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10 April 2012

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

Our ref: ATH
Matter no: 9548593

Mr David Turner
Manager
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

By email: tmops2@customs.gov.au
david.turner@customs.gov.au

Dear Director and David,

**Aluminium Road Wheels exported from the People's Republic of China
Initiation of an investigation into alleged dumping and subsidisation
Submission by GM Holden Limited on Issues Paper
Non Confidential Version**

We refer to our previous correspondence and discussions regarding this matter.

We now refer to the Issues Paper ("Issues Paper") 2012/181 issued by the Australian Customs and Border Protection Service ("Customs") entitled "The Goods and Like Goods".

Our client has now instructed us to raise the following issues adapting the headings and numbering as set out in the Issues Paper. For these purposes, unless otherwise defined, we have adapted defined terms as set out in the Issues Paper.

1. Issue 1 – Definition of the Goods

Our client makes no comment on Customs' preliminary view other than to object to any use of similar tariff classifications as the basis for concluding that goods are "like goods".

2. Issue 2 – Like Goods

Our client has instructed us to make the following comments regarding the comments in the Issues Paper.

- (a) Our client remains of the view expressed in its earlier submissions and the submissions by others summarised in paragraphs (1), (2) and (3) under the heading "Submissions".

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INTERLAW.

- (b) Our client disagrees with the reasons cited by Arrowcrest on pages 7 and 8 of the Issues Paper as to the reasons why OEM and AM ARWs are Like Goods.

For these purposes, our client submits further as follows.

- (1) To the knowledge of our client, Arrowcrest does not produce ARW to standards meeting or exceeding the specifications of our client. Arrowcrest has not manufactured such items for our client for a significant period of time and, as a result, it has no basis to assert that it manufactures its ARWs to standards that meet or exceed the relevant GMH specifications.
- (2) The last production by Arrowcrest for our client was well before the period the subject of the Investigation by Customs.
- (3) The Issues Paper (and other submissions by Arrowcrest) refers to the supply of ARW for the OEM to HSV. However, HSV is not an OEM. HSV takes vehicles produced by our client as an OEM and then undertakes modifications to those vehicles. That does not render HSV as an OEM.
- (4) We are instructed that our client's dealers only sell ARW for the OEM as part of new vehicles. Our client's preference is that recommended OEM ARW are used to maintain the intended integrity and performance of the vehicles. Accordingly, if any such AM ARW are to be sold, the dealers are first obliged to advise customers that using AM ARW would void any new car or manufacturers warranty. Failure to observe this obligation would constitute a breach of the agreement between our client and its dealer.
- (5) ARW produced for the OEM and AM do not possess all essential characteristics to render them completely interchangeable.
- (6) ARW produced for the AM do not compete with OEM ARW that are factory fitted. Any "retro fit" of AM ARWs to vehicles at new car dealerships will void any new car warranty and our client's dealers must explain this to customers. The comment by Arrowcrest that "the AM would not exist if the AM and OEM wheels were not functioning" disregards the essential issues in this case. Our client (and others) provide specific and fundamentally different ARW for the OEM market. In the view of our client, the AM ARW exists for consumers who wish to replace the ARW produced for the OEM or those who buy vehicles on a second-hand basis and require replacement ARW. That is entirely separate to the market and characteristics required for the OEM AM.
- (7) The nature of the aluminium grade which may be included in the ARW for the AM and OEM is not the sole determination of the similarity of the ARW for the OEM and AM.
- (8) The suggestion that the processes for development and manufacture of ARWs are "globally generic" does not appear to be capable of being supported. Arrowcrest would not be aware of the details of the processes for development and manufacture of ARWs in all

instances. The suggestion that "physical and chemical properties for OEM and AM ARWs must be essentially the same" ignores the fact of fundamental and important differences between the properties for OEM and AM ARWs. The existence of an Australian AM can be attributed to reasons other than those suggested by Arrowcrest.

- (9) Given that Arrowcrest has not produced ARWs for Ford and our client for some time, Arrowcrest is not in a position to suggest that AM ARWs meet and can often exceed factory OEM specifications for Ford and our client. Further, the fact that AM ARWs are fitted to "performance enhanced vehicles" is irrelevant given that "performance enhanced vehicles" are not produced by our client.

Accordingly, our client does not agree with the preliminary view of Customs that the Australian ARW market should be treated as a single market and our client remains of the view that OEM and AM ARWs should be treated as two separate goods.

However, our client does agree with the preliminary view of Customs that OEM and AM are separate segments of the Australian ARW market which should be analysed separately in its injury/causation analysis. This approach is consistent with the view that OEM and AM ARW should be treated as two separate goods.

3. **Issue 3 – Specific Exclusions from the definition of the Goods**

Our client disagrees with the preliminary view of Customs that 20 and 22 inch diameter wheels are separate items. Our client does not agree that 22 inch wheels are legally substitutable for 20 inch wheels or that the 20 inch wheels which are produced by Arrowcrest are "Like Goods" to the imported 22 inch wheels. The diameter of the wheels operate to entirely separate markets.

We look forward to discussing these matters with you.

Yours faithfully
Hunt & Hunt



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