UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
TOW-BEHIND LAWN GROOMERS	)	701-TA-457 and
FROM CHINA	)	731-TA-1153 (Final)

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Tuesday,
June 16, 2009

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

The hearing commenced, pursuant to notice, at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable SHARA L. ARANOFF, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

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DANIEL R. PEARSON, VICE CHAIRMAN
DEANNA TANNER OKUN, COMMISSIONER
CHARLOTTE R. LANE, COMMISSIONER
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APPEARANCES: (Cont'd.)

<u>Staff</u>:

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JAMES McCLURE, SUPERVISORY INVESTIGATOR

<u>In Support of the Imposition of Antidumping and Countervailing Duty Orders</u>:

<u>On behalf of Agri-Fab, Inc.</u>:

MICHAEL COHAN, President, Agri-Fab, Inc.
GARY HARVEY, Vice President, Finance, Agri-Fab, Inc.

MARK S. ZOLNO, Esquire
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Katten Muchin Rosenman LLP
Chicago, Illinois

I N D E X

P R O C E E D I N G S

(9:30 a.m.)

MS. ABBOTT: Will the room please come to order?

CHAIRMAN ARANOFF: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing in Investigation Nos. 701-TA-457 and 731-TA-1153 (Final) involving Tow-Behind Lawn Groomers from China.

The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of subsidized and less than fair value imports of tow-behind lawn groomers from China.

Schedules setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table.

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding time allocations should be directed to the Secretary.

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

Madam Secretary, are there any preliminary matters?

MS. ABBOTT: Madam Chairman, no. I note, though, the first panel, the Petitioners, are seated, and all witnesses have been sworn.

(Witnesses sworn.)

CHAIRMAN ARANOFF: Thank you. Let us proceed then with opening remarks.

MR. ZOLNO: Good morning, Madam Chairman and members of the International Trade Commission. My name is Mark Zolno. I'm an attorney with the law firm of Katten Muchin Rosenman in Chicago.

We are proud to represent Agri-Fab, Inc., the Petitioner and leading domestic producer of tow-behind lawn groomers, also referred to as TBLGs or simply as lawn groomers. With me today are Mike Cohan, president of Agri-Fab; Gary Harvey, vice president of Finance of Agri-Fab; and Kaz Kano and John Smirnow, both attorneys with Katten Muchin

Rosenman.

We are here today at the culmination of an investigation that was launched nearly one year ago on lawn groomers imported from China that were sold at less than fair value and supported with countervailable subsidies from the Chinese Government. Our client, a long-established, privately held business from the heartland of rural America, is the primary manufacturer of lawn groomers in the United States. As you will hear, it has been decimated by unfairly priced subject imports.

Only yesterday, the U.S. Department of Commerce issued its final determinations. It found that Chinese manufacturers had been selling their products at less than fair value and calculated dumping margins of over 386 percent. In addition, Commerce found that most Chinese lawn groomers were receiving a countervailable subsidy at the rate of 265 percent. These massive margins exemplify the extent to which these unfair trading practices were taking place.

Clearly the Department of Commerce has established that lawn groomers were not coming in from China with a level playing. For the final phase of this investigation, high margins are now imposed on all lawn groomers coming in from China regardless of the Chinese manufacturer.

One mandatory Respondent, Princeway, received a relatively low preliminary dumping margin. However, we found evidence in some of Princeway's submissions which suggested that, to put it mildly, Princeway was not playing by the rules. When this fact was brought to Commerce's attention, Princeway ultimately refused to allow Commerce to conduct a verification at its facilities in China, and its dumping margin now exceeds 386 percent.

We are now requesting that the International Trade Commission issue a final determination that imports of lawn groomers from China have caused or are threatening to cause material injury to the domestic lawn groomer industry.

The volume of these unfairly priced Chinese lawn groomers has increased dramatically since 2006. These unfair trading practices have forced Agri-Fab and other members of the domestic industry to sell their products at suppressed or depressed prices in order to remain competitive in the face of increasing materials cost.

In some cases Agri-Fab did not even get the chance to lower its prices, and unfairly priced lawn groomers from China caused a total loss of at least one customer's business. As a result, Agri-Fab has suffered material injury, having been forced to reduce production and employees, eliminate shifts, face declines in profits and suffer other adverse effects.

You will hear presentations today from Mike Cohan, Agri-Fab's president, who will provide a brief history of Agri-Fab and its place in the domestic lawn groomers industry. Mike will discuss how Agri-Fab's efforts to provide innovative products and maximize efficiency of production have been of little use against unfairly priced and subsidized Chinese imports.

Mike will also relate for you his visits to manufacturing facilities in China where he encountered firsthand the kind of unfair business practices that prompted Agri-Fab to seek relief from the ITC.

Finally, Mike will tell you what his sales representatives have faced when they approach customers in the United States and are told to match prices that do not even cover Agri-Fab's material cost.

You'll also hear from Gary Harvey, Agri-Fab's vice president of Finance, who will talk about the effects of the surge of Chinese lawn groomers on the domestic industry. Gary will focus on the financial impact that Chinese imports have had on Agri-Fab's production and sales volume, pricing and employment.

He will show you how Agri-Fab has been unable to price its merchandise to account for rising cost of steel and other raw materials and how Agri-Fab's profits, employment and overall financial health have deteriorated as a result.

We look forward to assisting the Commission in making this critical decision and would be pleased to provide answers to your questions either during today's testimony or in our postconference brief.

Once again, thank you very much for the opportunity to appear to present our case, and I would now like to introduce Mike Cohan.

MR. COHAN: Good morning, Madam Chairman, members of the Commission and Commission investigative staff. I would also like to thank you for giving us the opportunity to appear before you today and speak on behalf of Agri-Fab to discuss the antidumping and countervailing duty investigations.

My name is Mike Cohan. I am the president of Agri-Fab, a position I've held since August of 2007. I have over 30 years' experience in this industry, all of them with Agri-Fab.

Prior to becoming the president of Agri-Fab I was plant manager, vice president of Operations, began my career on the shop floor and have worked in virtually every area of the manufacturing, including welding, assembly, fabrication, painting, supervision, production control, so as we have done our tour through the plant I enjoyed showing you through.

Agri-Fab is a leading producer of tow-behind lawn groomers in the United States. We're also one of the two largest employers in the town of Sullivan, Illinois, where our headquarters and manufacturing facilities are located. To this day, nearly all of our lawn groomers are produced in Sullivan. We have a 380,000 square foot production facility in Sullivan and another 300,000 square foot distribution facility in nearby Decatur, roughly 30 miles away.

Agri-Fab has stayed in the forefront of the tow-behind lawn groomer industry by expanding, reinvesting in our plant and equipment to improve our products and processes and pushing the envelope in designing new and different lawn groomers that appeal to our customers.

Just recently we launched the new Smart series of groomers, which includes an extra large sweeper, spreader and a modular unit that allows users to quickly switch out different aerator and dethatcher components without the need for tools. Our constant focus on improving both the lawn groomer product line and our production processes using lean manufacturing techniques has allowed us to maintain our position as an industry leader.

Agri-Fab is also focused on providing employment for the community, a goal that has carried over from related businesses formed during the Great Depression. Maintaining and creating local jobs is a bedrock principal of our company.

In the absence of Agri-Fab, Sullivan, Illinois, would suffer a devastating economic blow. We currently employ over 300 people on both a full- and part-time basis, although this number is significantly lower than it was just a few years ago. The Commission should also recognize that the majority of our raw material purchases are from domestic suppliers so that we may foster ties to our community and contribute to keeping other jobs in the United States.

We're also important to Sullivan in ways other than providing employment. We've been donating money to area organizations continually since 1977.

In the last 10 years, we've given over $2 million in grants, scholarships and other donations.

Since 1989, Agri-Fab has also maintained an on-site child care facility for our employees. In addition, we've help found a steel service center in the neighboring town of Arcola. We've also donated space for Sullivan's volunteer fire department to train.

These are just a few examples of how our company was built on the foundation of working hard and giving back to our employees and recognizing those in the local community who have helped us along the way.

Unfortunately, everything we have worked for is in jeopardy due to dumped and subsidized imports from China. We made that case during the preliminary staff conference a year ago, and you agreed with the issuance of your affirmative determination. Since that time, the adverse effects of Chinese imports have only become more apparent.

As I mentioned during the preliminary conference, we don't immediately point the finger or look for bailouts as soon as things start to go bad. Instead, we look within ourselves and try to find ways to improve our situation.

We improved our production methods, including the way in which our personnel are used during production and assembly of our lawn groomers. We've invested in computer technology, powder coat painting methods, automation and other technological advancements regarding assembly line operations. We've also invested in outside consulting services to improve our overall business practices.

In addition, we believe Agri-Fab has without a doubt the most efficient and environmentally friendly production process in the industry and that our efficiency and use of technology and advanced production techniques have saved jobs, not replaced them.

However, we simply cannot compete with Chinese lawn groomers when the playing field is so uneven no matter how efficient our production methods are. In many cases, Chinese producers are exporting products to the U.S. that are direct copies of our own products; only the Chinese imports are sold at less than Agri-Fab's cost of production or in some cases even the cost of our materials.

To explain this, I want to give you a historical anecdote that I related in the preliminary conference. We first started seeing the Chinese knockoffs of our products in 2003. We were very curious about who was doing this and to what extent our products were being copied.

At the invitation of a Chinese manufacturer, we went to China to view its manufacturing facility and observe the company copying our products. We later discovered that this producer had obtained pictures from our website and samples of our products which had been used to reverse engineer our groomers.

