

Department finds good cause to extend the time limit for notification of the extension of the preliminary determination for the reasons stated below.

To begin, the period of investigation ("POI") in the line pipe investigation of the PRC, a non-market economy ("NME"), is July 1, 2003, through December 31, 2003. In NME cases, the Department values data using prices from a comparable market economy that is a significant producer of comparable merchandise. However, the availability of such prices that are properly contemporaneous with the POI is limited at this time. The Department needs additional time in order for the Department to have contemporaneous information from a comparable market economy on the record to corroborate properly the secondary information to be used as the basis of the margin for the PRC entity.

In addition, as stated in the Extension Request, the U.S. International Trade Commission ("ITC") reached its affirmative preliminary injury determination for Mexico, Korea, and the PRC on May 3, 2004. Were the Department to proceed with its preliminary determination with respect to the PRC, it would be necessary that the ITC issue a separate final determination for the PRC, much earlier than with respect to Mexico and Korea. The petitioners in this investigation have requested that the Department align these cases at its preliminary determination to eliminate the necessity for separate ITC determinations. In the interest of administrative efficiency, the Department concludes that the Mexico, Korea, and PRC cases should remain on a consistent timeline.

For the reasons identified above, we are postponing the preliminary determinations under Section 733(c)(1)(A) of the Act by 50 days, to no later than September 29, 2004. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations. This notice is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: August 6, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04-18455 Filed 8-11-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-865]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Outboard Engines From Japan

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

ACTION: Notice of preliminary determination of sales at less than fair value and postponement of final determination.

DATES: Effective August 12, 2004.

FOR FURTHER INFORMATION CONTACT: James Kemp or Shane Subler at (202) 482-5346 or (202) 482-0189, respectively; AD/CVD Enforcement Office 1, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that outboard engines from Japan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice. Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination.

Case History

This investigation was initiated on January 28, 2004.¹ See Notice of Initiation of Antidumping Duty Investigation: Outboard Engines from Japan, 69 FR at 5316 (February 4, 2004) (Initiation Notice). Since the initiation of the investigation, the following events have occurred:

The Department of Commerce (the Department) set aside a period for all interested parties to raise issues regarding product coverage. See Initiation Notice, 69 FR at 5317. On February 24, 2004, the following companies submitted timely responses: American Honda Motor Co., Inc., and Honda Motor Co., Ltd. (Honda); Nissan

Marine Co., Ltd. (Nissan); Suzuki Motor Corporation and American Suzuki Motor Corporation (Suzuki); Tohatsu Corporation, Tohatsu Marine Corporation, and Tohatsu America Corporation (Tohatsu); and Yamaha Motor Company, Ltd., Yamaha Marine Company, Ltd., and Yamaha Motor Corporation, USA (Yamaha).

On February 3, 2004, the Department issued a letter providing interested parties an opportunity to comment on the Department's proposed model match characteristics and its hierarchy of characteristics. The petitioner submitted a timely response on February 20, 2004. Honda, Nissan, Suzuki, Tohatsu, and Yamaha also submitted comments on February 20, 2004. Bombardier Motor Corporation and Bombardier Recreational Products Inc. (Bombardier), a domestic interested party, submitted a timely response on February 27, 2004. Based on these comments, we determined the appropriate model match characteristics and included them in the antidumping questionnaire issued to Yamaha on March 11, 2004.

On February 23, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are materially injuring an industry in the United States producing the domestic like product. See Outboard Engines from Japan, 69 FR at 9643 (March 1, 2004) (ITC Preliminary Determination).

On April 30, 2004, the petitioner requested that the Department extend the preliminary determination in this investigation by 30 days. Because there were no compelling reasons to deny the request, we postponed the preliminary determination to July 16, 2004, under section 733(c)(1) of the Act. On June 22, 2004, the petitioner made an additional request to extend the preliminary deadline 20 days beyond the July 16, 2004, deadline. Once again, there were no compelling reasons to deny the request, and the Department made a second postponement of the preliminary determination to August 5, 2004.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the

¹ The petitioner in this investigation is Mercury Marine, a division of Brunswick Corporation (Mercury).

Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from the respondent, Yamaha. In its request, the respondent consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. In the petition, the petitioner identified six potential producers and exporters of outboard engines in Japan: Honda, Nissan, Suzuki, Tohatsu, Tohatsu Marine Corporation (TMC), and Yamaha. On March 4, 2004, Tohatsu placed information on the record indicating that Nissan is not a producer, although it exports engines produced by Tohatsu to the U.S. market.² Information placed on the record by the petitioner indicated that it was appropriate to treat Tohatsu and TMC as a single entity.³

On March 1, 2004, the Department requested information on the total quantity and value of subject merchandise exported to the United States during the period of investigation

(POI), and the total quantity and value of subject merchandise sold in the United States during the POI, by the Japanese producers and exporters of the subject merchandise. On March 4, 2004, the Department received timely responses from Honda, Nissan, Suzuki, Tohatsu, and Yamaha. For selecting respondents, the Department considered these statistics and statistics from U.S. Customs and Border Protection (CBP). Using these data, we selected Yamaha as the mandatory respondent.⁴ On March 11, 2004, the Department issued an antidumping questionnaire to Yamaha.

