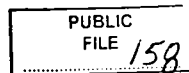




**Australian Government**  
**Australian Customs and**  
**Border Protection Service**



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## **INTERNATIONAL TRADE REMEDIES**

### **ISSUES PAPER: 2012/181**

**Aluminium Road Wheels**  
**From the People's Republic of China**

**Issue: The Goods and Like Goods**

**International Trade Remedies Case No. 181**

**March 2012**

## PURPOSE

Issues papers afford interested parties the opportunity to comment on issues raised in an investigation. By providing issues papers, the Australian Customs and Border Protection Service (Customs and Border Protection) aims to consider significant issues in detail before publishing the statement of essential facts (SEF).

The purpose of this paper is to outline Customs and Border Protection's preliminary views in regards to the goods and like goods to the goods the subject of the application.

Customs and Border Protection will take into account all interested parties' comments, whether provided previously, obtained in the course of the investigation or made in response to this paper that are received no later than 10 April 2012. Interested parties must attach relevant evidence to support the views expressed in their submission.

A non-confidential version of submissions must be provided.

Submissions can be provided:

By mail to:

Director Operations 2  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
CANBERRA CITY ACT 2601

Or by email to:

[tmops2@customs.gov.au](mailto:tmops2@customs.gov.au)

Or by fax to (02) 62756990.

## Background

Customs and Border Protection is currently investigating the alleged dumping of aluminium road wheels exported to Australia from the People's Republic of China (China).

The initiating notice (ACDN No. 2011/54) defined the goods the subject of the application (the goods) as:

*"...aluminium road wheels for passenger motor vehicles, including wheels used for caravans and trailers, in diameters ranging from 13 inches to 22 inches.*

For clarification, the goods include finished or semi-finished ARWs whether unpainted, painted, chrome plated, forged or with tyres and exclude aluminium wheels for go-carts and All-Terrain Vehicles.

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The goods are classified to tariff sub-heading 8708.70.91 (statistical code 78) in Schedule 3 of the Customs Tariff Act 1995."

The goods therefore include aluminium road wheels (ARWs) for passenger motor vehicles, caravans and trailers in diameters ranging from 13 inches to 22 inches.

The definition includes finished and semi-finished ARWs and specifically excludes aluminium wheels for go-carts and All-Terrain Vehicles (ATVs).

During the investigation to date, a number of submissions have been received on the issue of the goods. These submissions may be found on the electronic public record for case no. 181.

### Issue 1: Definition of the goods

#### Background

The initiating notice (ACDN No. 2011/54) defined the goods the subject of the application (the goods) as:

*"...aluminium road wheels for passenger motor vehicles, including wheels used for caravans and trailers, in diameters ranging from 13 inches to 22 inches.*

*For clarification, the goods include finished or semi-finished ARWs whether unpainted, painted, chrome plated, forged or with tyres and exclude aluminium wheels for go-carts and All-Terrain Vehicles.*

*The goods are classified to tariff sub-heading 8708.70.91 (statistical code 78) in Schedule 3 of the Customs Tariff Act 1995."*

The definition of the goods therefore includes:

- aluminium road wheels (ARWs) for passenger motor vehicles, caravans and trailers in diameters ranging from 13 inches to 22 inches; and
- finished and semi-finished ARWs.

The definition of the goods specifically excludes aluminium wheels for go-carts and All-Terrain Vehicles (ATVs).

During the course of the investigation it has become apparent that there are two possible tariff classifications for ARWs for motor vehicles:

- tariff sub-heading **8708.70.91/ 78** which covers road wheels 'of a kind used as components in passenger motor vehicles'; and
- tariff sub-heading **8708.70.99/ 80** which covers road wheels other than of a kind used as components in passenger motor vehicles.

Chapter 87 Additional Note 5 of the Tariff Act defines passenger motor vehicles, for the purposes of Chapter 87, as

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"motor cars and other motor vehicles designed for the carriage of 2 or more persons other than ambulances, hearses, police vans, amphibious vehicles or off-road vehicles."

Chapter 87 Additional Note 4 of the Tariff Act defines off-road vehicles as four wheel drive vehicles that have at least 4 of 6 specified technical characteristics.

ARWs for trailers and caravans are classified to **8716.90.00/ 39**, if the sole or principal use of the wheel is for use in trailers or caravans<sup>1</sup>, which covers parts of trailers and semi-trailers and other vehicles not mechanically propelled.

