay. I guess what I'm
9 asking you is, if I come in and see two boats, the
10 same size, the same interior, and one has a Yamaha
11 engine, and one has a Mercury engine, the same size,
12 which boat are you going to try to steer me toward?

13 MR. WOLF: If you have no particular
14 preference, I will steer you to the boat that I can
15 make more money on.

16 (Laughter.)

17 COMMISSIONER LANE: And which one would that
18 be?

19 MR. WOLF: It depends on the buy that we
20 made at the time.

21 COMMISSIONER LANE: You know, if I keep
22 asking you, I'm going to get an answer. Will it be
23 the Yamaha or the Mercury? We're not having lunch
24 until I get this answer.

25 (Laughter.)

1 MR. WOLF: Okay. If I am a larger Mercury
2 dealer -- all of the engine companies have what's
3 called a registration type of rebate, and I buy a few
4 more Mercurys than Yamaha, and I maybe get 2
5 percentage back on the Yamaha and 4 percent back on
6 the Mercury, I will probably try to sell you the
7 Mercury because I will make 2 percent more on that
8 engine. All things being equal, I have to try to make
9 more money where I can.

10 COMMISSIONER LANE: Okay. Thank you. Does
11 anybody else want to add to that? Okay. Thank you.
12 That's all the questions I have, Mr. Chairman.

13 CHAIRMAN KOPLAN: Thank you, Commissioner
14 Lane. It's nice to have you confirmed.

15 Commissioner Pearson?

16 COMMISSIONER PEARSON: Mr. Chairman, I would
17 just like to clarify for Andy Wolf that part of the
18 information that Commissioner Lane didn't provide is
19 that my observation is that she has a preference for
20 rather high-performance engines in general, and that
21 might have guided your answer to her.

22 The only other thing I would ask is, do we
23 need to consider expanding the scope of the
24 investigation to include trained gerbils? With that,
25 I have no further questions.

1 (Laughter.)

2 CHAIRMAN KOPLAN: I don't think I can follow
3 up on that. I have nothing further. Let me see if
4 there are any other questions from the dais. If not,
5 does staff have questions, Ms. Mazur, of this panel
6 before we release them?

7 MS. MAZUR: Mr. Chairman, staff has no
8 questions.

9 CHAIRMAN KOPLAN: Thank you.

10 Mr. Barringer, do Respondents have any
11 questions of the panel before they are released?
12 Could you turn your microphone on for that?

13 MR. BARRINGER: No, Mr. Chairman. Thank
14 you.

15 CHAIRMAN KOPLAN: Thank you.

16 If so, I think it's probably time for us to
17 break for lunch. I would remind you that the room is
18 not secure, so any confidential business information
19 that you all have with you, you need to take until you
20 come back, and with that, let me thank all of you.
21 The lateness of the hour, I think, is demonstrative of
22 the quality of the panel that was before us this
23 morning and this afternoon, and I would expect we will
24 go quite late when we come back. We'll take a break
25 now until 3 o'clock.

1 (Whereupon, at 2:05 p.m., a luncheon recess
2 was taken.)
3 //
4 //

1 I'm Kris Carroll, the president of Grady White Boats,
2 a builder of high-end, saltwater fishing boats located
3 in North Carolina. I'm appearing today in opposition
4 to the attempt by Mercury Marine to impose antidumping
5 duties on imports of outboard engines from Japan.

6 Grady White has consistently been rated
7 number one in customer satisfaction in our market
8 segment by J.D. Powers & Associates. We are the
9 premier family saltwater fishing brand. All of our
10 boats are powered by outboard engines. Beginning with
11 the 2003 model year, Grady White decided to package
12 our boats exclusively with Yamaha engines or to sell
13 boats prerigged for Yamaha engines. We no longer
14 offer the option of any engine or rigging other than
15 Yamaha. Ninety-eight percent of all Grady White boats
16 sold today will have a Yamaha engine on them.

17 Grady White used to prerig for multiple
18 brands, but we did not package. We did not want to
19 force our choice of engine on the customer. However,
20 in the model year 2003, we went ahead and committed to
21 packaging and prerigging our boats for Yamaha engines
22 only. We had become more concerned with customers
23 having a poor experience with the power on their boat
24 than we were concerned about dictating the customer's
25 choice of engine. No matter how good the boat, if the

1 customer has a bad experience with the engine, it will
2 ultimately affect the reputation of the boat.

3 Our choice to power our boats with Yamaha
4 engines had nothing to do with price. We are far more
5 concerned with customer satisfaction than adding a few
6 dollars to the bottom line by getting a better engine
7 deal from another supplier. Our boats have top-of-
8 the-line features, and we have to have an engine which
9 is also top of the line.

10 Our customer-satisfaction survey showed very
11 clearly that when powered with the Yamaha,
12 satisfaction was significantly than when powered with
13 other engines. Yamaha was the only logical choice for
14 this reason alone. However, there was an additional
15 reason: The domestic engine suppliers did not have
16 the four-stroke engines that our customers prefer.

17 The clear trend in our market has been to
18 replace both conventional two-stroke carbureted and
19 two-stroke, direct-injection engines whenever a four-
20 stroke in the same horsepower category became
21 available. Thus, we were interested in a supplier
22 that was moving quickly into high-horsepower engines
23 with four-stroke engines. Again, this was Yamaha.

24 Frankly, we don't know what prices
25 Bombardier or Mercury would have offered Grady White.

1 We believe it would have been a feather in Mercury or
2 Bombardier's cap to power our premier saltwater boat
3 line. Therefore, we believe they would be willing to
4 give us a very good price, probably much better than
5 the Yamaha price. However, price is meaningless
6 unless the supplier has the product the customer wants
7 and the reliability that our customers expect.
8 Neither Mercury nor Bombardier have had the products
9 that are essential to maintaining the reputation of
10 our boats. Again, we don't even try to get prices
11 from Bombardier and Mercury.

12 Ninety-nine percent of our boats are powered
13 by four-stroke engines. Ninety-eight percent have
14 four-stroke engines of 150 horsepower or greater. We
15 purchase almost 2,500 engines per year. Over most of
16 the period of investigation, neither Mercury nor
17 Bombardier has had U.S.-produced engines in these
18 categories.

19 Mercury finally introduced a large four-
20 stroke in July of 2004. Last spring, we expressed
21 interest in testing our boats with their new engines,
22 and Mercury has yet been unable to supply us with any.
23 Obviously, we would not buy engines from Mercury or
24 Bombardier if they don't have the engines our
25 customers want. Thank you for your time.

1 MR. DEAL: Hello. My name is Scott Deal. I
2 am the president and owner of Maverick Boat Company.
3 We produce saltwater fishing boats, approximately
4 1,500 a year, all targeted at the high end of the
5 market. While we've carried engine brands other than
6 Yamaha in the past, in recent years we have elected to
7 carry Yamaha engines exclusively. My company is in
8 the business of giving customers what they want, and
9 in our market, consumer demand is moving
10 overwhelmingly to Yamaha's four-stroke technology.

11 For instance, we sell engines from 40 to 300
12 horsepower, and over the past several years, we have
13 found that whenever Yamaha has introduced a four-
14 stroke product in the same horsepower as an existing
15 two-stroke or two-stroke, direct-injection engine, the
16 four-stroke has, within a short period of time, taken
17 the place of the two-stroke engine.

18 A good example of this would be that the F-
19 150, the four-stroke Yamaha 150, already represents
20 approximately 30 percent of our engine unit volume
21 despite the fact that it's a relatively new product.
22 Therefore, a major reason that we buy exclusively from
23 Yamaha is that neither of the domestic producers
24 offers anything close to the range of four-stroke
25 product offerings that Yamaha does.

1 Do we buy because of price? No. In fact,
2 we don't even seek pricing from other suppliers.
3 Across our product line, the cost of the engine is
4 about 30 percent of the cost of the boat-engine
5 package we sell. Furthermore, our boats sell at a
6 premium price above the competition's. For example,
7 our Pathfinder brand bay boat powered by Yamaha sells
8 at nearly a 40-percent premium above a similar Sea Fox
9 brand powered by a Mercury Optimax. Our customers are
10 very conscious about quality and are, by and large,
11 not overly price sensitive. They simply want the
12 best, and that's what we give them.

13 Our boats are very weight sensitive, and
14 when four-stroke engines were first introduced, I was
15 an extremely skeptical builder. However, over time,
16 not only has Yamaha been able to bring down the
17 weight-to-power ratios; it has also been able to
18 improve the performance in terms of the acceleration
19 and top speed. The improved performance, combined
20 with four-stroke reputation for technology and being
21 really quiet and being easy to operate, has swung the
22 market heavily towards four-stroke engines.

23 Let me close by saying that the strong
24 performance for four-stroke engines and Yamaha, in
25 particular, was illustrated to me during the 2002 year

1 model year when we had an availability problem with
2 our Yamaha four-stroke engines. We were concerned
3 that our dealers were not getting timely delivery of
4 our Yamaha-powered product and might want us to supply
5 alternative brands or engine technology, which was in
6 abundant supply.

7 However, when we surveyed our dealers, only
8 10 percent expressed any desire to have boats powered
9 by an alternative technology, and of those that did,
10 only 10 percent of them wanted to shift to a non-
11 Yamaha product. This is a 99-percent acceptance and
12 has nothing to do with price. Thank you. I look
13 forward to your questions.

14 MS. MAXWELL: Good afternoon. I'm Joan
15 Maxwell, president of Regulator Marine, a relatively
16 small builder of saltwater sport fishing boats.

17 Regulator first started building boats in
18 1988 and today builds several hundred boats per year
19 which are positioned at the upper end of the market.
20 Until 1995, Regulator did not package boats. Dealers
21 could power our boats with any engines they chose.
22 Frankly, when we decided to package our boats with
23 engines, we did not consider any engine manufacturer
24 other than Yamaha. Our main competitor powered with
25 Yamaha. Our most successful dealers were also Yamaha

1 dealers, and Yamaha had the only saltwater series
2 engines available.

3 Yamaha engines had a reputation for
4 reliability, possibly the most important factor in
5 choosing an engine for use in saltwater. Perhaps the
6 worst experience in boating is to have an engine break
7 down in the middle of the ocean. In his mind, the
8 customer does not separate the engine from the boat.
9 When there is an engine failure, it is his Regulator
10 boat that is leaving him stranded offshore.

11 Our decision to partner with Yamaha has
12 proved to be a good one. Our unit volume sales have
13 increased almost immediately and have increased
14 fivefold since the beginning of our packaging in 1995.
15 Yamaha proved to be the right choice for us not only
16 because of reliability and reputation but because as
17 the market, in recent years, has shifted to four-
18 strokes, Yamaha has provided the technology and
19 horsepower that our customers demand.

20 Approximately 90 percent of the buyers of
21 Regulator boats have previously owned another boat.
22 Ours are experienced and knowledgeable customers.
23 Overwhelmingly, they want four-stroke engines, to the
24 point that they often will accept a lower-horsepower
25 four-stroke rather than a higher-horsepower, two-

1 stroke engine.

2 Regulator is not unique in that our
3 objective is to grow our business and to ensure the
4 reputation of our boats. Our customers don't buy our
5 boats on the basis of price. If they did, they
6 wouldn't buy them. Our customers want the best and
7 most sophisticated products.

8 While they may get slightly better
9 performance in a direct-injection engine in terms of
10 tenths of seconds to plane or a difference in top-end
11 speed which is almost negligible, what they really
12 value is the four-stroke technology: reliable, easy-
13 to-use engines, engines that are quiet and don't burn
14 oil, and engines that match the quality of the boat.

15 We have not even considered another engine
16 brand because our customers have been satisfied with
17 Yamaha, and by partnering with Yamaha, we have been
18 able to grow our business. As the market for higher-
19 horsepower engines has moved to four-stroke engines,
20 Yamaha has been ahead of the domestic competition in
21 moving into and providing more choices in this
22 segment. Thank you.

23 MR. DEPUTY: Good afternoon. I'm Bob
24 Deputy, president of Godfrey Marine, a family-owned
25 company that has been manufacturing boats for over 45

1 years --

2 CHAIRMAN KOPLAN: Could you move that
3 microphone a little closer to you, sir?

4 MR. DEPUTY: -- for over 45 years, primarily
5 powered by outboard motors.

6 We are one of the largest independent
7 builders of recreational boats in the United States,
8 producing over 14,000 boats per year. We employ over
9 1,200 people in eight states, with manufacturing
10 facilities in Indiana, Illinois, and Alabama. We
11 currently package our boats with engines from Mercury,
12 BRP, Honda, Suzuki, and Yamaha. We let the dealer and
13 retail customer tell us which engine brand they
14 prefer, and dealers and consumers have increasingly
15 demanded that we supply them with four-stroke,
16 outboard motors.

17 In the early 1990's, we started packaging
18 our boats with Yamaha motors when none of the other
19 outboard manufacturers would sell engines to us.
20 After our success with Yamaha, Mercury asked us to
21 package their engines with our boats, as did OMC.
22 Prior to the introduction of four-stroke engines, our
23 business was split about equally between these three
24 companies.

25 In December 2000, the bankruptcy of OMC left

1 a shortage of U.S.-produced engines. At the time,
2 many OMC dealers were already authorized to sell and
3 service a competing brand of Japanese engine. These
4 dealers, for the most part, increased their purchases
5 of Japanese-manufactured engines in 2001. In
6 addition, a shortage of key, four-stroke engines from
7 Mercury developed in 2001 due to their production
8 constraints of 75-, 90-, and 115-horsepower, four-
9 stroke engines produced from powerheads supplied by
10 Yamaha.

11 Because of these events and dealer business
12 decisions, the percentage of U.S.-manufactured
13 outboard engines we sold dropped from 47 percent in
14 2000, the year prior to the OMC bankruptcy, to 29
15 percent in 2001, the year following the OMC
16 bankruptcy. Consumer demand for four-stroke engines
17 grew rapidly, and our purchases of four-stroke engines
18 increased from 46 percent of our units in 2001 to 81
19 percent of our units' volume in the first nine months
20 of 2004.

21 In the late nineties, Mercury and OMC, now
22 BRP, chose not to develop four-stroke technology.
23 Rather, they enhanced their two-stroke engines with
24 high-pressure direct-injection. The new, two-stroke,
25 high-technology engines did not achieve the expected

1 consumer acceptance due to a poor-quality and
2 reliability reputation in the marketplace.
3 Eventually, Mercury moved into four-stroke engine
4 manufacturing by co-building four-stroke engines with
5 Yamaha. The Mercury-Yamaha engine was, and is, a fine
6 product; however, Mercury does not offer a full lineup
7 of four-stroke engines comparable to Yamaha's.

8 By way of illustration, in model year 2005,
9 Godfrey will purchase over 1,500, 150-horsepower,
10 four-stroke engines from Yamaha and Honda. Mercury
11 does not currently offer a four-stroke engine in this
12 very popular horsepower. In fact, Mercury does not
13 produce any of the popular 135-, 140-, and 150-
14 horsepower, four-stroke engines that are available
15 from Yamaha, Honda, and Suzuki.

16 Our engine-purchase decisions are driven
17 primarily by the orders we receive from dealers, not
18 by the price associated with an engine brand or model.
19 Our dealers have found that the four-stroke engine
20 best meets the demands of their individual markets and
21 have virtually replaced the demand for two-stroke
22 engines. We sell four-stroke models at prices that
23 are, in many cases, more expensive than the same
24 horsepower, direct-injection, two-stroke engines, and
25 the four-stroke engines consistently outsell the

1 direct-injection engines, irrespective of price.

2 Finally, as regards price, I would note that
3 the prices from Bombardier have generally been lower
4 than prices from any of the other suppliers. This
5 includes the prices of four-stroke engines imported by
6 Bombardier from Suzuki in Japan. This may be because
7 Bombardier needs EPA credits from sales of four-stroke
8 engines in order to be able to sell its own two-stroke
9 engines.

10 With respect to Mercury and Yamaha prices,
11 the differences have been so small as to be
12 insignificant to the consumers. Over the period of
13 investigation, depending on specific engines and model
14 years, Yamaha has been higher than Mercury in some
15 cases and lower in others, but the differences have
16 always be small. In regards to product breadth,
17 neither Mercury nor BRP have yet solved their product
18 problems. Mercury has introduced several new, high-
19 horsepower, four-stroke engines in the 200-horsepower-
20 plus category. However, for our dealers, this is a
21 horsepower range which does not meet many of our
22 company's needs.

23 Similarly, BRP has concentrated its efforts
24 on direct-injection technology rather than developing
25 a full line of four-stroke engines. While their newly

1 introduced, E-Tec engines have established BRP's
2 credibility in the two-stroke, direct-injection
3 market, they are not currently a widely accepted
4 alternative for the four-stroke engines that the
5 consumer is increasingly demanding.

6 In Mercury's case, public filings will show
7 that former corporate management embarked on a more
8 than \$800 million buying binge of nonmarine-related
9 businesses in the mid-nineties instead of making
10 adequate R&D investments in their core engine
11 business. Current corporate management started in
12 2000 to divest the previous nonmarine acquisitions,
13 and in recent years has increased investments in
14 Brunswick's core engine business, but they have yet to
15 produce a lineup of four-stroke products which covers
16 the full range of horsepower offerings of the Japanese
17 manufacturers. They are still dependent on Yamaha for
18 either powerheads or complete engines for four-stroke
19 engines of 75 horsepower or more.

20 BRP has indicated that the OMC products they
21 acquired had serious design problems, and BRP decided
22 to develop the E-Tec series of direct-injection two-
23 strokes rather than rehabilitate many of the former
24 OMC products. Based on our experience, the
25 marketplace has not widely accepted these new

1 offerings. In my opinion, the loss of market share by
2 BRP to the Japanese manufacturers is primarily
3 attributable to problems associated with their past
4 reputation and the present inadequate product
5 offerings available to the dealers.

6 As the president of a family-owned business
7 with over 1,200 employees, I am responsible for
8 protecting our company's future and the future of our
9 employees. The engine price increases that have
10 already occurred and will follow from the imposition
11 of tariffs on Japanese manufacturers will result in
12 significantly higher prices for our packaged boat
13 products.

14 Ultimately, higher engine prices will lead
15 to fewer boats sold, fewer jobs in our industry, and
16 financial hardship for our dealers and the
17 approximately 17 million consumers who own
18 recreational boats in the United States. While the
19 imposition of duties on engines might help Mercury and
20 BRP, it will cause significant harm to the balance of
21 our industry and must be rejected. Thank you very
22 much.

23 MR. JACOBS: Good afternoon. My name is
24 Irwin Jacobs, and I'm chairman and chief executive
25 officer of Genmar Holdings, second in size only to

1 Brunswick in being the largest pleasure boat
2 manufacturer in the world. Genmar is made up of 15
3 different boat brands, eight manufacturing campuses,
4 all in the United States, and with approximately 5,000
5 employees.

6 I'm here today to speak in opposition to the
7 antidumping duties being sought by Brunswick and
8 Mercury on Japanese outboard engines. I can tell you
9 that I personally have probably had more dealings with
10 Brunswick and Mercury over my 27 years in the boating
11 business than anyone else in the industry. Therefore,
12 I feel more than qualified to discuss in great detail
13 what is going on in the industry and why Mercury and
14 Bombardier are experiencing problems.

15 Let me address the allegations underlying
16 this investigation, namely, low import prices, by
17 saying that Mercury's charge that the market share
18 gains by the Japanese are due to deflated prices or
19 dumping is absolutely untrue.

20 Let me go through Genmar's experience. I
21 will submit the specifics of our pricing for Mercury
22 and Bombardier in confidence for the record in the
23 Respondents' post-hearing submission. What I can say
24 publicly, and what will be demonstrated in the post-
25 hearing submission, is the following.

1 One, in the period immediately prior to the
2 OMC bankruptcy, the largest discounts Genmar received
3 were from Mercury. The difference was not one or two
4 percentage points greater than the discount we
5 received from Yamaha but substantially more. This was
6 true in model year 2000 and model year 2001.

7 Two, in model year 2002, we were operating
8 under a new \$500 million contract with Mercury, as
9 well as a new contract with Yamaha. Even before
10 taking into account the off-the-books incentives
11 provided by Mercury to Genmar, which I will discuss in
12 a second and which amounted to an additional minimum 8
13 to 10 percent discount, the Mercury discount was
14 larger than the Yamaha discount.

15 Three, because Mercury did not have product
16 to meet its contract commitments, a new contract was
17 negotiated with Mercury for model year 2003, and the
18 nominal discount was slightly below Yamaha's on the
19 surface. However, Genmar continued to get the off-
20 the-books incentives since Genmar never returned any
21 of the value provided by Mercury for the \$500 million
22 contract.

23 Four, in addition, in model year 2003,
24 Bombardier was providing Genmar with a larger discount
25 than Yamaha despite the fact that Genmar was buying

1 less than one-third as many engines from Bombardier as
2 from Yamaha.

3 Five, for model year 2004, Bombardier
4 increased its discounts to Genmar while Yamaha's
5 remained the same.

6 Six, in the current model year, 2005,
7 Bombardier has increased its discounts while Yamaha
8 has reduced its discounts because of lower volume at
9 Genmar, creating a significant gap.

10 As I stated in the preliminary determination
11 for the period 2000 to the present, Yamaha has never
12 been the lowest-priced product that Genmar purchases.

