



## **ANTI-DUMPING NOTICE NO. 2015/115**

### **Certain Aluminum Road Wheels**

### **Exported from the People's Republic of China**

### **Notice of decision under subsection 269ZZM(1)**

### ***Customs Act 1901 – Part XVB***

This Anti-Dumping Notice is to advise that the then Parliamentary Secretary to the Minister for Industry and Science<sup>1</sup> (Parliamentary Secretary) has made a decision under subsection 269ZZM(1) of the *Customs Act 1901* (Act)<sup>2</sup>. The decision is made pursuant to the orders of the Federal Court of Australia (Federal Court) in respect of its decision in *GM Holden Limited v Commissioner of the Anti-Dumping Commission* [2014] FCA 708 (GM Holden). Notice of the Parliamentary Secretary's decision was published in *The Australian* newspaper on 23 September 2015.

#### **Background**

On 27 June 2012, the then Minister for Home Affairs (Minister) accepted the findings and recommendations in *International Trade Remedies Report No. 181* (REP 181) and decided to publish dumping duty and countervailing duty notices under sections 269TG and 269TJ of the Act in respect of aluminium road wheels (ARWs) exported to Australia from the People's Republic of China. The notices were published on 5 July 2012.

Following a reinvestigation of certain findings in REP 181, the Minister accepted the findings and recommendations in *International Trade Remedies Report No. 204* (REP 204) and decided under subsection 269ZZM(1) of the Act to affirm the decisions of 27 June 2012 to publish the dumping duty and countervailing duty notices, and vary the countervailing duty notice in relation to YHI Manufacturing Co Ltd (YHI). Notice of the decision was published on 8 May 2013. Further details can be found on the Anti-Dumping Commission's website [www.adcommission.gov.au](http://www.adcommission.gov.au).

#### **Federal Court of Australia - decision and orders**

Following its decision in *GM Holden* in July 2014, the Federal Court made orders to set aside the Minister's decision of 8 May 2013. In particular, the Federal Court declared that:

*Save and except for YHI Manufacturing Co Ltd, the 112 exporters categorised by [the Commissioner of the Anti-Dumping Commission (as successor to the Chief Executive Officer of the Australian Customs and Border Protection Service)] as "selected non-cooperating exporters" are and were "residual exporters" and not "selected exporters" within the meaning of s 269T of the Customs Act 1901 (Cth).*

Further, the Federal Court ordered:

1. *The decision of the Minister for Home Affairs made on 8 May 2013 under s 269ZZM(1) of the Customs Act 1901 (Cth), in so far as the Minister affirmed the reviewable decisions made on 27 June*

<sup>1</sup> On 23 December 2014, the then Minister for Industry and Science delegated his powers and functions under Part XVB of the *Customs Act 1901* to the Parliamentary Secretary.

<sup>2</sup> Subsequent to the Parliamentary Secretary's decision, the Prime Minister appointed the Parliamentary Secretary as Assistant Minister for Science on 20 September 2015.

2012 to publish dumping duty and countervailing duty notices under ss 269TG(1) and (2) and 269TJ(1) and (2) of the Customs Act 1901 (Cth), be set aside.

2. Pursuant to s 16(1)(b) of the Administrative Decisions (Judicial Review) Act 1977 (Cth), the matter consisting of the reviewable decisions made on 27 June 2012 be referred to [the Minister for Industry and Science] for further consideration under s 269ZZM(1) of the Customs Act 1901 (Cth) in accordance with law, subject to a direction that:

to the extent, if any, the description of exporters, other than YHI Manufacturing Co Ltd, as "selected non-cooperating exporters" impacted the calculation of countervailing duty, any countervailing duty applicable to those exporters be recalculated as appropriate to take into account those exporters' status as "residual exporters".

