March 31, 2010

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Case No. A-570-969
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Investigation
Proprietary Information Deleted on Pages 4, 7, 8, 16, 26-30, 32-35 and in Exhibits 2, 4, 8 and 10.

PUBLIC VERSION

CBI 10-164

The Honorable Gary Locke
Secretary of Commerce
Attn: Import Administration
APO/Dockets Unit, Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

The Honorable Marilyn R. Abbott, Secretary
U.S. International Trade Commission
Room 112A
500 E Street, S.W.
Washington, DC 20436

Re: Glyphosate from The People's Republic Of China

Dear Secretary Locke and Secretary Abbott:

Enclosed is a petition requesting imposition of antidumping duties on imports of glyphosate from the People's Republic of China on behalf of Albaugh, Inc. ("Petitioner"). We hereby certify that this petition is being filed simultaneously with the U.S. Department of Commerce ("the Department") and the U.S. International Trade Commission (the "Commission"), as required by section 351.202(c) of the Department's regulations, 19 C.F.R. § 351.202(c), and section 207.10(a) of the Commission's regulations, 19 C.F.R. § 207.10(a).

On behalf of Petitioner, were hereby request proprietary treatment for information designated as proprietary in the Petition, pursuant to the Department's regulations codified at 19 C.F.R. §§ 351.105 and 351.304 and the Commission's rules codified at 19 C.F.R. § 201.6. The information for which Petitioner requests confidential treatment is Albaugh's proprietary information (*e.g.*, its period of investigation production, shipments, etc.) and market intelligence

(*e.g.*, information that Albaugh has engaged a consultant to collect or that Albaugh purchased subject to restrictions on its dissemination).

Petitioner agrees to permit disclosure of proprietary information contained in the Petition under an appropriately drawn APO.

Public versions of the Petition have been prepared and are being filed along with this submission pursuant to the Department's regulations and rules of the Commission.

I hereby certify (1) that to the best of my knowledge, information substantially identical to that described above for which Petitioner requests confidential treatment is not available to the public; (2) I have read the attached submission; and (3) based on the information made available to me, I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

Respectfully submitted,

John D. Greenwald
Patrick J. McLain
Robert McKeehan
David M. Horn
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Counsel for Petitioner

DISTRICT OF COLUMBIA)
)
)

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, on this 31st day of March, 2010.

Notary Public, District of Columbia
MARLAINE D. WILLIAMS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires May 14, 2014

My Commission Expires: May 14, 2014

COMPANY OFFICIAL CERTIFICATION

I, Stuart I. Feldstein, Vice President and General Counsel, currently employed by Albaugh, Inc., certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

Stuart I. Feldstein
Vice President
Albaugh, Inc.

March 30, 2010

PUBLIC VERSION

Total Number of Pages: 144
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Pages 4, 7, 8, 16, 26-30, 32-35 and in
Exhibits 2, 4, 8 and 10.

BEFORE THE
UNITED STATES DEPARTMENT OF COMMERCE
AND THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

GLYPHOSATE FROM THE PEOPLE'S REPUBLIC OF CHINA

CASE NO. A-570-969

ANTIDUMPING PETITION

ON BEHALF OF

ALBAUGH, INC.

Susan Crawford
International Trade Resources, LLC

John D. Greenwald
Patrick J. McLain
Robert McKeehan
David M. Horn
WILMER CUTLER PICKERING HALE
AND DORR, LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 663-6000

March 31, 2010

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I. INTRODUCTION AND SUMMARY

This petition is filed on behalf of Albaugh, Inc. ("Albaugh"), one of two U.S. producers of glyphosate. Monsanto Company ("Monsanto") is the other, and the largest, U.S. producer of glyphosate. Albaugh asks the Department of Commerce ("Commerce") and the U.S. International Trade Commission (the "Commission") to initiate an antidumping investigation of glyphosate imports from the People's Republic of China ("China").

Glyphosate, which was introduced by Monsanto as a commercial herbicide in 1974 under its Round Up® brand name, is the leading systemic, non-selective herbicide for control of annual and perennial weeds. The reasons for glyphosate's success -- it is by far the world's largest selling herbicide -- are its toxicological and ecotoxiological properties, the low incidence of glyphosate-resistant weeds and its adaptability to developments such as no-till production, precision agriculture and genetically engineered crops.[1/] Glyphosate is absorbed on foliar application through green plant parts and is translocated rapidly through the plant to the roots and storage organs in enough quantities to kill the entire plant. By virtue of its effectiveness and rapid weed control, glyphosate plays a vital role in weed control practices in over 130 countries.

Glyphosate itself is an acid which is "formulated" for use in home or agricultural applications with one or more surfactants which spread glyphosate in solution form across the leaves of plants. Glyphosate is commonly distributed to end-users as a water soluble salt (either isopropylamine- or potassium-based) in a liquid concentrate. This petition covers Chinese glyphosate imported into the United States in all its forms, including acid, "wet cake"

1/ *See generally*, Franz, Mao and Sikorski, "Glyphosate: A Unique Global Herbicide," *American Chemical Society*, 1997. We have attached at ***Exhibit 1*** a brief description of glyphosate from *Weed Control Methods Handbook, The Nature Conservancy*, Tu et al., version November 2001.

(essentially acid with higher moisture content) and salt, as well as acid, wet cake or salt produced in China that has been formulated in China or in a third country prior to importation into the United States. Glyphosate "technical," *i.e.*, acid, is typically a 95 percent glyphosate concentrate; glyphosate "wet cake" is typically a concentrate between 82 and 85 percent, glyphosate salt is typically a 62 percent concentrate and fully formulated glyphosate is typically a 41 or a 48 percent concentrate.

Glyphosate can be produced using different processes or production "routes." In China, approximately 65 percent of glyphosate production is from the glycine (or aminoacetic acid) manufacturing process. The remaining 35 percent of Chinese glyphosate production is by the IDA manufacturing process. Albaugh has, accordingly, calculated the normal value of Chinese glyphosate by valuing each of the factors of production used by Chinese producers in each of these two manufacturing processes by reference to Indian factor prices and then comparing the resulting normal values to representative second half 2009 f.o.b. Shanghai export prices for Chinese glyphosate acid of US$2.90/kg. (for production using the glycine process) and US$3.00/kg. (for production using the IDA process) -- *i.e.*, it has followed Commerce's standard methodology for calculating dumping margins in cases involving China. The results of Albaugh's analysis are striking; in each case the normal value is more than three times the export price of Chinese glyphosate over the last six months of 2009.

A. Route to Glyphosate Production	**B. Estimated Normal Value of Chinese Glyphosate ($/kg of acid)**
Glycine Route	US$11.55/kg.
IDA Route	US$13.44/kg.