13 Let me turn now to the incentives and
14 discounts that Brunswick and Mercury have used to get
15 contracts and to hide pricing. In late 2001, Genmar
16 was in the process of selling our Hatteras yacht
17 division. Brunswick initially offered to purchase
18 Genmar's Hatteras yacht division for \$65 million.
19 Ultimately, Brunswick actually paid \$85 million in
20 cash plus a \$20-million, three-year earn-out. Genmar
21 received the \$20 million earn-out in the form of a
22 loan at the time of the closing that was ultimately
23 forgiven.

24 Why did Brunswick pay this higher price?
25 Well, it is not coincidence that the Hatteras deal

1 occurred simultaneous with the signing of a long-term,
2 engine-supply contract between Brunswick and Genmar.
3 During the negotiations, Brunswick made it very clear
4 that Genmar had to make a commitment to purchase
5 approximately \$500 million of engines from Mercury at
6 agreed-upon prices and discounts over a five-year
7 period in order for Brunswick to pay the price Genmar
8 wanted for Hatteras.

9 Both transactions ultimately closed on the
10 same day Brunswick publicly announced that they had
11 agreed to purchase Hatteras, and, in a separate
12 release, announced Mercury had received a \$500
13 million, five-year engine contract from Genmar.
14 Brunswick and Mercury were questioned by the industry
15 media if the engine contract had anything to do with
16 the Hatteras purchase.

17 They categorically denied one had anything
18 to do with the other. However, in less than one year,
19 it became clear that although Mercury contractually
20 agreed to deliver to Genmar quality engines, as well
21 as the more competitive, four-stroke-technology
22 engines necessary to compete in the boat business,
23 there was on way Mercury was, in the near or medium
24 term, going to be able to provide Genmar with the
25 products necessary for us to be competitive in the

1 marketplace.

2 The contract became null and void in less
3 than one year due to Mercury's inability to deliver
4 the necessary engine products Genmar was promised and
5 needed, particularly Mercury's lack of a complete new
6 lineup of four-stroke-technology engines.

7 During the Hatteras and Mercury engine
8 contract negotiations, Genmar was promised that
9 Mercury was going to launch a complete new line of
10 four-stroke engines sometime during the 2002 and 2003
11 model year. Mercury knew, as we openly discussed
12 during the engine contract negotiations, that it was
13 an absolute necessity that we received the four-
14 stroke-technology outboards in the time frame they
15 promised in order that Genmar be able to compete with
16 the well-accepted and growing market for Japanese
17 four-stroke engines.

18 What the ITC should find particularly
19 interesting and which surely contradicts all of
20 Brunswick and Mercury's public statements that
21 surround the Hatteras transaction is the letter
22 correspondences that went back and forth between Mr.
23 Buckley and myself from October 4, 2002, through
24 October 18, 2002. These letters also will be
25 submitted for the record.

1 In the October 17th letter, Mr. Buckley
2 said, and I quote, "The connection of the two
3 elements, the Hatteras purchase and the \$500 million
4 engine contract, was clear to everyone: me, Dusty,
5 Vicky, Pat, Denny, Hugh, Grant, Roger, and your ex-
6 general counsel. It is even in our board minutes and
7 well understood by all."

8 Obviously, by Brunswick's own admission in
9 writing, Genmar did, in fact, receive a very
10 substantial discount on the price of outboard engines
11 that was covered up and camouflaged through the tie-in
12 to purchase price of Hatteras. By our calculation, it
13 amounted to an additional 8-to-10-percent discount on
14 the original \$500 million engine contract signed in
15 2001. However, if you take into account the reduction
16 in the number of engines that Genmar ultimately will
17 buy from Mercury, the additional off-the-books
18 discount is more like 16 to 20 percent discount.

19 While I am not sure whether these tie-in
20 arrangements are legal under the U.S. antitrust laws,
21 clearly they are an important part of Mercury's engine
22 strategy and engine discounting. Because Brunswick
23 takes such great pains to hide the relationship
24 between these arrangements and pricing, I am quite
25 sure that they are not reflected in Genmar pricing

1 discounts reported to this Commission by Mercury.

2 I will be submitting two additional letters
3 related to hidden discounts by Mercury. The first is
4 dated July 26, 2002, from Dennis Sheller, vice
5 president of OEM sales at Mercury, to Grant Oppegaard,
6 president of Genmar. In the letter, Mercury agreed to
7 make a one-time bulk payment to Genmar for \$3,968,756
8 for, as they stated, "to cover unanticipated costs in
9 connection with Genmar's transition to Mercury Marine
10 products under the supply agreement dated October 23,
11 2001."

12 The letter, dated January 14, 2003, is also
13 from Mr. Sheller to Mr. Oppegaard and explains how
14 Mercury was attempting to hide and camouflage the
15 \$3,968,756 payment that he committed to in his July
16 26th letter. Mercury ultimately gave Genmar engines
17 for the \$3,968,000 payment. I would guess that the
18 value of these engines received from Mercury, which
19 amounted to an additional 6 percent discount to Genmar
20 in the model year 2002, didn't appear anywhere in
21 Mercury's engine discounts to Genmar as reported to
22 this Commission also.

23 Even before accounting off-the-books
24 payments above, Genmar was getting very low prices
25 from Mercury. That was not the problem with the

1 supply agreement. The problem was that Mercury had
2 basically no product in the large-horsepower, four-
3 stroke engines to compete with Yamaha's large-
4 horsepower, four-stroke engines, particularly at a
5 time when the demand for outboard engines was growing
6 faster for four-strokes and large-displacement four-
7 strokes than available supply.

8 Genmar couldn't meet its commitment to the
9 \$500 in Mercury engines over the period of the
10 contract if Mercury did not have the engines that were
11 promised. Mercury represented that it would have
12 several new four-stroke models in different horsepower
13 categories in the market in 2002 and 2003. None of
14 these four-strokes were available until September 2004
15 in very limited supplies. In addition, this was not
16 anything near a complete lineup of four-stroke engines
17 that had contractually been promised by Mr. Buckley
18 and Mercury for the past few years.

19 The fact is that the boat and engine market
20 moved to clean, four-stroke engines faster than
21 Mercury could adjust. We are now halfway through the
22 2005 model year, and Mercury still does not have the
23 complete lineup of four-stroke engines that Mr.
24 Buckley committed Mercury would be offering to their
25 engine customers in 2002 and 2003.

1 Ladies and gentlemen, what I have explained
2 to the ITC here today, I believe, is only a small part
3 of what I truly believe is an attempt to cover up by
4 Brunswick and Mercury to mislead this Commission into
5 believing they have been damaged by the Japanese
6 outboard engine builders for dumping engines at
7 inflated prices to the U.S. The simple fact is they
8 have been competitively beaten, not illegally beaten.
9 Thank you for the opportunity to be here and speak
10 with you, and I look forward to answering your
11 questions.

12 MR. GOWENS: Good afternoon. My name is Bob
13 Gowens, and I am here today to discuss my experience
14 in the outboard engine industry regarding the issues
15 and problems of OMC, the effect of those problems on
16 the industry, OMC's business, and the consumer, as
17 well as other related matters.

18 I have over 18 years' experience in the
19 boating industry. Of those, five years were spent at
20 Mercury Marine and two years at OMC as the president
21 of the Johnson-Evinrude division. I worked at Mercury
22 from 1993 to '98 during the time that increasingly
23 stringent EPA and carb regulations were first
24 introduced. Outboard engine manufacturers were
25 looking for alternatives to traditional two-stroke,

1 outboard engines.

2 Mercury management at the time focused its
3 internal development efforts on two-stroke, DI
4 technology rather than four-stroke. It was Mercury's
5 position that the mid-horsepower engines, 75 to 150
6 horsepower, would be shared by two-stroke DI and four-
7 stroke technology, and the low-horsepower engines
8 below 75 horsepower would eventually be dominated by
9 four-strokes.

10 Mercury relied on, and continues to rely on,
11 four-stroke, Japanese imports for those lower-
12 horsepower, four-stroke engines. Mercury's plan was
13 to spend its resources developing high-horsepower,
14 two-stroke, DI engines for the most profitable segment
15 of the market, those over 150 horsepower, and to rely
16 on four-stroke imports to complete its product line.

17 However, when the president of Mercury was
18 replaced in 1997, the new president believed this to
19 be a flawed strategy, that four-strokes were going to
20 be the dominant technology in the market, and that
21 Mercury had to develop its own four-stroke technology
22 in a matter of two to three years. In fact, it has
23 taken six years since then for Mercury to develop and
24 begin to market its own four-stroke products.

25 Nevertheless, the new Mercury president's

1 perception of the market was correct. The market was
2 moving to four-strokes, and the pace of this movement
3 during the next six years was extraordinary.
4 Unfortunately, the domestic outboard engine
5 manufacturers were not prepared to respond to this
6 major market shift. Mercury was already behind the
7 market in its four-stroke development when the new
8 Mercury president arrived, and it took Mercury roughly
9 six more years to bring their first four-stroke
10 product to market.

11 In addition, except for some very small,
12 portable outboards, OMC never developed its own four-
13 stroke engines, deciding instead to rely on imported
14 four-stroke engines from Suzuki, as has Bombardier.

15 Accordingly, the increased demand for four-
16 strokes has been largely filled by Japanese imports,
17 including imports by Mercury and Bombardier. I
18 believe the current reported success that the Mercury
19 Verado product is enjoying is testimony to the fact
20 that the U.S. consumer would have embraced four-
21 strokes from domestic manufacturers if they had met
22 their requirements and had been available.

23 In the fall of 1998, I became president of
24 the Johnson-Evinrude division of OMC. As president, I
25 had responsibility for global manufacturing, product

1 development and engineering, and North American sales,
2 marketing, and distribution of the Johnson and
3 Evinrude engines. As detailed in my written affidavit
4 attached to the prehearing brief, at the time I
5 assumed these responsibilities, OMC was facing three
6 problems of enormous proportions, only one of which
7 they had recognized.

8 First, a known problem was that
9 approximately 20 percent of its customers' two-stroke,
10 DI Ficht engines were failing, and OMC did not
11 understand the reasons for the failures.

12 Second, just prior to my arrival at OMC, OMC
13 had announced it was closing three plants and would
14 begin outsourcing critical parts manufactured in those
15 plants. It had been assumed that there were capable
16 and willing suppliers, primarily from the automotive
17 industry sector, to provide the components OMC needed.
18 This was not so.

19 Unfortunately, the outsourcing effort
20 created an even greater crisis. It was subsequently
21 discovered that many of the components to be
22 outsourced did not have accurate engineering drawings,
23 and there were few qualified vendors willing to supply
24 those parts with the quality required in the
25 quantities needed.

1 Third, we discovered that OMC's
2 manufacturing infrastructure was in a deplorable
3 state, and it was unable to produce the quantity of
4 engines needed at acceptable quality levels.

5 The convergence of those issues resulted in
6 enormous manufacturing, sales, and marketing problems
7 which had a disastrous effect on OMC's products,
8 customer allegiance, and the bottom line.

9 My first priority after arriving at OMC was
10 to address the issue of the two-stroke, DI Ficht
11 engines. We assembled a SWAT team representing the
12 best of the best at OMC; hired multiple, world-class,
13 outside engineering consultants; and examined the
14 failed engines to determine the root causes. I gave
15 the team a 90-day objective for developing an
16 effective solution, a seemingly impossible time frame
17 but one to which they rose.

18 After the engineers developed solutions to
19 the Ficht design problems, we soon discovered that OMC
20 was incapable of consistently manufacturing the Ficht
21 engines to the new engineering specifications in the
22 quantity and quality needed. OMC's manufacturing
23 infrastructure suffered from years of neglect, causing
24 inconsistent and unpredictable production and
25 resulting in unacceptable numbers of rejected

1 components and products.

2 Additionally, the supply of critical components
3 from the outsourcing vendors was unpredictable in
4 terms of quality and quantity.

5 As a result of this lack of consistency and
6 predictability, was established stringent inspection
7 and testing standards and procedures, both internally
8 and at the problem vendors. Because of these and
9 other steps we took, OMC lost at least 40,000 units of
10 production in 1999 and 2000 from its production
11 schedule. Boat builders and dealers suffered acute
12 shortages of supply, and our bottom line was seriously
13 affected due to decreased sales and increased warranty
14 and repair costs.

15 Let me now turn to how OMC's internal
16 problems affected the market. As these problems
17 escalated, OMC's customers and dealers felt it
18 necessary to seek alternatives. Even after we spent
19 millions of dollars redesigning the Ficht engines,
20 rebuilding our manufacturing infrastructure, and we
21 were able to offer, arguably, the best two-stroke
22 engine in the world, it was extremely difficult to
23 convince customers and dealers that our improvements
24 had solved the problems, and our customers had tired
25 of our inability to supply the demand that did exist.

1 It is my observation that the negative
2 attitudes that had developed towards Evinrude and
3 Johnson engines continued long after OMC's bankruptcy.
4 Based on my observations, there was a massive move
5 among Evinrude and Johnson dealers even before OMC's
6 bankruptcy to add a second brand, and more likely than
7 not, that brand was Yamaha.

8 Since Evinrude had had a strong presence in
9 the saltwater and coastal markets, it was logical for
10 the Evinrude and Johnson dealers to move to Yamaha, a
11 brand that had developed a strong reputation among
12 saltwater boaters for reliability and durability, and
13 perhaps more importantly, Yamaha fulfilled the need
14 for the rapidly expanding four-stroke market.

15 I never heard anyone say that they had added
16 a Yamaha dealership or had bought a Yamaha engine
17 because of price. They always said they did so
18 because of reliability, durability, concern about
19 resale values, and the market move to four-strokes.

20 In summary, the reasons for OMC's collapse
21 were many, but at the heart of the turmoil were its
22 internal engineering and manufacturing problems and
23 its difficulty with the outsourcing and plant
24 closures. Pricing of Japanese outboard engine
25 products did not cause OMC's collapse. Every working

1 day while at OMC, I drew up an action list of my top
2 issues to address. My lists were focused entirely on
3 OMC's internal problems and its relations with its
4 customers. Pricing of Japanese outboard engines never
5 made that list, nor was it ever the focus of the
6 problems facing OMC.

7 I am available to respond to your questions.
8 Thank you.

9 MR. ZIELINKSI: Good afternoon, Chairman
10 Koplán and members of the Commission. My name is Tony
11 Zielinski. I am president of American Marina Motor
12 Sports, the supercenter and boat dealership in
13 Shawano, Wisconsin.

14 American Marina has carried Honda and
15 Mercury outboards since 1992 and Evinrude and Johnson
16 outboards since 1997. This year, we expect to sell
17 approximately 1,000 outboards.

18 As a Wisconsin native and proud American, I
19 want to carry Wisconsin-made, Mercury engines and to
20 see Mercury prosper. However, Mercury has made
21 statements in this investigation that concern me, and
22 I want to provide the Commission my views on these
23 issues.

24 One issue concerns the early problems with
25 domestically produced, two-stroke, DI engines. My

1 dealership sold Mercury Optimax engines after they
2 were introduced, and these engines had a high failure
3 rate. My dealership was, therefore, very reluctant to
4 stock, sell, or promote the Optimax engines. These
5 reliability problems drove many customers to consider
6 alternative technology and manufacturers. Although my
7 dealership has worked hard to relaunch the Optimax,
8 given it has been improved a great deal in recent
9 model years, these efforts have been seriously
10 hampered by the Optimax's negative reputation.

11 My dealership also sold OMC's Ficht engines
12 before OMC's bankruptcy. Simply put, the Ficht was a
13 disaster. As a result, like many other dealers, I was
14 very reluctant to carry Johnson and Evinrude engines
15 after Bombardier bought OMC's engines operations.
16 However, the new E-Tec engine is much improved, and
17 this product should help Evinrude regain market share
18 lost due to the Ficht debacle and the OMC bankruptcy.
19 However, the E-Tec is relatively unknown to most
20 customers, and Bombardier must still overcome the
21 generally negative perception of two-stroke DI
22 engines.

23 Another issue concerns Mercury's claim that
24 market share gains by the Japanese producers following
25 OMC's bankruptcy were not due to a lack of domestic

1 supply but aggressive pricing. In my experience,
2 Mercury did not have engines available to fill the
3 void created by the OMC bankruptcy.

4 First, in the summer of 2001, Mercury
5 temporarily stopped production of the 200- and 225-
6 horsepower Optimax engines to correct reliability
7 issues. Second, in 2001, Mercury recalled its 30-,
8 40-, 50-, and 60-horsepower four-strokes due to a
9 rocker-arm failure, severely limiting the supply of
10 these engines. Because of product shortages and
11 reliability concerns, many of my customers decided to
12 consider alternative technology and manufacturers such
13 as Honda. These factors did not involve price
14 competition. Honda was, and continues to be, a much
15 more expensive alternative.

16 Other issues concern the enormous increase
17 in customer demand for four-strokes. Although there
18 are some limited cases where four-strokes are not
19 ideal, most of my freshwater customers want four-
20 strokes for the easy-starting, smooth-running, quiet,
21 and reliable nature of the technology.

22 Finally, I have been surprised by the
23 investigation of alleged injury to Mercury since it is
24 well known that Mercury benefits significantly from
25 its imports of complete four-stroke engines and

1 powerheads from Japan. This is best evidenced by the
2 litigation between Mercury and Yamaha in my home state
3 of Wisconsin, in which Mercury has claimed that it
4 would be devastated, irreparably injured, if it could
5 not continue to import Japanese powerheads at current
6 prices excluding the tariffs.

7 I'm here to tell you that if tariffs are put
8 in place, given all of the increases that we have had
9 in year 2004, my dealership and many others in the
10 marine industry are the ones that would, in fact, be
11 devastated.

12 Thank you very much. I look forward to your
13 questions.

14 MR. GOOTEE: Good afternoon. My name is
15 Tommy Gootee. I manage our family business, Gootee's
16 Marine in Church Creek, Maryland.

17 Gootee's Marine has been selling outboard
18 motors as a full-line dealer since 1955. Before the
19 bankruptcy of OMC, we had been one of the largest
20 dealers of OMC outboards in the area. As a result of
21 the bankruptcy, we shifted our sales to Yamaha engines
22 and may soon be an exclusive Yamaha dealer.

23 Why did we shift our sales to Yamaha? Let
24 me explain. About a year before the OMC bankruptcy,
25 we began feeling nervous about the OMC situation.

1 First, we knew OMC was having serious problems with
2 the Ficht engine. We felt that OMC generally lacked a
3 product line with reliable, clean technology, namely,
4 four-stroke engines. After OMC went bankrupt, we
5 looked for an engine company to fill OMC's void. Once
6 we got a taste of Yamaha outboards through the Hydra
7 Sports boat line, we loved what we saw and stuck with
8 it.

9 Yamaha engines proved to be top-of-the-line
10 engines, and our experience with Yamaha was very good.
11 We didn't have to convince the customer the engine was
12 good. Yamaha has such a great reputation, customers
13 knew they were getting the very best.

14 We honestly never considered Mercury engines
15 because of our strong distaste for the brand
16 throughout the years. OMC and Mercury were rivals
17 like the Redskins and the Cowboys. There was no way
18 we could go over to the other side as a former OMC
19 dealer and purchase their engines. I don't know
20 whether Mercury engines are cheaper or more expensive
21 than Yamahas and don't care.

22 My customers typically don't buy an engine
23 based on price. They want a good motor to power their
24 boat. In fact, we recently dropped Lowe boats, a line
25 which we had been selling for years with Yamaha

1 outboards. Mercury recently became the new owner and
2 did not offer Yamahas. After Mercury purchased Lowe,
3 they tried to force feed us Mercury engines by
4 offering a 10-percent discount off Mercury-powered
5 boat packages. Even though we could buy the boats
6 cheaper with Mercury engines, we're not interested in
7 a cheaper boat with an engine the customer doesn't
8 want, so we just dropped the entire boat line. For
9 us, the decision was a no-brainer.

10 We picked up some independent boat lines so that
11 we could put the engines we want on them, Yamahas.

12 As for Bombardier, they have not
13 significantly convinced the consumer that Bombardier
14 has fixed the problems of OMC. We don't have a lot of
15 people asking for those engines. We are sticking with
16 Yamaha because of its superb product, and that is what
17 our customers are walking in the door and asking for.
18 Thank you for your attention.

19 MR. CARPENTER: Good afternoon, Mr. Chairman
20 and Commissioners. My name is Larry Carpenter, and I
21 am president of Master Marine Services in Mount
22 Vernon, Washington, north of Seattle. For years, I
23 have been a trustee with the Northwest Marine Trade
24 Association.

25 Master Marine has been in business since

1 1983 selling Suzuki outboards. Briefly, in the mid-
2 1990's, we carried OMC engines, and since 1999, we
3 have also carried Yamaha engines. Starting in the
4 late 1990's, customer preference in my area moved
5 strongly toward four-stroke outboard engines. This
6 showed up at our annual Seattle Boat Show, the largest
7 boat show on the West Coast.

8 As early as 1998, people attending the boat
9 show were demanding four-stroke engines. They liked
10 four-stroke technology for a number of reasons. They
11 liked the fact that they are quiet, clean engines that
12 do not emit smoke or oil. They like the fact that the
13 four-stroke engines get better fuel economy, which
14 saves them money and enables them to travel further on
15 a single tank of fuel. Probably most important, they
16 like the fact that four-strokes are reliable and can
17 be counted on.

18 Reliability is a huge issue for our
19 customers because most of the outboard use in our area
20 is in saltwater, off the coast of Washington state
21 where water temperature is 44 degrees or lower most of
22 the year, where a human being can only survive for 20
23 minutes in the water. They did not want to risk going
24 out with an engine that might stop working.

