

Level 26, 385 Bourke Street, Melbourne VIC 3000
GPO Box 1533N, Melbourne VIC 3001 | DX 252 Melbourne
T +61 3 8602 9200 | F +61 3 8602 9299

hunt & hunt
lawyers

19 December 2011

The Director
Operations 2
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: tmops2@customs.gov.au

Dear Director

**Aluminium Road Wheels exported from the People's Republic of China
Initiation of an investigation into alleged dumping and subsidisation
Submission by GM Holden Limited
Non-Confidential version**

We act on behalf of GM Holden Limited ("**Holden**") and we make the Submission on behalf of Holden.

We have been instructed by Holden to make the following submission to the Australian Customs and Border Protection Service ("**Customs**") in relation to the investigation referred to in Australian Customs Dumping Notice No. 2011/54 ("**ACDN**").

Please note that this is the **non-confidential** version of this Submission. A **confidential** version has also been provided.

1. Definitions

For the purposes of this Submission, the following definitions have been adopted.

- (a) "**AB**" means the World Trade Organisation Appellate Body.
- (b) "**ACDN**" means Australian Customs Dumping Notice No. 2011/54 in relation to the Application.
- (c) "**Act**" means the *Customs Act 1901* (Cth).
- (d) "**Aluminium Extrusion Investigations**" means the investigations undertaken by Customs associated with the imposition of dumping and countervailing measures on the export of aluminium extrusions from the PRC.
- (e) "**Aluminium Extrusion Measures**" means the dumping and countervailing measures applied to Aluminium Extrusions exported from the PRC to Australia.
- (f) "**Application**" means the application for a dumping duty notice and a countervailing duty notice in relation to certain ARW exported from the PRC made by Arrowcrest Group on behalf of the Australian Industry manufacturing certain ARW as referred to in the ACDN.

Page 2
The Director, Operations 2
Australian Customs and Border Protection Service

- (g) **"AM"** means the "After Market" segment of the market for ARW as described in the Application.
- (h) **"Arrowcrest Group"** means Arrowcrest Group Pty Ltd, being the applicant in this Application.
- (i) **"ARW"** means Aluminium Road Wheels as described in the Application and the Consideration Report.
- (j) **"Australian Industry"** has the same meaning as in the Application and in the Consideration Report.
- (k) **"Baoding"** means Baoding Lizhong Wheels Manufacturing Co Limited.
- (l) **"CBSA"** means the Canada Border Services Agency.
- (m) **"CBSA Decision"** means the determination and decision by the CBSA and the Tribunal regarding findings as to dumping and subsidies in relation to aluminium extrusions exported from the PRC to Canada.
- (n) **"Chalco"** means China Aluminium Corporation.
- (o) **"CITIC"** means CITIC Diecastal Wheel Manufacturing.
- (p) **"Consideration Report"** means Report number 181 issued by Customs in response to the Application.
- (q) **"Customs"** means the Australian Customs and Border Protection Service.
- (r) **"Discussion Paper"** means the discussion paper issued by Customs entitled "*Market Situation – Section 269TAC(2)(a)(ii) Guidance – Claims of Government Influence*".
- (s) **"DS379"** means the findings of the AB in "*United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*".
- (t) **"EC"** means the European Commission.
- (u) **"EC Decision"** means the decision of the Council of the European Union to impose definitive anti-dumping duty and collect definitively the provisional duty imposed on imports of certain aluminium road wheels represented by Council Implementing Regulation (EU) No. 964/2010 of 25 October 2010.
- (v) **"FIS"** means FIS according to INCOTERMS.
- (w) **"FCA"** means FCA according to INCOTERMS.
- (x) **"GOC"** means the Government of the PRC.
- (y) **"GUC"** means goods under consideration as described in the Application.
- (z) **"Importer Questionnaire"** means the completed Importer Questionnaire provided by Holden to Customs together with this Submission.

