NON-CONFIDENTIAL

Beijing B&H Associates
P.R.C Lawyers

Rm 1205, Beiguang Plaza, No.23,Huangsi Street,
Xicheng District,Beijing 100120, P.R.China
Telephone: +8610-8223-0591/2/3/4
Facsimile: +8610-8223-0598
www.bohenglaw.com

Please reply to Mr. LAN, Xiong
Direct: +8610-8223-0597
Fascimile: +8610-8223-0598
Email: lx@bohenglaw.com

November 29, 2012

The Director
Operations 2, International Trade Remedies Branch,
Australian Customs and Border Protection Service
Customs House
2 Constitution Avenue
CANNERRA ACT 2601

NON-CONFIDENTIAL

Public file

Re: Resumption of investigation into alleged dumping in respect of formulated glyphosate exported to Australia from the People's Republic of China

Our client: Jiangsu Good Harvest Weien Agrochemical Co.LTD (Good Harvest)

Dear Sir,

We refer to the resumption of investigation into alleged dumping in respect of formulated glyphosate exported to Australian from the PRC, as initiated on November 15, 2012, which the CEO should:

- consider the inclusion of 62 per cent IPA salt and the unregistered goods as like goods;
- consider further whether the low volume of domestic sales of unregistered goods by Rainbow, adjusted under s.269TAC(8) of the Act, was nevertheless sufficient to allow a proper comparison to be made for the purposes of determining a dumping margin; and
- give substantive consideration to whether Good Harvest's normal value should be assessed in accordance with s.269TAC(2)(d) of the Act.

Herewith we are providing the submission on behalf of Jiangsu Good Harevst Weien Agrochemical Co.Ltd ("Good Harvest") to address the relevant issues as indicated,

in particular,

1、whether 62% should be included or covered into this investigation and as like product;

2、whether Good Harvest's normal value should be assessed in accordance with S.269TAC(2)(d) of the Act.

1、 62% product

In Australian Customs Dumping Notice No. 2012/05 published 6th February 2012 which initiated the investigation into the alleged dumping of FF Glyphosate in Australia following an application from Nufarm, the "goods" were clearly defined in the following manner:

"The application is concerned with imported Glyphosate in all its fully formulated liquid forms including Glyphosate 360, Glyphosate 450 and Glyphosate 570, and the fully formulated dry forms including Glyphosate 680".

The key word in the above statement is "fully" meaning that the products are available for use by customers who simply dilute the product by adding water or in some cases additional wetter.

We submitted that the product should NOT be expanded in the investigation by the authority, and the Original CEO decision should be re-confirmed that 62% products be excluded from this investigation scope.

Furthermore, whether 62% would be a like product is definitely a different issue here, TMRO decision discussion of like product was not relevant for the product scope under investigation[1]. At the outset of the initiation, the goods under consideration was clearly indicated as "fully" formulated form, which would be controlling the product scope ,as the petitioner intended at the application of such anti dumping initiation. It was common in this industry that 62% was NOT fully formulated. Therefore we submitted 62% products should not be expanded to cover into this product scope subject to investigation or measures if any. And it would have rendered "fully" as used in the goods definition in the initiation notice or in the application by the applicant meaningless, if the Customs continued to include 62% "partially" formulated products in this investigation.

2、Sales to third country by Good Harvest were not appropriate method in assessing the normal value in this proceeding, as the circumstance and records indicated.

As indicated in the TMRO decision at 69, "it is satisfactory for Customs to ordinarily proceed with calculating a normal value under s 269TAC(2)(c) in accordance with its general preference to use that provision, unless there are circumstances which give rise to a reasonable suggestion that s.269TAC(2)(d) might provide a more appropriate method of assessing normal value."

[1] Like products discussion would be on the likeness to the product under investigation. In other words, after the product scope under investigation was determined, it comes to issue whether certain products were like to the product under investigation. If may be the case that 62% are like products to the goods under investigation, but it should not automatically covered in the product scope subject to measure if any, as it was clearly excluded in the initiation notice.

And then at 70, "In relation to Good Harvest, I am satisfied that the circumstances were such that Customs should have given substantive consideration to calculating the normal value in accordance with the method set out at s 269TAC(2)(d), prior to proceeding with the method set out at s 269TAC(2)(c). The applicant had provided its own calculations of a weighted average price of sales to third countries by Good Harvest, which suggested that if the normal value for Good Harvest was calculated by reference to third country export data, a positive dumping margin could result. Whether or not this data was correct is not the issue: the fact that the applicant had put this information before Customs in my view made it incumbent upon Customs to give substantive consideration as to whether its preferred method of assessing the normal value was appropriate in these circumstances."

