

18 February 2013

The Director
Operations 1
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Our ref: ATH
Matter no: 9548593

By email: itrops1@customs.gov.au

Dear Sirs

**Certain Aluminium Road Wheels
Exported from the People's Republic of China
Initiation of a reinvestigation of certain findings
Submission by GM Holden Limited
Non-Confidential Version**

We refer to our previous correspondence and confirm we act on behalf of GM Holden Limited ("**Holden**"). We have now been instructed to make the following Submission in relation to the ARW Investigation.

We advise that this is the non-confidential version of the Submission.

1. Definitions

For the purpose of this Submission, we have adopted the following definitions:

- (a) "**Act**" means the *Customs Act 1901* (Cth).
- (b) "**ARW**" means Aluminium Road Wheels as described in the Application and the Consideration Report.
- (c) "**ARW Investigation**" means Investigation Number 181 by Customs into alleged dumping and subsidisation of aluminium road wheels exported from the People's Republic of China.
- (d) "**ARW Ministerial Direction**" means the direction of the Minister set out in the *Australian Newspaper* on 23 January 2013 following consideration of the TMRO ARW Report.
- (e) "**ARW Reinvestigation**" means the reinvestigation to be conducted by Customs following the ARW Ministerial Direction.
- (f) "**ARW Report**" means Customs Report No. 181 to the Minister in relation to the ARW Investigation.
- (g) [REDACTED] means [REDACTED] (Chinese supplier).

- (h) "**CITIC**" means CITIC Dicastal Wheel Manufacturing.
- (i) "**Customs**" means the Australian Customs and Border Protection Service.
- (j) "**DS 412**" means the findings of the WTO Panel in "*Canada – Certain Measures Affecting the Renewable Energy Generation Sector*".
- (k) "**DS 426**" means the findings of the WTO Panel in "*Canada – Measures Relating to the Feed – in Tariff Program*".
- (l) "**Holden Submissions**" means the various submissions by Holden in relation to the Investigation including, without limitation:
 - (1) the Holden Consideration Report Response;
 - (2) the Further Submission;
 - (3) the Holden Issues Paper Response; and
 - (4) the Holden SEF Response.
- (m) "**Holden Visit Report**" means the Visit Report completed by Customs following its visit to Holden dated January 2012.
- (n) "**HSS**" means certain hollow steel sections as described in the HSS Investigation.
- (o) "**HSS Investigation**" means Investigation number 177 by Customs into alleged dumping of HSS exported from the PRC, Korea, Malaysia, Taiwan and the Kingdom of Thailand.
- (p) "**HSS Ministerial Decision**" means the decision made by the Minister following consideration of the HSS Report.
- (q) "**HSS Ministerial Direction**" means the direction by the Minister set out in *The Australian* newspaper on 18 January 2013 following consideration of the TMRO HSS Report.
- (r) "**HSS Report**" means the Report to the Minister Number 177 issued by Customs in relation to the HSS Investigation dated 7 June 2012.
- (s) "**Minister**" means the Minister for Home Affairs.
- (t) "**Report**" means the Report to the Minister No 181 issued by Customs in relation to the ARW Investigation dated 12 June 2012.
- (u) "**Submission**" means this submission.
- (v) "**TMRO**" means the Trade Measures Review Officer.
- (w) "**TMRO ARW Report**" means the Report by the TMRO in response to application by parties for review of the ARW Investigation and the ARW Ministerial Decision.
- (x) "**TMRO HSS Report**" means the report to the Minister Number 181 issued by Customs dated 12 June 2012 in relation to the HSS Investigation and the HSS Ministerial Decision.

(y) "YHI" means YHI Manufacturing (Shanghai) Co. Limited.

2. Holden submission on specific grounds of reinvestigation

Holden has instructed us to following submissions in relation to each of the grounds of the ARW Reinvestigation.

2.1 The calculation of the dumping margin for "selected non-cooperating exporters".

Holden agrees with the TMRO ARW Review that there needs to be a reinvestigation as to the calculation of the dumping margin applying to non – cooperating exporters, specifically in relation to dumping margin applying to ██████████ (Chinese supplier) as an exporter to Holden.

For these purposes, we note that at pages 46 and 47 of the Final Report, Customs gave reasons for establishing export prices for selected non – cooperating exporters according to section 269TAB(3) of the Act. Customs specifically used the lowest weighted average export price for the entire investigation period from the selected cooperating exporters, by diameter, excluding any part of the price that relates to post – exportation prices.

However, Holden believes that the approach taken by Customs to calculate dumping margins for selected non-cooperating exporters (as described above) should not be applied to ██████████ (Chinese supplier) given that Holden had provided comprehensive details on actual export prices paid by Holden to ██████████ (Chinese supplier). Holden submits that Customs could have established actual export prices from such information provided by Holden. Indeed we note that in the Holden Visit Report (at section 10), Customs specifically recommended that the export price for ARWs imported by Holden (which would include those exported by ██████████ (Chinese supplier)) can be established under section 269 TAB (1) (a) of the Act using the invoiced price, less deductions to the FOB level as required.

Accordingly, Holden submits that the reinvestigation undertake a new calculation of the dumping margin for ██████████(Chinese supplier) using the information provided by Holden according to section 269TAB(1)(a).

Further, when undertaking this reinvestigation, Holden would also draw Customs attention to paragraph 6(d) of the Holden SEF Response in which our client noted that the amount it pays per unit to CITIC is less than the amount it pays per unit to ██████████ (Chinese supplier). On that basis, we are of the view that there is no way that dumping margins for ██████████ (Chinese supplier) should be higher than those applied to CITIC when applying the same approach to calculate export price.

2.2 That YHI received a benefit under all countervailable subsidies identified by Customs.

From its review of all relevant material which was before Customs during the ARW Investigation, Holden shares the view of the TMRO in the TMRO ARW Report that YHI only received the benefit of one countervailable subsidy, being Program 7. Accordingly, Holden believes that YHI's level of margins and countervailable subsidies would need to be adjusted on that basis.

2.3 That there is a countervailable subsidy as a type described as "Program 1".

Following its review of the all relevant material which was before Customs during the ARW Investigation, Holden agrees that Program 1 does not qualify as a countervailable subsidy for the same reasons as set out in the TMRO ARW Report. To this effect, Holden also draws Customs' attention to the very similar rationale and conclusion reached in relation to "Program 20" in the TMRO HSS Report.

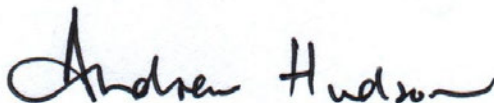
Further, Holden believes that the TMRO's approach to the consideration of what constitutes a countervailable subsidy in relation to these Programs is also consistent to the approach adopted by the Panel Majority in the Panel Reports relating to DSS 412 and DSS 426

3. Submission not to detract from earlier Holden Submissions

Holden wishes to emphasise that the Holden Submissions remain in place and reflect the position of Holden. Holden also wishes to state that the Submission is without prejudice to the rights of Holden to seek other judicial review of the ARW Ministerial Direction.

We look forward to hearing from you and would be pleased to provide further information as required.

Yours faithfully
Hunt & Hunt



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