

Ford Australia comments to the Australian Customs and Border Protection Service on the Investigation on Aluminium Road Wheels from China

1. Introduction

We act for Ford Motor Company of Australia Limited (Ford). We refer to the Australian Customs and Border Protection Service's (Customs) investigation into alleged dumping and government subsidization of aluminium wheels exported from the People's Republic of China (China).

The purpose of this submission is to demonstrate that:

(a) in so far as the Application includes aluminium wheels for the Original Equipment Market (OEM) that they are not like goods to the goods produced for the After Market (AM) and that the investigation should be terminated in so far as it includes the OEM;

(b) the contents of the Application form do not demonstrate that the Australian industry has suffered material injury; and that

(c) any injury it does suffer is not caused by the alleged dumped imports from China.

2. Background

Ford Motor Company (Ford) and vehicle manufacturers in general from all regions and countries compete on a global basis. European, American and Asia Pacific motor vehicle companies (OEMs) compete in all markets and regions as one group. The automotive industry is truly global.

Ford's global recovery plan is known as ONE Ford (shown below). It is based on the premise that for Ford to survive as a profitable business model, it must do business and compete on a global basis and engage with suppliers with the same mindset. Ford has embraced the maxim that it must deliver cars and trucks that its customers want and value. Furthermore, Ford believes that increasingly there is less and less difference among customers in different regions and countries. In other words, Ford has learned that its customers throughout the world want the same types of vehicles wherever they are: the freshest, most exciting designs; and the most advanced technology, with the latest features.

The Australian Federal Government also encourages the local Australian supply base to do the same. By releasing its "A New Car Plan for a Greener Future" support plan, it challenges and provides support to those suppliers to actively improve their technology and capabilities and to seek other markets to capitalise on the core strengths of their businesses. In the Report, the Government states "A New Car Plan for a Greener Future is a plan for reinventing the Australian car industry. It is about preparing the industry for a low-carbon future and making it indispensable to global markets and supply chains. It will ensure that car-making goes on contributing to Australia's prosperity".

Ford Australia is actively working with a number of local Australian suppliers to help progress this development and aid a number of Australian suppliers to gain work on many of Ford's regional vehicle platforms. Many suppliers are actively pursuing the Asia Pacific market opportunities and leveraging key skills other low cost country manufacturers cannot meet as a means of successfully competing in the world market. Some Australian suppliers have already marketed their niche low volume abilities to secure overseas contracts.

**ONE FORD**

ONE TEAM • ONE PLAN • ONE GOAL

ONE TEAM

People working together as a team, global enterprise for automotive leadership, as measured by:

Customer, Employee, Dealer, Investor, Supplier, Union/Council, and Community Satisfaction

ONE PLAN

- Aggressively restructure to operate profitably at the current demand and changing model mix
- Accelerate development of new products our customers want and value
- Finance our plan and improve our balance sheet
- Work together effectively as one team

ONE GOAL

An exciting viable Ford delivering profitable growth for all

Expected Behaviors**Foster Functional and Technical Excellence**

- Know and have a passion for our business and our customers
- Demonstrate and build functional and technical excellence
- Ensure process discipline
- Have a continuous improvement philosophy and practice

Own Working Together

- Believe in skilled and motivated people working together
- Include everyone, respect, listen to, help and appreciate others
- Build strong relationships, be a team player, develop ourselves and others
- Communicate clearly, concisely and candidly

Role Model Ford Values

- Show initiative, courage, integrity and good corporate citizenship
- Improve quality, safety and sustainability
- Have a can-do, find a way attitude and emotional resilience
- Enjoy the journey and each other; have fun - never at others' expense

Deliver Results

- Deal positively with our business realities, develop competing and comprehensive plans, while keeping an enterprise view
- Set high expectations and inspire others
- Make smart decisions using facts and data
- Hold ourselves and others responsible and accountable for delivering results and satisfying our customers

3. Sourcing Process

The process (Commodity Business Plan) by which Ford qualifies and chooses a wheel producer to supply OEM wheels to Ford is long, complex and rigorous. The process begins with the design of a new Ford car model, long before any wheel producer is even identified. Once the car design has been approved, Ford engineers develop the specifications and requirements for each part of the new vehicle.

The elements considered by the Ford Commodity Buyer to construct a Commodity Business Plan are:

- (a) Total understanding of the part construction and design characteristics.
- (b) Supply base Site Optimisation, understanding the number of suppliers who have the potential to fulfil Ford's requirements with Technology, Quality and Delivery, based on past performance and Company profile.
- (c) Supplier assessment, the supplier's willingness to comply with the Ford Global Terms and Conditions, Site footprint (do they operate in the places Ford are placed), Price transparency, Financial viability and Capacity to meet Ford volumes for new Programs.
- (d) We are instructed that as a result of protracted and acrimonious legal proceedings between Ford and companies within the Arrowcrest corporate group, the relationship between them has broken down to the extent that Ford would not consider Arrowcrest in the Ford Asia Pacific Alloy Wheel Commodity Strategy. We are instructed that Ford does not currently foresee any circumstances which would cause it to reconsider sourcing product from the applicant, Arrowcrest, in the future.

3.2 Ford sourcing requirements

Ford seeks sustainable suppliers that can meet its global product strategy, in all countries in which a particular vehicle is being produced. On a global basis, its suppliers must be able to reliably maintain quality, volume, and delivery requirements to all plants producing that vehicle.

As a result of experience, Ford has learned that it is not good business practice to press its suppliers so hard on specific elements, such as price, that doing business with Ford endangers the continued viability of the supplier. Ford has learned that if a supplier cannot profitably sell to Ford, Ford jeopardizes its own production. While price alone has never been the determinative factor in Ford's selection of a supplier, where all other elements are equal and price is the differentiator, Ford has learned to appreciate that it cannot always simply select the supplier with the lowest price. Rather, Ford must select sustainable suppliers, those which will be able to supply parts and components meeting all of Ford's specifications and requirements for the life of the vehicle program.

Ford's experience shows that Chinese wheels were neither the lowest priced nor were they used as benchmark to reduce price quotations offered by Asia Pacific suppliers. Furthermore, Ford has not and does not use prices or quotes from unqualified suppliers in its procurement process.

Ford's consistent position is that price is only one factor in the overall process by which Ford chooses a supplier. Quality, capacity and engineering capability are other decisive factors and Ford is prepared to select suppliers that are capable of delivering more judged against these criteria, even if their price might be higher.

Set out in Confidential Attachment 1 is the cost incurred by Ford in buying aluminium wheels from the Chinese manufacturer.

Dicastal, the sole Chinese wheel producer in Ford's global supply base, was introduced to and earned its place as a global Ford supplier because it demonstrated its ability and capacity to support and supply Ford's global vehicle programs, such as the Focus, which is produced in Europe, North America (U.S.A.) and China. Dicastal, like most of Ford's other global suppliers (e.g. Prime Wheels, a North American based wheels producer), was introduced to Ford's global supply base as a regional supplier in China. Ford has not applied any different or lesser requirements for Dicastal to become an approved, qualified global supplier of aluminium wheels to Ford. Indeed, being awarded a position as a global supplier to Ford means that Dicastal met somewhat higher and more stringent standards than other smaller and/or regionally limited suppliers.

Ford does not directly import aluminium wheels from Dicastal China, but purchases them from its subsidiary company in Australia.

4. Impact of aluminium pricing on aluminium wheels

The applicant Arrowcrest has argued that the Chinese prices do not account for the major cost component, aluminium.

Ford applies an aluminium price index, based on a prior quarter's average price for aluminium as a base for establishing the price Ford pays for aluminium wheels. The quarterly price average is determined using a number of informational sources (typically LME). Ford notes that it has not seen significant price differences for aluminium between China and other world markets. In other words, Ford has seen no evidence that prices for aluminium wheels are significantly cheaper in China than in other parts of the world. Ford has not seen any evidence

PUBLIC FILE

of governmental aluminium price subsidizing or market manipulation that improperly benefits Dicastal.

A graph showing tracking of Aluminium LME rates versus pricing adjustments by Ford is included at Confidential Attachment 2.

5. Design and testing process

For OEM wheels, once the supplier has been selected, it begins the design and development of the wheel it is to supply to the car manufacturer according to the car manufacturer's strict specifications and requirements. These requirements include material content specifications (i.e. limitations on recycled or scrap metal content), performance and durability of the wheel.

The end result of the design and development process is a prototype that Ford used to determine whether the part will be acceptable for use in production of the new vehicle model. Throughout this process, both Ford and the supplier engage in extensive testing and modifications, as required to ensure that the part meets all of Ford's specifications and requirements, which cover not just the wheel, but any modifications to the vehicle itself which affect the suitability of the wheel for that vehicle.

None of the above process is carried out when AM wheels are developed. As mentioned they are independently designed by wheel makers. And, it is Ford's view that the design criteria for AM wheels are the complete opposite of those for OEM wheels: where an OEM wheels is designed for a specific vehicle model, AM wheels must be designed for all makes and models of vehicles that use that wheel size.

6. Characteristics of the final product

Due to the specifics of its production process, as well as the relationship between wheel manufacturer and the car manufacturer, an OEM wheel, once produced, is different from an AM wheel because of its superior quality and physical chemical and technical characteristics.

However, it is not possible to make a fair and accurate direct comparison between OEM and AM wheels, because OEM wheels are designed, produced, and tuned with the tyre to enhance the driving characteristics of a specific vehicle model produced and sold by that car manufacturer. In contrast, AM wheels are produced and sold for use on whatever vehicles they can be fitted.

Ford notes that the applicant, Arrowcrest appears to suggest that the ability of AM wheels to be fitted to a specific car model makes them interchangeable with OEM wheels. That is highly misleading.

First of all, fit while obviously important, is all but assumed. The much more numerous and important technical and quality distinctions between OEM and AM wheels make clear that these two products are not interchangeable.

Second, an OEM wheel carries the benefit of the warranty which a car manufacturer provides for the entire vehicle. This means that the car manufacturer warrants that each part will perform with that vehicle as specified by the car manufacturer. That is not true for AM parts. While the AM part may carry some sort of warranty for that part, the warranty does not and cannot extend to any sort of guarantee as to how the AM part will perform with the entire vehicle or how that part will affect the performance of the vehicle or other parts. In this broader context, fit is a minor and largely irrelevant distinction.

PUBLIC FILE

6.1 Quality

Due to the stringent criteria used by car manufacturers in ensuring the quality of OEM wheels, the final product is very different from an AM wheel: it must meet a series of very demanding requirements imposed, such as the car manufacturers' engineering specifications (such as Ford's Global Wheel Functional Specification), Design Failure Mode Effects Analysis (Potential Failure Mode and Effects Analysis — Design FMEA) and other controls; vehicle structural durability; lab durability; ride, handling, steering and noise, vibration and harshness (NVH) evaluations, corrosion resistance testing; numerous paint and finish tests (e.g., paint performance specification WSS-M2P122-C), appearance sign-off tests, critical characteristics and capacity verification (part of car manufacturers' Production Parts Approval Process PPAP), a number of Scheme Development Standards (SDS) applicable to wheel and tire durability, Supplier Requests for Engineering Approval (SREA's) specs and others.

For example, Ford's Engineering Material Specification for Aluminium Alloy (A356-T6 Modified, Cast Wheel (FSA-M2A123-A) imposes on OEM wheels suppliers' requirements regarding:

- (a) Chemical composition
- (b) mechanical properties (yield strength, tensile strength, elongation, and hardness);
- (c) heat treatment; and
- (d) microstructure.

In addition, Ford's Design Verification Plan Report for Wheels envisions over 60 different tests with 80 separate acceptance criteria, testing everything from wheel retention - wheel clamp load performance to paint quality (for acceptance criteria such as initial hardness; colour and gloss, initial adhesion, thermal shock, gasoline/wheel-cleaner/tire-sealant resistance, stone chip resistance, weathering resistance, water resistance, and filiform resistance). In order to be accepted, the OEM wheel must pass every one of these tests. Any failure stops the process until the problem has been fixed and the test passed.