When compared to representative f.o.b. Shanghai export prices of US$2.90/kg. and US$3.00/kg., these normal values result in dumping margins of 299.65 percent (glycine route) and 349.65 percent (IDA route).

In calendar year 2006, the United States imported 15,404 metric tons of Chinese glyphosate acid (or acid equivalent in the form of wet cake, salt and fully formulated glyphosate).[2/] In calendar year 2007, imports from China rose to 25,564 metric tons and, in 2008, they jumped to 82,316 metric tons. In late 2008, the market for glyphosate collapsed because of the very sharp increase in Chinese supply which led to a vast excess of supply over demand. As a result, glyphosate prices fell by as much as 75 percent. Yet despite the late 2008 collapse of the market, imports of Chinese glyphosate continued to pour into the United States. Over the twelve month period July 2008 through June 2009, the volume of technical or technical equivalent glyphosate imports from China were 100,292 metric tons, or about the equivalent of total U.S. demand in a typical year. For calendar year 2009, imports of Chinese glyphosate on an acid equivalent basis were 69,974 metric tons, down from their 2008 peak, but still well above their 2006 and 2007 levels.

Much of the Chinese glyphosate that was imported during the period July 2008 – June 2009 went into inventory. Thus, despite a pronounced post-June 2009 drop in the volume of imports from China, the combination of a continuing supply of subject imports at very low prices and a very substantial inventory overhang led both to significant cut-backs in U.S. industry production and to a sharp drop in U.S. producer pricing. In fact, the impact of Chinese

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2/ The import statistics for this petition are based on data compiled by an outside industry expert as the HTS numbers that include glyphosate are basket categories that cover a variety of products. *See* ***Exhibit 2*** providing the import data Albaugh has relied on by month and an accompanying declaration from the consultant on the source of his information.

producer dumping on U.S. producer pricing has been uncommonly direct [

].

The cause and effect relationship between the imports subject to this petition and harm to the U.S. industry is also uncommonly clear because imports from third countries are minimal. In 2009, imports of glyphosate from China accounted for more than 98 percent of total imports on an acid equivalent basis. Insofar as the Commission's injury and causation analysis is concerned, therefore, the imports subject to this petition are not "negligible" within the meaning of the antidumping statute[3/] and this petition raises no significant "Bratsk" issue.[4/]

Because a portion of U.S. industry sales is pursuant to annual contracts, the full effect of Chinese export pricing on the profitability of U.S. industry was not immediately apparent. Rather, dumped imports began to affect the bottom line of U.S. producers over the course of calendar year 2009 as sales at sharply lower prices under more recent contracts replaced sales under higher priced contracts that had been negotiated in 2007 and 2008. But by the end of calendar year 2009, the combination of a lower volume of sales and lower prices had

[ ].

The present situation is not sustainable. The U.S. industry's most recent returns will not support continued investment in the business. Unless imports of Chinese glyphosate are subject to antidumping discipline, there is no reason to believe that a sustainable balance of glyphosate supply and demand will be restored any time soon. Inventories of Chinese glyphosate that flooded the U.S. market in 2008 and the first half of 2009 are still significant and *China now has*

3/ 19 U.S.C. § 1677(24).

4/ *Bratsk Aluminum Smelter v. United States*, 444 F.3d 1369 (Fed. Cir. 2006). The "Bratsk" issue is whether an increase in subject imports is at the expense of third country imports instead of U.S. production.

in place glyphosate supply capacity that will exceed the entire world's demand for glyphosate for the foreseeable future.

Even Chinese analysts have recognized that the "irrational expansion of glyphosate capacity in China" has been a major cause, if not the major cause, of the collapse of glyphosate prices world-wide. According to a March 16, 2009 story in the *China Chemical Reporter*:

> "There are two major reasons for the drastic price drop of glyphosate. One is that with impacts from the global financial crisis and the sharp drop of crude oil prices, the planting area of transgenic glyphosate-resistant crops has been reduced in various countries around the world. The other is that the capacity of glyphosate in China has expanded rapidly while the demand has not grown. China's glyphosate technical capacity reached 350,000 t/a in 2007 and could already meet the demand in both domestic and overseas markets. Nevertheless, the capacity was expanded to nearly 500,000 t/a in 2008 and there was therefore serious oversupply. With the restriction of export and the slackness in domestic sales, producers are selling at reduced prices and even at a loss. The price of glyphosate technical is already down from the peak of RMB100,000 per ton to RMB21,000-22,000 per ton. In the vicious market competition, high-quality products can hardly get a high price."

But despite recognition that China's "irrational" capacity expansion created a structural supply/demand imbalance, a subsequent January 21, 2010 article in the *China Chemical Reporter* documents an additional 100,000 tons increase in the Chinese capacity in 2009 and projects an equivalent or even greater capacity increase in 2010:

> "According to statistics, 106 domestic enterprises have registered to make glyphosate technical in China. Their combined capacity reaches 600,000 t/a. The actual output of glyphosate technical was close to 480,000 tons in 2008. It is reported that the 100,000 t/a glyphosate production line of Nanjing Red Sun Group Corporation will be completed at the end of 2010. Construction on the other large enterprises' new and expansion glyphosate projects have already been started and these projects will be completed in 2010. The capacity of glyphosate will increase around 150,000 t/a at that time. According to 2008 statistics however, the annual worldwide demand for glyphosate is only 700,000 tons. The irrational

> expansion of glyphosate capacity in China will inevitably lead to oversupply."

In response to the collapse of glyphosate market prices, both Albaugh and Monsanto reduced their own production and laid off part of their glyphosate workforces in 2009. These layoffs should be temporary -- having brought so much capacity on-stream, the Chinese industry has created a structural problem and it, not the U.S. Industry, must be the one to adjust by shutting down excess capacity. To date, however, China has not only resisted adjustment but its reaction to the collapse of glyphosate prices brought about by its own industry's capacity expansion has been to increase the tax rebate on glyphosate exports from 5 percent to 9 percent. The objective, according to China Research and Intelligence, was to "make more space for the reduction of the glyphosate export price."[5/] There is no reason for the United States to tolerate the erosion of U.S. production and jobs because of Chinese producer dumping that has been deliberately promoted by Chinese government export incentives.

5/ *China Research and Intelligence*: "The Glyphosate's Yield Capacity Will Reach 900 Thousand Tons in 2010," May 14, 2009. *See* ***Exhibit 8.***

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II. PETITIONER

Albaugh is a privately owned, independent U.S. producer of glyphosate acid which both synthesizes its own glyphosate and formulates acid it purchases from Monsanto.[6/] Albaugh's headquarters are at:

1525 NE 36th Street
Ankeny, Iowa 50021
Tel.: 515-964-9444
Website: www.albaughinc.com

The address of Albaugh's manufacturing facility is:

4900 Stockyards Expressway
St. Joseph, Missouri 64504
Tel.: 816-238-3377

The Albaugh contacts for inquiries regarding this petition are:

Stuart Feldstein
Vice President and General Counsel
Tel.: 515-965-5253

Albaugh, which markets its glyphosate under its GlyStar® trademark, believes that it produces approximately [ ] percent of the glyphosate acid produced in the United States and [ ] percent of formulated glyphosate.