Page 3
The Director, Operations 2
Australian Customs and Border Protection Service

- (aa) **"INCOTERMS"** (International Commercial Terms) means the standard accepted commonly used trade terms and conditions utilised in international trade as published by the International Chamber of Commerce and entitled "INCOTERMS 2000"
- (bb) **"Interim EC Decision"** means Council Regulation (EC) No. 1225/2009 of 30 November 2009 to impose provisional anti-dumping duty on imports of certain aluminium wheels originating in the PRC.
- (cc) **"Investigation"** means the investigation by Customs in response to the Application.
- (dd) **"LME"** means the London Metals Exchange.
- (ee) **"Mullins Wheels"** means Mullins Wheels Pty Ltd.
- (ff) **"OEM"** means the "Original Equipment Manufacturers" segment of the market for ARW as described in the Application.
- (gg) **"PRC"** means the People's Republic of China.
- (hh) **"Public File"** means the public file maintained by Customs in relation to the Investigation.
- (ii) **"SHFE"** means the Shanghai Futures Exchange.
- (jj) **"SOE"** means State Owned Enterprises.
- (kk) **"Speedy Corporation"** means Speedy Corporation Pty Ltd.
- (ll) **"Submission"** means this submission on behalf of Holden.
- (mm) **"Tribunal"** means the Canadian International Trade Tribunal.

2. Holden

As stated above, we act on behalf of Holden.

2.1 ***The business of Holden***

The history of Holden dates back to 1856 when it started as a saddlery business in South Australia. Today Holden is one of only seven fully-integrated global General Motors operations that designs, builds and sells vehicles for Australia and the world.

Holden has its headquarters in Port Melbourne, with an engine manufacturing plant on-site and vehicle manufacturing operations in Adelaide South Australia and it is represented by approximately 250 dealerships nationwide.

Holden's Vehicle Operations produce 51 models from two architectures, including HSV base vehicles, from six vehicle body styles for domestic and export customers. For the Australian market, the facility produces the Commodore range of sedans, Sportwagon and Ute together with Caprice and Caprice V long-wheel base luxury vehicles and the Cruze global small sedan and hatch, which went into production in 2011.

HVO includes a press plant and metal assembly operation, body hardware facility, paint shop, plastics operation, body assembly and vehicle assembly operations. The

Page 4
The Director, Operations 2
Australian Customs and Border Protection Service

beginning of local production of the Cruze has also helped grow Holden's expertise in small vehicle engineering and manufacturing.

Holden's Global V6 Engine plant is located in Port Melbourne, Victoria. It opened in 2003 at a cost of \$400 million - GM's single largest investment in Australia for more than 20 years. The state-of-the-art facility gives Holden considerable flexibility in the range of engines it can produce for local and international customers including: 2.8, 3.0, 3.2 and 3.6 litre variants. Holden exports its V6 engines to China, South Korea, Germany, Mexico and North America.

Holden is responsible for design, vehicle and powertrain engineering for its locally made vehicles and also performs work for global GM programs. Holden is one of GM's nine global design centres and is responsible for vehicles such as the Holden Commodore and Chevrolet Camaro.

2.2 *Potential effect of the application of measures on Holden*

It is important to note that our client is neither a distributor nor retailer of ARW which purchases ARW to meet perceived consumer demand. Rather, our client is a significant Australian manufacturer of vehicles and the purchase of ARW forms a vital element of that manufacture. The following information is relevant.

- (a) Preliminary decisions on production and the purchase of all components (including ARW) are taken several years before production commences following research and development and design of all components needed for production.
- (b) Final decisions as to the sourcing and purchase of components such as the ARW are based on price, the ability to meet demand and quality (in equal part).
- (c) Pricing for components is set significantly in advance of delivery.
- (d) For Customs duty purposes, the price for the ARW established in this manner is also subject to an agreed uplift on account of various production assists in accordance with a Customs Valuation Advice.

The arrangements described above are set in place well in advance of the production and delivery of the ARW. In the majority of instances, the commissioning and ordering takes place 2 years prior to delivery. Accordingly, the potential application of anti-dumping or countervailing duties would represent a significant commercial disadvantage for our client. Holden would have no ability to pass on those additional duties and the costs of monitoring and paying those duties. In particular, the imposition of interim measures at this stage when Customs itself acknowledges there is significant, considerable, additional investigation and research to be undertaken would cause substantial financial disadvantage to our client. Even if interim measures were revoked on a final determination, the administrative difficulties and the financial cost of ultimately recovering any duties paid would represent a considerable financial burden. The refund of duties or other measures would not relieve that financial burden.