At the time we thought that we could limit these products from flooding the U.S. market by entering into an agreement with this company. We entered into a manufacturing and supply agreement to purchase several products besides lawn groomers in exchange for the promise that this company would not sell the groomers to our competition or our customers.

Unfortunately for us, this company broke the agreement and started selling lawn groomers directly to our customers and competitors. This company, just like the Chinese lawn groomer industry as a whole, got its start by taking our products, reverse engineering them, copying them and selling them back in the U.S. at unfair prices. This strategy results in the Chinese producers avoiding the high cost of research and development of the subject products.

I'm not relating this to you simply to accuse Chinese producers of stealing. Rather, it became clear to us that Chinese lawn groomer producers have established and expanded their businesses by taking lawn groomer designs, including ours, reproducing them in China and exporting vast quantities to the United States at prices against which we cannot compete.

We've seen the volume and variety of low-priced Chinese imports increase substantially over the past three years, especially in 2007 and 2008, and covering all of our products that are the subject of our petition. As I mentioned before, we pride ourselves on working hard and striving to create efficient production methods and innovative products, but these qualities cannot protect us from unfairly priced imports from China.

The Smart series of lawn groomers is our latest example of innovation. However, being innovative is of little advantage when our new products are quickly copied in China and sold back to the United States at prices that do not even cover our material cost, not to mention the prototyping, testing and other research and development costs.

As Gary will discuss, the recent onslaught of Chinese imports has had a severe adverse impact on our business. However, I can tell you that all of us at Agri-Fab can see how Chinese imports have changed the way we sell our products.

Our salespeople are at the front lines of our company, and they have the most direct knowledge of how we have lost sales and lost customers because of low-priced Chinese imports. Even today our sales professionals are being asked for lower prices by purchasers who got used to unfairly priced Chinese imports.

Most lawn groomer manufacturers, including Agri-Fab, do very little direct selling to the public. The vast majority of our sales are to home improvement retailers, and a good number of these sales are to a few large national or regional retail chains. These customers are very important to us, and we make every effort to keep them happy.

For all of our customers, we make an effort to provide the best value for our products. I want to focus on the word value for a minute because I believe it's an important term here.

Excuse me just a second.

(Pause.)

MR. COHAN: For a long time, both we and our customers perceived value to constitute a complete package of service and quality. While it was important to sell our products at a reasonable price, it was just as important, if not more so, to have the best customer service, product range and availability, technical support and warranty coverage.

This combination of factors was where we could show our customers that we were offering the best value for our products. Now the game has changed. While you still hear the term value, it has come to mean that price is the factor above all others. When our customers come to us explaining the need to offer the best value for our products, it is nothing more than their way of asking us to lower our prices to meet the Chinese imports.

On several occasions our sales reps have gone to a customer, demonstrated our product lines, touted all of the advantages that our company and our products can offer, and we were simply told in response that the customer got a low-price quote from China and that we need to match that price. More often than not that price was less than even our cost of materials.

As a result, we simply lost sales with a number of our customers, whether large or small, new or longstanding. As Gary will tell you, the impact was so extreme and so quick that in some cases we didn't even have the opportunity to present a counteroffer to our customers.

In short, we are being overrun with unfairly priced lawn groomers from China. While Gary can give you a better idea of the extent of injury that we have suffered, I can tell you that based on my experiences talking and meeting with our sales reps, we've seen significant sales erosion, particularly during 2008, as we indicated to the Commission in our questionnaire response.

We are here because this investigation represents our best and possibly last hope at leveling the playing field and remaining competitive in this industry. In the absence of an affirmative determination by the Commission, the migration of lawn groomer production form the United States to China will continue and may even force us to transform from the largest domestic producer of lawn groomers into just one more importer of Chinese tow-behind lawn groomers.

With that, I'd like to introduce Agri-Fab's vice president of Finance, Gary Harvey. Thank you.

MR. HARVEY: Thank you, Mike. Our profits and capital investments have declined, and our working capital has been reduced, the capacity usage in our manufacturing facility was significantly down, our vendor purchases were reduced and our employment was significantly off its levels from prior years.

Today the problems we face from Chinese imports have gotten more pronounced. Just about every financial indicator that had dropped in 2007 continues to drop and fall in 2008 in response to Chinese imports.

Without going into any confidential business information, it is safe to say that our financial results in 2007 were downright rosy compared to the results of the end of 2008. We were hit especially hard on the pricing of our products by Chinese imports. We really began to see the effects in 2008, and I believe you see from our questionnaire responses that our price had particularly suffered that year.

Chinese imports simply eliminated our ability to raise prices in response to rising material costs. When the cost of our input materials used to produce lawn groomers such as steel increased throughout much of 2008, we were not able to increase our prices to cover those costs. It was only towards the end of 2008 that we were able to get some price relief.

To the extent that the depressed economy has subsequently decreased some of these material costs, we are now being asked by our customers to lower prices yet again. As Mike mentioned, it has gone so far that customers have asked us to lower our prices to reflect what the customers could have paid for the Chinese imports before the Department of Commerce's preliminary margins went into effect.

As much as we were forced to suppress and depress our prices in 2008, they do not reflect the case that we've simply lost sales altogether. As Mike mentioned, for several large accounts we did not have the opportunity to present lower counteroffers. We simply lost the business. You do not see this just by looking at the prices of the products that we did sell in 2008.

The loss of business we have suffered is due to dumped and subsidized imports from China. The downturn in both the housing market and economy in general has certainly hurt. It is not, however, the cause of our troubles.

As I testified in the preliminary conference, we started to see Chinese imports enter the market at a time when the market itself was relatively flat or growing. The lawn grooming industry undergoes cyclical patterns and has been around long enough to weather previous downturns in the housing industry. We were around during the recessions of the early 1980s, and we have seen a number of corrections in the housing market.

I'm not trying to make light of the economy or its effects on our industry, but we are not sitting here in front of you because of the economy or because of the housing market crisis. The poor economy essentially has nothing to do with why we are being told by our customers to match prices that may not even cover our material cost.

What the economy does, however, is make us even more vulnerable to the effects of Chinese imports. It is problematic enough to manage a business when overall demand is stifled. The decrease in overall demand, however, is being compounded by having to compete against unfairly priced Chinese imports so not only is the pie getting smaller; the share of the pie being eaten up by subsidized Chinese imports continues to grow.

Finally, I want to address what's been happening with Agri-Fab the last few months. You'll probably notice that my discussion so far has been limited to what's happened to Agri-Fab as of the end of 2008. That is because the Department of Commerce began to impose dumping duties on imports of lawn groomers in January 2009. After these duties were imposed, we began to see some signs of life in the market.

Without going into proprietary information, we were able to implement some much needed price increases on our products, and we did recover some business from both old and new customers. Of course, we are still nowhere near the production and sales values of our better years, so there's still quite a bit of work to do.

If anything, however, this tells us that these investigations are doing exactly what they're supposed to do. They have enabled us to go to our customers and reintroduce the concept of overall value that we have offered for the last 30 years.

With a level playing field, we have finally been able to see our numbers trending upward for the first time in a long time. This is another reason why the Commission should see that the recession or the housing crisis is not the cause of the domestic industry's injury.

Having said that, it is clear that the

primary reason that we have seen any sort of success in 2009 is because of the preliminary duties that Commerce has imposed. We have no reason to believe that these trends in the lawn groomer industry would have suddenly changed in 2009 for any other reason than Commerce's preliminary determination.

Without an affirmative final determination by the Commission, we understand that these duty margins would disappear. If that happens, imports from China would flood right back into the U.S., and we would just revert back to the same precarious position that caused us to petition for relief.

We therefore believe that the conditions that existed in 2008 before any dumping margins were imposed represent the genuine condition of the U.S. lawn groomer market and the state of the domestic industry.

In conclusion, like my colleagues before me, I respectfully request the Commission issue an affirmative determination that the domestic industry is materially injured by reason of imports of tow-behind lawn groomers from China.

Thank you for your time. I would now like to introduce John Smirnow, who will discuss domestic like product.

MR. SMIRNOW: Thank you, Gary. Good morning, Madam Chairman, Commissioners and Commission staff. My name is John Smirnow, and I'm an attorney with the law firm of Katten Muchin Rosenman.

By now you are aware of the four products which we believe comprise a single domestic like product: Tow-behind sweepers, spreaders, dethatchers and aerators. Each of these products contribute to the single function of lawn grooming.

As we'll explain, the Commission's six factor like product analysis leads to we believe only one conclusion: Tow-behind sweepers, aerators, dethatchers and spreaders constitute a single domestic like product. The record also indicates that the domestic like product does not include any other product such as lawn carts or push products.

I will now address each of the six domestic like product factors in turn. Common manufacturing facilities, production processes, production employees. With regard to common manufacturing facilities and production employees, Agri-Fab's lawn groomers are produced within the same facilities and by the same production employees.

Each groomer utilizes steel that is stamped, cut or pressed using the same machinery. Tubing for the various items is also bent on the same machinery. Many of the bolts, nuts, washers and other materials used to assemble all of the four lawn groomers are interchangeable. The various subcomponents for each item are also painted on the same paint line.

Furthermore, Agri-Fab's production employees are generalists. As some of you may have seen during your tour of Agri-Fab's facilities, Agri-Fab employees are trained to produce each of the four categories of lawn groomers.

The packing operations for each of the groomers are also the same. Accordingly, we believe this factor is unquestionably in favor of a finding of a single domestic like product.

Channels of distribution. With regard to channels of distribution, it is also obvious to us that tow-behind lawn groomers are all marketed and advertised to the same customers and sold in the same channels of distribution. Part of the reason lawn groomers are viewed as one like product is because lawn groomers are sold alongside one another in the same sections of the same home improvement retail stores.