6.2 Physical and chemical differences

In addition to the overall higher quality, resulting from strenuous testing requirements, OEM wheels also have different physical and chemical characteristics, because a number of standards and specifications explicitly require the use of special materials or certain performance deliverables. For example, Ford has special material specifications for aluminium and paint (Ford's Paint Performance), as well as specific heat treat furnace performance requirements. In addition, suppliers of raw materials to the component manufacturers (such as wheel makers) must in some cases be pre-approved by Ford. The suppliers' compliance with Ford's various requirements for special physical qualities is continually verified in production, must be shown on the manufacturer's control plan, which in turn is verified during Supplier Technical Assistance (STA) audits.

In addition, a number of quality requirements result in tangible physical differences, such as resistance to:

- (a) corrosion, or certain chemicals (salt),
- (b) climactic factors (humidity, temperature), and
- (c) physical obstruction (impediments on the road, rocks and sand, snow, holes in the ground, washing).

7. Cost of manufacturing

Considering the heightened quality requirement, complex relationship with car producers and collaboration between car and wheel maker in design and production, as well as follow-up audits, testing and verifications, the costs of manufacturing OEM wheels are generally much higher than that of AM wheels. This is because the processes of prequalification require the producers to meet certain criteria in terms of size of operations, liquidity, reliability, corporate practices, as well as manufacturing practices. Also, as the end product must meet more stringent criteria (in some cases expressed in terms of performance deliverables or in others in terms of use of specific materials or production methods), and pass the testing, and audits, the manufacture of OEM wheels is more expensive, as in short, they are made of better materials and are of better quality.

8. Lack of interchangeability

As demonstrated above, AM and OEM wheels do not have the same physical and technical characteristics. Unlike AM wheels, OEM wheels are subject to very special technical, procedural and physical requirements.

Ford requests Customs to recognize the distinctive technical and physical characteristics of the AM and OEM markets which lead in our view to the unquestionable conclusion that there is no meaningful interchangeability between AM and OEM wheels. Ford notes that the physical ability of AM wheels to fit on vehicles is not a sufficient basis on which to find interchangeability.

Ford (and all car manufacturers) can never use an AM wheel for industrial assembly. As elaborated above, OEM manufacturers set unique design criteria for wheels for a specific vehicle model. These criteria are derived from the OEM's design concept for that car model and from the OEM's manufacturing requirements. There is no suggestion on the record that AM wheels have ever been purchased in the OEM market, and any such suggestion would be completely false. Indeed, even the Complainant does not allege this to be the case. The absence of any allegation or evidence that OEM manufacturers buy AM wheels for OEM intent is sufficient to establish lack of interchangeability, because it defeats any attempt to draw a causal link from allegedly dumped AM imports to the OEM market.

Price for AM wheels, however, is a very important, if not determinative, element in a consumer's decision to purchase an AM wheel. The price a car manufacture pays for a wheel is important to the car manufacturer, but not the sole or even primary consideration. And the price that a car manufacturer paid for a wheel has no bearing at all on the consumer's decision to purchase a new vehicle. But, price, after fit, is often the primary driver in a consumer's decision to purchase an AM wheel. Ford notes that while car manufacturers do offer OEM quality wheels in the aftermarket, these wheels normally bear higher prices than other AM wheels. The premium price of OEM quality wheels is justified because of their superior quality and material content and they compete only when the consumer is prepared to pay more for a higher quality wheel. The reality of the AM wheels market is that OEM-quality AM wheels are a relatively small segment of the AM, which Ford believes demonstrates that a critical distinction between OEM and AM wheels is price.

9. Arguments to the claims made in the anti dumping complaint by Arrowcrest

9.1 "Like goods"

Ford submits that there are two different and segmented markets, the OEM market and the AM market for the goods the subject of the Application. Ford has set out above the decision

making process it goes through in selecting an OEM manufacturer and why the aluminium wheels produced for the OEM market and the AM market are not "like goods" because there are in fact essential characteristic differences. That submission reflects in part, the submission made by Ford in the EC case. That submission is at Attachment A.

The applicant, Arrowcrest, maintains that in fact there is only one market, the ARW market, but with two major distribution channels. Arrowcrest states that both markets are price sensitive and transparent, but states that in the AM market price is the determinative issue and that competition between OEM is essentially price motivated. This statement reveals a fundamental difference between the two markets as the attached submission from Ford makes clear. One market (OEM) is concerned with quality and technical specifications first with price a secondary consideration, and in the other (AM) price alone is the only issue.

The arguments advanced in the attached paper shows the exacting requirements of Ford (and this would apply to other vehicle manufacturers as well) for an OEM manufacturer of an aluminium wheel to match the overall design specification of car and to the quality standards expected of Ford when it sells its vehicles onto the new car market in Australia and overseas.

Ford acknowledges that the EC rejected similar reasoning, but Ford considers that the EC's analysis was flawed for the following reasons:

- (a) The EC stated in its reports¹ that OEM and AM wheels share the same physical and technical characteristics and are interchangeable. Further, both AM and OEM wheels can be produced by means of all production processes, in all diameters and weights, with all different types of finishing. Ford disagrees. First, as is explained in this submission and in the attached document, wheels produced for the OEM market are produced to a higher standard than those produced for the AM market which is more concerned about price and appearance. They are not interchangeable.
- (b) Second, even if OEM and AM aluminium wheels were interchangeable i.e. an AM aluminium wheel can be used on a Ford car, they are still different. The aluminium wheels produced for a Ford vehicle meet the exacting standards and quality assurance standards of Ford and are backed by a new car warranty that a consumer expects when making a purchase of a new vehicle. The fact that a lower quality aluminium wheel may at some point of time be purchased for use on an older vehicle does not mean that there is not an essential difference in character. Quality and design differences are a very important issue when selling a new car. Ford, nor any other established car manufacturer for that matter, would never risk the safety of its customers, the quality of its product, and its reputation by purchasing the cheapest "suitable" part for the new vehicles it produces. The EC did acknowledge that the AM wheels were not "nominally" produced to the manufacturers' specifications but stated that "the fact that specifications come from different sources cannot be considered as such as a proof of differences in physical and technical characteristics."

With respect, the use of the word "nominally" wrongly downplays the considerable differences between the two types of aluminium wheels. Further, there was a lack of proof in the EC case. In contrast, the evidence as a whole in this submission shows that there are important differences between wheels produced for the OEM when compared to the AM.

¹ Commission Regulation (EU) No 404/2010 of 10 May 2010 imposing provisional dumping duties on imports of certain aluminium wheels originating in the People's Republic of China and Council Implementing Regulation (EU) No. 964/2010 of 25th October 2010 imposing a definitive anti dumping duty and collecting definitively the provisional duty imposed on imports of aluminium road wheels originating from the People's Republic of China.

The EC report states that the fact that AM wheels are "customarily" not installed on new cars and that car makers use of selected manufacturers is a sourcing decision which has no bearing on the conclusion of the interchangeability of OEM and AM wheels. The apparent justification for this statement is that an AM wheel bearing the brand name of a wheel manufacturer could be installed on a new car. This comment is simplistic and superficial. The EC recognised that it is "customary" for AM wheels not to be installed on new cars, which implies, "normally". In fact, the commercial reality is that it never happens. The EC's statement that AM types with suitable brand logos could be used is in complete contradiction of the fact that it never happens.

The fact is that there is complete market segmentation between the supply to an OEM and to the AM. This is not just a question of different distribution channels as alleged by Arrowcrest. In this case the applicant itself does not suggest that it could supply an OEM car manufacturer with its AM wheels. Significantly, Arrowcrest indeed does not supply Toyota with AM wheels from its stock. Arrowcrest will have gone through a similar process that Ford has outlined in supplying Toyota with wheels for its new vehicles.

In considering whether two goods are "like goods", it is recognised in Australian law that one of the major considerations is to consider what the market says. In this case the market is not saying that one product (AM aluminium wheels) could replace another product (OEM aluminium wheels). Compellingly, the market itself is saying that this never happens.

Indeed, the primacy of having regard to what the market is saying in considering the issue of market segmentation is illustrated by *Customs Report No 41 Pineapple Juice Concentrate From Thailand and Pineapple Fruit From Indonesia and Thailand*.

In that case, pineapple was sold into the Food Services Market and into the Consumer market. The differences between the products were basically presentation and size but most importantly, as in this case, there were different distribution channels into two different markets. Customs stated that:

"Customs is of the view that fruit FSI and fruit consumer are sold into two distinct market segments of the market and therefore are not directly competitive and only marginally substitutable. Customs concluded that pineapple fruit FSI and pineapple fruit consumer are two separate goods."

Likewise, in this case, there is complete market segmentation between the OEM and AM and a wheel in the AM market is not directly competitive with a wheel sold into the OEM market. The difference between the two markets could not be more pronounced.

The fact that ultimately a consumer may go to the AM after purchasing a new car does not mean that at the time that Ford makes the decision to purchase an aluminium wheel for its vehicle that the AM product can be considered a "like good". Ford submits therefore that the current investigation should be terminated in so far as it includes wheels made for the OEM market.

9.2 Injury Period and Investigation period

The function of the investigation period is to see whether dumping and/or subsidisation has occurred during this time. The period of investigation nominated by Customs in this case is from 1 July 2010 to 30 June 2011.

Without having regard to non-dumped injury factors, no finding of material injury caused by dumped imports can be made.

The purpose of the injury analysis period is to look at trends relating to the injury allegedly suffered by a domestic industry prior to the investigation period, to eliminate underlying trends

in order to determine if the injury caused by the allegedly dumped imports is in fact "material injury". The injury analysis period in this case is nominated to be from the 1 July 2006.

Ford's submission is that the most significant injury that allegedly occurred to Arrowcrest occurred prior to the investigation period and that during the investigation period there is no evidence of material injury when regard is had to the injury indicators.

For some purposes, however, Customs has had regard to the whole period from FY 2003, that a different conclusion follows which is incorrect (as a matter of law and practice).

Ford would also note that consistent with both the Customs Act and the anti-dumping agreement and as stated by Customs itself in previous cases, there can be no inference or assumption of dumping drawn from any finding prior to the investigation period which would include not only the injury analysis period, but the period going back to FY 2003. Dumping or subsidisation must be found to have occurred only during the investigation period for measures to be imposed,

Likewise as any finding of material injury is dependent on a finding that dumping has occurred during the investigation period, this means that although the applicant, Arrowcrest, allegedly was injured from 2003, such injury cannot be attributed to alleged dumped imports during the investigation period, but must be attributed to other causes.

Customs having nominated the injury investigation period as commencing from July 2006, correctly looks at questions of market share from that date. However, Customs refers to the whole period from FY2003 when looking at profit and profitability etc. This is an inconsistent use of a reference period for the purpose of injury analysis.

Set out below are the conclusions that Customs can consider by having regard to the injury analysis period it has nominated. In the alternative, for the reasons given below, even if regard was had to the earlier period going back to FY 2003, a proper analysis would confirm the findings made during the injury analysis period.

9.3 Injury factors

The applicant, Arrowcrest, claimed that material injury suffered by the Australian industry was in the form of:

- (a) Loss of sales volume;
- (b) Loss of market share;
- (c) Lost revenues;
- (d) Price depression;
- (e) Price suppression;
- (f) Price undercutting;
- (g) Loss of profit and profitability;
- (h) Reduced return on investment;
- (i) Reduced employment;
- (j) Reduced investment in the industry.

9.4 Consideration of Issues by Customs in the Consideration Report

(a) Volume effects

Customs noted that the overall Australian Road Wheel (ARW) market declined by 38% during the injury analysis period, and by some 45% since 2003. However as noted by Customs the market declined in 2009, then increased and stabilised in FY 2010 and FY 2011.