Our client understands that Ford Australia purchases the majority of its ARW from an Australian distributor which has been established by a Chinese exporter and supplier. Further, Mitsubishi Australia purchases the majority of its ARW from the Australian

Page 5
The Director, Operations 2
Australian Customs and Border Protection Service

Industry. For these purposes, our client believes that its position as an Australian OEM would be specifically and uniquely disadvantaged by the application of measures.

2.3 **Holden purchase of ARW**

In the course of its business, Holden has purchased ARW both from the Australian Industry (including Arrowcrest) and from a number of the Chinese exporters named in the Application and in the Public File specifically being CITIC and Baoding.

For these purposes, our client can identify that it has purchased ARW from the Applicant and some of the Chinese exporters as set out in the following attachments described below. Our client would also be pleased to provide additional information and answer questions during Customs' proposed verification visit.

Please note that these attachments have been produced by our client and are calculated on an FCA basis.

- (a) Confidential Attachment "A" represents the Importer Questionnaire completed by our client.
- (b) Confidential Attachment "B" represents a consolidation of information on prices for goods from its major suppliers of ARW for the period under consideration. The general approach to pricing for ARW bought from Chinese exporters is as set out in paragraph 2.2 above.
- (c) Confidential Attachment "C" is an indicative Supply Agreement between our client and CITIC which reflects how pricing is established in a manner consistent with the summary provided in paragraph 2.2 above.

As a result, our client is of the view that it is well positioned to make this Submission and provide useful observations regarding the Application and the facts relevant to the Application.

3. **Importer Questionnaire**

While the Importer Questionnaire has been provided, we note that the Questionnaire is set out in a way that aggregates details of ARW purchased according to shipments. Our client does not treat shipments in the aggregate as those shipments include different ARW at different prices depending upon the type and dimensions of those ARW and their origin. Our client allocates costs, prices and associated charges related to ARW to the vehicle to which they will be applied. As a result, the information shown in the Questionnaire for each shipment represents averages of the price paid for the ARW in the various shipments.

While our client has completed its Questionnaire in the manner prescribed by Customs, our client would be willing to disclose separate pricing for ARW (based on exporter, dimension and type of ARW) contained in each shipment at the time Customs conducts a verification visit.

4. **An Interested Party**

Based on the above, we are of the view that our client Holden is an "Interested Party" for the purposes of the Act and is entitled to make the Submission. This conclusion appears to be consistent with the approach taken by Customs which has directly requested our client to provide an Importer Questionnaire.

Page 6
The Director, Operations 2
Australian Customs and Border Protection Service

5. General approach of Holden to the Application

Subject to the specific comments below, our client generally rejects the submission by the Applicant that the Australian Industry (including Arrowcrest) has suffered material injury from Chinese exports which have been sold at artificially low prices through dumping and subsidy practices in the PRC and which are contrary to the Act.

On this basis, our client does not support the imposition of anti-dumping and countervailing measures such as those requested by the Applicant and as contemplated by the Consideration Report.

6. Commentary on specific aspects of the Application

6.1 *Reliance on EC Decision*

Arrowcrest has made extensive reference to the EC Decision in support of its Application. Similarly, in the Consideration Report, Customs has referred to a number of findings and conclusions from the EC Decision.

Our client has significant reservations as to placing reliance on the EC Decision as contained in the Application and the Consideration Report in the Australian context. This applies in relation to such issues as, "export price" and "normal value" (including, without limitation, a determination of whether a particular market situation exists), the nature of export practices in the PRC and the existence of government subsidies in the PRC which would support findings to impose dumping and countervailing duties on the relevant exports from the PRC.

Further, we would also point out that measures in Australia depend on material injury to the Australian Industry in relation to which the EC Decision is of no assistance.