Period of Investigation

The POI is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition (*i.e.*, January, 2004) involving imports from a market economy, and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

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

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

Powerheads are comprised of, at a minimum, (1) a cylinder block, (2) pistons, (3) connecting rods, and (4) a crankshaft. Importation of these four

components together, whether assembled or unassembled, and whether or not accompanied by additional components, constitute a powerhead for purposes of this investigation. An "unassembled" powerhead consists of, at a minimum, the four powerhead components listed above, and any other parts imported with it that may be used in the assembly of a powerhead.

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

The outboard engines and powerheads subject to this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8407.21.0040 and 8407.21.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Issues

In the Initiation Notice, we invited all interested parties to raise issues and comment regarding the product coverage under the scope of this investigation. We received comments from Honda, Nissan, Suzuki, Tohatsu, and Yamaha and rebuttal comments from the petitioner. We have preliminarily determined to continue to include engines under 25 horsepower (hp) and powerheads sold as spare parts in the scope of the investigation. We have also preliminarily determined that powerheads and completed engines constitute a single class or kind of merchandise.

Outboard Engines Under 25 Horsepower

Tohatsu requested that the scope of the investigation be revised to exclude all outboard engines under 25 hp. Tohatsu argues that the Department has the authority to both limit and expand the scope of an investigation proposed in a petition.⁵ Tohatsu maintains that domestic producers import all or, if not all, the vast majority of their engines under 25 hp. According to Tohatsu, the petitioner purchases the vast majority of its under 25 hp line from its Japanese joint venture, Tohatsu Marine Corporation. The remainder of the petitioner's under 25 hp line consists of either limited domestic production or outboard engines assembled from powerheads imported from Japan.

Further, Tohatsu argues, the emission standards established by the U.S. Environmental Protection Agency

² See letter from Tohatsu to the Department, dated March 4, 2004, at Exhibit 1.

³ See letter from Mercury to the Department, dated February 27, 2004, at page 2.

⁴ See memo from Shane Subler, International Trade Compliance Analyst, to Gary Taverman, Director of Office 5, RE: Selection of Respondents, dated March 11, 2004.

⁵ See, e.g., *Mitsubishi Elec. Corp v. United States*, 700 F. Supp. 538, 555 (CIT 1988), *aff'd* 898 F.2d 1577 (Fed. Cir. 1990).

(EPA), which mandate that outboard motor manufacturers reduce their average emissions in each year from the 1998 through 2005 model years, will prevent the petitioner from manufacturing two-stroke carbureted engines under 25 hp after 2006. Tohatsu maintains that this would leave the U.S. customers of these engines no choice but to buy an imported motor on which antidumping duties have been imposed.

Finally, Tohatsu argues that small horsepower engines do not compete with large engines. According to Tohatsu, engines under 25 hp are lightweight, portable, hand-throttle models which do not require special factory or dealer-installed rigging. They are used primarily for inflatable dinghies and small boats, or as the auxiliary power source for sailboats. Large engines, Tohatsu states, are not portable, require specialized rigging, and are used as the main power source for larger boats and specialty boats where speed is required. Tohatsu believes that this lack of interchangeability supports excluding engines under 25 hp from the scope of the investigation.

The petitioner states that outboard engines under 25 hp unambiguously come within the literal terms of the petition.⁶ The petitioner also argues that the Department gives "ample deference to the petitioners on the definition of the product for which they seek relief."⁷ Although the petitioner concedes that the Department has the ultimate authority to define the scope of the investigation, it generally does not alter the petitioner's scope definition except to clarify ambiguities in the language or address administrability problems.⁸

The petitioner states that Mercury does produce domestically a range of engines under 25 hp. However, the petitioner notes that it is not necessary that the domestic industry produce products identical to every item imported or to every single segment of the subject merchandise continuum. Further, the petitioner contends that Tohatsu's argument that 2-stroke carbureted engines will not be available for sale after 2005 due to EPA regulations is incorrect. The petitioner states that the EPA regulations impose emission standard levels on outboard

engines, but do not prohibit specific technologies.

In addition, the petitioner contends that outboard motors under 25 hp do compete with other engines. The petitioner argues that a 25 hp engine competes with both 20 and 30 hp engines, and that there is no clear dividing line at 25 hp that would merit making it a cut-off point for the purpose of excluding engines from the scope of the investigation.

Analysis

When the Department receives a petition that meets the requirements of the statute, it must initiate an investigation⁹ and, if warranted by the evidence, provide the relief requested.¹⁰ The starting place for determining the merchandise that is to be the subject of an investigation is the petition itself.¹¹ While the Department does have the authority to define or clarify the scope of an investigation,¹² it does not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition. As a result, absent an "overarching reason to modify" the scope in the petition, the Department accepts it.¹³

Engines having 25 hp or less clearly meet the definition of covered merchandise in that the scope makes no limitation on horsepower. Further, we agree with the petitioner that it is not necessary that the domestic industry produce all products covered by the scope. We note, however, that Mercury has placed evidence on the record indicating that it does produce certain engines under 25 hp. Therefore, since the scope language of this case clearly includes engines of 25 hp or less, we continue to include them in the scope of the investigation.