And at 73. "[I note for clarification that I am not satisfied that Customs erred by proceeding directly to s 269TAC(2)(c) in relation to Rainbow without consideration of s 269TAC(2)(d) because in relation to this exporter, there was no information before Customs to suggest that its reasons for preferring s 269TAC(2)(c) might need to be the subject of further consideration.]"

Therefore we understand with TMRO recommendation that the applicant provided submission or put in information made it incumbent upon the Customs to give substantive consideration as to whether the sales to third countries was appropriate method in assessing the normal value for Good Harvest.

And we submitted that the data as provided by the applicant were incorrect, and no such circumstance arise that third country would be more appropriate in assessing normal value in this proceeding, as the records indicated.

2.1 The export sale to third country data as provided by the applicant was not reliable, and its submission should not be considered due to its late submission or purposed speculation in this matter.

As noted, it was the first time by the applicants, *as late as several days before SEF response due*, or say more than ten days after the SEF as published, to raise the concern to assert normal value based on sales to third countries, and then provided *new factual information*, i.e. the Chinese export sales to third countries date in confidential attachment. See the applicant submission Re: Good Harvest visit report on July 6, 2012.

Firstly, we understand that the applicant have the sufficient time to provide those factual information or suggestions if true in this whole proceeding[2]. However, the applicant elected NOT to do so.

Although the applicant alleged a response to Good Harvest visit report, the Good Harvest visit report was put on public record at early as June 2012, and the applicant understand the SEF would be published on June 25, 2012, but the applicant purposely

[2] The standard questionnaire as issued by the Customs requested summary data on third country sales, rather than detailed transaction base. And the applicant should have noted that this requirement, and then should have filed comments addressed at earlier so as for the Customs request more detailed information, if the applicant thought the case in assessing normal value by a third country sale in this proceeding.

elected not to provide comments or data or otherwise raised the issues in this whole proceeding before that date[3], but provided those information as late as the SEF response due, when almost investigation factual records closed.

It is indeed a 100% speculation by the applicant in this matter! And it should have been seriously delayed or even prevented the investigation process in publishing the final reports as the ACT as required. Furthermore, it would deprive the opportunity for the interested parties to comment against such submission, in particular the accuracy or reliability of those extremely NEW factual information.

And here if we re-read the wording in the initiation notice No.2012/05 at February 6, 2012, it was required for all submissions before 19 March 2012 in this proceeding.

> "Interested parties are invited to lodge submissions concerning the publication of the dumping duty notice sought in the application no later than the close of business on 19 March 2012.
>
> Interested parties wishing to participate in the investigation must ensure that submissions are lodged ***promptly***. Interested parties should note that the CEO is ***not obliged to have regard to a submission*** received by Customs and Border Protection ***after*** the end of the period mentioned above if to do so would, in the CEO's opinion, prevent the timely placement of the statement of essential facts (SEF) on the public record.
>
> Interested parties may reply to matters raised by other parties during the course of the investigation and in response to the SEF.
>
> .....
>
> The dates specified in this notice for lodging submissions ***must*** be observed to enable Customs and Border Protection to report to the Minister within the legislative timeframe. A statement of essential facts will be placed on the public record by 29 May 2012, or by such later date as the Minister may allow in accordance with section 269ZHI of the Act. The statement will set out the essential facts on which the CEO proposes to base a recommendation to the Minister. That statement will invite interested parties to ***respond to the issues raised*** within 20 days of the statement being placed on the public record."

We understand that the initiation notice or its wording would be controlling and applies to all interested parties. And the submissions, in particular in relation with factual records, should be filed promptly, and the CEO is not obligated to have regard to a submission received after the end of periods mentioned if to do so, in the CEO opinion, prevent the timely placement of the statement of SEF on the public record.

However, the applicant elected to file those factual third country sales information rather than case arguments at more than ten days late after SEF published[4]. Therefore we are in the position that the applicant should have made such submission earlier, i.e. at least before the verification visits (if not strictly before the stated deadline as indicated in the initiation notice), and the CEO should have the right to disregard such submission, if in the CEO opinion, to do so would prevent the timely investigation process in this proceeding, as like in this instant proceeding.

---

[3] At the bottom, the applicant should have provided those information before the verification so as to provide the verification team the opportunity to request or address this concern at the verification or at least before the publishment of SEF.

[4] We understand that the applicant have the right to respond to the SEF as published, but it should be limited to the response to the issues as raised in the SEF, rather than file new factual information, if to do so would significantly prevent the investigation process or depriving the opportunity from interested parties to provide comments against it.

