



ARROWCREST GROUP

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23 April 2012

Ms. Joanne Reid
Director, Operations 2
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Joanne,

Reference : Arrowcrest response to Clayton Utz submission dated 12 April 2012 on behalf of Ford Motor Company of Australia Limited (Ford).

I refer to the submission from Clayton Utz dated 12 April 2012, on behalf of Ford Motor Company of Australia Limited (Ford), in respect to like goods.

Arrowcrest notes that Clayton Utz is repeating arguments similar to those presented by Ford in Europe, which were rejected by the European Commission in its 2010 determination that ARWs exported from China were at dumped prices and had caused injury to the European ARW industry¹.

Arrowcrest also refers Customs to Arrowcrest's earlier responses in respect of physical, functional and production likeness between OEM and AM ARWs (in support of Customs preliminary determination that OEM and AM ARWs are like goods) and now provides the following further evidence and commentary in respect of commercial likeness.

1. Why do car manufacturers fit ARWs ?

- ARWs are typically at least three to four times more expensive for the car manufacturer to source than equivalent fitment steel wheels.
- Despite this added expense, fitment of ARWs is more prevalent in mature and affluent markets, such as Australia, than the fitment of steel wheels.

¹ The Council of the European Union Regulation (EU) No 964/2010 of 25 October 2010 *imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium road wheels originating in the People's Republic of China.*

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- Car manufacturers design and fit ARWs to entice the consumer, via promotion of lighter weight performance attributes (perceived or factual) and styling attributes which cannot be achieved when producing a functionally equivalent steel wheel.

2. Who is the consumer ?

- Ford suggests, as it did in the European investigation, that Ford is the ultimate customer for OEM ARWs because it incorporates the ARWs it sources onto a finished product, i.e. a car. Arrowcrest contends however that in this respect Ford is merely a facilitator.
- The ultimate consumer is after all the driver as it is the driver who ultimately decides whether or not an ARW is sold as original equipment (OEM), or as a CSD or AM fitment.

3. Who comprises the market ?

- The market for ARWs is comprised of the ultimate consumer, i.e. the driver of passenger motor vehicles, four wheel drive vehicles, caravans and trailers.

4. What are the paths to market ?

In respect of new cars, the paths to market include :

- Sales of OEM and CSD ARWs (distributed exclusively) and AM ARWs (distributed non-exclusively), at the specific request (order) of the buyer of a new vehicle;
- Sales secured at new car dealerships of OEM, CSD and AM ARWs at the request (order) of the dealer on behalf of the consumer, i.e. prepared in advance to entice consumers;
- Sales secured ex-factory and ex-car-dealership, by tyre retailers and other participants in the aftermarket.

5. What is "OEM" ?

- OEM means "original equipment manufacture" and refers to automotive components, including ARWs, which are originally fitted to a car by the car manufacturer when first built.

6. What is "CSD" ?

- CSD ARWs are styled (typically) and sourced by the car manufacturer's customer service division for sale by new car dealerships as optional accessories. (See also 12 below.)
- CSD ARWs are not factory fitted.

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7. What is "AM" ?

- The Aftermarket (AM) is where an automotive component is fitted after a new car has been shipped from the factory.
- AM ARWs are typically selected from the AM ARW distributor's catalogue, including from the Australian industry. AM ARWs are styled by the ARW manufacturer and may be tested to equivalent or higher specifications than OEM ARWs. In the Australian market the majority if not all of the available AM ARWs are (or should be) performance tested to validate them for fitment to OEM motor vehicles including of the kind produced by Ford.
- It is entirely possible for a consumer to order a new vehicle with steel wheels for example, with the predetermined intention to replace those OEM steel wheels with AM ARWs post-factory, i.e. in an aftermarket transaction, thereby preventing the sale of an OEM ARW.
- It is therefore in the best financial interests of the car manufacturer to design attractive OEM ARWs to entice sales away from the AM segment.
- Conversely it can be in the best financial interests of the car dealer to promote an AM ARW in place of an OEM ARW in a bid to sell cars (via personalization of a standard vehicle) and to gain margin on the overall consumer transaction (via accessorizing).