Powerheads Imported as Replacement Parts

Honda and Suzuki requested that powerheads imported as spare parts

solely for the purpose of repairing outboard engines previously sold by the same manufacturer be excluded from the scope of the investigation. Both Honda and Suzuki emphasize that they import a limited number of powerheads for this purpose. Suzuki states that, with most of these imports, the cost of the powerhead was reimbursed as a warranty cost. Honda states it does not have any "sale" prices for these units, as they were used almost exclusively to satisfy warranty claims.

The petitioner argues that the Department should deny Honda and Suzuki's request to exclude powerheads from the scope of the investigation based on their intended use. According to the petitioner, the proposed exclusion would be impossible to monitor and would present an obvious means of circumventing the order. To the extent the companies do not have sale prices for these units, the petitioner suggests that the Department could excuse respondents from reporting these units if the imports are indeed very limited. The petitioner asserts, however, that these units should not be excluded from the scope.

Analysis

As discussed above, absent an "overarching reason to modify" the scope in the petition, the Department accepts it. In the instant case, the scope specifically includes powerheads. Attempting to exclude certain powerheads from the scope of the investigation based on usage would cause significant administrability problems for CBP, should an antidumping duty order ensue. Therefore, we continue to include all powerheads in the scope of the investigation, regardless of the reason for importation.

Treatment of Powerheads as a Separate Class or Kind

The term "class or kind" is equated with the term "subject merchandise" at section 771(25) of the Act. (This provision defines subject merchandise as the class or kind of merchandise within the scope of an investigation or other proceeding covered by the statute.) The Department bases its determination of whether the merchandise, as described in the scope of a proceeding, constitutes a single class or kind of merchandise on an evaluation of the criteria set forth in *Diversified Products v. United States*, 572 F. Supp. 883, 889 (CIT 1983) (*Diversified Products*), which look to differences in: (1) The general physical characteristics of the merchandise, (2) the expectations of the ultimate

⁶ See letter from the petitioner to the Department, dated March 11, 2004, at page 3.

⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR at 42985 (July 12, 2000) and Accompanying Issues and Decision Memorandum.

⁸ See, e.g., id. at 42985.

⁹ Sections 702(c)(2) and 732(a)(1) of the Act.

¹⁰ Section 731(1) of the Act. The relief sought would apply to all subject merchandise that is within the scope of the investigations. See section 731(2) of the Act.

¹¹ See 19 CFR 351.225(k)(1) (2001). See also *Eckstrom Industries, Inc. v. United States*, 254 F.3d 1068, 1071-72 (Fed. Cir. 2001) (citing *Smith Corona Corp. v. United States*, 915 F.2d 683, 685 (Fed. Cir. 1990)).

¹² See generally Final Determination of Sales at Less Than Fair Value: Certain Carbon Alloy Steel Wire Rod from Japan, Comment 1, 59 FR at 5987, 5988-5989 (Feb. 9, 1994).

¹³ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR at 15539 (April 2, 2002) and Accompanying Issues and Decision Memorandum at Comment 51; see also 19 CFR 351.225(k) (2001).

purchaser, (3) the ultimate use of the merchandise, (4) the channels of trade in which the merchandise moves, and (5) the manner in which the product is advertised or displayed. Both parties addressed the Diversified Products criteria.

Yamaha argues that powerheads should be treated as a separate class or kind from completed engines, and that powerheads should be excluded from the scope of the investigation. According to Yamaha, the Department's practice has been to treat sub-assemblies and semi-finished products as a separate class or kind.¹⁴

The petitioner rebuts that the Department has included less than complete merchandise within the scope of the investigation with complete merchandise in numerous cases, and has not determined less than complete and complete merchandise to be separate classes or kinds.¹⁵

A. Physical Characteristics

Yamaha maintains that powerheads have distinct physical characteristics from finished outboard motors in that the components making up a powerhead constitute a small portion of the overall parts and systems incorporated within a finished engine. Yamaha states that "according to the petition, powerheads consist of the cylinder block, pistons, connecting rods and the crankshaft."¹⁶

The petitioner argues that the general physical characteristics of both powerheads and outboard engines are very similar. The outboard engine, the petitioner points out, contains all the physical characteristics of the powerhead, which is the "engine" part of an outboard engine. Further, the petitioner states that the scope of the investigation defines the minimum defining characteristics of a powerhead. A powerhead may also include additional components. The petitioner contends that the powerheads covered in the scope of the investigation include assemblies that consist of a significant percentage of a completed outboard engine. For this reason, the petitioner maintains that there is a significant overlap in the general physical

characteristics of powerheads and outboard engines, and no clear dividing line exists.