25 When I had carried OMC engines in the mid-

1 1990's, I found OMC products were poor quality. For
2 instance, I worked with a commercial customer who had
3 a fleet of 25 charter boats that operated daily which
4 were experiencing OMC powerhead failures because OMC's
5 automated lubrication mechanism did not work properly.
6 The only fix the OMC engineer could give me was to mix
7 gas and oil in a tank. OMC's collapse in 2000 was
8 clearly a result of its poor products and extreme
9 level of warranty claims and a loss of consumer
10 confidence. It was not due to the pricing of Japanese
11 outboard motors.

12 In 1999, we added Yamaha outboards. I added
13 Yamaha to gain a broader line of good, four-stroke,
14 outboard engines. Since 2000, we have not purchased
15 anything but four-stroke, outboard motors. Our
16 customers were well aware of the problems of the Ficht
17 engines, as well as reoccurring problems with
18 Mercury's Optimax. The publicity about these problems
19 have scared the public to death and even hurt Yamaha's
20 HPDI engine sales.

21 As Suzuki and Yamaha introduced new, higher-
22 horsepower, four-stroke, outboard motors, we sold more
23 engines. In 2001, when Yamaha introduced its 200- and
24 225-horsepower, four-stroke, outboard motors and again
25 in 2003, when Suzuki introduced its 250-horsepower,

1 four-stroke motor, the consumer demand for them was
2 very hot, and for a year or so, it was hard for us to
3 meet customer demand for the new engines.

4 Other dealers in the area report that
5 Mercury engines have had a reputation of having
6 problems in our geographic area perhaps because of the
7 cold water. They have had a significant higher
8 failure rate than Suzuki or Yamaha motors. It is
9 clear to me that the reason for the increased sale of
10 four-stroke, outboard motors is the nature of the
11 motor; it is not price. In a recent conversation with
12 a Washington state governmental official, he said his
13 agency prefers four-strokes because of fuel economy,
14 dependability, and environmental concerns.

15 In 2004, my dealership has repowered eight
16 Washington State Fish and Wildlife Enforcement vessels
17 with new, four-stroke outboards. They are extremely
18 pleased. Thank you for your attention.

19 MS. COGHILL: I am Katrina Coghill,
20 president and owner of Pearson's Marina in Monticello,
21 Indiana. The dealership we purchased in 1988 sold
22 Mercury outboards, and we continue selling Mercurys.
23 In March 2000, we also became a Suzuki dealer and
24 later took on Tohatsu, Johnson, and Evinrude.

25 We focus on selling small fishing and

1 pontoon boats where our customers mainly concerned
2 about reliability, durability, and fuel consumption,
3 not speed or acceleration. Typically, we sell mid-
4 sized motors in the 40-to-115-horsepower range.

5 When we initially sold Mercury four-strokes,
6 they were carbureted, and several models had Yamaha
7 powerheads. They had problems. There was a
8 noticeable vibration in the motor at low RPMs. I
9 didn't like buying a motor with Mercury and Yamaha
10 components because the parts might not always be
11 available, and it was carbureted, which would lead to
12 expensive repairs. We also sold a few Mercury
13 Optimaxes, but they were a nightmare because of engine
14 problems.

15 I began carrying Suzuki outboard motors in
16 2000. This is how it happened. After researching the
17 product, my husband invited a Suzuki district manager
18 to our dealership to demonstrate a Suzuki outboard.
19 We became convinced we needed to sell the Suzuki four-
20 stroke engines. I almost had a heart attack. I said,
21 "Uh-uh, no way. You do that, and it could lead to a
22 divorce." I refused to go for a test ride and stormed
23 off. I had never heard of Suzuki or even seen a
24 Suzuki four-stroke, outboard motor.

25 I grew up and our business is located in a

1 very pro-Harley Davidson, made-in-America area. I did
2 not expect any outboard made in Japan to be a big
3 attraction to our customers. They would always come
4 in asking for Mercury, and they never asked to buy a
5 Suzuki. My husband went ahead and ordered some. We
6 opened our first Suzuki at a boat show to display in
7 our test tank, and it ran flawlessly for the 10-day
8 show. The Suzuki motor had electronic fuel injection,
9 the first mid-range, four-stroke motor to have EFI.
10 It started right up with the turn of a key, and it ran
11 so quiet and smooth, you couldn't tell it was running
12 except for the movement of the water.

13 Our customers came by and asked questions
14 and showed a lot of interest in the motor. Compared
15 to the Mercury four-stroke, it was quieter and didn't
16 vibrate. EFI means it had turn-key starting that
17 meant no carburetors, which are a big source of
18 problems in our area because the motors often sit for
19 long periods between uses. The additives in the fuel
20 are hard on carburetors, and about 65 percent of our
21 repair work involves a carburetor.

22 These motors are clean, quiet, and smooth,
23 maintenance-free, reliable, and durable, and start at
24 the turn of a key. It was very easy for me to sell
25 the Suzuki motors, especially to our female customers,

1 who are very interested in hassle-free starting. Once
2 we started selling the Suzuki motors, we have been
3 very successful. On average, we sell 100 to 160
4 Suzuki motors per year. We've had a total of fewer
5 than 10 warranty claims since 2000. This is in stark
6 contrast to the high level of warranty claims we've
7 had on Mercury motors.

8 Eighty percent of our outboard sales are
9 Suzuki four-strokes, and we recommend them to our
10 customers because of their features and quality, not
11 price. They can buy Mercurys at about the same price.
12 Customers are value driven, and Suzukis are the best
13 value.

14 MR. LOCKHART: Good afternoon. My name is
15 Wayne Lockhart. I am president and owner of Hooked on
16 the Bay, a boat dealership in northeast Maryland and
17 the northern Chesapeake Bay region.

18 Hooked on the Bay offers sales and service
19 on three boat lines, as well as four-stroke engines
20 produced by Honda, Suzuki, and Yamaha. In my
21 experience, four-strokes offer significant advantages
22 over two-strokes, including much better quality and
23 reliability, quieter and smoother operation, increased
24 fuel efficiency, less maintenance, and less exhaust
25 smoke. Because of these advantages, my dealership

1 experienced a huge customer preference for four-
2 strokes after we opened in 2000.

3 My customers were willing to pay a lot more
4 for a four-stroke even when a comparable Yamaha two-
5 stroke was cheaper. As a result, in late 2002, we
6 dropped all two-strokes, including the newer Yamaha
7 direct-injection engines. In fact, the preference for
8 four-strokes was so strong that we had a hard time
9 selling our remaining Yamaha two-strokes.

10 My dealership will never carry Mercury
11 outboards. Outboard engine dealers and customers talk
12 a lot, and every day it seems like I hear about
13 problems with Mercury engines or I see the problem
14 myself. One example occurred two years ago when a
15 customer wanted to trade in a three-year-old Mercury
16 to purchase a new Honda, and I agreed, and I certainly
17 paid for this decision. Weeks later, another customer
18 came in looking for a cheap engine, and I showed him
19 the Mercury trade-in. However, after a minute or so
20 of running the Mercury in a test tank, the engine
21 literally blew up. I was so steamed that I
22 immediately threw the Mercury into the dumpster, not
23 bothering to salvage it for parts.

24 Also, I've had a customer replace a new
25 Mercury on his Boston Whaler in order to get the

1 superior reliability of a Honda four-stroke.

2 Hooked on the Bay has been among
3 Crestliner's largest dealers in the mid-Atlantic. In
4 April, Mercury's parent, Brunswick, purchased
5 Crestliner from Genmar, and as a result, Crestliner
6 now only sells boats equipped with a Mercury,
7 Bombardier, or Honda engine. Because I believe that
8 Honda produces the highest-quality product, I will
9 only order Crestliners packaged with Hondas. Although
10 I love Crestliner boats, I will stop carrying
11 Crestliner if Brunswick stops packaging its boats with
12 Hondas, even though Mercury engines are likely to be
13 significantly cheaper.

14 In our democratic and capitalistic country,
15 businesses thrive on, one, owners believing in the
16 products they sell, and, two, consumers believing in
17 the products they purchase. I believe in the Honda
18 engines and do not think that the Mercury will satisfy
19 my customers' need for a quality product.

20 Finally, Mercury has alleged that the
21 Japanese producers have used lower prices to capture
22 sales. This has not been my experience. For example,
23 a large Mercury dealer near me regularly advertises
24 Mercury 25-horsepower engines for literally half our
25 price for a Honda 25-horsepower four-stroke. Despite

1 this fact, my business has grown every year because
2 quality and reputation are much more important than
3 price in a customer's purchasing decision. Quite
4 simply, my customers are willing to pay a premium for
5 a more reliable Honda, Yamaha, or Suzuki four-stroke.
6 Thank you.

7 MR. BARRINGER: That ends our presentation,
8 Mr. Chairman.

9 CHAIRMAN KOPLAN: Thank you, Mr. Barringer.
10 I want to thank the witnesses for their testimony, and
11 we'll begin the questioning with Commissioner Lane.

12 COMMISSIONER LANE: Thank you. Welcome to
13 this afternoon's panel.

14 Ms. Carroll, I would like to start with you
15 and Ms. Maxwell, I think. Both of you testified that
16 you only use Yamaha engines, I think, and you didn't
17 even look at the Mercury engines. Did you not even
18 compare prices as to which engines you could get for
19 what price?

20 MS. CARROLL: This is Kris Carroll. We used
21 to prerig for Mercurys and OMC products and Yamahas,
22 so we had plenty of experience with Mercury and OMC
23 products' pricing. In the nineties, Yamaha
24 established themselves as clearly the engine of choice
25 in the saltwater market, and at that time, we

1 prerigged for Yamahas, and most of our customers
2 wanted Yamahas. We knew that was a little more
3 expensive product than we could get from Mercury or
4 OMC, but it's what our customer wanted to have.

5 And so if you come into the year 2000 and
6 beyond, it's the only product that's going to satisfy
7 our customers. We survey our customers, and that
8 gives the highest customer-satisfaction rating by far,
9 is with the Yamaha product. So we're not even
10 considering the other products.

11 COMMISSIONER LANE: Okay. Ms. Maxwell?

12 MS. MAXWELL: This is Joan Maxwell. We
13 didn't consider OMC or Mercury. We only looked at
14 Yamaha because our dealers, our most successful
15 dealers, were Yamaha dealers. Yamaha had the
16 reputation for reliability. We had been running a
17 pair of test engines on our factory boat since 1990,
18 so we knew the reliability from a manufacturing
19 standpoint of those engines, so we didn't even
20 consider anything else.

21 COMMISSIONER LANE: Okay. Thank you.

22 My next question is for Mr. Gootee?

23 MR. GOOTEE: That's correct.

24 COMMISSIONER LANE: Okay. When OMC declared
25 bankruptcy, and you needed another source for your

1 engines, were you not somewhat concerned by just going
2 to another single source for your engines when you
3 went to Yamaha?

4 MR. GOOTEE: No, because we were a single-
5 line dealer up until about probably '98. We had Honda
6 for just a year or so there. We found it to be more
7 profitable for us to have just one engine line because
8 you have to train your technicians, and you have to
9 stock the parts. It's just a lot more overhead if
10 you're carrying more than one line. So, no, we were
11 not afraid of just having one line. In fact, we still
12 do carry Johnson and Evinrude. We have not ordered
13 any yet for 2005, though.

14 COMMISSIONER LANE: Okay. Thank you.

15 This is a question that I asked the morning
16 panel also, and I'm not sure who to ask this to, but
17 what do you believe accounts for the increasing market
18 power of the boat builders in the outboard engine
19 market replacing dealers gradually over the period of
20 investigation in importance?

21 MR. DEPUTY: This is Bob Deputy. I think
22 that when Yamaha started building their market in the
23 United States, they were not hamstrung by having 5000
24 dealers who were handling their engines, so they took
25 a little different approach to how to move a product

1 from their manufacturing to the ultimate consumer and
2 they put together a program to work with OEMs,
3 realizing that that probably was an efficient way to
4 merchandise their engines.

5 When we think about the overall boat
6 business, in the IO business, originally, a dealer
7 bought a boat, he ordered an IO engine, he would put
8 the engine in. Well, after a short while, they
9 realized that wasn't very smart, it wasn't very
10 efficient, so they started getting the IO engines
11 installed in the boats.

12 Well, as we moved to bigger horsepower
13 outboards, it made a lot more sense to have the boats
14 completely rigged at the factory and the engine come
15 with the boat.

16 Prior to doing that, a dealer may have to
17 have two, three, four hundred engines in a building so
18 he's have the right engine.

19 With the packaging concept, he orders a boat
20 with a motor and that's what it is. The beauty of
21 that is that if he has in stock eight or ten boats and
22 he sells a boat to Ms. Lane and she wants it with a
23 115 horsepower motor, he orders it that way, it comes
24 in that way, and so he gets exactly what the consumer
25 wants without having to sell something he's got in a

1 building that he'd like to get rid of.

2 So I think what happened is that Yamaha's
3 concept kind of forced the other engine companies
4 kicking and screaming toward the same concept of
5 merchandising the bulk of their engines that were
6 going to be sold with a new boat.

7 Now, a repower engine is a totally different
8 story, but for a new boat, to have the engine come
9 with it, it made a lot of sense.

10 COMMISSIONER LANE: Okay. Thank you.

11 As noted on pages 2-5 to 2-6 of the staff
12 report, there seems to be some disagreement in the
13 questionnaire responses of producers and importers as
14 to whether demand for outboard engines has increased,
15 decreased or remained the same since 2001.

16 Although petitioners indicated in testimony
17 at the pre-hearing conference that demand has fallen
18 since 2000 due to a decrease in sales, couldn't the
19 decrease in sales have been a result of changes in
20 supply factors such as the OMC bankruptcy as noted in
21 footnote 10 on page 2-5 of the staff report?

22 Mr. Barringer, maybe you could answer that.

23 MR. BARRINGER: Unfortunately, I can't
24 reference my staff report with my non-APO colleagues
25 next to me, but at least my reading of the numbers is

1 that between 2001 and 2003 and interim 2004 there was
2 growth in the market and so I'm not exactly sure what
3 that is referring to. In fact, I think the market
4 growth was somewhere on the order of 40 plus or even
5 50,000 units. Now, I have not gone back and looked at
6 2000.

7 COMMISSIONER LANE: Okay. Thank you.

8 I'd like to go back to maybe Ms. Carroll and
9 maybe Ms. Maxwell and others to talk about the
10 difference between the engines that are used in
11 saltwater and the engines that are used in freshwater.
12 Do certain types of engines work better in saltwater
13 versus freshwater?

14 MS. CARROLL: This is Kris Carroll. We
15 don't sell boats in the freshwater area. Primarily,
16 our area is saltwater. In the 1990s, Yamaha developed
17 in the two-stroke category their saltwater series.
18 You had to have an engine with components that would
19 not fail under the saltwater circumstances, corrosion
20 obviously being the most important piece. So that's
21 what addresses the saltwater issues, as well as the
22 four-stroke technology is best for our long-range
23 offshore fishing expeditions on a Grady White, as our
24 customers are often 30, 40, 50 miles offshore, so they
25 want a four-stroke that's going to give them more

1 range because it uses less fuel and they like the
2 quietness of the engines as well as not having the
3 smoke and not having to put oil in oil tanks.

4 MS. MAXWELL: I don't have anything to add
5 to that. We have a similar clientele and she
6 describes that engine very well.

7 COMMISSIONER LANE: Okay. Thank you.

8 Domestic producer BRP argues that OMC's
9 bankruptcy is in part attributable to the subject
10 imports and it cites the fact that workers separated
11 from OMC facilities during 2001 were eligible to apply
12 for trade adjustment assistance. Please comment on
13 the significance of this event on the reason for OMC's
14 bankruptcy.

15 Mr. Barringer, maybe you might be the right
16 person for this.

17 MR. BARRINGER: Yes. I'll be happy to go
18 into some detail in the brief. Suffice it to say here
19 that the standard for trade adjustment assistance is
20 entirely different than the standard applied by this
21 commission in dumping cases. If there were a dumping
22 case for every grant of trade adjustment assistance,
23 you all would be here 24/7, but I will explain the
24 reasons why.

25 COMMISSIONER LANE: Okay. Thank you.

1 CHAIRMAN KOPLAN: Thank you, Commissioner.
2 Commissioner Pearson?

3 COMMISSIONER PEARSON: On days like this, it
4 feels like we're here 24/7 anyway.

5 My welcome to the afternoon panel and
6 I appreciate your patience and your very fine
7 contributions to this hearing.

8 I'd just like to clarify for the record that
9 even though I might wish it was otherwise, I have no
10 relationship to Pearson's Marina, not to the best of
11 my knowledge.

12 And, as is my custom, I often greet
13 Minnesotans and if I'm not mistaken, I think,
14 Mr. Jacobs, you have some connection to that state,
15 don't you? And you live there even at this time of
16 year or do you have the good sense to go elsewhere?

17 MR. JACOBS: I've done it so long so wrong
18 I wouldn't know the right way if you told it to me.

19 COMMISSIONER PEARSON: Great.

20 Let me start with you, Mr. Gowans. You
21 provided a very interesting commentary on what was
22 going on at OMC during the years of your tenure there.
23 I had asked this morning some questions of the
24 petitioners regarding OMC and what they could tell me
25 about that time.

1 In addition to the other things that were
2 going on regarding product quality and customer
3 satisfaction, was OMC as a consequence pricing its
4 engines quite aggressively?

5 MR. GOWANS: As you can imagine, when you
6 have 20 percent failure rates, which are outrageous in
7 anybody's standard, you have a market battle to deal
8 with on a daily basis. We saw demand falling off
9 rapidly for our Evenrude two-stroke DI engines. We
10 continued to see demand for our Johnson two-stroke
11 carbureted engines. The problem was that I was
12 creating a monster for myself with EPA credits for
13 every Johnson engine I sold without having a clean
14 engine that I could also sell. So I was artificially
15 limiting production of Johnson products, after being
16 there for a few months, when I saw that it was really
17 going to be a bad idea to continue to do what we were
18 doing.

19 Because I was trying to move two-stroke DI
20 product, we did end up having to do some significant
21 discounting to move that product. And, unfortunately,
22 we followed what I consider to be a discount death
23 spiral. I've seen it happen before and against my
24 recommendations we continued to do it. And by that
25 I mean since we were driven by quarterly profit

1 reporting not only to our board of directors but to
2 our bond holders, we had public debt, we were not
3 public, but we had public debt, there would be panic
4 toward the end of the last month of each quarter as to
5 why we weren't getting our sales.

6 I had structured sales programs to
7 incentivize dealers and boat builders to even out
8 their shipments of product from us over that quarterly
9 time period, but as soon as we began this discounting
10 process to move product at the end of the quarter, it
11 doesn't take a dealer or a boat builder long to be
12 trained and they realized all they had to do was wait
13 to get the next great deal. As soon as you do that,
14 two things occur.

15 The first thing is you very much anger those
16 that lived by the program and they bought the deal
17 last month at the right price and the people this
18 month that are buying the deal at the heavily
19 discounted or more discounted or rebated price get the
20 benefit of having waited. And so it just continues to
21 get worse and worse if you continue to reinforce that
22 bad behavior. Because we were chasing quarterly
23 profits, we did end up having to discount product, but
24 it was driven as a result of our product issues, not
25 because of any competitive issue.

1 COMMISSIONER PEARSON: So in that
2 circumstance, given the context of the market at that
3 time, would you have seen OMC as the price leader or
4 were there other manufacturers that also were doing
5 similar things on price?

6 MR. GOWANS: We were definitely not the
7 price leader. When you're having brand equity
8 problems and product problems, you can't be the price
9 leader, at least not if you're smart, you're not. And
10 I think I think I at least have average IQ, so we
11 tried not to set that price in the marketplace.

12 Clearly, the market leader for pricing was
13 Yamaha and Mercury and I would typically wait until
14 I saw their pricing before we'd try to peg our pricing
15 in the marketplace so I wouldn't be out of line with
16 their pricing. I would try to focus my Johnson
17 two-stroke carbureted engines where the two-stroke
18 carbureted engines were or slightly below where they
19 were for the competition and I would try to peg my DI
20 Ficht engines not too far away from where the Yamaha
21 four-stroke and the Optimax DI engines were in the
22 marketplace. Generally speaking, though, I was a bit
23 below them.

24 COMMISSIONER PEARSON: Okay. And when you
25 indicate that Mercury and Yamaha were providing price

1 leadership, in those years were they trying to
2 maintain prices at a profitable level or were they
3 engaged in a competition that was pushing prices
4 downward? In other words, were they leading upward or
5 leading downward?

6 MR. GOWANS: Well, it's a competitive
7 industry and, as such, everyone is, number one, trying
8 to gain market share and, number two, trying to
9 maintain a profitable position. It's my perception,
10 having not been inside the company at that time, that
11 they were trying to maximize their profitability in
12 each one of those companies. Of course, there are
13 programs that are developed on an annual basis for
14 both boat builders and dealers that are intended to
15 incentivize builders and boat builders to purchase
16 your product and typically those programs are adjusted
17 on an annual basis so that you can try to gain market
18 share in each one of your market segments. I don't
19 believe anyone was trying to push prices down, if
20 that's your question. I think everyone was trying to
21 maintain a profitable profit margin, but remain
22 competitive.

23 COMMISSIONER PEARSON: All right. So a
24 number of you have had experience with BRP engines.
25 Are they now offered for sale at somewhat aggressive

1 pricing or are they very much in the mix of engines
2 that are out there?