In considering market volume by source at page 36 of the Consideration Report, Customs noted that during the injury analysis period, volumes fluctuated sharply, with a big dip occurring in 2009.

Customs noted that exports increased from FY 2007 to FY 2010, by 43% but these increases cannot be attributed to dumped imports. During the investigation period, FY 2011, which is the only period during which as a matter of law a finding of dumping can be made, the imports from China decreased by 6%, whilst exports from other countries increased "slightly" in the investigation period. Customs have not given a percentage figure to what is meant by slight.

Ford notes that no volume effect can be attributed to imports of Chinese ARW during the investigation period at the expense of Australian industry. Indeed imports of Chinese ARW went down by 6% and imports from other countries actually increased contrary to the argument put by Arrowcrest that Chinese lower export prices meant that they were always increasing their market share.

On the analysis conducted by Customs, there was no loss of volume to the Australian industry caused by subject imports of ARW during the investigation period. The fact that there may have been increases in Chinese imports prior to this period, does not provide any evidence that alleged dumped imports were the *cause* of loss of volume during the investigation period.

This finding is consistent with the finding of Customs in relation to ARW market share. Customs found that although the Australian industry lost some market share (the percentage is not specified), the market share from Chinese imports declined slightly and imports from other countries increased slightly. This would indicate that the loss of market share during the investigation period was either in whole or part attributed to non-dumped imports.

Indeed, the conclusion by Customs is that the Australian industry does not appear to have lost sales volume or market share during the investigation period.

Customs states that the data contained in the Application shows that significant volumes and market share were lost between FY 2003 and FY 2007, before stabilising between FY 2007 to FY 20011. However, these statistics do not of themselves prove that the loss of volumes and market share can be attributed to dumped subject imports, in particular, given that any finding of dumped imports can only be made during FY 2011. What this shows is that the trend was for Chinese imports to increase over time and that there was a loss of the Australian industry's market share prior to the investigation period to Chinese imports, as well as imports from other countries.

(b) Price effects

Price depression is correctly defined by Customs at page 37 of the Consideration Report as occurring when a company, for some reason lowers its prices. Having conducted its analysis of the information provided in the Application, Customs

records that Arrowcrest prices declined in FY2008, FY2009 and in FY2010 but increased slightly in the investigation period.

However, in its conclusion at 7.8.1 Customs states that there appeared to be price depression during the investigation period. With respect, this is contradicted by its own findings that there was a slight increase in prices during the investigation period and its own definition of price depression as being a decrease in prices.

In relation to price suppression, Customs notes that it occurs when price increases have been prevented which otherwise would have occurred and that an indicator of price suppression may be the margin between revenues and costs.

It is important to note that there is no presumption that a failure to increase prices in line with costs means that there is price suppression. There may be other factors at play in the market place which would prevent prices rises to recover costs in whole or part. Indeed as Customs itself notes, the failure to increase prices by the margin between revenues and cost may be an indicator of price suppression, not that it must be such an indicator.

The information shows that during the injury analysis period costs were down significantly in FY 2010 due to self-help measures undertaken by Arrowcrest to reduce prices - presumably in response to the greatly increased costs when compared to prices in the preceding FY2009 - but that these margin differences were unable to be sustained during the investigation period. Properly characterised, what has happened is that the historical trend of the close alignment between cost and prices has been restored, and this can hardly be said to be evidence of price suppression.

The applicant, Arrowcrest, relies on certain alleged evidence of price undercutting to demonstrate that it was prevented from increasing prices.

Ford's analysis results in a difference conclusion:

- (i) The reference to the contract is to the 27 November 2009.

This is not relevant because it provides no evidence of price undercutting during the investigation period which is some three years later. Indeed, as there is no presumption of dumping, this cannot be evidence of price undercutting of a dumped product.

- (ii) The reference to 20 November negotiations with an OEM manufacturer.

This is within the investigation period, but it is in relation to one product and is apparently based on oral evidence of what someone told Arrowcrest. This oral information must be considered as mere assertion from an interested party with little probative value and should have been rejected in the absence of reliable corroboration.

- (iii) That price undercutting in the AM is self-evident in lost sales market share.

This information dates back to 2003 and again, cannot be used to demonstrate that there has any price undercutting during the investigation period. Again this evidence is not based on any sales information or contracts so has absolutely no evidentiary weight.

Likewise the references to the AM market, the departure of Mullins and any decline in production of Performance Wheels is to be disregarded. The reference to Mullins is to a time prior to the investigation period and is just conjecture without any evidentiary weight that would support any finding of price undercutting.

- (iv) Reference to 2006/7 and Arrowcrest ceasing to trade directly with a major customer in AM sector when they asked for a 15% month end rebate which Arrowcrest understands was able to be met by another company who was importing from China.

Again this is an example based on a date considerably before the investigation period and cannot be used as evidence of price undercutting being caused by alleged dumped imports. In addition all that is being put forward is pure speculation with no evidentiary weight.

With one exception, none of the so called examples of price undercutting occurred during the investigation period and are not based on any credible evidence. The one exception during the investigation period is based on mere assertion and is in respect of one product, not all.

Customs cannot reasonably rely on such allegations of price undercutting to reach any well founded conclusion on price suppression or price depression.

9.5 Profit and Profitability

The injury investigation period shows that during the benchmark year of FY 2006, no profit was in fact made by the applicant, Arrowcrest, followed by an increase in FY2007, a reduction in FY2008, a significant reduction (indeed a loss) in FY2009, a significant increase in FY2010 and a decline in 2011.

If contrary to the injury investigation period, regard is incorrectly had to the period 2003 to 2006, then all that can be observed is a fluctuation in profit and profitability.

Customs asserts that there appears reasonable evidence to support the claim that exports of ARW at dumped and or subsidised prices have caused injury to Arrowcrest in the form of reduced profit and profitability. Given that findings of dumping or subsidies can only be made during the investigation period FY 2011, reference to earlier periods is irrelevant to establish the question of injury caused by dumped imports.

The highest that Customs could conclude is that the Australian industry has suffered injury from some cause or causes during the investigation period and that Customs believes that after having some regard to other factors that there is a reasonable basis to find material injury.

There is no acknowledgement that if the question of profit and profitability is dependent on volumes, during the investigation period, Chinese volumes actually declined by 6%. This indicates that any loss of profit and profitability from FY 2010 to FY 2011 was due to factors other than import of aluminium wheels from China.

In terms of material injury during the investigation period, the conclusion is that there is no loss of sales volume, market share, and revenue or price depression in the investigation period.

There is evidence of price suppression but if proper regard is had to the injury analysis period it is obvious that the price suppression observed is caused by factors other than the alleged dumped imports during the investigation period

In respect of loss of profit and profitability, again given that the imports from China actually fell 6% during the investigation period and that imports from other countries rose by the same amount, then you cannot attribute any decline in profit and profitability of Australian industry to exports of ARW from China.

9.6 Causal Link

In order to establish that dumping is the cause of the material injury, Customs has to confine its consideration of other factors which may have caused injury during the investigation period. It is to have regard to underlying trends it has observed during the injury analysis period and having identified these underlying trends ensure that they are separated out from the injury caused by dumped imports.

It is clear that the injury trends during the injury investigation period (and even outside that period) demonstrate that Arrowcrest's cause of significant injury occurred prior to the investigation period especially in relation to loss of market share and sales volume.

In addition there were other "known factors" which caused injury to Arrowcrest, the first two of which it identified in its Application as

- (a) Closure of the Mitsubishi Motors Limited plant in Adelaide in FY 2008; and
- (b) Reduced demand for ARW during the Global Financial Crisis which occurred in FY 2009.
- (c) The decision by Ford not to purchase aluminium wheels from the applicant following a commercial dispute between Ford and Arrowcrest.

Regardless of whether OEM wheels are to be properly considered as part of the Application, which is denied, Ford would also include as a "known factor", the general decline in the production of passenger motor vehicles in Australia which impacts not only on the number of new vehicles produced, as it also has a consequent flow on to the AM.

9.7 Decline in Locally produced vehicles for the Australian Market.

As Australian tariffs have declined since the mid 1980s, Australia has gone from having 5 car manufacturers assembling 13 models in 8 plants to 3 manufacturers assembling 6 models (Falcon, Territory, Commodore, Cruze, Camry, Aurion) in 3 plants.

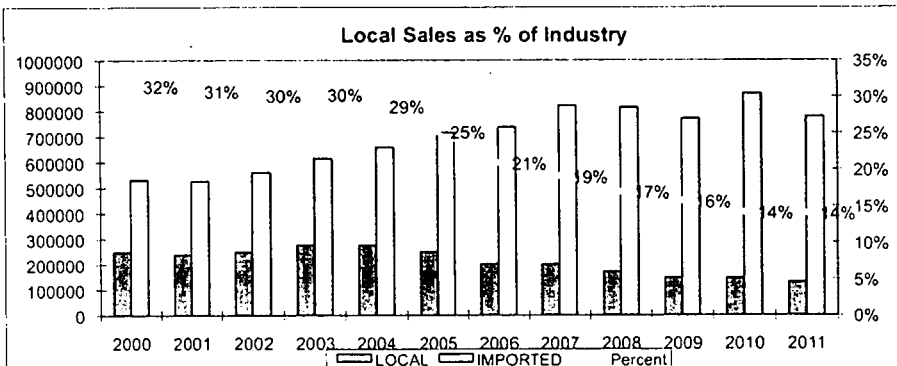
In 2000, automotive tariffs were 15%, this fell to 10% in 2005 and subsequently, to 5% in 2010. Taking Free Trade Agreements into account, the effective Australian tariff rate is now only 3.5%. This means Australia has one of the most open automotive markets in the developed world with over 62 brands selling more than 360 models sourced from 28 countries.

Chart 1: Automotive tariff rate

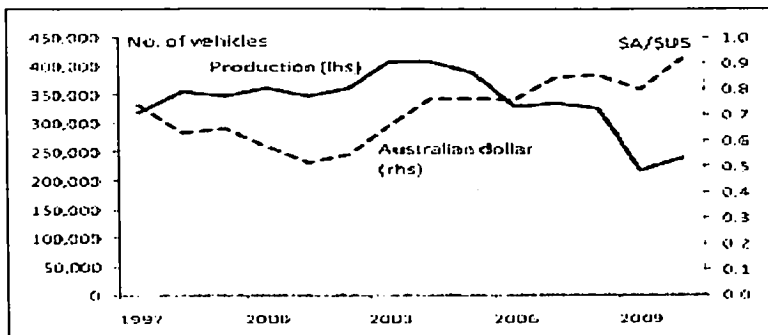


Source: Customs website and Parliamentary Library.

These increasingly low tariffs, combined with an exceptionally high Australian dollar, has seen consumer demand for locally built vehicles drop from 32% of domestic sales in 2000 to the current running rate of 14% of sales. The corresponding sales volumes for local vehicles has fallen from ~250,000 units in 2000 to approximately 145,000 units in 2010/2011 despite significant growth in the size of the overall market.



As a consequence, Australia's 3 car manufacturers produced just fewer than 240,000 vehicles in 2010. This is considerably lower than approximately 400,000 locally produced vehicles just seven years ago (2003). To some extent, local manufacturers have relied on export sales – Toyota to the Middle East and Holden to the United States – to maintain throughput. However, this export business has come under increasing pressure due to the high \$AUD and emerging competitive threats from other car manufacturing markets.

Chart 2: Local production of motor vehicles

Source: DIISR (2010) and RBA.

The significant decline in new car production, as illustrated above, its impact on the Australian industry producing aluminium wheels for the OEM market and Ford's unrelated private commercial decision not to buy any more product from Arrowcrest, have each had significant impacts on Arrowcrest. These impacts have to be separated out and distinguished from the alleged effect of dumped imports.

Given that the injury indicators above do not demonstrate that there is a claim for material injury from alleged dumped imports, when these factors are taken into account, it provides further evidence that there is simply no probative evidence that could be considered to demonstrate material injury even if it is assumed that the importation of aluminium wheels were alleged to be imported at dumped prices.