You would not, for example, need to go to one store to purchase an aerator and another store to purchase a dethatcher or a spreader or a sweeper. You would get all four of these in the same area within the same store. This is another factor that we believe strongly favors a finding of a single domestic like product.

With regard to push products, retail stores generally do not advertise tow-behind lawn groomers and push products together. In addition, Agri-Fab's customers often assign separate buyers to purchase tow groomers versus push products. This is because tow groomers and push products are designed for different ultimate customers.

Tow groomers are unnecessary for consumers who do not own riding mowers, while those who do will most likely avoid push products. Accordingly, we believe this factor also strongly supports a finding of one domestic like product.

Physical characteristics and uses. With respect to physical characteristics and uses, the lawn sweepers, aerators, dethatchers and spreaders show a number of common physical characteristics, including a steel frame, a tow hitch, an engage/disengage transport handle and in most cases two wheels and a single axle. Lawn groomers are also similar in size and share a variety of parts, as I noted previously, including washers, screws, bolts and nuts.

As to use, all lawn groomers are designed to be attached to a residential lawn tractor, all-terrain vehicle, utility type vehicle or similar vehicle in order to groom lawns. Products perform specific and complementary functions, but they all work towards the common purpose of maintaining a healthy and well groomed lawn. These functions complement one another, and the user ideally would have all four of these at his or her disposal.

As compared to other products, however, such as push products or carts, the end uses of tow-behind lawn groomers are, we believe, clearly distinct. With regard to push products, which are generally smaller, the key physical difference is that push products have a handle rather than a hitch.

Push products have no physical feature which allows them to be attached to a residential lawn tractor, ATV or other vehicle. Because of this, even if the result of using tow-behind lawn groomers and push products is to groom and maintain lawns, the means are different.

With regard to carts, their end uses are different from tow-behind lawn groomers. Carts serve an entirely different purpose from lawn groomers.

They transport or haul material from one place to another. While what the customer is hauling may be related to lawn care maintenance, the carts themselves do not directly act upon the lawn as each of the TBLGs do.

Therefore, you should find that this factor also weighs in favor of a finding of a similar domestic like product, which does not include carts or push products.

Customer and producer perceptions. Speaking on behalf of the largest domestic producer of lawn groomers, lawn groomers constitute one domestic like product to Agri-Fab. Just as importantly as we noted previously, our customers also perceived tow-behind lawn groomers to constitute a single product family.

When Agri-Fab's sales representatives meet with customers to discuss purchase orders, they will nearly always present and otherwise treat lawn groomers as a full product line within the same family.

In addition, again as I noted previously, many of our customers have separate buyers dedicated to tow groomers versus push products. This is further evidence that customers view tow-behind lawn groomers as a separate and distinct category, and because tow-behind groomers and push products are used in significantly different ways they are perceived by customers to be different products.

Price. With regard to price, lawn groomers generally fall within a narrow price range from approximately $60 to $400. Within this range there are significant overlaps between categories. Dethatchers are the least expensive lawn groomers, ranging in price from $60 to $100 at retail.

While the price for spreaders and aerators also start at $60, prices for these items can range up to around $300 retail, which then overlaps with sweepers which are generally priced in the $170 to $400 range.

In general, push products are uniformly less expensive than tow-behind groomers since they are smaller and have fewer components than tow-behind products. If there is any overlap in price between a push groomer and a comparable tow groomer, it is a very small overlap. In any case, it is not enough for this one factor to have some small overlap to then determine that push products are part of the same like product.

Interchangeability. Finally, with respect to interchangeability it is true that each category of lawn groomers performs a unique function. However, they perform these functions in a complementary way in order to achieve a common goal: Lawn grooming.

In addition, a number of lawn groomers are multi-functional, such as a combination spreader/ aerator or a sweeper/dethatcher. As Mike indicated during his testimony Agri-Fab recently introduced a modular grooming system to its product line-up. This system includes a platform and several grooming components including a dethatcher and several varieties of aerators. These combination groomers are at least partially interchangeable with individual groomers.

As for comparisons between tow-behind lawn groomers and other products, as a practical matter they are not interchangeable. Carts, for example, do not perform any of the lawn grooming functions that are performed by sweepers, aerators, dethatchers or spreaders. They serve a different purpose from lawn grooming altogether.

Similarly, tow-behind groomers and push products are also not interchangeable as a practical matter. This is best explained by comparing lawn groomers to lawnmowers. Generally the type of person who purchases a riding lawnmower has a big enough yard where a push mower would not be practical.

Similarly, if you have a small yard you have no need for a riding mower, and you use the push mower instead. This analogy works the same way with lawn groomers. The way in which tow and push products are used simply do not make them practically interchangeable.

Given the foregoing, we believe the Commission should find one domestic like product comprised of each of the four tow-behind lawn groomers. The Commission should also define the domestic like product to include the lawn groomer parts identified within the scope.

Even though the semi-finished products analysis wasn't in controversy at the prelim, I'm going to just quickly go through that for you. As discussed in our petition and prehearing brief, TBLG parts are dedicated exclusively for use with lawn groomers and are not used in any finished product other than lawn groomers.

They exhibit the physical characteristics of parts of completed lawn groomers. Lawn groomers cannot perform their end uses without these parts, and these parts serve no function independent of their function within the lawn groomer. Finally, we are unaware of any instances of these parts being sold in commerce other than for warranty purposes.

For these reasons and for the reasons set forth within our prehearing brief and other submissions, the described parts should also be included within the domestic like product consistent with the scope language.

In summary, the Commission should find, as it did in the preliminary determination, that the record at hand indicates that there are more similarities than differences among the four types of TBLGs. The Commission should therefore find one single domestic like product co-extensive with the scope of these investigations.

Thank you for your time. We look forward to answering any questions you may have.

CHAIRMAN ARANOFF: That completes your direct presentation?

MR. ZOLNO: Yes, it does.

CHAIRMAN ARANOFF: Thank you very much. I want to welcome all of you here this morning. Welcome the witnesses who have come in from Agri-Fab to be with us; express our appreciation for your hospitality a few weeks back when we came to tour the facility, which was very helpful in getting us prepared for today.

We are going to start the questioning this morning with Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman.

I also want to express my appreciation to the witnesses for coming today and also we found the tour very, very useful. We appreciate that very much.

I would like to continue a little bit on this question of like product, and wondered if Agri-Fab has conducted studies of consumer purchasing patterns with regard to these rumors at issue. For example, do you know the extent to which consumers typically buy a whole set of two-behinds at the same time?

MR. COHAN: We have done some preliminary research on that and that's something that we would address in the post brief. It is data that we have compiled that the rest of the industry may not have.

COMMISSIONER WILLIAMSON: Okay. Good. Well, when you do that, you can also address if they buy them at the same time, or do they buy one unit first, and if people buy one unit first, what do they typically buy and why, and also whether or not the people who would buy, if you say they buy all four, would they also buy the carts or rollers at the same time too; just that whole combination of question of how do consumers purchase the products. I don't know if there is anything you want to say now or you want to save it all for posthearing.

MR. COHAN: We would prefer to address that posthearing. The only thing I'd say right now is that the Smart-link that we have on the market today is addressing that same issue where consumers are coming in and buying similar -- the whole package. They are getting the platform with the aerator and the detacher available to go with it at the same time out the door, so specifics on that we would prefer to furnish after the hearing.

COMMISSIONER WILLIAMSON: Okay. At that time would you also address the question the extent of the sales of the Smart-link products?

Also, are the Smart-link sales included in the data that you provided to the Commission in terms of the use of the use of the different products -- the number of sales of the different products?

MR. HARVEY: Yeah, we did include Smart-link and the other Smart products in the data that we provided, more recent data.

COMMISSIONER WILLIAMSON: Okay, thank you.

I think you did say something about how are the four types of groomers displayed in most retail establishments. Are they usually all in one section?

MR. COHAN: Yes, they are usually all right together.

COMMISSIONER WILLIAMSON: Would things like wagons be in the same section or someplace else?

MR. COHAN: It depends upon the particular retailer. Some of them may have a wagon on that same floor plan.

COMMISSIONER WILLIAMSON: Okay. I was wondering also do you experience any competition with imports from China of other product such as push spreaders or tow-behind carts?

MR. COHAN: The two-behind carts, a lot of that volume moved to China quite a few years ago, so it's definitely out there. The push spreaders from China, I don't think there is a whole lot for us on that side. We would have to look and see.

COMMISSIONER WILLIAMSON: Is there some reason why the -- you're saying basically that the carts, the Chinese sort of got into that section first?

MR. COHAN: That's been probably 10 years ago that a lot of the carts were imported.

COMMISSIONER WILLIAMSON: Why did they go after that first, or why was that where you saw the first signs of competition?

MR. COHAN: I'm afraid you would have to ask them why they chose that one first. It may be easier to copy, smaller package.

COMMISSIONER WILLIAMSON: Talking about copy, I was wondering are any of your products protected by a patent or trademark?

MR. COHAN: We have become an expensive process of doing that with so many things that we've been developing. Some of the older products were not protected.

COMMISSIONER WILLIAMSON: So I assume that means you're expecting that you would be use intellectual property laws to deal with --

MR. COHAN: Yes.

COMMISSIONER WILLIAMSON: Thank you. In your sort of contract negotiations with your customers, do they often ever mention subject imports or the subject import prices during negotiations?

MR. COHAN: They would not necessarily mention a particular quote. They may say, here is the price that you have to meet. I believe we furnished documentation on a specific example of that, and that was a Chinese import scenario.

COMMISSIONER WILLIAMSON: And has this sort of competition influenced the way you price your products? Is pricing done to meet the import competition?

MR. COHAN: Could you repeat that one, please?

