UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	Investigation Nos.:
	)	731-TA-1178
GLYPHOSATE FROM CHINA	)	(Preliminary)

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Thursday,
April 22, 2010

Room No. 101
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The preliminary conference commenced, pursuant to Notice, at 9:33 a.m., at the United States International Trade Commission, CATHERINE DeFILIPPO, Director of Investigations, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Staff:

CATHERINE DeFILIPPO, DIRECTOR OF INVESTIGATIONS
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR
AMY SHERMAN, INVESTIGATOR
MICHAEL HALDENSTEIN, ATTORNEY/ADVISOR
NANCY BRYAN, ECONOMIST
JOHN ASCIENZO, AUDITOR
ROBERT RANDALL, INDUSTRY ANALYST

APPEARANCES: (cont'd.)

In Support of the Imposition of Antidumping Duties:

On behalf of Albaugh, Inc.:

SPENCER VANCE, President, Albaugh, Inc.
STUART FELDSTEIN, Vice President and General Counsel, Albaugh, Inc.
JIM KAHNK, Chief Operating Officer, Albaugh, Inc.

JOHN D. GREENWALD, Esquire
Wilmer Cutler Pickering Hale and Dorr, LLP
Washington, D.C.

In Opposition to the Imposition of Antidumping Duties:

On behalf of China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters; Hubei Xingfa Chemicals Group Co., Ltd.; Jiangsu Good Harvest-Weien Agrochemical Co., Ltd.; Nantong Jiangshan Agrochemical & Chemicals Co., Ltd.; Sichuan Leshan Fuhua Tongda Agro-Chemical Technology Co., Ltd.; Zhejiang Xinan Chemical Industrial Group Co., Ltd.; Anbui Huaxing Chemical Industry Co., Ltd.; Anhui Jinbang Chemical Industry Co., Ltd.; Fujian Sannong Group Co., Ltd.; Jiangsu Yinyan Specialty Chemicals Co., Ltd.; Jingma Chemicals Co., Ltd.; Ningbo Generic Chemical Co., Ltd.; Shandong Weifang Rainbow Chemical Co., Ltd.; Shanghai Hujiang Biochemical Co., Ltd.; SinoChem Shanghai Co., Ltd.; Tiacang City Pesticide Factory Co., Ltd.; Youth Chemical Co., Ltd.; Zhejiang Biok KP Chemical Co., Ltd.; Zhejiang Jinfanda Biochemical Co., Ltd.; Zhejiang Linghua Group Import & Export Co., Ltd.:

ANTOINE PUECH, President and CEO, MEY Corporation
DANIEL KLETT, Economist, Capital Trade

JULIE MENDOZA, Esquire
DONALD CAMERON, Esquire
WILL PLANERT, Esquire
MARY HODGINS, Esquire
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Washington, D.C.

APPEARANCES: (Cont'd.)

On behalf of Helm Agro US, Inc. and Drexel Chemical Co.:

STANLEY BERNARD, Vice President of Growth and Development, Drexel Chemical Co.
VOLKER HEIDE, President, Helm Agro US, Inc.

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Adduci, Mastriani & Schaumberg, LLP
Washington, D.C.

I N D E X

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P R O C E E D I N G S

(9:33 a.m.)

MS. DeFILIPPO: Good morning and welcome to the United States International Trade Commission's conference in connection with the preliminary phase of antidumping investigation No. 731-TA-1178 concerning imports of Glyphosate From China.

My name is Catherine DeFilippo. I am the Commission's Director of Investigations, and I will preside at this conference. Among those present from the Commission staff are, from my far right, George Deyman, the supervisory investigator; Amy Sherman, the investigator; to my right, Michael Haldenstein, the attorney/advisor; Nancy Bryan, the economist; Robert Randall, the industry analyst, and John Ascienzo, the auditor.

I understand that parties are aware of the time allocations. I would remind speakers not to refer in your remarks to business proprietary information and to speak directly into the microphones. We also ask that you state your name and affiliation for the record before beginning your presentation. Are there any questions?

(No response.)

MS. DeFILIPPO: Hearing none, we will

proceed with the opening statements. Mr. Greenwald, please begin your opening statement when you are ready.

MR. GREENWALD: The opening sentence of my opening statement, and for the record I am John Greenwald from Wilmer Hale. Wilmer Hale represents Albaugh in this proceeding. The opening sentence of my opening statement is something that I hope won't bother you. It is that Albaugh would really rather not be here today, but that it has no choice.

No Petitioner wants to file an antidumping petition. What has happened here is that Albaugh has invested tens of millions of dollars in a glyphosate production plant which has now been shut down, and workers at that plant have now been laid off. As long as prices stay in this marketplace where they are -- that is below any reasonable calculation of cost at least in a market economy country -- the economics of the business will not support bringing this plant back on line.

The core problem that Albaugh faces is one of Chinese supply. As you know, the Chinese expanded their capacity to produce glyphosate far beyond not only any rational level for their own market, but any rational level for the entire global market. China

now has over one million tons of glyphosate production capacity in the world in which demand is perhaps in the 700,000 ton area.

What happens when you expand capacity this rapidly and if all of it is targeted at exports is that prices worldwide collapse. The best way to think of what has happened in China is that the China glyphosate industry is the product of China's very deliberate policy of export led growth.

Because the Chinese market is so small and the rough order of magnitude is maybe 80,000 tons, the buildup of surplus production capacity has necessarily been targeted at export markets and has been targeted without any apparent regard for a return on investment.

Now, when glyphosate prices collapsed one would have thought that maybe China would have reacted by taking supply offline. It did not. What the Chinese Government did rather was increase an incentive to export, and they did it for the express purpose of giving their exporters more what they call pricing flexibility.

Chinese prices are now the benchmark against which U.S. producers must price. They are the primary reason why U.S. producer profitability has evaporated.

Albaugh has provided the Commission with its own data, and we are not going to refer to that in this public hearing, but publicly available financial statements from other producers tell the story as powerfully as anything that Albaugh could do.

And because of the amount of Chinese material that is now in inventory, coupled with the production capacity expansion in China, what we have here is a long-term problem, not a short-term one. The most recent edition of *Glyphosate China Monthly Report* that just came out posits that current capacity in China can satisfy the demand for at least the future three years. It then goes on to say: The problem of overcapacity in China cannot be resolved easily.

The short of it is what we have in this case is indisputable evidence of material injury in terms of the performance of the U.S. industry over the past 12 months, coupled with indisputable evidence that the primary cause of the problem has been a collapse of prices worldwide and in the United States, which is directly traceable to an enormous capacity buildup in China and Chinese pricing, which itself has been very, very aggressive as you will hear.

In other words, the key elements of material

injury and causation are present beyond any reasonable doubt. Thank you.

MS. DeFILIPPO: Thank you, Mr. Greenwald. We will now have an opening statement for those in opposition to the imposition of the antidumping duties. Welcome, Ms. Mendoza. Please proceed when you're ready.

MS. MENDOZA: Thank you. Good morning. My name is Julie Mendoza. For the record, I am representing Chinese exporters and producer Respondents in this case.

As the Commission considers this case, it should realize one thing. This is a petition by one small U.S. producer, which may or may not be acting as a stocking horse for Monsanto, against the rest of the U.S. industry producing glyphosate. It has only framed its case as against China, but it is really a case against a significant segment of the U.S. industry by one member of that industry.

Let's keep in mind that Albaugh buys either glyphosate technical grade or PMIDA from domestic producers and from China and formulates it. The companies that have responded to the U.S. producer questionnaires, the ITC U.S. producer questionnaires, also formulate glyphosate from either imported or

domestic acid and therefore are also members of the domestic industry.

Once it is clear that U.S. formulators, whether it be Albaugh, Helm, Syngenta, Drexel, are selling a domestically produced product. Imports of formulated product were very small and could not have had any significant effect on the market.

Imported Chinese salt is also very small. There are more imports of glyphosate acid, and Monsanto does, we believe, have merchant sales of acid. So the vast majority of the competition between imports and merchant market shipments occurred between Monsanto and Chinese imports of acid that were brought in by U.S. producers, including Albaugh.

So what is Albaugh's theory of injury, material injury from imports? As you listen later in the day to Albaugh's presentation, ask yourself what was the cause of the injury to Albaugh, the increase in prices in 2008 or the decrease in prices in 2009? Which is it?

And who led prices up in 2008? Albaugh admits that it was Chinese imports that led prices up in 2008. They even told U.S. farmers last week in an advertisement that the dumping case was intended to protect them from "Chinese price hikes."

We also agree with Albaugh that allocations by Monsanto pulled imports into this market. U.S. producers and formulators like Albaugh and other U.S. producers and formulators could not obtain materials from Monsanto in 2008. Even Monsanto's best customers were on allocation or couldn't obtain material in 2008. Those producers had a choice. They could stop producing altogether or they could import acid from China.

Did the Chinese imports injure Albaugh because Albaugh chose to purchase too much high priced Chinese acid or high priced PMIDA from China in the hopes of making a killing in a tight market? This is the strangest case of causation that I have ever seen. High priced imports from China injured me.

Albaugh admits that pricing trends in 2008 can be explained by external demand and supply factors in 2008. It is equally true that the conditions of that boom market were directly responsible for its later drop in prices. We agree that prices in 2009 were down, but only when they are being compared to overly inflated prices from 2008.

The data will show that 2009 and 2010 prices are actually returning to normality, which has taken some time due to the extreme supply overreaction in

2008 and the great recession of 2009.

So the big question that we all have in this room is where is Monsanto? It is pretty obvious to our clients that Monsanto has their hands full with the antitrust investigation by the Justice Department, and we understand Monsanto may not want to lead the charge against imports.

But the clock is ticking on this case, and apparently we now have been told that we won't know whether this investigation will proceed until at least April 29 when Monsanto has told the Commerce Department that they intend to decide whether this case should go forward or not.

Now, this is a case that lives or dies on Monsanto. Monsanto controls the U.S. market not just because of its size, but because it produces Roundup, a premium product that holds a dominant position in the market and commands a significant price premium, but that is just the result of Monsanto's market power.

Monsanto controls the GMO seeds under patent and can bundle its sales of Roundup with seeds and offer a substantial rebate to fixed key distributors who control the distribution in the ag sector. Those relationships are driven by profit and high-priced

patented seeds.

Frankly, given the obvious limitations in Petitioners' argument, Albaugh has to be staking their case on threat and that the Chinese capacity will end up in the U.S. market at low prices, but even Albaugh doesn't believe that.

Finally, Chinese producers cannot enter this market on their own unless they are willing to pay millions of dollars to get their acid and formulated product registered with the EPA, so U.S. producers hold the registration for Chinese imports. This is a significant barrier to entry, and thus competition in formulated glyphosate is domestic competition with only a very small amount of imported formulated product into the U.S. Thank you.

MS. DeFILIPPO: Thank you, Ms. Mendoza. We will now proceed with testimony for those in support of imposition of antidumping duties.

Mr. Greenwald, if you and your panel would like to come up? The name tags are on the table. If you would grab yours and bring it with you that would be helpful. Thank you.

MR. GREENWALD: Thank you for the opportunity. I am sure that Albaugh will welcome the opportunity to speak for itself rather than having Ms.

Mendoza speak on its behalf. Stuart Feldstein, Vice President and General Counsel, will lead off the Albaugh testimony.

MR. FELDSTEIN: Thank you. Good morning. We appreciate the opportunity to speak to the staff today about our petition and answer any questions that you have for us.

I brought a couple of my colleagues with me today. I am Stuart Feldstein, as John said, Vice President and General Counsel. To my immediate left is Jim Kahnk. He is our Chief Operating Officer for Albaugh, Inc. and has been with our company since 1994. And Spencer Vance, President of our company, who has been with our company since 1992.

So what we want to do this morning is basically tell you a little bit about our company. We're not a name that people know about necessarily, but we want to tell you a little bit about ourselves.

Albaugh, Inc. was founded in 1979 by Dennis Albaugh, and Mr. Albaugh is still the sole owner of the company today. He began the business, he likes to say, out of the basement of his house in Ankeny, Iowa, which is just north of Des Moines. He began as a reseller of agricultural chemicals and in 1981 began to formulate product on Creekview Dive in Ankeny. He

began with phenoxy herbicides, which includes the herbicide 2,4-D, still a very popular herbicide today.

In 1992, he acquired a larger formulation facility in St. Joseph, Missouri, and overnight tripled his output again principally in phenoxy herbicides. Over the years, we have spent our growth energies toward adding product lines to the portfolio.

We are a generic producer, so what that means is that we enter the market for products and offer a competitive alternative after products have come off patent. In the year 2000, that happened to the glyphosate molecule, and we were among a number of companies that at that time elected to enter the glyphosate business.

Glyphosate is a very popular herbicide -- you'll hear more about that from Spencer Vance a little later on -- and the business grew quite rapidly after 2000. Albaugh began as a formulator of glyphosate. In other words, Albaugh would buy the raw material acid, glyphosate acid, and formulate end use products.

That described its business in the United States from 2000 until 2006 when the final steps in the construction of a glyphosate synthesis plant were completed, and that is also located in St. Joseph.

The investment that we made in that plant is approximately $40 million or more, and that plant was designed to bring PMIDA into the plant and subject it to an oxidation process to create the glyphosate molecule. Jim Kahnk will tell you a little bit more about that process.

To give you a sense of the history of the evolution of our company, in 1992 at the time that Albaugh acquired the St. Joseph facility our annual sales were approximately $20 million. Those sales had grown to approximately $80 million in the year 2000 when the glyphosate molecule came off patent, and today we sell approximately $300 million a year in the United States.

So we are here to talk about our petition to impose dumping duties on Chinese imports of glyphosate. As John mentioned, this is not something we do lightly. It is not an easy process for us, but we feel that we have had no choice based on how things have transpired over the last 18 months or so.

We have seen our profits in the glyphosate business turn to losses. We have laid off employees, and we have shut down that glyphosate synthesis plant because we can't run it profitably faced with the competition that we're seeing from the Chinese

imported material.

This has all been caused by the Chinese pricing practices. Those practices in turn have been driven by the irrational and unsustainable buildup of capacity in China that John referenced in his opening statement, and that is a fact that's really testified to by many industry observers in China and published accounts of what's going on in China with the capacity.

We can't run our plant at a profit currently and we can't bring it back on line if prices stay where they are. As a family-owned company, this has been very difficult for Dennis Albaugh. Dennis knows a lot of the people at the plant. He knows some of the people that had to be laid off, and that's a very difficult thing. We want to get those people back to work and we want to get our plant running again.

Our financial information isn't public, as John mentioned, but it's been submitted to you and so you can see for yourselves the injury that has been sustained by our business as a result of these practices.

With that, I want to turn it over to Jim again, Chief Operator Officer. He's going to talk to you a little bit about the glyphosate molecule and how

we produce it.

MR. KAHNK: Good morning. My name is Jim Kahnk. I'm the Chief Operating Officer for Albaugh, Inc. I've worked for Albaugh for 16 years. As Stuart mentioned, our plant down in St. Joe, we've had that operational for 18 years, and one of my responsibilities is the oversight of that production facility down at St. Joe.

So what we went through last April 2009 where we started laying off people because we could not run our synthesis plant and compete against Chinese acid that's dumped in the marketplace, that was probably one of the tougher jobs that I've had in the last 16 years with Dennis is going down there and telling people that they no longer have a job.

With the great recession of 2009 as it's called, the hope for finding a job wasn't that good either, so you knew that they weren't going to bounce right back on their feet. That was one of the tougher things that I had to do.

One of my other responsibilities is procurement of the technical materials that we need for our facility and our production unit in St. Joe, and those actives, many of those we have sourced from China and Argentina, our company down there over the

few years.

I've been going to China myself for at least a dozen years sourcing some of those materials, and I've got to watch the Chinese industry grow and expand and become more professional and new regulations start to be implemented there in China, but it's not always across the board. But nothing that I've seen in those 12 years compares to what I've seen in the last three years in China.

In 2007 and 2006 when the demand was growing for glyphosate, the market started to accelerate its purchases. People went there to go buy material sooner than they normally would. The Chinese anticipated that as being this huge expansion in demand, so everyone rushed.

The Chinese were new to capitalism. They all wanted to take advantage of the opportunities that were there, that appeared to be there in glyphosate. They all rushed in to set up manufacturing plants, and I got to witness firsthand this rapid expansion in the number of plants.

I could see the writing on the wall. At some point in time it was going to be too much production, and some day we would all have to deal with that excess production. So because of a lack of

regulation and licensing and some producers producing illegally over there, there is too much capacity, and now over the last year I have watched the prices trend downward and trend downward in a very dramatic way.

The fact that we've issued this antidumping has even put more pressure on the pricing. You know, it's gotten incredibly cheap, and that puts pressure on our PMIDA that Julie mentioned. We are a purchaser of PMIDA. We are one of the very few people that purchase PMIDA.

We've got options to purchase out of Argentina, domestically or over in China. A fair amount of it we do buy from China, but the Chinese producers that manufacture PMIDA, they can't compete against that glyphosate. The glyphosate is so cheap that I can't take the PMIDA, we can't react it in our facility and make glyphosate out of it at a competitive cost. We're better off buying just straight glyphosate like everyone else is trying to buy glyphosate.

So there's two things that I really want to talk to you about and that's glyphosate to make sure you understand what it is and what's involved in formulating it and then also what it is that we do down at our plant down in St. Joe. What is the

difference between synthesis, manufacturing of glyphosate, and just formulation?

So let me start with glyphosate. Glyphosate is a nonselective herbicide. It's used to kill all plant and vegetative life. It's very effective, and the neat thing about it for farmers is we've got the GMO traits now in the seeds that they buy that makes crops like soybeans, corn, canola, cotton resistant to it.

So farmers have adapted it. It's a very safe and secure way for them to have an effective herbicide program in the crops, so it's become an integral part of most farmers' herbicide plan now. So they count on making sure that they've got the availability of glyphosate. They need security and supply.

Albaugh got involved in glyphosate in 2001. That's when the patent came off on glyphosate. So we got in the business as a formulator. We would buy glyphosate acid. We would aminate it so you have an acid. You have a basic. You know the pH from one spectrum to the other. You put them together, and you make a liquid product out of it or a salt.

I think you've all seen we've had terminology about glyphosate acid or wet cake. Then

we have salt, typically a 62 percent concentration. So you have this liquid salt that then you add more water and surfactant that helps it become more efficacious when you apply it.

So that's a fairly simple process. You know, we got into the business with a couple mix tanks, a couple formulation tanks, storage tanks. It was fairly inexpensive to get into the business. Yes, you do have to have your EPA registration and a member of task forces, but it's equipment-wise fairly inexpensive to get into it.

So we operated that way for about three, four years, and Dennis Albaugh one day said look, we're not adding a lot of value to this process. You know, 75 percent of the value of that end use product is from the glyphosate acid, so we're only adding 10, 20, 25 percent of the value in all those other activities that we were doing. He said we need to back integrate further into this process.

So we set out with the help of our company down in Argentina that has the same kinds of technology that we employ today in St. Joe to build our own synthesis plant. So we began that plant construction in 2004. It was 2006, April, when we finally got the plant running, so it was a two year

long process just to set up the facility.

Stuart mentioned that it's a $40 million project. It's a lot of engineering, a lot of process controls that are involved in that facility. We think that we've got some very unique and obviously we have some patented processes with that as well.

So we began operation in 2006. We've been running that plant for three years until we couldn't buy PMIDA at the right cost ratio to glyphosate. So it is a lot different process. We quickly learned how different it is because you run a synthesis plant 24 hours a day, seven days a week. You have three shifts employed. You have people -- probably five times the number of people -- to operate a synthesis plant as you do a formulation plant to produce the same output. Dramatic differences.

The cost is probably 50 to one to produce the same amount of output, so it's much more expensive than a formulation facility. The level of expertise in our workers is much different. The skill sets are much more advanced with engineers and more chemists, and those same people also draw higher salaries too. So it's dramatically different between synthesis and formulation.

And then just so you understand, when you

take glyphosate acid, glyphosate acid or wet cake is a dry, powdery material. So we add water to it. You add your basic, the NEPA, you react it and you make a liquid salt and then from there, like I said, you add your water and surfactant. So you have to remember that glyphosate is the herbicide and then what we're doing with that herbicide is modifying the delivery system.

If you took Miracle Gro, for example, if you've used that in your lawn and garden, it comes in a dry powder. You mix it with water. Well, the water, when you mix it it sprays easier. It becomes more readily absorbed on the plant surface than sprinkling a dry granule out on the leaf surface. So it's the same kind of theory around glyphosate formulation. You're just taking the herbicide and changing the delivery.

So now let me talk a little bit about our synthesis plant, what is involved, how we actually formulate or synthesize the glyphosate molecule. So we take PMIDA. PMIDA is a chemical intermediate. It has no herbicidal activity in itself.

We mix it in a high pressure vessel versus just stainless steel mix tanks -- these are high pressure vessels -- with water, a catalyst, an oxygen,

and then under pressure, agitation and the oxygen, the catalyst, you take the PMIDA and you actually create the glyphosate molecule. That's created in that mass of water. And from there we have some unique processes that take and separate the glyphosate from the water and the other byproducts that are manufactured in that process.

Our process we think is unique and very energy conservative. I mean, we save a fair amount of money on how we run that process, how we are more energy efficient than a lot of other producers. Because we stay liquid, we've got a unique way of separating the glyphosate from the impurities and from the water where we concentrate then the glyphosate in our facility making the salt, and then later on we can do the other parts of the process.

Our process is what's called oxidation, and we use pure oxygen in our oxidation process. There was a recent article in *CCM Magazine*, the April issue, that talked about the Chinese evolution from hydrogen peroxide process to the oxygen process, and I think we could probably get you a copy of that story as well.

But it talks about PMIDA being the last step in the manufacturing of glyphosate, so the Chinese are adapting some of the same types of technology, but we

have a more energy efficient way of removing the glyphosate from the other material than they will, at least today. We have it patented. Hopefully the intellectual property rights are preserved.

So with the reaction of the glyphosate, again in our same process we've captured about 75 percent of the value of the final formulated material. That's where the value of the glyphosate is created is in the manufacturing of the glyphosate.

I guess there will be a question and answer session later, but I guess the points I would like to conclude is I hope that you have an understanding and appreciation of the differences between what we are doing with synthesizing glyphosate versus the formulation of glyphosate, and then the other thing too is we've got a campaign where we've worked on kind of Made in America, Made in U.S. that we're promoting.

We have challenged some of the other producers that have taken glyphosate and just aminated it, asked the FTC to rule on that and they have, and they've said that taking glyphosate acid from China, manufacturing it here in the U.S. isn't a product of the U.S. It doesn't qualify for substantial transformation. We've actually had some positive rulings in our favor on that.

So to summarize, we have a proven process for manufacturing glyphosate in our plant in St. Joe. We have economic advantages when we can compete on a level playing field. That means we can buy PMIDA at a price that's competitive or in relationship to the glyphosate acid. We cannot, however, compete with glyphosate acid that's dumped below the cost of production.

So our goal is to source PMIDA competitively, use our unique manufacturing process to manufacture glyphosate and put our people back to work. So with that, I would let Spencer Vance, President of the company, talk a little bit more about market and imports.

MR. VANCE: Thanks, Jim, and good morning. As Jim mentioned, my name is Spencer Vance, and I am the President of Albaugh, Inc. and have been with Dennis since late 1991, early 1992, when we actually acquired the facility in St. Joe, Missouri, and have been in the industry for 25 years.

I started my career with Dow Chemical and eventually worked through a few sales jobs. Dennis was a customer and I ended up going to work for Dennis, and so it's been a very interesting evolution of our business as we've seen.

We now market and sell close to 21 or 22 different chemistries in the generic ag chemical realm both in North America and in South America, but there are really three things that I'd like to just give you a broad overview of glyphosate and the demand and really what it's done over time and a little bit about the supply and where we see that situation and then conclude with some of the impact that we believe that the massive quantities of Chinese glyphosate that have been dumped on our shores below cost have caused not just Albaugh, but the entire domestic manufacturing industry in the U.S.

You know, every farmer in America uses glyphosate in one way, shape, fashion or form. It is also used on golf courses and turf and et cetera, and partially because it is very effective and with the introduction of glyphosate resistant seed technology of course that expanded consumption in late 1990s and early 2000s to the point where today there's in the range of I think there's been some public indications that there's 105 to 115 million gallons of glyphosate sold in the U.S. marketplace every year and that the global consumption of glyphosate is in the range of 450 million gallons.

And so you can imagine when the Chinese

expanded capacity they looked at the U.S. market as a huge opportunity because it is nearly 25 percent of the entire world usage and consumption of glyphosate. It has grown to be and is a very key input in agriculture for American farmers today to be able to competitively raise cotton and corn and soybeans, and again that is why the adaption and the consumption has changed over time.

You know, there was somewhat of a perceived shortage in 2007, and we go back and look at those records and actually the usage of glyphosate probably only increased something in the neighborhood of eight to 10 million gallons over that '07 through '09 crop period, so it really only increased about 10 percent. For years it had been growing in the range of 5 to 12 percent in usage in the U.S. marketplace.

So as that occurred we at Albaugh, as Dennis Albaugh always does, when you're in the commodity generic business like we are you need to have flexibility, you need to have leverage, and you need to have alternatives from a supply standpoint and so similar to the investment Dennis made by buying manufacturing and buying a company in South America called Atanor, we decided to back integrate in the glyphosate business.

As Jim much more accurately described than I could, we built a glyphosate plant in St. Joe because we wanted to have flexibility and alternatives and not be a formulator that was reliant on a low-cost acid supply, and so in that transition we wanted to be able to control our destiny and manufacture glyphosate on our own, and we did use state-of-the-art technology that the Argentina company that we owned had perfected and patented in the U.S. to help us build that glyphosate manufacturing plant.

When that plant came on line, there really are only two true manufacturers of glyphosate in the U.S. marketplace, really in all the Americas. Monsanto and Albaugh are the only two -- or Atanor, our wholly owned subsidiary, are the only two -- true manufacturers of glyphosate in the Americas, whether it's North America or South America, and so we've invested heavily in the glyphosate manufacturing business, again because of the technology we have and our desire to have flexibility and leverage to survive in a commodity-based business.

And so the other thing that's happened in the U.S. marketplace is in the last 24 months we've gone from in the neighborhood of -- I don't know -- five to seven of us in the glyphosate business to

about 30 or 30 plus importers and formulators in the business. Julie referred to the millions of dollars that are being spent for all these people to come into the marketplace and the barrier that that is.

Well, it appears that the barrier to entry in the U.S. market is not all that great since there's been about 25 new entrants into the marketplace in the last 24 to 30 months. We're certainly not against free trade and we're certainly not against competition because we live in that environment every day.

But what we are for is fair competition and we do believe that as the Chinese expanded their capacity from, as will be elaborated on and already has been talked about, to supply 150 percent of the global demand in today's world that huge inventories got built up and ultimately got dumped in the U.S. marketplace and an excess of 50 to 70 percent of the entire U.S. consumption got dumped into this market in '08 and '09.

So they went from levels back in '04 to '05 and single digit percent market share range to about 25 percent in '07 to numbers that are 50 to 70 percent, depending on whether you look at a calendar year or crop year basis, in '08 and '09. So again, what that really caused, the buildup in inventory, was

then a huge collapse in the price.

As Jim elaborated on, it's a very painful experience to lay people off and to have to make those very difficult decisions and to do things in the organization that are painful and difficult to do, but we've done that and we're here today because we believe that we've been harmed and we're asking for relief.

As John mentioned, and he'll elaborate more later, we are one of the two manufacturers in the U.S. glyphosate manufacturing industry, and quite frankly we'd like to preserve that industry. I hate to envision a point in time where off the back of unfair trade practices the Chinese manufacturers have completely collapsed and crippled the U.S. manufacturing business and American farmers are 100 percent reliant on Chinese producers. That's not a place that I don't think we as Americans want to take the agriculture industry.

Dennis Albaugh is an American farmer, and quite frankly if those unfair trade practices are allowed to continue not only us, but the other domestic manufacturer really for the first time, and John will elaborate more, has lost money on over $400 million worth of sales of glyphosate in their second

quarter, so some very, very dramatic changes and swings based on the impact of what all that volume being dumped on our U.S. shores has caused.

