



## ARROWCREST GROUP

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14 February 2013

Mr. John Bracic  
Director, Operations 1  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

Dear Mr. Bracic,

**Reference :** *Reinvestigation of certain findings – Certain aluminium road wheels exported from the People's Republic of China*

### Background

Following an investigation into an application by Arrowcrest Group Pty Ltd (Arrowcrest), requesting the application of anti-dumping and countervailing measures on aluminium road wheels (ARWs) exported to Australia from the People's Republic of China (China), the Minister for Home Affairs (the Minister) accepted the recommendations of the Australian Customs and Border Protection Service (Customs) and on 5 July 2012 published a dumping duty notice and countervailing duty notice on certain future exports of ARWs from China.

The dumping duty notice applied to all Chinese exporters of ARWs with the exception of exports from Zhejiang Shuguang Industrial Co., Ltd (also known as PDW International or PDW), and the countervailing notice applied to all exporters other than PDW and CITIC Dicastal Wheel Manufacturing Co., Ltd (CITIC).

The Trade Measures Review Officer (Review Officer) received nine applications for review of the Minister's decision to apply measures to ARWs exported from China. Following investigation, the Review Officer recommended to the Minister for Home Affairs that certain matters be reinvestigated by Customs and Border Protection, including:

- (i) The calculation of the dumping margin for 'selected non-cooperating exporters' of ARWs from China to Australia;
- (ii) That YHI Manufacturing (Shanghai) Co., Ltd (YHI) received a benefit under all countervailable subsidies identified by Customs and Border protection; and
- (iii) That there is a countervailable subsidy of the type described as 'Program 1'.

Arrowcrest seeks to address each of the matters identified for reinvestigation in this submission.

**(i) Dumping margin for 'selected non-cooperating exporters'**

In Trade Measures Report No. 181 (REP181), Customs determined dumping margins for selected cooperating exporters - namely CITIC, PDW, Pilotdoer Wheel Co., Ltd, Zhejiang Jinfei Kaida Wheel Co., Ltd., and Zhejiang Yueling Co., Ltd. Customs referred to all other exporters as non-cooperative and classified them as "selected non-cooperating exporters", including YHI and "all other exporters of ARWs from China other than the selected cooperating exporters".

As indicated by the Review Officer, section 269T of the Customs Act (the Act) includes definitions of each of the following:

- new exporter ;
- residual exporter ; and
- selected exporter.

The Act does not categorize exporters other than within the three terms identified.

Selected non-cooperating exporters cannot be considered a "new exporter" or a "selected exporter" as selected non-cooperating exporters have export sales to Australia and are considered to have not adequately cooperated with the investigation. By definition, the "selected non-cooperative exporters" as described by Customs must therefore be included within the "residual exporter" category.

In REP181, Customs has misclassified residual exporters as "selected non-cooperative exporters".

This oversight can be simply rectified by determining dumping margins for *residual exporters* in place of *selected non-cooperative exporters*, (as the latter definition is not recognized by the Act), thereby determining normal values and export prices in accordance with REP181 including highest weighted average normal values and lowest weight average export prices for selected cooperating exporters.

**(ii) Benefits from subsidies received by YHI**

The Review Officer has recommended that the Minister direct the Chief Executive Officer to reinvestigate its findings with respect to subsidies that were received by YHI.

Customs determined YHI as a selected non-cooperative exporter as it did not have sufficient information available to it (from YHI's exporter questionnaire response) to determine normal values for YHI. Indeed the Review Officer confirmed that<sup>1</sup>:

*"I do not consider that Customs had enough information available to it to calculate a dumping margin for YHI based on the data that had been provided, and that accordingly it could not be considered a 'selected exporter'".*

The Review Officer concurs with Customs' finding that YHI could not be considered a selected cooperating exporter and hence falls within the residual category of all other exporters.

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<sup>1</sup> Trade Measures Review Officer Decisions – ARWs exported from P R China, P. 52, paragraph 234.

YHI claimed that it had identified only one subsidy program that it had received benefits from – namely Program 7. However the information provided by YHI was incomplete including with respect to subsidies it received.

The information provided by YHI could not be relied upon as YHI was not considered a 'selected cooperating exporter'. The determination of applicable subsidies from which YHI received benefits can therefore only be the same as for all other non-cooperating residual exporters.

**(iii) Countervailable subsidy – Program 1**

The Review Officer has recommended that Program 1 – Aluminium provided by government at less than adequate remuneration - be reinvestigated to assess whether Program 1 involved a countervailable subsidy.