6// Albaugh also formulated Chinese acid from time to time when its U.S.-sourced supplies were insufficient to meet demand.

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III. OTHER U.S. PRODUCERS/INDUSTRY DEFINITION

A. Other U.S. Producers

Monsanto is the only other U.S. producer of glyphosate acid. The address of Monsanto's headquarters is:

800 N. Lindbergh Blvd.
St. Louis, Missouri 63167
Tel.: 314-694-1000

All inquiries to Monsanto regarding this petition should be addressed to:

Mr. Alfredo Avila
Assistant General Counsel
Monsanto Company
Tel.: 314-694-5269
e-mail: alfredo.avila@monsanto.com

Monsanto synthesizes its own glyphosate, which it markets under its Round Up® trademark, and also sells glyphosate acid and salt to other companies that formulate the material they buy from Monsanto in the United States. Albaugh believes that the companies that formulate Monsanto's glyphosate in the United States include [ ]:

1. Cheminova, Inc.
   One Park Drive, Suite 150
   Research Triangle Park, North Carolina 27709
   Tel.: 919-474-6600
   Fax: 919-474-6629
   Contact: Mr. Mark Peterson
   Tel.: 919-474-6601

2. Nufarm Americas, Inc.
   150 Harvester Drive, Suite 200
   Burr Ridge, IL 60527
   Tel.: 630-455-2000
   Fax: 866-241-0612
   Contact: Mr. Dale Mellody
   Tel.: 630-455-2019

There is another group of U.S. companies that also formulates glyphosate acid and/or salt in the United States, but because these companies do not produce either acid or wet cake but, instead, rely entirely, or almost entirely, on imported Chinese acid, wet cake or salt to feed their formulating operations, they cannot properly be considered part of the U.S. glyphosate industry. U.S. companies that depend entirely or almost entirely on imports of Chinese glyphosate technical to support their formulating operations in the United States include:

Syngenta Crop Protection
P.O. Box 18300
Greensboro, North Carolina 27419
Tel.: 336-632-6000

Dow Agro Sciences LLC
9330 Zionsville Road
Indianapolis, Indiana 46268
Tel.: 317-337-3000
e-mail: http.www.dowagro.com
Contact: Mr. David Erasmus
Tel.: 317-337-4515

MEYCorp.
121 South Estes Drive
Chapel Hill, North Carolina 27514
Tel.: 919-932-5800
Fax: 919-932-5820
Contact: Mr. Antoine Puech
Tel.: 919-932-5800

Helm Agro
8275 Tournament Drive, Suite 340
Memphis, Tennessee 38125
Tel.: 901-312-1525
Fax: 901-312-1535
Contact: Mr. Volker Heide
Tel.: 901-312-1525

Lastly, there are major glyphosate distributors in the United States that may have the ability to formulate glyphosate salt but which, to the best of Albaugh's knowledge, generally purchase their glyphosate from others. These distributors include:

Universal Crop Protection Alliance
1300 Corporate Center Avenue
Eagan, Minnesota 55121
Tel.: 651-239-1000
Fax: 651-239-1123

Helena Chemical
225 Shilling Blvd.
Collierville, TN 38017
Tel.: 901-761-0050

Crop Protection Services (CPS)
7251 W. 4th Street
Greeley, Colorado 805634
Tel.: 970-356-4400

Winfield Solutions, a Land-O-Lakes Subsidiary
P.O. Box 6421 MS 5725
St. Paul, Minnesota 55164
1080 County Road F West
MS 5725
Shoreview, MN 55126-2910
Tel.: 1-800-328-9680
e-mail: gmfinlay@landolakes.com

At the end of the distribution chain are dealers and growers who purchase formulated glyphosate.

B. Domestic Industry Definition

The antidumping statute defines the U.S. industry as producers of the product that is "like" the article subject to investigation.[7/] Because the merchandise subject to this investigation is (1) Chinese glyphosate acid (technical) and wet cake and (2) glyphosate salt and formulated glyphosate made from Chinese acid or wet cake, the domestic like product is (1) glyphosate acid and wet cake produced in the United States and (2) glyphosate salt and formulated glyphosate made from U.S. acid or wet cake. Under this definition, glyphosate salt and formulated

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7/ 19 U.S.C. § 1677(4) and (10).

glyphosate that is processed in the United States from Chinese acid or wet cake does not qualify as U.S. production of the like product.

The essential herbicide characteristics of glyphosate come from the acid, not the formulation process, which is *relatively* simple and low value. This has led the U.S. Customs and Border Protection Service to rule that the origin of formulated glyphosate depends on where the acid was produced, *not* where it was formulated.[8/] Chinese acid that is formulated in the United States or a third country remains the product of China; thus, companies that import and formulate Chinese glyphosate technical are resellers of Chinese acid, *not* part of the U.S. glyphosate industry.

Moreover, even if the Commission were to define the domestic industry as including U.S. formulators that depend heavily on imports of Chinese glyphosate, they would still have to be excluded from the U.S. industry because they are first and foremost importers of Chinese glyphosate and their interest in this proceeding is as importers of Chinese glyphosate, *not* as domestic producers. As U.S. processors and resellers of dumped Chinese glyphosate acid, wet cake or salt, their U.S. operations are not only fully insulated from the impact of Chinese dumping, but they profit from it.

The antidumping statute permits, "in appropriate circumstances" the exclusion from the domestic industry of domestic producers that are also importers.[9/] In applying this provision, the Commission considers:

[8/] *See* ruling of the U.S. Customs and Border protection service attached at ***Exhibit 3***.

[9/] 19 U.S.C. § 1677(4)(B).

(1) the source and extent of the firm's capital investment;
(2) the technical expertise involved in U.S. production activities;
(3) the value added to the product in the United States;
(4) employment levels;
(5) the quantity and type of parts sourced in the United States; and
(6) any other costs and activities in the United States directly leading to production of the like product.

The investment needed to produce glyphosate acid or wet cake is far greater than the investment needed to produce glyphosate salt or formulate glyphosate from the acid or wet cake. Salt is produced by diluting and neutralizing acid or wet cake; the formulation process dilutes the salt and adds a surfactant. In terms of value added, acid accounts for about 93 percent of the value of glyphosate salt and about 84 percent of the value of formulated glyphosate.