So we're really here to try to get back in a position where we can compete fairly. We're about economic growth and jobs in the heartland, and we'd love to put those people back to work and try to have some discipline about fair trade and be able to again put those people back to work in St. Joe.

So with that, thank you for your time, and we appreciate the opportunity to plead our case. John?

MR. GREENWALD: Yes. I'm going to try and bring you all back to the statute, sort of the terminology you're familiar working with, material injury and causation, and I'm going to take you through some public documents that I think make the case certainly as well as I could probably make it from the confidential record.

Let me begin with material injury. The U.S. producers, and by that I mean the companies that make glyphosate or formulate U.S. glyphosate in the United States, have I think been materially injured in the sense that their businesses are doing or have done very, very poorly relative to the past over the past

12 months.

Albaugh is privately held and its financials are not public. You have seen the data. They are, I would say, unequivocal, but I'm not going to talk about those data at this hearing.

Rather, I'm going to emphasize the shutdown of the plant, which really, really does matter if you're a manufacturer in the United States, and the layoff of work forces and just tell you the first time I met Dennis Albaugh he looked at me and he said something that not too many CEOs said. He said I know every one of those employees that I had to lay off, and I want to hire them back, and that is fundamentally the reason why I think Mr. Albaugh has proceeded with this case.

Monsanto, unlike Albaugh, is a public corporation, and what I would like to do is take you through Monsanto's most recent financial statement. They break out the glyphosate business, and they compare first half 2010. They have a fiscal year which ends I believe in August. I think it's August. So the first half -- I'm sorry. It is through February 28 in the second half and beginning August 1, right? Okay.

So you have a picture that is August through

February and you can compare 2010 and 2009, and what you see in the chart before you is a drop in sales of 54 percent or over $1 billion. What you see is a drop in gross profits of 93 percent, and again it's over $1 billion.

Now, to get the earnings before interest and taxes, what you have to do is do an allocation, but that is perfectly possible based on the financial analysis, and what you see there is a very, very substantial profit become a very substantial loss. We are talking here in the public data of a change in the financial situation that on almost any measure is down $1 billion. I'd submit to you very simply that if you're looking for an indicator of material injury that qualifies. Now, attached to this is the Monsanto 10-Q data from which these figures are taken.

Second, I'd like to talk about another company that published its financials, and I don't have in this case earnings, but I do have information that's publicly available on sales, and that is Syngenta, Syngenta's nonselective herbicides, its glyphosate essentially. And what you see there in the first quarter 2010 against the first quarter 2009 is a reduction of 29 percent.

Syngenta then went on to provide some

numbers and a market update, so if you go to about four or five pages in you will see in their market update that Syngenta talks about the U.S. market. And the problems in the U.S. market are or include high channel inventory. In other words, what Syngenta is saying and what Albaugh is saying that there was an enormous buildup in U.S. inventory.

And, second, glyphosate price, and what is meant by that is glyphosate prices have indeed collapsed. So once again you have a third party, not Albaugh, corroborating the essentials of Albaugh's injury story.

Now let me turn to causation. What I want to talk about is the volume and pricing of Chinese material based on observers of the Chinese industry in China. Albaugh estimates that between mid 2008 and mid 2009 imports from China were enough to supply the entire U.S. market for a full year. Most or a good part of those imports went into inventory. They are causing, therefore, present injury because their impact on market prices is being felt to this day.

It's true that since June of 2009 the volume of imports of glyphosate from China has dropped, but, A, they are still significant and, B, the important part of this story is the amounts that were already in

inventory. We have not seen the market share numbers, but according to Albaugh's estimates what has happened is imports of Chinese glyphosate have risen from 19 percent of the U.S. market in 2007 to roughly 47 percent or even higher in 2009.

Now, why has there been this very large influx in imports? The answer is the rise in the volume of China's exports to the United States is a direct consequence of what Chinese observes have themselves called an irrational expansion of capacity.

That irrational expansion of capacity is well documented. So too is the relationship between that capacity expansion and the collapse of prices and the degree to which imports from China have created an enormous inventory overhang that continues to affect the market today.

Now, in talking about the capacity expansion, what I'd like to refer you to is a report by *AgriWorld Crop Protection News, The China Special*. It's called Surviving the Glyphosate Downturn, and it's an interview with a Mr. Sun Shubao, General Secretary of the China Crop Protection Industry Association, and it is April 16, 2010. I am going to quote:

"On the topic of glyphosate, the biggest

agrichemical casualty of the 2009 slump, Mr. Sun has plenty to say. Throughout 2007 and 2008, Chinese glyphosate producers expanded capacity, and other companies that did not deal in pesticides entered the industry and started making glyphosate. Companies from such diverse fields as real estate, textiles and coal all wanted a piece of the glyphosate cake.

"Large Chinese agrichemical producers such as Jiangsu Yanguong and Red Sun that did not manufacture the herbicide prior to 2007 soon started to work on large scale glyphosate plants. The official yearly Chinese capacity for the herbicide is 800,000 tons, but Mr. Sun believes that the real total to be somewhere over one million tons per year."

Let me stop there to remind you that the entire global demand is maybe 700,000, 800,000 tons and no more.

"More Chinese glyphosate producers either lost money in 2009 or suffered huge decreases in net profits. Mr. Sun adds that the glyphosate industry," and here I am quoting, "is so rotten with too many manufacturers that they cannot make such a consortium for glyphosate just yet. Only when the glyphosate industry has become," to quote him, "rotten to the core, and most smaller manufacturers have withdrawn

from the market in a year or so will the CCPIA establish a consortium for the herbicide."

We can't wait for the Chinese industry to become rotten to the core. It has done enough damage at the so rotten stage. The imports that have come into inventory and the impact of the inventory on current market conditions that Albaugh has talked to you about is in fact corroborated by an importer.

Aceto CEO Vince Miata said, and this was after Albaugh filed its petition, "A petition to impose antidumping duties on imports of glyphosate from China was filed March 31, 2010. We believe that our current inventory, which should be sufficient for the 2010 selling season, is not subject to the petition."

And that's true. What has come in is not subject to the petition, but what has come in, whether it was in 2009 or 2008, that buildup is causing present injury. It is the key factor behind the collapse of market prices, and it is one of the factors on which you must focus.

Now let me talk a bit about pricing. There is uncontrovertible evidence of significant price suppression and price depression. *China Research and Intelligence* in May of 2009 reported, and again I'm

quoting, "Under the influence of the international financial crisis, the international pesticide market answered the decline passage, especially the reduction in the glyphosate price."

In the beginning of 2009, the bottom price, and this is for glyphosate technical, was $3,100 per ton or $3.10 a kilo. The evidence we provided in the petition shows that in the second half of 2009 the FOB selling price had dropped below the $3 per kg level.

An April 13, 2010, article in *Business China* reports on the reaction of the Chinese industry to the Albaugh petition, and once again let me quote. "The petition, should it pass, will worsen a domestic glyphosate business that is already troubled by overcapacity." Our point precisely.

In 2009, China produced 1.03 million tons of glyphosate, while global demand was estimated at only 800,000 tons. Meanwhile, the global financial crisis has sent the price of glyphosate crashing to around RMB $18,000 per ton, eviscerating producer profit margins.

Now, you're all aware of the stability of Chinese exchange rates, so I think I can say convert that with some confidence that that is a price that promises to be steady over time without too much of a

change that's exchange rate related. An $18,000 RMB price translates to a $2.64 per kilogram price for glyphosate technical. That is far, far, far below any market economy producer's cost.

If this is the pricing structure that is likely to prevail then there is no way that Albaugh or I suspect any other U.S. producer can produce glyphosate technical at a profit, much less at a return necessary to justify continued investment in the business.

Now let me turn quickly to threat of injury. The data will show that the volume of imports rose substantially over the period of investigation. It is true that they fell off in the second half of 2009, but it's equally true that there has been enormous inventory buildup. It is equally true that imports from China are sure to be at significant levels for the foreseeable future unless something is done to change the dynamic.

Glyphosate China Monthly, again April 20, 2010, reports that more than 85 percent of China's glyphosate is for exportation. It's a point worth stressing. There is no significant home market for Chinese glyphosate. Domestic technical manufacturers have established good relationships with overseas

partners. What this means in effect is that there are long-term supply arrangements between Chinese manufacturers and U.S. formulators that are already in effect.

A future supply at the Chinese prices as they now exist is locked in for the foreseeable future unless there is antidumping relief. There is no question about the excess capacity in China. It is the real story behind this case, and the reports out of China show that Chinese market observers do not expect a realignment of Chinese supply with global demand any time soon.

What this means in a nutshell is that there is material injury that is -- well, it is more than material injury. It is very, very substantial injury to the domestic industry that will be perfectly apparent in all the financial data you receive.

There is no doubt of the cause and effect relationship between the collapse of prices and the Chinese capacity buildup, and given that capacity buildup and given the fact that China has nowhere to ship this material but export markets, the threat of injury and continuing injury is more than real. I mean, it is essentially locked in.

So with that we would like to close our

affirmative presentation. I don't know if we have any more time left for rebuttal.

MR. DEYMAN: George Deyman, Office of Investigations. You have 15 minutes left for your presentation. You will at the end of the conference have 10 minutes for rebuttal. The 15 minutes is not added to the 10 minutes at the end.

MR. GREENWALD: Well, I think I've said my piece, and now it's our turn for us to answer your questions.

MS. DeFILIPPO: Thank you very much, Mr. Greenwald, and thank you to the industry representatives who are here today. It's always very helpful having people in the industry. Not that it's not helpful having the attorney, but it's always nice to have the industry witnesses here to provide us with information as we try to understand the industry.

In that vein, we will start staff questions, and we will start first with Ms. Sherman.

MS. SHERMAN: Good morning. My name is Amy Sherman from the Office of Investigations. Thank you all for coming here this morning. My first question involves some of the terms that were used this morning.

Mr. Kahnk, you explained some of them, but I

was hoping you could explain to us more about the differences between actual acid production and synthesis. You also used the term amination. Can you explain to us more what that is and how that fits into the glyphosate production process?

MR. KAHNK: All right. That sounds like that's kind of up my alley, so I'll try my best. Synthesizing the molecule glyphosate is the construction of the molecule, all right, so it's the PMIDA. It's the oxidation, the catalyst, to make the actual molecule glyphosate.

And then when we talk about glyphosate acid or glyphosate wet cake that's just the function of separating that molecule from the water and from the other byproducts that are manufactured and just to a 96 percent or 96 percent material with some water in it. That's what we term wet cake.

At that point in time glyphosate is a free flowing powder, all right? So then you have this free flowing powder like sugar or flour, something like that, that you aminate, okay? So that's where you take this powder, you mix it in a vessel with water and then you add your basic because glyphosate acid is acidic and you have a basic. That is the other side of the pH scale.

Those create a little bit of reaction, and you add to the glycine acid the IPA salt, and that's the terminology we talk about when we talk about glyphosate salt, which is a liquid form at that point in time. Does that help?

MS. SHERMAN: Yes. Also in the petition it states that to produce the salt you neutralize the acid within an organic base. Is this what you're talking about here?

MR. KAHNK: Correct.

MS. SHERMAN: Okay. In the petition it states that the Chinese manufacturers typically use the glycine route to produce glyphosate usually 66 percent of the time versus the IDA route. Do you know why the glycine route is preferred by Chinese producers over the IDA route?

MR. KAHNK: Yes, and I would say this. Whether you make glyphosate from the IDA route or the glycine route, you end up with the same glyphosate herbicide and from there it's aminated the same ways.

So the Chinese adapted the glycine route because of certain economics and efficiencies that they felt they had with the glycine versus the IDA at the time. The glycine producers also found a unique way to take their waste product when they separate

that glyphosate from that water that I mentioned to take it from the synthesized glyphosate to a glyphosate acid.

When they do that they centrifuge off the water and with that water comes a fair amount of impurities, and with that some glyphosate would remain soluble in that water so that some value of the glyphosate would move with that water that they're removing from the glyphosate acid.

Well, they would take that what they call a mother solution or that waste with some glyphosate value in it, add more glyphosate to it and sell it as a 10 percent material into the Chinese market. Since then, a year plus ago, the Chinese Government wanted to disallow that use, but apparently it still continues with some illegal activity around that.

MS. SHERMAN: Thank you. Respondents contended in an April 14 letter to Commerce that you import PMIDA from China and simply oxidize it to be able to finish the glyphosate technical acid or wet cake. You mentioned this this morning as well. How do you respond to this; that this is not actual production of glyphosate?

MR. KAHNK: Well, as I tried to explain, the oxidation of the PMIDA, and that's what I explained to

you in that high pressure vessel with the catalyst, the reverse osmosis water and the oxygen, is no simple process. We probably have no less than 50 to 100 different instrumentation and quality control devices on that reaction. In fact, we've got oxygen detectors that tell you when that reaction is made that costs upwards of $350,000.

I mean, it's a very, very intense operation and we have skilled operators that monitor the operation on a continuous basis on computer systems, so it's much more different and much more difficult than the operation of just aminating, liquefying, the glyphosate herbicide.

MR. GREENWALD: Ms. Sherman, let me do a little followup. Let me make something very clear. We looked at that letter. PMIDA is not glyphosate. It isn't. You make glyphosate from PMIDA.

The idea that there is a petition against glyphosate that somehow sweeps in PMIDA or somehow compromises Albaugh as a glyphosate producer because it makes glyphosate from PMIDA is just nonsense.

MR. FELDSTEIN: I just wanted to follow up. I think Jim mentioned in his talk this morning this article that's dated April 20, the *Glyphosate China Monthly Report*. It's published by CCM International,

which follows many of the Chinese agrichemical industries.

On page 8, and we can provide you with a copy of this, it does discuss the oxidation of PMIDA, and it refers to it as one of the key steps in glyphosate production, so there shouldn't be any doubt that oxidation of PMIDA to produce glyphosate is glyphosate manufacturing. It's not formulation.

MS. DeFILIPPO: If you could submit that with your postconference brief, that would be helpful. Thank you.

MR. GREENWALD: We will do that.

MS. SHERMAN: Okay. I've also read in the press that your St. Joseph facility has been for sale in the past. Can you please comment on this?

MR. FELDSTEIN: Yes. In 2008, Dennis considered selling the company and engaged an investment bank to run a process to solicit bids for the company. It was a very vigorous process.

Unfortunately, the financial crisis kind of intervened and all of the buyers for the company, to make a long story short, evaporated in that process.

MR. VANCE: But it wasn't the sale of just the facility.

MR. FELDSTEIN: No, no. It was the sale of

the entire company, Albaugh, Inc., which includes all of its investments overseas and so forth.

MS. SHERMAN: Thank you. In the petition at page 29 it states that glyphosate has become a commodity chemical, but that Monsanto can still command a price premium for its Roundup brand. Are there any differences in quality among Monsanto's Roundup, Albaugh's nonbranded glyphosate and other formulated glyphosate produced from Chinese technical acid or salt?

MR. VANCE: Well, fundamentally it is all still glyphosate and has a similar herbicidal effect, okay? Monsanto has some proprietary technology which they still have patented called potassium salt, so they sell a different salt or different delivery system in their branded Roundup products.

The rest of us in the generic business sell what's called isopropylamine salt or a 41 percent product which is diluted more than Monsanto's proprietary brand and Roundup products and so when you say there are differences or when you ask if there are differences, let's put it this way. Perception is that U.S. produced, U.S. based product is of considerably better quality.

Monsanto is able to extract a premium

because it's like any other brand in the marketplace. I guess it doesn't matter if you're buying Advil or ibuprofen. You know, Advil still commands a premium and ibuprofen with a generic label on it is going to be less money. And so Roundup has and always will extract a premium. Farmers are very comfortable with it and have used it forever.

However, we sell a brand called Gly Star that we certainly believe and have convinced a lot of farmers because they use it. You know, we've been able to capture a significant amount of the market share in the U.S. marketplace with our Gly Star brand and we're very comfortable and so are hundreds of thousands of farmers using our Gly Star in the U.S. marketplace.

But there have been instances where if you don't control the impurities and you don't control how you formulate glyphosate you can cause some phytotoxicity or you can cause some issues with glyphosate over the top around particular crops. Cotton is the one that is particularly most sensitive to I'll call it some of the higher levels of impurities that might exist in some of the Chinese material.

And so there have been documented cases of

some of those kinds of situations. So people who have had that experience obviously would prefer not to have that experience again and would quickly gravitate back to using something that they're more comfortable with.

The fact that we're an American company and that we have an investment here in people and a manufacturing base and have been in the business for over 30 years helps us when we're dealing with customers who if there is a problem know that they're not going to call somebody with a consultant and a post office box who won't come out and walk their field and take care of the problem for them because we certainly do support our products and follow up if there are any problems.

MS. SHERMAN: Thank you. Are you aware of any other companies besides Monsanto that sells seeds or plant varieties that claim a tolerance to glyphosate?

MR. VANCE: Yes. There are several. Dupont, Syngenta and Dow are the biggest three that come to mind. They all have glyphosate tolerant seeds. There are many other smaller ones -- Stein, Becks and lots of little regional.

Monsanto has made available the glyphosate resistance technology to virtually everyone in the

seed business through licensing agreements, and I don't know the details about that, but virtually all the soybeans, corn and cotton that's sold and most of the canola have the glyphosate resistant gene in them.

MS. SHERMAN: Have you seen an increase in the amount of weeds that have developed their own resistance to glyphosate, and how concerned are you about this development if it exists?

MR. VANCE: Yes, that has definitely happened over time. You know, back in the early 2000s as more and more glyphosate got adopted and used over nearly 90 percent of most of those corn and soybean acres there have been a number of weeds that plant scientists have documented tolerance/resistance.

And so even companies like Monsanto and like Dow are now developing technology where other broadleaf herbicides and the resistance to those like Dicamba and 2,4-D and the resistance of those are looking at being introduced and launched in as early as 2011 and 2012 to help glyphosate control some of those resistant or tolerant weeds.

So in the not too distant future there will be varieties that growers can purchase that will have broadleaf herbicide resistance in them as well, and the difference is that most of the tolerant, most of

the resistant species of weeds are broadleaf because glyphosate is a little weaker on broadleaves than it is on grasses.

So over the years and years of continued use and exposure to glyphosate they have more quickly grown somewhat tolerant or more resistant. But, yes, it's definitely a documented fact.

MS. SHERMAN: Can you describe the EPA registration process, particularly commenting on its length and cost?

MR. FELDSTEIN: Yes. I think Spencer mentioned that over the last 12 or 24 months we've seen a slew of new registrants in the U.S. that have registered Chinese sources as their source of technical in order to offer glyphosate products for sale in the United States market.

It's not a particularly difficult process in order to obtain a registration. Basically a registrant has to invest anywhere from $20,000 to $50,000 in a chemistry package and submit that to the Agency. The Agency must determine that the chemistry is substantially similar to existing registered products, and then the registration is granted. If I'm not mistaken, it's approximately an eight to 11 month process in order to obtain that registration and

maybe quicker.

The one aspect of registration that you'll no doubt hear about is that there's also a data compensation component under the pesticide law called FIFRA, and in order to obtain that registration the registrant must make an offer to pay to registrants that came before that submitted health and safety data to EPA to compensate them for a share of that.

And so part of the cost that a registrant has is to ultimately pay that data compensation. Those figures aren't publicly available, so I'm not sure what people have paid or are paying for the data compensation bills. We paid ours back in 2000 when we first entered the glyphosate business. I'm guessing those bills are a lot smaller today.

MS. SHERMAN: Thank you. I have no further questions.

MS. DeFILIPPO: Thank you, Ms. Sherman. We will now turn to Mr. Haldenstein for any questions.

MR. HALDENSTEIN: Good morning. Mike Haldenstein, Office of the General Counsel. I have a question about the formulators.

Reading through the petition and the handout this morning, it wasn't clear to me whether your position was that they were producers of glyphosate

and members of the industry or not. I think in your handout on page 2 it says that formulators are members of the industry. Do you want to comment on that?

MR. GREENWALD: Yes. If it doesn't say what I'm going to say then it is wrong and you have to pay attention to what I am going to say. The way we have structured the petition we have sought to define the domestic industry as producers of glyphosate that include U.S. formulators of U.S. made glyphosate.

So if you have a formulator that is buying a U.S. product and formulating it it's clearly part of the U.S. value chain. If you have a formulator in the United States that is dependent on -- entirely dependent on -- Chinese material then I would say no. That is a producer or U.S. finisher of Chinese glyphosate.

The best way to think about this is assume that you were the Department of Commerce and you were facing a circumvention problem. You have a product that is subject to an antidumping order, and in order to bring it in finishing is done in the United States.

If Commerce finds that the value added in the United States is not sufficient to confer U.S. origin on the product then the import of the unfinished product governs and the U.S. activity isn't

enough to confer essentially U.S. origin on the product. It is an issue of value added in the United States. What I would say is that U.S. formulators that are entirely dependent on Chinese glyphosate are finishing a product in the United States, but it always retains its Chinese origin. They are U.S. finishers are Chinese glyphosate and not part of the U.S. industry.

MR. HALDENSTEIN: Thank you.

MR. GREENWALD: Finishers of U.S. made glyphosate clearly are part of the U.S. value chain.

MR. HALDENSTEIN: Okay. I just wanted to make you aware that in the past the Commission has taken the view that even if you're starting with the subject import and further processing it, that can be production.

MR. GREENWALD: They have taken the view that it can be, yes. I understand that.

MR. HALDENSTEIN: I just want to direct you to the case of International Imaging Materials. It's a 2006 case, Slip Op 06-11. Also, in an earlier investigation, in chlorinated isocyanurates from China, the Commission indicated that, you know, further processing of Chinese sourced material could be domestic production.

MR. GREENWALD: Well, it can be. There is flexibility in the statute to decide what you're going to include and what you're going to exclude in terms of the U.S. industry, and you have the flexing required, but you do have the flexibility to exclude what I would say are a relatively minor processing in the United States of imported material as being not part of the domestic industry. I think the statutory authority is blackletter and clear. How the Commission chooses to exercise that is not the question.

MR. HALDENSTEIN: Thank you. I think in the petition it suggests that maybe the formulators aren't doing enough to constitute production. Maybe it's like 10 percent value added. I thought I was hearing today that maybe it was more like 25 percent.

MR. GREENWALD: I'll let the expert speak to that, but it depends on the value of the, obviously the cost of the glyphosate.

MR. FELDSTEIN: Yes, that's correct. The cost of the other ingredients in the formulation have stayed relatively stable, and so that percentage can fluctuate depending on the cost of the glyphosate. So we've seen the percentage of formulated product, the percentage attributable to glyphosate, be anywhere

from north of 75 to north of 90 percent depending, again, on that glyphosate cost that's going in.

MR. HALDENSTEIN: Your position is generally that the formulators would be members of the industry if they're working with U.S. made materials?

MR. GREENWALD: Yes.

MR. HALDENSTEIN: Okay. Let me also ask you about your like product definition. Again, it seems to suggest that in order to be part of the domestic like product, this is on page 18 of the petition, that it has to be made from U.S. wet cake or glyphosate technical. I just want to make you aware the Commission's never drawn a distinction like that between where the raw material is sourced.

MR. GREENWALD: Well, let me put it to you this way. If you have a U.S. product, U.S. glyphosate, and it is processed by a formulator, it seems to me there is no question at all that that is a value added to a U.S. glyphosate. U.S. value added to a U.S. glyphosate. Therefore, the value added part is, it would seem to me, part of the U.S. production chain. If what you have by contrast is a minor portion of value added to a Chinese glyphosate, it seems to me what you are doing is not in any way making or processing U.S. glyphosate. What you're

doing is making or processing Chinese glyphosate.

In effect, what you are doing in real terms is processing Chinese material for delivery. I would say to you that that does not qualify as domestic production status. The value added to a Chinese product doesn't qualify you as part of the domestic industry. Now, you do not have to accept that to reach the conclusion that processors or formulators of Chinese product are not part of the domestic industry for purpose of the statute. To go back again, there is authority in the statute to define the domestic industry as excluding importers of the product under investigation. The question there is where are the interests?

If a company is dependent, entirely dependent on Chinese material and then formulates it, its interests are overwhelmingly as an importer of the product under investigation, and it is not interested in any real sense as a domestic producer of U.S. made glyphosate. It's a question of degree. Again, it is not required that you exclude or you define the domestic industry to exclude companies that import, but there is an issue of degree. If you decide, or if the Commission decides, to reject the notion that I spoke of earlier about who is and who is not a

legitimate U.S. producer, that is, who does U.S. manufacturing activity that is associated with glyphosate sold in the United States, then what I would urge you to do is look very carefully at the authority to exclude from the definition of the domestic industry companies that have primary interests as importers.

MR. HALDENSTEIN: Thank you. In your postconference brief, could you also comment on the factors relating to whether a certain production process constitutes, you know, domestic production related activity? You've outlined them on page 12 of the petition, but there are other factors in addition to value added.

MR. GREENWALD: And we will do that. Again, let me make a point that I just want to emphasize here on the record. I believe you're talking about wet cake or acid as being raw material. That's not what it is. The acid, or the wet cake, is the glyphosate, okay? What you are doing is you are, as you go down the formulation chain, you are providing a delivery system for that glyphosate. Again, it's not processing a raw material that we're talking about here. The glyphosate itself that comes from China and that's formulated in the United States is Chinese

glyphosate that has been processed in the United States for delivery purposes only. Again, it is not the same as dealing with a raw material input that you transform.

MR. HALDENSTEIN: But you are saying that the formulators working with domestically produced glyphosate are doing enough.

MR. GREENWALD: They are. They are part of the production process of U.S. glyphosate, yes, domestic glyphosate. That's true.

MR. HALDENSTEIN: Even formulators that are purchasing from Monsanto, for instance?

MR. GREENWALD: Well, I mean, again, what I don't seem to be getting across as successfully as I would like is the notion that the glyphosate itself is, in the wet cake or the acid, that is the active herbicide, and you can't make Chinese glyphosate formulated in the United States into a U.S. product. It's not. It is Chinese glyphosate that has been processed for delivery purposes. The essential characteristics of the glyphosate are Chinese. So, yes, I am saying there's a difference.

MR. HALDENSTEIN: Okay. All right. Well, I just want you to be aware that in the past the Commission has applied the six factor test to

determine whether it's --

MR. GREENWALD: In the postconference brief we'll address your six factor test.

MR. HALDENSTEIN: Okay. Also, on a related point, a related party sort of alluded to it, that these other companies, these formulators, are importing and that if they're deemed to be domestic producers there would be of whether they should be excluded as related parties. Could you also take a position in your postconference brief?

MR. GREENWALD: I actually am taking a position here, yes. The answer is yes, and we will elaborate in the postconference brief.

MR. HALDENSTEIN: Okay. I had a question also on the suggestion that Monsanto's premium was related to an alleged tie in agreement, can you comment on that, with their seed.

MR. GREENWALD: No, I really can't. I'm not here on behalf of Monsanto. It is inappropriate for anybody in this room to assume otherwise. Monsanto is making its decision on -- if you have questions that you would like addressed, the best I could do is forward essentially the transcript. Let me again make it clear. Albaugh is here speaking for Albaugh, and that's all it can speak to.

MR. HALDENSTEIN: No, I understand that, but I was just wondering, in the marketplace, is that the reason that they're commanding a, is that the reason their product is selling at a higher price?

MR. GREENWALD: Well, I think you got an answer that was to me pretty persuasive. First, it is true that brand names tend to carry a higher price. So when you go out, I don't know, I mean, the one that comes to my mind is Hostess Cup Cakes. I'm willing to pay more for the Hostess Cup Cake label than I would for some other, but, you know. On top of that, there is the way in which Monsanto formulates as I understand it, but, again, let me be perfectly clear, I have no in-depth knowledge of this point. I understand that the Monsanto product is a higher concentration because it's formulated with a different salt, and that may affect the premium it can carry.

MR. HALDENSTEIN: Thank you. Let's see. What part of the market consists of sales to like Helm consumers? Is that the trivial part of the market?

MR. VANCE: Yeah. It's very small. We guess it to be less than five percent of the total U.S. market. Consumers, golf courses, that sort of stuff, are pretty small.

MR. HALDENSTEIN: Thank you. And what about

glyphosate's competition with other herbicides? Is it considered just a premium, the premium product? The best?