In addition, allowing such a late submission, in particular extreme new factual information, as the applicant did, would provide advantage or reward those submitter for their speculation, and thus not fair for all interested parties, and more importantly significantly prevent the normal investigation process by the Customs, and would cause significant bad affect or precedent for future investigations as conducted by the Customs.

Therefore if those submissions were disregarded due to its late submission, there would be no assertions or suggestions by the applicant to raise the circumstance in assessing normal value by third country sale, as like Rainbow in this same proceeding.

Secondly, the information as provided by the applicant was not reliable. Needless to say, the applicant did not disclose the information source in the public version, and Good Harvest could not have a reasonable opportunity to comment against the reliability of that data due to its late submission in any manner.

In addition, the applicants did not nominate a third country which they considered would be suitable to be used as a basis to determine normal values. In identifying an appropriate third country, several complexities would be apparent. These include the need to consider different market characteristics (i.e. barriers to entry, market regulations and level of competition), product differences (i.e. variances in formulated glyphosate active concentrations levels and surfactants (including quality)), packaging type variances and different commercial relations (i.e. number of customers, levels of trade and any commission arrangements). See TER 183 at 46.

Therefore the applicant assertion should NOT be seriously considered as the appropriate or reasonable circumstance in assessing normal value by third country sale as required by the Act.

Thirdly, the Customs have verified the exports data to third countries by Good Harvest in an appropriate manner. See TER 183 at P.45. And those data or information as provided by Good Harvest had been fully verified by the Customs on the site and thus more reliable and accurate than the data as provided by the applicant, in assessing whether the sale to third country could be an appropriate method. And the data as provided by the applicant should be disregarded as incorrect figures or information.

As indicated in the third country sales by Good Harvest, the averaged unit price would be RMB [redacted] per Metric Ton, which was at similar level as the unit price to Australia in the POI, i.e. RMB [redacted] per Metric Ton. Therefore we did not see such a circumstance that the sale to third country could have been used to assess the normal value for Good Harvest in this proceeding, and the applicant assertion was incorrect.

As indicated in the TMRO decision at 71, "substantive consideration may have shown the data provided by the applicant to be incorrect or irrelevant";

It is the real case here. And the applicant filed those incorrect or unverified data at late submission. The customs could have derived the conclusion that the verified third country sales were much more reliable, and the data as provided by the applicant was not correct! And there were no indication or circumstance that third country sale would have been used appropriately in assessing normal value for Good Harvest in this proceeding, as further discussed below..

2.2 There were no circumstance that the export sales to third country being

appropriate to assess the normal value before proceeding to constructed method

Firstly, as verified by the Customs, the applicant submission or its data as provided was incorrect or distorted, as discussed above.

And there was significant low volume of sales to most third countries by Good Harvest. Therefore Customs and Border Protection found that for Good Harvest's third country export sales, the low volume threshold would not have been met when assessing export volumes to certain individual third countries. See TER 183 at 46.

In particular, only sale to [redacted] would have met the 5% threshold, See below table. And [redacted] was only marginally higher than 5%, and would have been not representative at all for other reasons as discussed below.

country	number of customer	quantity	unit	value	payment	terms	unit value	AUS sales QTY in IP	percentage
[redacted]									

Secondly, the unit price as verified by the Customs in the above table, there were lower than the unit value to Australian in the similar sales terms CIF or FOB. As for [redacted], it was majority packed differently at smaller size, i.e. 500ML*20 and in particular packing manner, but Australian sales were packed in larger size, and thus required at least more than 40% extra cost for sales to [redacted] in the normal business operation.

Therefore, we did not see such a reasonable circumstance as discussed in TMRO recommendation or basis for assessing normal value by third country sales. If there were have been dumping to Australia, Good Harvest may have been more likely dumped into other third country. And this third country method may not be appropriate for assessing normal value in this instant proceeding. And the applicant assertion of higher profit margin for third country sale was meritless at its entirety. See more discussion below.

Furthermore, it seems not possible or practical to assess the normal value by third country sale in this proceeding, since the applicant did not address it at earlier stage for the Customs request more information over it for fair comparison purpose if any. Therefore, it would be appropriate that the normal value being assessed other than by third country sales, and there were in particular no *reasonable* circumstance that the third country would be more appropriate than constructed method[5].

---

5 As we understand that the general third country sales information were requested in the exporter questionnaire, and it would be very difficult to rely on that information to calculate a normal value. And it would be by default the secondary alternative for normal value purpose in the normal dumping investigation by the Customs, in particular for those cases as involved complexity of products, as like in this case, there were diversified concentration and great complexity in physical characteristic for different product models, like goods, and different cost structure, etc as maybe for those sales to third countries, and it would not be feasible to calculate normal value directly from those general third country sales information as originally requested in the Exporter Questionnaire.