B. Expectations and End-Uses by the Ultimate Customer

According to Yamaha, the ultimate purchaser of a finished engine is the consumer who buys the engine as part of a boat package and intends to use that engine to power the boat. The ultimate purchasers of powerheads are outboard motor manufacturers, who intend to incorporate this component into their own engines. Because of the large degree of further manufacturing necessary to convert a powerhead to a finished engine, these two products are not interchangeable—a customer could not buy a powerhead to use as the propulsion system on a boat. Therefore, Yamaha maintains that the products have entirely different end-users and, as a result, different expectations among the particular end-users.

The petitioner maintains that there is almost complete overlap in the end uses of outboard engines and powerheads. Outboard engines are used to propel a boat; powerheads are used to provide power to the outboard engine in order to propel a boat. According to the petitioner, because every outboard engine contains a powerhead, the end uses are the same. The petitioner concedes that a powerhead alone cannot propel a boat, but finds this fact irrelevant because a powerhead has no end use unless it is propelling a boat as part of an outboard engine. Further, the petitioner points out that powerhead failure is not uncommon, and when it happens, the boat owner is faced with a decision of whether to buy a powerhead or a completely new engine. According to the petitioner, the expectation of that customer, whether he decides to buy a powerhead or a completely new engine, is that the non-functional outboard engine will be replaced with a functional outboard engine capable of providing propulsion to the boat.

C. Channels of Trade

Because they have completely different purchasers, Yamaha argues, powerheads and finished engines of necessity have completely different channels of trade. Powerheads are sold to manufacturers; finished engines are sold to customers buying a boat package. Yamaha maintains that there are consequently different costs associated with each of these channels as a great deal of marketing and sales expenditures are required to sell finished engines to the retailers and dealers which are the ultimate

customers. Powerheads have a limited number of customers and require much less in the way of marketing and selling expenses.

The petitioner points out that in its Section A response, Yamaha stated that the channels of distribution for powerheads are identical to those for outboard motors. See Yamaha's Section A questionnaire response dated May 18, 2004, at page A-28. In addition, for sales of powerheads in the U.S. market, Yamaha stated that there is only one channel of distribution for powerheads—dealer distribution. See id. at page A-29. Therefore, the petitioner concludes that there is ample evidence on the record that powerheads and outboard engines are sold through the same channels of trade in both the U.S. and home markets.

D. Manner of Advertising

With respect to powerheads, Yamaha states that when there is only one customer, such as the petitioner, it is not necessary to incur excessive selling and marketing expenses. Finished motors, on the other hand, require a great deal of additional expenses to market and advertise because there is an extremely large customer base. Yamaha explains that various forms of print and television advertising are necessary to advertise the finished outboard engine and boat package, whereas there is virtually no advertising necessary to sell powerheads to outboard engine manufacturers.

The petitioner contends that while there is essentially no advertising of powerheads alone, the advertising for powerhead sales is subsumed within the advertising for the outboard engine. If a company's advertising for completed engines persuades a customer to purchase its brand of outboard motor, it creates a captive market for its powerheads in that the customer must come back to the manufacturer to purchase a replacement powerhead should the engine fail. This subtle difference in advertising, the petitioner maintains, is not sufficient to outweigh the significant overlap among the other four diversified product criteria.

Analysis

We analyzed this issue based on the criteria set forth by the CIT in *Diversified Products*.

A. Physical Characteristics

The powerhead, which provides the motive force to an outboard engine, is a major component of the finished product, and thus shares its primary physical characteristics. Additionally, in deciding whether physical

¹⁴ See, e.g., Color Picture Tubes from Canada, Japan, Republic of Korea and Singapore; Negative Final Determinations of Circumvention of Antidumping Duty Orders, 56FR at 9667, (March 7, 1991); Final Determinations of Sales at Less Than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semifinished Products of Special Bar Quality Engineered Steel from Brazil, 58 FR at 31496 (June 3, 1993) (Hot-Rolled Steel from Brazil).

¹⁵ See, e.g., Mechanical Transfer Presses From Japan: Final Results of Antidumping Duty Administrative Review, 68 at 39515 (July 2, 2003).

¹⁶ See letter from Yamaha to the Department, dated February 24, 2004, at page 5.

differences in merchandise rise to the level of a class or kind distinction, the Department looks for a clear dividing line between product groups, not merely the presence or absence of physical differences.¹⁷ The scope of this investigation defines the minimum components which make up a powerhead—cylinder block, pistons, connecting rods and the crankshaft. It does not, however, define a limit for the maximum number of additional parts which can be added to the powerhead before it ceases to be properly categorized as a powerhead and becomes an outboard engine. The petition lists other components which may be attached to the four basic elements of a powerhead, such as a starter; alternator; flywheel ignition system; flywheel; stator or ECU (programmable); carburetors; electrical harness; electrical plate assembly and electrical harness; oil pump; throttle linkages; battery cables and connections; and spark plugs.¹⁸ Presumably, other components could be added to a powerhead to the point where it might be more properly classified as an outboard engine. Consequently, we find that a clear dividing line between powerheads and completed outboard engines does not exist. For these reasons, we preliminarily determine that the differences in physical characteristics between powerheads and outboard engines are not significant.