Some 'off-road' camper trailer wheels, where it can be demonstrated they cannot be used in passenger motor vehicles, are classified to Tariff sub-heading **8708.70.99/ 80**.

Unfinished wheels e.g. 'blanks', where the goods are readily recognisable as unfinished wheels and have the essential character of wheels i.e. would have no practical use other than as wheels are classified to sub-heading **8708.70.91/ 78** or **8708.70.99/ 80**<sup>2</sup>.

**Submissions**

Interested parties have submitted that the definition of the goods does not include aluminium road wheels for 4WD vehicles<sup>3</sup> and caravans<sup>4</sup> classified to a tariff sub-heading other than 8708.70.91/ 78.

**Preliminary view**

Customs and Border Protection considers that the words 'passenger motor vehicles' in the initiation notice for the investigation are designed to be read according to their common or generic meaning, that is, vehicles that are designed to carry passengers. Customs and Border Protection acknowledges that the Tariff Act contains specific definitions of passenger motor vehicles that exclude 4WD vehicles that meet certain characteristics. This definition, however, is not the one relied on for the purpose of the investigation.

It is Customs and Border Protection's preliminary view that the definition of the goods includes:

- ARWs for passenger motor vehicles, trailers and caravans classified to tariff sub-heading 8708.70.91/ 78;

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<sup>1</sup> Subject to Section XVII Note 3

<sup>2</sup> Subject to general interpretative rule 2(a)

<sup>3</sup> Hunt & Hunt lawyers on 22 December 2011

<sup>4</sup> PWC on 21 December 2011

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- ARWs for 4WD vehicles (other than all terrain vehicles) and trailers classified to tariff sub-heading 8708.70.99/ 80; and
- ARWs for trailers and caravans classified to 8716.90.00/ 39.

The only exclusions, as specified in the notice, are ARWs for go-karts or All Terrain Vehicles (ATVs). Oxford dictionary defines ATVs as

"a small open motor vehicle with one seat and three or more wheels fitted with large tyres, designed for use on rough ground."

### Issue 2: Like goods

#### Background

Like goods to the goods the subject of the application are ARWs produced by the Australian industry and sold into the Australian market and ARWs produced by Chinese manufacturers and sold into the Chinese domestic market.

Customs and Border Protection regards like goods as identical goods (goods that are identical in physical characteristics) and in the absence of identical goods, goods closely resemble the goods. Customs and Border Protection assesses whether goods closely resemble the goods against the following criteria:

- (1) Physical likeness;
- (2) Commercial likeness;
- (3) Functional likeness;
- (4) Production likeness; and
- (5) Other considerations e.g. marketing.

ARWs are sold in Australia via two distribution channels or market segments: the Original Equipment Manufacturer (OEM) segment and the Aftermarket (AM) segment.

#### Submissions

An interested party submitted that OEM and AM ARWs should be treated as two separate goods<sup>5</sup> or as distinct market sectors that must be distinguished in injury/causation analysis<sup>6</sup>.

It was claimed that the OEM and AM segments are not just different distribution channels i.e. there is complete market segmentation between the supply to an OEM and the AM segments. Therefore OEM and AM wheels should be treated as two separate goods as per the Customs and Border Protection decision in Report No. 41:

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<sup>5</sup> Hunt & Hunt lawyers on 20 February 2012

<sup>6</sup> Roger D Simpson & Assoc Pty Ltd on 19 December 2011

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Pineapple Juice Concentrate from Thailand and Pineapple Fruit from Indonesia and Thailand.

*'Customs and Border Protection is of the view that fruit FSI (industrial) and fruit consumer are sold into two distinct market segments of the market and therefore are not directly competitive and only marginally substitutable. Customs and Border Protection concluded that pineapple fruit FSI and pineapple fruit consumer are two separate goods.'*

It was claimed that the OEM and AM segments operate as two distinct market segments for the following reasons:

(1) Physical differences;

- OEM wheels are designed and developed to meet the vehicle manufacturer's strict specifications and requirements including material content (i.e. limits on the use of recycled or scrap metal), performance and durability of the wheel. The OEM wheel has higher overall quality to an AM wheel because of Australian standards and specifications an OEM wheel must meet. OEM wheels are also designed, produced and tuned with the tyre to enhance the driving characteristics of a specific vehicle model;
- AM wheels on the other hand are designed independently by wheel manufacturers for all makes and models of vehicles that use that wheel size and fitment;