3 Mr. Jacobs?

4 MR. JACOBS: I would say that, first of all,
5 Bombardier's engines, their Etech engines, are very
6 good engines. They've done a great job of
7 constructing a new platform and putting out this new
8 product. However, they do have a very, very difficult
9 time in marketing. There's no question that although
10 I heard Mercury blame the Japanese for OMC's demise,
11 I must say to you that Bombardier's most difficult
12 competitor is Mercury. And in saying that to you,
13 Bombardier clearly is, I would say, the heaviest
14 discounter in the marketplace.

15 COMMISSIONER PEARSON: You say Bombardier is
16 the heavier discounter?

17 MR. JACOBS: Yes, they are today. Yes.

18 COMMISSIONER PEARSON: And have other boat
19 manufacturers or dealers found that same thing to be
20 true or found something else to be true?

21 MR. DEPUTY: This is Bob Deputy, Godfrey
22 Marine. I would concur for the most part with Irwin;
23 however, I think of late, for the 2005 model year
24 product, Bombardier has changed their approach
25 completely, they've raised their prices and from our

1 perspective are not offering huge discount programs
2 and so forth, albeit they are not even offering a
3 four-stroke engine. We've had four-stroke engines on
4 order from them since July and we've not yet received
5 any. And so effectively they're out of that market.
6 They are now basically selling what we would call old,
7 two-stroke dirty parentheses engines and their new
8 Etech engines, which are a good engine, but just don't
9 have the market acceptance on the dealer level or the
10 consumer level to be really a viable factor as of
11 today.

12 COMMISSIONER PEARSON: We don't have anyone
13 here from BRP today to ask this question, so can
14 anyone give some insight on the issue of whether
15 Bombardier is currently limited by emission credits in
16 terms of -- does that affect its engine mix today?

17 MR. JACOBS: I think definitely it affects
18 it and that was one of the reasons why, I think, they
19 imported the four-strokes that they did from Sazuki,
20 although they did announce that they were having a
21 very difficult time when the commission announced the
22 duty, the 22 percent temporary, I believe you called
23 it, duty. They basically said they could not compete
24 with imports and, as Mr. Deputy just said, they've
25 left a lot of people high and dry. We have orders and

1 we don't have them either. They said they couldn't
2 order them because they couldn't afford to deliver
3 them based on the duty.

4 COMMISSIONER PEARSON: And the way the
5 emissions credit system works, is it basically an
6 engine-for-engine swap or is it not quite so neat?

7 MR. JACOBS: I can't answer that.

8 COMMISSIONER PEARSON: If they sell one of
9 their high tech EFI engines, can they then sell one or
10 two or three of the older technology engines? Anybody
11 know?

12 MR. BARRINGER: We've tried to address that
13 in our brief and we tried to write it ourselves so
14 that someone like yourself might understand it as
15 opposed to something very complicated, but it is --

16 COMMISSIONER PEARSON: You've got to keep it
17 simple.

18 MR. BARRINGER: I'm including myself with
19 you. But it is a fleet-wide system and you have to
20 have a certain number of credits from clean engines,
21 that is, amounts above the minimum emission standard,
22 in order to offset the credits that you have below.
23 And we used Yamaha as an example, which has many, many
24 more clean engines that they sell than Bombardier and
25 it is our view that they have a very, very serious

1 problem with the credits needed to offset their dirty
2 engines.

3 COMMISSIONER PEARSON: Thank you very much.
4 My time has expired, Mr. Chairman.

5 CHAIRMAN KOPLAN: Thank you, Commissioner
6 Pearson.

7 Is there anything you want to tell me before
8 I get started, Mr. Barringer? If not, I'll start with
9 you and Mr. Kaplan, if I could. The commission
10 requested U.S. producers and importers of outboard
11 engines to provide quarterly data for the total
12 quantity and value of outboard engines that were
13 shipped to unrelated OEMs and dealers in the U.S.
14 market. I'm referring to the price data that's in
15 chapter 5 of our staff report. When we made that
16 request, we asked that U.S. producers and importers
17 provide total values that were net of all discounts,
18 allowances, rebates, prepaid freight and the value of
19 all returned goods.

20 On page 6 of chapter 5 of the report, we
21 point out that there were 180 possible price
22 comparisons and out of that, and I quote, there were
23 113 instances, 63 percent, where the subject imported
24 product was priced below the domestic product.

25 What I'm trying to understand is that if

1 subject imports have captured market share because
2 they're of higher quality, how do you account for the
3 predominance of underselling? I would think that the
4 predominance would be the other way, there would be
5 overselling. And I'm raising this with you and
6 Mr. Kaplan because I've got 12 tables that relate to
7 this price data and the 180 comparisons and it's all
8 BPI, so none of your industry witnesses have access to
9 the quarterly comparisons that I'm looking at and
10 those comparisons cover seven products, three of them
11 are carbureted two-stroke products, different
12 horsepowers, two are direct fuel injection, two-stroke
13 of different horsepowers, and then the last two are
14 the four-stroke, one carbureted and one EFI. Just for
15 the record, that's how comprehensive it was.

16 So I'm curious, I've listened to all of this
17 testimony, but I'm asking you to help me out here as
18 I look at this data, it's totally different than what
19 I'm hearing this afternoon and I thought maybe you and
20 Mr. Kaplan could help me out.

21 MR. BARRINGER: Let me make a few remarks.
22 First of all, as we indicated in the preliminary and
23 I believe we also indicated in our comments to the
24 staff on their draft questionnaire, this is a
25 volume-driven industry in terms of pricing. That is,

1 Mr. Jacobs gets a price for buying, say, \$20 million
2 from Yamaha, he gets a better price for buying 40
3 million and he gets an even better price for buying 60
4 million or 100 million. That's the pricing structure.

5 CHAIRMAN KOPLAN: But you can't limit
6 yourself just to volume because there's product mix
7 involved here, so don't you have to look at value at
8 the same time?

9 MR. BARRINGER: Well, it is value. The
10 discounts are based generally on how many dollars you
11 buy, okay? So irrespective of the product mix,
12 although there may be some cases where product mix is
13 also relevant, but the discount, he will get a back
14 end discount of, say, 1 percent if he buys 20 million,
15 okay? So that's in addition to his front end
16 discounts, if he hits his 20 million target, he'll get
17 1 percent back, a check from Yamaha.

18 What is relevant here in my view is what he
19 would get from a comparable volume from another
20 supplier. For example, let's assume that he gets a 35
21 percent discount from Mercury with absolutely no
22 volume and he gets a 30 percent discount from Yamaha,
23 but he can't get the extra 5 percent until he gets to
24 100 million. The question is who is underpricing
25 whom?

1 CHAIRMAN KOPLAN: What I'm trying to
2 understand is simply this: are you telling me that
3 I should simply discount these tables and they have no
4 value here? The underselling information -- the
5 predominance of underselling is something that isn't
6 present in this case?

7 MR. BARRINGER: No, I'm saying you're
8 comparing apples with oranges. If you want to compare
9 Genmar prices with Mercury's prices to Tracker, that's
10 good, okay? The fact of the matter is that Genmar
11 buys more engines from Yamaha than Bombardier
12 produces, okay? And so the pricing structure that
13 Bombardier has to pursue in order to lock up contracts
14 with OEMs is different than what Yamaha pursues, but
15 it's all volume-driven. And so what is important in
16 terms of underselling is if he can get the same
17 discount from Bombardier on 5 million and he has to
18 buy 25 million from Yamaha, that's the important
19 competitive dynamic, not what he would get from
20 Bombardier on 20 million because Bombardier doesn't
21 have 20 million to offer him.

22 CHAIRMAN KOPLAN: Thank you.

23 Mr. Kaplan, do you have anything -- I see
24 you all the way back there.

25 MR. KAPLAN: I think there's three points

1 I'd like to make and this will be gone over in more
2 detail --

3 CHAIRMAN KOPLAN: Could you pull that
4 microphone a little closer to you?

5 MR. KAPLAN: This will be gone over in
6 detail somewhat in the closed session and some in the
7 post-hearing brief.

8 CHAIRMAN KOPLAN: Good.

9 MR. KAPLAN: There are volume discounts that
10 aren't incorporated, there are hidden discounts that
11 were just discussed, and then finally there is the
12 representativeness of the products and noting that the
13 distribution of under and overselling is not the same
14 among each of the products looked at.

15 CHAIRMAN KOPLAN: I realize that.

16 MR. KAPLAN: We'll discuss all of those
17 later. Thank you.

18 MR. HARRISON: Chairman Kaplan, excuse me.
19 May I add something to that, please?

20 CHAIRMAN KOPLAN: Certainly.

21 MR. HARRISON: I'm Donald Harrison, counsel
22 for Honda. I also wanted to explain -- you mentioned
23 that there are two comparisons office review the
24 four-stroke models, but you've heard testimony today
25 that there is a very, very limited offering of

1 four-stroke models by the domestic industry, so the
2 comparisons you have are a 25-horsepower four-stroke
3 that is made by Mercury and a 115-horsepower that's
4 made using an imported power head.

5 As you've heard in the testimony earlier
6 today and you'll hear in greater detail in the
7 confidential version is there has been an enormous
8 growth in the four-stroke market in the higher
9 horsepower model, but you do not have comparison in
10 those horsepower models to show that price difference.

11 CHAIRMAN KOPLAN: The comparison, though,
12 wasn't between comparing the four-stroke carburetor to
13 the EFI carburetor, each of those are separate
14 categories for which price comparisons were taken.

15 MR. HARRISON: That's right. The point I'm
16 making is that in terms of the overall market for the
17 four-stroke models, you do not have a large sample of
18 that by using those two examples.

19 CHAIRMAN KOPLAN: I hear you.

20 MR. HARRISON: Thank you.

21 CHAIRMAN KOPLAN: Thank you for that.

22 If I could stay with counsel for a moment,
23 Mr. Barringer, the joint hearing brief states, and
24 I quote, it says, "As detailed above, both Mercury and
25 Bombardier have relied heavily upon imports of

1 complete outboard engines and powerheads for their
2 presence in the critical four-stroke segment of the
3 market. These imports have benefitted the domestic
4 manufacturers by allowing them to offer a broader
5 product lineup. To see the impact of this benefit, it
6 is necessary to reconfigure the market share on a
7 brand basis, that is, treating all sales by Mercury
8 and all sales by Bombardier the same, whether they are
9 selling imported engines, engines made from imported
10 powerheads or domestically produced engines, as
11 equally effective sales by the domestic industry. The
12 imports' market share in contrast can be limited to
13 imports by and for the Japanese companies, Yamaha,
14 Honda, Sazuki, and Tohatsu."

15 My question -- I have two of them, actually,
16 here -- first, what statutory authority can you give
17 me for citing the suggestion that we do this on a
18 brand basis?

19 MR. BARRINGER: I think the statutory
20 authority is not to attribute to imports injury from
21 other factors and since these -- it's somewhat the
22 reverse of this but since those imports are benefiting
23 the domestic industry, you somehow have to segregate
24 those imports which are benefitting the domestic
25 industry from imports that might be harming the

1 domestic industry. And you can do that by an
2 analysis, for example, ask them how many more
3 two-strokes they were able to sell because they had
4 more four-strokes; ask Brunswick what the irreparable
5 injury would have been had he not had these
6 four-strokes to the rest of his lineup and the rest of
7 his business. That's one approach.

8 The other approach is simply to try to look
9 at the volume with the realization that the domestics
10 were importing products that they had to import and
11 were in essence protecting their market share.

12 And at the end of the day, if you do what
13 we're suggesting, the change over the period of
14 investigation is \$4 million out of \$1.4 billion and
15 1000 units out of 300,000 units. That's what has
16 shifted between imports and domestics over the period
17 of investigation.

18 CHAIRMAN KOPLAN: I think I'd appreciate it
19 if you could expand on this a bit more in your
20 post-hearing submission.

21 MR. BARRINGER: I'd be happy to.

22 CHAIRMAN KOPLAN: Thank you.

23 Vice Chairman Okun?

24 VICE CHAIRMAN OKUN: Thank you,
25 Mr. Chairman.

1 Let me join in thanking all the witnesses
2 for being here this afternoon and for your willingness
3 to answer our questions. I've again enjoyed listening
4 to your perspectives on this market. It's one of
5 those hearings where I heard black is black this
6 morning and white is white this afternoon or reverse
7 it, however you like, white and white and black and
8 black, but I will try to sort through what I've heard
9 and how we factor that into our analysis.

10 Let me start with a question, I guess it
11 would be directed to you, Mr. Jacobs, and perhaps
12 Mr. Deputy as well, which is, Mr. Barringer, you led
13 this morning in your opening statement talking about
14 parallel practices by Mercury to explain some of
15 what's going on in that market and I wondered if
16 I could ask Mr. Jacobs and Mr. Deputy whether you have
17 engaged in any similar parallel practices and if
18 there's something you want to talk about in a
19 post-hearing and proprietary way, you can do that, but
20 I do want to ask you that.

21 MR. JACOBS: No. Do we have any financial
22 arrangements with any -- no. We have none other than
23 what I talked about earlier with the sale of Hatteras
24 that I spoke about, but we have no -- we pay cash
25 discount for all of our engines from Bombardier and

1 from Yamaha and from Mercury.

2 VICE CHAIRMAN OKUN: Okay.

3 MR. DEPUTY: This is Bob Deputy. I would
4 concur with Irwin. We have no tie-in arrangements of
5 any kind with any of the outboard suppliers, nor have
6 we had any time.

7 VICE CHAIRMAN OKUN: Okay. I appreciate
8 those comments.

9 Well, then, Mr. Jacobs, let me come back to
10 you. Obviously, you're a big player in this market
11 and the bankruptcy of OMC presented some
12 opportunities, I guess, for your company. The
13 petitioners this morning quoted a statement you made
14 in 2003 in which you noted a significant price
15 differential among Mercury engines and other engines
16 which you intended to pass on to the dealers and
17 consumers some of this differential from Mercury.

18 I've heard your statements this afternoon
19 and in the brief that the domestic producers were
20 price leaders and some of the information you have in
21 your testimony about these off-the-book discounts and
22 I want to understand what your testimony is with
23 regard to the prices for Mercury and whether it's just
24 this new information that you're offering or how I can
25 sort through the pricing data.

1 MR. JACOBS: I'm very happy you asked me the
2 question and I will make it very clear for you what
3 took place.

4 After OMC file for bankruptcy and the
5 auction took place for the sale of the assets of OMC
6 in bankruptcy court, we along with Bombardier
7 purchased the entire OMC company assets. Bombardier,
8 we had a transaction with them that they would pay so
9 much percent of the assets that were purchased in
10 court for the engines and we would take the boats.

11 When that was over with, we ended up with a
12 much larger company than prior to OMC's bankruptcy.
13 Surely we had a lot of engine business to offer
14 somebody and we received a very strong call of
15 interest from Mercury that says we'd like to do a lot
16 more business with you. We did have a contract with
17 them to that time.

18 And we said you're welcome to come in and
19 make a presentation and Mr. Mackey and a cast of a
20 thousand came to Minneapolis to make that
21 presentation. I don't mean literally a thousand, but
22 they filled a couple of airplanes up, I think. And
23 they made a complete presentation to our president and
24 our engine buyers and our operating people and they
25 started out by telling our people in this presentation

1 that we want 20,000 engines from you, that's what
2 we're looking for, and by the way we're raising your
3 price.

4 And our people looked at them like they
5 thought they said the wrong thing. You mean you're
6 lowering the price, not raising it.

7 No, they said, we're raising the price.
8 And, by the way, you don't have any choice because
9 there's not enough production to go around and you'd
10 better take advantage of it because there isn't going
11 to be any production for you if you turn this down.

12 Our people at that point basically said to
13 them you'd better leave the building before you're
14 escorted out and they were told to leave the building
15 and at that point we became a customer of Mercury, no
16 different than any person that would have called up
17 and said I want to be a customer of yours.

18 We received a letter from Mr. Mackey
19 canceling all contracts and said that you will be in
20 accordance with our list price to everybody out there,
21 regardless of who you are.

22 That price was an approximate 10 percent
23 increase on the engines that we purchased from them
24 and we in fact then went to Yamaha, increased our
25 orders with Yamaha substantially.

1 That went on until the fall of that year.
2 By the way, I did put out a public statement that
3 basically said we were raising prices, very clearly in
4 conjunction with what I'm telling you. What I heard
5 here earlier this morning was very clearly just a
6 small part, they didn't tell you about what I'm
7 telling you about.

8 You should also know, by the way, and this
9 is factual 100 percent, we were told that we were
10 getting a bigger discount than we should have got
11 because Mercury was in violation of Tracker Marine's
12 discount contract, based on what they were selling us
13 engines for, so they had no choice but to raise our
14 price. That's what they told us.

15 In the fall of the year, things were pretty
16 hostile and testy between us because our business was
17 sinking very fast with them, we had put Hatteras up
18 for sale, as you heard me talk earlier, and they
19 wanted to buy Hatteras and they asked for a booklet
20 from the investment banker which they ultimately got
21 and they made an offer for \$65 million, we told them
22 it was unacceptable, and then George Buckley called me
23 and said if we could get together with a substantial
24 engine contract we could make this thing work and get
25 you a lot more money for it.

1 Ultimately, I think as I told you earlier,
2 we did give them a \$500 million contract for their
3 paying \$105 million for Hatteras.

4 Did that answer your question?

5 VICE CHAIRMAN OKUN: Well, I mean, I guess
6 the one thing -- and, Mr. Barringer, we might be able
7 to explore some of this in the proprietary session,
8 I guess I'm just trying to make sure that I understand
9 what is on the record with regard to when the
10 different negotiations were going on and the timing of
11 them, if it's clear from the record we have, any
12 documentation other than -- obviously, I understand
13 this is a competitive business, but --

14 MR. JACOBS: We have the record.

15 MR. BARRINGER: We are going to put all of
16 that on the record. We will go model year by model
17 year and what happened in each model year and what
18 discounts Genmar was getting in each model year from
19 each of the manufacturers.

20 MR. JACOBS: Also, we will answer for you
21 date-by-date when these meetings took place that
22 showed when I made the announcement versus when they
23 were in Minneapolis. In other words, all of that is
24 well documented in our files. When they came, they
25 gave us a written proposal and told us this is what

1 they wanted and, of course, we passed.

2 VICE CHAIRMAN OKUN: And the reason all this
3 isn't already in our record, I guess that was my next
4 question.

5 MR. JACOBS: Well, interestingly, our
6 lawyers in Minneapolis revealed these documents, went
7 through our files and found all of these documents
8 that had nothing to do in the files of the engine, it
9 was in the Hatteras transaction documents, and they
10 were combined as one, in a sense what it is, and then
11 I went through every single -- this is now -- last
12 week, I had four days I personally went through all of
13 the files, me, personally, and this took four days,
14 Tuesday, Wednesday, Thursday, Friday, that I went
15 through every single document that I could find in any
16 of our records anywhere, into our archives and
17 everywhere, going back to the whole timeframe of what
18 this is all about. These were not prices as much as
19 documents that supported what took place, but you have
20 the documents that our people submitted that they had
21 in the normal course of our business.

22 VICE CHAIRMAN OKUN: Okay. I think I may
23 have some more questions to come back to that, but let
24 me just briefly turn to another subject as well. I'm
25 going to turn to Mr. Zielinski.

1 In the statement you submitted and in your
2 testimony today, you talked about the availability and
3 this may be actually broader than you -- my time is
4 going to run out. Let me just ask you, I'll start
5 with you.

6 One of the things you said is that Mercury
7 didn't have the engines to fill the void created by
8 the OMC bankruptcy and I've heard that statement made
9 and it's been argued to a large extent here. If
10 I look at the chart that the petitioners handed out
11 this morning which is the line up of their products
12 that they had available and what was available from
13 Yamaha and the staff report collected this data as
14 well for 2003, they seem to line up, that their
15 products were available, including a four-stroke.

16 Now, I understand the argument that was if
17 it's imported powerhead, the argument Mr. Barringer is
18 making, but let's just say you're looking at Mercury
19 which, as I understood it, had a four-stroke and had
20 the same product line. I'm trying to understand
21 because it sounds to me you all are saying, well, they
22 didn't have the products, but I look at this and
23 think, well, they had the products, so what was the
24 difference?

25 MR. ZIELINSKI: Commissioner, I'm at the

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1 retail end, I own a retail store. The product
2 availability of four-stroke was probably more apparent
3 to me than anybody else. I'm not a Yamaha dealer, by
4 the way, so I really don't know what the availability
5 of Yamaha was. At that point, it sounds to me as if
6 Yamaha had made some pretty aggressive promises in
7 terms of product to some of the OEMs and it was not
8 able to provide it at the retail level.

9 It sounds like from my experience, Mercury
10 was going through the issues with the four-stroke
11 recall and it wasn't just replacing powerheads or
12 replacing the rocker arm assembly. They had to
13 actually -- well, not had to, they did it right, they
14 did a complete engine recall. They shipped us a brand
15 new motor, we boxed up the old motor and we shipped it
16 back. So in the scheme of things, they did it as good
17 as I've ever seen anybody handle a customer concern
18 and kudos to them for it, but the fact of the matter
19 is when they went through that recall I had trouble
20 acquiring four-stroke from Mercury at that point.
21 Incidentally, I am the largest Honda dealer in
22 Wisconsin and, frankly, it's the path of least
23 resistance. Honda makes a very good product. The
24 consumer for many years has been very happy with the
25 product that we're selling, we basically went back to

1 selling the Honda four-stroke line.