10. Conclusion

Ford submits:

1. the goods imported from China to supply Ford motor vehicles are not like goods to those imported from the AM and therefore should be excluded from any consideration in the present investigation.
2. that there is no evidence of material injury suffered by the Australian industry which is clearly demonstrated from the Application itself.
3. the Application fails to address the important question of the overall decline in the OEM market which has reduced the demand in the OEM market which when proper regard is had, further demonstrates that there is no basis for a finding of material injury.

PUBLIC
FILE

193

PUBLIC FILE

CONFIDENTIAL ATTACHMENTS C1 AND C2 OMITTED

Attachment A

PUBLIC
FILE

191

EU ANTI-DUMPING INVESTIGATION ON ALUMINIUM
WHEELS FROM THE PEOPLE'S REPUBLIC OF CHINA

COMMENTS TO THE COMMISSION REGULATION IMPOSING PROVISIONAL
DUTIES

SUBMITTED ON BEHALF OF

FORD EUROPE

NON-CONFIDENTIAL

Hogan
Lovells

17 June 2010

EU ANTI-DUMPING INVESTIGATION ON ALUMINIUM WHEELS FROM CHINA
COMMENTS TO THE COMMISSION REGULATION IMPOSING PROVISIONAL DUTIES

Ford Europe ("Ford") submits its comments to the disclosure of the essential findings in the anti-dumping investigation concerning imports of aluminium wheels from China ("Disclosure") received on 11 May 2010.

Ford believes that the provisional anti-dumping measures cover two distinct product types which cannot be combined together for the purpose of assessing dumping, injury and Union interest.

The large majority of aluminium wheels ("wheels") imported from China (around 80%)¹ are after market ("AM") wheels. By contrast, EU producers manufacture predominantly (around 85%) wheels destined for the industrial assembly, i.e. original equipment manufacture ("OEM") wheels. There seems to be no indication in the file that AM wheel imports from China can cause injury to the EU OEM wheel industry, in light of the uncontroverted fact that OEM manufacturers, which are the exclusive customers of the EU OEM wheel industry, never buy AM wheels. Furthermore, while the Commission acknowledges that OEM and AM wheels belong to different market segments, it concluded that the two market segments were indistinguishable. This factually unsupported conclusion caused the Commission to fail to determine injury and causality separately. Ford understands that Chinese imports of OEM wheels account for only a tiny fraction of the OEM wheel market in the EU. In addition, in Ford's experience, quotations provided by the Chinese exporters in tenders for the supply of OEM wheels are comparable and sometimes even higher than those submitted by the EU producers.

Ford considers the Commission has wrongly defined the product concerned by disregarding the profound differences between wheels primarily destined for industrial assembly of cars sold under the Ford brand ("OEM wheels") and replacement wheels destined for retail and sold under wheel maker's brand, in the aftermarket ("AM wheels"). Ford's experience in sourcing wheels for use in industrial assembly, and its knowledge of the after market confirms that both products are entirely different. The Commission's conclusion that the two products were indistinguishable was, therefore, incorrect, because it is contradicted by the facts.

Assuming that the two separate products, OEM wheels and AM wheels, are correctly identified and distinguished from the other, Ford submits that the investigation should be terminated with respect to OEM wheels, because Chinese AM imports could not have caused any injurious dumping to the EU OEM industry. If the European Commission ("Commission") decides not to make the product distinction, it should, in the alternative, exclude OEM wheels imported under CN 8708 70 10 from the product scope of the investigation and any measures imposed thereof.

¹ Ford refers to ACEA's comments of 14 June 2010 to the Commission provisional findings in which the import data has been corrected.

1. AM IMPORTS FROM CHINA DID NOT CAUSE MATERIAL INJURY TO THE EU OEM INDUSTRY

This investigation, as admitted in the Regulation imposing provisional measures,² covers two very different market segments that do not overlap:

- OEM wheels, and
- AM wheels.

Imports from China are predominantly concentrated in the AM segment (around 80%) while the production and sales by the Union industry and especially the sampled EU producers is concentrated almost entirely (around 85%) in the OEM segment.

Ford notes that there appears to be a logical gap in the Commission's decision. The Commission has concluded, properly, that "the 'OEM and AM' have different channels of distribution."³ Indeed, there is no indication in any submission by the Complainant, nor in any other part of the record that is available to Ford, that a single OEM purchaser has ever bought aluminum wheels on the aftermarket. On the contrary, it appears from the Disclosure that OEM purchasers buy on the OEM market, and do not buy AM wheels.

The Commission also acknowledges that the vast majority of Chinese imports are made into the AM distribution channel⁴ and the failure of Chinese exporters to play a major role in the OEM market stands out starkly in the Complainant's own market share analysis.⁵

Ford notes that the Commission bears an obligation to examine "*the volume of the dumped imports*".⁶ To this end, the Commission has found that the overwhelming volume of imports is in the aftermarket,⁷ and the record shows that China holds only a 3% share of the OEM market.

The Commission also must examine "*the effect of the dumped imports on prices*".⁸ and has concluded there is significant price undercutting in the AM market, but has found comparatively little price undercutting in the OEM market.⁹ The Commission provisional findings also demonstrate that the average price of OEM wheels is much higher than AM wheels.¹⁰

² EC Commission Regulation imposing anti-dumping measures on imports of aluminum wheels from China ("Provisional Regulation"), OJ L117/64, of 11.5.2010.

³ Provisional Regulation ¶ 22.

⁴ Provisional Regulation ¶ 92.

⁵ Complainant's Submission on Injury and Causation of 12 March 2010 ("Complainant's Submission") ¶ 58.

⁶ WTO Anti-dumping Agreement ¶¶ 3.1.

⁷ Provisional Regulation ¶ 92.

⁸ WTO Anti-dumping Agreement ¶¶ 3.1.

⁹ Provisional Regulation ¶ 98.

¹⁰ The price difference is very well demonstrated by the undercutting calculations for OEM (13-30%) and AM (56-63%) at ¶ 98 of the Regulation. Ford notes in particular that the combined assessment of AM/OEM price trend misrepresents the real (much higher) price of Chinese OEMs. Provisional Regulation ¶ 99.

Ford also notes that the Commission bears an obligation to examine whether *"the dumped imports are, through the effects of dumping, . . . causing injury"*.¹¹ This requires the Commission to show a causal link between the volumes and price effects of the dumped imports that it has identified, and the injury that has been suffered. Facile suggestions such as those made by Complainants that *"AM producers can also become OEM producers"*¹² are utterly irrelevant to this issue. The question before the Commission is not the future corporate plans of offshore companies, which in any event, would mean only that those producers were participating in two entirely distinct product and market segments. It is whether the actual imports that the Commission finds to be dumped – imports that by all indications are found, if at all, almost exclusively in the AM market – are the cause of injury in the OEM market.

Despite the obligation to establish this causal link, there is no indication in the Disclosure that the Commission has identified any mechanism by which the effects of volumes of allegedly dumped AM imports could affect the OEM market. Ford is unable to identify any such mechanism because OEM manufacturers do not buy AM wheels.

While the Commission acknowledges the segmentation between OEM and AM wheels, it fails to establish and demonstrate injury and causality for each of them respectively. Thus, given the Commission's practice,¹³ Ford respectfully requests that the Commission disclose its full analysis, on a segment-specific basis, in support of its provisional finding of injury in the OEM market.

[]

Ford opened the aluminium wheel supply contract for [] to worldwide competition. Price quotations offered by Chinese suppliers were not significantly lower, and in some cases even higher than those provided by the EU producers (Annex 1 - confidential). Ford notes that this experience stands in direct contradiction of the Commission's provisional conclusions in this regard.

*"However, as already explained it has to be borne in mind that the injury suffered in relation to OEM sales is triggered by the low Chinese prices and is indeed price-related. More specifically, there are indications that the car makers use the Chinese offers as a benchmark with the effect of forcing down the prices of the EU ARWs producers in the tendering processes. In order to remain present on the market, the Union producers indeed have no choice but to give in and reduce their prices."*¹⁴

¹¹ WTO Anti-dumping Agreement, ¶ 3.4.

¹² Complainant's Submission ¶ 37.

¹³ In the past the EU looked into injury and causality for each segment separately. *Reference is made to Sweetcorn from Thailand* OJ L159/14 of 20.06.2007 and *Electronic Weighing Scales from China* OJ L301/42 of 30.11.2000.

¹⁴ Provisional Regulation, ¶ 133

Ford maintains that Chinese OEM imports do not undercut the prices of EU OEM wheels. Furthermore, their marginal share in the OEM segment (around 3%)¹⁵ breaks any causal link between the alleged injury suffered by EU OEM wheels producers and imports of OEM wheels from China.

Ford considers that the drop of car production and sales in the EU market during the investigation period more likely to be the major cause of injury to EU OEM wheel producers than price undercutting by Chinese wheel producers. It was widely reported that car sales in the EU had dropped by 25%, with dramatically greater declines in certain markets, such as Spain and Britain. This collapse of the global automotive market caused dramatic cuts in new vehicle output, which meant that car manufacturers purchased correspondingly less parts and material from suppliers. The downturn also forced a drop in prices paid for vehicles in turn causing car manufacturers to pay lower prices for the parts and material needed to assemble those vehicles. Ford would note that the pressure on suppliers was certainly offset to some degree for significantly lower prices for the raw materials and other supplies needed to produce OEM parts, such as wheels.

2. OEM WHEELS SHOULD BE EXCLUDED

Ford believes that the distinction between OEM and AM wheel markets is best understood when viewed from the perspective of the ultimate consumer in each market. For OEM wheels, the car manufacturer is the ultimate consumer; while for AM wheels, the individual car owner is the ultimate consumer. The roles the car manufacturer and the individual car owner play in their respective OEM and AM wheel markets are very different. In the OEM wheel market, the car manufacturer is the principal and dominant player. OEM wheels are made to each car manufacturer's specific order, made to numerous and exacting specifications and requirements imposed by the car manufacturer. OEM wheel producers have been developed and cultivated by the car manufacturers (a number of them being essentially successors to in-house divisions of the car manufacturers themselves). Therefore, OEM wheel producers do not engage in such activities as marketing to consumers or speculative product design and development.

In contrast, in the AM wheel market, the individual car owner decides what wheels he or she will buy from whatever wheels are available. The decision is based on suitability of the wheel for the particular vehicle, appearance and price. In the AM wheel market, the consumer expresses his or her purchase requirements solely by choosing a wheel from what is offered. This very different marketplace puts a premium on active engagement in consumer branding, and rewards product development that is driven independently by the AM wheel producer, rather than in response to a specific design requested by an OEM customer.

¹⁵ See ACEA's submission of 14 June 2010.

In effect, OEM wheel production should be considered as part of car manufacturing operations, which have been outsourced to third parties. By contrast, AM wheels are sold through regular distribution channels (importers, distributors, and retailers) to the ultimate consumer (car owner). Based on the above, and also considering that OEM imports from China are negligible and could not adversely affect EU producers, Ford hereby requests the exclusion of OEM wheels from the scope of definitive anti-dumping measures.

Ford recalls that the above differences between products that are initially subject to the investigation are routinely considered by the Commission in determining whether to exclude one of the categories of the products, which – after an analysis of the above factors – is found different from that covered by the investigation and the resulting duties. For example, in *Footwear from China*, the Commission excluded certain type of footwear where it found that (i) it was “highly sophisticated” in that it had “distinctive technical features” and “was designed specifically” for certain use and to achieve qualities that enabled that use, “significant research and development costs in terms of design, specially incorporated materials, as well as on-site testing” were incurred, which generally resulted in higher import price for excluded footwear as compared to non excluded,¹⁶ and (ii) excluded footwear was different from non excluded types, because (a) it was normally sold via different sales channels, (b) it had usually a different end-use and consumer perception and (c) import trends developed differently.¹⁷ In summary, “[f]or the above reasons, i.e. differences of basic physical and technical characteristics, sales channels, end-use and consumer perception” the Commission excluded the product from the definition of the product concerned, and thus from the duties.¹⁸ As explained in more detail below, for the exact same reasons OEM wheels should be excluded from the duties.