2.3 The third country sale was not appropriate method in this proceeding

Since different physical characteristic would be relevant for a specific country, and different packing requirement[6]. And it would not be appropriate to assess the normal value by third country sale, and difference cost component or surfactant, or packing materials may be used in the finished goods production, since the export sales were production to order basis, as the officials verified.

2.3.1) different product type was sold for third countries, as the data verified.

As for Australian sales, the majority sales were for 450G/L IPA salt, see Visit report at 19, and there were few sales for 360G/L (i.e.41%) IPA Salt. And this particular product type was designed or sold for Australia only.

However, those sales to third country were at majority [redacted] IPA salt.

As recalled, Good Harvest provided the overall export sales spreadsheet in addition to its third country sales summary as provided in the questionnaire in the verification meeting, and the Customs fully verified those data and information. See Visit report at P.17 and its "Total sales spreadsheet" in confidential attachment at EXP 2. And we believed that the Customs should have already taken them into consideration in this issue.

And in this "Total Sales Spreadsheets", we provided the overall exports, covering GUC or non-GUC, and Australian Sales or third country sales in the POI. And if we filtered by GUC but "not Australian", we would have complete third country sales on the record in this proceeding on transaction basis, which would have agreed with our submitted third country sales summary. And in this spreadsheet, customer, product type, packing manner, quantity and value, etc were completely indicated.

Among all third country sales quantity [redacted]MT,

- There were significant transaction, i.e. [redacted]MT for [360G/L] products, which Good Harvest only sold [redacted]MT into Australia, it would be less than 5%.
- There were [redacted] transaction of [Ammonium salt [redacted] at quantity [redacted]MT, which Good Harvest did NOT have any sales to Australia.
- There were only [redacted] transaction of [redacted] at quantity [redacted]MT, which Good Harvest did NOT have any sales to Australia;
- Three were only [redacted] transaction of [redacted], at quantity [redacted]MT, where Good Harvest sold [redacted]MT into Australia.

2.3.2) different packing was required for third country sale, as verified.

---

6 The finished goods sold to Australia are branded using the importing customers own brand. This is also true of the large sized 1000L and 1250KG drums which also carry the importers brand. Good Harvest explained that the importer resells these products without any repacking. Good Harvest likened such sales to an OEM sale – there are no sales of Good Harvest brand to Australia. See visit report.

Even under for the same product type, there would have been packed at different requirement for third country than Australia.

- For product type [ ], Australian sales were packed at [ ] per Drum, where third country sales were [ ] per drum. And therefore their packing manner and material costs would be significantly different. And their packing drum and labeling were different from country to country.

- For product [ ], Australian sales were packed [ ] at small quantities. where third country sales were packed diversified manner ranged from [ ]. In particular, those sales to [ ] were for retailer purpose, and mostly packed at much smaller size, [ ], etc. with special requirement of bottle materials and labeling. In other words, those packing cost would be significantly different from country to country.

In addition, there would be required different packing manner incorporated different labor in this respect.

2.3.3) there was small or immaterial sales quantity for third country sale, as verified.

As indicated above, there were only [ ] countries [ ] met the low volume 5% threshold as compared with Australian Sales, in which {US and Japan} were marginally higher than 5% threshold, And if we go further for those countries.

- it was all at [ ], but there were at different packing, Generally there would be much smaller size, i.e. 200ML or 500ML, they would packed at different packing bottle directly for retail sale. And there were only one similar product code as packed at [ ], under product code [ ], which sales quantity were at [ ] MT. much lower than the 5% threshold, as comparing with Australian Sales. [7]

- And it was [ ]. And there were at different physical characteristics with different packing requirement, and therefore they did not share the same product code with Australian Sale. For example, for the same 62% model, it was packed at [ ], but at [ ] for Australia, and their packing drums and labeling were different, and for the [ ], it was packed [ ], but at smaller size for Australia.

2.3.4) there were unique customers not representing the ordinary course of trade, as verified.

For most third country sales, there were only one single customer, including [ ], it was not representative anyway at all as to be used to assess normal value,

[7] Product code [ ] packed in [ ] as compared with Australian Sale, its unit value was at RMB [ ] per MT at CIF term, and Australian Sale for the same product code [ ] per MT at same term. And there were no indication that Australia sale were at lower dumped prices.

where there were diversified customers in Australian Customers. As we understand that it may not be in the ordinary course of trade and thus be excluded for normal value purpose, if it involved only one single customer in the business operation.