MR. VANCE: Well, because of its unique, I mean, both, you know, environmental or lack of environmental effects and its relatively safe tox profile, and the fact that it controls all the weeds, generally speaking, except for a few resistant ones, you know, it has some very unique properties that other products generally don't have. We sell 2,4-D. You know, 2,4-D kills your dandelions, but it leaves your grass, right? So it doesn't kill both. Glyphosate does. So it's got some very unique properties that, again, allow for it to be used over many, many acres.

Really, a lot of times the decision is made it might go more around, for instance, tillage. If I've got a field full of weeds and I know it's going to cost me $5 an acre to spray it with glyphosate, is that less expensive or more expensive than firing up my tractor, and hooking it up to my disk and running that across the field, okay? As the price of glyphosate goes higher, obviously there's less usage and there's more tillage. Some of that's driven off. You know, obviously it costs more money to run that

tractor across the acre at $5 a gallon diesel fuel than it does at $2 a gallon diesel fuel.

So all of those economics come into play when a farmer is sitting there at the end of the field going should I spray or should I till? So, many times glyphosate is used as a tillage tool even before you plant your crop and sometimes right after you harvest your crop because in the case of weeds, I mean, there's a good deal of glyphosate that gets used right after weed harvest because the farmers in the plain states want to leave that weed stubble to catch snow to retain the moisture, so, you know, there's a lot of conservation tillage uses for glyphosate as well. I would put it this way.

As glyphosate gets fairly high priced, then there are other chemistries that can be combined with where we could put two chemistries together, and as at the same cost per acre as glyphosate, perform the same thing. But in today's world, there's not a substitute that exists that can replace glyphosate on its own. Many, many companies are putting combinations of other herbicides, in some cases, to try to control these resistant weeds with glyphosate.

MALE VOICE: (Away from microphone.)

MR. VANCE: Yeah, you're right. I mean,

with the exception of, you know, a small piece of technology that Bayer sells called Liberty Link, you can't put other herbicides over the top of Roundup ready crops, you know, without potentially damaging those glyphosate resistant crops. So that technology exists just for glyphosate. We couldn't spray 2,4-D over the top of soybeans. Not yet. I mean, maybe in three years we can when the technology exists, but you couldn't spray 2,4-D over the top of soybeans without damaging or killing the soybeans. You can spray glyphosate today because, again, the resistant gene's been introduced in it. So it's made farming easier for growers and more cost effective for growers.

MR. HALDENSTEIN: Thank you. Can you comment on the suggestion that prices of glyphosate are returning to their historical norm?

MR. GREENWALD: Yes. They're not. I've looked at prices in 2007, for example, and 2009, over the period, and what you see is the current prices out of China are below any reasonable, well, first, they're below the levels at which prices have been, certainly in the United States, over the full period of investigation. Second, when you think about prices, you have to think about it relative to cost. At today's prices, the testimony you have is

unequivocal. Albaugh cannot profitably operate its glyphosate production plant. I showed you the financials four months out.

Now, I don't really know what lies behind them, but my guess is, again, that at the prices that prevailed from let's say I guess it would be November 2009 through February 2010, it was almost impossible to produce and sell glyphosate profitably. So again, when you think about what has happened to prices, one matters, absolutely, the other is relative to cost. If you accept the proposition that the Respondents said in their opening statement that we're back to normal, then what you have to do is accept the proposition that the norm in this business is to lose tens of millions of dollars, and it just isn't.

MR. HALDENSTEIN: Thank you. I saw in the petition the suggestion that contracts for the product are made on a long-term basis. Could you comment on that? Why that's the practice?

MR. FELDSTEIN: Are you referring to the contracts with our customers or contracts from our suppliers?

MR. HALDENSTEIN: I think for your customers.

MR. FELDSTEIN: For our customers, no.

Typically that business I think throughout the industry is probably done on a spot basis. Yeah. By and large, that would describe our industry. There wouldn't be a lot of long-term selling contracts. At least we're not aware of that being a big practice.

MR. HALDENSTEIN: I think the reference in the petition is on the supply side. So if you were buying, for example, glyphosate technical, the contracts are, but they might be for a year. Why don't you elaborate on that.

MR. FELDSTEIN: Yes. On the supply side, yes. It would be different if somebody's buying acid or salt. There might be a supply contract. It wouldn't be uncommon to see a supply contract govern those kinds of arrangements, and they could be for multi year.

MR. HALDENSTEIN: So a formulator would have a multi year contract?

MR. FELDSTEIN: Yeah.

MR. HALDENSTEIN: I mean, if that was multi year, but again, you can ask the formulators. So supply of glyphosate technical for formulations is, as I understand it, typically not, you know, today's price, tomorrow's price, the next year. You need certainty of supply.

MR. GREENWALD: I don't know if it's multi year.

MR. HALDENSTEIN: Thank you. I have no further questions.

MS. DEFILIPPO: Thank you, Mr. Haldenstein. We'll now turn to our economist, Ms. Bryan.

MS. BRYAN: Thank you. I'm Nancy Bryan from the Office of Economics. Thank you so much for your testimony thus far. It's very interesting. I have a sort of very basic opening question. I guess it's just referring to all morning when you referred to the prices of glyphosate. Are you referring to prices of the technical acid form of glyphosate?

MR. KAHNK: Yes. Typically, that's what we do when we talk about 95 percent basis, $3, $4 a kg or $260 a kg.

MS. BRYAN: Okay. Thank you. So where have you seen these prices on the market? Who's actually selling the technical acid in the United States?

MR. KAHNK: The direction of the pricing today versus just months ago, or what?

MS. BRYAN: No. Who is actually selling the acid?

MR. KAHNK: Typically, what we're talking about is who's selling the acid is of the Chinese

producers.

MS. BRYAN: Okay.

MR. GREENWALD: It's also true that Monsanto sells acid. There's two forms of competition. One is acid to acid. I don't think Albaugh sells acid, but it certainly buys acid. What you have to do is look at acid to acid pricing sales. The second part of the equation is if you have access to acid at very low price, what you then can do is compete against domestic's part of the downstream level and the formulated product of the salt, and so the pricing of the acid actually flows through the competition in the formulated or salt sales.

MS. BRYAN: It does. Okay. That was what I was going to ask. So sales of generic formulated glyphosate, they actually are different price points?

MR. VANCE: Yeah. Typically what happens is whether it's us or an importer bringing in glyphosate from China, you've got an acid price of $3 a kg, and, of course, you've got some conversion costs, and you add surfactant, and you add packaging and, in some cases, freight, and whatever your costs of manufacturing might be and you end up with an ultimate cost. The primary component of all that is the acid cost, whether we're manufacturing it or whether we're

buying it from China. So, generally speaking, the end use prices that the formulated product gets sold for are a direct reflection of how low or high the acid prices are.

MS. BRYAN: Okay. And if the formulator is using acid both from import sources and from a domestic producer, Monsanto, assuming, and they're combining those two forms and they're selling a formulated product, is the price for the formulated product the same regardless of the source of the acid used in it?

MR. VANCE: Yeah. I mean, you may end up with a blended cost, one might be higher or lower than the other one, but, yeah, the price is pretty much the same.

MS. BRYAN: Okay.

MR. GREENWALD: When all the data come in I think you will see very clear what are called underpricing, price suppression, price depression, at the acid sales level. For that, you need a full response to compare the import price of acid with say domestic sales of acid. It will be more difficult if you go down to the formulated products and try and do pricing analysis there because there are mixes. What you will find, I think, is some formulators are maybe

100 percent Chinese product and others will have a mix, and there, the pricing analysis is going to be much more difficult.

MS. BRYAN: Okay. So it sounds like the real point of price competition is the purchases of the acid.

MR. GREENWALD: From Albaugh's point of view, what forced them to close the plant is the inability to compete downstream based on the cost of their own processing. They had to shut that down. They're not still making, I assume, and producing acid from, I mean a formulated product from finished acid, whether it is U.S. origin or Chinese origin. But they had to shutdown their plant because the economics of operating, of making the glyphosate was not sustainable at the prices at which the formulated product was being sold. I think that's right.

MR. VANCE: Right. John, let me add one thing. You know, the U.S. finished product price will fluctuate based on what FOB Shanghai glyphosate acid pricing is. So if it's $3 versus $4, there will be a significant price difference in the U.S. marketplace if glyphosate acid is bought at $4 a kg FOB Shanghai versus $3 FOB Shanghai. That's the way the environment exists today because they're so low cost.

MR. FELDSTEIN: Another way of saying the same thing as that, what we've seen in our experience is that when we see that there's a price fluctuation in China, the market price responds. The market price of the formulated product responds almost immediately.

MS. BRYAN: Okay. So just to make sure I'm understanding what you're saying correctly, so a formulator, let's just say, that only is using imported acid from China versus a hypothetical formulator that's just using acid purchased from Monsanto, they would have totally different prices for their formulated products based on --

MR. FELDSTEIN: No.

MS. BRYAN: Okay.

MR. FELDSTEIN: No. The formulated product price is the same because aside from the Monsanto branded product premium, aside from that factor, all the generic glyphosate formulations have got to compete on the same level, otherwise you're not going to get any business. So it really does become, you know, a question of managing your costs on the input side as best you can because you've got to compete with that level, but that level is being set by what's going on in China. That's what we're trying to convey.

MS. DEFILIPPO: Okay. Okay.

MR. GREENWALD: Let me put it another way. The pricing of the formulated product may be exactly the same because you're all competing for the farmers business, and George is right, you're not going to sell with very significant price difference from the formulated product. What will be different is the sustainability of the economics. If your input cost is $5 and your competitors are getting Chinese acid at $3 and you're both selling the formulated product at whatever the price is, there will be a radical difference in the economics of the U.S. activity.

MS. BRYAN: All right. Okay. I think kind of what I'm getting at is, you know, typically how we present pricing data in this case would not really apply. Mostly what we're going to have for sales prices are sales prices of formulated product, so they're not import U.S. comparisons or the prices will all be the same. So I guess I'm trying to drive at which prices should we be looking at, and I think it's purchase prices of the acid, but if we're not getting data from a U.S. producer of acid, their sales prices, then again, there's not going to be --

MR. GREENWALD: Well, hope springs eternal. You might.

MS. BRYAN: I'm sorry?

MR. GREENWALD: I said hope spring eternal. You might get those.

MS. BRYAN: Let's hope Okay. Speaking of Monsanto, and again, if you don't know this, I totally understand, but the Roundup brand from Monsanto, when you refer to that, that's just their formulated glyphosate. That's the name of their formulated product.

MR. VANCE: Correct.

MS. BRYAN: Okay. So, as far as you know, if Monsanto is selling the technical acid form, that would not be a branded product.

MR. VANCE: That's correct.

MS. BRYAN: Okay. Thank you. I guess I just have also some questions about the end uses. I just want to make sure I understand. Can glyphosate only be used on glyphosate resistant seeds?

MR. VANCE: No. As I mentioned before, you know, it's widely used as a preplant burn down. When I talked about the farmer sitting at the end of his field before he plants his soybeans or his corn, like today, there's a massive amount of planting going on in the midwest, well, if that field is heavily infested with weeds, he's going to make a decision:

do I spray them or do I work the ground before I plant? Then there's also uses in the fallow treatments, which are kind of the after weed harvest treatments, and then there are other, although somewhat minor, uses in the turfs, the golf course, even industrial vegetation management, roadsides, power lines, those kind of uses, but those are certainly small in comparison to the large acre row crop uses.

MS. BRYAN: Okay. Good. Thank you. I also had a question about the quality of glyphosate manufactured from the PMIDA. Is the quality of that glyphosate different than the other production processes?

MR. KAHNK: The IDA-based glyphosate, or glycine-based glyphosate, they're very similar. There are a few impurities. Spencer had mentioned about some reactions in cotton. If you have high levels of one particular impurity coming from the PMIDA or IDA route, you can have some phytotoxicity, spotting of the leaves, especially in cotton, but otherwise, for the most part, they're very similar in their qualities.

MS. BRYAN: Okay. Thank you. To the best of your knowledge, do your customers know or ask what

the country of origin is of any of the material you sell?

MR. FELDSTEIN: Let me try that. We actually are required to state the country of origin on our product labels, and so when you have a mix, like we do, of sources, you have to specify basically, you know, all the countries that the product could possibly come from. So if you are bringing in Chinese product, it should say product of China on it, even if you also handle the U.S. product.

MS. BRYAN: Okay. So it would say both in China and U.S.?

MR. FELDSTEIN: You could say, yeah, product of China or U.S. Yes. That's just a requirement that we're required to follow.

MS. BRYAN: Okay. Interesting. And are there like industry standard specifications or industry grades that you have to meet?

MR. FELDSTEIN: Industry standards. Well, we have to comply with the confidential statement of formula that everybody has to submit to the EPA in order to obtain your registration. So that would be the quality standard. EPA, you know, will have different, you know, requirements for different molecules. So for glyphosate everybody should be, you

know, subject to the same kind of basic criteria.

MS. BRYAN: Okay. And are the imports from China also subject to a standard?

MR. FELDSTEIN: They are. They are. They're required to submit their formula statement, they're required to pass muster at EPA. There's not a lot of policing of that and we haven't done a lot of our own testing, so the extent to which those products are complying with those statements of formula, you know, at this point would just be a matter of speculation. There was just a published account of a significant quantity glyphosate that was seized in Brazil because of impurity levels that were vastly in excess of the mandated limit for a particular impurity, and so it's not inconceivable that, you know, there could be deviations, but again, just speculation at this point.

MS. BRYAN: Okay. Thank you. I also wanted to touch on one of the other points we've heard earlier about the choice between the glyphosate versus tilling. Could we sort of go more in depth in that? So were you trying to say that there actually is a trade off? That you could either till more and spray less glyphosate or there's some degree to which you could do that?

MR. VANCE: Only to the degree that the crop wasn't already planted, okay? I mean, if the crop is already planted, you're not going to till it up, obviously, but I'm talking about prior to planting and then potentially after harvest. If you want to, as I mentioned, leave that weed stubble out there to catch the snow over the winter, you've really got two choices. You can hook up your tillage equipment and your tractor and go till that ground or you can potentially give it a chemical tillage or use primarily glyphosate. In many cases, they'll put some other products in there, like dicamba or 2,4-D, to help the effectiveness on some of those larger broad leaf weeds. And so the question is it's kind of purely cost or from an agronomic practice standpoint, you know? Does the farmer really want to leave that residue out there and catch the snow or does he want to work the ground?

MS. BRYAN: Okay. But the bulk of glyphosate is used when would you say?

MR. VANCE: The bulk of it is used in season in crop over the top of a Roundup or a glyphosate resistant crop.

MS. BRYAN: Okay. On a like percentage basis, how much would you say?

MR. VANCE: I'd say 60 percent of it. Maybe as high as 65 percent of it.

MS. BRYAN: Okay. Thank you. For the formulated product, I understand that it must be seasonality and the market. Does that flow backwards to the acid form also?

MR. VANCE: Guess I don't understand your question.

MS. BRYAN: Your purchases of acid, are those seasonal?

MR. VANCE: Well, the use season begins, generally speaking, in February-ish, and the peak season is May and June, that's when the over the top applications are made, and it will end by the middle of July. Then there will be some minor uses in August and September, and then it's over.

MS. BRYAN: Okay. So your purchases of acid track that seasonality as well?

MR. VANCE: Generally speaking, yes. We'd be buying, you know, 30 to 90 days in front of that.

MS. BRYAN: Okay. Thank you. I just have a question I guess about when you talk about the inventory build up. Is that inventories of the technical acid or the formulated product?

MR. VANCE: Both.

MS. BRYAN: Okay. And how long can each of those products last while sitting in inventory?

MR. VANCE: Years.

MS. BRYAN: Years. Okay.

MR. VANCE: They're very stable. Whether it's in a jug or in a bag, it's acid. They're just as good three or four years from now as they are today.

MS. BRYAN: Okay. I'm trying to figure out how to ask this question. I'm not sure if I want to ask about the purchase, the supply side, or your sales side, but I'll just ask and see what you give me. So are there swaps or trades of this product between different customers and suppliers? Like, I'm going to use this product somewhere else, can you just trade me some of your product because you're closer to my end user than I am? Things like that.

MR. KAHNK: Well, there obviously could be, especially with our company where we've got activity down in South America, we've got production down there and other producers in the states, perhaps, but we're not involved in any of those relationships right now with the glyphosate. It could make sense, you know, where you have coproducer pricing because we are a basic producer like say a Monsanto could be. Could be, but we're not.

MR. VANCE: We have them on some other chemistries. I mean, we save in freight, transportation costs, those kinds of things.

MS. BRYAN: Okay. Thank you. I also wanted to touch on just how prices I guess of the technical acid have moved since 2007. If someone could sort of track when prices started ramping up and when they started going back down.

MR. KAHNK: Yeah. I've been very involved in that and tracked that fairly actively. I know you've spent a lot of time about the glyphosate acid pricing. We've got an interest outside of glyphosate so that we can track our PMIDA values as well. So if the glyphosate value goes up, our PMIDA value can go up, but there's always a relationship that we have to have PMIDA to glyphosate so that our conversion is cost effective. So we witnessed, you know, the rapid escalation of prices in late 2007 and continued through 2008.

The Summer Olympics in 2008 was supposed to have a major impact and didn't. But since then, you know, we have seen a fairly gradual, and then recently a rapid, descent in pricing. In late 2009, it hit kind of a bottom. It looks there was raw material prices increasing as we got into the late 2009, early

2010.

As recently as March, I went to China. We discussed pricing. You know, the price had fallen back down into that three dollar range, not that many buyers. So again, they dropped the price under three dollars, and then even as recently as April 5th, something like that, I think the Chinese understand the antidumping thing is probably going to happen. So those that did produce are anxious to get rid of their inventory. So we've seen new and additional downward pressure on the pricing, down into the 2.50 range.

MS. BRYAN: Okay. So your understanding of the market, why did prices go up such when they did?

MR. KAHNK: Well, I mean, there was this speculation about how strong the demand was really about glyphosate, and people wanted to try to find ways to capitalize it. So there was some anxiousness in trying to purchase glyphosate and RPMIDA in fact as well out of China. But China doesn't have a lot of regulation around their ability to fix and set prices.

For example, in 2007, I remember visiting with one of our suppliers, and we're about ready to sign a purchase order, and he gets a phone call and he says -- hangs up, and he goes, oh, Jim, so sorry; your price is now a dollar a kg higher. So I think we

didn't even get the PO done. It was just that crazy at that point in time, that the industry was cooperating, working on how they were going to price their material. So they knew the demand was there, or felt that it was there, so they could command any price that they wanted. So we saw a 400 percent increase in the price in the matter of a year.

MS. BRYAN: Okay. So just to clarify, there was a perception that demand would be high?

MR. KAHNK: Yeah. The perception was that there was this explosion in the demand for use of glyphosate.

MS. BRYAN: And why would that be? Exactly why would --

MR. KAHNK: Well, because in 2006, you know, we started introducing Roundup for the corn into the United States market. Primarily, before that it was just soybeans and cotton that had that trait. Then it was introduced to corn. And then we saw, you know, more of the corn farmers, they were attracted to the traits that many of the seed producers had, which the genetics were outstanding, and they also had the Roundup-ready trait. And genetics means it has the potential for strong yields. It has the trait that protects it, using sprayed glyphosate on it.

So they wanted those traits that gave them the best yield, so they started buying the glyphosate-resistant trait. So 2006 and 2007, we saw the corn acreage go up. But, you know, when you look at USDA plantings, maybe that increase in the corn acreage was 5 million gallons worth of glyphosate or a 5 percent increase. But there was just enough demand there that then in 2007, distributors and farmers said, hey, I don't want to have any risk of getting cut short again. So I'll accelerate the timing of my purchase. I'll buy stuff earlier than I normally would.

You mentioned, you know, the difference in seasonality and the timing. Well, at that point in time, everyone accelerated it. The Chinese interpreted that as this huge increase in demand. So they started raising the price because they felt that they could, and then they started building facilities because their neighbor next to them was making a lot of money on the glyphosate business.

MS. BRYAN: Okay. So it was sort of their perception that the Chinese raised their prices during that time.

MR. KAHNK: Yeah. They did raise their price. They raised everybody's price. We went from buying this material at $3 or $4 at one point to as

high as $14 a kg. So that's a big increase. But like a lot of producers, when something is kind of tight, you can cooperate and work together, you know, to manage the price on the upside. On the way down, though, it's very difficult. If you can imagine OPEC, you know, the oil industry, when they have a lot of tightness, they'll work together and control how much production or what the price is going to be. But when it's over-produced, there isn't that same measurement of control. It's out of control at that point in time.

MS. BRYAN: So coming into 2009, would you say then that the Chinese are leading the downward pressure on prices as well?

MR. KAHNK: Well, everybody is desperate to try to sell their product at that point in time. They're not concerned about the group. I'm worried about I got to get my cash out of my inventory, so I'm going to do whatever I have to do to get rid of it.

MR. GREENWALD: I think the data that we have put on the record regarding Chinese prices, all of which comes from China, and talking about the -- again, the irrational capacity expansion and the cause and effect relationship between that capacity expense and the collapse of prices -- makes it fairly clear

that what is going on is China led.

Now how the Chinese industry works together or not, I'm certainly not qualified to comment on. But the point I want to make here is you had U.S. companies that with the prices coming out of China at levels, the technical levels, that were as far as they were below their own cost, simply had to stop production in the United States. That's a long story in that. And it's a reaction to a Chinese-driven price.

MS. BRYAN: Okay. Can you also touch on the weather effects in 2009? I understand there was flooding that affected farming and crop usage and probably glyphosate usage.

MR. VANCE: Yeah. I mean, obviously a spring like what we've had now is much more conducive to more herbicide usage and generally earlier usage. And so that compared to an early, wet, cold spring like we had in a lot of the cropping ground in 2009 reduces the amount of consumption. One of the other major factors is that there was a 1 in 70-year drought in South America, and it particularly hit Argentina. And Argentina is a fairly large user of glyphosate acid from China.

So again, the Chinese had built this

inventory thinking they were going to sell some of it in Argentina. Well, the farmers didn't even plant a lot of the soybean interests because it was so dry, the seed wouldn't come up. And so there was a huge reduction in the use of glyphosate, again part of it being brought in from China into a country like Argentina.

MS. BRYAN: Okay. And that leads me, I think hopefully, to my last question, about when you decide to produce. Do you wait for the custom orders to come in and produce the order, or is it sort of you have an idea of what you're going to need well in advance?

MR. VANCE: Well, try to get a verbal -- so not a contract. And we have simply been in the business a long time. You know, we've got relationships with all of those major customers, so we have a fairly good idea of their historic needs and purchases from us. And so we'll try to plan around that, but we'll certainly follow up almost on a weekly, or certainly every other two week, basis, some kind of where they are at in the purchasing process. And we'll build inventories again, anywhere from 30 to 90 days in advance of that.

You know, we exist in an environment where

90 to 120 days is when almost all of this is used. There is no way you can make it all in 90 to 120 days and deliver it to the distributor and the dealer and the farmers. So you have to build and stay in front of -- I mean, it is not uncommon for us to have 30 percent inventory to try to be in advance of the major peak season.

MS. BRYAN: Okay. I think that is all of my questions for now.

MS. DeFILIPPO: Thank you, Ms. Bryan. We'll now turn to our industry analyst, Mr. Randall. Do you have questions for this panel?

MR. RANDALL: I'm Robert Randall, Office of Industries. I have a couple of questions. You mentioned 2,4-D versus glyphosate in, say, lawn and garden use. So would glyphosate be used by lawn and garden people, or golf courses, or other turf?

MR. VANCE: Yeah. Yes, it is. But keep in mind that glyphosate will kill the grass, the turf grass, whether it is golf or in your yard, okay? So it's used on -- they're spraying cracks or they are spraying areas where they want a total vegetation control. So again, it's a very, very small amount of the total consumption of glyphosate.

MR. RANDALL: About when did Monsanto

develop the genetically modified crop genes? And would you say that has been a major factor in making glyphosate attractive for field crops?

MR. VANCE: Well, Monsanto could speak much more clearly on that, on that time line, obviously. But beginning in the mid- to late-90s is when they started to introduce -- Roundup-ready soybeans is what they started with primarily, and then cotton. And then Jim mentioned, you know, in the mid-2000s, maybe 2003, 2004, they launched Roundup-ready corn. And, yes, absolutely, that had driven the demand for glyphosate.

I mean, you know, think about there is approximately 80 million acres of soybeans planted every year in the U.S. And I think a number of 80 to 90 million acres of corn planted every year in the U.S., and 8 to 10 million acres of cotton. So all of a sudden, add all those up, you have got 160 to 180 million acres of new usage that wasn't there prior to the introduction of glyphosate-resistant seeds.

MR. RANDALL: I guess that is all of the questions I have. Thank you.

MS. DeFILIPPO: Thank you, Mr. Randall. We now turn to Mr. Ascienzo. Do you have any questions for this panel?

MR. ASCIENZO: Yes, I do. Thank you very much. And thank you very much for all of your testimony so far. And I'll apologize upfront if I ask questions that were already asked or are covered in the petition. Sometimes I miss things, though.

First of all, I think a fairly easy one, maybe not. Is there any difference between IDA and IDAN? Sometimes I see IDA and sometimes I see IDAN.

MR. KAHNK: IDA is usually referring to the final glyphosate form, either a glycine glysate or an IDA-based glysate. And there is a difference in the route in how you get to IDA-based glysate. You can come from PMIDA that is manufactured with DEA, diethylamine, or you can make your PMIDA from IDAN, which is sourced from natural gas. So slight differences, but in the end, you come with the some glysate, glysate IDA. Does that help?

MR. ASCIENZO: Okay, thank you. We know that you produce glyphosate using the PMIDA that you purchase. Do we know what Monsanto does?

MR. KAHNK: To the best of my knowledge, I believe Monsanto manufactures PMIDA, and then they have an oxidation process as well to manufacture it into glyphosate. The details of that, I don't know.

MR. ASCIENZO: No. I understand, I

understand. But oftentimes people know what their competitors are doing.

MR. KAHNK: Yeah.

MR. ASCIENZO: And I'll ask this, and you might know not the answer. So they produce PMIDA from scratch or --

MR. KAHNK: Yeah. They are basic in their manufacturing process. I believe they use DEA in their process to make their PMIDA, and then downstream into their IDA-based glyphosate.

MR. ASCIENZO: Okay. Thank you. Now about -- I doubt that you can do this now, or that you would want to do this in public now, but in your post-conference brief could you provide some data -- and the background is going to be value added. There is a lot of talk about value added here. So for 2009, could you give us the percentage of your raw material costs that were PMIDA versus, I think, oxygen, right? Oxygen is a big one. And then any others that you care to break out in post-conference. So PMIDA, let's say 78 percent, just to pick a number, oxygen 22 percent. Or that's 100, but --

MR. GREENWALD: Well, no. Well, we'll give you the breakdown.

MR. ASCIENZO: All right. Thank you very

much. There was talk before that the U.S. usage of U.S. market for formulated glyphosate was about 110 million gallons, and the world might be 450 million gallons. When we hear numbers like that, is there a standard concentration that is assumed?

MR. VANCE: Yes. The standard concentration by which that is measured is called a REG, R-E-G, okay? That is a Monsanto acronym for Roundup-equivalent gallon. So when people talk about gallons on a consumption or usage basis, it is all around actually a three-pound acid or 41 percent gallon, or a REG, again a Roundup-equivalent gallon. And that is actually the formulation that all of us that are in the business are selling as a 41 percent compensate.

MR. ASCIENZO: Okay, thank you. We know the acid, the glyphosate acid, is used to formulate the liquid product. Why would anyone produce a salt? Is salt used for the same thing?

MR. VANCE: Well, the finished product is a salt. And they get kind of confused in -- again, Jim -- you know, imagine -- Jim made a great analogy about the Miracle Gro fertilizer, you know. There is acid in the dry powder, okay? And you have to get it -- you have to transform it into a usable delivery system that makes it effective, or that actually enhances its

effectiveness on a weed. And so it is really -- I'll take you back to third grade science class.

You're dissolving salt in a salt shaker in a glass of water, okay? So now you're spraying saltwater on a plant, versus if you sprinkled that same salt shaker on that plant. None of it would stick on that plant, right? So even though it has got the herbicidal effect -- I mean, it's converted into a usable -- or transformed into something that is going to make it more usable on the plant, more effective.