In addition to the far greater capital needed to produce acid or wet cake compared to making salt from the acid or formulating glyphosate, there is a significant difference in the sophistication of the technologies. These differences explain why only Monsanto and Albaugh produce glyphosate acid and salt in the United States while there are many U.S. companies that formulate glyphosate.

IV. OTHER PAST AND PRESENT APPLICATIONS FOR RELIEF

This is the first antidumping petition against imports of glyphosate from China filed in the United States. Albaugh has not filed, and is not filing, for relief from imports of glyphosate under any other provision of U.S. trade law.

In the past, Monsanto has filed antidumping petitions against imports of glyphosate with the Commission of the European Communities, and antidumping authorities in Argentina, Australia and Brazil. Albaugh believes that there is a Brazilian antidumping order against imports of glyphosate from China, that the EU's antidumping measures against imports of glyphosate from China have been suspended, and that the petitions filed by Monsanto in Argentina and Australia did not lead to antidumping orders.

V. SCOPE OF PETITION AND DESCRIPTION OF THE IMPORTED MERCHANDISE

The scope of this petition is all forms of glyphosate imported into the United States from China as well as imports of Chinese glyphosate acid, wet cake or salt that have been formulated in third countries prior to importation into the United States. Specifically:

> This petition covers glyphosate (n-(phosphonomethyl) glycine) produced in China in all its forms and concentrations, whether imported into the United States as an acid, wet cake, salt or formulated product, as well as glyphosate acid, wet cake, salt or formulated glyphosate produced in China that is formulated or otherwise processed into a different form or concentration of glyphosate in a third country prior to importation into the United States. Glyphosate acid, wet cake and salt presently enter the United States under subheading 2931.00.9043 of the Harmonized Tariff Schedule ("HTS"). Formulated glyphosate presently enters the United States under HTS subheading 3808.93.500.

Glyphosate technical or acid is the active herbicide in all forms of glyphosate; it gives the formulated product its essential herbicide characteristics and most of its value. The difference between the various forms of glyphosate is largely in the degree of glyphosate concentration. Formulated glyphosate generally has a 41 or 48 percent glyphosate content; the salt, wet cake and acid concentrations are generally 62 percent, 82-85 percent and 95 percent glyphosate, respectively. Because of shipping costs, glyphosate is most frequently exported in acid or wet cake form.

Neither HTS subheading 2931.00.9043 or 3808.93.500 is specific to glyphosate. The import statistics for these "basket" categories, therefore, are not an indication of the volumes and values of glyphosate imports over the past three years. In the normal course of business, Albaugh relies on import data gathered by an independent consultant to gauge the trends in the glyphosate market. The import data in this petition are based on the consultant's data. *See*

Exhibit 2 for the import data and the accompanying affidavit of the consultant that collects the data.

Because glyphosate is imported in different forms with different concentrations, Albaugh has collected import and domestic production data on a " 95 percent acid equivalent" basis, meaning that the reported weights of imports of glyphosate salt and fully formulated glyphosate have been converted to a technical basis weight. Standard industry practice is to convert the 62 percent concentration glyphosate salt to a 95 percent acid equivalent by multiplying the weight of the salt by 0.4602 and dividing the result by 0.95. Similarly, the weight of fully formulated glyphosate imports has been converted on a 95 percent acid equivalent basis by multiplying the weight of the imports by 0.3093 and dividing the result by 0.95.

VI. DESCRIPTION OF THE PRODUCT/LIKE PRODUCT DEFINITION

A. General

Glyphosate (N-(phosphonomethyl) glycine) is a systemic, post-emergent herbicide with no soil activity or residual action. It can be produced by two distinct processes, each one of which depends on its own set of materials, energy and labor inputs. The two processes are:

1. Glycine Production Process
2. IDA Production Process, which has two alternative pathways:
    a. DEA route; or
    b. IDAN route.

According to reports on glyphosate production in China, Chinese manufacturers typically use the glycine (66.2 percent) or the IDA (33.8 percent) "route" to glyphosate.[10/] We have attached at ***Exhibit 5*** a production flow chart for each of the production processes mentioned above. Because each of the material, energy and labor inputs associated with each are well known (they are largely prescribed by the chemistry involved), Albaugh can estimate with a high degree of confidence the factors of production that Chinese producers use in each of these "routes" to glyphosate production

Glyphosate is produced and sold in different grades or forms of concentration. The chemical reaction processes as described above produce a "wet cake" with a glyphosate concentration of about 85 percent. By evaporating the moisture in the wet cake, manufacturers, including the Chinese, can produce an almost dry acid with a 95 percent glyphosate content.

10/ *See* [ ] (attached at ***Exhibit 4***).

Albaugh (and the Chinese manufacturers) also produce a glyphosate salt by neutralizing it with an organic base (*e.g.*, isopropylamine).

Glyphosate salt is then "formulated" to a finished product with a 41 or 48 percent concentration for use as a herbicide by diluting glyphosate salt with water and blending it with an additive that improves absorption into the plant tissue (*i.e.*, a "surfactant"). The formulation process is a simple matter of blending concentrated glyphosate salt with water and these surfactants and other inert ingredients. There are many companies in the U.S. that are capable of producing their own glyphosate products by formulating glyphosate salt.

There are no significant differences among the various forms of glyphosate in either their essential characteristics or end-uses. Glyphosate acid, wet cake and salt are eventually formulated by the manufacturer, a reseller or the end-user for use as a herbicide. Salt is produced by diluting and neutralizing acid or wet cake. The formulation process dilutes the salt and adds a surfactant. In terms of added value, acid accounts for about 93 percent of the value of glyphosate salt and about 84 percent of the value of formulated glyphosate. The minor processing required to transform acid into formulated glyphosate is fully reflected in the low added value resulting from the process.

B. Like Product Definition

Under well-established Commerce and ITC practice, the various forms of glyphosate constitute a single "domestic like product" and a single "class or kind" of merchandise. The essential physical characteristics of glyphosate are the same regardless of the form in which it is shipped and the end-use is always a herbicide because there is no other significant market for glyphosate.

Because glyphosate's essential characteristics and uses are created when a producer synthesizes glyphosate "wet cake," which it then typically dries to a 95 percent concentration, thereby producing glyphosate technical or acid, the domestic "like product" for purposes of this position is:

> Glyphosate wet cake or glyphosate technical produced in the United States and the glyphosate salts and formulated glyphosate made from U.S. wet cake or glyphosate technical.

Under this definition, formulated glyphosate or a glyphosate salt made from domestic wet cake or acid is a domestic like product, but formulated glyphosate or glyphosate salt made from imported Chinese glyphosate is not. In collecting data from U.S. formulators, it is, therefore, critical to distinguish between their production from U.S. wet cake, acid or salt and their production from Chinese wet cake, acid or salt.