(2) Commercial differences;

- The physical, technical and quality differences between OEM and AM wheels means that these products are not interchangeable. Vehicle manufacturers will never use an AM wheel for industrial assembly due to OEM manufacturers setting unique design criteria for wheels for a specific vehicle model derived from the OEM's design concept for that vehicle model and from the OEM's manufacturing requirements;
- An OEM wheel carries the benefit of the warranty which a vehicle manufacturer provides for the entire vehicle. This is not true for AM wheels. While the AM wheel may carry some sort of warranty for that part, the warranty does not extend to any sort of guarantee as to how the AM part will perform with the entire vehicle;
- The AM market is more concerned about price and style. Whereas the OEM market is concerned with quality and technical specifications, first with price a secondary consideration;
- A wheel in the AM market is not directly competitive with a wheel sold into the OEM market. A consumer may go to the aftermarket after purchasing a new car, however at the time the vehicle manufacturer makes the decision to purchase a wheel for a vehicle an AM product is not considered as an alternative to the OEM wheel designed for that model of vehicle;
- the OEM sector is characterised by no advertising or promotion; normally high volume supply of each part number for the model life of the vehicle; bulk

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packaging to OEM specification; wheels normally dispatched directly to OEM with little or no stockholding; and Credit control cost is minimal – the terms are agreed by contract. The AM sector on the other hand is characterised by a network of warehouses, state managers and sales and marketing staff in strategic locations resulting in significant operating costs; large number of customers; significant packaging costs, substantial credit control cost; significant advertising and promotion costs; and regular new design releases.

(3) Production differences

- the OEM sector is characterised by increased engineering and technical support; use of the low pressure die casting (LPDC) method<sup>7</sup> which is suitable for high volume production runs of each separate wheel; stringent quality control and dedicated quality assurance staff to maintain records to specified compliance level; and tooling is owned by the OEM;
- the AM sector, on the other hand, is characterised by regular tooling investment to match new design releases in a multitude of sizes for many different vehicle fitments; and use of the gravity casting (GDC) method because of low volume production runs from each tool and cost savings. Typically the GDC method results in an excess of waste material which is able to be scrapped and then recycled for use in future manufacturing. The AM market will typically allow a ratio of new material to recycled material of up to 60:40 whereas the OEM market will typically require in excess of 90% new material and so the more accurate LPDC method is preferred.

Counter-claims have been made by Arrowcrest<sup>8</sup> that OEM and AM ARWs are like goods and therefore separate investigations should not be conducted for the following reasons:

- ARWs produced by Arrowcrest for the aftermarket are manufactured with identical plant, process controls and quality controls as OEM wheels.
  - Arrowcrest manufactures its ARWs to standards that meet or exceed the relevant GMH specifications;
  - Arrowcrest supplies ARWs (including 20 inch wheels) to HSV and supplies Toyota with all of its ARW requirements. Arrowcrest has in the past also supplied ARWs to Holden, Ford and Mitsubishi;
- OEM and AM ARWs are fully interchangeable on the same vehicle and many car manufacturers, including Ford, sell AM accessory wheels through their dealerships whilst retaining full new car warranties;

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<sup>7</sup> ARWs can be manufactured using a number of different methods:

- Low Pressure Die Casting;
- Gravity die casting;
- Flow forming;
- Forging; and
- Two and three part wheels.

<sup>8</sup> Arrowcrest Group on 21 February 2012

- OEM and AM ARWs, intended for fitment to the same make and model of vehicle, possess all of the essential characteristics to render them completely interchangeable. It is the responsibility of the AM manufacturer to ensure that strength is also sufficient for the target application;
- AM ARWs compete at new car dealerships against OEM ARWs that come factory fitted. Customers have the option to purchase new cars with OEM ARWs or to retrofit AM ARWs;
- AM and OEM wheels are functionally alike in that both products can be fitted to cars and are both generally capable of matching the life expectancy of the vehicle to which they are attached;
- The AM would not exist if the AM and OEM wheels were not functionally alike;
- OEM and AM ARWs are produced from the same AC601/A356.2 aluminium grade with nominal 92.47% purity of aluminium. This level of purity is required to produce ARWs that will correctly attain the necessary T6 temper for passenger, 4wd, caravan and trailer vehicle applications globally;
- While vehicle manufacturers might provide their own specifications to wheel manufacturers the processes for development and manufacture of ARWs are globally generic. The physical and chemical properties for OEM and AM ARWs must be essentially the same or else there would not be an Australian aftermarket;
- Many AM ARWs are fitted to performance enhanced vehicles and typically meet and can often exceed factory OEM specifications.