We note that in developing the model matching criteria to be used in this investigation, all parties agree that products should be classified as either powerheads or complete engines. Yamaha's classification of its products into those categories has not been contested. Nevertheless, this cannot be construed to mean that a clear dividing line exists for all manufacturers in all situations.

B. Expectations and End-Uses by the Ultimate Customer

Completed outboard engines are unquestionably used to power boats. Powerheads are fitted into outboard engines either by engine manufacturers

making new engines or by engine repair facilities using the powerhead as a replacement part. Although the powerhead cannot be used by itself to power a boat, both the engine manufacturers and engine repair facilities expect that, after installation, the powerhead will be capable of powering the boat. The finished engine gets its propulsion from the powerhead.

In contrast to Hot-Rolled Steel from Brazil, where the Department found that the semi-finished products, hot-rolled bars and rods, "have numerous ultimate uses, including machining, forging, and hot- and cold-forming," and that "consumers of hot-rolled bars and rods expect a product which meets relatively exacting tolerances, while consumers of semifinished products do not require such exacting specifications,"¹⁹ we find that the powerheads in this case have only one use—to be incorporated into a completed outboard engine and used to propel a boat. Further, the standards to which the powerhead is produced determine into which specific type of engine it will be incorporated. These standards also determine what level of power the consumer, be it an engine manufacturer, a boat-builder, or a boat owner, can expect from that engine.

C. Channels of Trade

Powerheads are sold primarily to engine manufacturers, a different customer category than the boat manufacturers, dealers and distributors which purchase completed engines. When powerheads are sold as spare or replacement parts, they also are sold to boat manufacturers, dealers, and distributors. With regard to the petitioner's cites to Yamaha's response, we note that in both the U.S. and home market, Yamaha was referring to its sales of powerheads as spare and replacement parts. The majority of Yamaha's sales of powerheads are going to engine manufacturers. There is no evidence on the record that this is not typical for the industry. Therefore, it appears that the majority of powerhead sales are made via a different channel of trade from that of completed outboard engines.

D. Manner of Advertising

Both parties agree that powerheads are not advertised directly. The advertising which does occur in the industry is for the completed engine and is often aimed at the boat owner. Yamaha has indicated that some of the advertising is for the "boat package."²⁰

This would indicate that the completed engine, a component of the boat package, benefits from the advertising for the whole package. Powerheads can be assumed to receive at least some benefit from the advertising done for the completed engine, to the extent the customers are convinced that the features the powerhead contributes to the final engine are desirable. However, we note that if a powerhead goes into an engine which is subsequently marketed under another manufacturer's name, this advertising benefit is largely eliminated. Therefore, there appears to be little similarity in the manner of advertising between powerheads and completed engines.

Conclusion

As an initial matter, we disagree with Yamaha that it is the Department's practice to treat subassemblies of finished products as a separate class or kind. The Department has a large number of cases where a petition was filed on products and their major components, in which they were treated as a single class or kind.²¹ Further, we find Yamaha's reference to Color Picture Tubes to be off-point, as the order in question did not cover completed color televisions.

In analyzing the Diversified Products criteria, we find that the similarities in physical characteristics, end uses, and the expectations of the ultimate purchaser outweigh differences in channels of trade and advertising. The powerhead is a defining characteristic of the completed engine, and there is no clear dividing line between the two. We note that because we have determined that powerheads and completed outboard engines constitute a single class or kind of merchandise, Yamaha's comment regarding removing powerheads from the scope becomes moot.

Yamaha's Sales to Mercury

Yamaha reported sales of certain powerhead models to Mercury's affiliate in Japan, Mercury Marine Japan, as U.S. sales. Yamaha assists Mercury in shipping these models to the United States. Therefore, Yamaha has knowledge that the United States is the final destination of the merchandise. However, for sales of other models of

¹⁷ See Final Affirmative Less Than Fair Value Determination: Sulfur Dyes, Including Vat Sulfur Dyes, from the U.K., 58 FR at 3253 (January 8, 1993); see also, Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa, 65 FR at 25907 (May 4, 2000) and the Accompanying Issues and Decision Memorandum at Comment 1.

¹⁸ See Petition for the Imposition of Antidumping Duties: Outboard Engines from Japan at Exhibit I-1.

¹⁹ See Hot-Rolled Steel from Brazil at 31496.

²⁰ See letter from Yamaha to the Department, dated February 24, 2004, at page 7.

