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20 February 2012

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
Further Submission by GM Holden Limited**

We refer to our letter of 19 December 2011 ("**First Submission**") and to the verification visit ("**Verification Visit**") with officers of the Australian Customs and Border Protection Service ("**Customs**") and officers of our client at the premises of our client on 23 January 2012.

We also refer to correspondence directly between Mr Alex Menta of our client and Customs since the date of the Verification Visit.

As discussed, our client has instructed us to make the following further submission ("**Further Submission**") to Customs in relation to its Investigation. For these purposes, this Further Submission should be read together with the First Submission and should not be taken as detracting from the First Submission.

1. Further Definitions

For the purposes of this Further Submission;

- (a) Terms defined in paragraph 1 of the First Submission have the same meaning in this Further Submission;
- (b) "**CITIC Response**" means the Non-confidential Exporter Questionnaire completed by CITIC as disclosed on the Public File;
- (c) "**Dicastal Response**" means the Non-Confidential Questionnaire completed by Dicastal Australia Pty Ltd as disclosed on the Public File;
- (d) "**Ford Submission**" means the Non-Confidential Submission made by Ford Motor Company of Australia Limited as disclosed on the Public File;
- (e) "**GOC Submission**" means the submission by the GOC disclosed on the Public File;
- (f) "**Manual**" means Customs Dumping and Subsidy Manual;

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INTERLAW.

- (g) **"Versus Submission"** means the Non-Confidential Submission made by PWC on behalf of Versus as disclosed on the Public File; and
- (h) **"Visit Report"** means the Non-Confidential version of the Visit Report of Customs visit to the Arrowcrest Group as disclosed on the Public File.

2. Additional Comments

This Further Submission is made based on information currently available to our client as at today's date. As Customs would understand, there is additional information becoming available at regular intervals. Accordingly, our client wishes to reserve the right to make further submissions.

3. Like goods

As set out in the First Submission, we are of the view that the ARW for the OEM are not "Like Goods" to ARW for the AM.

We note the opinion expressed by Customs during the Verification Visit that it would be likely to be found that the ARW for the OEM were "Like Goods" to the ARW for the AM market. However, we would draw Customs' attention to the comments as to findings on Like Goods in the Manual.

At paragraph 2.2 of the Manual, Customs indicates that if goods are not identical:

"It is necessary to determine whether the goods would still fall within the ambit of goods having characteristics closely resembling those of the goods under consideration. To determine whether the goods are goods having characteristics closely resembling those other goods under consideration, the factors outlined below will be considered."

In our view, the ARW for OEM and AM are not identical goods due to physical and other technical characteristics described in the First Submission, the CITIC Response, the Ford Submission and the Versus Submission. Accordingly, pursuant to paragraph 2.3 of the Manual, Customs must assess whether the OEM and AW ARW "have characteristics closely resembling each other.

For these purposes, we consider that the following are relevant considerations:

(a) **Physical likenesses**

The ARW for the OEM and AM have different sizes, weights, grades, strengths, contents and purity of aluminium. These differences are set out in detail in the First Submission, the CITIC Response and the Ford Submission. Further, the Versus Submission addresses differences including different means of production.

(b) **Commercial likenesses**

In the view of our comments, there are few, if any, real commercial likenesses between the ARW for the OEM and AW. For example:

- (1) the goods do not compete in any market;

- (2) the OEM does not use AM ARW in any circumstances. As discussed, should there be a shortfall in ARW required by our client, it would be the practice for our client to import additional ARW specifically for its vehicles by way of air freight;
- (3) the pricing differential as between the 2 products is not the issue. The goods are different goods for different markets;
- (4) there are different distribution channels. The ARW for OEM are physically attached to the vehicle by the OEM themselves whereas AM ARW are imported and sold by retailers; and
- (5) there is no similarity in packaging of the goods. There is, in fact, no packaging of the ARW used in the OEM whereas the ARW for the AM are, in fact, packaged and sold through retail outlets.

These commercial differences emphasise that the goods are not Like Goods.

(c) **Functional likenesses**

Obviously, in one limited sense, both the ARW for the OEM and the AM have a similar "end-use" in that they are both fitted to motor vehicles. We believe that is too simplistic an approach. Given the different manner of production, specification and use, the conclusion is that there are no practical functional likenesses in relation to the two products. Customs should take into account the established qualitative differences to the ARW for the OEM and the AM.

Further, in the view of our client there is no likelihood of consumer demand changing in the future to use ARW produced for the AM in new vehicles manufactured by the OEM.

(d) **Production likenesses**

Again, while both the ARW for the OEM and AM are comprised of similar materials to an extent (ie they both contain aluminium), our client is of the view that there are significant production differences. These include the following:

- (1) different percentages of aluminium;
- (2) different production processes adopted for ARW for the OEM and AM; and
- (3) compliance with different specifications. The specifications set for our client (and presumably for Ford) are significantly more stringent than those required for the ARW used in the AM.

Again, these differences are emphasised in other material on the Public File specifically in the CITIC Response, the Ford Submission and the Versus Submission.

(e) **Other considerations**

In the view of our client, it is also significant and noteworthy that;

- (1) while there may be extensive advertising and marketing for the ARW for the AM, there is no such specific marketing or advertising for the ARW used for the OEM. The ARW for the OEM comprise part of the entire vehicle which is the basis for marketing and advertising;
- (2) CITIC does not even produce ARW for the AM, which underlines the significant differences in characteristics for the goods; and
- (3) the CITIC Response identifies why the goods are not "Like Goods".