VII. CHINESE PRODUCERS AND EXPORTERS

There are over 100 Chinese producers of glyphosate. Of these, Albaugh believes that the Zhejiang Wynca Chemical Industrial Group Co., Ltd. (80 thousand metric ton capacity, to be expanded by 50 thousand metric tons in 2010), Nantong Jiangshau Agrochemical Limited Liability Company (82 thousand metric ton capacity), Jiangsu Yangnong Chemical Group Co., Ltd. (15 thousand metric ton capacity with an additional 30 thousand ton expansion planned), JingMa Chemicals Co., Ltd. (10 thousand metric ton capacity with an additional 30 thousand ton expansion planned), Jiangsu Good Harvest Weien Agrochemical Co., Ltd., Hubei Sanonda Co., Ltd. and Sichuan Leshan Fultua Agricultural Science Group are the largest. Their addresses are:

Zhejiang Wynca Chemical Group Co., Ltd.
93 Daqiao Road
Xin'anjiang, Jiande
Zhejiang province 311600
People's Republic of China
website: www.wynca.com

Nantong Jiangshan Agrochemical & Chemicals Co., Ltd.
No. 35 Yaogang Road
Nantong, Jiangsu Province
China
Tel.: 0513-83513131
Fax: 0513-83510690

Jiangsu Yangnong Chemical Group Co., Ltd.
39 Wenfeng Road
Yangzhou City, Jiangsu Province
China
Tel.: 86-514-87568858
Fax: 86-514-87812900

JingMa Chemicals Co., Ltd.
No. 50 Bao Ta Road Longyou
Zhejiang, China 324400
Tel.: 86-570-7855226
Fax: 86-570-7855806

Jiangsu Good Harvest-Weien Agrochemical Co., Ltd.
Laogang
Qidong City 226221
Jiangsu, China
Tel.: 86-513-83883399
Fax: 86-513-83883309
e-mail: wechem@pub.nt.jsinfo.net

Hubei Sanonda Co., Ltd.
No. 93 East Beijing Road
Jingzhou
43400 Hubei
China
Tel.: 86-716-81-4595
Fax: 86-716-820-8899

Sichuan Leshan Fuhua Tongda Agro-Chemical Technology, Co., Ltd.
Jianshe Road
Wutong District
Leshan City
Sichuan Province
Tel.: 86-833-3560386
Fax: 86-833-3350028

According to *CCM's Glyphosate China Monthly Report* (*see* ***Exhibit 4***) in May 2009, the first five of these companies accounted for 67.91 percent of China's total exports of glyphosate technical. The same report highlights major export contracts recently entered into by Sichuan Leshan FuHua Agricultural. A fuller list of Chinese producers taken from the table of contacts of "Outlook for China Glyphosate Industry 2009-2014" is attached at ***Exhibit 6.***

VIII. U.S. IMPORTERS OF CHINESE GLYPHOSATE

To the best of Albaugh's knowledge, the five largest U.S. importers of Chinese glyphosate are, in order of the volumes of their imports:

Nufarm Americas Inc.
150 Harvester Drive, Suite 200
Burr Ridge, Illinois 60527
Tel.: 630-455-2000
Fax: 866-241-0612
Contact: Mr. Dale Mellody
Tel.: 630-455-2019

MEYCorp.
121 South Esters Drive
Chapel Hill, North Carolina 27514
Tel.: 919-932-5800
Fax: 919-932-5820
Contact: Mr. Antoine Puech
Tel.: 919-932-5800

Dow Agro Sciences LLC
9330 Zionsville Road
Indianapolis, Indiana 46268
Tel.: 317-337-3000
e-mail: http.www.dowagro.com
Contact: Mr. Daniel Erasmus
Tel.: 317-337-4515

Syngenta Crop Protection
P.O. Box 18300
Greensboro, North Carolina 27409
Tel.: 336-632-6000

Helm Agro US, Inc.
8275 Tournament Drive, Suite 340
Memphis, Tennessee 38125
Tel.: 901-312-1525
Fax: 901-312-1535
Contact: Mr. Volker Heide
Tel.: 901-312-1525

Each of these companies imports glyphosate mostly in acid or salt form, which it then formulates at its own facilities or ships to an independent formulator prior to packaging and resale to

distributors, retailers or end-users. Among the other importers of Chinese glyphosate during the period of investigation are:

Cheminova
One Park Drive, Suite 150
Research Triangle Park, North Carolina 27709
Tel.: 919-474-6000
Fax: 919-474-6629
Contact: Mr. Martin Petersen
Tel.: 919-474-6601

AG Chemical.com LLC
P.O. Box 846
Cary, North Carolina 27512
Tel.: 888-425-7024
Fax: 919-462-1377

Ritter Chemical
26099 SW 95th Avenue
Wilsonville, Oregon
Tel.: 503-218-2980
Fax: 503-293-8372
e-mail: RitterChemicalLLC.com

IX. SALES AT LESS THAN NORMAL VALUE

China is a non-market economy country for purposes of the antidumping statute.[11/] Under the statute, the preferred method of dumping analysis is, therefore, to compare the "export price" of Chinese producer exports to the United States during the period of investigation to a "constructed normal value" based on the actual factors of production used by Chinese producers, priced by reference to factor prices in "a comparable" market economy country.[12/] Consistent with Department practice, including a recently completed review of the antidumping order on *Glycine from China*, Albaugh has selected India as the market economy "surrogate" for China for purposes of this petition.[13/]

Albaugh believes that India is the appropriate surrogate for China because, in addition to the comparability of the Chinese and Indian economies in terms of size, diversity and structure, India is one of the few developing countries that produces glyphosate in significant volume.[14/] Data on Indian market prices of the major inputs used in the production process are readily available. So too are recent data (*i.e.*, for the fiscal year ending March 31, 2009) on the ratios of factory overhead to direct labor, materials and energy costs, SG&A expenses (including financing costs) to the cost of manufacturing, and profit to cost of production for a major Indian glyphosate producer. Albaugh's estimate of normal value in this petition is based on the

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11/ *See, e.g., Certain Potassium Salts from the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value*, 75 FR 12,508, March 16, 2010.

12/ 19 U.S.C. § 1677b(c).

13/ *Glycine from the People's Republic of China; Preliminary Results of Antidumping Administrative Review*, 74 FR 15930 (April 8, 2009) and *Final Results of Administrative Review*, 74 FR 41121 (Aug. 14, 2009).

14/ *See, e.g.*, Annual Report of Excel Crop Care Limited for fiscal year 2009 at ***Exhibit 7***.

Department's "factors of production/surrogate country pricing" methodology using (1) Albaugh's knowledge of the factors of production in each of the two production "routes" to glyphosate commonly used by the Chinese glyphosate industry, and (2) Indian market values for each factor of production. Because the material inputs used to produce glyphosate, and their amounts, are fixed by the chemistry of the production process, the factors of glyphosate production and factor usage in China are not materially different from the factors of glyphosate production and factor usage elsewhere in the world.