COMMISSIONER WILLIAMSON: In making your pricing decisions, to what extent are they influenced by what the imports?

MR. COHAN: Over the last couple of years there has been a good bit of influence in trying to hold onto business, and taking a lower margin, and I think that's in some of the BPI information where you can see what we've done there.

COMMISSIONER WILLIAMSON: Okay. I guess there is some non-subject imports from -- non-subject imports from Mexico are basically limited to only one model, and I was just wondering why is this the case? Is there an explanation for that?

MR. HARVEY: Why is the case that there is only one imported model from Mexico?

COMMISSIONER WILLIAMSON: Yes.

MR. HARVEY: At this time that's all we've chosen to do ourselves, and we're not aware of any others.

COMMISSIONER WILLIAMSON: Okay. I was wondering can you address any rationale for why they decide to say import that one particular model from Mexico?

MR. HARVEY: I think that's something we would like to address later in the posthearing brief.

COMMISSIONER WILLIAMSON: Okay. Thank you. And also you can say now or in posthearing how quickly or how easily could production of other types of tow-behind lawn groomers be ramped up in Mexico?

MR. HARVEY: From Mexico? Okay.

COMMISSIONER WILLIAMSON: Madam Chairman, that's all the questions I have at this time for this round. Thank you.

CHAIRMAN ARANOFF: Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Madam Chairman, and I would like to welcome you all and thank you for being here today to help us understand what's going on in this industry.

This first question may require a posthearing response rather than one here at the hearing, but I'm wondering whether you have any explanation for the positions taken by other domestic companies with respect to this petition.

MR. COHAN: I think we would prefer to answer that posthearing.

COMMISSIONER PINKERT: Mr. Zolno, do you have any response?

MR. ZOLNO: Not at this time.

COMMISSIONER PINKERT: Thank you. Turning to the domestic-like product issue and looking at the statutory definition, would you agree that physical characteristics and uses are the two most important factors to be considered in defining the domestic-like product?

MR. SMIRNOW: I would not necessarily agree with that, no. Of the six, the first five, other than price, you look at the first five and then if relevant price, I would not necessarily say physical characteristics and uses are more important than others. Common manufacturing facilities I think is equally important.

COMMISSIONER PINKERT: Thank you. Now specifically with regard to physical characteristics and uses, which I understand your answer to my previous question is that they are not the most, the two most important factors, but specifically with regard to those factors, would you agree that the individual types of TBLGs in fact do not have the same physical characteristics or the same uses?

MR. SMIRNOW: I would say that there are overlaps in physical characteristics that we discussed. For physical characteristics, there are similarities and there are differences, and you think of a spreader, for example, as compared to an aerator, they could both have wheels, they have a hitch, they have a unit to pull them up. As far as use, the spreader is used to spread things. The aerator is used to penetrate the soil. But there is an umbrella -- there is an umbrella use of lawn grooming that we think is kind of over-arching, and then you have the four kind of specific functions and uses.

So I think for physical characteristics, while there are differences at the individual level, there is also quite a bit of commonality.

COMMISSIONER PINKERT: Perhaps in the posthearing if you could compare the facts of this case with regard to the domestic-like product issue with the facts of some of our key precedence in this area, that would be helpful, and I want to mention three precedents:

The heavy-forged hand tools case from China, that's 1991; the folding metal tables and chairs from China case, which is a 2002 case; and certain valves, nozzles, and connectors of brass from Italy for use in fire protection systems case, and that's a 1984 case.

MR. SMIRNOW: We will do that. We will address those.

COMMISSIONER PINKERT: Thank you. Now, assuming that we were to find multiple like products, and I understand that you're not conceding that assumption, but if we were to find that in this case, do you agree with the staff report that the combination spreaders-aerators should be treated as spreaders for purpose of a multiple domestic-like product definition?

MR. SMIRNOW: We would say that if you have to put it in either a spreader or an aerator category, it would be more -- lean toward the spreader.

COMMISSIONER PINKERT: Thank you. If there is anything in addition to that that you want to elaborate on with respect to that distinction, feel free to do that in the posthearing.

MR. SMIRNOW: Okay.

COMMISSIONER PINKERT: Now turning to some of the impact issues in this case, I'm wondering, just looking at all the data, and this is not based on dividing it up into separate like products, but looking at all of the aggregate data for the industry, does the argument that there is a correlation between subject import penetration and domestic industry performance founder on the experience and the data related to 2007?

MR. SMIRNOW: Does it -- could you repeat the question?

COMMISSIONER PINKERT: In other words, part of the argument as I understand it in this case is that there is a correlation between subject import penetration and some of the difficulties that the industry has been experiencing.

MR. SMIRNOW: Right.

COMMISSIONER PINKERT: I'm looking at 2007 on an aggregated basis, on other words not dividing it up into separate domestic-like products, and I'm wondering how is the correlation evident in the 2007 data?

MR. SMIRNOW: I think we will address that in the posthearing, but I guess I just wouldn't want to limit it to 2007, I would want to look at '06, '07, '08, and also you need to keep in mind too that there is a lag time for when something is imported and when it's sold.

For example, now retailers are still -- Chinese imports have slowed greatly given the existence of the margins probably towards the end of '08, but you're still seeing, if you go to the home improvement retailers you are going to see a lot of Chinese merchandise being sold out.

So I think there, and we'll address this in the posthearing, but there could be some lag period there.

COMMISSIONER PINKERT: And I understand that it might be better for the posthearing to get into some of these issues, but just so I understand what you're saying, would it be the position of the domestic industry that the 2007 performance in terms of cost of sales and in terms of profitability reflects 2006 import penetration or does it reflect 2007 import penetration?

MR. SMIRNOW: We'll address that, but Gary would say that there would be both. You would see both of that, both the lag as well as the immediate effect.

COMMISSIONER PINKERT: Well, I do think, Mr. Harvey, in your testimony you talked about 2008 and how things really began to so signs that there was just deterioration as a result of the imports in 2008. What's your view of 2007?

MR. HARVEY: We also saw a deterioration in

2007 as well as a result of imports for our own situation now. Some of the total data that you're looking at, aggregate data, we haven't seen so I'm not sure exactly what that shows, but in terms of our situation we've seen the deterioration in that period as well.

COMMISSIONER PINKERT: Thank you.

MR. SMIRNOW: '07 is when they started to bite, but really the wave hit, and there were in particular two large accounts that were directly affected by subject imports in '08.

COMMISSIONER PINKERT: Thank you. I assume that you will get into this further in the posthearing.

MR. SMIRNOW: Yes.

COMMISSIONER PINKERT: Thank you. Well, I will save my additional questions until the next round, and I appreciate your answers.

CHAIRMAN ARANOFF: Can you describe for me, you described it a little in your direct testimony but I want to clarify it for the record, how exactly do the Chinese imported products compete for sales at your major retailer accounts?

For example, do sales representatives of Chinese producers call directly on these retailers or do the retailers tend to research alternate sources and reach out to Chinese producers?

MR. COHAN: It happens both ways. At trade shows you will have Chinese manufacturers there representing what they can do. You also have purchasing people within these companies that are looking for import products, so it's happening both ways. Just like when we were contacted, it was, you know, a Chinese company that contacted us to see if we wanted to buy some of our own product basically.

CHAIRMAN ARANOFF: I know what happened in that case is confidential but do we have any information in the record of who that producer was?

MR. COHAN: Yes, we do.

CHAIRMAN ARANOFF: Okay. And you had mentioned that you had an agreement for a period of time with that producer. Do we have the details on the record as well as to what the products were that you had agreed to purchase from them and what happened?

Can you get closer to your microphone? The court reporter can't hear you.

MR. ZOLNO: The agreement was that Agri-Fab would purchase non-tow-behind products from the Chinese. I don't have a record, but I could clarify that that type of product --

CHAIRMAN ARANOFF: Okay. I don't know how much detail we need on non-two-behind products but I think would be helpful to have information who the producer was, when the agreement was entered into, what the terms were and what went wrong just so we have that background.

Now, you've mentioned that you sometimes have Chinese producers who are approaching your customers directly and sometimes it's the customers approaching the producers. Do you ever experience head-to-head bidding for a customer's purchase? Would a particular customer, for example, put out a request for quotations and say, I'm going to buy aerators of such and such a size, put in your bid?

MR. COHAN: Not exactly in the way that you're describing it. Normally we're showing a group of lawn groomers, giving our price for the coming year, and then they may come back and say, in the case of a document that you have currently here is the prices you need to match.

CHAIRMAN ARANOFF: Are other accounts a which you have not faced competition from subject imports, and if so, why do you think that's the case?

MR. COHAN: I'd have to look but I can't

think of any off the top of my head that we haven't faced the same issue.

CHAIRMAN ARANOFF: Do purchasers tend to buy all of their TBLGs from one supplier or do they tend to split their purchases among more than one supplier?

MR. COHAN: Depends upon the particular retailer and how they want to go about it, but we have some customers who will buy the whole group from us, some may still have an import that they're using up so they're not looking to buy that yet, and other customers do want to shop the line.

CHAIRMAN ARANOFF: Okay. But aside from the current issue with inventory that might be remaining that they might be trying to sell or bring in other products, just in a more typical pattern.

MR. COHAN: Yes, they may buy some of their groomers from us and some from domestic competition, yes.

CHAIRMAN ARANOFF: Okay. And would they be buying the same thing, and would they be buying two 46-inch spreaders from two different manufacturers or would they be buying --

MR. COHAN: No, they may buy a 42-inch sweeper from us and a 46-inch sweeper from a competitor, or a 40-inch detachers and a 48-inch detacher from someone else.