MR. ASCIENZO: So, I'm sorry. So then the salt is -- a surfactant is added, and then that becomes what is used on the plants?

MR. VANCE: Right, and water.

MR. ASCIENZO: And more water, or water, okay.

MR. KAHNK: Maybe just to clarify a little bit about the salt, too, that when we talk about, you know, the first step as we liquify the glyphosate into that 62 percent salt --

MR. ASCIENZO: Right.

MR. KAHNK: That's as concentrated as you can get glyphosate in a liquid form. And for some producers, they may buy -- you know, we may sell to our customers the 62 percent material that they can

add their own water and surfactant to it. So that's why you kind of stop at a 62 percent, and then you add the other dilutants into it and surfactant to make it your final formulation. Okay?

MR. ASCIENZO: Okay. Thank you. Mr. Vance, in your direct testimony -- I don't want to misquote you, but I think you say your company produces 21 to 22 chemistries. Does that ring a bell?

MR. VANCE: Sure, yeah.

MR. ASCIENZO: And what do you mean by that?

MR. VANCE: Well, we sell 21 other compounds, just like glyphosate is a herbicide. We sell 2,4-D and dicamba and bromoxynil, and again 21 other total different chemistries that we sell in the U.S. marketplace. So glyphosate is 1 of 21. And part of my reason for saying that is that we have been in this business a long time, and I have never seen a phenomenon like what we've just experienced with glyphosate. So to think this is a cycle is, quite frankly, naive. It is something that has absolutely been driven by the over-capacity -- the buildup of over-capacity in China.

MR. ASCIENZO: Thank you. And I don't know if you can answer this in public, but the 21 or 22 chemistries or all glyphosate-related?

MR. VANCE: No. Most of them, no, they are not.

MR. ASCIENZO: Okay.

MR. VANCE: No. There is no relationship between 2,4-D and dicamba and glyphosate. They're completely different.

MR. ASCIENZO: So, I'm sorry. So glyphosate is only a portion of your overall sales.

MR. VANCE: Correct.

MR. ASCIENZO: Okay. There are some byproducts when glyphosate is produced. Either now -- now, if you can -- but in your post-conference brief, could you talk about the relative values of those? If the glyphosate cost is, let's say, roughly $3 a kilogram, or whatever that comes to, 6.60 a pound, could you care to comment now what the value of the byproducts are? Once again, if not now, in your post-conference brief.

MR. KAHNK: Well, there isn't any value in those byproducts. Typically, it's a waste. And just to explain, if you have 1-1/2 pounds of PMIDA, that makes 1 pound of glyphosate, typically. So the other half pound is the creation of some of these byproducts, like formaldehyde and formic acid. And one of the things again with our synthesis plant, we

have downstream again a water treatment plant.

So this is a totally different operation that somebody that formulates it and doesn't generate the liquid and the waste that we do. But we have a biological treatment process. We have bacteria that digest the formaldehyde and formic acid, turn it into CO_2, and we discharge pretty clean water that complies with all of the state of Missouri regulations around the clean water.

And our process and how we treat that waste water is fairly unique in the industry, and I think there are few of the Chinese producers that probably have the same kind of process as efficient as we have.

MR. GREENWALD: In economic terms, it's right to say that there is no revenue stream of any significance that is generated by these -- what you call byproducts of waste. To the contrary, it is mainly a cost of disposition.

MR. KAHNK: Yeah, that's correct.

MR. ASCIENZO: Thank you. In your post-conference brief, could you provide an estimate of what the cost was to dispose of these products for 2009, a percentage of your costs? Thank you very much.

I think we have kind of answered this, but I

just want to make sure. I think, Mr. Vance, you talked about this. Production is year-round, and maybe a two-week break in the -- a lot of companies take a week or two break in the summer to do maintenance. But production is January through December?

MR. FELDSTEIN: You're talking about synthesis?

MR. ASCIENZO: Well, let's do both. Let's do the acid and then the -- yeah. Well, the synthesis and then the formulation.

MR. KAHNK: Well, we've had a few breaks in our production, you know, at different times. You know, it is a little bit seasonal. But on the other side, when you run a synthesis process, it's kind of one of those slow and steady things. You don't have the ability to flex up and flex down, so we have to run it fairly continuous.

But we do have the intermissions with -- or a letup in demand. That's when we'll do, you know, a shutdown for a week or two and do our maintenance, or we'll add new equipment and improve efficiencies in our process, which we have done over a period of time.

MR. ASCIENZO: Thank you. Formulators in general, I know some of them have tolling operations

or, excuse me, I guess contract out. Could you at all liken them to tollers, though, that if they can tell things aren't going well, they're just not going to buy as much acid and they're just not going to formulate it?

MR. KAHNK: Well, speaking of tollers, there is sort of a -- there are probably a few startup companies that got in the business of -- the generic companies bringing in material, and they custom formulate for different people with registrations that are bringing in Chinese material. We made the investment where we do all of that work in-house. But other people, they'll just contract the use of someone, mix vessel and blending facilities and packaging facilities, and they'll campaign or run, you know, their million gallons or half million gallons through their facility, and then they're done.

MR. ASCIENZO: But I'm just thinking on a broader basis. It just seems like a formulator has less capital tied up in their operation than you would or Monsanto. So if can say things are not going good this year, we're just not going to buy the acid, and we're not going to formulate because we can't sell it for the price that we need to sell it for.

MR. KAHNK: No. That's very true. And some

of the same facilities that they use to formulate glyphosate, when they're done formulating glyphosate, they may work some other formulation and tolling activity inside of those vessels. They're not very specialized. It is pretty standard stainless steel materials that we have. And you're right. It is a very low cost, typically, operation.

MR. ASCIENZO: Oh, I guess for Mr. Greenwald. We were talking about value added for formulators. I think you said if somebody uses 100 percent purchased acid, and they were U.S., they should be considered a U.S. producer. And if they use 100 percent of imported acid, they're not. I'm guessing a lot of people are going to be in the middle. What is your position on those?

MR. GREENWALD: My position would be 50 percent. You know, you are either interested as a formulator of Chinese acid in major part, or of U.S. in major part.

MR. ASCIENZO: Thank you, thank you. I don't know if any of these gentlemen have an accounting background, so if you do, great; if you don't -- you don't have to answer that in public, no.

MR. FELDSTEIN: We're happy to answer. We don't have an accounting background.

MR. ASCIENZO: Okay. But perhaps you can answer this in your post-conference brief. And the question will be why would some companies write down the value of their inventory when others wouldn't? There are reasons that you would and reasons that you wouldn't, but it's possible that -- in this industry some have written down their inventory and some haven't. So the question is why would some and why wouldn't others. And if you can't answer that right now, I understand.

MR. GREENWALD: It is a good question. I haven't thought of it, and I certainly don't have an answer for you. But --

MR. FELDSTEIN: We know why we did it, but I'm not sure we want to answer it on the record.

MR. ASCIENZO: I understand that fully. Okay. So, okay. Thank you very much. If you could touch on that in your post-conference brief. And with that, I think that's it. Thank you very much. Thank you very much for your answers.

MS. DeFILIPPO: Thank you, Mr. Ascienzo. We'll now turn to Mr. Deyman.

MR. DEYMAN: I'm George Deyman, Office of Investigations. Mr. Greenwald, you said earlier that you don't represent Monsanto. However, you did submit

a letter, a public letter, to the Commission relating to Monsanto's questionnaire response. So could you explain whether you do or don't represent Monsanto?

MR. GREENWALD: I am not here today on behalf of Monsanto. It is true that on one occasion at Commerce and one occasion at the ITC I did send in a letter expressing -- I think it was a Monsanto request for extension. But that is the extent of it.

MR. DEYMAN: Well, where is Monsanto?

MR. GREENWALD: They are in St. Louis.

(Laughter.)

MR. DEYMAN: Is there anybody here from Monsanto?

MR. GREENWALD: Let me -- Mr. Deyman, it is obviously an issue that is going to be brought up here. But if -- you know, Monsanto's position on this is under consideration. I think that was what was stated in the letter. It was frankly a courtesy to allow a company that takes this very seriously, and has a range of interests, to get time to decide. Obviously, Monsanto matters in terms of any assessment of the impact of subject imports on the industry. And I understand that, and I understand the Commission's -- I don't think it's -- you know, it creates some questions about where is Monsanto, and the reason for

it.

But I also think that the Commission has to respect the process that Monsanto is going through. All I can say, because it really is all I know, it is a process that is not an easy one. It is one that they are considering in very good faith. They don't mean, as far as I can tell, to create any difficulty for the Commission. And in fairness, I think at this point that is all that can be asked of them in a public forum.

MR. DEYMAN: Just for the record, though, is there anyone from Monsanto in the room? We're not going to call you up to testify, but I'm just curious. Is there someone from Monsanto here covering this proceeding? Someone raised their hand. All right.

Now I would point out for the record that Monsanto has not yet submitted its questionnaire response, whereas, of course, Albaugh has, and virtually all of the formulators and importers have.

MR. GREENWALD: I also understand that. And one of the -- I mean, I think it is important for the ability of everybody to make their case to see a full record. Thankfully, you have extended the time for the post-hearing brief so that I believe everybody will have time to digest all of the data that you have

requested. To the best of my knowledge -- and I mean this. I hope you take it as I say it -- Monsanto is engaging in an internal process in good faith. It's not easy for a company to answer the detailed questionnaire that you submit out. It's a process. Frankly, companies typically don't keep their books the way you structure your questionnaire.

So again, all I can say is urge patience. I understand the fairness issue, and I think it is a reasonable point to raise.

MR. DEYMAN: All right. You mentioned earlier that if a formulator purchases U.S.-produced glyphosate and formulates it, it is a U.S. producer and part of the U.S. industry in this proceeding.

MR. GREENWALD: It is a U.S. producer of a U.S. product, yes.

MR. DEYMAN: Whereas if a formulator purchases 100 percent Chinese technical glyphosate and formulates it, it is, for this proceeding, not a U.S. producer.

MR. GREENWALD: In my view, it is a U.S. producer of a Chinese product.

MR. DEYMAN: Right. And John Ascienzo asked the question, well, what if someone is 50/50, somewhere in the middle, and you said, well, the 50

percent cutoff. That 50 percent cutoff, would that be by weight or by value?

MR. GREENWALD: Everything in the middle -- the response to Mr. Ascienzo -- and it was a very good question because I think it is in fact the truth insofar as most formulators go. And I was too glib in the way I responded. I think the real way to respond, it's possible. And I believe Commerce may have asked for this in its questionnaire, but I'm not sure -- is to distinguish between the production and the -- coming up to a specific production and the economic activity associated with the U.S. part, and that that's associated with the imported part.

In my own view, if it were a close case, if what you had was a company that did substantial quantities of both processing of Chinese and U.S. acid, my response would be the Commission should err on the side of including that company in the part of the domestic industry. It's just that value added process. So the contribution to the U.S. industry is really relatively small. But nevertheless if they are substantial processor of U.S. acid and also, you know, processors of Chinese acid, I think it is too glib to say, well, there is a hard and fast cutoff. And my guess is you have a rule that fact is substantial with

the product acid into the U.S. industry.

Where by contrast you have, let's say during the past year, a company that is 100 percent Chinese, that's an easy call. If it's 95 percent Chinese, to me that's an easy call. You can go down to 85, say, and that is still a fairly easy call. It's a judgment that I think you're going to have to make. And this is, you know, not an easy question.

Ultimately, I don't think the answer matters in terms of the data you look at. I don't think there is enough in the economics of the processing in the United States to affect the result one way or the other. I apologize for giving you the quick 50 percent cutoff rule because it was too harsh, and you all deserved a more thoughtful answer. So that is how I would approach it if I were you.

MR. DEYMAN: The right value distinction is an important one, though, because if a formulator is importing the Chinese technical product, which you say is at a much lower price, then that formulator would have more value added in the United States than if it purchased a U.S.-produced --

MR. GREENWALD: It was a more relative value added, but the value added would be exactly the same. I mean, if you are talking about the value added,

anything between the input price and the end price, but I don't think that's the way to look at it.

MR. DEYMAN: Okay. It's the cost rather than the price, right. I'm going to ask a couple of questions here that we probably have covered already, but just to be absolutely specific, Albaugh mentioned that there is a real distinction between synthesizing and formulating. Now Albaugh synthesizes the product, and it also, I believe, formulates the product. Is that the correct, in the same facility?

MR. FELDSTEIN: It's in the same physical location, but in different areas of the plant, I guess.

MR. DEYMAN: Now as far as you know, does Monsanto synthesize the product?

MR. FELDSTEIN: Yes.

MR. DEYMAN: Does it formulate the product?

MR. FELDSTEIN: Yes.

MR. DEYMAN: In the same general --

MR. KAHNK: Yeah, I believe in the same kind of complex, similar to what we would have. You know, they would do the activity in the same plant site, but different buildings perhaps.

MR. DEYMAN: And then there are formulators of the product in the United States. Is there anyone

else that synthesizes the product in the United States?

MR. KAHNK: I only know of us and Monsanto.

MR. DEYMAN: So a synthesizer is definitely a U.S. producer of the product, in your opinion, whereas a formulator may or may not be, depending on certain, you know, value added and other considerations.

MR. GREENWALD: And again, let me say something that is factually correct, and it's very important. Prior to the synthesis process, you do not have glyphosate, okay? So the product is produced as a result of synthesis. The product in its essential characteristics doesn't change after that. What is done is it is diluted; it is made into a salt, I think for stability reasons. A surfactant is put on it. But all of that ought to be thought of as processes for the delivery for the product. What creates the product is the ultimate synthesis, in this case, of PMIDA into glyphosate.

MR. DEYMAN: I do thank you for your questionnaire response. I know you spent a great deal of time and effort on that. I would like to ask one more data item, if possible, if you could supply it in your post-conference, and that is -- well, actually,

if you could supply it by April 29, so before the post-conference briefs. And that is you mentioned importing the PMIDA. We would like to know, if you could give us your imports of PMIDA, quantity and value, for the calendar years 2007 and 2008 and 2009, if you could provide those to the staff.

MR. GREENWALD: We can do that, yes.

MR. DEYMAN: Broken up by China and by anywhere else that you may import it from. And an April 2, 2010, article in the Des Moines Register mentioned that Albaugh's sole a glyphosate manufacturing facility in St. Joseph, Missouri is up for sale. Is the facility still up for sale, or is it up for sale?

MR. FELDSTEIN: No, it's not up for sale now. Does it say "is" or "was."

MR. DEYMAN: I don't have it here in front of me, but I believe it said "is."

MR. FELDSTEIN: I believe it said "was," but we'll check.

MR. DEYMAN: Okay, fine.

MR. FELDSTEIN: In any case.

MR. DEYMAN: All right. If it said "is," that's incorrect. Mr. Greenwald, do you think that the captive consumption provision is applicable in

this case, because -- well, we don't -- we haven't seen Monsanto's questionnaire response, but I presume that it's using its own produced glyphosate to produce its downstream product, and it could trigger the captive consumption provision.

MR. GREENWALD: It could. But, I mean, conceptually, I think the problem is that you generally have the captive consumption provision when you use it to make something else. And we are seeing here in regard to glyphosate that glyphosate is in various forms. So I don't really think it's applicable, but it's a good question, and we will address it in the brief, in the post-conference brief.

MR. DEYMAN: Right. On June 23, 2009, Monsanto's board of directors approved a restructuring plan to take future actions to reduce costs in light of the changing market supply environment for glyphosate. What do you think prompted that decision?

MR. GREENWALD: I do not -- I'm making it very clear, I do not know what prompted that decision, and I cannot give you anything other than what I have learned about the industry. But what I have learned about the industry is the collapse of prices and the collapse of essentially the economics of that sustained the largest operation forced the decision.

This is another case where frankly American production and American jobs have been a casualty, in my view, of a fairly aggressive export-led growth policy by the government in China.

MR. FELDSTEIN: Our layoffs were also announced in June of 2009, for what that's worth.

MR. DEYMAN: That's helpful. Thank you. Page 37 of the public version of the petition names several formulators that have entered into long-term supply arrangements or contracts with firms in China. Is that assertion correct? I suppose it is. And if so, how long is long-term, and were the arrangements or the contracts the results of bids that were also made and lost by Albaugh or by Monsanto, as far as you know?

MR. GREENWALD: Again, I can't give you any answer with regard to bids made or not by Monsanto. This is I think contracts for glyphosate technical, so Albaugh is not in the business of selling its glyphosate. I mean, I assume that's right. Whether or not those were -- well, let me be more direct. These are major formulators. They have major operations. There are major amounts of glyphosate technical at stake. I am confident that had -- if the question were could the U.S. supply that glyphosate

technical, I am pretty confident that the U.S. supply is sufficient to meet all U.S. demand, and I would wager that the deciding factor the decision to source Chinese supply is price.

MR. DEYMAN: You contend that the U.S. industry is injured currently. Back in 2007, 2008, when glyphosate prices were apparently quite high, at that point, do you think that the industry was experiencing any injury?

MR. GREENWALD: If I had looked at the financials, and they would end in the calendar year 2008, we wouldn't be here. No. What has happened is a dynamic that in response to good times in the industry, expansion of capacity in China has gone beyond any rational level. And what it has meant is not only a very, very substantial decline in prices, and essentially the price of the economics of production, in 2009, but it has locked in a supply demand and imbalance for the foreseeable future.

This is not a short-term cyclical problem. This is a problem that by Chinese -- the admission of Chinese observers -- I think I quoted you one of the secretary generals of one of the associations. It isn't going away for at least three years. This is non-sustainable. There is no compelling reason why

the glyphosate industry, which is not labor intensive, should gravitate to China instead of the United States, and U.S. jobs should be lost because of a capacity buildup in China that has no regard for the underlying economics.

I mean, it is a structural change. Let me make this very clear. We're not talking about a cyclical problem here. It is a very deep, long-lasting structural change that has to be resolved, and will only be resolved, when China takes production -- I mean takes capacity out of production.

MR. DEYMAN: When did you first notice significant amounts of imports of glyphosate coming in from China, and when did you first realize that the imports were, in your view, adversely affecting your operation? And if you can be pretty specific as to maybe certain months of a given year.

MR. KAHNK: Well, if we wanted to get real specific, perhaps we could provide you some of the detail by month. But, you know, as we are into that late 2008, we saw very rapid escalation. You know, I track the imports from a July to July. That's kind of the crop year, as I call it. So when we looked at measured that, you know, we could see a lot of that activity coming in, you know, in the tens of thousands

of gallons -- or it wouldn't be -- or tens of thousands of tons each one of those months.

But if you'd like, we could share more of that detail with you.

MR. DEYMAN: Well, if you could, sure. That would help. But you said you tracked imports. How do you track them? Because there is no common tariff system number under which the imports are clearly imported. Well, we know what number under which they are imported, but there are other products being imported under that number, too. So how do you track the imports?

MR. KAHNK: Well, we actually use a consulting service that has got a very good reputation and long history in tracking not only glyphosate, but all -- many ag chemical products. He is paid by us and other basic manufacturers to track those, so he is very good at what he does. And he details out, you know, how much was brought in as 95 percent acid, how much was brought in as 62 percent salt, or even breaks down what is brought in as formulated, ready-to-use product.

MR. DEYMAN: Thank you. A June 25, 2009, article in the St. Louis Post Dispatch mentioned that Monsanto planned to cut 900 jobs due to a steeper than

expected drop in sales of Roundup, and mentioned that Monsanto was, quote, "caught offguard by a flood of inexpensive Chinese-made herbicide that quickly eroded sales," unquote. But it also mentioned that Monsanto is going forward with the expansion of a glyphosate manufacturing plant in Luling, Louisiana. As far as you know, is Monsanto still going forward with that expansion? And if so, why is it doing it, if the industry is currently injured?

MR. GREENWALD: I think that is a question that you just have to ask of -- certainly in the latter part, ask Monsanto. The sense I have is they're going forward with it, but I can't offer anything beyond that.

MR. DEYMAN: You mention on page 11 of the petition that Customs has ruled that the origin of formulated glyphosate depends on where the acid was produced and not where it was formulated. You're not suggesting that some of the formulated glyphosate entering the United States from third countries is misclassified as product from those countries, I assume. Do you know of any imports from third countries, significant imports?

MR. FELDSTEIN: We have observed -- I'm not sure exactly how to answer this. But we have observed

that, yes, there is quantities of product that are coming in to the United States from third countries that are essentially processed Chinese acid.

MR. DEYMAN: Are they being identified as products of China or products of the third country?

MR. FELDSTEIN: Products of the third country. Yes. We would believe those are being misclassified.

MR. DEYMAN: And you also mention on page 11 of the petition that -- well, you mention the Customs, a specific Customs ruling that you included in Exhibit 3 of the petition. But the ruling that you included appears to relate to product that is essentially produced in the United States and then shipped to Canada or Mexico for retail packaging before being shipped back. And I couldn't see the connection between that ruling and your contention that -- you know, that a formulated product in a third country is not necessarily the product of that country.

MR. FELDSTEIN: If you read that carefully, I think that ruling -- the fact for the acid and the salt were produced in the United States, and then either formulated with the surfactant, et cetera, in the United States, and then shipped to a NAFTA country for packaging, or the formulation step was done in the

third country, in Canada and Mexico. So in either case, if you read that carefully, you'll see that the Customs Service decided that is product of the United States because the acid was manufactured in the United States.

MR. DEYMAN: There is some information on the record of this investigation that the quality of glyphosate produced in China and in other countries can frequently vary somewhat considerably. Is that true?

MR. KAHNK: It can. We've heard experiences and have experiences with some variability in the quality of material, from sediments to certain higher levels of impurities.

MR. DEYMAN: Would you say that the Chinese glyphosate is generally equal in quality to the glyphosate produced in the United States, I mean, given that there are some variations? But is it generally equal and generally interchangeable?

MR. KAHNK: Generally, but I'd like to think that the product that we produce in St. Joseph is as good as any in the world, so --

MR. DEYMAN: Does that mean that you would command a higher price for your product if it is a better quality?

MR. KAHNK: You would hope that there would be a slight premium to the quality, but -- and in some cases, I think there is.

MR. GREENWALD: When you have Chinese acid coming in, and it's being brought in by major agricultural companies, they are, I'm sure, pretty insistent on the quality. It is undoubtedly true that in China, they sell a 10 percent solution, I think, that is generally viewed as lower quality than, let's say, material of a higher concentration. But I would not stand by the proposition that the bulk of Chinese imports are -- especially knowing who they go to -- are inferior grade.

MR. DEYMAN: You mention on pages 4 and 5 of the petition that China now has in place glyphosate supply capacity that will exceed, or does exceed perhaps, the entire world's demand for glyphosate. Is there a public -- no. We see all sorts of capacity numbers and projections and various articles and so forth. But is there a public source of information on the world market for glyphosate and, you know, someone that keeps track of capacity and consumption and so forth in various countries?

MR. KAHNK: I don't think there is a single source that can track and manage all of the different

producer sites and the capacities that they have in China. A lot of it is speculation and guess and various surveys that are conducted to try to determine that. But because some of the Chinese plants aren't licensed manufacturers, no one really knows exactly what that capacity level is.

MR. GREENWALD: Mr. Deyman, it does seem to me fair for us to quote the general secretary of the China Crop Protection Industry Association. As you may know, the associations in China tend to work hand in glove with the government. And when he says that he believes -- this is Mr. Sun -- that the real total capacity in China is somewhere over a million tons per year, that strikes me as pretty authoritative.

MR. DEYMAN: Page 13 of the petition mentions antidumping petitions on glyphosate, presumably from China, that have been filed in the past in Argentina, Australia, Brazil, and the European Union. Although we're looking into the existence of such petitions and any antidumping orders in those countries, it would be helpful if you could provide any information in your post-conference briefs relating to those cases.

MR. GREENWALD: We will do that.

MR. DEYMAN: I think I have just one other

question. You mentioned earlier that -- I believe Mr. Vance mentioned that the consumption in the United States of glyphosate is maybe 105 to 115 million gallons, and the world consumption is about 400 million. So the United States is a little bit more than a quarter of the world consumption. I don't understand fully why a slight uptick in U.S. consumption in 2008, with the new genetically modified seeds for corn, could have had such a -- or did it have such an effect on prices. There is a huge price spike in 2007-2008. What caused that? Is it only the genetically modified corn that you mentioned or are there other factors?

MR. KAHNK: Well, from my view, the principal event was, as began the GMO traits in 2006, some expansion in the corn -- and I mentioned to you as well, you know, it didn't appear that it was maybe much more than a 5, maybe plus, percent increase in what should have been the pricing demand. But what happened was, you know, people didn't want to be caught in a short position on the materials. So from the grower level, retail level, to the distributor level, everyone started to accelerate the timing of those purchases, so that we lost the seasonality on when people would make those purchases. They

accelerated it by six months.

So that gave the perception, you know, that there was all of this additional demand. And that's what the Chinese were reading, incorrectly, when they started building all of these facilities to produce what they thought was increase in demand. It was a perception of demand, not actually significant change in usage.

MR. DEYMAN: Good. That's helpful.

MR. VANCE: And I would say two other things. During that time frame in there, there was a major earthquake in one of the larger producing provinces in China. So then there is a lot of speculation about phosphorous production for intermediates and glyphosate production, and then there was constant discussion around plant shutdowns due to the Chinese government wanted to clean up the air around Beijing. And so there was a tremendous amount of speculation around what impact that would have on availability of glyphosate out of China.

MR. DEYMAN: Thank you for your very helpful answers. I want you to know that, as you know, we are in neutral here. We're just trying to find out what is going on in this market and this industry. So if any of our questions have seemed pointed in any way,

they're not. We're simply trying to find out the facts.

MR. GREENWALD: Albaugh has been advised that that in fact is not only what you're trying to do, but you're very good at it.

MR. DEYMAN: Thank you. I have no further questions.

MS. DeFILIPPO: Thank you, Mr. Deyman. Staff has asked great questions, and I've crossed off most of my mind. But I have a couple of just clarification and clean-up things. First, Mr. Greenwald, would you like this included in the transcript as an exhibit at the back of the transcript?

MR. GREENWALD: Yeah, I guess we would.

MS. DeFILIPPO: Okay. We will do that. We will make sure that the court reporter gets a copy. And while I have that in my hand, on the table where it is talking about Monsanto's 10Q filing, and it has first half 2010, first half 2009, and there is a significant decrease in the net sales -- as most of us know, this was a harsh winter. And I know you've talked about it being a good spring. But is there any impact from a bad winter pushing the planting season and perhaps affecting the first quarter of 2010?

MR. GREENWALD: The only thing I know is what is in the narrative in the 10Q. And I don't know whether I supplied that. If not, I will submit it for the record. There is discussion about the problem with over-capacity in the business and the competition from generic.

MS. DeFILIPPO: But did the bad weather -- has that affected this spring sales, pushed out further at all, or not really?

MR. VANCE: No. The largest impact of that was all of the inventory that got dumped into the market in late 2009.

MS. DeFILIPPO: And is that coming down? That's just one of the things said, that the inventories were coming down.

MR. VANCE: Well, it still exists in the market because keep in mind, they haven't used it yet. I mean, it was put in the market because of low prices and opportunistic buying. It was dumped in the market late in the fourth quarter of 2009, so it replaced lots of people's sales. So the opportunity for those sales in the fourth quarter, which I guess it would be their first quarter and the second quarter, were not there.

I mean, I don't think publicly, but they've

talked to their customers about how their market share declined something like -- I'm going to use 40 percent on their branded stuff. I mean, their Roundup brands declined from I believe their year 2008 to 2009 right around 40 percent.

MS. DeFILIPPO: And when we talk about this buildup in inventory, is that at the distributor level? The distributors are holding it?

MR. VANCE: Actually, it moved from the formulators and manufacturers into the distributors, and then ultimately mostly to the growers during really about a four or five month period in late 2009, to the point still where today we would be selling in a normal market, with normal inventories -- we'd be pretty actively selling glyphosate, and the sales are very, very small right now because of that inventory that exists in the market. And the new season is still in front of us.

MS. DeFILIPPO: Okay. That's helpful. Thank you. A clarification. You talked about making different products, and also layoffs. I wanted to clarify. The layoffs that you have talked about here today, are those strictly for employees that produce glyphosate, or were they related to other products also?

MR. KAHNK: No. They were in and around our synthesis process primarily. We ended and eliminated one of our shifts, complete shifts, down at our plant that produced glyphosate.