2 VICE CHAIRMAN OKUN: My red light has come
3 on. I'll have an opportunity to come back to this
4 because I think it's broader than you, but since it
5 was right there in your statement, I wanted to ask
6 you. I appreciate those answers.

7 Thank you, Mr. Chairman.

8 CHAIRMAN KOPLAN: Thank you.

9 Commissioner Miller?

10 COMMISSIONER MILLER: Thank you,
11 Mr. Chairman.

12 Let me join in thanking the panel, welcoming
13 you and expressing my appreciation for your
14 willingness to continue my education in the boating
15 business, I guess.

16 Mr. Jacobs, I appreciate your responses to
17 Vice Chairman Okun. I wanted to ask as well about
18 sort of reconciling the statements with what we've
19 seen of the trade press that was provided by the
20 petitioners and what we were hearing from them this
21 morning.

22 I understand from what you said,
23 Mr. Barringer, as well, that you're going to detail
24 this in your post-hearing submission. I did note
25 there was sort of this gap between your point number

1 one and two and you just filled that in.

2 MR. JACOBS: Did I fill it in properly for
3 you?

4 COMMISSIONER MILLER: Well, you did. You
5 did.

6 MR. JACOBS: Okay. Because it is quite
7 simple, unless I didn't say it right.

8 COMMISSIONER MILLER: Exactly. Well, and
9 you're going to in greater detail, it sounds like, in
10 the post-hearing submission. But help me understand
11 another aspect of it because you talked further on in
12 your testimony this morning about Mercury not
13 delivering on the four-stroke engines the way you said
14 they had agreed to deliver. Do the contracts specify
15 volumes of the different engine technologies? I just
16 want a general sense of these long-term contracts, how
17 specific they are about the kinds of engines to be
18 provided.

19 MR. JACOBS: Yes. Without revealing more
20 than I can --

21 COMMISSIONER MILLER: I understand.

22 MR. JACOBS: That's okay. I'll answer the
23 best I can. There were numbers for each year, really
24 more in dollars. It was units, but they were
25 converted into dollars, so to speak. What was

1 important that they committed in our negotiations that
2 they would have four-strokes and, in fact, I will be
3 submitting with my documents press interviews with Mr.
4 Buckley, who committed in the media of the industry
5 when he would have the new four-strokes out in the
6 year 2002, model year 2003, they would be out.

7 It was clear, because we were already into
8 that period, they didn't have them and they weren't
9 about to have them. I mean, history does show, it's
10 two years now and they still don't have a full line.

11 But if you go back to that time, they
12 committed to competitive products as the customers so
13 desire in the marketplace. Had they given me engines
14 for \$10 and it wasn't what the market wanted, it was
15 unimportant what those engines were. I had to have
16 engines and when you're the size of the company we
17 were, at that time we had 1900 dealers, you can't sit
18 there and explain to them, well, try this one instead
19 of this one. These people were very sophisticated and
20 we were building 65,000 boats a year, you know, 1250
21 boats a week. It's a lot of product.

22 The point I'm trying to make is obviously we
23 had to know that they were going to have the proper --
24 and they did not hesitate and I mean this, did not
25 hesitate to say their product will obsolete the Yamaha

1 product and the Japanese product out there, what they
2 have.

3 Now, we hadn't seen it, you understand.
4 They were willing to pay up for Hatteras to get the
5 contract, you know, really, what did we have to lose?

6 Now, you've got to understand, they did make
7 an announcement that they had a \$500 million contract.
8 The world out there never heard they lost that
9 contract. The fact is within less than a year that
10 contract was canceled. And you've got to know no one
11 gives up a \$500 million contract if they believe that
12 they have something that is going to stand up.

13 In fact, Ms. Miller, you will see in the
14 letter that I will be submitting they acknowledge that
15 that contract was worth \$200 million in profit to
16 them, in their writing, this is from Mr. Buckley to
17 me. And in one of those original letters, he says I'm
18 not giving this up, we have to protect that \$200
19 million. Well, he ultimately gave it up.

20 Now, again, I can't imagine anybody doing
21 that, believing that they were in the right.

22 COMMISSIONER MILLER: Okay. And so as the
23 large boat building company that you are, talk a
24 little bit more about your perception of the
25 four-stroke and applications.

1 You have a variety of different boat
2 building companies --

3 MR. JACOBS: Soup to nuts.

4 COMMISSIONER MILLER: You've got it all.
5 Exactly. We've had several saltwater companies --

6 MR. JACOBS: We have those two.

7 COMMISSIONER MILLER: We had bass boats --

8 MR. JACOBS: We have those, too.

9 COMMISSIONER MILLER: Okay. You've got the
10 range.

11 MR. JACOBS: And we're a factor in every one
12 of those categories.

13 COMMISSIONER MILLER: Okay. So tell me,
14 I mean, part of my impression this morning was that
15 depending on the application that drives the choice of
16 an engine. Is that true, in your perception, or do
17 you think the four-strokes basically work across the
18 board?

19 MR. JACOBS: I have heard so many versions
20 here today and, of course, you've heard more than I've
21 heard because it's more confusing to you than it is to
22 me, but I must say to you, there is no fine line, this
23 is exactly the way it works everywhere. You
24 understand dealers' experience with your products is
25 what's going to make the dealer buy that product.

1 Look, I want to see Bombardier make it in
2 this business and we're doing what we can. Yes,
3 they've got to be competitive because they're at a
4 disadvantage out there based on the marketplace today
5 and who they are, but we are their biggest customer
6 today, so we haven't left them high and dry, we're
7 doing business with them.

8 The fact is we're doing business with
9 Mercury today, where the customers want their
10 products. But there is no question, none whatsoever,
11 the marketplace has voted with their pocketbooks.
12 They've chosen Yamaha pain and simple. Yes, they're
13 buying other products, but believe me when I tell you
14 our biggest concern is getting enough engines from
15 Yamaha. I mean, we shut down two weeks ago one of our
16 plants for two days because we were short Yamaha
17 engines and the customer said I'll wait. That's
18 unprecedented in our company, to shut down a factory
19 for two days because we're short of Yamaha engines.

20 Now, there's reasons for it, but put all
21 that aside, we screamed and yelled, obviously, and
22 we're being corrected, but the point I'm trying to
23 make to you, they're willing to put up with things
24 like that, our factories, our customers.

25 I mean, I could give you so many one-liners

1 that's out there in the marketplace that says, you
2 know, make sure when you go out in the ocean you take
3 X amount of certain engines and you can take one
4 Yamaha, you're going to return. I mean, those kind of
5 things, that's dock talk, but that isn't me speaking,
6 these are people out there. And it's very bad for the
7 competitors for what it is, but there are people out
8 there that have a very strong influence in the market.

9 You know, Kris Carroll's company, Grady
10 White, it's a superior company. I mean, it's creme de
11 la creme of the industry. You heard earlier today
12 that they won the Field and Stream Award. Well,
13 I didn't hear anybody say anything about Yamaha, for
14 three years, they won it every year, the J.D. Power
15 Award, and yet they were bragging about Field and
16 Stream, but they said the J.D. Power is really not a
17 big deal, but they bragged about Field and Stream.

18 Well, it's kind of hard to sit there and
19 listen to this and say to myself how many people buy
20 their boats in Field and Stream and how many people
21 when they see an ad in a magazine that says we won the
22 J.D. Power Award for three years in every boat
23 magazine in America, including by the way, you should
24 know, their own boat company won the J.D. Power Award,
25 Sea Ray, and they blast it out there, they tell the

1 whole world about it.

2 So it's kind of self-serving, everything
3 you're hearing going on here in the sense of what it
4 is and I'll be the first to agree.

5 COMMISSIONER MILLER: We're used to that.

6 MR. JACOBS: I'll be the first to agree with
7 you. But, honestly, there is an answer for every
8 question you have and it depends who you're going to
9 ask it to.

10 COMMISSIONER MILLER: Yes. Welcome to our
11 life.

12 MR. JACOBS: You may get more than one.

13 Did I answer it for you?

14 COMMISSIONER MILLER: Well, you answered it.
15 I'm still confused.

16 MR. JACOBS: We are, too, and I've in the
17 business 27 years.

18 COMMISSIONER MILLER: Okay.

19 Mr. Deputy?

20 MR. DEPUTY: I'm Bob Deputy and while we're
21 not that big in the bass boat business, we are the
22 largest builder of pontoon boats and the largest
23 builder of deck boats in the country, and I can
24 testify that the customers of our boats were probably
25 the leaders in pushing us to the four-stroke engines

1 and this happened ahead of a lot of the other trends.
2 And I think you heard earlier today the positive
3 attributes of the four-stroke but the fact is these
4 customers were willing to pay more money for a
5 four-stroke engine on their pontoon boat and on their
6 deck boat than they were for a two-stroke engine and
7 willingly did so and continue to do so. And so
8 I think that it's the consumer that's driving it and
9 the fact that in the case of Yamaha they do have a
10 complete line, that makes a huge difference to a
11 dealer who is trying to sell a very broad range of
12 boats. Our boats are sold with engines from probably
13 40 horsepower to 250 horsepower. And so the broad
14 range of Yamaha four-strokes helps our dealers be able
15 to capture market share in their markets.

16 COMMISSIONER MILLER: Okay. Well, the
17 yellow light is on, so I won't start another question,
18 but I appreciate your answers.

19 Thank you.

20 CHAIRMAN KOPLAN: I can't imagine why you
21 wouldn't start another question.

22 Commissioner Hillman?

23 COMMISSIONER HILLMAN: Thank you.

24 I would join my colleagues in also thanking
25 you very much. We appreciate your patience with us

1 and all of the information that you've provided.

2 Mr. Jacobs, if I can come back to the
3 question to some degree that I think Commissioner
4 Miller was asking, because I'm struggling with the
5 same thing. We heard all morning a lot about bass
6 fishing and I will say I've now listened to the entire
7 afternoon, I heard a lot about saltwater fishing.
8 I haven't heard a lot about bass fishing and so I'm
9 trying to make sure I'm getting a full picture of
10 this.

11 MR. JACOBS: I can speak well to the bass
12 fishing.

13 COMMISSIONER HILLMAN: You responded to her
14 question saying the market has spoken with respect to
15 preferring Yamaha, but Yamaha to me is not the same
16 thing as preferring four-stroke. I mean, Yamaha is
17 making and selling into this market two-stroke
18 engines in enough quantity that I'm trying to make
19 sure I'm understanding it.

20 If I'm a bass fisherman and I'm coming to
21 you to buy a boat, what engine are you going to put on
22 it for me?

23 MR. JACOBS: Well, let me say this to you.
24 We have three bass boat companies and we are
25 approximately on a combined basis -- we sell almost

1 one out of every two bass boats in the United States.
2 We have Ranger bass boats, we have Stratis and we have
3 Champion. Ranger is clearly the leader of the
4 industry, it has been for many, many years. Ranger
5 was all Mercury at one time. All Mercury. I can tell
6 you, I mean from head to toe, it was all Mercury.

7 Matter of fact, I purchased that company in
8 the early '90s and when I purchased it in the early
9 '90s, it was basically all Mercury.

10 The one thing that has happened in the bass
11 boat world today, it's become big business. Big
12 business means there's tournaments today. We run
13 tournaments out there that literally we give out
14 \$30 million a year in earnings in bass tournaments.
15 These fishermen are serious about their boats and they
16 are serious about getting there on time and getting
17 back.

18 There had been some situations here over the
19 past several years that have devastated -- the cold
20 water, for example, matter of fact, I have a memo that
21 I can -- maybe it's in the files that you already
22 have, where we had in one tournament 27 failures of
23 Optimax, just blew up in a tournament.

24 Now, you've got to know these fishermen go
25 crazy. That's a \$100,000 they're fishing for. That

1 27 will get the 27,000 customers not by us, we don't
2 want it to be discussed because they always the boat
3 and the engine.

4 COMMISSIONER HILLMAN: Okay.

5 MR. JACOBS: The point that I'm trying to
6 make to you today is we have seen this market move
7 where Mercury is still a very strong player in the
8 bass boat business. You heard Rick Grover, he's one
9 of our dealers, he's all Mercury, 100 percent.

10 COMMISSIONER HILLMAN: So today, in your
11 bass boats --

12 MR. JACOBS: They're about 50 percent of our
13 business.

14 COMMISSIONER HILLMAN: Fifty percent of your
15 business.

16 MR. JACOBS: Yes. Of Ranger. Of Ranger.

17 COMMISSIONER HILLMAN: What engines are you
18 using today?

19 MR. JACOBS: We're using at Ranger
20 approximately 50 percent Mercury and we're using some
21 of their new Verados as well as their two-strokes and
22 their Optimaxs. We use a full variety. And then we
23 use Yamaha, it's about -- I think they're right about
24 40, 40-plus percent and Bombardier is the balance.

25 COMMISSIONER HILLMAN: Okay. And of the

1 Yamahas, are they two-stroke or four-stroke?

2 MR. JACOBS: We offer it all. It's both.

3 COMMISSIONER HILLMAN: Can you give me a
4 ballpark sense of it?

5 MR. JACOBS: You know, it's so complex in
6 the numbers, I couldn't tell you. I could just tell
7 you the percentages of what we use from each one of
8 them, but I can't tell you the breakdown of engines.

9 COMMISSIONER HILLMAN: Okay. Okay. All
10 right. I'm just trying to make sure I understand this
11 four-stroke, two-stroke, I'm clearly hearing that for
12 the saltwater applications and the pontoon
13 applications, there's a preference.

14 MR. JACOBS: It's a different customer.
15 Yes.

16 COMMISSIONER HILLMAN: For four-stroke. But
17 that in the bass and other boats that want to be
18 moving fast and start out in shallow water, there may
19 be a preference for two-stroke?

20 MR. JACOBS: No.

21 COMMISSIONER HILLMAN: Or you're saying
22 there is no preference?

23 MR. JACOBS: You asked about bass and we're
24 talking about bass. There's walleye, now.

25 COMMISSIONER HILLMAN: Okay. I was just

1 going to get to that.

2 MR. JACOBS: Yes.

3 COMMISSIONER HILLMAN: Okay. In the walleye
4 and pike market, what --

5 MR. JACOBS: In the walleye and what?

6 COMMISSIONER HILLMAN: Walleye or pike.

7 MR. JACOBS: Well, walleye is competitive
8 fishing, tournaments.

9 COMMISSIONER HILLMAN: All right.

10 MR. JACOBS: It has gone extreme
11 four-stroke. I mean, they're running so fast. I can
12 just tell you that it's gone faster than we ever
13 dreamt it's going to be. I mean, I'm not kidding,
14 I don't know the number, but I wouldn't be surprised
15 to see our tournament series of those today running at
16 75 percent four-stroke.

17 COMMISSIONER HILLMAN: Four-stroke?

18 MR. JACOBS: Yes. It is a different angler,
19 as you heard earlier on the presentation from Mercury.

20 COMMISSIONER HILLMAN: Okay. All right.

21 MR. JACOBS: And they're paying a premium
22 for that, you understand. They pay a premium.

23 COMMISSIONER HILLMAN: Well, actually, that
24 was sort of the next question I was trying to get to.
25 As I heard the testimony, I listened to everybody's

1 testimony, I think every single witness this afternoon
2 has indicated that Mercury and Bombardier's prices are
3 lower than the Japanese engine prices. I think that's
4 what I heard from all of you.

5 MR. JACOBS: Yes. If you listened to
6 everything I said to you, we're going to give you all
7 the records we have, it will prove to you. I mean,
8 plain and simple.

9 COMMISSIONER HILLMAN: All right. I'm just
10 trying to make sure I'm understanding from everybody's
11 perspective that testified. Are you comparing
12 engines -- when you say to me, all of you, all of you
13 have said to me that the Bombardier and the Mercury
14 prices are lower. I just want to make sure
15 I understand that. Are you telling me comparisons of
16 the same horsepower and type, four-stroke, 225 versus
17 four-stroke, whatever it is, or are you comparing U.S.
18 two-stroke engines with Japanese four-stroke engines
19 as you're all giving me this testimony of your price
20 comparison?

21 MR. JACOBS: When you say all --

22 COMMISSIONER HILLMAN: Mr. Deputy. Let me
23 start back here and we'll come forward.

24 MR. DEPUTY: I think that in my testimony
25 I pointed out that in some cases a Mercury may be a

1 little more money and in other cases a Yamaha may be
2 more money, comparing apples for apples, an old style
3 two-stroke 50 horsepower across the board or a new
4 four-stroke 115. There's no clear winner who is the
5 cheapest or most expensive.

6 Secondly, when we look at comparisons we
7 have to add all the rigging costs into the engine. We
8 don't buy a naked engine and sell it. We have to rig
9 it on a boat, which includes the cables, the controls,
10 the wiring harnesses, the prop and all the stuff that
11 goes with it. So from that standpoint, we find that
12 there is no one who is absolutely always the cheapest
13 on every single comparison or one who is always the
14 most expensive on every single comparison.

15 COMMISSIONER HILLMAN: Okay. But that
16 testimony strikes me as a little bit different than
17 this sort of broad testimony that I heard and, again,
18 obviously a lot of the purchasers here today are
19 saying they're purchasing only Yamaha or only
20 Japanese. bit clearly I'm hearing that the U.S. prices
21 are lower than the Japanese and yet obviously the data
22 in our record don't show that.

23 Mr. Jacobs, I don't know whether you wanted
24 to add to that.

25 MR. JACOBS: I have made a statement here

1 today that there has been what we would call side
2 deals. These side deals are real. We got the money
3 for it, we got almost \$4 million. You will see a
4 letter in here that shows what we were getting it for
5 and how they were going to pay us six months later.

6 It doesn't show up anywhere in your records,
7 but I'll assure you that they paid us 6 percent with
8 that almost \$4 million check.

9 I'm sure in your records you won't find
10 anything that they paid us somewhere in the area of
11 \$40 million more for Hatteras than they said they were
12 going to pay us in the first place and they said in
13 their own words, you will see the chairman's letters
14 here that say that these are tied in together and we
15 are paying you too much money for those companies.

16 COMMISSIONER HILLMAN: Actually, I did have
17 a question on that, just to make sure we've got it.
18 You're now saying that the price that they paid was
19 over what they should have paid. Again, if there
20 is -- again, I don't want to ask it here because it
21 may involve confidential data --

22 MR. JACOBS: Please ask it.

23 COMMISSIONER HILLMAN: Were there other
24 bidders? What were your investment bankers pricing
25 this for?

1 You were saying you rejected at \$65 million
2 offer for Hatteras, so presumably you thought 65 was
3 too low. They come back with an offer of 85 plus this
4 engine deal and you're telling me, I guess now, that
5 that's definitely overpaying for Hatteras.

6 MR. JACOBS: Let me answer that for you and
7 say to you that I'm prepared -- Bear Stearns was the
8 investment banker. The only bidder was Brunswick. We
9 had no other bidders.

10 COMMISSIONER HILLMAN: Okay. All right. So
11 in theory your view is somewhere between 65 and what
12 you got was the fair price?

13 MR. JACOBS: Well, a fair price is a willing
14 buyer and a willing seller. That's fair price for
15 anything. In the case of what this is here, we were
16 extraordinarily happy with the transaction, obviously.
17 I mean, we got \$105 million for this copy, we were
18 originally offered 65. Now, I'm not going to sit here
19 and tell you what we would have taken for it, that
20 would be much too revealing, but on the other side to
21 it, I will say to you they paid us by their own words,
22 you will see these documents, this is not on my
23 stationery, this is on Brunswick's stationery. They
24 said we overpaid you to get that engine contract. You
25 have to ask them. They said it's in the minutes of

1 their company, by the way, so just ask for their
2 minutes and I'm sure you'll find out what they
3 overpaid us. He came out and said it's in the minutes
4 of our corporation. And everybody knew we overpaid
5 you.

6 I can't sit here and tell you, we
7 negotiated. I can't tell you what price discount they
8 think they gave me, we think we can figure it out
9 today, I told you it when I spoke earlier, but the
10 fact is they paid a huge price to get that engine
11 contract and they did not hesitate to say they had a
12 \$200 million profit in that engine contract, in their
13 words, and they weren't giving it up.

14 COMMISSIONER HILLMAN: Okay. I appreciate
15 that and I understand from the response to Vice
16 Chairman Okun and Commissioner Miller that, again, we
17 would appreciate these documents in terms of the
18 specificity of these contracts, whether it was by
19 type, by size, all of that, as well as anything --
20 obviously, the value of the overpaying, to the extent
21 that you're calculating off of that to figure out how
22 much of a discount this was assumes that there is some
23 number out there that is considered fair market value
24 for this. So, again, I think if we're going to try to
25 figure out how to calculate any sort of a discount off

1 of this, we would need to understand those market
2 dynamics.

3 MR. JACOBS: I'll answer it again when we
4 come back to you a little better.

5 COMMISSIONER HILLMAN: Okay. Thank you very
6 much.

7 CHAIRMAN KOPLAN: Thank you, Commissioner.
8 Commissioner Lane?

9 COMMISSIONER LANE: I only have one
10 question, so I guess if I ask Mr. Jacobs, it will take
11 up my whole ten minutes and so it's a good thing
12 I only have one question.

13 CHAIRMAN KOPLAN: Actually, I might have to
14 cut you off because your red light will probably come
15 on.

16 COMMISSIONER LANE: Okay.

17 Mr. Jacobs, I'm sort of struck by the
18 difference in the testimony we heard this morning and
19 the testimony I heard this afternoon.