CHAIRMAN ARANOFF: Okay. And then when they are marketing these products to their own customers at the retail level, are they selling them and say, this one is bigger than this one and that's the difference between them, or are they trying to sell, you know, based on a good, better, best type of concept?

MR. COHAN: Some customers will take both approaches. You will actually see an ad from some customers that say good, better, best, and a lot of times the best does wind up being the largest.

MR. SMIRNOW: Chairman, on your previous question Gary had wanted to add something.

MR. HARVEY: Yes. Just regarding the way the customers purchase the different products within the TBLGs, traditionally in the past it was more of a one stop shop. The customer would come to us and buy pretty much all the products at once. But that's one of the changes we have seen in the industry and in the marketplace is that as these lower priced products became available from China we started to see more what we call cherry-picking where they will pick a lower priced aerator or spreader or something like that from the Chinese competition, and then fill the rest of the line out with our or maybe with some other domestic producers' product.

CHAIRMAN ARANOFF: Is it usual or unusual for a retailer to sell a private label TBLG that you've manufactured alongside your own branded product?

MR. HARVEY: We see both. As far as how much of each, I guess I can't really say right now, but we do both. We manufacture under a retailer's label and also under our own label the same product.

CHAIRMAN ARANOFF: And it's not uncommon for the same retailer to sell both next to each other?

MR. HARVEY: I don't know that that's that common. I'm not aware of too many situations like that.

CHAIRMAN ARANOFF: Okay. If you could help us for purposes of posthearing to assess whether or not it's a widespread practice in the industry, that would be helpful. In fact, I'd also be interested, you know, what the typical price spread, if any, might be between a retailer selling your private label product and your branded product in the same store.

MR. HARVEY: Okay.

CHAIRMAN ARANOFF: Thanks. Let me turn to a different question on pricing. In this case, also in a case where retailers service direct importers of the subject product we run into a situation where we can't include the transaction prices for retailers' imports when we are doing our price comparison because the sales aren't made at the same level of trade, and so the question I have considering that there are, you know, some large retailers that this might describe, is there any way that we can consider the pricing information that is supplied by retailers who directly import the product and what weight should we give to that information compared to the other price comparison information that we have in the record?

MR. SMIRNOW: We would say yes, and this is something that we've addressed in the prehearing brief when we gave an example. There is a table in the prehearing brief where we based on conservative estimates tried to get a sense as to what an importer under that scenario what their pricing would be like at a comparative level, and we will again address that, highlight that in our postconference submission.

CHAIRMAN ARANOFF: Okay. I know that the respondents are not here today, but one of the things that struck me in looking over their submissions was they basically characterize Agri-Fab's present injury case as being based entirely on the loss of one particular large customer. Can you comment on the extent to which that is a fair assessment?

MR. HARVEY: Yeah, I think we've highlighted one particular instance, but there has certainly been several others in addition to that where we've lost business and lost sales, and then there has also been many other situations where pricing has been depressed or suppressed as we talked about because of the Chinese imports and the threat of potentially losing business to those imports.

MR. SMIRNOW: I would add, too, that with respect to the one party that they've referenced certainly one of the huge volumes there, and I would note that in their brief they said that price really had nothing to do with that party's activities with respect to imports. I think there is a credibility issue there on the Respondent's side.

CHAIRMAN ARANOFF: Yes, unfortunately, we are not able to ask that question today.

All right, my light has turned yellow. Let me thank you for those answers and turn to Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman. Permit me also to welcome the panelists. At one time I actually knew something about things that were towed behind tractors; not garden tractors, but larger one. I regret that I was not able to tour your facility.

I'd like to start by asking about overall demand in the marketplace. During the period of investigation what was your sense of what the overall demand was, not just what you were selling because I know that from the staff report, but what was happening to demand overall?

MR. HARVEY: Overall demand, I'd say our belief is early in the period probably flat to maybe some slight growth. Again, our sense of it. Getting into late 2008 certainly we saw or we felt like there were declines in the overall industry and overall demand related to the economy and the housing situation.

VICE CHAIRMAN PEARSON: Okay. Based on your considerable years of experience in this industry, at what point did you start to have the sense that perhaps you weren't getting what you would consider your fair share of the market based on what you had been accustomed to in the past?

MR. HARVEY: Related to the imports, it was earlier. Some of it began before the period of investigation, so 2004 time period I would say.

VICE CHAIRMAN PEARSON: So as you look at the demand for 2009, are you expecting it to be smaller or larger than in 2008?

MR. HARVEY: The overall market again, is that what you're referring to? I believe just from the indications again, the overall economy and the housing situation, we probably feel like it's going to be less than 2008 for 2009.

VICE CHAIRMAN PEARSON: If you were to project ahead through 2010 as you do your business planning, are you anticipating a rebound in demand in that year?

MR. HARVEY: We'd say slight growth from '09 to 2010.

VICE CHAIRMAN PEARSON: Do you have any projections you could share in the posthearing that would give us a sense of how Agri-Fab sees the prospects in this marketplace?

MR. HARVEY: Yes, we do. We will share those in the posthearing.

VICE CHAIRMAN PEARSON: Okay. We deal with some industries where there is published information regarding likely movements in supply and price and what have you, and this is not such an industry so that's why I'm curious. You're running a serious business. You're thinking about what's happening in the marketplace, so it doesn't surprise me if you've done some thinking, and to the extent you can share that with us, I'd appreciate it.

Earlier in the direct testimony you mentioned price suppression and depression. I think, Mr. Cohan, you may have been the person who discussed that. As I look at this record, I see that the pricing of our pricing products generally increased, so we would normally see that as arguing against price depression. If prices are depressed, they should be going down. We don't see that jumping out at us here from this staff report.

And then in terms of suppression, we often look at the cost of goods sold to sales ratio, and use that as a general indication of suppression, and here we see only a very slight increase in the cost of sales ratio which, you know, kind of would suggest little or no price suppression. So talk to me about how you see price depression and suppression, how you think we should understand it.

MR. HARVEY: Well, I think we'll probably have to address most of that in the posthearing brief, but in general, specifically with 2008, there were significant increases in our cost with little ability to pass those cost increases in our pricing. So I believe that there should be -- should show a little more than a slight increase in cost of sales as a percentage of sales.

VICE CHAIRMAN PEARSON: Right, and we, of course, have to deal with aggregate information for the industry, treating the industry as a whole, and so that's what I was looking at when I was referring to.

MR. HARVEY: Okay.

VICE CHAIRMAN PEARSON: Not a huge change in the cost-to-sales ratio.

MR. HARVEY: Again, you know, not seeing the aggregate data, I'm not sure what the report looks like, but our experience is different than that is what I would say.

MR. SMIRNOW: We'll address that in the postconference submission.

VICE CHAIRMAN PEARSON: Okay. Well, you probably are familiar enough with our statute so that you know that we are required to look at changes in volume of the subject imports, change in prices in the domestic market, and impact on the industry. And as I look at this just perfunctorily, it's not too hard to see some volume effect. I can observe that. The price effect gets to be more complicated. It doesn't jump up and whack me over the head, and that's why I would like you, to the extent you can, explain more to me how we should recognize price effects on the basis of this record.

MR. SMIRNOW: Yes, for now I would say underselling jumps off the page at me when I look at the underselling, and there are two categories that we distinguished in our prehearing brief I think are distinguishable. Once those are distinguished the underselling is across the board.

VICE CHAIRMAN PEARSON: Okay, but it's not so terribly unusual that we have cases in which there is a pattern of underselling that may or may not affect the prices of like product.

MR. SMIRNOW: If you lose the sale, then you're not even given the opportunity to compete with the price, you lose the same. So the underselling can be considerably important in that context.

VICE CHAIRMAN PEARSON: So you're relying more heavily on evidence of lost sales and lost revenues?

MR. SMIRNOW: Potentially. I'll address it in the postconference, but yes, we did have a considerable lost sale, lost revenue where Agri-Fab didn't even have the opportunity to lower its prices. It just lost the business which I think Mike had indicated during our testimony. But we will give you specific examples of that and the relevance of that in the context of depression and suppression.

VICE CHAIRMAN PEARSON: Okay, because we do have a modest number of instances that were confirmed of lost sales. Sometimes we see clear evidence than we might be seeing here. So again tell me what you can about this to help me understand it.

A related question: If demand has been somewhat slack lately, why hasn't that been reflected in lower prices in the marketplace? I mean, you know, very often we consider that when demand falls prices also fall along with it, depending on the type of product and the structure of the marketplace. Could you comment at all on that? Is this a product where you would not expect to see a price decline when demand shrivels?

MR. HARVEY: I think materially when we look at near the end of '08, pricing was being driven by the much higher material costs, when commodity prices sharply rose. So even though demand was falling at that point we didn't see prices follow suit.

Now since the end of the year, since early '09, we have begun to see falling prices, and you know, that's data that you wouldn't have seen so far, so I think it's just too new at this point, and again as we talked about in our testimony, customers still refer back to that import pricing when they think of prices need to return to where they were, our prices.

VICE CHAIRMAN PEARSON: And is that true now in '09 even with the preliminary duties in place?

MR. HARVEY: Yes. We've had even indications in '09 still that they're expecting -- the customers are expecting prices at those levels, the Chinese import levels from before.

VICE CHAIRMAN PEARSON: Are you facing competition in the marketplace now from Chinese product that came in subject to the preliminary duties?

MR. HARVEY: I'm not aware of any direct situations necessarily.

MR. COHAN: There aren't any that I'm aware of. It would be product that came in prior to the margins being established, and that is still out in the marketplace, so it will take awhile to work through that inventory.

VICE CHAIRMAN PEARSON: Okay, thank you for that clarification. My time has expired, Madam Chairman.