Given all these factors, and those set out in previous correspondence, we remain of the view that the goods are not "Like Goods". Our client believes this view is supported by the comments in the Ford Submission, the CITIC Response and the Versus Submission to the effect that the ARW for the OEM and AM are not Like Goods.

4. Use of the decision of the EC

As set out in the First Submission, our client is concerned that Customs does not place undue reliance on the EC Decision. We also identified that our client was not involved in the EC proceedings. We have now reviewed the Ford Submission on the merits of the EC Decision and support the comments by Ford as to the merits of the EC Decision and the submission that Customs should not place reliance on the decision of the EC.

5. Separate Investigation for OEM and AM goods

As set out in the First Submission, it is the view of our client that ARW for the OEM and the AM are not "Like Goods" and that there are no grounds for findings of actionable dumping or subsidies for ARW for OEM.

For these purposes, our client has previously submitted that the fact that the pricing for the goods exported to our client, being based on the LME prices (rather than the SFE prices) would support separate investigations for ARW for the OEM and the AM.

In further support of this position we note that;

- (a) both our client and Ford's prices for ARW are based on the LME with prices changing in accordance with changes to the LME; and
- (b) the CITIC Response emphasises how prices are set for ARW for the OEM.

6. Use of constructed Normal Value

In our First Submission, we observed that it was inappropriate to assume that a "Particular Market Situation" existed in the PRC export markets for the GUC and that Customs should not otherwise resort to use of constructed prices in determining whether there was any alleged dumping and subsidy.

Without limiting the generality of the First Submission or the Ford Submission, we make the following additional observations regarding the recourse to a constructed Normal Value.

(a) **Particular Market Situation**

We note that neither the Application nor the Visit Report contains evidence to suggest that a particular market situation exists in the PRC for the GUC.

We also note that the GOC Submission and the CITIC Response both expressly reject the position that a Particular Market Situation exist.

We remain of the view that there is no evidence before Customs to allow the conclusion that a Particular Market Situation exists.

(b) **Prices based on LME**

As set out above and as set out in the First Submission, the Ford Submission and the CITIC Response, prices for the ARW exported to our client and Ford are based on the LME rather than the SFE and, as a result, there is no basis for recourse to constructed Normal Value.

7. **Subsidy**

In the Consideration Report, Customs has considered the claim of the existence of subsidies warranting the imposition of countervailing duties by the Applicant. According to the Consideration Report, Customs appears to be doing so based on the Application, the preliminary findings in the investigation regarding alleged dumping of toilet paper, REP No. 148, REP No. 175 and DS379.

These are discussed in more detail below.

- (a) Our client acknowledges that this is a very complex analysis following DS379. However, our client has reservations regarding reliance on "findings" in the investigation into alleged dumping of toilet paper referred to in the Consideration Report. Those allegations were never properly tested and should not be relied upon for the Investigation.
- (b) There were no findings in REP 175 that either of the exporters from whom our client purchases ARW have any "State Investment" so as to qualify as "public bodies" themselves nor is there any evidence that those manufacturers nominated as "public bodies" in REP 175 supply to the exporters to our client.
- (c) The findings in relation to alleged subsidies in REP 175 were some time ago and the market and the economic environment in the PRC has changed substantially. Accordingly, full and comprehensive new analysis needs to be undertaken. For these purposes, Customs needs to take into account the Ford Submission, the GOC Submission and the Dicastal Response.
- (d) The CITIC Response and the GOC Submission make extensive comments as to why there has not, in fact been actionable subsidies or grants to the exporters or to manufacturers to the exporters. Those submissions also point to the existence of an "arms length" market for aluminium raw material, other production inputs and ARW.

8. Material Injury

We have considered the material in the Application and the Visit Report. We remain of the view that, as expressed in our First Submission that there has been no material injury to the Australian industry and that even to the extent that there had been any such material injury (which is not conceded), then such material injury was not caused by alleged dumping or alleged subsidies in relation to exports of ARW from the PRC by exporters to our client.

We have also considered the Ford Submission and the Versus Submission and concur with the views expressed in those Submissions regarding this issue.

Without limiting the generality of these comments we note further as follows.

- (a) The Application and the Visit Report continually refer to "2003" as the "key year" which was a source of difficulties for the Applicant. In our view, Customs should not consider any such past period when determining injury. Customs should only adopt its normal practice of looking to injury over the period under investigation and considering the preceding three years for content.
- (b) The Visit Report refers, in fact, to the Applicant having secured price increases of recent time from Holden Special Vehicles. This is entirely inconsistent to any allegations of price suppression or price cutting occasioned by any alleged dumping or subsidy.
- (c) Our client, Ford and Versus have pointed to significant other reasons for any alleged injury experienced by the Applicants. These include:
 - (1) a drop of sales of new vehicles over the period under review;
 - (2) tariff reductions making imported vehicles "cheaper";
 - (3) quality issues;
 - (4) loss of business by Arrowcrest in a competitive tender for sales to our client;
 - (5) the Arrowcrest dispute with Ford;
 - (6) the GFC; and
 - (7) failures by the Applicant to properly invest in its business (as shown in the Versus Submission).
- (d) As pointed out in the Ford Submission and the Versus Submission, there is significant evidence of the market for the ARW having stabilised during the period under investigation.
- (e) The Application ignores the likelihood of other exports from other countries being the source of the loss in market to the Applicant.

Accordingly, for these reasons, we believe that there should be no finding that material injury has been caused to the Australian industry arising from any alleged dumping or subsidy.

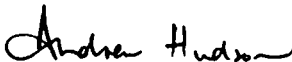
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Australian Customs and Border Protection Service

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We look forward to discussing this matter with you.

Yours faithfully
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