For these purposes we make the following further observations.

- (a) Notwithstanding that the EC and Australian provisions are established under the auspices of the WTO *General Agreement on Tariffs and Trade 1994*, there are substantive legislative and practice differences between the prevailing provisions in the EC and in Australia;
- (b) The EC does not start with the presumption that the PRC is a "full market economy" (or equivalent) as is the case with Australia;
- (c) The involvement of different parties as importers and manufacturers in Australia compared to those referred to in the EC Decisions;
- (d) There is a significantly different market in Australia as compared to the EC with different structures regarding the prices for local production, costs of transportation, distribution and sales processes;
- (e) The findings of fact in relation to many of the circumstances in the Interim EC Decision and the EC Decision are specific to the conditions of the market in the EC and should not be used in the Australian context; and
- (f) The EC Decision relies upon the use of Turkey as an "analogue" country (effectively the equivalent of a surrogate country in Australian practice) in its findings. This is not the case in the Application or in the Consideration Report.

Page 7
The Director, Operations 2
Australian Customs and Border Protection Service

Accordingly, while Customs will, no doubt, take notice of some of the considerations as set out in the EC Decision, our client is of the view that no undue reliance should be placed on the EC Decision and that the application of any measures (whether interim or otherwise) should await full consideration and analysis of the application of those measures according to Australian law and practice and Australian market dynamics.

6.2 Like goods and the marked difference between OEM and AM products

- (a) Our client believes that a number of the goods supplied by PRC exporters should be excluded from the scope of the Application and the Investigation on the basis that they are not produced by the Australian Industry. More specifically, the Australian Industry does not manufacture ARW with diameters of 20 and 22 inches. It is the view of Holden that these products should be excluded from the scope of the Application and not be subject to any anti-dumping or countervailing measures.
- (b) Our client believes that there are significant differences between the ARW it purchases for its OEM and the ARW purchased by others for the AM. Some differences are as follows.
 - (1) There are differences in the quality and elements of the aluminium used in the OEM and AM market.
 - (2) There are significant quality differences between OEM and AM products. Specifically, ARW used in the OEM needs to accommodate Australian Standards which are more rigorous for new vehicles in the OEM market than in the AM markets.
 - (3) The processes used to produce ARW for the OEM market are undertaken in a way to minimise CO₂ emissions.
 - (4) The ARW produced for the AM would not qualify for use in Australian manufacture of passenger motor vehicles.
 - (5) The ARW manufactured by Arrowcrest does not meet the specific additional quality standards and requirements of Holden.
 - (6) While the Interim EC Decision and the EC Decision seem to conclude that there was no basis to differentiate between OEM and AM products for ARW in the European Union market, our client was not party to those proceedings nor were its related companies in the European Union. The Australian market is very different. Accordingly, any such findings should be treated with extreme caution.

For these purposes, our client is of the view that ARW produced for the OEM and AM markets are not "like" goods and each market should be considered by way of separate applications and investigations.

As a result, we believe that the Application and Investigation should not proceed in its current form. Should Customs continue the Application and Investigation, then it should only do so on the basis of separate investigations as to potential application of measures for ARW for the OEM and AM markets.

Page 8
The Director, Operations 2
Australian Customs and Border Protection Service

6.3 **Calculation of "normal values" and "export price"**

(a) **General observations**

- (1) Subject to the comments in paragraph 6.3(b) below, given the limited time available to make this Submission and given that much of the information regarding pricing has not been able to be independently verified by our client, Holden is not in a position to make observations regarding the specific calculations as to the amounts of normal value and export price and therefore relevant margins. Accordingly, Holden can only respond at this stage with regard to the process adopted to effect these calculations and makes the additional comments set out in paragraph 6.3(b) below.
- (2) Holden is of the view that the approach of Arrowcrest and Customs as to the existence of a "particular market situation" in the PRC is incorrect and that Customs should have had recourse to domestic selling prices in the PRC when making determinations of normal value and export price. We note that Customs seems to have proceeded with Arrowcrest's use of "constructed" normal values to determine normal values and support the conclusion that there appears to have been dumping. However, we are of the view that this is an incorrect approach and that, until Customs has itself assessed that there is a "particular market situation", Customs should not have departed from the use of PRC domestic prices when assessing normal values.