**Preliminary view**

It is Customs and Border Protection's preliminary view that the difference between OEM and AM ARWs relates to the different channels of distribution. The manufacture and sale of OEM wheels involves the car industry in the process of developing and designing the wheel whereas the development and design of AM wheels is principally controlled by the wheel manufacturer. OEM and AM wheels share similar physical and technical characteristics and are interchangeable. There is also evidence that AM ARWs are being placed on new passenger motor vehicles by motor vehicle dealers before customers take delivery without affecting the new car warranty.

It is Customs and Border Protection's preliminary view that the Australian ARW market will be treated as a single market i.e. OEM and AM wheels will not be treated as two separate goods.

It is also Customs and Border Protection's preliminary view that OEM and AM are separate segments of the Australian ARW market which will be analysed separately in injury/causation analysis.



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**Issue 3: Specific exclusions from the definition of the goods****Submissions**

Interested parties have submitted that certain ARWs are not manufactured in Australia and should therefore be excluded from the definition of the goods:

- ARWs with a diameter of 20 and 22 inches<sup>9</sup>;
- Wheels specifically for use with caravans<sup>10</sup>;
- ARWs for use with 4WD fitments<sup>11</sup>;
- ARWs stamped with "trailer use only" are exempt from duty under a TCO as not being manufactured in Australia<sup>12</sup>;
- Blank ARWs with the stud pattern, centre bore and/or offset unfinished<sup>13</sup>; and
- Cast flow form and forged ARWs<sup>14</sup>.

Arrowcrest (the applicant) manufactures ARWs, using the low pressure die casting (LPDC) method<sup>15</sup>, for passenger motor vehicles and trailer vehicles in diameters ranging from 13 inches to 20 inches in silver painted, hyper silver and bright machined face finishes.

Arrowcrest does not produce 22 inch ARWs but claims that as 22 inch wheels are legally substitutable for 20 inch wheels, the 20 inch wheels it produces are like goods to the imported 22 inch wheels.

**Preliminary view**

It is Customs and Border Protection's preliminary view that:

- 20 and 22 inch diameter wheels were included in the definition of the goods in the initiating notice. Customs and Border Protection will take into account the fact that Arrowcrest does not manufacture 22 inch diameter ARWs in the context of injury/ causation analysis if necessary;

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<sup>9</sup> Hunt & Hunt on 19 December 2011

<sup>10</sup> PWC on 21 December 2011

<sup>11</sup> Hunt & Hunt on 22 December 2011

<sup>12</sup> Hunt & Hunt on 22 December 2011

<sup>13</sup> Hunt & Hunt lawyers on 22 December 2011

<sup>14</sup> HSV visit report

<sup>15</sup> Arrowcrest manufactured a small volume of ARWs using the gravity feed method during the investigation period. Arrowcrest closed the gravity casting line in September 2011

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- ARWs specifically for use with trailers or caravans are included. Arrowcrest manufactures ARWs which may be used by the caravan chassis and trailer manufacturing industry if the specific requirements of the industry are provided to Arrowcrest;
- ARWs for use with 4WD fitments are included. Arrowcrest manufactures ARWs for 4WD vehicles;
- ARWs stamped with "trailer use only" and exempt from duty under a TCO are included. The Minister may however decide to exempt ARWs subject to a TCO from dumping and/ or countervailing duties if the investigations result in the imposition of measures;
- Blank ARWs which may be used on passenger motor vehicles are included. Blank ARWs for use on passenger motor vehicles can be drilled and machined to fit a variety of common as well as uncommon fitments; and
- Cast flow form and forged ARWs are included. ARWs can be manufactured using a number of different methods including cast flow forming and forging. The impact of ARWs manufactured using cast flow forming and forging methods on the Australian industry will be examined in injury/ causation analysis if necessary.