CHAIRMAN ARANOFF: Commissioner Okun.

COMMISSIONER OKUN: Thank you, Madam Chairman. I join my colleagues in welcoming all of you here. Appreciate you taking our questions, providing information.

If I could just follow up on the Vice Chairman's last question with respect to the argument you have made about what weight we should give the post-petition information and just make sure I understand Mr. Harvey's answer. When we're looking at the prices and the volume and the impact in that period, you know, what's going on in the market that you think we should discount and what shouldn't we discount based on the filing of the petition?

MR. HARVEY: I guess I'd reiterate that near the end of '08, both with the material situations that we face and the Chinese beginning to learn about the margins, we saw some opportunities to improve our pricing, but then again as material costs begin to fall after the beginning of 2009, we were getting requests from our customers almost immediately to reduce prices again.

COMMISSIONER OKUN: Okay. Perhaps Mr. Zolno for posthearing you can just take a look at the data and the argument regarding what weight the Commission should give based on the pendency of the petition. It would be helpful for me.

I just wanted to go back to a couple of follow ups on the like product question. If the Commission were not to accept one like product, the Respondents had proposed three categories, and I wondered if you could address those here or address in posthearing if the Commission were to find more than one like product whether you think the three categories versus the four would be more appropriate.

MR. SMIRNOW: We'll address that in our postconference submission.

I would note that in reviewing their submission, it appeared to me that they were only looking to one discrete physical characteristic to distinguish, to make their like product case.

They went through the analysis, but at the end of the day I believe they hung their hat on one subcomponent of physical characteristics.

COMMISSIONER OKUN: Okay.

MR. SMIRNOW: But we'll address that in our postconference submission.

COMMISSIONER OKUN: Okay. And then just a follow up to Commissioner Pinkert's request to discuss Commission precedent. If you could include in that list of past cases to look at Professional Electric

Cutting and Sanding Grinding Tools From Japan, which was a 1993 case, and also Anti-Friction Bearings?

In discussing those cases, if you could look to what the Court had to say about the Commission looking at product categories and operating elements rather than the argument you've made with kind of this overall function of all about taking care of your lawn?

MR. SMIRNOW: Okay.

COMMISSIONER OKUN: Okay. That would be helpful.

If the Commission were to find four like products, can you tell me how the Commission should evaluate the presence of nonsubject imports in this spread or category or in any category, but let's just say for nonsubject imports?

For purposes of posthearing, if you can look at the presence of nonsubject imports and say how it should be evaluated differently for the different categories?

MR. SMIRNOW: Okay. We would prefer to do that in posthearing.

CHAIRMAN ARANOFF: Posthearing, yes. Gotcha. Okay.

And then I know that you have responded in response to the Chairman's question about how we look at retailers where we don't have the same level of trade, and I did look at the pricing series that you had provided in Exhibit 5 of your prehearing brief.

So for purposes of responding to that question further, if you can explain to me in more detail the basis for your adjustment factor that you used and whether the actual data in Exhibit 2 was considered when you arrived at that adjustment factor to help me understand that better?

MR. SMIRNOW: Okay. We will.

COMMISSIONER OKUN: Okay. And I know that you have had a chance to respond or talk quite a bit about what was going on with respect to demand, and I think I better understand what you're saying, but I guess there was maybe even a lag for you in terms of the housing market, the decline in the housing market, when you started seeing that impact on demand for your product.

I think some of the cases we've had in other products and we're looking at the housing market, I mean, you saw a much bigger dropoff earlier. For this record we don't really see that until much later, and that just would be typical because it takes a while for people to -- they're not going out and buying them for the lack of new homes I guess it is as that explains it.

Is that kind of an accurate view of this market right now? It actually seems like you didn't get hit as hard until much, much later than some of the other things that are related to home ownership.

MR. HARVEY: Yes, that's probably true. I think, you know, our retailers, our customers, tend to try to forge ahead with business as well as they can, and they continued to try to drive volume maybe even when the housing market did start to weaken, which helped us some.

But again, we really didn't see much of the weakness, the general weakness, until later in 2008. You know, the reasons for that we don't really have a lot of detail on right now.

COMMISSIONER OKUN: Okay. That's helpful. And just so I understand it, I know in response to earlier questions you talked a little bit about private label products and where they're being sold in a store, and I'm just trying to make sure that I understand that in terms of the pricing.

I mean, if you go into a large retailer and you see a private label alongside branded is that something that they're marketing to the consumer? You talked a little bit about that the purchasers now, because of low-priced subject imports, might choose to buy a spreader not from you, but from another company and keep your spreader.

How are they then marketing that? Has that changed? You've talked about that change in the dynamics of the market. I'm trying to better understand that. How has it changed how a consumer perceives these products?

MR. COHAN: We're not always sure that the consumer knows that they're looking at an import product at the time they're looking at it on the store shelf, especially if it is private labeled. You know, we mark ours as Made In The USA on the identification tag, and it does say Made In China on the other products.

If they're comparing an Agri-Fab Made In USA with a private label Chinese unit it would probably depend upon what that particular retailer has chosen to do, and a lot of times we don't have much say in how they display the product so we're kind of at a loss to help you on that one.

COMMISSIONER OKUN: Okay. What about in terms of seasonality? The staff report reflects that there is some seasonality in this market, and even the four different products are used at different times of the year, if I understand them, although I haven't ever operated one of them like my colleague here.

Has any of that changed in the marketing? I mean, are they sometimes sold as buy all four because you need all of these to take care of your lawn or, you know, if you're in there in the fall you're a consumer and you're looking for one type? I'm trying to understand the trends among the different products that we have before us.

MR. HARVEY: I don't think we've seen a lot of change in the seasonality of the products. They typically sell in the springtime.

Our shipping season runs from January through mid May to maybe the end of the May, and then we do have some season in the fall, which is probably more driven by sweeper demand than it is the other products at that time because there is some fall use for sweepers, but typically the season is spring. People buy it early in the year so that they can use it for the entire summer season.

COMMISSIONER OKUN: Okay. How about in terms of life cycle? Has any of that changed when you're looking at how long you expect a consumer to own one of these products? Is it different among them? How has that changed?

MR. HARVEY: I think that's probably something we'd like to talk about posthearing --

COMMISSIONER OKUN: Okay.

MR. HARVEY: -- to give you some more detail on that information.

COMMISSIONER OKUN: Okay. That would be great. When you're doing that, if you can also kind of further elaborate?

I know there's some information in the staff report, but whether the downturned economic conditions have led to more consumers looking to repair products as opposed to buying them. If you have any information on that, that would be great.

MR. HARVEY: Okay.

COMMISSIONER OKUN: Madam Chairman, my light has turned red, but he says yes. Thank you.

CHAIRMAN ARANOFF: Commissioner Lane?

COMMISSIONER LANE: Good morning. I too want to say that I enjoyed the plant tour, and it helped bring everything into focus and so I think maybe a lot of my questions were already answered, but I do have a few.

Do your customers sell both domestic, your product, and subject product and nonsubject in the same place?

MR. HARVEY: Some of our customers do and some don't. I think there's some distinction that we haven't talked about a whole lot, and that's there are retailers that carry lawn tractors and some retailers that don't, but they can also potentially carry tow-behind lawn groomers.

Many times they don't. Those choose to carry nonsubject products instead because they don't have the vehicle that tows the lawn groomers.

COMMISSIONER LANE: Well, why don't we discuss this a little bit because I did have a question and it was really vague because I wasn't sure if it was business proprietary or not.

At one point I think that I learned that you might have an affiliation with a major brand person or entity of motorized vehicles. Did that come through, and how much of your product do you sell to entities that are selling the lawn tractors also?

MR. COHAN: I'm not sure of the affiliation that you're talking about, but --

COMMISSIONER LANE: Well, I'm not sure if it's business proprietary, but it would be a major producer of lawn tractors.

MR. COHAN: Yes. We have no affiliation

with lawn tractors.

COMMISSIONER LANE: No. I'm sorry. I don't mean affiliation. I meant marketing. Do you market your product say at places that sell the lawn tractors? For instance, like a Kabota --

MR. COHAN: Yes.

COMMISSIONER LANE: -- or John Deere or Ford or any of those?

MR. SMIRNOW: Commissioner, I believe, and I don't know the specific affiliation example you're talking about, but I believe that's another domestic producer that might have that relationship, and we would be happy to --

I mean, we think it's public, but we don't want to reveal anything here that probably shouldn't be. We don't want to risk it, so to speak.

COMMISSIONER LANE: Well, let me just say that unless I dreamed it I asked on the tour do certain producers of lawn tractors sell your equipment at the same location, and I was told that you all were discussing that with a particular producer of lawn tractors. I just wondered if that had come true.

MR. SMIRNOW: We'll do our best to address that in a postconference submission.

COMMISSIONER LANE: Okay. I'm sorry. I was trying not to reveal business proprietary information if it were.

MR. SMIRNOW: Would this be something that you could be more explicit through a staff request?

COMMISSIONER LANE: Yes. Yes.

MR. SMIRNOW: If we could handle it that way?

COMMISSIONER LANE: Okay. Okay. Thank you. In the staff report, and I think this is business proprietary so it will be vague again.

Your raw material inputs. Could you provide in posthearing where you get your raw material inputs and how you price them?

MR. SMIRNOW: Yes. We'll address that in the posthearing brief.

COMMISSIONER LANE: Okay. And do you compete for customers of your product with nonsubject product? I'm sorry. With subject product from nonsubject countries.

MR. SMIRNOW: No. As far as we know, the only country other than the one specific example from Mexico, the only country where subject merchandise is produced, the four categories are produced, is China.

COMMISSIONER LANE: Okay. And can you explain in your posthearing more about the product from Mexico and how it's sold and where it's sold?