(b) **Determination of "normal value"**

In the Application, Arrowcrest has maintained that a "particular market situation" exists in the PRC in relation to the production and export of ARW and, as a result, recourse should be made to a "constructed" price to determine "normal value" in accordance with section 269TAC(2)(a)(ii) of the Act.

We also note that in the Consideration Report, Customs appears to have expressed no view as to whether there is, in fact, a "particular market situation" in the PRC which renders domestic sales unsuitable for establishing normal value. Customs has commented that it proposes to make further enquiries as to whether a "particular market situation" exists in the PRC in relation to ARW. However, Customs then proceeds on the basis of normal values "constructed" by Arrowcrest and finds that those values support a conclusion that there has been dumping.

It is our view that Customs should not have elected to proceed based on Arrowcrest's "constructed" normal values until it had first come to a conclusion whether a "particular market situation" existed or at least was likely to have existed.

For these purposes, we refer to the commentary on this issue in the Discussion Paper where Customs refers to the Act and the circumstances in which a "particular market situation" is determined to exist allowing the determination of value other than domestic prices in the country of export. As set out in lines 82 to 97 of the Discussion Paper:

Page 9
The Director, Operations 2
Australian Customs and Border Protection Service

"82 Australia's treatment of China

The test for calculating normal values in an investigation involving China is the same as for market economies generally. That is, the general test under s269TAC(1) that domestic selling prices will be used for normal values unless one of the exceptions listed in s269TAC is established to the satisfaction of the Minister.

There is no automatic assumption that domestic selling prices in China, as in any other market economy, are unsuitable for use in calculating normal values. Neither the Government of China nor the exporters in China have any responsibility to demonstrate to Customs that domestic selling prices are suitable for calculating normal issues.

Australia's approach to investigations in China is, in that sense, the same as investigations conducted in any other market economy."

The Discussion Paper also describes the process to be observed before making a determination that a "particular market situation" exists and allowing departure from normal values in the country of export. As set out in lines 63 to 69 of the Discussion Paper:

"In reaching a decision about whether he or she is satisfied that there is a market situation under section 269TAC(2)(a)(ii), the Minister is required to follow the principles of administrative law. That is, his or her decision must be based on evidence, must only take into account relevant factors, must not take into account irrelevant factors and must be otherwise procedurally fair. If a decision is not made according to administrative law requirements it may be subject to challenge in a court."

In our view, in undertaking its investigation, Customs should follow a similar procedure and be governed by the same manner of considerations. It is our view that these threshold requirements have not been met at this stage of the investigation and consequently there is nothing which would support departure from the use of domestic selling prices in PRC for ARW in determining normal values and whether dumping has taken place in the current matter.

As mentioned above, the Consideration Report makes no finding as to whether an exception in section 269TAC of the Act applies and merely proceeds to consider Arrowcrest's costed values as if the exceptions applied. It is subsequently on those constructed values that Customs concludes there appears to be a reasonable prospect of dumping in the PRC. No assessment is made based on actual domestic selling prices in the PRC.

The Consideration Report does seek to distinguish earlier determinations in the Aluminium Extrusion Investigations which found that Chinese sales of aluminium were suitable for use in determining normal value.

However, the comments on page 21 of the Consideration Report are specifically relevant:

"Customs and Border Protection, however, found that certain prices of aluminium extrusions in China provided for full cost recovery where

*cost calculations took into account primary aluminium based on the LME.**

As also stated above, the cost for the ARW purchased by our client provides for full cost recovery taking into account the cost for primary aluminium based on the LME. In our view, this would support the use of domestic prices in the PRC to determine normal values when assessing whether dumping has occurred. Given the comments in the Discussion Paper and the comments in the Consideration Report as well as in Preliminary Affirmative Determination No. 148, our client believes that there is no basis by which Customs should have departed from domestic sales in the PRC when establishing normal values for this Consideration Report.