20 MR. JACOBS: I am, too, by the way.

21 COMMISSIONER LANE: And this morning, the
22 perception was that the dealers are the ones who
23 basically decided for the customers what was being
24 sold, that the customers would go in and the dealers
25 would basically make the deal on what was best for

1 them. This afternoon, I'm hearing that the customers
2 are coming in to the dealers and are basically telling
3 the dealers what they want.

4 Could you reconcile those two perceptions
5 for me, please?

6 MR. JACOBS: Yes. What you heard is right
7 on both sides. It happens both ways. But you must
8 understand, price does have a lot to do with certain
9 products that are more sensitive to pricing and there
10 are some that are, hey, we'll any price if we get the
11 right product for it. I don't mean any price, no one
12 will pay any price, but speaking relatively, people
13 will pay -- like the walleye anglers will pay a
14 premium, they'll want all four-strokes, the best of
15 the best.

16 When you talk about a customer coming in, a
17 customer who has a good experience with an engine or a
18 product or a boat, they're going to come back and say
19 sell me the new one, I want the same thing I had, it
20 was great, give me the new model.

21 The customer's going to have a bad time, he
22 says, look, I've been in the service shop more than
23 I've been out on the water, give me something new,
24 I can't stand it.

25 And then you have companies like ours that

1 offer every product, every engine out there that's
2 there, and we do offer transactions every now and then
3 that could change between the horsepower or what we're
4 putting that product out at that will entice maybe
5 people to buy it. So you're asking for a simple
6 answer to a very complex question because I think
7 everybody at this table could tell you -- she could
8 say to you -- they take Yamaha, they don't ask. We
9 have other customers that will take Mercury, like we
10 heard on the bass. They don't want anything else but
11 Mercury. Rick Grover, who was here earlier, said
12 that.

13 So there is a loyalty, definitely. Now, is
14 loyalty going to carry the day in the engine business?
15 No. Will there be some? Yes. And our job as a boat
16 manufacture is to give the best product at the best
17 price we can, so we negotiate very hard for those
18 contracts to be the best that we can get.

19 COMMISSIONER LANE: Yes, sir?

20 MR. DEPUTY: Bob Deputy, Godfrey Marine. As
21 I stated in my testimony earlier, we do let the dealer
22 and the consumer tell us what engine they want. We're
23 probably one of the few companies that, number one,
24 has never agreed to any type of a percentage of market
25 share with any outboard engine builder if we do

1 business with them. We're probably not as a good
2 negotiator, I know we're not as good as Irwin. There
3 isn't anybody as good as Irwin. But from our
4 standpoint, we let the market take it where it's going
5 to take it. And, at one point, before the advent of
6 the four-stroke new technology, we were about equally
7 divided in our business with Yamaha, Mercury and OMC.
8 And with the advent of the four-stroke and the
9 dealers' demand for these products, that's what pushed
10 us to more volume with Yamaha.

11 To this day, we have price lists for every
12 one of the companies, we do not disadvantage any
13 company on the price list and if our dealer is a
14 Mercury dealer, we want him to do a great job with
15 Mercury. If he's a Yamaha dealer, we want him to do a
16 great job with Yamaha. So we're going to do whatever
17 they want us to do and do the best job we can
18 supplying them.

19 COMMISSIONER LANE: Okay.

20 Yes, sir?

21 MR. CARPENTER: My name is Larry Carpenter.
22 I want to speak to this from the dealer's perspective,
23 if I may, for a moment. I'm from the Seattle market
24 and I don't know that that's slightly different or
25 greatly different from anywhere else in the U.S., but

1 definitely the Seattle market is very much a high tech
2 industry with Microsoft and Immunex and Boeing and
3 I can go on forever. People are very knowledgeable
4 and certainly they have a lot of access to computers
5 and do their own research.

6 I don't have a single two-stroke motor in my
7 dealership and I sell somewhere between 400 and 500
8 motors a year. People don't inquire about
9 two-strokes. They know the failure rate of
10 two-strokes, they know the smokiness, the oil
11 consumption. But one of the other things I think
12 that's worth mentioning, in my dealership the
13 reduction in warranty claims of the repairs that we do
14 on our customers' outboard motors relative to failure
15 that we're paid for by the manufacturer has gone down
16 approximately 90 percent since we've gone to all
17 four-stroke. That's a huge benefit to us because we
18 lose money doing warranty work. We don't always get
19 paid shop rate, there's a variety of things, and
20 mostly the customers is upset, the retail customer,
21 because his boat is sitting in our yard waiting for us
22 to get it done. So the 90 percent reduction in
23 warranty claims four-strokes versus two-strokes is
24 very profound.

25 COMMISSIONER LANE: Okay. Thank you.

1 And, Mr. Chairman, that's all I have.

2 CHAIRMAN KOPLAN: Thank you, Commissioner.

3 Commissioner Pearson?

4 COMMISSIONER PEARSON: Thank you,
5 Mr. Chairman.

6 I'd like to ask some questions about
7 consumption in the U.S. market of outboards. The
8 petitioners maintain that demand in the U.S. market
9 for outboard engines fell sharply from 2000 to 2001.
10 In other words, the year prior to the period of
11 investigation to the first year in the investigation
12 and that demand has never really fully recovered since
13 then. If they measure consumption over that period
14 from 2000 to 2003, they're looking at a decline of
15 about 6 percent.

16 Does that track how you would see it? And
17 I understand, if you're not fully prepared to talk
18 about what happened before the period of
19 investigation, that's fine, but I just put the
20 question out there.

21 To anyone?

22 Yes, Mr. Deputy?

23 MR. DEPUTY: I think, I'm going to go a
24 little bit from memory, but our records would
25 certainly show quite the opposite, that our use of

1 outboard engines increased significantly from 2000 to
2 2003. Now, that may be because the dealers buying our
3 products insisted that we send engines with them or it
4 may be because our products were capturing market
5 share from some others, but we did not see this
6 decline that apparently the industry had.

7 COMMISSIONER PEARSON: That would be
8 particular to your business?

9 MR. DEPUTY: To our business. To our
10 specific business. That's right.

11 COMMISSIONER PEARSON: Now, does anyone have
12 a sense of the aggregate?

13 MR. JACOBS: What years are you talking
14 about again? What model years are you talking about?

15 COMMISSIONER PEARSON: 2000 is the year that
16 the petitioners had raised as a possible starting
17 point.

18 MR. JACOBS: Well, you've got to remember,
19 OMC went bankrupt, filed bankruptcy December 22nd in
20 2000. There was tremendous, tremendous chatter and
21 everybody saying they're going to go under. I mean,
22 when they did, it was no secret. They hadn't made
23 their payment 90 days earlier. There was a fear
24 factor and OMC did something that was terrible to
25 dealers, terrible. They went out and loaded them up

1 with engines in the fourth quarter, the quarter they
2 filed bankruptcy, and said we'll give you extended
3 floor plan, which means we'll pay your floor plan into
4 next year, take these engines. They stuck the dealer
5 with those engines and the floor plan, they weren't
6 going to pay, they went bankrupt.

7 So these poor dealers were sitting with all
8 these thousands and thousands of engines that they
9 could have potentially got stuck for on the floor
10 plans and were going to go after them personally.

11 When we got into the picture in January of
12 2001, the month after, I called in every one of the
13 floor planners, it was GE, it was Birmingham floor
14 plan, it was Transamerica who was the largest, and sat
15 down with them. I called them all into my office and
16 I said, look, you either are going to take care of
17 these dealers or you're going to be the biggest boat
18 dealer in the world. You're going to own every boat
19 that's out there because I'm going to tell them to
20 give them to you. I didn't have any liability to
21 them, but a lot of them were my dealers.

22 And, by the way, a lot of them would have
23 hurt Mercury as well as Yamaha. Everybody was on the
24 fringes of this thing being a disaster because if
25 you've got a dealer who is going out of business

1 across the street liquidating their engines at half
2 price, everything on the other side of the street is
3 worth less, too. So we convinced the floor planners,
4 I sat down, negotiated a deal with them, and I said
5 I will go in and make a bid to buy that entire company
6 in the boat business and bring in Bombardier if you
7 people will consider waiving interest to these dealers
8 and giving them a chance to come out whole.

9 Well, they were tickled to death because we
10 showed we would get in the business, they wanted us in
11 the business, because it wasn't going to be liquidated
12 then. So in fact they went along and they ate about
13 6, 7 million dollars of floor planning.

14 The point I'm trying to make, all of this
15 going on, surely there was a lot of flux and people
16 weren't out there buying boats and engines just to
17 stock up with after all this terrible stuff was going
18 on. Whether it was real or not, at the time they were
19 doing, people were scared to death for it. But it was
20 a very unusual time in the business.

21 COMMISSIONER PEARSON: Let me just clarify.
22 You used the time floor plan and that's an inventory
23 carrying plan?

24 MR. JACOBS: That's where the -- like
25 Transamerica is a finance company, GE, these people

1 finance. I heard earlier one of the manufacturers
2 here say that the boats, if they weren't sold at the
3 dealer, they belong to them. I believe it was
4 Mr. Kimmel said that. And the fact is that we don't
5 have anything like that. That's unheard of in the
6 industry. You may give them a million dollar buy-back
7 out of a billion dollars worth of business, but we
8 never give -- a floor planner approves our dealer's
9 credit, they're on their own after that. We have
10 nothing to do with it. They finance them and that's
11 it.

12 Now, we may guarantee the interest on early
13 programs and stuff, but when I tell you that there's
14 no way we -- well, we would be vulnerable to a market
15 with a billion dollars of inventory out there on any
16 given day, so we don't have anything to do with that.

17 COMMISSIONER PEARSON: Okay. Mr. Barringer,
18 either now or in the post-hearing, if respondents have
19 anything they'd like to say about this issue of the
20 year 2000, I would be happy to hear it.

21 MR. BARRINGER: We obviously have quite a
22 bit to say about it because it is a rather novel issue
23 and we will address it.

24 COMMISSIONER PEARSON: Okay. Looking at
25 demand during the period of investigation, respondents

1 are comfortable enough with the data that we have?
2 I suppose that's a question I should direct to you,
3 Mr. Barringer.

4 MR. BARRINGER: Yes. We believe the data
5 shows an up trend in the shipments which is consistent
6 with a strengthening of the economy and a
7 strengthening of incomes. And we believe it's a
8 period which is representative of what was going on in
9 the industry.

10 COMMISSIONER PEARSON: Okay. Then as a
11 threat factor, we probably should look at what the
12 demand prospects might be in the year ahead and that's
13 a question I would pose to the panel broadly. What
14 does your business look like in the coming year? Are
15 you going to sell more boats and outboards or fewer?

16 MR. JACOBS: Great for us. It looks very
17 strong for us, Scott Deal Maverick Boats.

18 COMMISSIONER PEARSON: Could you identify
19 yourselves, please, as you --

20 MR. JACOBS: I'm sorry. I'm Irwin Jacobs,
21 Genmar.

22 MS. MAXWELL: Joan Maxwell, Regulator.
23 Sales are higher this year than 2004. We projected
24 out through the model year.

25 MR. DEPUTY: This is Bob Deputy, Godfrey

1 Marine. We expect our sales to increase this next
2 model year. This year, year-to-date, our sales are up
3 about 20 percent.

4 COMMISSIONER PEARSON: People are using the
5 term 'model year.' Could you clarify what that is for
6 your business?

7 MR. DEPUTY: The model year for us starts on
8 August 1st. So the 2005 model year would be from
9 August 1, 2004 to July 31, 2005.

10 COMMISSIONER PEARSON: Okay, thank you. Mr.
11 Dyskow?

12 MR. DYSKOW: Mr. Pearson, my name is Philip
13 Dyskow. To understand this growth or decline in the
14 marine industry, our industry tracks very closely to
15 the GDP. And if you look at the last three years,
16 you've had a steady improvement in GDP. Interest
17 rates remain low. Stock market has recovered and
18 strengthened. Unemployment has leveled off at a
19 particular level. So, we're no different than a lot
20 of other industries. We track with the GDP. So when
21 you see a three-year trend in the GDP, you would
22 expect our industry to trend similar. Of course,
23 there's going to be some timing issues. It's not
24 exactly on top of the GDP. And with the projections
25 that are being predicted in the coming year, probably

1 will track upward again, because the economy is
2 tracking upward.

3 So, we don't need 10 percent growth in the
4 GDP to have a significant increase in our business.
5 If it's over two percent, we'll look for growth.

6 COMMISSIONER PEARSON: Good. Anyone seen
7 problems in the year ahead or a fairly general
8 consensus that it's not a bad year to be in the boat
9 business? Okay, sounds good to me.

10 There has been a noticeable increase in
11 imports from Japan over the period of investigation.
12 Has that increase been more a function of demand pull
13 by the U.S. market or has there been a supply push
14 function going on in Japan with possibly Japanese
15 production increasing and the Japanese needing to find
16 a home for those engines?

17 MR. DEAL: This is Scott Deal, Maverick
18 Boats. I can tell you, I've got boats at my lot
19 waiting for outboard motors for Japan. I've given
20 dealers the opportunity to substitute other brands
21 numerous times. Retail consumer demand is so strong
22 for the products coming from Yamaha that we're forced
23 to park boats out and we wait. And we wait for the
24 ship to come and the motor is shipped directly from
25 Washington State to our factories, because trying to

1 speed the delivery. It's not a push situation at all.

2 COMMISSIONER PEARSON: Any other comments?

3 MR. BARRINGER: Yes. I believe that if you
4 look at the foreign producer responses, the Japanese,
5 by and large, are operating at fairly high rates.
6 They're shipping at grades, which are quite high by
7 historical standards. And I know just from talking to
8 all of these witnesses, as well as many others, that
9 there are shortages in the market or delays in
10 delivery just because the market is quite strong.

11 COMMISSIONER PEARSON: Okay. And one last
12 question here before my light turns -- oh, my light
13 has turned. You had a comment, Mr. Harrison?

14 MR. HARRISON: Yes. I'd like to just add
15 for Honda, Honda only products and sells four-stroke
16 models, so they're sort of uniquely qualified to deal
17 with the four-stroke issue. And if you look at the
18 pattern of American Honda sales over the period of
19 investigation, what you'll see is that the sales gain
20 has been virtually exclusively when they've introduced
21 new models. In other words, what you had over this
22 period of time, initially, when the market was first
23 absorbing the four-strokes after the EPA regulations
24 became effective in 1998, you had this need for all of
25 the companies to respond to that, to have these

1 quieter -- the more fuel efficient and less polluting
2 engines. And what's happened, originally, you have a
3 fairly narrow band of horse-powered models offered in
4 the four strokes. As Honda offered more and more
5 four-strokes and higher and higher horsepower models,
6 their sales expanded in those categories. And you can
7 see that very dramatically, if you look at the sales
8 by horsepower range.

9 COMMISSIONER PEARSON: Okay. Thank you,
10 very much, Mr. Chairman.

11 CHAIRMAN KOPLAN: Thank you, Commissioner
12 Pearson. Mr. Zielinski, if I could come back to you.
13 In your direct presentation at the beginning, you
14 indicated that you had early problems with
15 domestically-produced two-stroke direction injection
16 engines. Your dealership sold Mercury Optimax engines
17 after they were introduced and they had a high failure
18 rate. You said you were, therefore, very reluctant to
19 stock, sell, or promote them, and that these problems
20 drove many customers to consider alternative
21 technology and manufacturers. And you, also,
22 indicated that you worked hard to relaunch it.

23 The first question I have with regard to
24 that is when did this happen? What time frame am I
25 looking at here?

1 MR. ZIELINSKI: Approximately 2000, 2001.

2 CHAIRMAN KOPLAN: 2001 -- 2000 and 2001?

3 MR. ZIELINSKI: Yes. It rolled into 2001,
4 as well.

5 CHAIRMAN KOPLAN: Okay. And after that, you
6 stopped carrying it, is that it?

7 MR. ZIELINSKI: Mr. Chairman, we, also,
8 carry the Ficht. And it --

9 CHAIRMAN KOPLAN: No, I understand, you
10 testified about the Ficht. I'm concentrating now on
11 Optimax.

12 MR. ZIELINSKI: On Optimax?

13 CHAIRMAN KOPLAN: When you said you worked
14 hard to relaunch it, have you relaunched it? Has it
15 been out of stock, as far as you're concerned, since
16 2001? I'm trying to understand.

17 MR. ZIELINSKI: Mercury is my lead engine
18 power plant at my store. We sell more Mercury, two to
19 one, over anything else that we carry. So, we worked
20 very hard, period, to launch and sell Mercury product.

21 CHAIRMAN KOPLAN: Okay. But, I'm asking
22 about Optimax.

23 MR. ZIELINSKI: And on Optimax, we worked
24 very hard, as well. We're a Triton dealer. And when
25 you look at the bass and Walleye side of the business,

1 people tend to look for performance, more performance
2 typically than what a four-stroke will provide. So,
3 yes, we worked hard to sell the Optimax. But,
4 typically, what we found, Mr. Chairman, is we had
5 people walk into the store and say, look, I need
6 performance on the back of this bass boat --

7 CHAIRMAN KOPLAN: Excuse me. You're not
8 listening, I don't think, to the question. The
9 question is, did you stop selling Optimax when you
10 said you had a high failure rate or did you continue
11 to sell it?

12 MR. ZIELINSKI: We continued to sell it to
13 people that absolutely were looking for that
14 technology.

15 CHAIRMAN KOPLAN: Okay. Then my request is,
16 can you provide for the record your warranty service
17 records, as it related to Optimax, during the period
18 2001 through the first nine months of 2004?

19 MR. ZIELINSKI: Yes, I can.

20 CHAIRMAN KOPLAN: I appreciate that. Has
21 the performance of the Optimax, since you've continued
22 to carry it during this period, has its performance
23 improved since the time that you said you had
24 problems?

25 MR. ZIELINSKI: Drastically.

1 CHAIRMAN KOPLAN: It's drastically improved?

2 MR. ZIELINSKI: Yes, sir.

3 CHAIRMAN KOPLAN: Okay. If anyone else that
4 had testified this afternoon similarly sold Optimax
5 during the period and had problems, would you raise
6 your hands and tell me whether you will submit your
7 warranty records that relate to this period that we're
8 looking at for purposes of the post-hearing? Is there
9 anyone besides Mr. Zielinski? You, Mr. Jacobs?

10 MR. JACOBS: Yes. As a matter of fact, we
11 have, in fact, submitted some to the pre-hearing.

12 CHAIRMAN KOPLAN: Do we have all of them?

13 MR. JACOBS: Well, I don't think you have
14 all of them. But, you know, it's a very complex thing
15 with us. We'll have to go back -- when you say 'all
16 of our records,' for years do you want them?

17 CHAIRMAN KOPLAN: No. I said for the period
18 2001 through the first nine months of 2004.

19 MR. JACOBS: I will make every effort --
20 there's 18 boat companies and I'll make every effort
21 to get you every record we can for that. We'll do it
22 through Mr. Barringer.

23 CHAIRMAN KOPLAN: I appreciate that very
24 much. Let me talk to the witnesses from Yamaha, if I
25 could, for a moment. I'm interested in your

1 particular marketing strategy for sales of outboard
2 engines and power heads during the period
3 investigated. Could you provide for the record any
4 business plans that were developed by Yamaha relevant
5 to your exports of subject imports of product to the
6 U.S.? The Petitioner argues that Japanese producers
7 made attempts to increase market share, particularly
8 to OEMs, through aggressive discounting and that this
9 effort largely succeeded. It's in their brief at page
10 69. What I'm interested in is business plans for the
11 period -- to cover the period 2001 through the first
12 nine months of 2004. I assume that you have the
13 equivalent of that and could you submit it post-
14 hearing?

15 MR. DYSKOW: Yes, we can, Commissioner
16 Koplan.

17 CHAIRMAN KOPLAN: Thank you, very much.
18 Mercury states that the United States is the largest
19 export market for Japanese producers, especially on a
20 value basis, and that while Japanese producers have
21 substantial exports to other markets, these could
22 easily be shifted to the U.S. market, in an effort to
23 gain an even larger share of this market, particularly
24 as the demand for larger sized, more profitable
25 engines in this market grows. And that's in their

1 pre-hearing brief at page 96. If the Commission were
2 to make a negative determination, what impediments
3 exist for you to shift subject imports of outboard
4 engines to the United States from third-country
5 markets. Mr. Dyskow?

6 MR. DYSKOW: Phil Dyskow, Mr. Koplán.

7 CHAIRMAN KOPLAN: Yes.

8 MR. DYSKOW: If I understand your question,
9 are you saying can we stop selling products in other
10 countries and shift those sales to the United States?

11 CHAIRMAN KOPLAN: Are there any impediments
12 to doing that?

13 MR. DYSKOW: Well, the simple largest one is
14 the vast majority of the engines sold in the United
15 States by Yamaha are large engines. Most of those
16 engines we sell in other markets are small engines.
17 For example, the factory we have in France that Mr.
18 Mackey alluded to this morning, I don't believe builds
19 an engine over eight horsepower. Our average
20 horsepower in Europe is around 30. Our average
21 horsepower in the United States is around 115
22 horsepower, vastly different engines.

23 That new factory that Mr. Mackey alluded to
24 this morning only builds small and smaller midrange,
25 the bottom end of the midrange, two-stroke engines,

1 primarily for export in third-world markets. The
2 product that we import into the United States is
3 primarily made at our Sanchien plant, which is at full
4 capacity today, and I would defer to any boat builder
5 in this room to ask them if they're getting the
6 quantity of Yamaha engines today that they really have
7 a need for based on demand from their customers. We
8 are at capacity and are struggling to fill demand in
9 the United States as it is. We, also, have strong
10 demand in these other markets. But, Mr. Koplan, their
11 model mix and their engine requirements are vastly
12 different than the United States.