MR. SMIRNOW: Yes.

COMMISSIONER LANE: Okay. Thank you. You talked about the Smart Link product. Is that part of the like product that we are discussing here today?

MR. SMIRNOW: Yes, it is. We've included it in our data.

COMMISSIONER LANE: Okay. And can you explain in your posthearing the difference in profitability of the four different types of tow-behind lawn groomers and why there is a difference?

MR. SMIRNOW: Yes, with respect to Agri-Fab specifically.

COMMISSIONER LANE: Yes. That's what I mean. I'm sorry.

MR. SMIRNOW: Yes. We will do that.

COMMISSIONER LANE: Okay. Now, in the staff report, and this is also business proprietary, how do you account for the fact that when demand goes in one direction sales to some customers go in another direction?

MR. SMIRNOW: Without a specific example --

COMMISSIONER LANE: No. It's in the staff report and so --

MR. SMIRNOW: Okay.

COMMISSIONER LANE: It is business proprietary, and I thought maybe --

MR. SMIRNOW: Could you cite the page number of the staff report? We could address it that way.

COMMISSIONER LANE: Okay. I'll have to find it and give it to you.

MR. SMIRNOW: I'm sure we could go through the staff on that one.

COMMISSIONER LANE: Okay. Thank you. Typically how long do lawn groomers last? What's the life cycle of them?

MR. SMIRNOW: I think that was something that again we wanted to talk about posthearing.

COMMISSIONER LANE: Yes. I thought Commissioner Okun's question was more like how long people keep them. I wanted to know how long they would last, but maybe it's the same question.

MR. SMIRNOW: I think it's similar, and it does get into some of the research that we've done that's proprietary.

COMMISSIONER LANE: Okay. When you make products for someone else are they typically sold assembled, or do customers have to assemble them when they get them home?

MR. COHAN: Most of the integrated assembly like on a sweeper is done at the plant, but the customer -- most of our units are knock down. Most of the TBLGs require customer assembly.

COMMISSIONER LANE: Okay. Thank you. Now, do people generally buy all four of these lawn groomers at the same time, or do they stagger their purchases?

MR. COHAN: I think that's in the research that we were going to provide posthearing.

COMMISSIONER LANE: Okay. Okay. I think that's all I have. Thank you.

CHAIRMAN ARANOFF: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman. I just have one question. I was just wondering as to how production capacity is defined in this industry.

I note that you produce a variety of other products on the same assembly line and with the same employees that you use for the groomers, so I was wondering. How do you account for the ability to switch production to other products when determining capacity for groomers?

MR. HARVEY: I guess I'm not sure, you know, how the aggregate data was really compiled, but particularly for us we looked at our largest, highest years of production in terms of volume and based our analysis of capacity on that, on those volumes.

COMMISSIONER WILLIAMSON: So are you sort of allocating the capacity based on whatever allocation it was in those years?

MR. HARVEY: Yes. Yes, during our highest, heaviest production times. We based it on that time period.

MR. SMIRNOW: And during those times the company felt like it was at 100 percent capacity for TBLGs, so that's the ceiling that they've set and measured capacity against that.

COMMISSIONER WILLIAMSON: So you also take into account the non TBLG use too for the company?

MR. SMIRNOW: Yes. The capacity numbers is peak of everything that they wanted to devote to TBLGs. It was devoted to TBLGs without taking away business from other areas.

They could build a new factory. There's things they could do, but as far as shifting they felt like that had already been factored into the peak, that peak performance here.

COMMISSIONER WILLIAMSON: Okay. Thank you for that clarification. With that I have no further questions and wanted to thank you all for your testimony.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Madam Chairman. I just have a few more questions. I understand the argument in the brief that the import price data for Comparison Products 4 and 7 is unreliable in your view.

I'm wondering whether you have any suggestions, and maybe this is a good question for the posthearing, but if you have any suggestions as to what alternative pricing information we might consider, particularly with respect to pricing of Product 7, which is the only dethatcher for which we have price information.

MR. SMIRNOW: Yes. We'll address that in the posthearing brief.

COMMISSIONER PINKERT: Thank you. Now turning to your argument about Bratsk, I'm wondering, and maybe this is a good question for Mr. Smirnow.

I'm wondering whether there's some interdependence between how we answer the domestic like products question and whether we need to undertake any Bratsk inquiries. So if in fact we divide up the domestic like product, does that mean that we would then need to do an analysis for at least one of the subproducts based on the Bratsk precedence?

MR. SMIRNOW: Well, other than your interpretation we would say no.

(Laughter.)

MR. SMIRNOW: Noting your footnote and the interpretation of the --

COMMISSIONER PINKERT: I thought that your discussion of this issue in the brief looked a lot like my interpretation of Bratsk actually.

MR. SMIRNOW: Yes. I mean, we tried to cover the Commission's views, which would include yours, even though they may differ.

But, yes, I would say that if you break it out by like products that's the first analysis, and then in making your injury assessment Bratsk would come into play for each of those separate like products, but we don't believe that Bratsk applies under any like product finding that you may have.

In the posthearing I'd be happy to do that on a kind of product-by-product, assuming there's not one like product.

COMMISSIONER PINKERT: That would be very helpful, and I think that what you'll find when you break it out product-by-product is that there's a particular let's call it notional domestic like product.

There's a particular one that raises questions about this <u>Bratsk</u> issue, so if you can elaborate on how we would deal with that that would be very helpful.

MR. SMIRNOW: We will, and we'll assess that under both interpretations of <u>Bratsk</u>.

COMMISSIONER PINKERT: Thank you. That's all I have. Thank you very much.

CHAIRMAN ARANOFF: I want to follow up with a few more like product questions. In particular, I've been looking again through Agri-Fab's 2009 catalog, product catalog, which I think I acquired on the plant tour.

In the catalog you tend to group your lawn care implements by function, so for each function there tends to be included both a tow-behind, several tow-behind models, and then also some push models of the same product.

This organization tends to suggest that these products are aimed at the same market; that when someone looks at this catalog they're looking by end use as opposed to looking by category of tow-behind versus push.

What should I be drawing from the organization of merchandise in the catalog?

MR. SMIRNOW: I would say individually looking at the catalog you have to look at it in the context of the six like product factors. For several of those it's a mixed picture. There are some that favor. There are some that go against.

In the function context of the catalog, we're not going to ignore that the catalog is structured that way, but when Agri-Fab goes to its top customers materials are presented. The bids are presented as a family.

There are separate buyers. I think that's more important. Common manufacturing facilities, channels of distribution. I think those are more important factors than the catalog that may have grouped it together.

If you want to add something as to why it's catalogued that way?

MR. HARVEY: No. I really would just to follow up just reiterate what John said. We're more focused when we sit down with a customer actually in a sales meeting to focus on the family of products, the TBLGs.

If we do go in and sell nonsubject product, it's in a separate meeting with a separate buyer on a separate day, a totally different process from our standpoint. We may use the same catalog for both meetings, but otherwise everything is different and separate.

CHAIRMAN ARANOFF: Okay. I marvel under those circumstances that there aren't two catalogs or at least that the catalog isn't organized differently than it is, but if there's anything else you want to add on that feel free to do that in the posthearing.

Looking at the catalog again, you had mentioned the Smart Link modular product which allows you to use one platform for several TBLG products, so I'm looking again at the catalog, and in particular on page 41 it indicates that in addition to aerators and dethatchers this platform also functions with a roller, which is a nonsubject product.

I'm trying to figure out how to fit that into the like product analysis that you've offered us, which is the fact that you have these combination products indicates that customers tend to think of these products as a group and use them as a group, but we also now find that there's a product outside the set that you've given us, which works in this same combination.

MR. SMIRNOW: I would analogize to the push spreader where there are factors where there's some overlap.

I think in this context, as I said before, there are some factors that weigh against each of the six and there's some that favor us, some that go against us, but on balance looking at the record as a whole, looking at the six like product factors as a whole, we believe there's one like product.

I think there are examples throughout the record where there are some overlaps with products that we would say shouldn't be covered by the domestic like product. This isn't a case where there's a bright line.

I think there are some, but you have to look at the record as a whole, and common manufacturing facilities -- in the context of what the antidumping laws intended to do is protect the domestic industry, and Agri-Fab is a company that their core products that they manufacture are tow-behind lawn groomers. Those go through their production facility the same way. They're on the same machines.

When they sell those products in the market they generally sell them as four products. There are times where they sell push to some of those same customers, but the heart of what they manufacture and what they sell are the four tow-behind lawn groomers.

CHAIRMAN ARANOFF: Okay. I know that you're going to submit some marketing research that you've done for purposes of the posthearing, so to the extent that that addresses one of the things that I'm interested in is the distinction between who buys a tow-behind product and who buys a push product.

I've heard two different things. One is well, obviously if you don't own something that's going to tow the tow-behind product, you're not going to buy it, but there's also been a discussion of lawn size as a dividing line between who would purchase a tow product and who would not. So if there's any research that really supports how clear that dividing line is, that would be helpful.

I'll tell you just a little bit more about what I'm thinking. You might have a riding mower to mow a lawn that's an acre or two because you've got to mow the lawn every week, and that's very tedious with a push mower, but if you're only going to aerate once or twice a year or use a spreader once or twice a year, if it was much less expensive, you know, how many people are there who might still buy the push one for that purpose in thinking well, I'm only going to walk the lawn once and not every week, so why should I spend more?

I didn't know if your research addresses that sort of issue.

MR. HARVEY: We do have some information regarding size of lawns and the correlation between tow-behinds and other products, so we will include that posthearing.

CHAIRMAN ARANOFF: Thank you very much. There's one or two other questions that deal with confidential data and so are for the posthearing.