MS. DeFILIPPO: Okay. And just following up on something Mr. Deyman said in the third countries. Is there synthesis in other countries other than in the U.S. and China?

MR. FELDSTEIN: Yes.

MS. DeFILIPPO: Do we have any indication that the capacity there has increased or is going to increase? Or do you have any information on that at all?

MR. FELDSTEIN: We, as Spencer mentioned, have an Argentine subsidiary. It has synthesis capacity in Argentina, and yes, they have increased capacity down there, but for the MERCOSUR market. That doesn't get exported to the U.S.

MS. DeFILIPPO: Okay. Thank you. I think I have one last question, which was in Ms. Mendoza's opening statement this morning. She made a comment that there was a difficulty for customers in obtaining material in 2008. We've talked about the pricing dynamic that was going on then. But was there some sort of shortage or allocation or difficulty for

customers in getting the glyphosate during that time?

MR. KAHNK: Well, in very early 2008, late 2007, as I said, there is an acceleration in people's intention to buy, which created some tightness over in the Chinese market. So at that point, yes, it was a little bit difficult to get exactly what you thought you wanted at that moment.

MS. DeFILIPPO: Were you -- and feel free, if you would prefer to talk about this in a post-conference submission. Were your lead times being extended? Were you not being to sell customers the amounts that they were requesting when they were asking for product at that time?

MR. KAHNK: Yes, at that point in time, we put our customers on an allocation supply of glyphosate. I mean, we had to, just to kind of rationalize the timing of when we were going to make the sales. You know, in the end, we sold what we thought we were going to. We just had to stretch out -- we could not let all of our distributors buy, you know, their 2008 needs in one month in late 2007. So they were allocated over a period of time. But the volumes eventually were all there to satisfy the market.

MS. DeFILIPPO: I think those are all the

additional questions that I have. Does staff have any? Ms. Bryan.

MS. BRYAN: Thank you. Just hearing some of Cathy's questions, I have another question about what happened in 2009 with pricing. My understanding is I think prices went down in 2009, mostly do to this oversupply issue that was started in 2008. So this oversupply that you sensed in 2009, and I guess still now, is it all Chinese supply, or was it also your own inventory buildup, or the sales of your products that customers are holding in inventory as well?

MR. KAHNK: This will probably be a two-part kind of answer here from maybe me and Spencer. But as far as the Chinese, yes, the price had deteriorated in 2008 and continued through 2009. And then to answer your question about where we were with our inventory -- and I think John had asked the question about, you know, whether you sold down your inventory or not. But, you know, the high-priced inventory had to be liquidated at some point in time. So is that kind of what you're asking about the U.S.?

MS. BRYAN: Well, was there buildup of inventory of U.S. products, as well as buildup of Chinese inventory?

MR. KAHNK: Yeah.

MR. VANCE: Yes. Both us and Monsanto had excess inventories of domestic production.

MR. GREENWALD: There are two parts to this. One is are you talking about inventory that manufacturers are hold? And then the second is are you talking about inventories that are in the United States that either the distributors or the -- whatever the distribution points you have. And so I guess the first question is did U.S. inventories at the distributor build up the same way that Chinese inventories did?

MR. FELDSTEIN: At the distributors or at our --

MS. BRYAN: At the distributor.

MR. VANCE: I would say at the distributors because once the price started to fall -- I mean, imagine -- I mean, many of those distributors also had the experience with fertilizer, where fertilizer ramped way up, and they were left holding high-priced stocks of fertilizer, okay? So the last thing they wanted was to hold several hundred millions of dollars of glyphosate that the value was decreasing every two weeks or every month. And so they -- quite frankly, they -- the formulators and manufacturers were holding the inventory at the end of the 2009 season.

So in July and August of 2009, there was not a lot of inventory at the distributor or farmer level. All of the inventory was -- not all, but the biggest, biggest share was at the formulator/distributor level because -- oh, I'm sorry, the formulator/manufacturer level because the distributor was like, I'm just going to buy what I need when I have got it sold so that I don't get caught upside down. And they were very hand to mouth.

MS. BRYAN: Okay. Then just another clarification about -- I think, Mr. Kahnk, you said that the Chinese kind of misinterpreted what was going on in 2009, as there was this buildup in demand, but there was some demand buildup, but not as much as maybe the Chinese thought there was because they were getting these orders earlier. Did you also have that perception, that there was higher than what was actual demand at the time?

MR. KAHNK: Well, we had the perception that there was an acceleration in the timing in which people wanted to secure their inventories. And, you know, we were going to try to capitalize on that just like anyone else would, try to satisfy that demand, even though in the end the usage probably was not going to change that much.

MR. VANCE: Yeah. There was a certain level of, call it panic or frenzy, but no different than you running off to the grocery store or me right before a big snowstorm, right? In a much larger way, that was kind of the phenomenon that was happening in the marketplace. And again going there, public denominations about earthquakes in China and shutting down plants because of the Olympics, et cetera, compounded all of that, quite frankly. So people were scrambling to try to source product to make sure that they had adequate supply way ahead of normal use season.

MR. FELDSTEIN: But it was also true, I think, that it took a while for us -- for everyone, I think, to realize the extent to which capacity had come online in China. It was not something that was apparent during that 2008 run-up. There was a chance to come online, yes. But the extent of it was something that was only realized a lot later.

MR. GREENWALD: The reasonableness here is because they had to shut down their plant. And Monsanto laid off 900 workers. The difference we're talking about is not so much reaction to market perceptions in a cyclical sense. It is the difficulty that has been created structurally by the expansion of

capacity that the U.S. has reacted to by shutting down. But this cannot be -- if this is the end of the story, it is a very sad commentary because what it really says is the Chinese are free to bring on as much capacity as they want without regard to structural demand, and that the adjustment has to pushed on the U.S. producers, and that the Chinese are free to sell below cost because for whatever reason, as the government or their financial markets view that as perfectly acceptable, and that's the natural order of the world. I mean, it's precisely this problem that we're trying to get at.

MS. BRYAN: Okay. I promise, one last question. And just what was your perception of what happened to demand from 2008 to 2009? Was demand -- actual demand, not perceived demand or this early ordering, you know. I understand that, but actual annual year over year consumption.

MR. VANCE: Consumption was not a lot different. I mean, 2008 and 2009 were fairly similar. There wasn't a lot of difference. There is always some ebbs and flows based on what weather does, but they're not -- I mean, we're talking about 5 percent, you know. We're not talking about 30 or 50 percent adjustments. One thing about weeds and being in the

herbicide business is they're fairly consistent. There is a fairly consistent consumption every year, give or take a weather effect of 5 percent, that happens in the herbicide business.

MS. BRYAN: Okay. Thank you.

MS. DeFILIPPO: If I could find one just really small clarification. When we were talking about the lower cost potential and the lower quality with some of the Chinese products, a lower quality would not mean it wouldn't meet that EPA standard. That wouldn't be any sort of barrier that they couldn't sell in the market, right?

MR. FELDSTEIN: Well, it would be if it was established. And what I was trying to point out a little earlier was that there was just a recent incident where some quantities of Chinese material going into China -- I mean into Brazil, glyphosate, was stopped by the Customs authorities in Brazil because of a particular impurity being in the specification.

That could happen in the United States. Now we don't have any evidence that that has happened. But if it were discovered, that is a fact that could cause the product to be what we call stop-failed.

MS. DeFILIPPO: But to your knowledge,

during the period we're looking at --

MR. FELDSTEIN: I'm not aware of any major incidents like that.

MS. DeFILIPPO: Okay. Thank you very much. Mr. Ascienzo?

MR. ASCIENZO: Thank you very much. I'm sorry, I'm sorry. I have three more questions actually. I think the first one is the simplest. The PMIDA, it looks like the components of that cost, the three biggest are oxygen, the phosphorous, and the formaldehyde. Does that sound right?

MR. KAHNK: It wouldn't be the oxygen in PMIDA. It would be either DEA or IDAN, and then your phosphorous, as you mentioned, formaldehyde, and sodium chloride -- or sodium hydroxide. Those are the top four components. But Stuart mentioned energy, you know, as a principal component. Just energy backs all the way into those raw materials, two phosphoruses, a lot of electrical energy that goes into the purification of phosphorus.

MR. ASCIENZO: In your post-conference brief, could you please estimate for 2009 the percentage of your costs accounted for -- you could do percentage of actually the PMIDA accounted for by the big four that you just gave me.

MR. KAHNK: We track that, so I can.

MR. ASCIENZO: Okay, yeah. Thank you very much. And there is one -- and I know you're not Monsanto. But to your knowledge, is the genetically modified corn and other seeds -- are they widely received around the world? Are there any problems with them being planted in other parts of the world?

MR. VANCE: Well, obviously, various countries have taken different positions. They are much widely adopted in the Americas than they are in Europe, for instance, and maybe some countries in Asia. So it is really considerably different, depending upon the country's perceptions of genetically altered crops. And the United States and South America have very rapidly and very almost exclusively -- I shouldn't exclusively, but completely adopted genetically altered crop and the use of those, both in corn, soybean, and cotton, and canola. All the sugar beets are also -- and there is some I'm betting Monsanto is working on now, alfalfa as well.

MR. ASCIENZO: Okay. Thank you. And my final question -- and you can provide this in your post-conference brief. If you were going to build an economically efficient brand new formulation plant today -- and you can define what that is. Is that a

30-million capacity? Whatever you think it is. Could you tell us what that would cost, you know, 10 million, 20, 30, 40? And if you're also going to build an economically efficient synthesis plant today, could you tell us what that would cost?

Thank you very much. And that's the questions I have.

MS. DeFILIPPO: Anyone else? Well, with that, I thank you very much for both your direct testimony and presentation and for enduring our lengthy questioning session. It has been very helpful in getting us to understand the dynamics of this industry. And with that, we're going to a break for about 10 minutes. We'll come back at 12:55.

(Whereupon, at 12:43 p.m., the preliminary conference in the above-entitled matter was recessed, to reconvene at 12:55 p.m. this same day, Thursday, April 22, 2010.)

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A F T E R N O O N S E S S I O N

(12:58 p.m.)

MS. DEFILIPPO: Welcome. I guess we'll get started with the next panel, those in opposition to the imposition of antidumping duties. Ms. Mendoza, welcome to you and your panel, and please proceed when you're all set.

MS. MENDOZA: Thank you very much. My name is Julie Mendoza, accompanied by Don Cameron, Will Planert, and Mary Hodgins of our office, and Dan Klett is going to speaking on behalf of the Chinese respondents regarding some economic conditions in the market. And we also have Mr. Puech of the MEY Corporation, who is going to be explaining some conditions of competition in the U.S. market. And do you want to introduce your?

MR. SJOBERG: I'm Will Sjoberg, on behalf of Drexel Chemical and Helm Agro, and they'll be also testifying.

MR. KLETT: Good afternoon. My name is Daniel Klett, I'm an economist with Capital Trade testifying on behalf of respondents. This is an unusual case from a variety of angles, as you will be able to discern from witness testimony to follow. My testimony will focus on the following. First, Albaugh

and Monsanto's imports from China, either glyphosate or PMIDA precursor. Second, an explanation of the supply demand factors prevailing in the U.S. market and based on these factors why imports from China increased. Third, why the 2009 phenomenon was temporary and is not likely to recur in the future. Fourth, longer term data to put the POI in the appropriate context. And fifth, why imports from China are not a threat.

Both Albaugh and Monsanto have been significant importers from China, either glyphosate or its chemical precursor PMIDA. We have collected data from our clients on their sales of glyphosate and PMIDA to Albaugh and Monsanto. You should have some slides in front of you, and as you can see from slide 1 these two companies imported increasingly larger volumes and values from China through 2008, totaling over $93 million in that year.

Proprietary data we have from CCM, an organization that closely tracks Chinese exports of glyphosate and PMIDA, reports significantly higher exports of PMIDA to the U.S., which must have been to either Albaugh or Monsanto. This demonstrates two points. First, they confirm that a shortage existed in 2007 and 2008, and that both Albaugh and Monsanto

relied on imports from China to fill the gap. Second, they illustrate the disingenuous nature of the petition given Albaugh and Monsanto's reliance on imports from China.

Industry witnesses will testify later on their experience on the various supply and demand factors affecting the market during the POI, but I want to provide some specific data. As to demand, the main driver in the ag sector is crop plantings and the increasing use of herbicide resistant crops. However, actual consumption in any particular year can be affected by crop prices, farm income, weather conditions, and expectations.

Slide 2 shows the significant and continuous increase in herbicide tolerant plantings in the U.S. from 2002 through 2009. This upward trend is expected to continue both in the U.S. and worldwide, with the increasing use of biotech trait seeds as illustrated in slide 3, which is an excerpt from a Monsanto presentation where they talk about the increasing use of trait seeds in various parts of the world.

However, actual consumption in any particular year can diverge from the long term growth path. Slide 4 shows the significant decrease in farm income and farmer's purchases of inputs, which would

have tempered glyphosate purchases in this year. Perhaps the most significant factor affecting demand in 2009, however, was weather conditions. Slides 5 and 6 are excerpts from various publications confirming that a wet spring planting season reduced glyphosate demand significantly in 2009.

A major supply factor affecting the POI were the wild swings in phosphate prices, a key raw material input to produce glyphosate. As shown in slide 7, phosphate prices increased by a factor of almost 4 between January 2007 and September 2008. Monsanto, however, has its own phosphate mines, so it's insulated on the cost side from these increases as compared to nonintegrated producers, including nonintegrated producers in China.

Another supply factor was Monsanto's $200 million investment to expand U.S. glyphosate capacity by 20 percent, which also would have put downward pressure on prices in 2009 given weak demand. Why are these factors relevant to the Commission's causation analysis? Increasing demand in '07 and '08 combined with higher raw material costs led to expectations of glyphosate shortages. This fact is not disputed.

Slide 8 includes quotes from the trade press and the industry. Expectations of shortages pulled in

glyphosate acid imports from China by distributors, formulators, and even by Monsanto. The fact that this was a pull rather than a push phenomenon is confirmed by the fact that higher import volumes were correlated with significantly higher import prices import prices from China. This also affected imports in prices of the precursor chemical PMIDA, which is produced by Monsanto but purchased by Albaugh.

And I want to contrast with what Mr. Greenwald said in that, if it was a supply push factor based on increased capacity I would have expected to see decreasing prices from China, not increasing prices. So I think that the data don't comport with his theory of why imports from China increased. Keep in mind that agricultural chemicals such as glyphosate and fertilizers must be put into the distribution system to serve farmers well before actual purchase by farmers, and that there is an additional lag for imports.

In late '08 and early 2009 there was significant formulated glyphosate volume in inventory and in the distribution system due to the prior year's shortage experience or expectations and the desire to avoid being short of glyphosate for the 2009 season. However, formulated glyphosate demand was

significantly weaker in '09 than had been expected with a consequent oversupply imbalance. During 2009, China's exports for formulated glyphosate and glyphosate acid to the U.S. declined significantly in response to declining demand and well before the petition was filed.

These data are proprietary in terms of the month to month trends, but we'll include those in our postconference brief. The effect of phosphate input costs and prices also must be considered. Slide 9 has three price series, a BLS price index for phosphate rock, import glyphosate prices derived from the petition, and phosphatic fertilizer average unit values from imports. What it shows is that glyphosate acid prices are highly correlated with changes in the key raw material input for integrated producers as well as with prices for other agricultural products also relying on this input.

So I don't think you can necessarily tie the decline in prices of glyphosate to imports from China, there were a lot of other things going on. You cannot rely on petitioner's assertions that the decrease in glyphosate price was in large part attributable to competition from China. The drop in profitability of U.S. nonintegrated producers that rely on purchased

PMIDA or purchased glyphosate acid or salt to produce 41 percent formulated glyphosate is largely attributable to carrying high cost formulated glyphosate inventory.

I have not seen questionnaire responses from all U.S. producers, with a major gap being Monsanto. However, based on data I have reviewed and Monsanto's SEC filings, which include data for its glyphosate operations globally, I expect you will see declines in industry profitability between '08 and '09. However, 2009 was a unique year for the reasons I just discussed, and to extend the downturn in '09 forward to 2010 would be inaccurate. In fact, glyphosate acid and formulated glyphosate imports from China declined from 2008 to 2009, and in the last quarter of 2009 where only about 50 percent of the import volume compared in the fourth quarter of 2008.

It is acknowledged in the industry that high cost inventory was sold at losses in 2009 and is largely off the books for 2010. For 2010, Monsanto is projecting gross profits for its glyphosate operation of $600 million. Nufarm is a large multinational producer of glyphosate, and slide 10 is from a presentation it made in 2009. It stated that the downward earnings revisions in 2009 were short term,

that supply constraints exist in China for glyphosate, and that any excess Chinese inventory would have washed through the system. In other words it was a short term supply demand imbalance.

Although the Commission has a three-year POI, the shortage situation that existed in much of 2008 in 2008 skews these years as appropriate reference points, particularly for pricing and profitability. Monsanto has not yet submitted a questionnaire, but its SEC data does report data for its glyphosate operations globally. Slide 11 shows that Monsanto's sales and profitability increased in both 2007 and 2008, and that prior to 2007 gross profits were very stable at just below $650 million.

In 2009, Monsanto's sales and profits exceeded those reported in every year but for the 2008 peak. You heard this morning from petitioner that Monsanto lost significant market share in 2009. Slide 12 does show that Monsanto's sales volume declined by 29 percent from 2008 to 2009, but its average price increased by 22 percent. And as you saw from the prior slide, Monsanto's sales revenue and gross profits remained strong in 2009.

My point is that at least in this proceeding, any decline in industry condition in 2009

would not be a good indicator of injury but instead reflects phenomenally good performance in the prior two years of the POI. For a number of reasons, glyphosate imports from China do not pose a threat to the U.S. industry. First, glyphosate imports from China reached their peak in about March 2009 and have declined since that time.

In the last quarter of 2009, import volumes from China was just 50 percent of the import volume in the last quarter of '08. Second, the U.S. accounts for less than 20 percent of China's glyphosate shipments based on questionnaire data. Other large and growing export destinations for Chinese glyphosate include Argentina, Brazil, and Southeast Asian markets. Slide 13 is an excerpt from a PowerPoint presentation utilizing Phillips McDougall, a consultancy that closely follows the glyphosate market.

As you can see, strong annual average growth is projected for non-U.S. export markets to which China currently sells. Third, as recognized by Nufarm, Chinese glyphosate producers are facing more strict regulations on product quality and environmental standards and higher capital commitments, all of which effectively put constraints

on potential exports supply from China.

I also want to comment on capacity, I know there was numbers thrown around this morning about 1 million tons of glyphosate capacity in China. But you have questionnaire data which, based on my calculations, accounts for probably over 90 percent of exports to the U.S., and based on my calculations capacity for those companies, which really are the relevant companies for your purposes, was about 368,000 metric tons, not 1 million metric tons.

I want to comment on a statement made by Albaugh in an ad campaign from earlier this week, excerpts of which are shown in exhibit 14. This is the first investigation in which I have participated in which petitioner has complained of high import prices. I want to make two points. First, as a matter of economics, the increased prices charged for Chinese glyphosate in 2007 and 2008 was a function of basic supply demand factors affecting all glyphosate suppliers.

The assertion that if an order is not imposed that Chinese producers will dominate the U.S. glyphosate market and charge high monopoly profits is ludicrous given the fragmented nature of the Chinese glyphosate industry. This assertion also is ironic

given Monsanto's business model for pricing glyphosate. Second, the real reason that Albaugh is complaining of high Chinese import prices in 2007 2008 is not concern for the farmer but because it purchased these high priced imports as a portion of its raw material inputs, and therefore was stuck with high cost inventory as market prices were declining.

Injury in this proceeding is largely due to cost suppression due to high priced imports. And I just want to make one comment on pricing, I know there was some discussion on price comparisons. But in terms of acid, you actually did collect in your formulator questionnaire purchases of acid from both U.S. producers and importers on a delivered price basis which would have included purchases from Monsanto. So I think in terms of price comparisons at that level even if Monsanto were not to supply a questionnaire response you'll have some good comparative data. Thank you.

MR. PUECH: Good afternoon. My name is Antoine Puech, President and CEO of MEY Corporation located in Chapel Hill, North Carolina. The acronym MEY stands for Maximum Economic Yield. MEY Corp imports and sells formulated glyphosate from China and also imports glyphosate acid for formulation in the

United States. I appreciate the opportunity to come by here today to talk to you about the U.S. glyphosate market and the role that Chinese imports play in that market.

In particular I would like to emphasize four points about the U.S. market. First, it's important to understand that there are two different markets for glyphosate, the market for glyphosate technical, which is 95 percent, and the market for formulated glyphosate, which is 41 percent. Glyphosate acid is highly concentrated, 95 percent glyphosate in a powder form, and the product of one of two possible chemical manufacturing processes or routes used to synthesize glyphosate, the glycine route or the IDAN route.

There are only two significant suppliers of glyphosate acid to the United States market, Monsanto and the Chinese producers. Every other U.S. producer of formulated glyphosate in the United States, including MEY Corp, Albaugh, Syngenta, Dow, produce its formulated glyphosate or glyphosate salt using glyphosate acid supplied by Monsanto or imported from China.

Glyphosate salt is produced, as was earlier mentioned, by neutralizing the acid using an organic base. The salt is then diluted with water and blended

with surfactants and other ingredients to yield formulated glyphosate. Most generic glyphosate is sold in the U.S. in a 41 percent solution to end users, although generally at lower concentration levels in the retail market. Round Up and some other branded formulations of glyphosate are typically sold at higher concentrations.

I am aware that Albaugh claims to be a U.S. producer of glyphosate acid as well. There are two important points the Commission needs to understand about this assertion by Albaugh. First, it is widely believed in the industry that the majority of Albaugh's U.S. production of formulated glyphosate uses glyphosate acid purchased from other acid producers. As I mentioned, there are only two possible sources of that acid, Monsanto and Chinese imports.

It is also widely known that a significant percentage of Albaugh's glyphosate acid is in fact supplied from China. This was particularly true in late 2007 and 2008 when the supply of glyphosate was tight and Monsanto strictly limited the amount of acid it would sell to competitors. Second, even the portion of Albaugh's glyphosate acid that it claims to produce internally is in fact generated by conversion

of an intermediate chemical called PMIDA, which is a precursor chemical to glyphosate.

For this reason, Albaugh's claim that it is a true domestic producer while MEY Corp and other U.S. producers of glyphosate sold and formulated glyphosate are not, is frankly outrageous. There are three distinct segments in the glyphosate business. The first and largest is of course agricultural use. Several large distributors purchase glyphosate to supply this segment of the market, and some large agribusinesses may also buy direct from the manufacturer.

Monsanto is by far the largest player in this market, but Albaugh and other generic producers also participate. The second segment is for forestry, rights of way, and turf and ornamental applications. The turf segment is the retail which you know of as sales to Home Depot and other garden centers for use by consumers. Monsanto dominates this segment and has forged close relationships with major retailers through the Scotts company primarily, which is the exclusive supplier of retail glyphosate under the Round Up brand name.

The retail market is highly significant, particularly in dollar terms, and is enormously

profitable because it offers much larger markups than the agricultural sectors. Monsanto faces virtually no competition in this segment.

The second major point I would like to discuss with you is why Monsanto is and always has been the dominant supplier in the U.S. glyphosate market. Monsanto invented glyphosate, or Roundup as the Monsanto brand is called, in the 1970s, and enjoyed monopoly power until about 2000. Glyphosate came off patent in 2000, and starting around that time other producers entered the market. Despite the expiration of the patent, however, Monsanto has been brilliantly able to maintain its dominant position. One major reason for this is a developing by Monsanto of so called Roundup Ready crops.

These are patented, genetically modified seeds that are resistant to glyphosate so that farmers can spray the glyphosate directly on the crop. Roundup Ready soybeans were introduced in 1996, and today Monsanto also offers Roundup Ready seeds in corn, sugar beets, canola, alfalfa, and cotton. The patents on these Roundup Ready crops do not expire for many more years, and new variants of them are on the way to try and extend the patent life.

Monsanto leverages these patents to maintain

its dominant position in the glyphosate business. All glyphosate producers sell to approximately six major U.S. distributors. These same distributors also sell Monsanto's Roundup Ready seeds. Monsanto offers rebates on both Roundup and Roundup Ready seeds that are based on the volume purchased of both products. Monsanto also offers rebates on the royalty, or tech fee, it charges on its patented seeds that are tied to sales of Roundup.

Typically, Monsanto will offer its distributor customers a significant rebate on the tech fees provided the distributor sources. For example, 80 percent of its annual glyphosate volume has to be purchased using Monsanto Roundup. Monsanto also offers so called crop protection guarantees to farmers, providing that if a crop is damaged or fails for any reason and needs to be replanted, Monsanto will provide new seed without charging the tech fee, but only if the farmer used Monsanto's Roundup glyphosate.

Through these various techniques, Monsanto has been able to maintain its dominant position in the glyphosate despite the expiration of the patent on Roundup. Monsanto has opted to use this leverage to keep the price of its branded Roundup at a significant

premium over generic glyphosate, and now even has its own generic Honcho brand of glyphosate, reintroduced in late 2009. This strategy has helped it maintain market share and generated enormous profits for Monsanto.

The third major topic I would like to discuss with you today is the price volatility that took place in the market during 2007 to 2009 that is the subject of the Commission's investigation. In 2007, U.S. and world demand for glyphosate surged. There were several reasons for this. First, in 2006, Monsanto introduced Roundup Ready corn, which was spectacularly successful and has led to a substantial increase in glyphosate demand.

Rapidly rising oil prices led to Congressionally mandated increased ethanol production. This in turn drove up the price of corn and increased the area planted to Roundup Ready corn. Higher farm incomes and a higher share of corn acreage being Roundup Ready resulted in glyphosate demand outpacing glyphosate supply. Around the first quarter of 2007, Monsanto began warning customers there will be tight supplies and shortages of glyphosate.

This led producers to increase purchases of acid from China, and led to rapidly increasing

glyphosate prices in 2007 and 2008. As an example, MEY's sales increased on a value basis by 600 percent in 2008. However, these increasing sales values were accompanied by higher costs as the price of Chinese glyphosate soared. As prices rose amid expectations of shortages, distributors and farmers increased their purchases to try to build inventories.

Monsanto limited or cut off entirely its supply of acid to formulators, diverting its acid supply to production of its own more lucrative Roundup brand. At the same time the availability of glyphosate acid in China was constrained. Environmental regulations connected with the Beijing Olympics and the air pollution in Beijing forced a shutdown of plants producing glycine and other raw materials used to produce glyphosate in China.

Prices for yellow phosphorous also increased, raising production costs for Chinese producers. The result was a perception in the market of an acute shortage. Prices for glyphosate from China increased rapidly, sometimes even on a daily basis. Large U.S. formulators including Albaugh, Nufarm, Dow, Syngenta, and Cheminova could not get adequate supplies of acid from Monsanto, and thus increased imports of acid from China.

Chinese imports reached their highest level in 2008 during the price peak. As prices continued to increase through 2008 and supplies continued to tighten, a bubble was created. Fears of continued shortages and a lack of supply from Monsanto led the entire industry to want to build inventories and in fact to build inventories. But these inventories came at a very high cost due to the rapidly increasing prices for Chinese glyphosate. This glyphosate bubble led to extraordinary profits for Monsanto, because Monsanto is truly back integrated in yellow phosphorous and its own production, its costs remained relatively stable.

As prices for formulated glyphosate increased dramatically from January of 2007 to approximately July of 2008, a large proportion of the increase was pure profit to Monsanto. For U.S. formulators, however, including Albaugh, production cost increased as prices for glyphosate acid increased. As happens with all price bubbles, however, correction was inevitable.

In 2009, a series of events led prices to rapidly drop to the more normal levels of 2006 and 2007. Once again, several events coincided to create a perfect storm. First, a sharp worldwide recession

began in the fall of 2008. While agriculture is less vulnerable to the impacts of a recession than other sectors, there is an impact particularly as oil prices dropped, reducing the demand for corn for ethanol and the world prices of other commodity crops also dropped. Lower crop prices also led to lower U.S. farm income, contributing to a demand downturn for formulated glyphosate.