²¹ See, e.g., Notice of Initiation: Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, 68 FR at 44040 (July 25, 2003); Final Results of Change Circumstances Review, Revocation of the Antidumping Duty Order, and Rescission of Administrative Reviews: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany, 67 FR at 53996 (April 22, 2002).

engines and powerheads to Mercury Marine Japan, Yamaha states that it relinquishes the title to the product when it arrives at the Japanese port. Yamaha, therefore, asserts that it has no knowledge of the final destination of this merchandise and classified these sales as home market sales. As support for this classification, Yamaha points to Mercury's plants in Belgium and Mexico as evidence that the merchandise may go elsewhere than the United States for further processing. Although Yamaha is not aware of any Mercury plants in Japan that could process powerheads into outboard engines, it does claim that Mercury sells finished engines containing the powerheads in question in Japan. Furthermore, Yamaha notes that Mercury has sales outside of the United States of engines built from the powerhead models in question.²²

In response to Yamaha's classification of these sales as home market sales, Mercury submitted an affidavit²³ stating that all of the powerheads and engines purchased by Mercury Marine Japan from Yamaha had to undergo further processing at Mercury's Wisconsin plant. Mercury claims that all of the engines and powerheads sold by Yamaha to Mercury were exported directly from Japan to the United States for processing at this plant. The affidavit also states that Mercury's plant in Mexico only produces components for outboard engines, and that its plant in Belgium has never received powerheads or engines directly from Yamaha. The submission attached to the affidavit states that neither plant manufactures or further processes the subject merchandise. The affidavit also claims that Yamaha officials have toured these two plants and are aware of the plants' functions.

Although Yamaha acknowledges that one of its officials toured the Mercury plant in Belgium, Yamaha claims to have no specific knowledge of Mercury's manufacturing and shipping process at this plant.²⁴ Yamaha also notes that Mercury sells completed engine units containing the powerhead models in question outside of the United States. Furthermore, Yamaha suggests that Mercury could import the powerheads into the United States under a temporary importation bond or send them to a bonded warehouse or

foreign trade zone.²⁵ Mercury could then further manufacture the powerheads and re-export them to a third country. Under these circumstances, Yamaha argues, the powerheads would not be entering the United States for customs purposes.

The Department has interpreted the phrase "for exportation to the United States" in section 772(b) of the statute to mean that the reseller or manufacturer from whom merchandise was purchased knew or should have known at time of sale that merchandise was being exported to the United States. See *LG Semicon v. United States*, 23 CIT 1074 (December 30, 1999). Based on evidence placed on the record, we preliminarily determine that Yamaha knew or should have known that the powerheads it sold to Mercury were being exported directly to the United States. These sales should, therefore, be classified as U.S. sales.

Bombardier placed the U.S. Securities and Exchange Commission's Form 10-K report for Brunswick Corporation, Mercury's parent company, on the record of this case.²⁶ The document states, "Mercury Marine also manufactures engine component parts at plants in Florida and Mexico, and has a facility in Belgium that customizes engines for sale into Europe." Furthermore, Mercury's Web site describes the Mexican plant's function as the "manufacture of wire harnesses, remote controls for Quiksilver, miscellaneous electrical assemblies for engines and spare parts, and machining operation for the outboard business unit."²⁷ This publicly available information, combined with Yamaha's tours of these plants, indicates Yamaha knew or should have known that the powerheads it sold to Mercury Marine Japan were to be exported to the United States, the only location where Mercury could process the powerheads into completed outboard engines. Information placed on the record by Yamaha does not support its contention that it had no specific knowledge of Mercury's manufacturing process at the plant in Belgium.²⁸

Yamaha's argument that Mercury had sales outside of the United States of engines that are built from the powerhead models in question does not

change our analysis that Yamaha knew or should have known the destination of the powerheads. The first sale of the powerheads is from Yamaha to Mercury. We have based our analysis on this sale. The sale of complete engines from Mercury to the ultimate purchasers occurs after the powerheads have undergone the requisite further manufacturing at Mercury's Wisconsin plant. Because the powerheads must go directly to the Wisconsin plant after Yamaha sells them to Mercury, the sale of the complete engine by Mercury to the ultimate purchaser did not affect our analysis. With regard to Yamaha's argument that Mercury may import the powerheads under a temporary import bond or to a bonded warehouse or foreign trade zone, we note that the duty rate for powerheads during the period of investigation was zero. Therefore, Mercury would have had little reason to import the powerheads under a temporary import bond or to a bonded warehouse or foreign trade zone.

For these reasons, we preliminarily determine that Yamaha knew or should have known that these sales were to be exported to the United States. As a result, we have moved all of Yamaha's sales of powerheads to Mercury from its home market database to its U.S. database.

For outboard engines sold by Yamaha to Mercury Marine Japan, however, there is no compelling reason to believe Yamaha knew or should have known that these engines were destined for the United States. Yamaha acknowledges that this merchandise is packed for export. This does not, however, indicate that all of these sales were exported to the United States. Although Mercury indicated that all of these engines were exported to the Wisconsin plant for further processing, it is reasonable to believe that a finished engine could be sold directly in Japan or to a third country. Without evidence that Yamaha knew or should have known these exports were destined for the United States, we preliminarily determine that these sales should be excluded from our analysis.

Fair Value Comparisons

To determine whether sales of outboard engines were made in the United States at LTFV, we compared the export price (EP) and the constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price and Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and

²² See Yamaha's second supplemental Sections A, B, and C questionnaire response, dated July 22, 2004, at page 2.

²³ See letter from Mercury to the Department, dated June 29, 2004.