If you look as between the various U.S. producers at the changes in value of net sales during the period that we're looking at you do see some differences, so if you could comment for purposes of posthearing on the differences in trends between the domestic producers that would be helpful. I'm particularly interested in what might be accounting for those differences.

Secondly, if you could comment on how the trend in industry capital expenditures supports or detracts from the injury arguments that you're making that would also be helpful.

MR. SMIRNOW: Okay. We'll address those in the posthearing brief.

CHAIRMAN ARANOFF: Thank you very much. I'm realizing now as I was at my like product questions that I forgot one, so let me just turn back to that quickly.

Do any of the Chinese producers have a modular product that's similar to the Smart Link product?

MR. COHAN: Not that we're aware of.

CHAIRMAN ARANOFF: Are you aware of any combination products that they sell, more like your two product combination ones?

MR. COHAN: Yes. There are some listed in there, I think the combination spiker. The aerator/spreader combination is in there.

CHAIRMAN ARANOFF: Those are produced by Chinese manufacturers?

MR. COHAN: Yes. Yes.

CHAIRMAN ARANOFF: Okay. If there's any information that you can provide about the availability of those products that would be helpful.

With that, I don't think I have any further questions. I'll turn to Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman.

Mr. Harvey, going back to the COGS to sales ratio, since my last questions I looked at the specific numbers for Agri-Fab and I see those as following more closely the general trend that I described earlier. I take great comfort when the numbers align with the testimony. I'm not sure that that's the case right here.

Please look at the numbers that we have in the staff report for Agri-Fab, and if we are incorrect then do correct us. If not, please describe in the posthearing what exactly you're referring to.

MR. SMIRNOW: We'll do that.

VICE CHAIRMAN PEARSON: Okay. Then for counsel, you would have access to the data regarding the raw material costs for industry as a whole, because there was specific reference earlier by Mr. Harvey to the raw material costs.

Tell me if I'm missing something there because I'm not seeing a pattern in the raw material costs for the whole industry that I think reflects the testimony that was provided earlier.

MR. SMIRNOW: Okay. We'll also address that posthearing.

VICE CHAIRMAN PEARSON: Okay. Thank you. For counsel, do you consider this case for an affirmative vote to be stronger for present injury or for threat?

MR. ZOLNO: If I may address that? I think it's stronger for present injury than it is for threat. All the data that we've seen with respect to the injury suffered by Agri-Fab tends to show present material injury.

VICE CHAIRMAN PEARSON: Okay. And so what do I do with that? In the event the Commission would see this as a threat case, can you give us any arguments for doing so? What would be the strongest arguments for threat?

MR. ZOLNO: I think the strong argument for threat is the capacity of the Chinese manufacturers to resume production and exportation of their tow-behind products to the United States.

As the Agri-Fab witnesses testified to earlier today, the market has somewhat turned around with respect to the massive margins that were imposed against the Chinese manufacturers of these products, causing a significant decline in imports of the products into the United States, so that I think is indicative of our point.

VICE CHAIRMAN PEARSON: Okay. If you have anything more for the posthearing regarding threat versus affirmative present, by all means please share that.

Earlier you had a discussion I think with Commissioner Williamson regarding the fact that some of your products are not protected by patents and trademarks, and those are the ones that have been imported from China.

In the posthearing could you provide any more information in regard to which products or innovations that now are being protected by patents or trademarks?

MR. COHAN: Yes, we can do that.

VICE CHAIRMAN PEARSON: Okay. And you may have some knowledge of our Section 337 practice here at the Commission where we are involved in enforcing violations of patents and trademarks for imported products.

MR. ZOLNO: We're very familiar with Section 337, Commissioner Pearson.

VICE CHAIRMAN PEARSON: Yes. You know, we've had one dealing with <u>Lawn and Garden Tractors From China</u> that was a trade duress issue a little while, but they're no longer coming in with particular shades of yellow and green paint.

(Laughter.)

VICE CHAIRMAN PEARSON: So we can provide an effective remedy under some situations.

Let's see. The issue of nonsubject imports from Mexico has been mentioned before, but I wasn't sure whether the question had been asked specifically whether you have any evidence that there is competition between the imported products from Mexico and the imports from China. This gets into a nonattribution issue.

MR. SMIRNOW: We'll address that in the posthearing submission. We believe the answer to that is no, but we'll confirm that in the posthearing submission.

VICE CHAIRMAN PEARSON: Okay. So your supposition at this point is that there's not been situations in which --

MR. SMIRNOW: We don't believe Chinese product of that specific item is coming into the United States.

VICE CHAIRMAN PEARSON: Okay. So we've not seen a reduction in sales of Mexican product that was instead served by a Chinese product?

MR. SMIRNOW: Yes. I was mistaken about that. Let's address that in the posthearing submission.

VICE CHAIRMAN PEARSON: Okay. Then another issue that has been mentioned is whether the four products are sold together as a group by your sales force.

I'm not sure just what commitments you already may have made to provide information in the posthearing, but to the extent that you can provide some documentation that your salesmen actually are marketing the four products together as a group, that would be helpful.

MR. SMIRNOW: We'll include that.

VICE CHAIRMAN PEARSON: Okay. Madam Chairman, I think that pretty well takes care of my questions. Thank you.

CHAIRMAN ARANOFF: Commissioner Okun?

COMMISSIONER OKUN: Thank you. I think based on the discussion, I think I have just one last request for the posthearing, and that is while I have not made up my mind I would ask that you brief for four separate like products.

And in particular in doing that I think to make sure that in looking at the attribution issues that you distinguish between the different products and whether we should consider any of the products differently based on the trends we see there.

With that, I don't have any other requests.

I will look forward to all the posthearing information that we've requested. Thank you very much.

CHAIRMAN ARANOFF: Commissioner Lane?

COMMISSIONER LANE: I don't have any further questions, but we will submit posthearing the specifics of those obscure questions that I asked you so that you can answer them posthearing. Thank you.

CHAIRMAN ARANOFF: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Just one. In response to the Vice Chairman's request for documentation showing that the four products are marketed together, specifically if you have if you could show sales documents showing that they were sold together, I would particularly like to see that. That's all I have. Thank you.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: I just have one additional question.

I noticed in your brief that you talked about the statutory obligation of the Commission to at least consider the dumping margins found by Commerce in the context of our injury determination.

How exactly do you see the Commission factoring those margins, dumping and countervail margins, into the analysis?

MR. ZOLNO: I think that the massive margins that we discussed before in our opening testimony, which were not determined until yesterday by the International Trade Administration of the Department of Commerce, I think that is indicative of the extent of injury to the domestic industry and the nexus between the injury and the underselling of the products and here just not underselling of products -- in other words, sold at less than fair value -- but coupled with the massive subsidies that are afforded many of the Chinese exporters by the Chinese Government, which were found to be countervailable by the ITA.

COMMISSIONER PINKERT: Thank you. And with that I have no further questions, and I look forward to the posthearing submissions.

CHAIRMAN ARANOFF: Are there any further questions from Commissioners?

(No response.)

CHAIRMAN ARANOFF: Do the staff have any questions for the panel?

MR. McCLURE: Jim McClure, Office of Investigations. Madam Chairman, staff has no questions.

CHAIRMAN ARANOFF: All right. Well, we

appreciate all of the time that you have taken to answer our questions this morning, and you have five minutes for a closing statement so please proceed whenever you're ready.

MR. ZOLNO: Typically at this point we would offer a rebuttal to the Respondents' testimony. I don't know if I should say unfortunately or perhaps fortunately there were no appearances by the Respondents today.

I believe that we mentioned briefly in our opening statement that one of the major -- in fact mandatory -- Respondents in the Department of Commerce investigation withdrew at the eleventh hour from the Department of Commerce less than fair value inquiry and has never been a party to the ITC injury investigation.

The other mandatory Respondent again at the eleventh hour withdrew from this hearing, so to a certain extent we and the Commission must speculate with respect to exactly the nature and the extent and seriousness of the arguments that were made.

We have, and I think this case is very indicative of the value of the antidumping and countervailing duty laws to the U.S. domestic industry, that the company has already experienced a slight turnaround in the problems that they were having with respect to the unfair practices of the Chinese industry and the unfair competition that they were facing in the U.S. market, so there has already been a turnaround, a slight turnaround at least, with respect to their markets here in the United States.

The turnaround was due to this Commission's initial preliminary determination of injury, coupled with the preliminary significant margins imposed by the Department of Commerce.

We would just urge the Commission to find, as we said at the outset, that there has been present material injury, or if not present material injury threat of material injury, to the U.S. industry -- and by U.S. industry again we don't just mean our client, Agri-Fab, but the entire tow-behind lawn groomer industry -- and that the Commission conclude in its final investigation or make an affirmative finding in its final investigation.

We very much thank you for the opportunity to appear.

CHAIRMAN ARANOFF: Thank you. Posthearing briefs, statements responsive to questions and requests of the Commission and corrections to the transcript must be filed by June 23, 2009.

Closing of the record and final release of data to parties will take place on July 8, 2009, and final comments are due on July 10, 2009.

With that I want to thank everyone again on the panel for participating today, thank the staff for all their hard work on this case, and with that this hearing is adjourned.

(Whereupon, at 11:37 a.m. the hearing in the above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Tow-Behind Lawn Groomers

INVESTIGATION NO.: 701-TA-457 and 731-TA-1153 (Final)

HEARING DATE: June 16, 2009

LOCATION: Washington, D.C.

NATURE OF HEARING: Public Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: June 16, 2009

SIGNED: Raymond Vetter
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: Tammy Brodsky
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: John Del Pino
Signature of Court Reporter