8. Can Arrowcrest provide examples of where AM ARWs have been factory fitted ?

- As referenced elsewhere by Arrowcrest, AM ARWs have been and are fitted as OEM installations in factory by car manufacturers. Arrowcrest has provided examples of its AM wheels being factory fitted by Chrysler, Ford and Mitsubishi as recently as 2009.
- Whilst the last sale of AM wheels for factory fitment by Ford was in 2002, Ford has fitted AM wheels as OEM equipment in-factory and it would be misleading and untruthful to suggest otherwise.
- Arrowcrest notes that where its AM ARWs have been fitted as OEM equipment, Arrowcrest did not make any changes to the process by which it produced those AM ARWs, nor did it modify the design of those AM ARWs to satisfy the varying car manufacturers' specifications.

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9. Are AM ARWs sold at new car (OEM) dealerships and do they compete with OEM ARWs ?

- Aside from Arrowcrest's AM ARWs fitted as OEM equipment, Arrowcrest (for example) has supplied its AM ARWs to OEM car dealers for fitment to new vehicles, in lieu of the OEM steel and alloy wheels alternatively offered by the car manufacturer.
- Arrowcrest's AM ARWs that have competed directly with OEM ARWs at new car dealerships include Strike and Boost (Mitsubishi), Image and Envy (Hyundai), Image, Sekta, Cobra and Circ (Ford), Spectra (Daewoo), Astron, RT, Shift and Boost (Suzuki), and Instinct, Dune, Ritz, Impact and Sandown (Toyota).
- Mullins Wheels AM ARWS that have competed with OEM ARWs at new car dealerships have included Galaxy and Hornet (Mitsubishi), Ultra and Concept (Hyundai), Sebring, Kaos and Concept (Mazda), Kaos and Concept (Daewoo), and Concept (Renault).
- Mullins' AM ARWs continue to compete at Ford dealerships across Australia with Ford's OEM ARWs.

10. Are OEM and AM ARWs commercially competitive ?

- Yes. OEM and AM ARWs vie for sales to car manufacturers and at car dealerships.
- Car manufacturers offer supply contracts whose volumes and tenure offset lower prices typically recorded for OEM ARWs when compared to equivalent AM ARWs.
- Conversely, AM ARWs typically command higher prices which are reflective of the inherent risks in terms of development, production, stockholding and market-servicing costs. (Arrowcrest's A6 data for example shows the higher selling, distribution and administration costs of doing business in the AM segment.)
- However AM ARWs can quickly become OEM ARWs by simply meeting the car manufacturer's expectation for price and performance. For example, Arrowcrest's AM ARW factory fitted by Ford met both criteria and did so without modification to chemistry, process or product. As determined by the European Commission, *"it should also be recalled that many wheel manufacturers produce for both segments and OEM and AM wheels are produced on the same production lines. Producers active in one segment can enter the other segment."*

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11. How critical is price ?

- Ford suggests that the AM market is more concerned about price and style, whereas the OEM market is concerned with quality and technical specifications, with price being a secondary consideration.
- However in the EU investigation, Ford submitted that when choosing the car, the consumers are always driven by important factors such as price.
- Arrowcrest submits that Ford is correct in respect of both segments of the ARW market and, all else being equal, price is the determining factor in the decision making process.