A. Export Price

In the second half of 2009, Chinese producers were shipping glyphosate to their U.S. customers at an f.o.b. Shanghai China port price of US$2.90/kg. for acid produced by the glycine process and US$3.00/kg. for acid produced by the IDA process. Evidence of this price, which includes inland freight and handling charges, is attached at ***Exhibit 8***. Included in the FOB prices are inland freight and brokerage and handling charges. Most of the major Chinese producers of glyphosate are located in Zhejiang and Jiangsu Provinces, or approximately 100 kilometers from Shanghai. Albaugh estimates that the average plant-to-port distance is, therefore, about 100 kilometers. The cost of delivering chemicals by truck in India is about Rs. 0.00165 per kg. per kilometer.[15/] The cost of brokerage and handling in India is 0.359 per kg.[16/]

15/ Albaugh relied on the average per kilogram cost of freight for December 2009 published by Infobanc, the source generally relied upon by the Department when India is selected as the surrogate country. *See* www.infobanc.com/logistics/logtruck.htm attached at ***Exhibit 9.***

16/ Albaugh used the average cost of brokerage and handling applied by the Department in the preliminary results of OCTG from China, attached at ***Exhibit 9.*** (*See* Public Version of Brokerage Calculation from *Certain Oil Country Tubular Goods from the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value,* 74 FR 59117, November 17, 2009.

Thus, the in-land freight and brokerage and handling costs associated with Chinese glyphosate exports delivered by truck to Shanghai and the cost of brokerage and handling is Rs. 0.524 per kg. or US$0.0107 per kg.

C.I.F. import values for Chinese glyphosate entered in the second half of 2009, corroborate Albaugh's $2.90/kg. and $3.00/kg. estimate of Chinese producer f.o.b. Shanghai export pricing. The import data are attached at ***Exhibit 8***, as is a published report of a 2009 export price for Chinese glyphosate of US$3,100/MT or 3.10/kg.[17/]

B. Normal Value

We have calculated the normal value of Chinese glyphosate based on the two glyphosate production processes that are commonly used in China, *i.e.*, the glycine production process and the IDA production process. Albaugh has provided its estimates of the materials, direct labor and direct energy used by Chinese manufacturers to produce a kilogram of glyphosate acid under each process. We have valued all materials and utility inputs by reference to the prices in India. We have valued the price of labor by reference to Commerce's most recent estimate of the surrogate value of Chinese labor. And we have based the "financial ratios" for factory overhead to the cost of material, energy and labor ("MLE"), for SG&A (including financing costs) to the cost of manufacture, and for net profit to the cost of production, on data from the most recent annual report of the largest Indian producer of glyphosate.

Albaugh's calculation of the constructed normal value of glyphosate produced in China under the glycine and IDA production processes are, respectively, US$11.55/kg. and US$13.44/kg. We have attached at ***Exhibit 10*** an affidavit supporting the estimate of utilization

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17/ Petitioner estimates ocean freight and marine insurance from Shanghai to the West Coast at $0.15/kg.

of the different factors of production by a representative Chinese producer, as well as a cost analysis of Chinese glyphosate production using the glycine and IDA production processes by [

]18/ that, *inter alia,* lists factor utilization rates that corroborate those in the supporting affidavit. In ***Exhibit 10*** we have provided the source documentation for Indian factor prices. The source documentations include values for materials inputs from Indian import statistics and India's *Chemical Weekly,* a value for labor from Commerce's most recent calculation of the hourly wage rate for China, a value for electricity based on CEA pricing as of March 2009 adjusted by WPI, pricing for natural gas based on import values and financial ratio data derived from the 2008/2009 Annual Report of Excel Crop Care, Ltd.

C. Dumping Margin Calculation

The combination f.o.b. Shanghai export prices of US$2.90/kg. and US$3.00/kg. and constructed normal values of US$11.55/kg. (glycine) and US13.44/kg. (IDAN) yields dumping margins of 299.65 percent *ad valorem* for Chinese producers that use the glycine production process and 349.65 percent *ad valorem* for Chinese producers that use the IDA production process. *See* ***Exhibit 11*** for the worksheets supporting these calculations.

18/ This report must be purchased. It is not publicly available.

X. MATERIAL INJURY/CAUSATION

A. Introduction

From 2007 through 2009, Albaugh's glyphosate production dropped significantly, the prices it could command for its glyphosate fell by more than [ ] percent, the [ ] and it cut its glyphosate workforce by [ ] percent, with all the pain that layoffs at a time of deep recession entails. Dumped imports from China, driven by China's "irrational" expansion of its glyphosate capacity over the past three years, are at the root of the problem. Albaugh recognizes that the global economic crisis would have led to a fall in glyphosate prices from their 2007/2008 highs, but the surge in heavily dumped imports from China and subsequent reductions in China's export pricing is to blame both for the magnitude of the decline in U.S. industry sales and the depth and duration of the drop in market prices. The prices at which Chinese glyphosate is being offered for export to the United States are far below both the fair value of the exported product and the cost of producing glyphosate in the United States.

To be sure, U.S. producers can command a premium over the price of Chinese glyphosate -- this is especially true for Monsanto's sales under its RoundUp® brand -- but the extent of the premium is limited. When major companies like Syngenta and Dow Agro are able to import Chinese acid at prices that are below a U.S. producer's costs, formulate it in the United States, and sell the formulated glyphosate under their own recognized brand names in direct competition with Albaugh and Monsanto, the domestic industry has no option other than to price its product competitively with the dumped imports. In fact, since the Chinese established themselves as *the major* glyphosate suppliers to the U.S. market, their prices have become the benchmark against which the domestic industry's prices are tested. All of Albaugh's glyphosate sales are vulnerable

to Chinese producer dumping because customers insist on competitive pricing with Chinese pricing; if Albaugh's prices are not competitive, they will simply purchase from other suppliers.

B. Conditions of Competition

1. The U.S. Demand for Glyphosate

Glyphosate has long been the best selling herbicide in the United States. Significant percentages of U.S. soybean, corn, and cotton crops are produced from "Round-Up Ready®" (*i.e.*, glyphosate-resistant) seeds. Because the seeds have been engineered to resist glyphosate, glyphosate can be applied easily to the crops to kill weeds that interfere with crop growth and limit yield potential. Albaugh estimates that, on an acid equivalent basis, glyphosate consumption in the United States rose from [ ] metric tons in 2007 to [ ] metric tons in 2008 before falling to [ ] metric tons in 2009 when calculated as the sum of Albaugh's and Monsanto's domestic shipments and imports. However, to the extent the 2008 surge in imports went into inventory, these data inflate 2008 apparent domestic consumption for 2008 while understating apparent domestic consumption in 2009. Adjusting for the build up in inventories of imports, Albaugh believes that demand for glyphosate was, in fact, relatively flat over the 2007-2009 period.