Second, as was mentioned previously today, the 2009 planting season was a cool wet year for agriculture both in the United States and in South America. Massive flooding in Iowa and other midwestern states delayed or eliminated plantings altogether. These factors reduced the amount of glyphosate required for weed control by approximately 20 percent. Normally, many farmers use glyphosate for a preplant burndown before they plant the crop. They then make a second application of glyphosate once the crop has been planted. But due to the weather there was virtually no burndown season in 2009, reducing the demand for glyphosate for that particular use.

Third, as demand cooled and prices dropped, many formulators were caught holding large volumes of very high cost inventory that had been produced when glyphosate acid prices were at their peak. Prices

fell further as U.S. producers regardless of their glyphosate acid source tried to move that inventory in already saturated market. This is particularly true of Albaugh which had put itself up for sale.

Albaugh had purchased large volumes of acid at the peak of the price surge and found itself holding very large inventories of high cost formulated glyphosate that it was going to have to sell at a loss. It is widely known throughout the industry that Albaugh made a strategic decision to push all of that loss into 2009 rather than spread it out over 2009 and 2010. As a result, Albaugh slashed prices on formulated glyphosate in order to unload its excess stocks, further depressing the market in 2009.

Glyphosate acid imports from China had nothing to do with this, as the volume of those imports had already declined. The drop in the market price for glyphosate in 2009 put pressure on Monsanto. Monsanto, which I have already discussed has traditionally been able to maintain a substantial premium on its Roundup branded product, was very slow to react to the change in the market in 2009.

Monsanto's customers and the entire industry understood that the shortage conditions that had led to the runup in prices had reversed themselves, and

Monsanto was increasing production capacity. Worldwide glyphosate prices also were dropping as there were poor growing seasons in other non-U.S. markets and abundant yellow phosphorous supplies. Given the size of the adjustment taking place, even Monsanto's leverage from its patented Roundup Ready seeds was not enough to keep some customers from switching to generic suppliers.

In addition, other large U.S. agribusinesses, such as DuPont and Syngenta, which compete with Monsanto in the seed business, began following Monsanto's business model of linking sales of patented seeds with sales of their own glyphosate brand. This type of bundling, known as integrated marketing, allowed them to begin to compete on a very large scale with Roundup and gain market share. In addition, farmers who have long felt that they were being gouged by Monsanto on the GMO seeds finally put their feet down when Monsanto tried to maintain their record price levels of 2008, even as the rest of the industry led by Albaugh was restoring prices to previously levels.

As we have moved through the first quarter of 2010, the market for glyphosate has started to normalize. Prices have bottomed out and have actually

started to recover from the fourth quarter of 2009. Furthermore, as prices have fallen, the supply from China has been significantly reduced. Meanwhile, Monsanto has been very public about admitting that it pursued a flawed pricing strategy in 2009. Prices for corn, wheat, and soybeans have fallen from the inflated bubble prices of 2008.

Monsanto has now brought its own prices more in line with the rest of the industry, although a substantial price premium for their branded Roundup still exists. The weather so far this year has been ideal, and we currently see supply and demand pretty much in balance, with stable prices in the $10 per gallon range on a 41 percent formulated basis for generic glyphosate. At current price levels, Monsanto, which is believed to net $20 per gallon or more on its Roundup Ready sales, should also be able to remain highly profitable.

The role of the Chinese in the U.S. market, I would like to discuss the role of Chinese imports in this market. Chinese imports have been in the U.S. market in significant quantities long before 2007. Monsanto is the sole truly and fully integrated U.S. producer of glyphosate acid, and Monsanto has little incentive to supply its competitors except on terms

that are highly favorable to Monsanto. Monsanto has controlled the formulators to whom it will sell, and it is widely known that Monsanto has also limited the quantities that it supplies to these formulators.

Certainly no company wants to be solely dependent on a competitor for its primary raw material, and since China is the only other significant source of glyphosate acid, this means that Chinese imports are an important source of supply to the U.S. generic producers of formulated glyphosate. It is important to understand, however, that Chinese presence in this market is limited. First, there are only a limited number of Chinese producers that are licensed by the Chinese government for export and have the ability to supply significant volumes of quality glyphosate to the U.S. market.

Each Chinese factory has to be registered with the United States EPA, which is an expensive and time consuming process. Second, MEY Corp, as well as virtually every other reputable glyphosate producer in the U.S. that I am aware of, has an extensive quality qualification process to go through to supply glyphosate acid to the U.S. MEY has its own office in China, and the qualification process involves visiting the factories to qualify the manufacturing plants,

extensive testing of their sample production, and making sure the supplier is able to satisfy its requirements for volume and reliability.

Not all Chinese producers can meet these requirements. Indeed, MEY has purchased from only a few Chinese suppliers during the 2007 to 2009 period. Many Chinese producers expanded their production capacity during 2006 to 2008. One of the reasons was the rumor that Monsanto would decide to close part of its facilities in the United States. However, when Monsanto announced in 2008 that it would expand its production by 20 percent, many Chinese producers had already slowed down their investment on glyphosate.

Monsanto controls more than 70 percent of the market and is by far the leader in the glyphosate business, with the lowest production costs and the most advanced technology. Importing decisions are made by U.S. formulators. Chinese exporters have no established distribution network in the United States and cannot launch any marketing activity themselves. If the labels belong to domestic producers of formulated glyphosate it is illegal to have any commercial activity for Chinese producers without the approval of the U.S. domestic registration holder and producer, and usually the U.S. producers of formulated

glyphosate hold the glyphosate registration and the label.

The barriers to entry for a U.S. formulator are significant. To obtain a registration an applicant must agree to pay Monsanto a substantial fee for its research on the safety and efficacy of glyphosate as well as fees to other so called task forces that conduct additional research on environmental and health issues. These fees typically run into the millions of dollars. Furthermore, Chinese quality is not always as reliable as Monsanto's.

In my company we recently had a very large shipment of formulated glyphosate that was defective due to sedimentation of the acid in the glyphosate. We had to reject the entire shipment and we are now in litigation with the supplier. In addition, the much longer supply chain for Chinese products and the inherent risk of delays due to shipping, weather, et cetera, all place Chinese glyphosate at a significant disadvantage compared to Monsanto.

For these reasons, as well as certain stigmas in the market associated with Chinese products due to recent scandals involving defective drywall, contaminated food supply, and other products, some

customers in the U.S. simply will not accept Chinese product. Overall, these factors as well as the other competitive advantages Monsanto enjoys due to its brand recognition and its ability to leverage its Roundup Ready crop combine to maintain Monsanto's share of the formulated glyphosate market at approximately 70 percent in the agricultural sector and nearly 100 percent in the home and garden sectors.

The temporary increase in Chinese imports in 2008 and 2009 was a function of the price bubble and the supply shortage conditions of 2008. Those were not normal circumstances, and increased imports were in response to real and perceived shortages in the U.S. market, not due to Chinese producers pushing glyphosate exports to the United States. Thank you very much, I'd be happy to answer any questions.

MR. BERNARD: Hello. My name is Stanley Bernard. I am Vice President for Growth and Development at Drexel Chemical Company, located in Memphis, Tennessee. I started my career in this industry 32 years ago as a chemist for Velsicol. My testimony today will cover three points. First, the petitioner Albaugh is a formulator, not a manufacturer of glyphosate. Until as recently as June 2009, Albaugh was importing glyphosate from China.

Albaugh's motives for bringing this antidumping action should be seriously questioned.

Second, Monsanto is the entity that truly stands to gain from this action. Yet Monsanto, the giant of the agrichemical industry whose anticompetitive practices are notorious, is strangely absent from this proceeding. Third, Albaugh's petition grossly misrepresents the realities of the glyphosate market condition. Any recent fluctuations in demand were not caused by Chinese imports but rather by normal supply and demand factors.

In its petition to the International Trade Commission, Albaugh characterizes all forms of glyphosate as simply one all encompassing product. That chemically and functionally is incorrect. Albaugh knows this, as Albaugh is itself an agrichemical formulation company. Glyphosate technical acid, whether dry or wet cake, must be further transformed into a soluble salt form and then formulated to provide a suitable product to farmers for application, and this is so that the plant could take it up properly and it would do its job, much like a drug, it has to be in a form that can be absorbed by the body and then metabolized as needed.

This process consumes a number of raw

materials other than glyphosate, such as a means, alkali bases, surfactants, compatibility aids, packaging, labor and freight. All this together accounts for more than 50 percent of the value, plus formulation is not a simple process, particularly with glyphosate where you have a reaction going on between the glyphosate and the base, that requires millions of dollars of investment and quite a few skilled employees, not just to make the batches but you also got to package it too.

The EPA as well as the Chemical Abstracts Service characterizes each of these compounds, whether it's glyphosate acid, the isopropylamine salt, potassium salt, sodium salt, diethanolamine salt, whichever salt you wish to use, all the separate compounds, each having a different EPA classification number, each having a different Chem Abstracts number, so they are unique compounds.

Albaugh represents itself as a producer of glyphosate like Monsanto. That comparison is a stretch of the imagination. Albaugh's small facility in St. Joe, Missouri, is only capable of carrying out the last and final step in glyphosate synthesis. That last step is the simplest step in the process, where you oxidize the PMIDA, or phosphonyl methyl diacetic

acid, into glyphosate. You're essentially kicking off one of the acetic acid groups with oxygen. This can be done with air, hydrogen peroxide, or oxygen.

In other words, Albaugh is simply substituting one glyphosate for another. I could easily claim to be a producer of Coca-Cola by carbonating the cola syrup, to give you an example of how simple it is. I question why Albaugh even built a facility to convert PMIDA to glyphosate. I personally have evaluated doing the same for my then employers a number of times over the years, and irregardless of capital expenditures, or lack of, I found each time it was not competitive with the market.

In other words, it was a poor business model to try to take the last step of a process as complicated as glyphosate synthesis and doing it at another location other than where PMIDA is produced. To me it sounds like Albaugh is complaining that the Chinese PMIDA he's buying is overpriced, too expensive for him to make his glyphosate to compete with the market.

Since Albaugh completed its obligations to Monsanto in 2002 for purchase of Monsanto glyphosate in connection with gaining its EPA registration for glyphosate, Albaugh began formulating glyphosate as

sourced from China. For the period of time 2007 to 2009 cited in Albaugh's petition, most of the glyphosate Albaugh placed into the market originate from China, not by China, through Chinese PMIDA through Albaugh's facility.

Albaugh appears to be acting on behalf of Monsanto in making this petition. Monsanto would certainly be the true beneficiary through a windfall of profits should any action be taken by the International Trade Commission. Albaugh too may benefit should its glyphosate production facility suddenly be placed in a better cost position against other generic glyphosate via an antidumping duty.

It is noteworthy that Albaugh has been for sale for the last few years. It may be better able to sell its company if its ability to convert Chinese PMIDA into glyphosate were made more cost competitive. Monsanto on the other hand is truly a producer of glyphosate. It is fully back integrated in its production all the way back to phosphate mining, and it has several mines in Idaho where it can obtain the phosphate rock, convert it to elemental phosphorous, which is then converted again to either PCL-3 or phosphorous acid, and continued on through the process to make glyphosate.

With such integration in the glyphosate synthesis, Monsanto is certainly the world's largest and also the world's lowest cots producer. Monsanto has been accustomed to U.S. competition since its patent expired in 2000. Monsanto employs a number of tactics to limit competition on glyphosate from generic sources via its marketing programs, tying glyphosate to genetically modified seeds tolerant to application of glyphosate, numerous frivolous patents on both glyphosate formulations and seeds to further restrict competition, purchasing worldwide producers of glyphosate acid to shut them down, and it is expected Monsanto will soon, as early as 2012, have available their next generation of genetically modified crops that are tolerant not to just glyphosate but also dicamba and 24-D type products.

Current generic glyphosate producers would not have access to these markets as these crops, as they're introduced, would still but under Monsanto's patents. Monsanto continues to maintain the lion's share of the market, having approximately 70 to 80 percent of that market. Monsanto doesn't just market its branded Roundup products but also generic products through distributors and formulators. Registration costs to enter this market are high. They're -- well,

I don't want to say what we paid or other people have paid, it's millions of dollars, not just for the registration data but also to gain a license to apply your product over their genetically modified seeds.

And that's just the beginning. There are other elements within our industry that you have to comply with. People sitting in this room are now under pressure by task forces to join those task forces in order to gain other support that's required by the EPA such as spray drift, environmental issues with endangered species, the indoor outdoor residential use, and so forth. And then even today there's a new barrier to market.

The EPA along with industry has introduced that there will be data compensation now for raw materials. So you can't take just any soap compound and add it into your formulation of glyphosate, it has to come from somebody who's a member of the task force, otherwise the EPA will restrict your registration and reject it until you either agree to buy from somebody who's registered source or you join the task force yourself. So that's just one of the caveats of our industry, it's not just getting a registration and running to the market.

Albaugh's petition claims glyphosate is

suffering from unfair competition in the U.S. market. Well recent actions by Monsanto do not support that. In 2003, late 2003, Monsanto commissioned Sterling Chemical in Texas City, Texas, to resume its amino diacetic acid production to supplement its production both in Brazil and the United States. In 2008, Monsanto announced its investing $200 million to increase capacity by 20 percent at a Lirling, Louisiana, facility which was recently completed in 2009.

One of the other boasts that they've made is not only did it increase the capacity but it reduced the carbon footprint that that facility places on the environment. That's just a fancy name for cutting out some pollution. I suspect what they've done is they put in a process to recycle formaldehyde back into the second step of PMIDA production -- something that a formulator taking PMIDA and oxidizing it can't do. They have to throw that formaldehyde in the garbage, declare it a loss. Monsanto of course regains the value.

Since the Monsanto patent 4,405,531 covering all salts of glyphosate expired on September 21st, 2000, the U.S. glyphosate market has nearly doubled in volume, and still continues to grow, as does the world

glyphosate market. Numerous factors have and still are continuing to make this growth occur. Introduction of new varieties of genetically modified crops resistant to application of glyphosate is one. Increased worldwide acceptance of genetically modified crops. Even diehard environmental groups such as Green Peace, Green Peace of all people has now come out saying that, yeah maybe we were wrong, some of these could be beneficial, let's go ahead and let everybody in the world who's hungry have golden rice.

A more favorable toxicological profile, other than the other nonselective herbicides such as paraquai, also contributes to its increased acceptance. Growing homeowner turf use, industrial use, is large, long established, and still growing. World food needs and increased acreage placed into crop production, and it's now more competitive than other nonselective herbicides. Albaugh's petition attempts to limit the focus of its claims to misrepresent market responses so as to cast -- can I take a drink -- so as to cast blame upon Chinese imports for U.S. glyphosate market prices dropping in 2009. This is not the case.

Beginning in 2007 the glyphosate market, our prices began to rise as demand overtook supply. This

was because of large conversions of crop acreage to genetically modified crops, as well as other factors that I listed above, contributed to the increased demand for glyphosate. Also for environmental concerns and in preparation for the 2008 Olympics, many Chinese pesticide factories were shut down and moved to industrial sites. This caused a reduction in available generic glyphosate supply.

As oil and petroleum prices began to skyrocket, oil seed crops were in high demand as biofuel plants replaced on stream to produce ethanol and biodiesel. The major oil seed crops, corn, soybean, and canola, are now almost all grown from genetically modified seeds tolerant to glyphosate. These conditions resulted in large demand increases for all inputs, not just glyphosate but seeds, fertilizers, other pesticides, farm equipment, and so forth. John Deere, Case, all of those stocks took significant increases.

With this increase in demand, prices of glyphosate, pesticides such as glyphosate and atrazine, and especially all types of fertilizers rose sharply in 2008 crop growth season. Raw material prices for glyphosate synthesis and glyphosate formulation also dramatically increased in price.

2009 appeared to be another robust year for American agriculture as oil and petroleum prices remained high into the third quarter 2008.

In anticipation of 2009 being another robust year in oil seed crop production, most U.S. glyphosate suppliers began building inventories of glyphosate in 2008 so as not to be caught short as they were in the 2008 use season. As oil and petroleum prices declined in fourth quarter 2008, so did the prices of many pesticides and fertilizers. When the 2009 U.S. crop planting season approached, large parts of the country were inundated with continuous rainfall. The rainfall and flooding kept many farmers out of their fields, as well as the cold weather.

In many instances, beyond the window of opportunity for planting, vast farm acres did not get planted in 2009, and of those that did many were planted late in desperation. They did not have the benefit of normal agricultural practices. The net result was most of the midwestern and southern farm acreage did not receive any preplant herbicide or fertilizer treatments in 2009.

As the agricultural commodity companies tried to push their inventories into the market, prices declined. Some products such as atrazine and

glyphosate returned to their pre-2007 levels, while other agricultural inputs such as fertilizer and diesel fuel have not. As energy and raw material prices declined, glyphosate prices also declined in China, almost to historic levels.

Albaugh's petition focuses on just the marketplace anomaly experienced in the 2007 to 2009 seasons. It also fails to reveal what would be considered the normal market conditions after Monsanto's patent protection expired in 2000 and generic competition began. Albaugh also fails to note the two-tier marketplace found in the U.S. agrichemical marketplace. There is the upper tier that's enjoyed by Monsanto with its Roundup branded glyphosate that is comarketed with its Roundup Ready seeds via a contract with a technology fee and a branded Monsanto use requirement.

If that does not restrict the glyphosate market enough, Monsanto has also found ways to obtain patents to exclude competition on any other salt form of glyphosate other than the isopropylamine salt. These tactics of Monsanto tend to devalue the generic glyphosate market. The portion of the U.S. glyphosate market, which is approximately 30 percent, that's not tied up by Monsanto marketing programs are restricted

by their numerous patents and is available for competition, is what we would call the lower tier.

In summation, Albaugh's petition begs the question, who is really behind this, Albaugh or Monsanto? And are Chinese imports really the reason that glyphosate prices have fluctuated? My testimony has sought to demonstrate that Albaugh is simply acting as a stocking horse for Monsanto, and that market conditions, not Chinese imports, explain the recent price fluctuations. I'd be happy to answer any questions. Thanks.

MR. CAMERON: George, can we get a time check? I show we have about six minutes, is that what you've got?

MR. DEYMAN: Yes, George Deyman, Office of Investigations. You have six minutes, that's right.

MR. CAMERON: It's a miracle.

MS. MENDOZA: I knew that stopwatch would come in handy.

MR. CAMERON: I'd just like to make one point. Don Cameron with Carlton Sanders. The discussion that we heard this morning regarding Monsanto was not exactly what one would call candid, and I think that you've heard testimony here this afternoon which demonstrates that. You asked this

morning about why Roundup gets a premium over generic since it is a commodity product, right?

And of course what we heard was somewhat of an incomplete answer. We were told that, well you know, it's really like the difference between Advil and ibuprofen. And then counsel said that, well it's really like Hostess cupcakes. I don't know that I'd want to eat this stuff, I mean I like my clients but I've got to tell you. But I mean, really is that a complete answer to this question? I mean they know that Monsanto actually gets a tech fee, and they know that potential Monsanto seed will not receive the crop protection from Monsanto unless they're using Roundup to protect it.

Well, I mean that means Monsanto really controls this industry through this device. So the question was asked this morning by the panel, I mean we've just heard about what a disaster this market is, so why is it that Monsanto is expanding its capacity? And of course counsel said, well gee I don't know, who knows? And Monsanto doesn't know because -- well, they might know but they're not here. And he doesn't speak for Monsanto. He sends letters on behalf of Monsanto, but he doesn't speak for them.

Now, I would just like to make a suggestion

as to, now I, just like counsel, am speculating, okay. But my speculation is that Monsanto is expanding that capacity because they're smart and because they make a lot of money. And the reason they're expanding that capacity is that the growth curve is up. And the reason that the growth curve is up is because GMOCs are expanding, not only here with new varieties, but also globally with global acceptance.

So yes, there is a reason that Monsanto expanded their capacity, it's because they don't make their decisions based on tomorrow, they're making their decisions based on the long term. And based on their actions, their actions are bullish.

And finally, we heard Mr. Vance say, well look, you know, consumption here is really constant. I mean it might have bumped up a little bit but it's constant. Weeds are weeds. Got them all the time, it's the same thing, so consumption isn't going to change. Well that's true about weeds, but the growth of resistant seeds is not constant, and that is exactly the point, and that is exactly the basis for Monsanto's decision.

MS. MENDOZA: That concludes our presentation.

MS. DEFILIPPO: Thank you, Ms. Mendoza, and

thank you very much to the panel for coming today and providing testimony, it's helpful to have witnesses on both sides that know the market, so I appreciate you being here, and we will start staff questions with Ms. Sherman.

MS. SHERMAN: Thank you. My first question is for Mr. Puech. You said in your testimony that there are a limited number of Chinese producers that are licensed for export. Do you have any idea of how many Chinese producers are actually licensed for export?

MR. PUECH: No I don't, but I know that many of the smaller producers are not producing and are being shut down. Many others are being regulated for not having proper environmental facilities to decontaminate byproducts. And the big producers who are qualified and who have good facilities are licensed for export.

MS. SHERMAN: Thank you. In the petition in exhibit 8, there's an article on the Chinese glyphosate industry that states that there are low entry conditions in China but fierce industry competition. Do you know why the entry requirements are so low in China, and why don't we see more glyphosate producers here in the U.S.?

MS. MENDOZA: Are you prepared to answer that? I mean we could ask our clients probably to respond, they might know a little bit more about the conditions in the Chinese market, and we can send them this article and see what they think of what's said there and get their comments.

MS. SHERMAN: Sure.

MS. MENDOZA: I think you can respond that you don't see a lot of people entering this market, right, in terms of the U.S. market?

MR. PUECH: Well you have to get a permit in China to put in a glyphosate plant, and it's not easy to get this permit. I mean there's government regulations as to who can produce and who can't produce. And it is true there is some illegal production, but this illegal production is not going to be long term, I mean it's going to be shut down and regulated. And that's limiting the number of people who can legally be in the business.

MS. SHERMAN: Thank you. Do you agree with the statement in the petition that states that Chinese manufacturers typically use the glycine route to produce glyphosate versus the IDA route, and do you know why the Chinese producers prefer using the glycine route?

MR. PUECH: Well they produce it by both the different routes, it's just the majority of production is glycine, and glycine is usually more economical. They can control some of their raw material costs for glycine much better than they can control some of the raw material costs by the IDA route. Stanley, you want to comment on that?

MR. BERNARD: Yes, also glycine is a different compound than the precursor for IDA. IDA is produced via diethanolamine. Diethanolamine is primarily available from facilities who have close relationships with petroleum companies. Here in the United States the three major producers, or only three producers, and that's Huntsman, Dowell, and Linedel. There is not any diethanolamine production in China, or there wasn't. I understand there's probably some now in Taiwan. But the glycine was the first to be developed because they had access to glycine.

MR. HEIDE: Volka Heide with Helm. If I might add something. Glycine route was the truly generic route. We in Helm, we dealt with the Chinese since the late '80s on behalf of Monsanto also, Monsanto had a shortage in glyphosate at that time but still they did not give a license to the Chinese to produce the same way Monsanto is producing in the U.S.

So there was a patent of Monsanto on the IDA route, especially on the catalysts used and necessary in the IDA route, so the glycine route was all we had available at that time, and then over the years it progressed into something which is very cost competitive.

MS. SHERMAN: Thank you. There was a lot of talk earlier about the Beijing Olympics in 2008 and earthquake and how that affected supply and whether it was speculation. Can you comment on whether this actually affected supply?

MR. PUECH: Well we do know that one of the glycine producers was shut down because their factory was too close to Beijing, and the Chinese as I understand it had a regulation as to how many factories would be allowed to operate within, I think was it a 100-mile radius of Beijing, maybe larger than that. And so if you happened to be in the 100-mile radius you got shut down, and they didn't care whether you were a producer of glyphosate or not.

MS. SHERMAN: Do you know how large that company was? Was is a major producer?

MR. PUECH: It was a major producer of glycine for the glycine route glyphosate, yeah.

MR. HEIDE: And the alternate producer then

was located in this Szechuan province where the earthquake happened, and then they got influenced by that as well because they did not have enough process water and so on because all this damming system, the leveling system and so on collapsed, and so they did not have enough electric power and they did not have enough processing water so they had to close down for three months.

MS. SHERMAN: Okay. I think my last question goes back to the quality issue that counsel just commented on, but can other people comment on quality difference between Monsanto Roundup and the Albaugh's nonbranded glyphosate and the Chinese glyphosate?

MR. PUECH: Well, in general the quality is seen in impurities in the technical. Sometimes you even have contaminants such as dirt and stuff swept up from the factory floor bundled together and sold as technical glyphosate. And of course in the formulated product you quite often can get improperly made formulations in China, which are not stable and result in sedimentation and things like that in the U.S. and are not acceptable to U.S. customers.

MS. SHERMAN: Okay, I have no further questions.

MR. CAMERON: Excuse me, did you also want a discussion of the difference between generic and Roundup? Because these guys can probably give you a little discussion of that if you would like.

MS. SHERMAN: Sure.

MR. CAMERON: Is that helpful for you?

MS. SHERMAN: Yes.

MR. CAMERON: Why don't you talk to her about that, about the difference between Roundup and generic like Albaugh, what's the difference?

MR. BERNARD: What's different? Well, in the beginning there was no difference. Original Roundup was the same as what we're allowed to sell now. Now, over the years Monsanto has decided that they want to convert their markets to the potassium salt, and they have a variety of patents that protect that. Even though the total salt patent expired in 2000, they still managed to keep those protected by things as -- I don't know how they get it through the Patent Office but they do -- the one that they like to wave as being the one that protects potassium salt is the fact that you can formulate potassium salt in a little higher concentration than the isopropylamine salt.

Therefore you've created a way of storage

that's unique for glyphosate because you can take this other salt and make it a little more concentrated so you can put more in a barrel, you know, they're not patenting the salt, they're patenting a storage system. You know, I can do the same by not putting as much water in Koolaid, but how they got it through the Patent Office and, you know, we spent $70,000 with a patent attorney to confront it, and went to Monsanto and they said, well the Patent Office thought it was good, and if you win we've got another one here. So we just kind of gave up on that.

The other issue I believe that's involved with the potassium salt is, like I said, in 2012 we anticipate they'll be coming out with a glyphosate dicamba combination -- and dicamba would be formulated as the potassium salt and makes it a lot easier as the potassium salt is a little easier for coformulations with metolachlor and other compounds.

MR. HEIDE: But again, we are mainly competing in the market segment of 41 percent isopropylamine salt. All of us running mainly this simple formulation of glyphosate, all of us running it mainly here in the U.S. The difference in quality toward Chinese material is, as Megan said it correctly, is quality control. The U.S. market is a

very sensitive market, there's a lot of liability involved, so quality control is important, and U.S. formulators or producers of glyphosate isopropylamine salt are just better organized and they use better raw materials. So what most of the producers and formulators here in the U.S. do, they use branded surfacting systems in their formulations, which makes the product a better performing product than simply made Chinese copies.

MR. BERNARD: Now, the material that Monsanto supplies to distributors for repackaging or formulating, now that's all isopropylamine. The 41 percent that Monsanto supplies is Buccaneer or Honcho, that's what they call their fighting brands. They'll give the distributor a certain proportion of that along with however much Roundup branded material, and so that he can go into the generic market with it.

MS. DEFILIPPO: Thank you. And thank you, Ms. Sherman. We'll now turn to Mr. Haldenstein for any questions he may have for this panel.

MR. HALDENSTEIN: Thank you. Mike Haldenstein, Office of the General Counsel. Do you agree that all the forms of glyphosate constitute one like product? Or what's your position on that?

MS. MENDOZA: For purposes of the

preliminary determination we do take that position, that it's a single like product.

MR. HALDENSTEIN: Thank you. And turning back to who's a domestic producer, what's your position on whether the formulators are producers and whether -- there was some testimony that suggested that even Albaugh wasn't doing enough to constitute domestic production.

MS. MENDOZA: Well, our position is that basically Albaugh is the same as these other processors, and that for purposes of the Commission's legal analysis under this case, which I believe you referred to earlier, we believe that they should all be treated as members of the U.S. industry. If they're processing it in the United States, and from what we've seen they have a significant value added and significant investments, and therefore while some of our witnesses are saying, you know, if we're not they're not, I think our legal position is basically that they all should be considered U.S. processors, and therefore that to the extent that there is price competition, at the formulated stage it's occurring between U.S. producers of that product.