3. RELATIONSHIP BETWEEN WHEEL MANUFACTURERS AND CAR MANUFACTURERS

By way of background, the process by which wheels are supplied to car manufacturers is entirely driven and dictated by the car manufacturers, whereas aftermarket for wheels is primarily driven by the wheel producers in terms of what kind of wheels at what price they will offer to the aftermarket. Only wheel producers that have been qualified by an individual car manufacturer are allowed to produce and supply wheels to that manufacturer. The wheels produced for a car manufacturer may only be produced for that manufacturer and not for any other car manufacturer or for general sale by the wheel producer. The OEM buyer will only buy OEM wheels made to its particular specifications. OEM buyers never buy AM wheels for use in the assembly of new vehicles. In contrast, for the aftermarket, it is the wheel producers that design, develop and produce the wheels offered for sale in the aftermarket.

¹⁶ Commission Regulation (EC) No 553/2006 of 23 March 2006 imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam, Official Journal of the European Union, L98/3, 6.4.2006, at ¶ 13

¹⁷ Id., at ¶ 14.

¹⁸ Id., at ¶ 19.

The process by which Ford qualifies and chooses a wheel producer to supply OEM wheels to Ford is long, complex and rigorous. The process begins long before any wheel producer is even identified with the design of a new Ford car model. Once the car design has been approved, Ford engineers develop the specifications and requirements for each part of the new vehicle. These two initial phases can take up to a year or more to complete.

Once the part specifications and requirements have been finalized, Ford Purchasing teams begin the process of identifying potential suppliers for the part for which they are responsible. In this case, Ford's Wheel and Tires Purchasing team was responsible for identifying and selecting a wheel supplier. Ford Purchasing policy requires that a supplier be qualified before it is sent a Request for Quote ("RFQ").

Ford's mandatory supplier qualification procedures go far beyond the mere ability of the supplier to produce the specific part in question. Qualification criteria include []. The Supplier qualification process can take between 6 and 18 months to complete.

Once a list of qualified suppliers is identified, they are sent the RFQ, which contains all of Ford's specifications and requirements for the part at issue (i.e. aluminium wheels). The RFQ requires the supplier to provide []. The Ford Purchasing team reviews all returned RFQs according to Ford's evaluation guidelines and policies.

Only after Ford selects the supplier, does that producer become directly involved in the process which results in the part being delivered to the car manufacturer. A Ford wheel supplier is allowed to produce the subject wheels only for Ford. It cannot offer those wheels to other car manufacturers nor produce and offer for sale to the aftermarket wheels using Ford's designs and specifications. While Ford establishes and enforces deadlines for completion of all aspects of the part production process, the ultimate requirement is that the part supplied to Ford be acceptable for assembly into a Ford vehicle.

The car manufacturer's complete control over the entire OEM wheel process contrasts starkly with the AM wheel process. AM wheels are designed, manufactured and sold entirely by the wheel manufacturers. Car manufacturers have no involvement whatsoever with wheel producers' production and sale of AM wheels.

The car manufacturer's total control over the OEM wheel supply process continues throughout the vehicle production life cycle for which the part, such as the wheel, has been purchased. By way of example Ford requires suppliers [].

4. CUSTOMERS, THEIR PURCHASING DECISIONS AND QUANTITIES PURCHASED

Given the different roles that OEM and AM wheels have on the market, they are destined to different type of customers. In the OEM sector, the ultimate consumer is the car manufacturer, which incorporates the wheels into new motor vehicles. OEM wheels cannot be sold by the wheel producer to any other customers than the specific car manufacturer for whom the wheel has been produced; and car manufacturers do not generally resell or use OEM wheels for any other purpose than new vehicle production. The wheel is not a separate product in this context, but only a component of the final product, the car. The wheel manufacturer, although a separate entity linked by a contract with the car manufacturer, is - in functional terms - an integral part of automotive supply chain.

Moreover, wheels are a component that is relatively unimportant to the ultimate user of the car; rarely, if ever, is a consumer's decision to buy a particular car exclusively or predominantly because of the wheel design or the origin of the wheel. When choosing the car, the consumers are always driven by other much more important factors (such as price, brand, performance considerations, fuel efficiency, etc).

In the AM sector, on the other hand, the ultimate consumers are the car owners that want to purchase (usually only a few) replacement wheels for their car. No OEM buyer ever buys AM wheels for use in a new motor vehicle. In their purchasing decisions, car owners are usually driven by its appearance and then ultimately, its price. It is the wheel, and only the wheel, that is the product and the purchasing choice is driven by the wheel's attractiveness to the final customer, i.e., the owner of the car. In terms of volumes, AM wheels are sold in much smaller quantities and to different purchasers (importers, distributors, retailers, etc).

In other words, essential differences between OEM and AM sectors include: (a) the identity and market role of immediate customers, as well as consumers; (b) the factors driving their purchasing decisions; and (c) the volumes purchased. As explained below, wheels sold into the OEM market rarely cross into the aftermarket, and wheels sold into the aftermarket are never purchased by OEM buyers.

5. DESIGN AND TESTING PROCESS

For OEM wheels, once the supplier has been selected, it begins the design and development of the wheel it is to supply to the car manufacturer according to the car manufacturer's specifications and requirements. These requirements include material content specifications (i.e. limitations on recycled or scrap metal content), performance and durability of the wheel. The end result of the design and development process is a prototype that Ford determines will be acceptable for use in production of the new vehicle model. Throughout this process, both Ford and the supplier

FORD - AD 541

NON-CONFIDENTIAL

engage in extensive testing and modifications, as required to ensure that the part meets all of Ford's specifications and requirements, which cover not just the wheel, but any modifications to the vehicle itself which effect the suitability of the wheel for that vehicle.

See Annex 2 - (confidential)

None of the above process is carried out when AM wheels are developed. As mentioned, they are designed by wheel manufacturers independently.

6. CHARACTERISTICS OF THE FINAL PRODUCT

Due to the specifics of its production process as well as the relationship between wheel manufacturer and the car manufacturer, an OEM wheel, once produced, is different from an AM wheel because of its superior quality and physical, chemical and technical characteristics. However, it is not possible to make a fair and accurate direct comparison between OEM and AM wheels, because OEM wheels are designed, produced and sold for a specific vehicle produced by a car manufacturer, while AM wheels are produced and sold for use on whatever vehicles they can be fitted. Ford notes that the Complainants appear to suggest that the ability of AM wheels to be fitted to a specific car model makes them interchangeable with OEM wheels. That is highly misleading. First of all, fit while obviously important, is all but assumed. The much more numerous and important, technical and quality distinctions between OEM and AM wheels make clear that these two products are not interchangeable. Second, an OEM wheel carries the warranty a car manufacturer's provides for the entire vehicle. This means that the car manufacturer warrants that each part will perform with that vehicle as specified by the car manufacturer. That is not true for AM parts. While the AM part may carry some sort of warranty for that part, the warranty does not and cannot extend to any sort of guaranty as to how the AM part will perform with the entire vehicle or how that part will affect the performance of the vehicle or other parts. In this broader context, fit is a minor and largely irrelevant distinction.

6.1 Quality

Due to the stringent criteria used by car manufacturers in ensuring the quality of OEM wheels, the final product is different from an AM wheel: it must meet a series of very demanding requirements imposed, such as the car manufacturers' engineering specifications (such as Ford's Global Wheel Functional Specification), Design Failure Mode Effects Analysis (See Annex 3 - confidential) and other controls, vehicle structural durability, lab durability, ride, handling, steering and noise, vibration and harshness ("NVH") evaluations, corrosion resistance testing, numerous paint and finish tests (e.g., paint performance specification), appearance sign-off tests, critical characteristics and capacity verification (part of car manufacturers' Production Parts Approval Process "PPAP"), number of Scheme Development Standards ("SDS") applicable to wheel and tire durability, Supplier Requests for Engineering Approval ("SREA's") specs and others.

For example, Ford's Engineering Material Specification for Aluminium Alloy (Annex 4 - confidential) imposes on OEM wheels suppliers' requirements regarding:

- a) chemical composition ;
- b) mechanical properties (yield strength, tensile strength, elongation, and hardness);
- c) heat treatment; and
- d) microstructure;

In addition, Ford's Design Verification Plan Report for Wheels (Annex 5 - confidential), envisions over [] different tests with [] separate acceptance criteria, testing everything from wheel []. In order to be accepted, the OEM wheel must pass every one of these tests. Any failure stops the process until the problem has been fixed and the test passed.

AM wheels, on the other hand, must meet only the basic requirements imposed by external standards, such as the international ECE standard¹⁹ or German TUV²⁰ standards, which are also of course incorporated into the far more extensive and demanding OEM wheel specification and requirements. Ford refers to ACEA's submission of 14 June regarding the distinctions between the basic requirements met by AM wheels and the OEM wheel requirements. The above-referenced Ford documents show the numerous, specific specifications and requirements that an OEM wheel must meet to be accepted by Ford.

6.2 Physical and chemical differences

In addition to the overall higher quality, resulting from strenuous testing requirements, OEM wheels also have different physical and chemical characteristics, because a number of standards and specifications explicitly require the use of special materials or certain performance deliverables. For example, Ford has special material specifications for aluminium and paint (see Annex 6 - confidential), as well as specific heat treat furnace performance requirements. In addition, suppliers of raw materials to the component manufacturers (such as wheel makers) must in some cases be pre-approved by Ford. The suppliers' compliance with Ford's various requirements for special physical qualities is continually verified in production, must be shown on the manufacturer's control plan, which in turn is verified during Supplier Technical Assistance ("STA") audits.

In addition, a number of quality requirements result in tangible physical differences, such as resistance to (a) corrosion, or certain chemicals (salt), (b) climactic factors (humidity,

¹⁹ U.N. ECE Regulation No. 124 - Uniform Provisions Concerning the Approval of Wheels for Passenger Cars and Their Trailers (E/ECE/324 and E/ECE/TRANS/505) Rev 2/Add.123.

²⁰ TUV Regulations, No. 287 § 30 SIVZO (Regulations authorising the use of vehicles for road traffic; Guidelines for the testing and inspection of custom wheels for motor vehicles and their trailers), Bonn, November 25, 1998, SIV 1336.25.07-20.01.

temperature), and (c) physical obstruction (impediments on the road, rocks and sand, snow, holes in the ground, washing).

By contrast, AM wheels are only subject to very general safety requirements. The Complainants' suggestion that general government AM market safety requirements, such as the German TÜV standard, are the equivalent of highly detailed OEM manufacturer specifications²¹ is simply not true, as is made clear by even a cursory examination of the documentation provided by Ford in this submission. Ford would also note that those European wheel producers who do supply OEM wheels know very well that it is all but impossible to make any comparison between car manufacturer wheel specifications and requirements and the general requirements for AM wheels.

7. COST OF MANUFACTURING

Considering the heightened quality, complex relationship with car producers and cooperation in design and production, as well as follow-up audits, testing and verifications, the costs of manufacturing OEM wheels is generally much higher than that of AM wheels. This is because the processes of prequalification require the producers to meet certain criteria in terms of size of operations, liquidity, reliability, corporate practices, as well as manufacturing practices. Also, as end product must meet more stringent criteria (in some cases expressed in terms of performance deliverables or in others in terms of use of specific materials or production methods), and pass the testing, and audits, the manufacture of OEM wheels is more expensive,²² as, in short, they are made of better materials and are of better quality.