At the least, given that Customs has made no determination as to whether there is a "particular market situation" in relation to the ARW market in the PRC, it is inappropriate to levy interim measures.

(c) **Specific observations**

In addition to the general observations above, our client wishes to make the following additional observations regarding pricing, demand and supply issues.

- (1) Our client has provided a number of confidential attachments (referred to in paragraph 2.2, which set out some information which may be of assistance.
- (2) Arrowcrest seems to suggest that price is the only reason for Arrowcrest losing market share. However, price was not the only reason for the rapid emergence and significant growth in rate of Chinese imports. There are important differences in terms of quality of product and availability of product in the PRC when compared to ARW produced by Arrowcrest.

6.4 **Subsidy analysis**

Similar to the comments in the preceding paragraph, in the available time to make the Submission, our client has not had the opportunity to independently verify the findings in the EC Decision, the allegations in the Application and the findings in the Consideration Report regarding the existence of certain subsidies in the PRC to support the imposition of countervailing duties, and certainly not on an interim level.

However, Holden would make the following observations regarding the findings as to the existence of countervailable subsidies.

- (a) The commentary of the GOC should not be discounted when making the determination regarding subsidy analysis.
- (b) Holden believes that the analysis by Arrowcrest regarding DS379 as being applicable to Australian practice requires further analysis by both Customs and our client.
- (c) Customs is required to take particular account of DS379 when determining whether subsidies exist. In our view, application of DS379 to determinations as to countervailable subsidies is only at its earliest stage and that no

conclusions as to countervailable subsidies (reasonable or not) could be found until the application of DS379 to the facts of the Application in this Investigation has been further examined in detail. Again, this would not support the imposition of interim measures pending further determination of the matter.

- (d) Recent determinations in the aluminium extrusion re-investigation contained in REP 175 are specific to the aluminium extrusion market itself and should not necessarily be accepted and adopted as evidence sufficient to support the imposition of countervailing duties in respect of the Application.

Accordingly, Holden does not support the analysis of Arrowcrest and Customs regarding the existence of Government policies in the PRC which would support the imposition of countervailing duties. At the least, the subsidy analysis undertaken in the Application should not support the introduction and application of interim measures pending full and comprehensive analysis by all parties.

6.5 **Material injury**

(a) **General observations**

- (1) Our client believes that it is important to recognise that the Application has proceeded without the benefit of information from Australian producers other than Arrowcrest. In particular, Customs has proceeded without submissions or information from either of Mullins Industries or Speedy Corporation. Indeed, we note from the submission by Speedy Corporation dated 14 November 2011 that it does not support the imposition of measures and nor does it support any of the submissions of the Application.
- (2) Our client is of the view that there have been issues which may have had an adverse effect on the Australian industry caused by factors other than the alleged dumping and subsidies which are the subject of the Application. These include the following;
- (A) the adverse financial situation experienced world-wide following the global financial crisis;
 - (B) the inability of Arrowcrest to increase production to a level required by our client;
 - (C) the fact that Arrowcrest lost the business of our client through a competitive and qualitative tender process;
 - (D) the fact that the Australian market appears to have recovered ground after the GFC and has maintained that position;
 - (E) the increase in the value of the Australian dollar which has, comparatively, made PRC prices more attractive;
 - (F) the view of our client that Arrowcrest had not comprehensively re-invested in processes and production (as other producers may have done);

- (G) increases in purchases of ARW from countries other than the PRC; and
- (H) that Arrowcrest does not produce ARW of equal or appropriate quality which complies with the standards of our client.

For these purposes, we are of the view that the Application and the Consideration Report do not support the imposition of measures as Arrowcrest has not established the causal link between alleged dumping and subsidy practices and alleged material injury.

(b) **Concern to preserve the legitimate business of our client**

As stated above, our client is a significant Australian presence in the OEM market. Our client legitimately conducts its business based on an arm's length basis and properly negotiates with exporters and other providers of goods and services. The imposition of measures such as that contemplated by the Application would have significant adverse financial consequences for our client which could not be passed on to its customers. Savings or other benefits would need to be found elsewhere in our client's business if measures were to be imposed.