MR. HALDENSTEIN: Okay, thank you.

MR. CAMERON: It also goes to one other

issue, which is the reason that we have discussed this in terms of domestic competition. The U.S. manufacturing jobs that are at stake among the formulators, which are U.S. producers, are equal in value to the other U.S. jobs that are at stake. So this isn't a case where you're talking about importing jobs and people kind of dismiss importers as whatever, these are U.S. manufacturing jobs that are here being attacked by this petition. And that is a major difference which actually is one of the reasons that you've made these decisions with respect to like product.

MS. MENDOZA: And if I could just add one other thing, and that goes also to Ms. Bryan's comment, which is that to the extent that, and it's our position that all of these processors are part of the U.S. industry, that in fact the inventories that these processors are holding of formulated product is in essence U.S. product, and that the Commission should consider it that. So for purposes of its analysis, we believe that all the U.S. processors should be considered as part of the domestic industry and their production considered U.S. production.

MR. HALDENSTEIN: Is that regardless of where the acid that they obtained was from?

MS. MENDOZA: Yes, absolutely.

MR. HALDENSTEIN: Okay.

MS. MENDOZA: We don't think that's a relevant consideration.

MR. HEIDE: If you take the formal aspect of added value, we did it in Helm before in other countries but we also did it here in the U.S., we did that calculation starting from Chinese supply glyphosate acid 95 percent and did the value added calculation to a glyphosate 41 percent to a vec, as we defined it here before. We came to a value of more than 50 percent, and we did that calculation here in a smaller group yesterday again, and I said, depending to the quality of the 41 percent I can demonstrate all kind of calculations between 45 percent and 70 percent.

So for the 41 percent it's fairly easy. For this manufacture a used product, this -- product of 62 percent, there I would probably be borderline. But 41 percent formulation which is a major formulation here in the U.S., definitely also by legal aspects fully qualifies to change the origin from China to the country where it has been formulated.

MS. MENDOZA: And I would just note too that our position basically is that, and I think that's

what the Commission found in the Thermal Transfer Ribbons case, which is that regardless of NAFTA rulings with respect to how you treat NAFTA sourced products produced in the U.S. and Canada, I mean frankly our position is that's really not relevant to the Commission's analysis.

MR. HALDENSTEIN: Okay, thank you. Could you be sure to address the other five factors in addition value added in your postconference?

MS. MENDOZA: Absolutely, yes.

MR. HALDENSTEIN: Okay, thank you. And related parties, since a lot of these I guess, you know, producers are also importers, can you be sure to take a position in your postconference brief on them?

MS. MENDOZA: Yeah, as you note it's probably confidential what we're going to say about individuals, so yes we'd be happy to do that.

MR. HALDENSTEIN: Okay, thank you. I have no further questions, thanks.

MS. DEFILIPPO: Thank you, Mr. Haldenstein. We'll now turn to Ms. Bryan.

MS. BRYAN: Thank you. Let me see, I'm just going to start with the demands going into '09. And I guess, Mr. Klett, it's your exhibit 2 that I want to refer to, that this is the plantings of the herbicide

tolerant crops. I mean I think this is a good indication I guess of a big portion of demand, and I guess, not sure, from what we've heard this afternoon there did seem to be some indication of lower demand in '09 it sounds like, but I'm not sure if we're seeing it here.

MR. KLETT: There's different elements in '09 in terms of what affected demand. You almost have to look at slide 2 and slide 4, but basically what slide 2 shows is the long term growth path based on herbicide resistant plantings, and that was up in the '09-2010 season. But you had other things going on as well in '09 that would affect actual consumption or actual demand for glyphosate, and that is that even if herbicide resistant crop plantings were up, if farm income was down they may not want to buy as much just because there is constraints on their ability.

For example if you look at slide 4, there were declines in farm income and basically declines in purchased inputs across the board. So you have that factor, you also have weather related issues that may have affected the actual consumption of glyphosate. Antoine testified about, you know, there was only one application versus two because of weather conditions, so even with the same acreage being planted there

could have been a decline in actual demand for glyphosate. So I think you have to look at all of those factors in conjunction in terms of what actual consumption and actual demand was, even if acreage was up. And I think our point is that acreage is up not only in the U.S. in terms of herbicide resistant crops but across the world, I think slide 3 I have that. And essentially meaning that explains a lot about investments, about increases in Chinese capacity, and threat.

MS. BRYAN: Thank you, that's really helpful. And looking forward to demand expectations, do you have a sense for that?

MR. PUECH: I'd like to comment. Monsanto has a gene, the Roundup Ready gene, and it can insert it in any crop they want. Those we know of today, and those of tomorrow, and we haven't talked much about the crops of tomorrow, but I'll give you an example. Brazil is pretty much self sufficient for ethanol because it grows a lot of sugar cane. Well, in two years, they're going to have Roundup Ready sugar cane in Brazil.

That's a huge consumer of glyphosate because you have to kill the crop to plant the next crop, the renewed crop, you know, and so this alone would have a

huge demand for glyphosate. If other crops come along where they can insert the Roundup Ready gene, and there are others on the way, that's going to drive demand, so as Donald said, putting in a new plant, they know what they're doing, and the demand is going to continue to keep climbing as they add new crops and new varieties of existing crops which are Roundup Ready.

MR. KLETT: If you look at Slide 3, this actually is from the Monsanto presentation, and this is biotech trait seeds of which herbicide resistance is one biotech trait, but they actually have projections for 2012 and some of the percent of the market that's going to have these biotech trait characteristics, and you can see there's growth in the U.S. and across the world, so that will generate additional demand for glyphosate.

MS. BRYAN: Thank you. It sounds like when there's a new Roundup Ready crop that Monsanto if it's Roundup benefits greatly from that, so do you have like an estimate or an idea of like when a new Roundup Ready crop comes into the market like what the impact on the generic glyophosate is?

MR. HEIDE: We also have huge export opportunities. Please remember that the entire

European zone is today GMO free because of the political resistance, and Monsanto is still under the belief that they can overcome those hurdles, and the ruling Lirling plant is also designed for export to Europe.

MR. PUECH: I'd like to add I can speak a lot about Brazil because I go there frequently, and Roundup Ready corn was introduced in Brazil about two or three years ago, and Roundup Ready soy beans not that long ago, and the increase in market share of Roundup Ready beans versus non Roundup Ready beans is explosive. In something like 60 percent of Brazilian soy beans now are Roundup Ready. In the U.S., more than 90 percent are Roundup Ready.

There's more demand growth that's going to take place in Brazil just based on soy beans. Huge demand growth based on increase in corn, Roundup Ready corn, and of course in the Roundup Ready new crops, sugar cane and some others, they're working on. The Brazilian market now is as big as the United States' market, so if you're a Chinese producer, you don't look just at the U.S. business. You look at the global business, and I can tell you that the demand for glyphosate is very, very strong and very bright if you're a glyphosate manufacturer.

MS. BRYAN: Okay. Thank you. And just to clarify, does Monsanto do the same bundling of its Roundup Ready seeds and Roundup in other countries?

MR. PUECH: Well, it failed to in Argentina. In Argentina, actually they weren't able to enforce that patent, and most of Argentina is Roundup Ready, and they use generic glyphosate over there. In Brazil, there's a lot of sellers, and I don't think they can tie the seed and the use of Roundup brand.

MS. BRYAN: Okay. Thank you. Yes. This is another question. When was the Roundup Ready corn introduced? Was it '06, or was it before that? 2006?

MR. BERNARD: About 2005 is when it really started. They have to come into it gradually because basically what you have to do is grow more seed each year, so it takes about five years for them to get up to full production.

MS. BRYAN: Okay.

MR. BERNARD: And now they're probably 90, 95 percent of the U.S. corn is all GMO now.

MS. BRYAN: Okay. So I would assume Monsanto was prepared that there would be increased demand for glyphosate due to this introduction of corn. I'm just wondering if there's any sense why Monsanto maybe had the supply shortage and why they

weren't prepared in '06, '07, '08?

MR. BERNARD: I don't think they anticipated the gross that they got plus the energy crisis. It changed so much acreage over the whole seed cop like corn and soy beans and canola. Anything you can convert to a biofuel was planted, and so rice and cotton acreage and those type of crops were not planted.

MS. BRYAN: Okay.

MR. BERNARD: I've never seen Highway 61 in Mississippi planted with corn. It's always been cotton and rice.

MS. BRYAN: Okay. Also, covering the price increases in '08, what is your sense of who is leading the price increases if there was a price leader? Was it coming come site or was it domestic?

MR. PUECH: I think that the price increases were driven by supply and demand and by increasing the price of raw materials. The demand here was huge. Monsanto couldn't supply, and so there was a lot of product imported by various big companies to formulate here and supply the market, so it's really a shortage of availability, and when the demand started increasing like that, the Chinese raw material prices increased, and it was just a whole cycle of price

increases.

MS. BRYAN: Okay.

MR. HEIDE: Monsanto also calculated with the Chinese capacities, but actually the logistics said they could not manage. We have been involved in that. We sought material for Monsanto in Big Sky, but we could not supply enough from China. So that surprised Monsanto. They thought the Chinese capacities are bigger than they actually are. There's one big difference, and we had it here also this morning. We always talk about the Chinese capacities. We need to realize there are two different indicators for the Chinese capacities.

The one indicator is installed capacity, so in theory is you have enough raw material supply, is you have enough orders on hand so they can produce a given quantity, but in reality, they produce much less than that because they don't have the raw material supply, because they don't have the inputs, because they don't have the orders in time, so actually that's a huge difference between installed capacity and real capacity, and this needs to be analyzed.

MS. BRYAN: Okay. Thank you. During '08, was it your sense that the acid prices from the import sources were about the same as U.S. acid prices?

MR. PUECH: Well, there was a range of prices, but there was a real shortage of availability.

MS. BRYAN: Okay.

MR. PUECH: And so, I mean, there wasn't a big difference in prices, but you could get cheaper from certain suppliers than from others.

MS. SHERMAN: Was Monsanto supplying it though?

MR. PUECH: I'm talking about the Chinese side.

MS. BRYAN: Okay. Okay. But you couldn't say across the board that all imports from China were higher or lower than Monsanto's prices say of acid, right?

MR. PUECH: Well, I don't know Monsanto's prices. I couldn't answer that.

MS. BRYAN: Okay.

MR. PUECH: But between the Chinese suppliers, there was a difference in price.

MS. BRYAN: Fair enough. Okay.

MR. KLETT: Ms. Bryan, as I said in my draft, we have the actual cost, and we'll provide that in our post-conference brief in terms of the levered cost relationships of the Chinese acid versus domestic acid to the formulators.

MS. BRYAN: Okay. Thank you. This is also related to the acid question. Are there any importers of acid that offer to sell it to other formulators in the United States? Is that common or not common?

MS. MENDOZA: Are you saying just acid importers and nothing else? Is that what you mean?

MS. BRYAN: And they might be also formulating on their own, but is there a separate channel where they're importing and reselling acids?

MS. MENDOZA: For acids you're talking about now?

MS. BRYAN: Yes.

MS. MENDOZA: Okay.

MS. BRYAN: Do you have a sense of how common or uncommon that is?

MR. BERNARD: No, no, no.

MS. MENDOZA: I don't think it exists.

MR. PUECH: Well, there was a lot of people importing acid and selling it to others that didn't have it or didn't have a registration for that particular supplier, but over time, the other big importers and all the big formulators have their own supply, so there's much less of that. There is still some quantity, but not much.

MS. BRYAN: Okay. Thank you. Also, this is

something I asked about this morning. I just kind of want to get your take on this if you know. If a formulator is using acid from both import sources and from Monsanto, is the formulated product typically sold at the same price regardless of the mixture of the acid used?

MR. BERNARD: Yes.

MR. HEIDE: Yes, and we do it. Yes, absolutely same price

MS. BRYAN: Thank you.

MR. HEIDE: And also to your question which right before about a selling technical product, also we did this before, but as Megan correctly answered, it has been discontinued. It happened only in 2008. Since that time, not anymore.

MR. BERNARD: Yes, it's really a registration issue more than it was a sale. Somebody wants to get into the market, and their registration is pending, can you help me out with your registration?

MR. HEIDE: That was also logistics because we had more efficient logistics and others so we could help some people to source the product from China because also them having three offices over there in China, so we have the logistics to handle those

volumes.

MS. BRYAN: Okay. Thank you. Also, I just have another question about the substitutes. I still kind of don't have a good handle on this. Are there other herbicides that can be substituted for glyphosate?

MR. BERNARD: In some degree, but certainly not on Roundup Ready crops. If you want to go out and burn down like we have those weeks right here in this square, you could use glyphosinate, glyphosate, paraquai and kittle, but if you put paraquai or glyphosinate across glyphosate resistent crops, you kill them, so the majority of the market, no you can't substitute. In some instances, you certainly can with other non-selective herbicides. Diaquat's another one.

MS. BRYAN: Okay. Thank you. I also have a question. This morning I think I heard correctly that there are other companies that are selling glyphosate-resistant seeds like DuPont and Dow and Syngenta, do you agree with that? I mean, are they bundling sales of seeds and glyphosate, and how is that an act of Monsanto's dominance?

MR. BERNARD: They all have their different ways of bundling, but the net result is the market's

excluded to this. Syngenta is a real master at that because they tend to bundle their chemistries, which is a very broad line of chemistry, and they have multi-tiered ways of building additional fences keeping a distributor from buying a generic product. They start with limiting your rebate. They're so bold they allow you a percentage.

Like with metolachlor in 2002, they begrudgingly allowed a distributor to buy two percent from somebody else, and they give additional incentives for their glyphosate products. I can show you if you'd like a copy of it.

MR. HEIDE: No. I think for the glyphosate case then it's important to know that Syngenta is having no production facility for taking care of glyphosate any longer outside of China. In the past, Syngenta owned a plant in the UK. They closed this down two or three years ago, so today they also with the glyphosate they depend on China. For Dow, it's about the same situation. Dow would only have those two sources, either Monsanto or Chinese supply. They don't own any glyphosate centers just to explain that background.

MS. BRYAN: Okay. Thank you. I think it's going to be my last question, but do you agree with

the story we heard this morning about coming into '09 there was this buildup of inventories which what we heard this morning had a direct impact on the pricing, and we do agree that there was this inventory buildup and to what degree did it affect prices do you think?

MR. HEIDE: This is in the companies different situation. Like we in Helm, we had a very soft landing because some people got just too greedy, so they bought too much glyphosate because they did a pure speculation that the prices would go up forever, and they just ignored the facts, so some people did okay also in 2009, and then some people got burned, so it's individual situations.

MS. BRYAN: Okay. Thank you.

MR. KLETT: I think there's also two points on the inventory. I think factually we agree there was an inventory buildup, but the issue is what are the implications for your analysis in terms of causation, and I think there is two points, one of which was alluded to by Julie and that is that if it's formulated product, it's inventory of U.S. production, so if that had an adverse affect on the market based on selling inventory into the market or loading inventory into the market at the end of the year, that's not due to imports.

The other this is from an accounting perspective. If you were a purchaser of either Chinese PMIDA or Chinese glyphosate at a high cost during the peak, and you decided to off-load that inventory, that will have a huge affect on your financials. It's not due to low-priced imports. It's due to having purchased high-priced imports of glyphosate or PMIDA from China, so I think you have to evaluate those two things on the inventory side.

MS. BRYAN: Okay. Thanks. I appreciate that, and that's all my questions. Thank you.

MS. DEFILIPPO: Thank you, Ms. Bryan. We'll turn to Mr. Randall. Do you have any questions for this panel?

MR. RANDALL: Yes. Are you kind of getting us to understand that Monsanto is with respect to glyphosate essentially been working on its patent positions and it's developed more and more of them that they've managed to use to their advantage to expand the market and extend it in new directions?

MR. PUECH: Yes. Monsanto is doing a great job, and I own their stock.

MR. RANDALL: So how would you see that business strategy, if you will, fitting into an anti-dumping case such as we have here? Do you see any

connection in U.S. law between such a business strategy, successful or not, and anti-dumping as a matter of law?

MR. PUECH: In other countries, Monsanto has successfully instituted anti-dumping in the past, and so they have a record of doing this.

MS. MENDOZA: But I will say that there are no existing orders on imports into any country other than Brazil. There's a two percent duty rate, so, I mean, in every other country they do not impose them.

MR. PUECH: They're all expired, yes, and then they file in other countries, and they fail in some countries.

MS. MENDOZA: Right.

MR. CAMERON: But with respect to your question about how Monsanto's strategy affects this case, I think it Monsanto's strategy and the success of Monsanto in fact dominates this case. It absolutely slices any possible causation effect. I mean, we heard this morning about the great threat that the Chinese imports have on this market. I mean, let's get serious. This market is about GMO seed.

This market is not about just this product. This market is about the GMO seed. That's where your demand is, and in fact, who controls the GMO seed and

who controls how much everybody gets. I mean, let's face it. Everybody in this room is dependent upon Monsanto for their raw materials. What happened in 2008? In 2008, Monsanto wasn't selling everybody all of the raw material that they need to make their product.

Therefore, what happened? What happened was that people went out and got other sources because actually, contrary to what you heard this morning, it is a raw material, and Monsanto is the only U.S. producer that sources that raw material, so, I mean, looking at this dynamic and the market strategy, look, Monsanto is tremendously successful. I mean, I think this is great, and GMO seed, let's face it, we all need food, and the idea is in a growing world, well guess what?

All of those dynamics work in their favor, which again gets back to the answer to the question why did they expand their capacity given what we understand to be the market conditions, and the answer is because Monsanto works globally, and they understand perfectly what this market is, and in response to the question about well, do they have tie-in arrangements down in Latin America, that's really not the point.

The point is they're getting paid for the seed, and they're going to get more than their share of the glyphosate, and they have the seed, so this is a growth market, and Monsanto in fact controls an incredible segment of it. I mean, I don't know exactly how much because I haven't seen a questionnaire response, but assuming we were to get a questionnaire response, I could actually give you an answer to that, and you would actually be able to calculate that number yourself.

MR. HEIDE: Then if you go back to logistics, you're going to have the anti-dumping duty against lots coming from China. In the past, we had those situations. We bought from Monsanto, and then in the season, they don't have the logistics to supply everybody at the same time, and then we're at the mercy of Monsanto and then maybe of Albaugh, who hardly is sending enough material to cover their own needs, so there will be no competition anymore.

MR. RANDALL: ITC looks at statutory factors are laid out. I've never heard anti-trust being included. I'm not a lawyer, but --

MR. CAMERON: That's to your credit.

MR. RANDALL: So is there some way --

MR. CAMERON: We're not saying that the

anti-trust aspects is what means that you can't have an anti-dumping case for exactly the reasons you're saying. Look, this Commission is on record saying I don't care if they're a monopolist. Monopolists can be injured. That's not the point. The point is that because of the dynamics of this particular market, the competition here is not between imports and domestic production of this product.

The competition is between these U.S. producers of a U.S. product, and these U.S. producers of a U.S. product. That is a very big difference. It gets to the point of well, how many people are really importing this product and just selling it like a steel distributor or like a steel importer because that's what we're normally dealing with? We're normally dealing with people who are importing these products, and then they're importers, and all they're doing is they're selling them, and how much can they import? As much as they can fit through the port, but that's not what we're talking about here.

What we're talking about here is U.S. production, and yes, there is an alternative to the Monsanto-produced U.S. production, and that happens to be Chinese, but the product is produced here, and the product is what is applied to the GMO seed, so in

terms of that we're not suggesting that because there may or may not be anti-competitive effects of Monsanto's business model that somehow that precludes a dumping case, we're not saying that at all.

What we are saying is that when you look at the market dynamics here and the structure of the market that it breaks the causal relationship between the concept of imports from China having any significant impact whatsoever on domestic production and especially Monsanto, which is an absolute joke.

MR. HEIDE: To repeat what I said earlier, we had about 50 percent added value on using glyphosate as a raw material originating from China. We as U.S. manufacturers formulating that glyphosate here in the U.S., so about 50 percent. It depends a little bit to the situation. It can be everything between 40 percent and 70 percent, and then we have another added value in distributing that product.

We are making a margin on it. We are selling it to our customers and having a profit out of that sales transaction. So in general terms, I think we can talk here about added value of that product originating as a raw material from China to the U.S. economy of about 70 percent.

MR. RANDALL: Just as a suggestion, in the

post-hearing brief you might want to consider sort of looking at these things you pointed out and seeing how it plays out through the statutory factors that we're required to look at.

MR. CAMERON: We'll be glad to do that. Thank you.

MS. DEFILIPPO: Are you done, Mr. Randall?

MR. RANDALL: Yes.

MS. DEFILIPPO: Okay. Thank you, Mr. Randall. Mr. Ascienzo, questions from you?

MR. ASCIENZO: Yes. Yes, thank you. Do all of you compete with each other and with Albaugh and across all sectors and all agriculture versus golf courses or however it was described this morning?

MR. BERNARD: If our particular chemistries clash, yes. Albaugh has 24D. We don't, so we wouldn't compete in the broad leaf market, but we have glyphosate, and we have MSMA, and yes, we compete in those markets.

MR. ASCIENZO: Okay.

MR. BERNARD: Well, we only sell to distributors, and then the distributors take it on to retail, but our brands would compete, yes, on the retail level.

MS. SHERMAN: Like lawn and garden?

MR. BERNARD: Lawn and garden as well. Yes, MSMA used to be lawn and garden until the EPA decided they didn't like it.

MS. SHERMAN: Like Home Depot and Lowe's?

MR. BERNARD: Home Depot.

MR. HEIDE: On the glyphosate, yes. There is direct competition between Nufarm and Cheminova and Drexel and MEYCHEM and Helm. We are all direct competitors.

MR. ASCIENZO: Right. Your formulated glyphosate. Right.

MR. HEIDE: Direct competitors, yes.

MR. ASCIENZO: Okay. Thank you very much. Thank you.

MR. BERNARD: Glyphosate is lesser in the home market because it's really dominated by Scotts and Monsanto.

MR. ASCIENZO: So here's my question: Why would Monsanto sell the acid to use so you can formulate it and then compete against them? Why don't they just build more formulation plants and end it? What am I missing? They're not here to ask I know, and the answer is they think they can make more money doing it the way they're doing it, but am I missing something here?

MR. PUECH: It's a premium in the Roundup brand. You can make more money selling an ounce of glyphosate as Roundup instead of some other brand, so why not do that? That's how they operate.

MR. CAMERON: Can I make another suggestion to you?

MR. ASCIENZO: Sure.

MR. CAMERON: The profit for Monsanto I would suggest to you is primarily in the seed, and it is in their interest to make sure that there is sufficient supply of the herbicide to make sure that anybody who buys seed is going to be able to actually use it because if you buy the GMO seed, and of course you don't have the herbicide to protect it, you really didn't do much, aside from the issue of the possible anti-competitive issue of that.

MR. KLETT: And also, Mr. Ascienzo, in terms of their production structure, they're fully integrated. They've invested $200 million for their new plant. They own their own phosphate mines, and I think they actually put in a petition to open another phosphate mine in Idaho, so to support their fully integrated operations, it's probably not their business model or interest to just put in a formulator.

MR. HEIDE: Also, they would not have any longer this cost of goods. Right now, with this fully integrated system Monsanto is having, they have very little storage, very little warehousing, everything optimized, and so they say what does it bring to us if you were to gain additional 10 percent or 15 percent market share here, and so I think they just focus on their business concept.

MR. BERNARD: They're already sold out. They sell it at a lower price.

MR. ASCIENZO: Mr. Bernard, I want to make sure I have your point right. I think you said a few minutes ago that you thought Albaugh's business model was flawed. Correct me if I'm wrong, but I think what you were trying to say was either that would integrate more along the lines of Monsanto or just buy the glyphosate and formulate it. Don't bother with the PMIDA route, is that about it?

MR. BERNARD: Yes. That's right. It's going to be more expensive if you take the very last step of something. You have to pull it out of the process. You have to prepare it in order to ship it. You have to bring it over here. You have to bring it to your plant. You've got to put it back into a reactor. You've got to react it. You've got to

process it again to formulate it and so forth. That's inefficiency.

If they were backward integrated like Monsanto, as soon as you make the PMIDA, go ahead and convert it to glyphosate in the same facility. Then, if you're back-integrated like Monsanto, I know Rainbow in China is integrated in the same way, they can reclaim the formaldehyde. It's not an expense to them. It's a bonus. It contributes to the bottom line in the glyophosate production instead of a liability.

That's why it's a flawed business plan. I've looked at it. I had the equipment at Cedar Chemical to make glyphosate, make it back out of PCL3. I could have made it out of PMIDA, so I could have gone back like Monsanto, but we didn't have the position on raw materials here in the U.S. to go back as far as Monsanto, and it didn't make sense to start with PMIDA. I couldn't make it work even though I had the equipment at West Helena, Arkansas, that could make 12 million pounds a year. I couldn't make it would. Unit 3 was perfect for glyphosate.

MR. HEIDE: I speculate here on the motivation of Albaugh, and we dealt with Albaugh Company before, and I know Dennis Albaugh personally.

He's a very smart guy, so he did not do an easy and stupid at that time. At that time when he decided to set up the PMIDA conversion plant in the U.S., the PMIDA, ex-China, was available in excess and was available at a low price.

Later the Chinese changed it a little bit, and they said why should we sell at a lower price the PMIDA if we just blow the air in and make it glyphosate and then sell the glyphosate at a slightly higher price, so the excess of that material was not that easy anymore. Another reason is we all in the industry know that Monsanto had that consideration of launching anti-dumping secrets against Chinese imports.

They did this import before. They did this in Europe before. They did it in Argentina before, and in Argentina, Dennis Albaugh did the same. He invested in Atanor, a PMIDA conversion into glyphosate for the same reason. He said if this is going to happen, I'm ready, so I think it is a smart decision. It did not turn out this way. Everything came a little bit different than he thought, but basically it was the right decision.

MR. ASCIENZO: Well, the reason I asked, and I think it was made public this morning that they

wouldn't have brought a petition at the end of '08 because they were making money, but I think you probably just answered it as the PMIDA was relatively cheap.

MR. HEIDE: Well, Monsanto talked about that petition already in 2006 to me, so at that time, they thought already about it, so that was much earlier than it happened now.

MS. MENDOZA: Also, I don't know if you noticed this morning one of the things that they were talking about was the fact that the price of PMIDA was relative to the price of the acids in China on a comparison basis, but the PMIDA was getting more expensive, so I think that also kind of explains what was going on. I mean, basically they're sourcing a different product in China. That product was getting more expensive during certain periods, cheaper, and so basically these decisions are being made based on the cost of the raw materials in China.

MR. HEIDE: There was one other aspect which I forgot to mention. At the time when I would take that decision, there was still a patent on this major catalyst used to convert PMIDA into glyphosate. Spencer mentioned that catalyst here before, that special technology. Monsanto had a patent on some

catalyst earlier, so some of the Chinese exporters face that problem that they could not use a Monsanto-like catalyst to export to the U.S.

Some companies, like our company, Helm, we bought the right from Monsanto to use that catalyst so we can do it in a legal way so we could always import PMIDA-based glyphosate into the U.S. in a legal way. Other companies did not have that advantage because they did not have the funding to pay that license fee to Monsanto, and about Albaugh's situation, I don't know whether he's having a license agreement with Monsanto or not. I have no knowledge about that.

MR. ASCIENZO: Thank you. I asked a question this morning of the panel what would be your capital expenditures? How much money would you have to put out to build an economically efficient formulation plant today? You can answer now or in the post-conference brief.

MR. BERNARD: Yes, I can tell you.

MR. ASCIENZO: Okay.

MR. BERNARD: There's two ways to do it. You can do it the Bob Shockey way, who owns Drexel Chemical, and we go out and buy all the used equipment and all used tanks, and we cut them up, and we weld them back together. That was $2 million is what we

invested, and we have a facility that can make formulate, 20,000 gallons per eight-hour shift. Now, if you went out and did it the Dow way or the Monsanto way or the Syngenta way or the DuPont way, that would cost you about $10 million.

MR. HEIDE: We did spend more than triple that amount, but Bob Shockey's much better than us.

MR. ASCIENZO: Is there general agreement with the other parties that that's essentially correct, or do you want to respond in the brief?

MS. MENDOZA: I think we'd like to respond in a brief. I mean, I'd like to give a serious answer to this question.