2.3.5) different third countries have different market entry barriers

There would different market entry barriers or regulations, level of competitions from one country to the other, for example, the registration cost or timing requirement, there would significant higher cost for product registration in the US, EU, or Japan Market than Australia, which definitely would be incorporated in the selling price decision by the Chinese exporters. Normally it required more than 2-5 years to register the goods under consideration in US, EU or Japan, costing more than 2-5 million US dollars, but however it only required at nominal cost for registration of the goods under consideration in Australian market. In addition, there were few companies registered in Japan, where dozens of companies registered in Australia, therefore we submitted that significant market situation or barriers were apparently at issue for different third country to render it inappropriate to assess normal value by a third country sale.

Therefore, there were significant difference in the fair comparison between Australian and third country sales, and it would be not appropriate to nominate a third country for assessing normal value purpose in this proceeding. And indeed, the applicant could not appropriately nominate a third country at all for assessing normal value purpose in this proceeding.

2.3.6) different sales arrangements may have existed for third country sale, as verified.

As verified, significant sales arrangement existed for third country sales, in particular, there would have been subject to certain commission arrangement. See Visit Report at P.22-23. The particular level of competition or arrangement from third country would render it not appropriate in assessing normal value for Sales to Australia.

2.3.7) third country sales would have been sold at loss or say not in the ordinary course of trade, rendering it not appropriate to assess normal value in this proceeding

As indicated above, most countries could not meet the low volume threshold, and most countries had only one single customer, there were definitely NOT sold in the ordinary course of trade.

Secondly, as discussed further, those third country sales were sold at significant loss. Sales to [redacted] were all apparently at significant loss in the IP, as the data verified by the Customs. For example, as for next larger sales to [redacted], the all sales were all for product code [redacted], its unit value were at RMB [redacted] per MT at CIF/FOB terms. If we checked through its CTMS for this product code [redacted], its POI overall averaged CTMS were [redacted] per MT, See verified CTMS. In other words, those sales would have been sold at a loss, in consideration of those bottom expenses, i.e. Inland Freight (i.e.RMB [redacted], Brokerage & Handling (i.e.[redacted]), Un-refundable VAT (i.e.8%)[8], regardless of those ocean freight and insurance expenses and potential commissions as paid, etc for those sales.

[8] We may refer to those expenses incurred for Australian Sales, since there were all for exports.

Indeed, as per the income statement as provided and verified, the company realized [redacted] for the company and the goods under consideration in the POI, there were no reason to tell that Good Harvest should sell at positive profit for third country sales, in addition to its domestic sales at [redacted]

And therefore the applicant asserting that Good Harvest sold to third country at a positive profit was not correct.

2.4 The Reasonable indication existed that there would be no dumping even if third country sale as verified were used to assess the normal value for Good Harvest

As discussed, the third country sale could not be used to assess normal value in this proceeding. However if the Customs continue to designate a third country sale, it would have been no dumping in this proceeding.

For example, for sales to the next largest country, i.e [redacted], its unit value for sales of product code [redacted] was at RMB [redacted] per MT at CIF/FOB terms[9]. At the least, if we used this third country selling prices, if not constructed method as like in the original investigation, as the normal value, there would be no dumping, that is, Australian sales of the same product code unit FOB price was RMB [redacted] per MT[10]. That is the sales to Australia would have been significant higher than sales to third country for the same product code.

Therefore if we compared with the sales price to other third country, the similar unit value or even lower value would be derived for third country sale, and we do not see any positive margin may be calculated, if normal value were assessed by third country sale.

3 Conclusion

As discussed above, we submitted that:

- 60% products should be excluded in the investigation or measures if any;
- The applicant submission in relation with third country sale by Good Harvest should NOT be considered due to its late submission or purposed speculation, and furthermore incorrect or not reliable.
- There were no such circumstance that the normal value being assessed more appropriately by a third country sale;
- It was not appropriate or even not practicable to assess normal value by a third country sale, in consideration of product complexity, and matching characteristic and required fair comparison adjustment.
- The third country sales were not in the ordinary course of trade, and thus not

---

[9] We did not exclude the ocean freight and insurance in this unit price conservatively for comparison purpose. Actually, those sales were ultimately shipped to [redacted] with significant ocean freight], though transacted with [redacted] customer.

[10] Or at Unit CIF price at RMB [redacted] per MT.

representative for normal value assessment purpose.

- There would have been no dumping, even if normal value would have been assessed by a third country sale.

Therefore the original calculation of no dumping in relation with Good Harvest should be confirmed, without any changes.

Please let us know if there were other questions.

Yours sincerely,

Lan Xiong /s/

Consultant to Good Harvest