*Aluminium producers as public bodies*

As noted in Arrowcrest's application Part C, the WTO Committee on Subsidies and Countervailing Measures in its 2009 minutes<sup>2</sup>, noted that "*China had not addressed the fundamental issue of how state-owned enterprises (SIEs) could operate on a purely commercial basis when they had to make investment decisions in accordance with government industrial policy (and) if China's ownership and management decisions were not based on commercial considerations, subsidy issues could arise.*"

In its 2010 Report No. 175<sup>3</sup>, (REP175), Customs identified the extent of direct and indirect State ownership in the Chinese primary aluminium producers, in particular the level of GOC ownership in Chalco, China's largest aluminium smelter. REP175 determined that SIE primary aluminium producers and suppliers do qualify as public bodies under the Act.

In its 2012 Report No. 181, (REP181), Customs determined that the "*findings of REP175 are relevant to (the ARW) investigation as at least some of the suppliers of raw material to the aluminium extrusion industry are the same as suppliers to the ARW industry.*"<sup>4</sup>

Customs referred to the World Trade Organization's Appellate Body Decision in DS379 of 11 March 2011, where it identified three indicia to determine whether an entity is a public body<sup>5</sup>:

1. a statute or other legal instrument expressly vests government authority in the entity (first indicia);
2. the entity is in fact exercising governmental functions that serve as evidence that the entity possesses or has been vested with governmental authority (second indicia); or
3. the government exercises meaningful control over the entity, and the entity's conduct serves as evidence that it possesses governmental authority and exercises that authority in the performance of governmental functions (third indicia).

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<sup>2</sup> WTO G/SCM/M/71 5 February 2010, 10-0678.

<sup>3</sup> Customs and Border Protection Report No. 175, 15 August 2011.

<sup>4</sup> SEF181, page 51.

<sup>5</sup> Ibid, P.61, paragraph 270.

*Indicia 1*

The Review Officer observed that Customs did not have access to information in support of Indicia 1.

However in REP181, Customs did determine that Chinalco - a wholly-owned SIE and majority shareholder in Chalco, the largest producer of aluminium in China – was vested with *“governmental authority to impose state mandated pricing policies on its subsidiaries.”*<sup>6</sup>

*Indicia 2*

In respect of Indicia 2, the Review Officer disagreed with Customs' assessment that State Invested Enterprises (SIEs) are required by Section 36 of the SOA Law<sup>7</sup> when making investments to comply with National Industrial Policies. The Review Officer considered it could not be established that the aluminium producers were public bodies.

By contrast, Customs determined that Chalco considered itself bound by State prescribed pricing policies as its largest shareholder, Chinalco, was vested with government authority to impose state mandated pricing policies on its subsidiaries (including Chalco)<sup>8</sup>, and that *“four out of the seven suppliers to the selected cooperating exporters in the ARWs investigation are CHALCO subsidiaries.”*<sup>9</sup>

Chalco's Form 20-F filing with the SEC for 2010 also states that *“the central and local PRC government continues to exercise a substantial degree of control and influence over the aluminum industry in China.”*<sup>10</sup>

In SEF181 Customs determined that *“SIEs were significant suppliers of aluminium and/or alloy to ARW exporters.”*<sup>11</sup>

Accordingly, Customs determined that *“significant evidence exists to suggest that Chinese aluminium industry SIEs, including those that produce aluminium and/or alloy, play a leading and active role in implementing GOC policies and plans for the development of the aluminium industry (and this) development is considered to be a ‘governmental function’.”*<sup>12</sup>

Customs concluded that *“additional information likely to be in the possession of the GOC was... not provided (and) Customs considers that further evidence of this indicator may have been observed in this omitted information.”*<sup>13</sup>

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<sup>6</sup> REP181, page 18.

<sup>7</sup> The Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People.

<sup>8</sup> SEF181, pages 53 and 54.

<sup>9</sup> Ibid, page 51.

<sup>10</sup> Ibid, page 32.

<sup>11</sup> SEF181, pages 44 and 45.

<sup>12</sup> SEF181, page 57.

<sup>13</sup> Ibid, page 57.

### Indicia 3

For Indicia 3, the Review Officer contends that the evidence fails to establish that the SIE aluminium and/or alloy producers are exercising governmental authority. It is Arrowcrest's view that the assertions of the Review Officer are simply personal viewpoints as to the adequacy of information that can be considered sufficient in order to be appropriately satisfied.