²⁴ See Yamaha's second supplemental Sections A, B, and C questionnaire response, dated July 22, 2004, at page 2.

²⁵ See *id.* at page 3.

²⁶ See letter from Bombardier to the Department, dated May 27, 2004, at Attachment 1.

²⁷ See memorandum from Shane Subler, International Trade Compliance Analyst, to file, Re: Mercury's Web site Description of its Juarez, Mexico Plant, dated August 5, 2004.

²⁸ See Yamaha's second supplemental Sections A, B, and C questionnaire response, dated July 22, 2004, at Exhibit 2.

CEPs. We compared these to weighted-average home market prices in Japan.

The date of sale on which we based our comparisons depended on the market. For all of Yamaha's home market sales, Yamaha Motor Marketing Japan Co., Ltd. (YMMJ) issues monthly sales invoices to its customers. Yamaha reported the date of shipment as either before or equal to the invoice date. In keeping with Department practice, we used the date of shipment as the date of sale for all home market sales.²⁹ In the U.S. market, we used the invoice date as the date of sale for the majority of transactions. However, some U.S. sales have a shipment date that precedes the invoice date. For these sales, we determined that date of shipment is the most appropriate date of sale. For sales of powerheads to Mercury, we found that the shipment date was the appropriate date of sale.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 772(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections 772(c) and (d) of the Act.

Certain sales by Yamaha are properly classified as EP sales because they were made outside the United States by the exporter or producer to an unaffiliated customer in the United States prior to the date of importation. The remainder of Yamaha's sales are properly classified as CEP sales because they were made for the account of Yamaha, by Yamaha's U.S. affiliate, Yamaha Motor

Corporation, USA, to unaffiliated purchasers in the United States.

In accordance with section 772(c)(2) of the Act, for both EP and CEP sales, we made deductions from the starting price for movement expenses, discounts, billing adjustments, and rebates, where appropriate.

After reviewing the terms of delivery for EP sales to Mercury, we deducted foreign inland freight from the gross price, where appropriate. For EP sales to Puerto Rico, the deductions for movement expenses depended on the circumstances of the transaction. For direct sales to Puerto Rico, we deducted only foreign inland freight and foreign brokerage, handling, and port charges. For all other sales to Puerto Rico, we deducted foreign inland freight; foreign brokerage, handling, and port charges; international freight and insurance; U.S. brokerage, handling, and port charges; U.S. warehousing; and U.S. inland freight. For CEP sales, movement expenses included foreign inland freight and insurance; foreign warehousing; foreign brokerage, handling, and port charges; international freight and insurance; U.S. inland freight and insurance; U.S. warehousing; and U.S. brokerage, handling, and port charges.

Section 772(d)(1) of the Act provides for additional adjustments to calculate CEP. Accordingly, where appropriate, we deducted direct selling expenses and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

In addition to these adjustments, we recalculated credit expense for sales that had no reported pay dates. For all such sales, we used the date of this preliminary determination as date of payment for the merchandise. See the Memorandum from James Kemp and Shane Subler, International Trade Compliance Analysts, to the File, Re: Analysis Memorandum for Yamaha Motor Company, Ltd., Yamaha Marine Company, Ltd., and Yamaha Motor Corporation, USA, dated August 5, 2004 (Analysis Memorandum).

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs the Department to calculate NV based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), and that there is no particular market situation that prevents a proper comparison with the EP or CEP. Under the statute, the

Department will normally consider quantity (or value) insufficient if it is less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. We found that Yamaha had a viable home market for outboard engines. As such, Yamaha submitted home market sales data for the calculation of NV.

In deriving NV, we made adjustments as detailed in the following *Calculation of Normal Value Based on Home Market Prices* section.

B. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that outboard engine sales were made in Japan at prices below the cost of production (COP). See Initiation Notice, 69 FR at 5318. As a result, the Department has conducted an investigation to determine whether Yamaha made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market G&A expenses, including interest expenses, and packing expenses. We relied on the COP data submitted by Yamaha in its cost questionnaire responses.

2. Test of Home Market Sales Prices

We compared the weighted-average COP for Yamaha to its home-market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregarded below-cost sales where (1) 20 percent or more of Yamaha's sales of a given product during the POI were made at prices below the COP, and thus such sales were made within an extended period of time in substantial quantities in

²⁹ See, *e.g.*, Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000) and accompanying Decision Memorandum at Comment 11; Final Results of Antidumping Administrative Review: Stainless Steel Bar From Japan, 65 FR 13717 (March 14, 2000) and accompanying Decision Memorandum at Comment 1.

accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POI, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that Yamaha made sales below cost and we disregarded such sales where appropriate.

C. Calculation of Normal Value Based on Home Market Prices

We determined NV for Yamaha as follows. We made adjustments for any differences in packing and deducted home market movement expenses, rebates, and discounts pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, where applicable in comparison to EP transactions, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments for Yamaha's EP transactions by deducting direct selling expenses incurred for home market sales (e.g., credit expense and warranty expenses) and adding U.S. direct selling expenses (e.g., credit expenses).