MR. ASCIENZO: Okay.

MR. BERNARD: Well, that's just steel. Now, if you want to come to Memphis, I can show you one of our plants, and I can take you down the street and show you the DuPont plant we bought. I mean, gee whiz.

MR. HEIDE: There's one big difference between the various formulators. There are some formulators which are just washing down glyphosate. So they take a solid already, a 62 percent solid, and they just filter or adding water, adding second systems antiform, filtering it and then putting it

into the final packaging. That's fairly inexpensive.

What Drexel is doing and what Helm is doing is we are doing the amination step, so to form solid out of the glyphosate acid, and this requires a reactor. It's a chemical reaction, and it's not easy to do, so you need to have a reactor which is heat and pressure resistent. You need a cooling unit because you create a lot of heat during that process. That process is highly explosive, so you need to have a lot of know-how, and you need to have the right equipment.

Everything needs to be explosion proof, and then also you need to have the right building, facility and outside surrounding in order to make sure if something happens, if you have a little explosion or whatever that nobody gets harmed, so this is much more expensive, so Drexel and Helm, we are doing this amination process. Albaugh is doing the same, but most of the other formulators, they don't do this amination step.

MR. ASCIENZO: Thank you very much.

MR. BERNARD: But you also have to consider the cost of getting into the market, and that can be over $10 million if you do everything, and then there's continuing costs as well because there's a data call in for glyphosate. Currently, all of us are

in the process of putting together a testing protocol for evaluating all of our products, including glyphosate for any kind of disrupter properties.

You're going to have all of these continuing costs, and we share in it equally, Albaugh and Monsanto alike, so it's not just flipping a switch and getting a milk bucket to stir up some stuff and put it in a jug.

MR. HEIDE: And I thought that this was part of your question to say how much does it cost really to enter the market, so besides the formulation plant and logistics, you also need to address registration, and the registration with all the confidence today, I think if you ask four or five different consultants, you will get ball park figures of something between $4 to $10 million for the glyphosate within those numbers.

MR. BERNARD: Now, I didn't include the cost of the land and the building and the rail spur and all of that. It's just the tanks we put in was a couple of million.

MR. CAMERON: So we'll try and get some actual detail.

MR. BERNARD: Yes.

MR. ASCIENZO: Ms. Mendoza, yes.

MS. MENDOZA: No, we'll pull it together. We'll give you a complete answer.

MR. ASCIENZO: Okay. Thank you.

MR. CAMERON: It's anywhere between $12 and $150 million.

MR. ASCIENZO: We'll get it up there, yes. Production, is it year round for your facilities also, and this is kind of a two-part question, and then let's say you know things are bad, like, for instance, I think Mr. Klett said earlier in 2009 you had a cold, wet spring, so presumably you're in the market, you would know things aren't going to be so good. What do you do? Do you shut down period? Do you decrease production? Do you do a mix of things? How does that work?

MR. HEIDE: In Helm, it's like this. So we do not own production. We are using a toy manufacturer, but we did all the investment and we are controlling that plant. And we did the decision at that plant, we did not lay off anybody. We're just slowing down. We are running sometimes one shift or two shift instead of three shift. But, we made so much good money in 2008 that we took a social decision. We said for a limited time, we don't need to send somebody home. So, in Helm, nobody got laid

off. That's just for us.

MR. ASCIENZO: Others?

MR. BERNARD: We didn't lay anybody off either. Actually, we continued to formulate. Now, as far as answering your question, we don't know it's going to rain until it rains. We don't know it's going to be cold until it's cold. So, we were all anticipating that the oil market would be crazy, that the oil seed market would respond, that there would still be the bio fuels being made, and we would still experience the robust industry that we had. And it would have been had it not been the fact the farmers couldn't get in the field and apply their compounds as they're accustomed to. And it's not just glyphosate. I mean, atrozine was the same situation, the same bubble. You take fertilizer, same situation. Diesel fuel, same situation.

MR. HEIDE: What helped us a lot not to close down the facility completely and not to send somebody home was the fact that we have a long-term supply agreement with China. That's true. But, we don't have any price fixing on that. And I think with most of the people in the industry, and this was your question before, there's no price fixing. There are guidelines on how to determine the price, but nobody -

- a fixed price, okay, fixed price -- okay, sorry.

MR. CAMERON: There's a difference between a fixed price --

MR. HEIDE: But, you know what I meant to say. So, nobody in China signing up on a contract for three years supply that you say I commit to you on behalf of our company 10,000 tons, 20,000 tons, and we have one fixed price written in that contract. Nobody does that. So, there are some descriptions how that price is going to be determinated close to the time of delivery. This is what most of the people in the industry do, at least this is my knowledge.

MR. ASCIENZO: Thank you, very much. I have one last question. I'm going to wade into Monsanto again. So when we get their questionnaire, what would you have us do with it? We've got --

MS. MENDOZA: We haven't thought ahead that far yet.

(Laughter.)

MR. ASCIENZO: I've heard a lot about --

MR. CAMERON: We've got our speculation.

MR. ASCIENZO: So, we've got swap agreements and we've got rebates and tying arrangements. Anything else that we should be looking out for?

MS. MENDOZA: Well, the other thing is

obviously the Roundup has a big premium, right, in terms of pricing. So, you've got to be sure you take that into account. I mean, I know your questionnaires says that they're supposed to take out any rebates and all that. So, I mean, to some extent, they are going to have to do that. But, I mean, the problem is that, you know, it's not really just a price issue. It's also a volume issue. In other words -- I mean, they basically are controlling the amount that anybody can compete with them through these arrangements. So, while it's true, you're going to see the price from Monsanto, you know, complicated by the fact that you have Roundup in there and rebates and all that kind of thing. But, I think -- I think that in some ways, you almost have to look at the generic prices as an indication because they're going to be so may things in the Monsanto price that are going to be difficult to separate out. But, I mean, once we see it, we would probably have more comments on it.

MR. ASCIENZO: That's it? If that's it, that's all I have. Thank you, very, very much.

MS. DEFILIPPO: Thank you, Mr. Ascienzo. We will turn now to Mr. Deyman.

MR. DEYMAN: I am George Deyman, Office of Investigations. Page 31 of the petition cites a June

25, 2009 article in the St. Louis Post-Dispatch, which talks about Monsanto's plans to slash the 900 jobs. And it also states that "they," meaning Monsanto executives, "were caught off guard by a flood of inexpensive Chinese-made herbicide that quickly eroded sales. How do you reconcile that statement, if it's true, with the fact that Monsanto was or maybe it still expanding its plant in Louisiana?

MR. HEIDE: Progress in the technology. The new plant is so much better that they don't need so many people anymore to run a bigger capacity with lesser staff.

MR. CAMERON: Look, I mean, let's be honest. Press statements that companies make at times of layoffs, it's much easier to say the imports did it rather than I made this decision because of my own business decision and the structure of the company. So, let's look at -- you know, all these press clippings are very interesting. We heard basically -- this morning, we were treated to a causation case build upon press clippings because, of course, we don't really have the dominant player in the market to actually analyze the data and analyze the market. Generally speaking, this Commission doesn't make its causation decisions based upon press clippings.

And so, I mean, it is what it is. Let's see exactly what the data is and that data isn't their 10Q. I mean, if we're going to talk about their 10Q, let's talk about their projection of $680 million in profits this year. I mean, let's -- you know, let's look and see what the data is. But, I think that the answer to your question is you can't reconcile them if you take everything at face value. But the one thing we have is a press statement with respect to layoffs, as opposed to real dollars that's being invested in production facilities. And I believe that we have given you exactly the economic fundamentals of their business logic, which seems awfully sound, as to why it is that they would look at this as a growth market and worthy of putting their money in. So, that would be my answer.

MR. DEYMAN: I have a question for the gentleman from the May Corporation. You mentioned in your statement earlier that Monsanto has control -- I'm sorry, that Monsanto has limited the quantities that it supplies to formulators. Is that something that it does annually? Or was it a one-time deal? Or what?

MR. PUECH: Well, in the past there were several companies, who used to source the glyphosate

from Monsanto and then Monsanto decided to notify them that it would no longer be able to supply them and converted all its capacity to Roundup brand, rather than the various generic brands that were out there.

MR. DEYMAN: I see, I see. So, now, MEY Corporation is a formulator, I suppose, right?

MR. PUECH: We're importer and seller, but we don't formulate. We depend on friends like Drexel and others to formulate for us.

MR. DEYMAN: That's why you said earlier that you didn't know Monsanto's prices because you don't presumably -- I haven't seen your questionnaire responses -- so, you don't purchase from Monsanto.

MR. PUECH: No.

MR. DEYMAN: I see. To what extent, if at all, is glyphosate sold in conjunction with other products, other than the Roundup Ready seeds, but like with other herbicides? Does that happen to a great extent?

MR. PUECH: Well, I can't answer for all of the companies, but many companies are mixing their own chemistry with glyphosate and selling the combination. Monsanto was one of them. They sell a combination of glyphosate with another active ingredient and so do many other of our competitors of this business.

MR. HEIDE: Glyphosate is a product, which sells very regularly. So, many times, it helps us to fill up trucks. When we send a truck across the country and I have product A and B in a very small volume, it would be extraordinary expensive to put that on the truck alone. So, glyphosate as many times also sell this item, which then sells together with other herbicides or echo chemicals. It's in the combination.

MR. DEYMAN: Right.

MR. HEIDE: So, it not necessarily always need to mean that you're going to mix those products later and apply them for the same purpose, but people bundling their purchase to contract that way that they put it together with glyphosate.

MR. DEYMAN: Right. So, in bundled purchases, though, does that affect the price of the glyphosate; that is, do you sort of average the price sometimes?

MR. HEIDE: Many times, yes.

MR. BERNARD: Sometimes yes, sometimes no, it depends on the situation. Also, in premixes, you may be using the glyphosate as the instrument to put your other active ingredient into the market, as Syngenta does.

MR. DEYMAN: I know we're all skeptical of press releases and I agree with you fully. But, you know, there have been several in the petition and elsewhere that talk about large capacity increases in China. For example, China Chemical Reporter, January 21st of this year says that the Nanjing Redsun Group Corporation is completing a glyphosate production line of 100,000 tons, which is a significant amount, to be completed at the end of 2010. I could give you two or three others here, but --

MR. HEIDE: That project has been terminated.

MR. DEYMAN: Pardon?

MR. HEIDE: That project has been terminated because of the situation in glyphosate. So, publishment doesn't mean facts because they publish it at a time when they thought that they're going to do it; but, meanwhile, they terminated it. And as I said, if we analyze capacities in China, we really need to look at the running capacities and not about announcements and not about replacements and so on. The Chinese are very, very by the system in China. You need to understand that system. In order to get the public attention, to get the funding and so on, they always make big announcements in China and the

announcements are always five times off the reality. That's just traditional over there. So, with press releases in China, I would be very, very careful.

MR. KLETT: I think also, Mr. Deyman, your typical situation when you see capacity increases is additional volume into the U.S. at prices that are going down. And in this case, you have some capacity increases based on your own questionnaire data, but it was correlated with increased volumes to the U.S. at higher prices, not lower prices. I mean, they were being pulled into the market. In 2009, even though you had some additional capacity increases based on your own questionnaire data, you actually saw a decrease in imports from China, not only year over year, but basically the decrease accelerated during the year.

MR. CAMERON: Yeah, the other thing that you ought to take into account is that this isn't the normal Chinese case, where you've got one response for the entire industry and the domestic industry gets to throw stuff at it and say, well, you know, obviously, the capacity is unlimited and who knows and by the way, I bought some publication out there and it says that there's five gazillion tons of unlimited capacity. Here, we've got responses that account for

90 percent of the exports to the United States -- or imports to the United States. You have hard numbers in this case. There's been a lot of cooperation. As a matter of fact, I mean, I don't want to throw stones or anything, but I would suggest to you that you have greater coverage of imports from China than you do of the domestic industry. So, I think that's a rather unusual situation. I haven't really faced that in many of these cases -- just saying.

MR. DEYMAN: I understand that and we thank you for that. And you had a very good response --

MR. CAMERON: You're welcome.

MR. DEYMAN: -- from the Chinese producers.

MR. CAMERON: And to hear the discussion about how difficult it is for a domestic producer to fill out these questionnaires, I mean, we spent four days coordinating responses for 15 Chinese Respondents. I understand that it's difficult. But, we were able to actually get some of them in on time and the rest of them were actually on time, too. It's unbelievable sometimes, you know.

MS. MENDOZA: If I could just add, the other thing that we would like to do in our brief is to show you how what we've reported, in terms of exports, correlates to the export data from China and also

import data that's confidential, but we'll be discussing in our brief. So, I think when we talk about 90 percent coverage, I think we're going to be able to show that in fact with the responses that we have in, we do have coverage of virtually all of the exports from China and imports to the U.S. from China.

MR. DEYMAN: Absolutely and I thank you. The gentleman from Helm Agro earlier mentioned installed capacity versus real capacity. Do you know offhand in your questionnaire responses what capacity was reported for your clients in China?

MS. MENDOZA: I mean, we can confirm it; but, basically, I mean, it's design capacity, which is full capacity. It doesn't -- I mean, and then you ask them to take into account all the factors that limit it, which were the discussions that we've been having about practical capacity. So, certainly, to a great extent, that exists. I don't know, you know, exactly how you go about quantifying how much that is and I guess it would vary by producer. I mean, we're happy to talk to them and ask them about it.

MR. HEIDE: Yes, we can provide that. I'm jut returning from Asia and I talked to the major five producers and they all are pretty supportive and they said we apologize that we do not speak any proper

English, so all this communication is a little bit difficult for us. But, we are working on those figures and they said you are also welcome to come and investigate us. But, they are going to be fully supportive and we can make those figures available between installed capacity and running capacity, to the best of our knowledge.

MR. CAMERON: We would actually prefer that any investigation you do be on your own time on vacation after you terminate this investigation.

MR. DEYMAN: Exhibit 8 of the petition mentions, again, a press release from China Research and Intelligence, which discusses the export tax rebate in China. It said that the export tax rebate on glyphosate was increased from five percent to nine percent, effective November 17, 2008. First of all, is that correct? And have there been any other changes to the export tax rebate that you know of or do you expect any such changes in the foreseeable future?

MR. CAMERON: I can honestly tell you that I don't know the answer to that question. I will be glad to get you the answer to that question and respond to you in the post-hearing brief. But, I will also note that there was no countervailing duty

petition that was filed on this case.

MR. DEYMAN: And my last question is the antidumping petitions in the third countries, you said that there are no current orders, except perhaps the two percent one in Brazil. But, if there is any other information you can give us on any of those cases, please do so in your post-conference brief.

MS. MENDOZA: We would be happy to do so. I actually have sort of the whole history in front of me, so we'll include this as an exhibit.

MR. CAMERON: It is interesting when you look at the responses to see the significance of exports to third countries. So, it's pretty significant.

MR. DEYMAN: Great. I have no further questions. Thank you.

MS. DEFILIPPO: Thank you, Mr. Deyman. And I think I just have a couple of things to clarify and I apologize if they've been said. In a question I believe by Mr. Deyman, he was referring to the testimony here that talked about Monsanto controlling their sales and pulling back -- I don't know the exact language. Do you know, is Monsanto selling the acid product now?

MR. PUECH: They're offering it to just

about everybody who is in business --

MS. DEFILIPPO: For formulation -- to formulators, okay. And Mr. Puech, in your testimony, you talked about crop protection that Monsanto offers only if the farmer uses Monsanto's Roundup. So, if you, for example, were to purchase the acid from Monsanto and then formulate it, would you be offered that crop protection or is it only the fully produced product by Monsanto?

MR. PUECH: The crop protection applies to those who buy the seed and then if the seed --

MS. DEFILIPPO: Right.

MR. PUECH: -- doesn't germinate because of cold weather or floods or whatever, then Monsanto replaces that seed free of charge provided that customer is using their Roundup brand herbicide.

MS. DEFILIPPO: Right. So, if you had sold the glyphosate product to a farmer that had bought those seeds and it didn't work, but you had used Monsanto's input, that still would not --

MR. PUECH: Yeah.

MR. HEIDE: It doesn't qualify, no.

MS. DEFILIPPO: Okay.

MR. PUECH: It does not qualify. It's a very powerful tool and almost all the first grade that

goes out over the top is their brand because of this.

MR. HEIDE: On that product, you will have your own label, not the Monsanto label, and only a product with a Monsanto label would qualify for these refunds or guarantees.

MS. DEFILIPPO: Okay, that makes sense. I think Ms. Bryan asked this question, but I think in a different way, in terms of sales prices, whether they would be the same if it were U.S. produced acid versus China. If you are doing both, importing the glyphosate acid and then formulating here and then you're importing the, I'll call it the formulated product, are you selling those two products for the same price? And if any of this is something you'd rather answer in a confidential environment, that's fine.

MR. PUECH: We have to sell to compete with our competitors. So, it doesn't matter where our goods come from, if they're formulated here or formulated in China. Ultimately, we have to compete with our competitors. So, the price is the same.

MS. DEFILIPPO: The price is the same?

MR. PUECH: Yeah.

MR. HEIDE: We do not even separate the product. Actually, in the production, whether we get

the raw material from Monsanto or from China, you know, we don't separate it. It all goes into the same tank and at the end, we have the same end use product. And as Mr. Puech said correctly, the market is determinating the price, not the import cost. So, the product will not get separated.

MS. DEFILIPPO: Right. Are you importing also the formulated product?

MR. HEIDE: No. We import acid from China and we buy acid from Monsanto and it all goes into the same tank.

MS. DEFILIPPO: Okay. But, are you, Mr. Puech, importing formulated product and acid and do you ever -- would you combine those to sell those or are those kept separate?

MR. PUECH: Well, there's separate manufacturing --

MS. DEFILIPPO: Right.

MR. PUECH: -- you know, so the stuff from China comes already packaged for you to sell.

MS. DEFILIPPO: Right. Okay, so you just sell that separate?

MR. PUECH: We sell that separately.

MR. KLETT: Ms. DeFilippo, this is Dan Klett. Generally, based on my review of the trade

data, the direct imports of the formulated is a very small part of the total imports from China. I've calculated may 10 to 15 percent is formulated and the other 85 percent is acid or 62 percent.

MS. DEFILIPPO: Okay. I believe this is my last question. Mr. Puech, in your testimony, you were talking about the three distinct markets are segments of the glyphosate business and you talked about the third segment being retail, saying it's highly significant. This morning, I think we heard it was maybe less than five percent of the total market. Would you agree with that estimate or do you think it's a higher portion of the total market?

MR. PUECH: I think it depends on how it's defined, but the way we define it, it's the home and garden sales to customers like you and I. It's a very profitable and very large dollar volume business. I think Stanley mentioned maybe 28 million gallons sold in that market and the prices are triple and quadruple what they are in the ag business.

MS. DEFILIPPO: Did you have anything to add, Mr. Bernard?

MR. BERNARD: Yeah. It's true, it's maybe only 20 percent of the ag market, but it's a very valuable market and it is big.

MS. DEFILIPPO: So, it might vary whether you did it based on a value basis or a quantity basis?

MR. BERNARD: It is a very large market. I can't tell you who told me what the exact quantity was because Monsanto is in the room.

MS. DEFILIPPO: That's okay. I don't need that. I think those are all the questions I have because staff did a good job. Does anyone have any follow-up questions?

(No response.)

MS. DEFILIPPO: Seeing none, I will thank you all, very much, for coming and presenting your testimony and answering our questions. It's been very helpful in understanding the market.

MS. MENDOZA: Thank you, very much.

MS. DEFILIPPO: Counsel, do you want to take a short break before closing statements or do you want to just head right into those? Sure, we'll do a five minute -- we'll actually do seven because it's easier to start; 3:25, we will reconvene for the closing statements.

(Whereupon, a brief recess was taken.)

MS. DEFILIPPO: We will now reconvene and hear closing statements. And we will first hear from Mr. Greenwald on behalf of those in support of

imposition of the antidumping duties.

MR. GREENWALD: Thank you, very much. I will try -- it's been a long day and I will try to be very brief. I want to go to some of the information in the slides. But, what I would like you to do as you leave this and then you get ready to go back and look at all the questionnaire responses that are now on or will be coming in the record is to try and summarize, points on which everybody agrees and points on which there are -- there may be some dispute.

It's clear that we all agree that glyphosate is one like product. And the important part there is that we're talking about glyphosate. We're not talking about non-glyphosate. The Respondents didn't say so directly, but it is uncontroverted that PMIDA is not glyphosate. It is the last step in a glyphosate production process. So, the idea that somehow Albaugh, which spent $40 million or more on a plant to make glyphosate, is the same as a group of formulators that some of them spent two million dollars, I think, on a formulating mixer and others who apparently contract out their formulating, basically the toll processors; that Albaugh and those companies are somehow equivalent is simply not supported by any of the evidence on the record. And

what does that mean in terms of your analysis of what's going on here?

What you've actually heard from are two or three companies that are formulating based on Chinese acid that want to say to you, our business model is to buy Chinese acid, to make it into a salt or a fully formulated product, and we are able to do that when the purchase price we pay is far below any reasonable standard of cost because the antidumping laws are not meant to reach imports of glyphosate technical at far below cost prices, as long as they are formulated here. That is a position that I don't think is going to hold up as a matter of law and certainly shouldn't hold up as a matter of policy.

But, if I could back up. At the very end of the Respondents' testimony, we heard, and I don't know quite who it was, but the question I think you asked, Ms. DeFilippo, is, is Monsanto offering acid to formulators. And the answer was, they sure are. They're trying to get anybody to buy, who can buy it. The answer was not, oh, yeah, and we're going to go right to Monsanto's door. The answer was, they sure are. The unstated part of the answer is, we're not buying any. We have terrific supply arrangements that give us access to dumped imports from China and that's

our business model.

On discussing Albaugh's business model, we were told that, in one case, that one company, they just wouldn't have done it under any circumstance, but another company, another Respondent said, it was a good idea, but it just doesn't work when the price of pamida relative to glyphosate is too high. That's true. It also makes the point, I think, as elegantly about the impact of access to dumped glyphosate acid, more elegantly than I think we did all morning. The fact of the matter is that Albaugh had to shut down its plant and it had to lay off its workers because unlike Respondent formulators, the opponents, Albaugh does not rely on dumped glyphosate inputs, glyphosate technical from China.

Now, let me close in going to some of the things that were in Mr. Klett's presentation, if you have it there. If you look at the first chart, it talks about the sales of glyphosate and pamida to Monsanto and Albaugh. The way they have defined the produce and the way we define the product, that is a red herring. The pamida part of this has no business being aggregated with the glyphosate part of it.

The next slide is a bunch of acres that are being planted and demand. And, in fact, the story you

see is more or less consistent with the story that was told this morning, demand has been rising fairly steadily over time.

The next part goes to what really happened in the market and that is what factors drove the prices down. Nobody disagrees that the price of glyphosate in the United States collapsed and that the profit margins of everybody that were involved in this business collapsed with the collapse of price. The factor affecting the market, by far the largest, is oversupply, now they say purchased while prices were high. And there is truth in the fact that most of the Chinese imports did come in when prices are high. But, the collapse is not a function solely of prices -- or of the prices when the demand was high. It's a function of the comparison between those prices and prices that are being offered now in the marketplace. So, you have inventory that has built up. The impact of that inventory on a business depends entirely on where the price point is in today's market.

And that's where I would like to conclude. If you would go to page nine of Mr. Klett's presentation. We have talked about the collapse of prices and we have talked about the impact on Albaugh's business and what you see here is, I

believe, a fair representation of pricing indexed. So, in 1Q-2007, we have 100. And if you go over to 4Q-2009, you see really -- well, from the second quarter of 2009, you see a steady decline. And you look at the number there and you say, ah, that's not a very big line. I mean, look at that big spike in the middle. The fact of the matter is, as I read it, it is about a 25 percent decline over the period from one end to the other. We have given you testimony, and it hasn't been rebutted or contradicted, that prices were still falling.

The reason prices are doing what prices are doing is a function of a capacity buildup in China. It is sophistry to suggest that there is not an impact on the price that a large Chinese producer can sell it because of the availability of supply in China from small producers. If the source of these data are what I suspect they are, in fact, what you have in this price decline over the period are prices of large Chinese producers. They are the prices that when you get down to the formula drive the market for formulated product. So that when again, Albaugh looks at its business model and makes a decision on whether or not it has to close its plant, it has to look at this glyphosate price for technical. It can look at

the price of pamida. It could look at the cost of making the glyphosate and it reaches a decision.

The price chart that Mr. Klett has provided essentially makes the case that we want to make; that, in fact, Chinese producer pricing is what forced Albaugh's hand. You can criticize the Middle business model all you wanted; but if the imports are sold at fair value, I guarantee you the business model makes perfect sense. The difference between the success and the failure of that model depends entirely on that, the access that others have to dumped supply.

So, again, let me come back. As I've said all along, I cannot talk with any knowledge about Monsanto's debt. It is, however, instructive that Respondents have said that Monsanto is actively looking for their business in the glyphosate technical supply area and I have the impression that they are not about to get it, as long as they have access to dumped supply. The same is exactly true for Albaugh's business model. Thank you.

MS. DEFILIPPO: Thank you, Mr. Greenwald. We will now hear from Respondent's closing statement.

MR. SJOBERG: Will Sjoberg on behalf of the Respondents.

MS. DEFILIPPO: Thank you.

MR. SJOBERG: What you just heard was the volume side of the equation. They kind of give you the value side of the equation. To sum up, Albaugh, a formulator, filed the petition for the sole purpose to stifle competition from its U.S. formulators. To the extent that Albaugh is a member of the U.S. industry, so are the rest of the formulators, to the extent that Albaugh tries to distinguish itself by saying that we buy U.S. technical, so, therefore, we're a member of the U.S. industry is hogwash. To the extent that they say that we oxidize PMIDA and, therefore, we're a member of the U.S. industry, I submit to you, ladies and gentlemen, all they're doing is blowing bubbles.

Albaugh's sudden cessation of imports of PMIDA and technical from China and here leading up to the filing of the petition should be seen for nothing but for what it is, a transparent attempt to rapid sale from the fly the purposes of this proceeding. The only thing that Albaugh has in common with Monsanto is the fact that they share the same counsel. They are a formulator just like all the rest of them are.

Monsanto is the 800 pound gorilla, from which we have not heard, stands to gain a windfall should the investigation result in an order. That

windfall would be in addition to the enormous profits it already reaps from its 75 percent market share gained through its integrated tying agreements that tie the sales of its branded Roundup sales of its GMO seeds and technical data. Should Monsanto ultimately support the petition and claim injury by reason of imports of glyphosate from China, the staff need only focus on the facts that, number one, Monsanto increased its purchase of DSIDA, a precursor for glyphosate, invested into it in 2008, $200 million to increase capacity and is currently petitioning the Bureau of Land Management to open yet another phosphate mine -- actually, the petition is going on. The petition was filed in 2009. These are clearly not the acts of an industry that's been injured or threatened with injury.

Finally, the market. As set forth during the testimony, glyphosate price increases and subsequent decreases during the period of investigation were the result of a combination of normal market forces and Albaugh's bad business decisions. The price of glyphosate during the POI tracked the market price of phosphate inputs, fertilizer, and petroleum. Based on the foregoing, we submit that there is no indication that the domestic

industry is materially injured or threatened with materially injury or that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports. Thank you.

MS. DEFILIPPO: Thank you, very much. On behalf of the Commission and the staff, I would like to thank the witnesses who came here today, as well as counsel, for helping us gain a better understanding of the product and the conditions of competition in the glyphosate industry. Before concluding, let me mention a few dates to keep in mind. The deadline for submission of corrections to the transcript and for submissions of post-conference brief is Tuesday, May 4th. If briefs contain business proprietary information, a public version is due on May 5th. The Commission has tentatively scheduled its vote on this investigation for June 2nd and it will report its determinations to the Secretary of Commerce on June 4th. Commissioners' opinions will be transmitted to Commerce on June 11th. Thank you all, very much, for coming. This conference is adjourned.

(Whereupon, at 3:40 p.m., the preliminary conference in the above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Glyphosate from China

INVESTIGATION NO.: 731-TA-1178

HEARING DATE: April 22, 2010

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary Conference

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: April 22, 2010

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).

SIGNED: Rebecca McCrary
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: Christina Chesley
Signature of Court Reporter