Most sales of glyphosate for end-use application are in the form of packaged or bulk shipments to distributors that resell to retailers and/or large farming enterprises. Some large distributor customers purchase glyphosate in salt form and formulate it themselves. Smaller customers (*e.g.*, agricultural chemical retailers and farms) buy formulated glyphosate in mini-bulk (265 gallon) or smaller packages.

The sales distribution process also varies with the size of the purchase. The largest commercial end-users will buy directly from a distributor or retailer. Smaller volume users tend

to buy their supply from retail supply stores which, in turn, tend to buy from the manufacturer or distributor on either a seasonal or "spot" basis. In all cases, however, the producer is obliged to meet competitive prices or lose the customer's business. Buyers in the spot market are free to choose among competing sellers; buyers that operate under a long-term supply contract typically have the right to require the producer to meet competitive market prices or release the buyer from its purchase obligation. Thus, no U.S. glyphosate producer is insulated from price competition with imports from China.

2. U.S. Market Pricing

Glyphosate has become a commodity chemical since Monsanto's patent expired several years ago. Monsanto can still command a price premium for its Round-Up® brand, but it cannot ignore price competition from Chinese suppliers, and Albaugh as a generic (non-branded) producer must compete largely on price with imports from China, especially when the imports are formulated in the United States and sold by companies like Dow or Syngenta that have a well-recognized presence in the U.S. market for herbicides. Indeed, because China supplied about 75 percent of U.S. demand for glyphosate from July 2008 through June 2009, and because so much Chinese glyphosate is formulated and/or distributed in the United States, [

].

C. Condition of the U.S. Glyphosate Industry

Table 1 below sets out the condition of Albaugh's glyphosate business for the period 2007-2009. The market was very strong through the first half of 2008, but by the fourth quarter of that year, it collapsed. The volume of imports from China continued at very high levels,

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however, creating a significant inventory overhang that affected demand and pricing in the U.S. market throughout 2009. The impact on Albaugh's glyphosate business was dramatic:

Table 1
Albaugh's Glyphosate Operations
2007-2009

	2007	2008	2009
1. Production (95% equivalent)			
Vol. (M/T)	[ ]	[ ]	[ ]
2. Sales (95% equivalent)			
Vol. Total (M/T)	[ ]	[ ]	[ ]
Val. Total ($000)	[ ]	[1]	[ ]
Vol. U.S. (M/T)	[ ]	[ ]	[ ]
Val. U.S. ($000)/	[ ]	[ ]	[ ]
Vol. Export (M/T)	[ ]	[ ]	[ ]
Val. Export ($000)	[ ]	[ ]	[ ]
3. Gross Profit	[ ]	[ ]	[ ]
4. Operating Profit	[ ]	[ ]	[ ]
5. Workforce (employees)	[ ]	[ ]	[ ]
6. Payroll ($MM)	[ ]	[ ]	[ ]

- Albaugh's glyphosate production fell by [ ] percent between 2007 and 2009 and by [ ] percent from 2008 to 2009.
- The value of Albaugh's glyphosate sales fell by [ ] percent between 2007 and 2009 and by [ ] percent from 2008 to 2009.
- The operating profit on Albaugh's glyphosate business [ ].
- Albaugh's glyphosate workforce fell by [ ] percent and the earnings of its glyphosate workers fell by [ ] percent from 2008 to 2009.

Albaugh does not have access to the results of Monsanto's glyphosate operations. However, from Monsanto's most recent quarterly financial reports, it is clear that Monsanto, like Albaugh, has been materially and adversely affected by dumped glyphosate imports from China:

Table 2 Monsanto's Glyphosate Operations, 1Q FY 2010 Compared to 1Q FY 2009			
	1Q (Sept.-Nov.)		
	FY 2010 ($MM)	FY 2009 ($MM)	Change (%)
1. Net Sales	509	1,359	(-62.55%)
2. Gross Profit	87	804	(-89.18%)
3. EBIT*	37	673	(-94.95%)

*EBIT data are for Monsanto's agricultural productivity business segment of which its glyphosate business is, by far, the largest part.

In addition to the impact that dumped Chinese imports have had on the volume of Monsanto's glyphosate production, the value of its glyphosate sales and the profitability of its glyphosate operations, the collapse of the glyphosate market led Monsanto to restructure its operations. The restructuring cut 900 jobs, many of which were glyphosate-related jobs in the United States.[19/]

D. Trends in the Volume of Imports and Market Shares

Imports of Chinese origin glyphosate rose very sharply from 2007 through the first half of 2009. The volume of imports fell in the second half of 2009, but only because major customers like Syngenta and Dow were holding so much Chinese glyphosate in inventory. Non-subject imports were not a significant factor in the market at any point during the period of investigation.

19/ Monsanto trims 900 jobs as RoundUp® sales plunge, *St. Louis Post-Dispatch*, Thursday, June 25, 2009 ("Faced with a steeper-than-expected drop in sales of its best selling RoundUp® weed killer, biotech giant Monsanto Co. said it plans to slash 900 jobs, or about 4 percent of its workforce. ...Monsanto executives had long predicted that gross profit from the RoundUp® business would peak in 2009. But they were caught off-guard by a flood of inexpensive Chinese-made herbicide that quickly eroded sales.")

Table 3 Imports of Glyphosate on a 95 Percent Acid Equivalent Basis			
	2007	2008	2009
1. Volume (M/T)			
China	25,564	82,316	69,974
Other	3,367	1,800	585
Total	28,931	84,116	70,559
China as % of Total	88.36%	97.86%	99.17%
2. Value (c.i.f./K$)			
China	125,193	911,754	315,313
Other	14,446	15,478	4,473
Total	139,639	927,232	319,786
China as a % of Total	89.65%	98.33%	98.61%
3. Unit Value			
China	4.90	11.08	4.51
Other	4.29	8.60	7.65

Despite the drop in subject imports in the second half of 2009, the annual data show that the Chinese made significant year-on-year market share gains:

Table 4 Subject Imports and U.S. Industry Domestic Shipments as Percentages of Apparent Domestic Consumption			
	2007	2008	2009
Monsanto Domestic Shipments*	[ ]	[ ]	[ ]
Albaugh Domestic Shipments**	[ ]	[ ]	[ ]
Total Domestic Industry	[ ]	[ ]	[ ]
Imports from China	[ ]	[ ]	[ ]
Non-Subject Imports	[ ]	[ ]	[ ]
Apparent Domestic Consumption	[ ]	[ ]	[ ]
China Market Share	[ ]	[ ]	[ ]
Domestic Industry Market Share	[ ]	[ ]	[ ]

* Monsanto domestic shipments are an Albaugh estimate.