In addition to these adjustments, we disregarded certain sales in the home market database because the merchandise was produced in France. See Analysis Memorandum.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of outboard engines for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general and administrative (SG&A) expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the *Cost of Production Analysis* section, above. We based SG&A and profit on the actual amounts incurred and realized by Yamaha in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. We used U.S.

packing costs as described in the *Export Price and Constructed Export Price* section, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home-market sales from, and adding U.S. direct selling expenses to, CV. For comparisons to CEP, we made COS adjustments by deducting from CV direct selling expenses incurred on home-market sales.

E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP transaction. The NV level of trade is that of the starting-price sales in the comparison market. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether comparison market sales are at a different level of trade than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from Yamaha about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondent for each channel of distribution. In identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments.

In conducting our level-of-trade analysis for Yamaha, we examined the specific types of customers, the channels of distribution, and the selling practices of the respondent. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the

functions and activities may be dissimilar. We found the following.

Yamaha reported three channels of distribution in the home market: (1) Sales to distributors (HM2); (2) sales to dealers (HM3); and (3) sales to Mercury. For purposes of the preliminary determination, we disregarded the sales made to Mercury and did not consider such sales in our level of trade analysis. See *Yamaha's Sales to Mercury* above.

To determine whether HM2 and HM3 constitute separate levels of trade in the home market, we examined the marketing process and selling functions to these two types of customers. We find that sales made to dealers are at a more remote marketing stage than that for sales to distributors. We also find that sales to dealers require more intensive selling activities. Based on this examination, we preliminarily determine that Yamaha sold merchandise at two levels of trade in the home market during the POI. One level of trade is for sales made by Yamaha to distributors (HM2), and the second level of trade is for sales made by Yamaha to dealers (HM3). For a more detailed discussion of Yamaha's levels of trade, see Analysis Memorandum.

In the U.S. market, Yamaha reported two EP channels of distribution: (1) Direct sales by Yamaha to Mercury (US1) and (2) direct sales to a distributor in Puerto Rico (US2). To determine whether separate levels of trade exist for EP sales to the U.S. market, we examined the selling functions, the chain of distribution, and the customer categories reported in the United States.

For Yamaha's sales to Mercury, the questionnaire response indicates that the respondent conducted invoice/order processing for the transactions and in some instances made freight arrangements. Nevertheless, we concluded that there were few selling activities undertaken to support these sales. Further, comparing Yamaha's sales to Mercury to Yamaha's home market sales, we find that there is no level of trade in the home market that corresponds to Yamaha's sales to Mercury. Therefore, for Yamaha's EP sales to Mercury (US1), we first attempted to match to the closest home market level of trade (HM2).

For Yamaha's EP sales to the distributor in Puerto Rico, we found that the number and degree of selling functions closely correspond to Yamaha's sales to distributors in the home market. Thus, we determined that these two channels of distribution are at the same level of trade. For a more detailed discussion of the selling functions corresponding to levels of trade for sales to the distributor in

Puerto Rico, *see* Analysis Memorandum. To the extent possible, we compared Yamaha's EP sales to Puerto Rico to home market sales at the same level of trade, HM2.

When we were unable to find sales of the foreign like product in the home market at the same level of trade as the U.S. sales, we examined whether a level-of-trade adjustment was appropriate. When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in levels of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. Net prices are used because any difference will be due to differences in level of trade rather than other factors. We use the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there is no pattern of consistent price differences, the difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary.

We found that there were consistent price differences between sales to HM2 and HM3. Therefore, we made a level-of-trade adjustment when we were forced to compare Yamaha's EP sales to Puerto Rico to Yamaha's sales at HM3. However, for Yamaha's U.S. sales to Mercury, there was no comparable level of trade in the home market. Therefore, we were not able to make a level of trade adjustment.

Regarding its CEP sales in the United States, Yamaha identified three channels of distribution, claiming that the three constitute a single level of trade: (1) Sales by YMUS to OEM boat builders; (2) sales by YMUS to dealers and; (3) sales by G3 to dealers. For CEP sales, we examined the market processes and selling activities after deducting the U.S. selling expenses and associated profit. As a result, there are very few selling activities associated with Yamaha's CEP sales. Therefore, we preliminarily find that the CEP level of trade is not comparable to either level of trade in the home market.

Being unable to quantify a level of trade adjustment for CEP sales, we matched, where possible, to weighted-average home market sales at the closest

home market level of trade (HM2) and granted a CEP offset pursuant to section 773(a)(7)(B) of the Act. Where we were unable to find a match at the closest level of trade, we matched to HM3 and granted a CEP offset.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sale, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination for Yamaha.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of outboard engines from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Producer/exporter	Weighted-average margin (percentage)
Yamaha	22.52
All Others	22.52

Disclosure

The Department will disclose calculations performed in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

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

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs on the later of 50 days after the date of publication of this notice or one week after the issuance of the verification reports. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: August 5, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04-18453 Filed 8-11-04; 8:45 am]

BILLING CODE 3510-DS-U