13 This is characterized as a large engine
14 market. Europe is characterized as a small engine
15 market. And I would suspect that even Mercury's
16 average horsepower in Europe is somewhere around 50
17 horsepower. Ours is less than that, as I said.

18 CHAIRMAN KOPLAN: Thank you. That's
19 helpful. Mr. Jacobs, on pages 34 and 35 of
20 Petitioners' pre-hearing brief, they say that a Genmar
21 2003 memorandum, in which you state, 'quite frankly,
22 certain engines cost us more than other engines and
23 Genmar is not able to continue to absorb the
24 significant price differential among the engine
25 manufacturers. Beginning January 1, 2004, Genmar will

1 pass on to the dealer and the consumer some of this
2 differential for the Mercury and Mercusa brands.' And
3 that's the Mercury pre-hearing brief at pages 34 and
4 35.

5 Mercury argues that this significant price
6 differential between the subject imports and
7 domestically-produced outboard engines is the direct
8 result of the dumping of subject imports into the U.S.
9 market at substantial margins. Please respond. What
10 happened after the first of this year; that is, did
11 this differential continue to exist and how has it
12 been reflected in pricing of outboard engines in the
13 boats you manufacture?

14 MR. JACOBS: You're talking about model year
15 2003? Is that what you said?

16 CHAIRMAN KOPLAN: I'm talking about after
17 January 1st of 2004, the first nine months, this
18 interim period that I'm looking at.

19 MR. JACOBS: Right. Well, what's happened
20 is, as I went back and explained to you that this \$500
21 million contract was null and void, so after that, we
22 were put back in the category where our discounts were
23 much smaller, because our quantities were much smaller
24 in what we were going to be purchasing from them. And
25 the fact was that the difference between what we

1 previously negotiated went away, because our
2 quantities have gone down and put us in a position
3 where we could not continue to sell them at the same
4 prices that we were selling them for previously. We
5 had used a lot less engines.

6 CHAIRMAN KOPLAN: Okay. I see my light is
7 about to come on, so thank you for that and I'll turn
8 to Vice Chairman Okun.

9 VICE CHAIRMAN OKUN: Thank you, Mr.
10 Chairman. I want to go back to the question I had
11 posed about parallel pricing and I realized I had
12 started with Mr. Jacobs and Mr. Deputy and had forgot
13 to go back and ask counsel for the companies that are
14 represented here, both for Yamaha Marine, for Suzuki,
15 for Honda, for Tohatsu, to also answer that question
16 in post-hearing for me. If I can have those counsel
17 indicate that they will do that. Mr. Dyskow, you want
18 to say it on the record? That's fine.

19 MR. DYSKOW: It's a short answer, so I can
20 give it to you now. This is Phil Dyskow, Ms. Okun.
21 We have no loans with any of these people and we have
22 no loans with any boat manufacturers.

23 VICE CHAIRMAN OKUN: Okay. And are there
24 are any other responses for the record? Yes?

25 MR. VANDIVER: This is Larry Vandiver,

1 American Suzuki. We do not have any loans to any boat
2 companies. We don't offer any kind of program such as
3 was spoke about this morning to anyone.

4 VICE CHAIRMAN OKUN: Okay.

5 MR. TERRY: This is Wade Terry with American
6 Honda. Ditto for us. We have been approached and we
7 refused.

8 VICE CHAIRMAN OKUN: Okay.

9 MR. MORGENTHALER: Jim Morgenthaler with
10 Tohatsu.

11 VICE CHAIRMAN OKUN: Yes.

12 MR. MORGENTHALER: We do not have anything
13 like that either.

14 VICE CHAIRMAN OKUN: Okay.

15 MR. MORGENTHALER: No loans or anything.

16 VICE CHAIRMAN OKUN: I believe that covered
17 everyone now. Thank you. Then, let me ask, we talked
18 about pricing in the market and there have been a
19 number of questions about four-stroke versus a two-
20 stroke. And I understand -- I'm not sure how much I
21 can get on this, because I know a lot of you are
22 carrying only four-stroke. But, one of the things we
23 had identified in our preliminary determination was
24 wanting to get more information on how new technology
25 affects the pricing. And when I listened to all of

1 the testimony, I thought when I read this record, I
2 wouldn't see any of these two-stroke carbureted
3 engines being sold, because they have to go out at
4 some point, and, yet, they're still -- you know,
5 they're still being sold. And while the pricing is
6 confidential and maybe we'll get into it in our next
7 session yet to come, I wondered if you could talk a
8 little bit more about pricing of the different
9 products.

10 Again, should we really be looking at four-
11 stroke versus two-stroke DI, as opposed to just
12 looking four-stroke to four-stroke? Should we look at
13 those at take anything out of that when I hear all of
14 this about how, you know, this new technology and the
15 four-stroke and the two-stroke DI. I'm trying to
16 figure out to look at the pricing here and see if
17 there is any -- there is a technology cycle or
18 anything else affecting these prices. Can anyone out
19 here help me? Mr. Deputy?

20 MR. DEPUTY: I don't know that I can help on
21 the DI versus four-stroke, but I can say that the old
22 style two-stroke engines, which are certainly still on
23 the market and still sold in quantity, have become
24 ideal engines for price package promotions. And so if
25 somebody wants to sell a pontoon boat for \$99.95 with

1 a boat motor, their only choice is to use an old style
2 two-stroke engine of some sort on that. And I would
3 say with the fishing boats we build, the entry level
4 fishing boats will buy the old style engine, because
5 that's a chance for somebody to own a boat without
6 having to pay the up charge that they're going to have
7 to pay to get into a DI engine or a four-stroke
8 engine. So, that market is still there.

9 Now when the EPA rules become fully
10 effective and those engines are no longer available,
11 there's going to be a big chunk of the market that's
12 going to have to be served by much higher cost
13 engines, because the four-strokes or the DI engines
14 are all much more expensive than an old style two-
15 stroke engine.

16 VICE CHAIRMAN OKUN: Okay. That's actually
17 helpful. That was one of the things I wanted to
18 understand, of how you see those in this marketplace.
19 And I may save some of these other questions for the
20 closed session.

21 What about in terms of -- I wanted to go
22 back to you, Mr. Deputy, again. You are another one,
23 who had -- at my last round of questioning, I was
24 talking about with Mr. Zielinski about what happened
25 when OMC, the bankruptcy, and what made people turn to

1 the different manufacturers. And in your testimony
2 today and in your statement, you, also, talked about
3 what happened with the bankruptcy and what you saw as
4 a shortage of key four-stroke engines from Mercury
5 developed in 2001. And I wondered if there is any
6 other -- you may have already put this data in the
7 record, but if you could just help me understand that
8 part of it again, like what was going on during that
9 period with regard to the availability of Mercury
10 four-stroke product.

11 MR. DEPUTY: Well, I think the key thing
12 happened there is twofold. Number one, we had a
13 significant number of dealers, who were Johnson-
14 Evinrude OMC dealers and for the most part, those
15 dealers had also taken on a complementary line. They
16 realized there were problems at OMC and a
17 complementary line was customarily a Japanese brand.
18 So when OMC went bankrupt, they simply increased their
19 orders of Japanese manufactured engines. We have to
20 realize that the Johnson-Evinrude dealer and the
21 Mercury dealer were the Chevy and Ford dealer
22 competing with each other and they didn't particularly
23 like each other real well, so it was not likely that
24 an avid Johnson-Evinrude dealer was going to decide to
25 leap on Mercury products. Now that was part of it.

1 But the other part of it was that Mercury
2 did not have availability of the 75, 90, and 115
3 horsepower four-strokes at that time. The market was
4 slow, they cut back their production, and they just
5 didn't have engines available. I can't say this exact
6 number, but I think they gave us an allocation of like
7 20, 115 four-strokes that we'd get for the whole model
8 year. That year, we needed over 1,200, 115 four-
9 strokes. So, they just didn't have the product
10 available at all. And the dealers, if they wanted the
11 four-stroke in that horsepower range, they had to rely
12 on whatever Yamaha could get them, because at least
13 they were getting them some engines; whereas Mercury -
14 - quite frankly, you, also, have to understand,
15 Mercury owns a number of boat companies of their own.
16 Those companies are captive. What they pay for
17 engines is irrelevant. It doesn't matter. But, they
18 are going to supply those companies. Furthermore,
19 Tracker Marine is the largest user of outboard engines
20 in the country and they are exclusive Mercury user of
21 engines. So, Mercury had to take care of their prime
22 customers and if you weren't a prime customer, you
23 weren't going to get very many engines. So, you had
24 no choice. If we were going to take care of our
25 dealers and their customers, we had to get the engines

1 they needed, which, in this case, turned out to be
2 either Yamaha, Honda, Suzuki, or some other brand.

3 VICE CHAIRMAN OKUN: Okay. And I believe
4 what you're testifying to, you did have information in
5 the pre-hearing brief. But, if there's anything else,
6 Mr. Barringer, any specifics that could be added with
7 regard to shortages in the market or what you were
8 trying to purchase with dealers, I think that would be
9 helpful information to understand with regard to what
10 was available at that time.

11 MR. DEPUTY: Fine.

12 VICE CHAIRMAN OKUN: Okay. Then, I know
13 some of my colleagues had asked, had gone back into
14 this issue of if you have different applications, are
15 you selling different things, and we talked a little
16 bit about bass and a few others. The other question
17 that had struck me about that and I was trying to look
18 back at where you all are from, but in terms of the
19 dealers out here, I mean, are you in competition with
20 any of the dealers that we heard from this morning,
21 like direct competition? You know these guys and
22 you're selling -- you know, you might have the same
23 people walk in.

24 MR. GOOTEE: My name is Tommy Gootee. I
25 don't know any of the dealers from this morning's

1 presentations.

2 VICE CHAIRMAN OKUN: Okay. Anyone else who
3 -- I guess, you can just answer if you do.

4 MR. CARPENTER: No, I don't.

5 VICE CHAIRMAN OKUN: Okay; okay. Again, I'm
6 just trying to understand a little bit more about
7 price competition in the marketplace, because I think,
8 Mr. Jacobs, you had -- in some of your answers, you
9 had talked about, you know, customers had voted with
10 their pocketbook and I think someone had asked you
11 about what put Yamaha in this position when, you know,
12 there's a lot of different products in the
13 marketplace, not just four-stroke, and that different
14 customers are willing to pay different amounts. And,
15 you know, again, to go back to some of the pricing
16 information on this record, I'm just still trying to
17 make sense of, you know, what people are -- what the
18 package price is and then how that translates into,
19 you know, what engine is being offered. And I think
20 it really does go to the builders to supply that
21 information, because I think that's the way I've heard
22 the testimony today. Mr. Jacobs?

23 MR. JACOBS: Yes. Ms. Okun, there is
24 something here that has been kind of, I think, has
25 been kind of looked over a little bit to the

1 significance of it. And you just heard Mr. Godfrey
2 talk about Tracker Marine. Now, first of all, he's
3 not the largest engine buyer. We are. And I will say
4 to you that he gets a better deal that we could ever
5 get, because he has a favorite nations. Mercury has
6 told us that. They've openly said, we can't give you
7 the same deal we gave them, because we have a favorite
8 nations with them. I don't know if it's 10 years, 20
9 years, whatever it is. But, I do know, by their own
10 words, that they said they can't sell an engine within
11 four percent of the discount, they told us that, of
12 what that price is. The significance to that is, is
13 that that could be just huge, because who knows -- you
14 will be able to find out; we won't. You should be
15 able to find out what Mercury is selling them engines
16 for. It should be very revealing to you, because
17 there's no question, none, there isn't a single
18 company in America that openly is getting the discount
19 that Tracker Marine is, not a single company. And
20 we're three times their size. So, just -- again, I
21 can't tell you what to do, but I can tell you, you
22 ought to look at it, okay.

23 VICE CHAIRMAN OKUN: Okay. Well, I
24 appreciate all of those answers. And with that, Mr.
25 Chairman, I have no further questions at this point.

1 CHAIRMAN KOPLAN: Thank you, Madam Vice
2 Chairman. Commissioner Miller?

3 COMMISSIONER MILLER: Thank you. A couple
4 of things I want to do here. I appreciate all of the
5 testimony and there have been a lot of good answers to
6 our questions. Mr. Deputy, you mentioned in your
7 initial testimony, you directed us to considering
8 rigging costs.

9 MR. DEPUTY: Right.

10 COMMISSIONER MILLER: And I know you -- I've
11 heard you say that at least once in some of your
12 answers here and I want to make sure I understand your
13 point on that. You have said that your rigging costs
14 for -- you gave us an example, on a Yamaha were
15 greater than the rigging costs on a Mercury. Explain
16 to me -- well, first of all, just help me understand
17 rigging costs and why the rigging costs on one engine
18 would be more than another engine, the same size and
19 technology and if what you're saying is generally true
20 or if it's going to be very much engine-by-engine,
21 boat-by-boat, in terms of which engine would cost more
22 to rig.

23 MR. DEPUTY: This is Bob Deputy. By and
24 large, the rigging costs, which are the cables, the
25 controls, the wiring harnesses, the propeller, the

1 parts we have to put with the engine in order to make
2 a package out of it, costs more for a Japanese engine
3 than they do for either a Bombardier or a Mercury, and
4 that's pretty much across the board. It will vary
5 engine-by-engine; but, by and large, the parts we have
6 to buy to make it a complete package costs more money
7 if it's, in this case, specifically a Yamaha engine.
8 And it will vary by engine more than by boat. By
9 boat, the length may be different, but the length
10 would be different for both of them. In other words,
11 if we need a 25-foot cable, we'll need a 25-foot cable
12 whether it's a Mercury or a Yamaha or a Suzuki. It
13 doesn't matter. But, the Yamaha cable is historically
14 more expensive by some amount than a Mercury part.
15 And so, we have to add those into our costs, in order
16 to figure out what's this engine package going to cost
17 to put into the market.

18 COMMISSIONER MILLER: And the answer to the
19 question of why it's --

20 MR. DEPUTY: Because, there are parts --

21 COMMISSIONER MILLER: Maybe, it was hidden
22 in what you are --

23 MR. DEPUTY: If the question is why are --

24 COMMISSIONER MILLER: You just said that
25 Yamaha parts are more expensive.

1 MR. DEPUTY: That's because they choose to
2 ask for more money for their parts.

3 COMMISSIONER MILLER: Okay, okay.

4 MR. DEPUTY: I mean, when we put --

5 COMMISSIONER MILLER: It's not because
6 there's something about the Yamaha engine that's
7 different. It's because --

8 MR. DEPUTY: No.

9 COMMISSIONER MILLER: -- they charge more
10 for their parts.

11 MR. DEPUTY: They charge more for their
12 parts. And, quite frankly, if we're going to put a
13 Yamaha engine on the boat, when we put the rigging in,
14 it's also going to say Yamaha on it. And when we put
15 a Mercury on a boat, the rigging is going to say
16 Mercury on it. We don't buy a generic knock off
17 rigging and have every boat rigged with that knock off
18 and not, in effect, tie into the actual brand of
19 engine that we're putting with the boat. The consumer
20 wants to see that when he starts driving that boat, if
21 it's a Yamaha engine, it says Yamaha; if it's a
22 Mercury engine, it says Mercury on his controls. So,
23 the Yamaha controls, they just charge too much money
24 for them. It's that simple.

25 COMMISSIONER MILLER: Okay. Let me just

1 note, because the transcript won't show, that many of
2 the witnesses were shaking their heads in the
3 affirmative, in agreement, regarding this point.

4 MR. DEPUTY: You know, in fairness, some of
5 these witnesses only use Yamaha, so they're not near
6 as brutally aware of this as some of us, who use all
7 of them.

8 (Laughter.)

9 COMMISSIONER MILLER: Okay. Well, I can
10 have others speak out, but I'm just going to note, as
11 I say, they all seem to be shaking their heads. So, I
12 just wanted to make sure I had that on the record.
13 I'll think about what that means.

14 The only other thing I wanted to do is to
15 welcome Ms. Coghill. I'm from the north side of
16 Indianapolis, so I have to welcome a fellow Hoosier,
17 as Commissioner Pearson welcomed another Minnesotan.
18 And, you know, growing up there, my family is all
19 there, I go back all the time and, yet, I didn't know
20 about Lake Freeman. So, now, I'm kind of curious. I
21 certainly knew about Monticello.

22 But tell me, I mean, your company, Pearson's
23 Marina, you know, you go into a 10-day boat show.
24 Where are you going to a 10-day boat show?

25 MS. COGHILL: In Indianapolis.

1 COMMISSIONER MILLER: Okay. But, 10 days?

2 MS. COGHILL: Chicago is not quite as long.
3 Chicago, also.

4 COMMISSIONER MILLER: Chicago would be your
5 other market. And you're a pretty major company,
6 then, for -- I mean, there's not that much boating in
7 Indiana, unless you're up north where Commissioner
8 Hillman is from.

9 MS. COGHILL: I know. If I only had all
10 their water.

11 COMMISSIONER MILLER: Exactly. And for you
12 -- I mean, I fully understand and appreciated your
13 comments about getting a Suzuki engine accepted in the
14 middle of Indiana. You said you went to it for
15 environmental reasons or that it was one of the things
16 that motivated you. I'm just looking through your
17 testimony a little bit more to help me understand what
18 -- you know, how you made this shift to the four-
19 stroke engine and why you made the shift. And I think
20 you gave us a lot of the information there about the
21 performance of it was the main thing that drove you.

22 MS. COGHILL: Yes. The fuel economy, the
23 warranty. The typical two-stroke engine only came
24 with the one-year warranty, where the four-stroke
25 engines had three-year warranties. That was an

1 excellent selling tool for the customer. Fuel
2 consumption, environmentally friendly. And like I
3 said, I'm a Suzuki dealer, so they had fuel injection,
4 which is an extreme bonus over some of the other -- at
5 that time, I think they were the only ones with fuel
6 injection on their midrange engines, on their 40, 50,
7 60, 70, a lot of pontoon and small fishing boat
8 motors. So when the customer comes in and you can
9 give him everything in one package, fuel injection, as
10 well as four-stroke, then it's an extreme bonus. And
11 once we made the conversion to Suzuki, it's like --
12 Mercury now has fuel injection, but why switch. You
13 know, you've got a great product. You don't have any
14 trouble with it. You know, I could have probably
15 bought Mercuries maybe a little cheaper or at the
16 exact same price, but, you know, you believe in what
17 you sell and you had a great experience with. And the
18 consumer tells their neighbor and it just becomes very
19 popular in our area.

20 I'm one of the only Suzuki dealers in the
21 entire state. There's a couple other dealers, very
22 north and very south of me. So, it works to my
23 disadvantage, because when someone out of my area,
24 which since we do these boat shows buys a Suzuki, they
25 have to make an effort to come back to me for service.

1 So, it's really a disadvantage. But, we feel it's
2 worth it, because we don't have anybody that's an
3 unhappy boater. What's hurt our business more than
4 anything is when a consumer has a bad experience
5 boating and there's a lot of swearing and not a lot --
6 a lot of fighting that goes on every weekend with some
7 products that were not nearly as reliable as what we
8 offer today. So, that's the big switch to the four-
9 strokes. So, the consumer has a great experience and
10 they like to boat and they want to take their kids
11 boating.

12 COMMISSIONER MILLER: Okay. Well, I
13 appreciate it. I appreciate your being here today and
14 learning a little bit about what boating is going on
15 in the middle of Indiana, which I wasn't aware of.
16 Thank you, very much.

17 CHAIRMAN KOPLAN: Commissioner Hillman?

18 COMMISSIONER HILLMAN: Thank you. And I,
19 too, would join in welcoming fellow Hoosiers. I am
20 much more up in lake country Indiana, where either
21 boats are spent -- I will say my time on wind-powered
22 boats out on Lake Michigan; but, again, would want to
23 welcome you, as well.

24 If I can come back to this issue that I
25 finished with last time, in terms of trying to

1 understand the price competition. And maybe, let me
2 start first with Ms. Carroll, Mr. Deal, and Ms.
3 Maxwell, who are 100 percent, as I understand it,
4 Yamaha. You're in salt water. From your perspective,
5 how do prices get set? I mean, you're not looking
6 around to any other company to figure out whether you
7 can get a better deal from somebody else. How do you
8 bargain for getting the best price for the package of
9 products you're buying from Yamaha? What goes into
10 the price competition?

11 MR. DEAL: Scott Deal, Maverick Boats.
12 Maybe I'm disadvantaged like Mr. Deputy is with Mr.
13 Jacobs' comparison. But, they present us a price list
14 and it says, you buy x, you get x off; you get x times
15 10, you get more off.

16 COMMISSIONER HILLMAN: So, it's kind of a
17 take it or leave it. These are your discounts. The
18 volume is x, you get y discount, and that's pretty
19 much it.

20 MR. DEAL: And importantly, the program is
21 known and understood. There isn't the deal of the
22 quarter or any other renegotiation during the course
23 of the year or some crazy price adjustment at the end
24 of the year. The prices are level all year. We
25 understand what they are. We do our programs for an

1 annual basis. And we mark up the product, we make
2 money on it, and we go on down the road.