At the very least, the imposition of interim measures would be of significant financial disadvantage especially taking into account the early stage of the Customs investigation. Such interim measures do not appear to be supported.

7. Exclusion for specific products

As stated above, our client is of the view that the Application and the investigation should exclude reference to aluminium road wheels for passenger motor vehicles, including wheels used for caravans and trailers with diameters of 20 and 22 inches as these are not manufactured in Australia by Arrowcrest.

8. Application of interim measures

In a number of our submissions we have referred to the fact that Customs' investigation is at a very early stage and that there are a number of significant differences between the parties, some of which are set out below. At this stage, there are a number of uncertainties and differences in this case.

- (a) Our client is of the view that Arrowcrest does not produce some goods which are, however, the subject of the GUC.
- (b) There are significant and important differences in the approach by the parties as to whether there is a "particular market situation" which would allow for the determination of normal values using domestic prices in the PRC or constructed prices. For these purposes, we note that Customs has formed no view as to the correct approach although any determination of measures would require adoption of one of the alternative means to determine normal values as part of the process of establishing whether dumping duties should be imposed.
- (c) Only one manufacturer in the Australian Industry supports the Application (regardless of the percentage of production of that Australian producer).

Page 13
The Director, Operations 2
Australian Customs and Border Protection Service

- (d) The prices paid by our client are based on the LME rather than the SHFE. There are previous findings that prices for aluminium based on the LME do bear full recovery and would therefore support the use of domestic prices in the PRC for determination of normal value.
- (e) Customs has not had the benefit of review of material from our client or from other Australian importers.
- (f) Decisions as to production and price are taken by our client significantly in advance of delivery of that product (in many cases as far as 2 years in advance). This would not allow for our client to adjust its pricing or production to accommodate any interim measures that might be imposed upon the ARW.
- (g) Our view as to the issue of "like goods" and the consequential need to undertake separate analyses of dumping or countervailable subsidies as to ARW for the OEM and the AM.
- (h) The fact that the Australian market appears to have recovered and stabilised since the GFC suggesting no need for interim measures.
- (i) The fact that there are other reasons for alleged material injury (even if injury is found to have existed).

Accordingly, our client strongly believes there are no bases on which Customs should impose interim measures of any type until a full determination is made of all aspects of the Application to which our client (and others) has had the full opportunity to respond.

9. Further submissions

We note that this Submission is made at short notice and without the benefit of time to undertake a detailed and comprehensive analysis of the Application and associated provisions such as the EC Decision, the Interim EC Decision and the implication of DS379.

Accordingly, our client would be pleased to be afforded the opportunity to provide further additional information and to make further submissions to Customs, as Customs sees fit. In our view, our client should be afforded the opportunity of making additional enquiries and further submissions before Customs makes any determinations or decisions which would involve the imposition of measures (whether interim or otherwise).

Please note that this Submission is made without prejudice to any other submissions or commentary which our client would make and without prejudice to any arguments which our client may seek to make in any applications for review of any type.

10. Conclusion and recommendation

As discussed above, our client does not support the Application and believes that the Australian Industry has not suffered material injury due to the alleged existence of dumping and subsidy practices which have benefited Chinese exporters.

Our client is concerned to ensure that a viable Australian automotive manufacturing industry is allowed to exist and continue to produce in which all parties adopt fair practices. That outcome is not supported by the proper application of any dumping or countervailing measures.

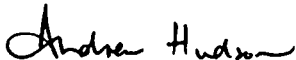
In our view, given the complexities of the facts and issues associated with the Investigation, the interests of all parties would best be served by Customs creating "Issues Papers" on the issues

hunt & hunt
lawyers

Page 14
The Director, Operations 2
Australian Customs and Border Protection Service

at hand and seeking commentary from the parties before advancing the investigation and before even considering the imposition of any dumping or countervailing measures.

Yours faithfully
Hunt & Hunt



Andrew Hudson
Partner
D +61 3 8602 9231
E ahudson@hnhunt.com.au