8. DIFFERENT CUSTOMS CLASSIFICATION

In Ford's view, the different customs classification of OEM and AM wheels further confirms the argument that they are two separate products: while regular AM wheels are imported under CN 8708 7050 (Road wheels and parts and accessories thereof, other), subject to a customs duty of 4.5%, OEM wheels primarily come in under a special CN subheading 8708 7010 (Road wheels and parts and accessories thereof, for industrial assembly), which is connected with end-use controls and subject to a reduced customs duty of 3%. In this regard, the EU has an actual and legal distinction between these two products to which the Commission's provisional findings in this case cannot be reconciled.

²¹ Complainant's submission ¶ 26.

²² While the manufacture must incur higher costs to meet demanding OEM specifications, the manufacturer also enjoys the benefit of long production runs.

9. LACK OF INTERCHANGEABILITY

Ford disagrees with the Commission's provisional conclusion that AM and OEM wheels are interchangeable.²³ As demonstrated above, AM and OEM wheels do not have the same physical and technical characteristics. Unlike AM wheels, OEM wheels are subject to very special technical, procedural and physical requirements. Ford requests the Commission to recognize the distinctive technical and physical characteristics of AM and OEM market which leads to the unquestionable conclusion that there is no meaningful interchangeability between AM and OEM wheels. Ford notes that the physical ability of AM wheels to fit on vehicles is not a sufficient basis on which to find interchangeability. The burden on the Commission is much higher: the Commission must find such actual interchangeability in the marketplace in order to determine that a finding of dumping in AM wheels bears a causal link to injury in the OEM market. The facts, including facts recited in the Provisional Regulation, actually contradicts the findings that the two wheel products are interchangeable.

Ford (and all car manufacturers) would never use an AM wheel for industrial assembly. OEM manufacturers set unique design criteria for wheels for a specific vehicle model. These criteria are derived from the OEM's design concept for that car model and from the OEM's manufacturing requirements. There is no suggestion on the record that AM wheels are purchased in the OEM market, and any such suggestion would be completely false. Indeed, even the Complainant does not allege this to be the case.

The absence of any allegation or evidence that OEM manufacturers buy AM wheels is sufficient to establish lack of interchangeability, because it defeats any attempt to draw a causal link from allegedly dumped AM imports to the OEM market. Ford notes, however, that OEM wheels also are not interchangeable into the AM market. While car manufacturers do offer OEM quality wheels in the aftermarket, these wheels normally bear higher prices than other AM wheels²⁴ because of their superior quality and material content. This difference shows how that a critical distinction between OEM and AM wheels is price. The price a car manufacturer pays for a wheel is important to the car manufacturer, but not the sole or even primary consideration. And the price that a car manufacturer paid for a wheel has no bearing at all on the consumer's decision to purchase a new vehicle. Price for AM wheels is a very important, if not determinative, element in a consumer's decision to purchase an AM wheel. OEM quality wheels offered in the aftermarket command a higher price than other AM wheels and compete only when the consumer is prepared to pay more for a higher quality wheel.

²³ Provisional Regulation ¶ 22

²⁴ Complainant argues the AM market includes highly quality wheels that sell at high prices. Complainant's Submission ¶ 27. Even if true, this proves nothing with respect to interchangeability. OEM manufacturers will not buy these wheels, and the OEM wheels that may enter the aftermarket are restricted to the narrow niche of warranty repairs and the like. Expensive, highly customized AM wheels are a very different niche of the market, and the customers who seek those out are not looking to replace the OEM wheels with a comparable product.

10. DUTY DRAWBACK

Ford wishes to draw one further consideration to the Commission's attention: the additional adverse effects that this decision might cause in light of the imminent entry into force of the EU-Korea Free Trade Agreement ("KFTA").²⁵ The duty-drawback provisions of the KFTA create incentives for Korean car manufacturers to import an ever larger portion of its parts and components from nearby countries with low-cost labour conditions.²⁶ China is large supplier of aluminium wheels to Korean car manufacturers. If the provisional duties are confirmed with their current form and scope, EU car manufacturers will face a significant cost increase when compared with their Korean competitors which will be exempted from all duties (including the anti-dumping duties on wheels from China) when exporting cars to the EU.

²⁵ Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (2010/0075(NLE); 8502/10)

²⁶ I.e., Protocol concerning the definition of "originating products" and methods of administrative cooperation, at Article 14

EU ANTI-DUMPING INVESTIGATION ON ALUMINIUM WHEELS FROM CHINA
COMMENTS TO THE COMMISSION REGULATION IMPOSING PROVISIONAL DUTIES

List of Annexes

1. Price quotations - CONFIDENTIAL
2. Wheels Commodity Plan - CONFIDENTIAL
3. Potential Failure Mode and Effects Analysis - CONFIDENTIAL
4. Ford's Engineering Material Specification for Aluminium Alloy CONFIDENTIAL
5. Ford's Design Verification Plan Report for Wheels - CONFIDENTIAL
6. Ford's Paint Performance - CONFIDENTIAL

AD541

Ford Europe

**COMMENTS BY FORD OF EUROPE ON THE DEFINITIVE DISCLOSURE OF THE
FINDINGS OF THE ANTI-DUMPING INVESTIGATION ON IMPORTS OF ALUMINIUM
WHEELS FROM CHINA**

1. INTRODUCTION

Ford Europe ("Ford") rejects the findings of the definitive disclosure ("Disclosure") on which the European Commission ("Commission") intends to impose a 22.3% definitive anti-dumping duty on imports of aluminium wheels ("ARW") from China.

In Ford's view, the Disclosure is unfounded for the following reasons:

- it fails to demonstrate that the Commission has properly assessed detailed information and comments with regard to the differentiation between Original-equipment ("OEM") and after-market ("AM");
- it fails to properly distinguish two separate wheel markets: OEM and AM;
- it fails to establish injury and a causal link for the OEM and AM segments and therefore for ARWs as a whole;
- it disregards the devastating impact that the global financial crisis had on the automotive industry;
- it disregards the impact that the imposition of the anti-dumping duties will have on Ford's financial situation. The annual estimated costs of a 22.3% anti-dumping duty is several millions €;
- is not in the interests of the EU to impose anti-dumping duties on Chinese OEM wheels which represent a negligible 3% market share, but provide car makers an additional source of supply; and
- key material evidence has not been properly disclosed to interested parties.

The main reason for the series of substantive shortcomings of the Disclosure is the wrongly defined product scope and, in particular, the inclusion of OEM wheels in the investigation. Ford, and other major EU vehicle manufacturers, has been contesting the inclusion of OEM wheels since the beginning of the investigation.

AD541

- 2 -

Ford Europe

2. THE DISCLOSURE FAILS TO ASSESS THE EVIDENCE PROVIDED BY FORD AND VEHICLE MANUFACTURERS PROPERLY: THE REJECTION OF THE DIFFERENTIATION BETWEEN OEM AND AM ARWS IS NOT JUSTIFIED

Ford is dismayed about the additional findings regarding the product concerned and the like product. In essence, the Disclosure's conclusion that OEM and AM wheels are considered to form one single product concerned is inadequately reasoned. According to EU jurisprudence, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, including the interest which the addressees of the measures may have in obtaining explanations to the facts of the case.¹ It is unquestionable from Ford's submissions that its main interest in the investigation is to demonstrate that the differences between OEM and AM wheels require a full separate dumping and injury analysis and that given that the market share for OEM wheels is a minimal 3%, the investigation for OEMs wheels should be terminated on the basis of non-injury.

In this section, Ford will demonstrate that the Disclosure fails to demonstrate that the Commission has properly assessed detailed information and comments submitted during the investigation.

According to the Disclosure, *"the fact that specifications come from different sources cannot be considered as such as a proof of differences in physical and technical characteristics."*² The Commission seems to conclude, without any apparent justification, the fact that the various specifications come from different sources, i.e. vehicle manufacturers and dealers, diminish the importance of the differences in physical and technical characteristics. Ford fails to understand why the Commission provides more weight to where the specifications originate instead of the actual differences in physical and technical characteristics themselves.

Furthermore, the Commission conclusion fails to provide any evidence that the specific differences that Ford explained in its comments to the provisional disclosure have been considered by the Commission and the reasons why the Commission seems not to have given appropriate weight into the investigation. Such evidence involves specifications related to Design - Annex 2 - GPDS V.21; to Quality - Annex 3 - Potential Failure Mode and Effects Analysis; Technical - Annex 4 Ford's Engineering Material Specification for Aluminium Alloy; or security - Annex 5 Ford's Design Verification Plan Report for Wheels.³

In Ford's view, the Commission should have analyzed and weighted each of the main differences in physical and technical characteristics identified in Ford's submission against the information provided by the Complainants on AM wheels. If the Commission decided to disregard these differences, it should have carefully explained why, so Ford and the European Judicature can properly assess the Commission's reasoning.

¹ Case C-78/00 P, *Petrolub and Republic v Council* [2003] ECR I-0079, ¶¶42,49-51.

² ¶ 13 Disclosure

³ Ford's comments to the Provisional Disclosure of 14 June 2010.

AD541

- 3 -

Ford Europe

With regard to the production process,⁴ the simplification of limiting the production process to five phases fails to reflect the detailed production requirements that Ford imposes on its suppliers of wheels.

Ford refers to the raw material requirements outlined in its comments to the provisional disclosure. Ford disagrees with the Disclosure conclusion that "... *EU producers which manufacture both OEM and AM wheels attested that both primary aluminium and - although to a limited extent - aluminium extracted from scrap is used in the production of both types of wheels*".⁵ To this end, Ford requests the Commission to provide a sound clarification of what the "limited extent" it refers to is. Furthermore, Ford requests the Commission to explain why "limited extent" is deemed sufficient to override Ford's and other vehicle manufacturers' factual statements that OEM wheels are not made from secondary aluminium (i.e. scrap). If so, Ford requests the Commission to disclose its findings in this regard in a meaningful way.

The Disclosure considers that differences in testing requirements "are ... *not as such conclusive that OEM and AM wheels are two different products*." It then provides a laundry list type of testing requirements alleging that "*both AM and OEM wheels are subject to various tests ...*" and that the "... *the testing requirements are not homogeneous*".⁶ The crux of the Ford's argument with regard to testing is to demonstrate that the vehicle manufacturers have considerably stronger requirements than AM wheels. Whilst Ford is not familiar with the testing requirements of all vehicle manufacturers, it is confident that Ford's and other manufacturers' testing requirements are similar and certainly more homogeneous to each other, yet much stronger and more stringent than those of the AM sector, to the extent that the AM wheels are subject to any meaningful tests at all. Ford considers that the Disclosure's conclusion is untenable unless it can justify that the testing requirements for AM wheels are comparable to those of OEM wheels. To this end, Ford considers that the EUWA's additional submission of 2 September (included in the file after the intervention of the Hearing Officer), in which EUWA states that "*The document shows that there is no uniform picture for OEM wheels, on the one hand, and AM wheels on the other and that AM wheels are of higher standard than certain OEM wheels*" should be disregarded out rightly pursuant to Article 19 of the basic Anti-dumping Regulation because the non-confidential version is meaningless. For such a statement to have any value, it would need to provide details on the sample, i.e. how many different OEM and AM wheels have been examined and their sales volume. The reference to "certain" would appear to indicate that the examples found by EUWA may simply be the exception to the rule.

⁴ ¶ 14 Disclosure
⁵ ¶ 15 Disclosure
⁶ ¶ 16 Disclosure

AD541

- 4 -

Ford Europe

Furthermore, Ford's wheel experts and legal counsel cannot follow the content/conclusion of the table attached "Requirements between different customers" attached to the letter. What does tuner wheel include? What is the weighted value of including tuning wheels in such a comparison? How many wheels for tuning are sold in the EU? What is the volume of the various types of wheels allegedly used by EUWA to make the tables? Ford trusts that the Commission would not find that withholding the volumes examined in each of the columns of the table can be deemed to be confidential.