In SEF181, Customs determined that *"the GOC is in fact exercising meaningful control over SIEs generally, and SIEs that produce aluminium and/or alloy."*<sup>14</sup>

Customs considered the European Union's (EU) decision on the dumping of ARWs exported from China<sup>15</sup>, wherein the EU considered the extent of GOC influence in the decisions concerning the main raw material aluminium, (i.e. Program 1).

The EU commented in its provisional findings that the GOC interference includes<sup>16</sup>:

- aluminium prices in China are set on the basis of long term contracts, with prices determined on the Chinese spot market plus a transformation fee;
- in this regard the GOC has a primary role in setting prices for primary aluminium and *"interferes in the market continuously"* with various policy tools including:
  - a 17 per cent VAT on exports of primary aluminium, whereas value-added products receive a 13 per cent VAT refund;
  - State interference in the pricing for aluminium on the Shanghai Futures Exchange ("SHFE") which is a *"closed exchange for Chinese-registered companies and Chinese citizens"*. This interference is linked to the GOC as both a seller and purchaser of primary aluminium *"via the State Reserve Bureau and other State Bodies"* and can therefore influence Chinese prices for aluminium;
  - The State sets daily price limits via the SHFE that are approved by the State Regulator, the China Securities Regulatory Commission (CSRC); and
  - at the time of the global financial crisis, the GOC via the State Reserve Bureau purchased aluminium from smelters to ensure continuity of operations and stockpiled product.
- the interferences contributed to a distortion of the primary aluminium prices on the SHFE to be below that of the LME from 2005 to the end of 2008 and LME prices have been significantly higher than prices on the Chinese market (for primary aluminium);
- the significant State-induced distortions on the Chinese market for primary aluminium influence the decisions of Chinese producers of ARWs (where raw material aluminum accounts for up to 60 per cent of the Chinese ARW manufacturers production costs).

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<sup>14</sup> Ibid, page 57.

<sup>15</sup> Refer Trade Measures Report No. 181, P.21.

<sup>16</sup> Commission Regulation No. 404/2010 of 10 May 2010 imposing a provisional anti-dumping duty on imports of certain aluminium wheels originating in the People's Republic of China, paragraphs 30 to 37.

The EU clearly noted that *"Chinese aluminium prices continue to be the result of State intervention"*, and *"Chinese producers of aluminium wheels...enjoy an advantage from these distortions"*.

It is evident from the EU's findings that the GOC intervenes in the Chinese market for primary aluminium and that this has the effect of prices being lower than they otherwise would be in the absence of government intervention.

The recent WTO Panel Report – *China - Measures related to the exportation of various raw materials*<sup>17</sup>, has also confirmed that the GOC's use of export duties, quotas, licensing arrangements etc., in respect of certain raw materials are inconsistent with WTO rules.

Arrowcrest maintains that the price distortions arising from these interventions by the GOC in the Chinese market for primary aluminium are actionable under the WTO Subsidies and Countervailing provisions.

The available information supports Customs' assessment that the SIEs that supply aluminium (which are administered by the State Owned Assets Supervision and Administration Commission – SASAC), are public bodies that are influenced by the GOC and perform functions that are aligned with the GOC's National Industrial Policies.

It is through GOC influence and intervention that aluminium is provided to the Chinese ARW industry at subsidized prices, causing significant trade distortions as evidenced by the EU findings on ARWs exported from China :

*"...it has been claimed that there is indeed arbitrage between the Chinese markets and the LME because there have been some minor exports of aluminium to/from China during the investigation period. This argument cannot be accepted in view of the divergence of price levels between the Chinese markets and the LME."*<sup>18</sup>

Similarly, Customs concluded that it considered that *"the GOC is exercising meaningful control over aluminium and/or alloy producers."*<sup>19</sup>

*Conclusion in respect of the DS379.*

Customs has determined that there was sufficient evidence to show that Indicia's 2 and 3 were satisfied and *"that the GOC was likely in possession of further information that was not provided by it that may have assisted Customs' analysis and provided further evidence of indicia 1 and 2 in particular."*<sup>20</sup>

Customs concluded that *"sufficient evidence exists to reasonably consider that SIEs that produce and supply aluminium and/or alloy should be considered to be 'public bodies' in that the GOC exercises meaningful control over SIEs and their conduct. As such, Customs...considers that these SIEs qualify as 'public bodies' under the Act."*<sup>21</sup>

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<sup>17</sup> Arrowcrest Application Part C, page 83.