12. Within a market sector are the goods similarly positioned ?

- Mullins AM ARWs are advertised on Ford's website and are available to the consumer at Ford dealerships, in direct competition with the OEM ARWs that Ford fits in-factory. It is also possible to see OEM and AM ARWs in competing displays at car dealerships across the country.
- What Ford neglects to mention here is that there is another class of ARW which is sourced by the car manufacturer, that is styled and tested to the car manufacturer's specifications, is sold through its dealerships and yet is neither an OEM (factory fitted) nor an AM (non-exclusive) ARW. This class of ARW can be described as a "Customer Service Division" (CSD) ARW.
- Car manufacturers invest substantial time and money operating customer service divisions (CSDs), which are independent of the dealer network. Amongst other functions, CSDs source a range of exclusive accessory options to entice the consumer which the car manufacturers wholesale to their car dealerships.
- Both the car manufacturer and the car dealership have an interest in preventing sales being lost ex-dealer to the aftermarket. Specifically, car companies benefit from wholesaling a range of factory-approved CSD ARWs to their dealerships, and the dealers place pressure on the CSDs to provide an attractive selection of ARWs that are cost competitive against both OEM (exclusive) and AM (non-exclusive) ARWs.
- For example, Arrowcrest manufactures a range of CSD ARWs for (confidential transactions). These CSD ARWs are not OEM factory fitted ARWs and (because they are styled by and tested to XXXXXXXX specification and are therefore exclusive to XXXXXXXX), they are not AM ARWs that are also wholesaled by Arrowcrest to the retail tyre industry.
- Arrowcrest's CSD ARWs are developed and tested in a similar manner to its OEM and AM ARWs, are produced using the same chemistry, equipment and processes as its OEM and AM ARWs and are packaged both individually and bulk on pallets.

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- Prior to restructuring as a result of its substantial losses to ARWs from China at dumped and subsidized prices, it was Arrowcrest's AM division that manufactured XXXXXXXX CSD wheels and manufactured and supplied AM styles to Ford and other OEMs referenced above at [8].
- The difference between the SBA ARWs sourced from Mullins and Ford's OEM ARWs is that the so-called SBA ARWs are apparently not tested to Ford's specifications. And yet they compete for sales with Ford's OEM ARWs at Ford's dealerships.
- Other examples of CSD ARWs are the HSVi ARWs which are wholesaled to GM-Holden dealers, firstly by GM-Holden's HSVi division and now by HSV. These HSVi ARWs compete for sales with both GM-Holden's OEM ARWs and with the AM ARWs that GM-Holden dealers source themselves from the retail tyre industry. (Confidential transaction.)
- Arrowcrest notes that a Chinese copy of Arrowcrest's high volume HSV OEM ARW (which was shelved by HSV in favor of an imported ARW from China/Taiwan), was (confidential transaction). The XXXXXXXX dealer sourced sufficient quantities for fitment to new cars to cause XXXXXXXX XXX XXX to request Arrowcrest to test the copy wheels. An out-of-court settlement for damages was subsequently paid by XXXXXXXXXXXXXXXXXXXX.
- It is therefore apparent that, whilst volume might affect the price paid, for all intents and purposes OEM, CSD and AM ARWs share sufficient commercial likeness as to be wholly competitive and they do compete on price for consumer sales.

13. Willingness to switch between sources.

- Arrowcrest has provided evidence here and elsewhere that demonstrates the functional and commercial interchangeability of OEM, CSD and AM ARWs and the willingness of the car manufacturers and their dealers to engage in sourcing ARWs that can be classified by their alternate paths to market as either OEM, CSD or AM.
- ARWs compete in the same market place for sales to the consumer and car manufacturers, car dealerships and the retail tyre industry are examples of the paths through which ARWs reach the consumer.
- AM ARWs have been supplied and can be supplied to car manufacturers for use in production vehicles and such interchangeability is not constrained by time.

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- There is price competition at car dealerships between ARWs sold to the car manufacturers and those sold into the AM market. Car manufacturers variously offer OEM, CSD and AM ARWs to the consumer through their car dealerships. A car dealership might also on-sell AM ARWs that it sources independently of the car manufacturer from the retail tyre industry or from wheel and tyre wholesalers who can also be the importers of ARWs. The retail tyre industry also competes for ARW sales with the car manufacturers and their dealers.
- Price competition occurs when the consumer chooses from this selection of OEM, CSD and AM ARWs at car dealerships and at tyre retailers.

It is not possible, as Ford appears to suggest, to isolate or segregate the consumer from the available choices for ARWs in the Australian ARW market.

It should also be noted that the Australian industry producing ARWs competes in both the OEM and AM segments against ARWs exported from China at dumped and subsidized prices.

For these reasons Arrowcrest's application is in respect of both OEM and AM ARWs.

Yours sincerely,



Bill Davidson
General Manager