** Albaugh's data are [
].

E. Trends in Import Pricing and Margins of Underselling

Prices of Chinese glyphosate rose from 2007 through mid-2008, but then fell very sharply and have remained depressed ever since. Because it is a commodity with no significant product

mix issue, the monthly unit values of imported glyphosate technical are a good proxy for transaction-specific import pricing trends. The impact of Chinese dumping on Albaugh's pricing is apparent from a comparison of the Chinese import values to Albaugh's average monthly prices:

Table 5
Comparison of the 2007-2009 Quarterly Average Unit Values ($/kg.) of Glyphosate Imports from China to Average Unit Values of Albaugh's Sales of Glyphosate (on an Acid Equivalent Basis)

Quarter	Average Unit Value - Imports from China	Average Unit Value - Albaugh U.S. Sales	Margin of Underselling
1Q2007	4.01	[ ]	[ ]%
2Q2007	4.22	[ ]	[ ]%
3Q2007	4.83	[ ]	[ ]%
4Q2007	5.94	[ ]	[ ]%
1Q2008	9.57	[ ]	[ ]%
2Q2008	13.01	[ ]	[ ]%
3Q2008	12.69	[ ]	[ ]%
4Q2008	7.46	[ ]	[ ]%
1Q2009	4.68	[ ]	[ ]%
2Q2009	4.60	[ ]	[ ]%
3Q2009	4.11	[ ]	[ ]%
4Q2009	3.13	[ ]	[ ]%

F. Impact of the Dumped Imports on the U.S. Glyphosate Industry

Over the past few years, several large glyphosate distributors have switched some or all of their business from the domestic industry to subject imports. Albaugh estimates that on an acid-equivalent basis, the share of the U.S. market supplied by subject imports has risen from about [ ] percent in 2007 to approximately [ ] percent in 2009. The market share gain by Chinese suppliers is mirrored by an equivalent [ ] percentage point market share loss for the domestic industry.

1. Lost Sales

Because sales are not through a "bid-and-response" process, Albaugh is typically asked to meet a price without knowing the competitive offers. It will either lose the business (a lost sale) or reduce its price and retain the business (lost revenues), but it does not track competition on a transaction-by-transaction basis. A review of Albaugh's 2007-2009 sales, however, [

]. Albaugh believes, but cannot say with certainty, that the loss in business at these accounts was in large part attributable to subject imports.

Albaugh also believes that [

]. Albaugh cannot pinpoint the date on which these companies switched from Monsanto to subject imports, but can say with confidence that the switch occurred.

2. Lost Revenues/Price Suppression

The major impact of Chinese producer dumping on Albaugh has been the effect it has had on U.S. market prices. The pricing of the Chinese product left Albaugh with no option but to sell much of its [ ]. The average price [

]. The [ ] that Albaugh incurred on its [

] was primarily [

].

XI. THREAT OF MATERIAL INJURY

A. The Legal Standard

The antidumping statute instructs the ITC to assess threat of material injury by reason of dumped imports by reference to (*inter alia*):

1. The extent to which there is unused production capacity in the country of export.
2. The rate of increase in the volume or market penetration of the subject imports.
3. The pricing of the subject imports (*e.g.*, are they likely to have a significant depressing or suppressing effect on domestic prices).
4. The actual and potential negative effects of the imports on product research and development by the U.S. industry.

Under these criteria, the threat to U.S. glyphosate producers posed by imports of glyphosate from China is real, substantial and imminent.

B. Chinese Capacity

Chinese glyphosate capacity grew from about 300 thousand metric tons in 2007 to about 700 thousand metric tons in 2009 and is projected to increase to as much as 900 thousand metric tons in 2010. By contrast, 2010 projections of glyphosate demand in China are only 60 thousand tons, *i.e.*, about 1/15th of Chinese capacity, and the 2010 projection of total *global* glyphosate demand is in the 500 - 700 thousand ton range, *i.e.*, some 200 - 400 thousand tons below China's projected production capacity. [20/]

[20/] *China Research and Intelligence*: "The Glyphosate Yield Capacity Will Reach 900 Thousand Tons in 2010", May 14, 2009.

C. Rate of Increase of Imports from China

In the 2008/2009 crop year, U.S. imports of glyphosate from China were more than four times their 2006/2007 crop year level -- and continuing large volumes of low-priced imports are all but guaranteed as a result of long-term supply arrangements that major Chinese exporters of glyphosate acid have concluded with companies in the U.S. Specifically, (1) Syngenta and Helm Agro have entered into long-term supply arrangements with Nantong Jiangshan Agrochemical & Chemicals Co., Ltd., (2) Jiangsu Yangnong Chemical Group Co., Ltd. has signed a long-term supply contract with Syngenta, and (3) Zhejiang Xinan Chemical Group Co., Ltd. has entered into a long-term supply arrangement with Dow Agro Sciences.[21/]

D. Import Pricing

Imports from China have systematically undercut U.S. producer prices and have done so by substantial margins. Given the huge excess Chinese capacity, there is no reason to expect Chinese producers to change their pattern of systematically undercutting U.S. producer prices or even to align their prices with their fully allocated costs of glyphosate production any time soon.

E. The Foreseeable Effects of Dumped Glyphosate from China on the U.S. Glyphosate Industry

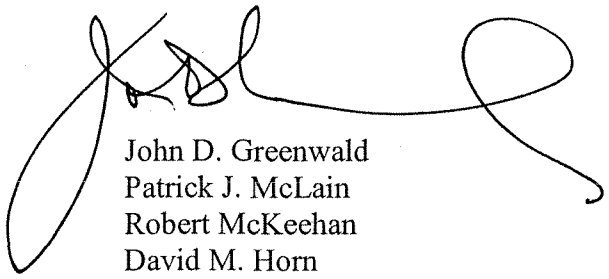
The extent of glyphosate production overcapacity in China is so massive that it throws into question the future of any market economy producer that has to operate at a profit sufficient to justify continued investment in the business. The unhappy truth is that either China will be forced to price its glyphosate exports to the United States at or above "fair value" or the future of the U.S. industry will be bleak.

21/ *China Chemical Reporter,* "Glyphosate Market: No Recovery in Sight," June 6, 2009.

XII. CONCLUSION

The evidence of Chinese producer dumping at triple digit margins is irrefutable. So too is the evidence of material injury to U.S. glyphosate producers. Without antidumping discipline, imports from China threaten the ability of U.S. manufacturers to continue producing glyphosate in the United States. For these reasons, Albaugh respectfully asks Commerce to initiate an antidumping investigation of glyphosate from China in all its forms as soon as possible.

Respectfully submitted,



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