<sup>18</sup> Commission Regulation No. 404/2010 of 10 May 2010, paragraph 48.

<sup>19</sup> SEF181, page 60.

<sup>20</sup> Ibid, page 60.

<sup>21</sup> Ibid, page 61.

### *Adequacy of remuneration*

The Review Officer suggests that Customs did not appropriately consider what may be considered "adequate" remuneration.

Conversely, Customs determined that Program 1 *"involves a financial contribution ..made in connection with the production of ARWs from China that involves the provision of goods (aluminium and/or alloy) by SIEs, being public bodies, at less than adequate remuneration."*<sup>22</sup>

In its application, Arrowcrest referred Customs to a substantial body of evidence from BNP Paribas Fortis : *"For several years now China has effectively been exporting subsidized electricity in the form of aluminium"*<sup>23</sup> and yet, as noted by HARBOR Intelligence, *"China is the most expensive primary aluminum producer in the world given high energy costs and high dependence on imported alumina and bauxite. Today, the entire Chinese smelting industry is underwater in a cash and total cost basis."*<sup>24</sup>

The majority of aluminium smelters in China are SIEs and Arrowcrest has provided irrefutable evidence that from 2004 to 2011, GOC intervention has conferred a substantial financial advantage to China's ARW industry. As noted in the January 2009 HARBOR Intelligence report, China is not a low cost producer of aluminium. The aluminium price in China is artificially low purely as a consequence of State and provincial government intervention.

Chalco's 2009 interim annual report confirmed that it received subsidies in the form of reduced rates of taxation, reduced interest rates, selective premium prices for aluminium sales to government and discounted electricity prices, enabling it to sell aluminium for transformation at discounted prices to the LME price. The GOC's role in exercising this discretion through Chalco confirms the extent of GOC influence via the provision of artificially low aluminium prices to downstream industries including the exporters of ARWs to Australia.

In respect of the "adequacy" of the remuneration under Program 1, the concept of an adequate return on investment can only be considered where it is recognized that the costs incurred represent true costs incurred. In the circumstances of primary aluminium sold in China, the GOC determines the price for primary aluminium and it is not determined on the basis of market forces and simple supply and demand.

In the absence of credible information as to the true cost of production for aluminium in China, Customs has correctly considered a benchmark to assess whether the prices for primary aluminium in China were less than adequate, i.e. the LME price. This approach is considered reasonable in the circumstances of the ARWs investigation and is consistent with WTO DS257.<sup>25</sup>

Customs finding in respect of Program 1 should therefore be affirmed.

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<sup>22</sup> SEF181, page 45

<sup>23</sup> Arrowcrest application Part B, pages 39 to 45.

<sup>24</sup> *Interesting trends in the Chinese Aluminum Market*, China Aluminum Monitor, January 2009.

<sup>25</sup> WTO dispute *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada* (Ds257 dispute). See also SEF181 pages 62 to 66.

## Conclusions

Arrowcrest considers that Customs has simply misclassified residual exporters as "non cooperating exporters". Arrowcrest agrees with the Review Officer that YHI cannot be considered a "selected exporter" as the company did not provide sufficient information that could be considered reliable and, therefore, must be considered along with residual exporters for both dumping and countervailing purposes.

For Program 1, Arrowcrest does believe that there was sufficient information available to Customs to be satisfied that domestic prices for primary aluminium were influenced by the GOC - through the GOC's involvement in the setting of prices, the purchasing and selling of primary aluminium, and through the GOC's influence of VAT policies on primary aluminium - for Customs to be satisfied of the existence of a countervailable subsidy for primary aluminium sold in China.

Customs concluded that *"after reviewing the identified GOC macroeconomic policies in relation to the aluminium industry, and related implementing measures, Customs considers there is extensive evidence on the record to show that the GOC plays a significant role in the aluminium industry in China, through its various policies, plans and implementing measures. ...it is considered that the GOC influences can be broadly categorized as follows :*

1. measures to drive structural adjustment;
2. technological, efficiency and environmental development measures;
3. tariffs, taxes, rebates and licenses; and
4. subsidisation of encouraged practices and products.<sup>26</sup>

It is Arrowcrest's position that Program 1 is the logical outcome of the market situation for aluminium and alloy in China.

If you have any questions concerning this submission, please do not hesitate to contact me.

Yours sincerely



Bill Davidson  
General Manager

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<sup>26</sup> SEF181, page 34.