### **Decision under subsection 269ZZM(1)**

The Parliamentary Secretary, has, under subsection 269ZZM(1) of the Act<sup>3</sup> and in accordance with the Federal Court orders entered on 18 August 2014, further considered the Minister's decisions made on 27 June 2012 (*reviewable decisions*). In doing so the Parliamentary Secretary:

- considered the orders of the of the Federal Court in *GM Holden*;
- considered the recommendations, and the material findings of fact and law on which the recommendations are based in REP 204 and REP 181, including the reasons for those recommendations; and
- accepted the recommendations and findings of REP 204 and REP 181 in so far as they are consistent with the decision of the Federal Court in *GM Holden*.

Based on the above, the Parliamentary Secretary has decided under subsection 269ZZM(1)(a) of the Act to:

- affirm the Minister's decisions made on 27 June 2012 to publish a dumping duty notice and a countervailing duty notice on 5 July 2012; and
- vary those notices under subsection 269ZZM(3)(b) of the Act as set out below.

### **Variation of dumping duty notice**

The dumping duty notice published under subsections 269TG(1) and 269TG(2) of the Act on 5 July 2012 is varied so that except for YHI, the 112 exporters categorised as 'selected non-cooperating exporters' are and were 'residual exporters' and not 'selected exporters' within the meaning of section 269T of the Act.

The dumping margin for residual exporters has been calculated under subsection 269TACB(2) of the Act. The normal value and export price for those exporters has been ascertained in accordance with subsections 269TG(3B) and 269TG(3C) of the Act using the weighted average of normal values and export prices for selected exporters, excluding the dumping margins of selected exporters that are less than 2 per cent.

The dumping margin for residual exporters is 9.13 per cent and the effective rate of interim dumping duty is 5.3 per cent<sup>4</sup>.

### **Variation of countervailing duty notice**

The countervailing duty notice published under subsections 269TJ(1) and 269TJ(2) of the Act on 5 July 2012 is varied so that except for YHI, the 112 exporters categorised as 'selected non-cooperating exporters' are and were 'residual exporters' and not 'selected exporters' within the meaning of section 269T of the Act.

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<sup>3</sup> The relevant version of the Act is the version that was in force at the time of the Minister's decisions made on 27 June 2012.

<sup>4</sup> Certain costs relating to subsidy Program 1 were used in the calculation of dumping and subsidy margins. These costs were removed from the dumping margin to avoid double counting.

The Parliamentary Secretary considered whether the description of exporters, other than YHI, as 'selected non-cooperating exporters' impacted the calculation of countervailing duty (and subsidy margin) under section 269TACC of the Act, taking into account the status of those exporters as 'residual exporters'. Having regard to the available relevant information, the Parliamentary Secretary determined that the methodology used in REP 181 to calculate countervailing duty for these exporters remains applicable because the application of section 269TACC of the Act is not affected by the categorisation of an exporter as a residual exporter. As a result, the categorisation of these exporters as residual exporters does not affect the calculation of countervailing duty.

The countervailing duty for residual exporters remains at 58.8 per cent.

### **Effective rate of duty**

The effective rate of duty (combined effective interim dumping duty and countervailing duty rates) for residual exporters will be 64.1 per cent.

### **Date of effect**

The Parliamentary Secretary's decision has effect from 5 July 2012, the date the original dumping duty and countervailing duty notices were published.

### **Refunds**

Under subsection 269ZZM(6) of the Act, importers that sourced ARWs from exporters and are affected by the Parliamentary Secretary's decision may apply for a refund of excess interim duty paid.

### **Right of review**

Interested parties may apply for a review of the Parliamentary Secretary's decision by lodging an application with the Federal Court of Australia in accordance with the requirements of the *Administrative Decisions Judicial Review Act 1975*, within 28 days of the publication of this notice.

### **Enquiries**

Enquiries about this notice may be directed to the Client Support Team on telephone number 13 28 46, fax number 03 8539 2499 or by email at [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au).

Dale Seymour  
Commissioner  
Anti-Dumping Commission

23 September 2015