The Disclosure states that "... *more stringent requirements or specifications may apply to certain wheels in both segments [OEM and AM], meaning that some AM wheels might comply with more stringent standards than OEM wheels.*"⁷ Ford objects to what appears to be a mere conjecture: "...*may apply to certain*"... In Ford's view, the Commission, as an independent Investigative authority, has the obligation to provide material evidence of the findings on which it bases its conclusions. This finding is particularly offensive, considering the volume of evidence on the record to prove the contrary, i.e., that OEM wheels have more stringent requirements. By giving more weight to conjectures submitted by the Complainants, than to hard, corroborated evidence submitted by Ford and the other vehicle manufacturers, who are in the best position to know and explain what they do, the Commission fails to conduct the investigation impartially. As stated by the WTO Dispute Settlement Body, an objective examination, as required by the WTO Anti-Dumping Agreement, requires that data be "*investigated in an unbiased manner, without favouring the interests of any interested party, or group of interested parties, in the investigation*" and that "*the identification, investigation and evaluation of the relevant factors must be 'even-handed.'*"⁸ Reliance on unsubstantiated assumptions in anti-dumping investigations violates the duty for the investigation to be based on positive evidence, and to be conducted by an objective and unbiased investigating authority.⁹ In addition, Ford requests the Commission to disclose the volume of AM wheels sold in the EU which allegedly comply with "***more stringent requirements or specifications than OEM wheels.***" (emphasis added)

Ford is appalled that, after 13 months of investigation, the Commission misrepresents the information and statements of the vehicle manufacturers cooperating in the investigation: AM wheels are not installed in new cars. Nevertheless, the Commission, without any apparent material evidence uses the adverb "*customarily*"¹⁰ when referring to the use of AM wheels into new cars. Ford requests the Commission to disclose if it has found a single instance in which a European vehicle manufacturer has installed an AM wheel on a vehicle produced at an OEM factory.

⁷ ¶ 17 Disclosure
⁸ DS331 Mexico - Pipes and Tubes AD Duties (Panel), paras. 7.211-215.
⁹ DS295 Mexico - Rice AD Measures (Panel), paras. 7.89-116.

¹⁰ ¶ 18 Disclosure. The Shorter Oxford dictionary defines "customarily" as "According to custom; commonly done, usual".

AD541

- 5 -

Ford Europe

Furthermore, the findings above attempt to be justified on allegations that vehicle manufacturers "... also source and sell aftermarket wheels."¹¹ Ford requests the Commission to disclose what kind of evidence it has analyzed to conclude that vehicle manufacturers sell aftermarket wheels apart from the misleading submission by EUWA of 2 August and supplemented on 2 September because of its deficiencies which includes brochures of third-party aftermarket dealers, who are not related to the vehicle manufacturers. Ford and all leading EU vehicle manufacturers, do not fit AM wheels into new cars. Ford understands that GM, which is the company largely quoted in EUWA's submission, has vigorously contested the misrepresentation that the third party brochure demonstrates that vehicle manufacturers install AM wheels on their new vehicles. In addition, Ford refers to ACEA's submission in this regard.

Ford objects to the Disclosure's conclusion that given that "... OEM and AM wheels are produced in the same production line",¹² this would appear to rebut all the arguments in favour of the differentiation between the two types of wheels.

Ford refers to its post-hearing brief comments regarding the importance of the different customs classification.¹³ In particular, Ford disagrees with the Disclosure conclusion that because "car makers import under both CN codes, formal differentiation based on end use would be extremely difficult."¹⁴ Ford reiterates that insufficient economic incentive and prior agreed upon delivery terms for low volumes is the explanation why CN 87087010 was under utilized. Needless to say, that if the proposed 22.3% definitive anti-dumping duty is confirmed, there would be a great incentive for vehicle manufacturers to declare wheels for industrial assembly under CN 87087010. Furthermore, existing Customs monitoring and enforcement procedures will ensure the appropriate use of the end used control CN code.

To conclude, Ford maintains that OEM and AM wheels are totally different in terms of the way the wheel is designed, produced, delivered, priced and even classified under the tariff code for Customs purposes, and Ford has serious doubts that the Commission has any concrete evidence to the contrary.

- (a) OEM and AM wheels have different physical and technical characteristics resulting out of stringent quality and performance tests imposed by car-makers. Ford does not buy AM wheels for installation on new vehicles produced by Ford;
- (b) OEM and AM wheels have different usage: OEM wheels are used exclusively for the industrial assembly of new vehicles. By contrast, AM wheels are not used for industry assembly;
- (c) OEM wheels are produced only by qualified suppliers and under a tight control by car-manufacturers. Suppliers are not allowed to sell Ford OEM wheels into the

¹¹ ¶ 19 Disclosure

¹² ¶ 21 Disclosure

¹³ Ford's post hearing comments of 26 July 2010 at Section 5

¹⁴ ¶ 26 Disclosure

AD541

- 6 -

Ford Europe

- AM. AM wheels are designed and produced by wheel producers themselves, with no quality and production control by consumers;
- (d) OEM wheels are priced on a zero-base basis (i.e. aluminium cost is directly indexed per London Metal Exchange and is not subject to negotiations), AM wheels price is not directly tied to the price of aluminium;
 - (e) AM wheels are imported under CN 8708 7050 (road wheels and parts and accessories thereof) subject to a customs duty of 4.5%. By contrast, OEM wheels for industry assembly, and for which Ford seeks in the exclusion of the investigation, are classified under CN 8708 7010 (road wheels and parts and accessories thereof; for industry assembly), which is connected with end-use controls and subject to a reduced customs duty of 3%; and
 - (f) The Commission's failure to adequately reason any of its main finding regarding the OEM/AM distinction, in particular why certain uncorroborates statements or attestations by the Complainants were given more weight than well-documented and corroborated arguments by the users.

3. OEM IMPORTS FROM CHINA COULD NOT CAUSE INJURY TO THE UNION INDUSTRY

The Disclosure alleges that Chinese imports of OEM and AM wheels caused injury to the EU OEM and AM producers primarily because of their decreased sales, market shares and profitability.

These conclusions are not supported by evidence, and in any case are incorrect. The EU ARW industry holds around 85% of the EU OEM wheel market. Chinese imports, with a negligible market share of 1-3% throughout the period of investigation, could not have caused any material injury to the EU OEM wheel producers.

By contrast, EU OEM producers suffered from the economic and financial crisis which had resulted in a sharp drop of vehicle sales (production down more than 25%) and therefore wheel orders. By way of example, one of the leading EU OEM wheel producers has shown an overall sound situation until 2009 in which as any company in the automotive sector had a very poor performance due to the global and financial crisis. Attached as **Annex 1 [CONFIDENTIAL]**. This EU OEM wheel producer has shown:

- a significant increase on production from 1998 to 2008;
- a similar pattern for turnover, i.e. their revenue increased in line with sales increase, which would appear to demonstrate that, contrary to the allegations on the Disclosure, there has not been any price depression factor due to Chinese imports;

AD541

- 7 -

Ford Europe

- in terms of employment, the presentation reveals that they continue increasing personnel and the drop at the peak of the global financial crisis is moderate when compared with redundancies made by vehicle manufacturers;
- with regard to investments, these have increased since 2006 reaching the highest peak of the last decade in 2008. Hence the drop in 2009 can be deemed to be normal considering what appear to be extraordinary investments in 2008.

Furthermore EU OEM wheel producers seem to have a wide customer base which provides assurances of their independence from the vehicle manufacturers. Another of Ford's EU OEM wheel suppliers provided Ford with data showing the growth of its customer base from 2004 to 2008. Attached as **Annex 2 [CONFIDENTIAL]**. During that period, Ford increased its share of that supplier's customer base. While Ford confirms that it temporarily suspended this supplier from sourcing consideration in 2009 because it entered bankruptcy proceedings caused by its inability to fund pension and healthcare obligations for its North American operations; upon its successful emergence from bankruptcy, the supplier has been reinstated into Ford's supply base.

The evidence obtained by Ford and presented to the Commission strongly contradicts the Commission's conclusions that Chinese wheels forced EU OEM wheel producers to lower their prices. The global financial crisis, which disproportionately hit the automotive industry, as well as the wheel producers own financial condition had a much more direct impact on wheel prices.

3.1 UI OEM producers increased, not decreased their market share

Cooperating EU OEM producers which constitute the Union industry,¹⁵ slightly increased their market share in the EU from 59.7% in 2006 to 60.4% in the IP. The table below provides an overview of the trends on sales volume, consumption and EU producers' market share.

	2006	2007	2008	IP
UI OEM sales volume ¹⁶	26,027,746	27,646,704	25,642,257	21,083,995
OEM consumption	43,573,000	44,009,000	42,076,000	34,915,000
UI OEM market share	59.7%	62.8%	60.9%	60.4%

Thus, even though Chinese OEM imports slightly increased their market share from 2008 to the IP, this did not impact the Union industry which increased its share.

¹⁵ Union industry can be composed only of fully cooperating companies supporting the complaint (either sampled or non-sampled). Producers not supporting the complaint cannot form part of the Union industry.

¹⁶ These figures have been reconstructed based on the note to the file of 11 May and the fact that 85% of sampled/cooperating companies' sales are OEM (recital 131 of the Regulation imposing provisional anti-dumping duties). The Commission withheld data regarding the OEM and AM sales volumes by the Union industry.

AD541

- 8 -

Ford Europe

The Disclosure withholds key data regarding the Union industry OEM sales volume. Interestingly, it introduces unsubstantiated "macro-economic data" of the "entire Union industry" that allegedly demonstrates a decrease in the market share of EU OEM producers. This contravenes the basic Anti-dumping Regulation which clearly defines at Articles 4.1 and 5.4 the "Union industry" as only cooperating domestic companies supporting the complaint.

Furthermore, even when using the data from the Disclosure for the "entire Union industry", a negligible increase of imports of Chinese OEM wheels from 2006 to the IP of 675,000 units cannot be held responsible for the TENFOLD decrease in the OEM sales by the "entire Union Industry" of 6,213,000 units. It just does not add up.

3.2 Prices for Chinese OEM imports did not depress prices of EU OEM ARWs

The Disclosure, without any apparent justification, withholds data on Chinese and EU OEM wheels prices. However, it recognizes that Chinese OEM imports occupied in the IP a marginal market share of only 3%.¹⁷ In addition, as disclosed following the Regulation imposing provisional measures, Chinese OEM imports were only 8% cheaper than the comparable UI OEM wheels. FORD's own data regarding purchases from the EU¹⁸ wheel producers during the IP demonstrates that the undercutting by Chinese OEM imports of its weighted average purchase price from the EU producers is ... marginal.¹⁹

		Note
A China Landed	37.57	EUROSTAT +7.6%
B Ford Landed WA purchase price	LIMITED	FORD QR
C Undercutting	LIMITED	=B-A
D China OEM volume	1,183,000	Disclosure
F China Undercutting Value EUR	LIMITED	=C*D
G Hypothetical turnover EUR	LIMITED	=B*D
H Undercutting margin	LESS THAN 5%	=F/D

Ford believes that a significant reason for the decrease in absolute prices of EU OEM wheels producers is the decline on the aluminium prices on a worldwide basis. Furthermore, for Ford, using a zero-based approach, Ford worked to establish a consistent, sustainable, price target for all of its wheel suppliers on a global basis. See attached **Annex 7 [CONFIDENTIAL]**. Chinese OEM wheels, which represent a minimal share of the EU market, 3%, could not depress prices of EU OEM wheel manufacturers. The price decrease reported in the Regulation imposing

¹⁷ 187 Disclosure

¹⁸ Relevant tables from the FORD's questionnaire response are re-attached herewith as **Annex 3**. Additional details on the sales values have been added.