3 COMMISSIONER HILLMAN: Okay. Now, if there
4 are competitors selling the same type of boat, but
5 using a different engine, are you aware of what they
6 might have paid for their engine? I mean, is there
7 much sort of understanding of what might be going on
8 else in the market? Ms. Maxwell, you sort of
9 indicated that you don't know or care what the other
10 prices are. I'm just trying to make sure I understand
11 that.

12 MS. MAXWELL: I think you read that right.
13 Joan Maxwell with Regulator. We don't know what our
14 competitors pay for their engines. We don't know what
15 their costs are in building their boats. Oftentimes,
16 we're able to discern the retail price of the boats,
17 but we still don't know what they actually charge the
18 dealer for them, because many of the boat
19 manufacturers have their own discount structures back
20 down to their dealers, so we don't really know what a
21 dealer is paying.

22 But, we do know what we charge and we do
23 know what we make off of each of our boats. And I
24 think that's important to understand is that sitting
25 around in this room right now, these are all

1 independent boat builders here. We are not tied to
2 Yamaha in any way and so our structures, all of our
3 pricing is all very independent.

4 COMMISSIONER HILLMAN: Okay. And typically
5 set in sort of a one-year type of a contract with
6 these discounts based on volume and other --

7 MS. MAXWELL: Exactly.

8 COMMISSIONER HILLMAN: -- and other things.

9 MS. MAXWELL: Exactly.

10 COMMISSIONER HILLMAN: And the same
11 percentage discount regardless of the size or the
12 technology of the engine? Or would you end up with a
13 whatever it is, 16 percent and that applies to all the
14 engines?

15 MS. MAXWELL: It depends upon what Yamaha's
16 pricing is. I think this year, there may have been a
17 differential in the two-stroke and four-stroke
18 pricing, and Phil could certainly speak to that better
19 than we could. But, we knew that going in, as we
20 purchased engines. I mean, there's no surprises, as
21 Scott was saying. It's a published price. You know
22 what the volume is that you need to do and either you
23 do it or you don't do it to get that price.

24 COMMISSIONER HILLMAN: And if I could turn
25 to the dealers. Some of you testified that you are

1 purchasing more than one -- you know, from more than
2 one engine maker. From your perspective, how does the
3 price competition work? Is it the same thing: you're
4 just presented here's your discounts, that's it;
5 there's no negotiation? Or is there any ability to,
6 in essence, compare and try to do any kind of price
7 competition among the various engine suppliers to you?

8 MR. LOCKHART: Wayne Lockhart. I do Honda,
9 Suzuki, and Yamaha. My primarily line is Honda. And
10 it's a well documented printed price list. If you
11 meet certain levels, you get x; if you don't, you
12 don't.

13 COMMISSIONER HILLMAN: And there's no
14 discussion with, say, Yamaha, gee, Honda is offering
15 me this better deal, why don't you meet it? Does that
16 ever happen?

17 MR. LOCKHART: No.

18 COMMISSIONER HILLMAN: Okay. And why not?

19 MR. LOCKHART: It's just not the way it
20 works at the dealer level. I don't think we have the
21 purchasing power. Even, you know, Tony, who buys
22 1,000 outboards, which is great, doesn't even compare
23 to a manufacturer that can buy several times that.

24 COMMISSIONER HILLMAN: Okay, okay. Mr.
25 Zielinski, did you want to add something?

1 MR. TERRY: May I respond?

2 COMMISSIONER HILLMAN: Sure.

3 MR. TERRY: I'm Wade Terry with American
4 Honda.

5 COMMISSIONER HILLMAN: I will come back up
6 to you, Mr. Zielinski. Go ahead.

7 MR. TERRY: We set our pricing based on
8 classes of customers and in accordance with U.S.
9 antitrust laws. So, we have to offer everyone the
10 same deal, based on their size and their volume and
11 what they do. So, we don't really have a choice. We
12 just do it that way.

13 COMMISSIONER HILLMAN: Okay. Mr. Zielinski?

14 MR. ZIELINSKI: Tony Zielinski. We deal
15 with approximately 10 various OEMs. And there are two
16 ways that you can buy an outboard: you can buy it
17 direct from the manufacturer or you can buy it through
18 the boat builder. Manufacturers have chosen in recent
19 years to send most all of their volume through the
20 OEMs or from the OEM to the dealer. They break it
21 down in bulk packages. Honda -- we carry three lines:
22 Honda, Johnson-Evinrude, Mercury. Honda has always
23 been the most expensive choice. If I were to choose
24 the same boat package with a different motor, such as
25 a Mercury, typically, it would had been less money for

1 the Mercury and then even less money for the Johnson-
2 Evinrude.

3 COMMISSIONER HILLMAN: Okay. No, I
4 appreciate that. I asked this morning and I would
5 just be curious whether you would agree with the
6 testimony we heard, to try to understand why the
7 prices to OEMs are significantly below the prices to
8 the dealers. I'm presuming it's basically what you've
9 just said. It's the issue of the buying power, the
10 size of the buying, and that the discounts are
11 primarily based on volume was basically the answer
12 that I heard. I just want to make sure from this
13 panel's testimony, you would agree with that; that
14 that is why our pricing data shows such a big
15 difference between OEM pricing and dealer pricing,
16 it's volume, fundamentally. Mr. Deputy?

17 MR. DEPUTY: Well, I think certainly volume
18 counts. But, we give an order to, in this case,
19 Yamaha in May for the following year, broken down by
20 engine, literally, by every two weeks what we're going
21 to buy. They're shipping them to us whether we've got
22 them sold or not and we're going to wire transfer
23 money to them, I think, every seven days to pay for
24 them. Their risk ended. When that truck dumped them
25 at our place, our risk started. And so, there's a big

1 piece there of why for the engine manufacturers, they
2 can build and ship and it's a sale for them. It's
3 going on their financial statement as a sale. And
4 from the standpoint of a dealer, many times, they will
5 have it on a floor plan with the dealer. In our case,
6 we made a floor plan with a dealer, but it's our risk
7 to get rid of it. It's also our risk to pay insurance
8 on it, pay taxes on it, warehousing and so forth. So,
9 they've transferred a lot of what the risk they had
10 years ago to the OEM. Quite frankly, it's been a
11 terrific deal for the builder of engines. From a cash
12 flow standpoint, it's terrific.

13 COMMISSIONER HILLMAN: Okay. I appreciate
14 that. That's very helpful testimony. And, again, the
15 same thing, if we look at the trend over our period of
16 investigation, we would generally have seen prices
17 decreasing to OEMs, but increasing to dealers. Any
18 sense of why that's the case? We have seen over our
19 period of investigation prices generally decreasing to
20 OEMs, but increasing going to dealers. If I just look
21 at what the price of any one of our products was at
22 the beginning of the period versus at the end, you see
23 a divergent trend.

24 MR. DYSKOW: Ms. Hillman, this is Philip
25 Dyskow. Perhaps, I can answer that question.

1 COMMISSIONER HILLMAN: Sure.

2 MR. DYSKOW: I believe this is true of our
3 competitors. It's certainly true of us. All pricing
4 is based on dealer net price. The dealer net price is
5 the established price level. Dealers are given
6 discounts off of that dealer net price based on
7 volume. OEM prices are based on that same dealer
8 price. See what I mean? The discounts that are given
9 based on volume are established off of dealer net
10 price. There isn't two sets of pricing. There's one
11 set of pricing. It's based on dealer net price.

12 Now what has happened and the reason perhaps
13 your data is so skewed, the volume on the OEM side has
14 gone up tremendously. The volume on the dealer side,
15 in the case of Yamaha, I don't know if this is in any
16 of the briefs, our dealer volume has stayed flat for a
17 number of years. Our OEM volume has done this. So,
18 as Mr. Deputy or Mr. Jacobs or any of these people, as
19 their volume goes up, well, of course, their discount
20 goes up accordingly, because that's the way the
21 program is done. But the base price is the same for
22 both: it's dealer net price.

23 COMMISSIONER HILLMAN: Like I said, I was
24 just trying to make sure I got it, that it was
25 basically a volume issue and then Mr. Deputy has added

1 this other issue of who is bearing the financial risk
2 and when that risk gets transferred and to whom is
3 obviously some of the factors going into it, as well.

4 MR. DEPUTY: The only thing, I'm a little
5 surprise, our costs of engines have gone up every
6 year. So the idea that the OEM cost has gone down,
7 that isn't true. The OEM cost of the engines has gone
8 up, but, now, maybe the quantity of engine, as Phil
9 Dyskow has just said, because of the balance, maybe it
10 looks like it's skewed the other way. But what we pay
11 for 115 horsepower motor pretty much goes up every
12 year.

13 COMMISSIONER HILLMAN: Okay. And you would
14 say that has typically been the case, not just
15 throughout this period, but that has --

16 MR. DEPUTY: That's pretty much the case,
17 period, forever.

18 (Laughter.)

19 COMMISSIONER HILLMAN: That's interesting.
20 No, it's just interesting to then look at it in the
21 way that our data looks at it. And, again -- I'm
22 sorry, the red light has come on. All right. Thank
23 you, Mr. Chairman.

24 CHAIRMAN KOPLAN: Thank you, Commissioner.
25 Commissioner Lane?

1 COMMISSIONER LANE: I have no questions .

2 CHAIRMAN KOPLAN: Thank you, Commissioner.
3 Commissioner Pearson? Commissioner Pearson has no
4 questions and I have no additional questions. Vice
5 Chairman Okun? Moving right along.

6 VICE CHAIRMAN OKUN: I want to thank you all
7 for your questions -- or the answers given this
8 afternoon. It's been very helpful. It's been very
9 helpful. It's been a long afternoon. We still have a
10 more to go. So, in light of that, I will -- there are
11 probably some more questions in there, including some
12 legal ones for Mr. Barringer, but I will have an
13 opportunity to do that either in writing or in the
14 next session. Thank you, Mr. Chairman.

15 CHAIRMAN KOPLAN: Thank you. Commissioner
16 Hillman? All right. I see that there are no
17 additional questions from the dias. Ms. Mazur, does
18 the staff have questions of this panel before we
19 release them?

20 MS. MAZUR: Staff has no questions, Mr.
21 Chairman.

22 CHAIRMAN KOPLAN: Thank you, Ms. Mazur. It
23 looked like there was some hesitation over there. I
24 just want to make sure that that's correct?

25 MS. MAZUR: No, that is correct.

1 CHAIRMAN KOPLAN: Okay, thank you. Mr.
2 Barringer -- no, I'm sorry. Mr. Dempsey, do you have
3 any questions of this panel before I release them?

4 MR. DEMPSEY: We have no questions, Mr.
5 Chairman.

6 CHAIRMAN KOPLAN: All right. Thank you,
7 very much. I want to thank this afternoon's panel for
8 its testimony. It's been extremely helpful, a lot to
9 digest and chew on. I want to make an announcement
10 before I release you all and then we move to our in-
11 camera session. And the announcement is as follows:
12 in light of the testimony this afternoon concerning
13 certain transactions between Genmar and Mercury, the
14 Commission requests both Respondents and Petitioner to
15 include in their post-hearing briefs documentation
16 related to these transactions. Documentation includes
17 written communications between individuals or
18 companies and any internal memoranda, including board
19 meeting notes or e-mails detailing written or oral
20 communication. The Commission, also, will permit
21 interested parties to submit response briefs by
22 December 29, 2004. These briefs shall respond only to
23 arguments asserted in the post-hearing briefs about
24 these transactions. The text of the response briefs
25 cannot exceed 10 pages.

1 With that, I, again, want to thank these
2 witnesses for their testimony. And we will now
3 prepare for the post-hearing in-camera sessions. Let
4 me say to you, counsel, that in terms of time,
5 Respondents have eight minutes remaining for their in-
6 camera presentation and Petitioners have 10 minutes
7 remaining. Mr. Dempsey, if you choose not to use your
8 full 10 minutes, any of that time that's left over can
9 be used in the public session for your public
10 rebuttal. And with that, thank you. I want to thank
11 all the witnesses for their testimony and we'll take a
12 few moments to change over.

13 (Whereupon, at 5:51 p.m., the hearing was
14 adjourned, to reconvene this same day for the post-
15 hearing in-camera session.)

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CHAIRMAN KOPLAN: We can come back to order. I'm looking forward to hearing closing arguments. Are you ready to proceed, Mr. Dempsey?

MR. DEMPSEY: Yes, Mr. Chairman.

CLOSING REMARKS BY COUNSEL FOR PETITIONERS

MR. DEMPSEY: Mr. Chairman, members of the Commission, it's been a very long day, and we've spent a lot of time on a very complicated case, and we appreciate the time and attention that you and your staff have spent on this case.

We think the record is clear that with the OMC bankruptcy at the end of 2000, the market was open for a period of fierce competition between the Japanese producers and the remaining U.S. producer in 2001, Mercury Marine. The fight over market share; that was fought largely on the basis of price. There were significant price discounts offered, especially on large, OEM boat-builder accounts that explained the significant increase in market share and volume by the Japanese producers beginning in 2001 and the high level of market share by the Japanese producers that has continued.

The fact of price competition is borne out in the Commission's traditional pricing product data

1 which show significant price underselling across a
2 range of products, 63 percent measured by quarter, and
3 the Japanese Respondents' argument to that is that
4 they are making sales not on the basis of price but
5 quality, but a quality argument is fundamentally
6 inconsistent with underselling and calls into question
7 whether, in fact, producers were purchasing more four-
8 strokes because they wanted four-strokes, they wanted
9 that quality, or whether they were purchasing those
10 four-strokes because that's what the Japanese
11 producers were offering at discounted prices.

12 The principal spokesman for the Japanese
13 Respondents today was Mr. Irwin Jacobs of Genmar, who
14 does account for -- is one of the largest independent
15 boat builders and, therefore, is a major purchaser of
16 especially Yamaha but also the other Japanese
17 producers, and his argument that price had nothing to
18 do with it is contradicted by public statements and
19 the press accounts from 2001. And again I would like
20 to just quote from a press article from May of 2001
21 that's reprinted in our prehearing brief.

22 This is from Soundings Trade Only Today, May
23 18, 2001, entitled "Genmar Cuts Back on Brunswick
24 Engine Orders." This is quoting the article. "Citing
25 'noncompetitive' pricing of Mercury Marine engines,

1 Irwin Jacobs said this morning that Genmar Holdings
2 will be cutting back on engine orders from the
3 Brunswick Corp. subsidiary in model year 2002.
4 Although he declined to cite specific numbers for the
5 Mercury cutback or which boats will be involved,
6 Jacobs said it will go from 'major to very minor.' He
7 estimated Genmar was previously getting some 30 or 40
8 percent of its engines from Mercury.

9 "Jacobs said that the cutback had nothing to
10 do with the problems that surfaced recently with some
11 of Mercury's 2001 Optimax outboards but, rather, was
12 related more to the cost of the engines. Calling
13 Mercury engines 'noncompetitive in our boats,' Jacobs
14 estimated these engines are priced 10 percent higher
15 than the primary competition in the marketplace.

16 "'I'm trying to keep costs down,' he said,
17 adding he is also trying to help his dealers remain
18 competitive. 'It's going to be a very competitive
19 year.' 'Yamaha's business could be up as much as 300
20 percent with us this year,' Jacobs said. 'Suzuki will
21 have a very big year with us. This is their first
22 time as an OEM, and Honda is being offered for the
23 first time as an OEM.'"

24 Those public statements by Irwin Jacobs in
25 May of 2001 at the point at which there was fierce

1 competition for the market share previously held by
2 OMC demonstrate that price was very much a factor in
3 the increased market share by the Japanese producers
4 that occurred in 2001 and that has caused the injury
5 to the domestic industry that is being suffered today.
6 An affirmative determination is in order. Thank you
7 very much.

8 CHAIRMAN KOPLAN: Thank you, Mr. Dempsey.
9 Mr. Harrison?

10 CLOSING REMARKS BY COUNSEL FOR RESPONDENTS

11 MR. HARRISON: Thank you, Mr. Chairman. I
12 would also, on behalf of all of the Respondents, like
13 to thank you very much for your attention today on the
14 somewhat complex factual patterns you've seen
15 described.

16 We have focused on the four-stroke engine
17 because that is where the increase in the imports have
18 occurred, largely, we have explained, on behalf of the
19 domestic industry. The increase in the four-stroke
20 demand was occasioned by both demand and supply
21 factors. On the one hand, you've heard testimony
22 today that the four-stroke engines were quieter, more
23 fuel efficient, less sooty, and fundamentally more
24 reliable than the two-strokes.

25 On the supply side, you've heard that the

1 domestic manufacturers and the distributors were
2 anxious to comply with the increasingly stringent EPA
3 requirements that ratcheted up the requirements year
4 by year. In order to do that, they had to sell the
5 cleaner engines on a year-to-year basis. In order to
6 do that, they wanted to increasingly sell the four-
7 stroke engines.

8 You saw the demand for four-stroke engines
9 dramatically increase during the period, and, indeed,
10 the principal focus of the increased demand was in the
11 higher-horsepower units as more and more of the
12 higher-horsepower models were introduced, and that was
13 precisely the segment in which the domestics did not
14 participate by their production.

15 As you've heard this morning and today, the
16 domestics did not produce any four-stroke engines over
17 115, and even in the case of their 115, their 90, and
18 their 75, they were relying on imported powerheads for
19 that purpose. You've heard that the reason for that
20 was that Mercury understood that there was a need to
21 develop four-stroke engines, and they wanted to do
22 that in a period of two or three years. You've heard
23 that by the late nineties they would have had four-
24 stroke engines in production in the 2003 and 2002
25 model year. You heard Mr. Jacobs explain that they

1 had hundreds of millions of dollars riding on that
2 issue, and yet they were unable to produce those four-
3 stroke engines until the model 2005 year, and even
4 then on a very, very limited basis.

5 We think that's the principal reason for the
6 problems that they have had.

7 I would like to end by quoting -- we have
8 the benefit of some observations by Mercury about the
9 importance of the four-strokes and the extent to which
10 consumers are aware of the differences. This is in
11 the litigation that we heard about, the Wisconsin
12 litigation, and let me just quote from several
13 statements that Mercury made in that litigation.

14 First, they explained in a filing in
15 October, barely two months ago, "As Yamaha well knows,
16 most consumers have a clear preference for one or the
17 other type of engine, four-stroke versus two-stroke,
18 direct-injection, given the differences in technology
19 and other characteristics of the engine, even though
20 engines of similar power are interchangeable from a
21 power perspective." Clear acknowledgement of the fact
22 that there is a consumer perception of the difference
23 between the two-stroke DI and the four-stroke.

24 Another statement made in that litigation by
25 Yamaha: "Over the past six years, there has been a

1 dramatic shift in the marketplace towards lower-
2 emission engines, including four-stroke engines, and
3 away from traditional two-stroke engines. This shift
4 is due in large part to Environmental Protection
5 Agency (EPA) emissions-reduction mandates enacted in
6 1978."

7 So they are making it very clear in this
8 statement that there has been this dramatic shift.
9 They further explain, "Because of the dramatic EPA-
10 mandated shift towards low-emission engines away from
11 traditional two-strokes, Mercury had to supply its
12 customers with mid-sized, four-stroke engines in order
13 to keep their business. Mercury was able to meet this
14 demand based on supply of powerheads from Yamaha."

15 They proceeded to explain further, "If
16 Mercury were unable to sell 70-to-115-horsepower,
17 four-stroke engines, the impact to its business and
18 the business of Brunswick would be incalculable but
19 certainly devastating." That is if they had not been
20 able to obtain those four-stroke powerheads, the
21 impact on their business would be devastating.

22 They explained that there were two
23 additional reasons in addition to not being able to
24 sell those directly. One, it was very important to
25 have a broad product line, and they explained as

1 follows: "Without the powerheads, Mercury would not
2 only lose all sales of a key product segment, mid-
3 range, four-stroke outboards purchased by over 90
4 percent of Mercury's customers, but Mercury would also
5 lose sales from across its entire product line of
6 outboard engines. Mercury's customers demand that
7 Mercury submitted a full range of outboard engines."

8 And, finally, the explained how important --

9 CHAIRMAN KOPLAN: I hope you're winding up
10 because your time has --

11 MR. HARRISON: Can I take one more minute?

12 CHAIRMAN KOPLAN: Okay.

13 MR. HARRISON: Thank you.

14 The last point is that they also explained
15 how important that was for their EPA compliance:
16 "Mercury's sales of lower-emission engines especially
17 allow it to make more sales of higher-emission engines
18 and remain in compliance. Without the low-emission,
19 four-stroke engines built with Yamaha powerheads,
20 Mercury would have to have reduced its sale of higher-
21 emission engines in order to remain in compliance with
22 the Act."

23 CHAIRMAN KOPLAN: Thank you, Mr. Harrison.

24 MR. HARRISON: Thank you.

25 CHAIRMAN KOPLAN: I want to compliment both

1 sides on the quality of their presentations today. It
2 was extremely helpful. I also want to thank the
3 agency staff for their assistance to us during the
4 course of today and leading up to this hearing. Thank
5 you all very much.

6 Post-hearing briefs, statements responsive
7 to questions and requests of the Commission, and
8 corrections to the transcript must be filed by
9 December 21, 2004; closing of the record and final
10 release of data to parties by January 19, 2005; and
11 final comments by January 21, 2005. And with that,
12 this hearing is concluded.

13 (Whereupon, at 7:59 p.m., the hearing was
14 concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Outboard Engines from Japan
INVESTIGATION NO.: 731-TA-1069
HEARING DATE: December 14, 2004
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 12/14/04

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

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Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Renee C. M. Katz
Signature of Court Reporter