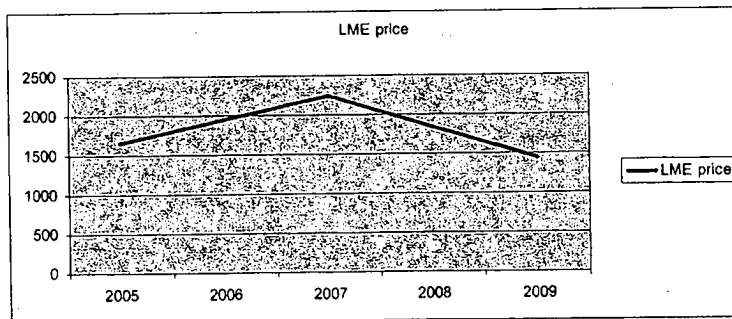
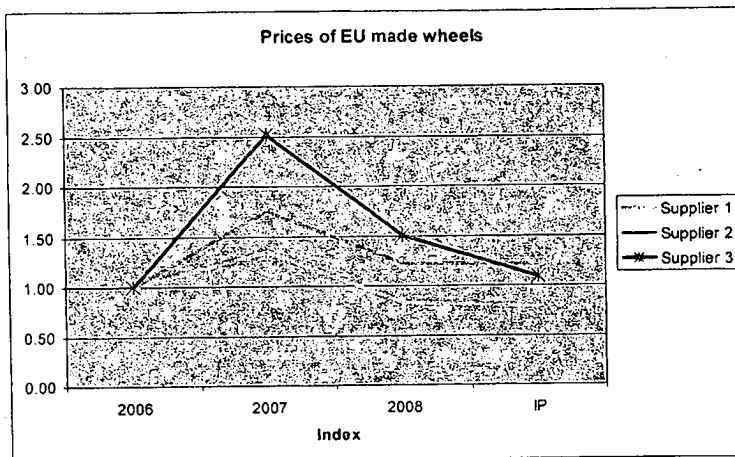
¹⁹ ...

AD541

- 9 -

Ford Europe

provisional measures from 49,7 EUR in 2006 to 46,5 EUR²⁰ is due to a global decline in price of aluminium, a major raw material for the production of ARWs. Aluminium price declined two fold in the IP while the sales price for OEM wheels is directly tied to the LME price quotations (recital 21 of the provisional regulation). This can well be illustrated based on FORD's own purchased data submitted as part of its questionnaire response²¹ and reflected in the table below.



That notwithstanding, in an effort to establish the price depression, the Disclosure alleges, that vehicle manufacturers use tender quotations of Chinese exporters to depress UI OEM prices²². However, such important allegations are unjustified in any of the submissions available in the non confidential file. Furthermore, all major vehicle manufacturers, including Ford, testified in a hearing before the European Commission and provided evidence that the tender quotations of

²⁰ Regulation imposing provisional measures at ¶89
²¹ The relevant purchase data is attached as Annex 3
²² ¶¶ 116 and 117 Disclosure

AD541

- 10 -

Ford Europe

Chinese exporters are not always lower and sometimes are actually higher than quotations of the EU producers. Specifically, Ford and several other car-makers testified to the European Commission that low Chinese tender quotations had not been used to drive European or any other suppliers' price quotations lower. To this end, Ford attaches further evidence at Annex 4 of the tender quotations and cost assessment made by Ford purchasing team in July 2009 [CONFIDENTIAL] for , which provides various examples in which the bid by the Chinese supplier were not the lowest. This information was provided to the Commission during the hearing held on 7 July and included in the presentation used during the hearing and re-attached for ease of reference as Annex 5 [CONFIDENTIAL].

Finally, Ford has provided evidence that price is not decisive when awarding tenders; all requirements must be met. This is reflected in Ford's sourcing decision as on numerous occasions Ford has partnered with a supplier providing higher price quotes. Attached as Annex 6 is Ford's Global Supply Strategy which does not include price benchmarking as one of the strategies Ford's purchasing team should follow [CONFIDENTIAL]. To this end, Ford's costs assessment table is used to determine the optimal cost estimate ("OCE") along with global Best-in-class ("BIC") "value-add" costs are used to manage the business. Both are based on extensive analysis performed by Ford in support of the purchasing team. Attached as Annex 7 [CONFIDENTIAL] confirming the way in which internal OCE and BIC studies operate.

In view of the above it is unquestionable that Ford uses sophisticated costs assessments to improve the productivity of its suppliers but not the prices of allegedly lower Chinese bids. Ford requests the Commission to reconsider the evidence provided. Alternatively, Ford requests the Commission to explain the reasons that apparently led to the disregard of Ford's data regarding tenders, prices and sourcing strategy.

- 3.3 Decline in the UI OEM profitability is a result of a decrease in OEM prices and demand; it has nothing to do with Chinese OEM imports

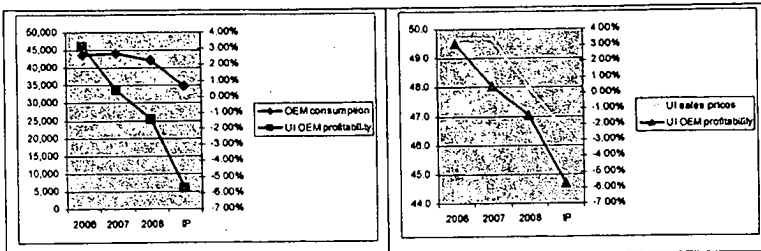
The scarce data available on the record of the investigation clearly points to the fact that the decline in the profitability of the EU OEM producers is a result of a decrease in sales volume and sales prices.²³

²³ The UI OEM sales prices are still, without any justification, undisclosed. Ford relied on an average UI AM/OEM sales price.

AD541

- 11 -

Ford Europe

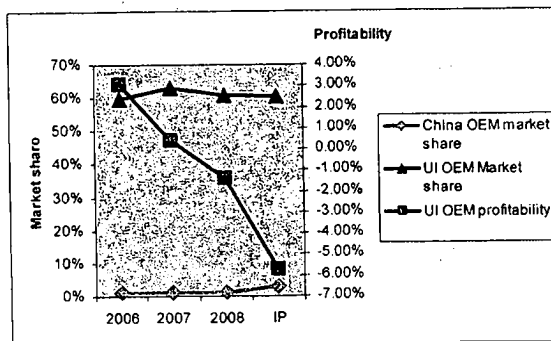


As acknowledged in the Regulation imposing provisional measures, a direct correlation between the sales volumes/prices and the profitability of the UI is due to its capital-intensive cost structure:

*"[Profitability fell in the IP] due to a combination of decreasing sales volumes and a reduction in sales prices, with an inelastic cost structure of the industry with high fixed costs."*²⁴

The Disclosure recognizes that the decrease on EU production of cars was significant, from 17 million in 2007 to approximately 13 million in the period of investigation (a decline of 25%).²⁵ Given the impact of the decline in car manufacture in the production and sales of ARWs, the conclusion on causation "... that no other factor other than the dumped imports from China is as such as to break the causal link..."²⁶ is untenable. The economic crisis, which contracted demand for vehicles in the EU and globally, is, undoubtedly, the only cause of injury.

Furthermore, developments in the market share of Chinese OEM imports had no effect on the UI OEM profitability. This is not surprising given that they had no impact on either the UI OEM market share (which increased) or its sales prices (which followed the LME aluminium price).



²⁴ Disclosure ¶ 117
²⁵ Disclosure ¶ 141
²⁶ Disclosure ¶ 144

AD541

- 12 -

Ford Europe

The Disclosure furthermore fails to properly assess the effect of Turkish OEM imports on the performance of the UI OEM producers, Turkish imports held a 7.4% market share in the OEM segment²⁷ and their price decreased by 23% from 2008 to the IP.²⁸

Considering that 85% of the UI sales are in the OEM segment and that Chinese OEM imports did not cause injury to EU OEM producers, it would seem impossible that Chinese OEM imports cause material injury to the EU ARW industry overall.

Furthermore, the data used for the injury and causal link analysis in the Disclosure is questionable. By way of example, to investigate trends in the AM segment the European Commission included in the sample, AEZ, a major AM producer. However, AEZ's response to the questionnaire reveals that it imported 40% of its sales from China in the IP. In such circumstances, AEZ should have been excluded from the sample and the UI AM data adjusted accordingly. Therefore, the conclusions of the Disclosure on injury assessment in the AM segment need to be revised.

4. IT IS NOT IN THE INTERESTS OF THE EU TO IMPOSE ANTI-DUMPING DUTIES ON CHINESE ARW

The European automobile industry is still recovering from the economic and financial crisis. The imposition of anti-dumping duties will impede Ford and other European automobile manufacturers' ability to sell cars which have the features consumers demand at the prices they can afford.

Based on responses from the EU wheel producers, there is insufficient production of OEM wheels in the EU to meet vehicle manufacturers' demands. See attached **Annex 8** [CONFIDENTIAL].

The Disclosure fails to recognize the additional costs that the imposition of anti-dumping duties on OEM wheels for industrial assembly will have.

Duty charges apply to DDU Price (CIF price): the annual impact of incremental duty [CONFIDENTIAL]

Without potential competition we could face an anti-competitive situation on aluminium wheels in the EU. China is a globally competitive source of OEM quality aluminium wheels that vehicle manufacturers competing in the global marketplace for new vehicles cannot ignore or allow to be

²⁷ ¶ (120) of the Disclosure mentions that 3/4 of the Turkish imports belongs to the OEM segment. That allows calculating their OEM market share based on OEM consumption in the IP and the absolute volume of Turkish imports in the IP mentioned in the Provisional Regulation.

²⁸ Recital (136) of the provisional Regulation.

AD541

- 13 -

Ford Europe

displaced. The ability to source from producers outside Europe is important to maintain flexibility and competition in the market. Given the highly competitive nature of our industry, Ford will not be able to pass on the increased material costs to the purchasers of our new vehicles. Instead, Ford will have to absorb the increased cost and this will unfairly burden Ford's recovery efforts to achieve sustained profitability, which could lead to a change in its business plan.

5. THE DISCLOSURE FAILS TO DISCLOSE KEY BASIS FOR ITS FINDINGS TO INTERESTED PARTIES

The Disclosure relies on data and evidence insufficiently disclosed in the Non-Confidential ("NC") file of the investigation. To this end, Ford has filed a series of complaints with the Hearing Officer aimed to:

- request meaningful non-confidential versions of the complainant's submissions of 28 July and of 2 August;
- determine if DG Trade, with a note to the file, can subrogate on the complainant's obligation to provide a meaningful non-confidential version of the information submitted as required by Article 19 of the basic Anti-dumping Regulation;
- access the information provided by the complainants on 28 July with a view to determining (i) if its content cannot be summarized in a meaningful non-confidential version and (ii) whether the assessment of the evidence made by the Services in the note to the file of 25 August is appropriate; and
- disclose further information on market segmentation which cannot be deemed to be confidential.

The Table below summarizes the data which Ford, despite the intervention of the Hearing Officer, deems insufficiently disclosed and the adverse consequences of the lack of key meaningful information.

Issue	Data missing	Note
Segment-specific data (i.e. separately for OEM and AM segments)	Segment-specific tables on UI sales volumes, PRC average import prices, UI sales prices, third country imports, UI production and UI cost of production per unit.	In the absence of these tables interested parties are deprived of the possibility to convincingly demonstrate that the injury in the OEM segment was caused by factors other than de minimis imports from China
Alleged price depression in the OEM segment	Evidence of car-makers using Chinese tender quotations to depress UI prices.	Given that Chinese OEM imports market share is only 3%, the injury in the OEM

Hogan Lovells

AD541

- 14 -

Ford Europe

		segment was established based on the allegation of price depression via Chinese tender quotations. At a hearing before the Commission, representatives of a number of car-makers, in answer to a direct question from the Commission staff, told the Commission that low Chinese price quotations had not been used to force EU wheel producers to quote lower prices.
Alleged interchangeability of AM and OEM wheels	Full set of evidence and accompanying explanation of car-makers installing AM wheels on new vehicles.	OEM and AM wheels are not interchangeable. Car-makers do not install AM wheels on new vehicles they produce.

...

Ford requests the termination of the investigation without the imposition of anti-dumping measures, or, in the alternative, request the exclusion of OEM wheels for industrial assembly on the basis of no injury.