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13 April 2012

By email:

Ms Joanne Reid
Director, Operations 2
Australian Customs & Border Protection
Service
Customs House
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Dear Ms Reid

Non-Confidential

Anti-dumping and subsidy investigation - aluminium road wheels exported from the People's Republic of China

We act for CITIC Dicastal and its related bodies corporate in relation to this investigation and make the following submission on their behalf.

One issues amongst others, that has arisen in this investigation and raised in the Draft CITIC Dicastal Exporter Visit Report (**Visit Report**), that needs to be addressed is whether a comparison between export sales with domestic sales in China, a comparison of export sales with sales by the Australian industry and the relevant analysis should be on 'pieces', as opposed to a per kilogram weight basis.

The visit team has recommended in its Visit Report that the assessment be done on a per kilogram weight basis. However, we understand that the case management team has instructed the visit team to include both an assessment by kilograms and an assessment by pieces. Despite raising this issue at the commencement of this investigation and having been given an undertaking to provide us with an explanation as to why Customs required sales data based on 'pieces', to date we have not received that explanation.

We submit that, for the reasons set out below, basing a comparison of export sales with domestic sales in China, a comparison of export sales with sales by the Australian industry and conducting relevant analysis on 'pieces', as opposed to a per kilogram weight basis, is neither practicable nor appropriate.

1. Why 'weight' per kilogram should be used and not 'pieces'

It is unclear to us how a proper and relevant analysis of data using 'pieces' could be made between:-

- export sales and domestic sales of a particular exporter; and
- export sales of several or all exporters and of sales by the Australian industry,

when, in regard to the OEM market in China and in Australia:

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- (a) each aluminium road wheel is for a particular model of motor vehicle;
- (b) each aluminium road wheel supplied to the OEM market is unique to the model of motor vehicle it has been designed for;
- (c) there is a wide variety of different designs of aluminium road wheels; and
- (d) a wide variety of wheel weights even amongst wheels with the same rim diameter, the weight being a key factor in the cost and pricing of the individual wheel models.

It follows that aluminium road wheels designed for motor vehicles in the China OEM market are different to those designed for motor vehicles in the Australian OEM market and, indeed, in both OEM markets aluminium wheels designed for a particular model of motor vehicle are unique to that model. That is, there are a considerable number of differences between each model of aluminium road wheel such as, for example, size, width, number of spokes, metal composition, finishes, weight, etc.

As pointed out to the Visit Team on several occasions during the on-site verification at the premises of CITIC Dicastal, an analysis by pieces is fundamentally flawed which can result only in a distorted and incorrect portrayal of the actual situation. The 'pieces' methodology has two fundamental defects which cannot be resolved by the use of this methodology.

First, it is very difficult to find an appropriate "like model" for the models sold to Australia or models manufactured by the Australian industry. A like-with-like comparison can not be done using the 'piece' method. To compare like-with-like using pieces, numerous and complex adjustments would need to be made to take account of all of the differences within and between aluminium road wheels sold in the OEM market in China and in the OEM market in Australia. It is not clear to us how such adjustments could be made and no explanation has been provided as to how they could be made to ensure a like-for-like comparison.

Secondly, an analysis on a 'pieces' basis cannot take into account the application of the productivity reduction required under the contract terms with the OEM car makers. The productivity reduction is not a discount or a rebate but a mandatory contract term with the OEM car makers requiring the wheel manufacturer to make cost reduction or saving from production improvements. It is not related to specific models, but a total amount that the wheel manufacturer is required to meet and spread across wheel models of the wheel manufacturer's choice. These cost/production savings are calculated on a per kilogram basis and not on a piece basis. The savings are passed on to the car makers by an appropriate reduction in the per kilogram pricing of the chosen models.

The 'pieces' methodology cannot address these two fundamental defects and any analysis or margin calculation using the 'pieces' methodology will distort the analysis/calculations to a point where the result will bear no resemblance to the actual facts of the price relationship between domestic sales and export sales.

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Any attempt to analyse and compare aluminium road wheels by pieces after attempting to make numerous adjustments will result in an unacceptable distortion of the prices that would prevent a reasonable comparison between domestic and export sales and sales between exporters and sales by the Australian industry.

The only way to undertake meaningful model matching and analysis is to calculate a single weighted average cost per kilogram, a single weighted average domestic selling price per kilogram and a single export selling price per kilogram.

Failure to calculate a dumping margin and do the appropriate analysis on a per kilogram basis is a total disregard for how CITIC Dicastal conducts its business, maintains its records and how the verification of its data was undertaken by the visit team.

In relation to why 'weight' should be used in preference to 'pieces', this is because the determination of price is essentially the aluminium market price, which is calculated by weight, plus manufacturing costs, overheads and profit, which also are allocated on a weight basis.

CITIC Dicastal uses [REDACTED] and recording its cost and for pricing its aluminum road wheels. In the OEM wheel industry, the formula used to determine the price quoted to all motor vehicle manufacturers is the same. That is, the aluminum market price per kilogram plus processing cost per kilogram plus SG&A and profit. As distinct to the Aftermarket, most OEM wheels require a 'normal finish', that is, fully painted (normally silver color) or painted with the surface machined. The price of an OEM wheel is directly related to the aluminum cost and related manufacturing cost with both the aluminum cost and the manufacturing costs linked to the weight per kilogram of the wheel.

For the normal finish OEM wheel, fully painted or fully painted and surfaced machined, the wheel cost equals the aluminum market price which is 100% related to the weight of the wheel, plus processing cost plus SG&A and profit. The main processing cost includes smelting, casting, heat treatment, machining and painting. Of these processing costs:

- smelting is 100% related to weight of the wheel;
- casting is 100% related to the weight of the wheel;
- heat treatment is almost 100% related to the weight of the wheel;
- machining is 100% related to the area machined, which is directly proportional to the weight of the wheel; and
- painting is 100% related to the front area, which is directly proportional to the weight of the wheel.

Refer to **Confidential Attachment 1 "comparison between weight and area"** which confirms the direct proportional relationship between machining and painting and the weight of the wheel.

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The visit team's recommendation that the assessment be done on a per kilogram basis is supported by CITIC Dicastal as the only fair and logical way to undertake any assessment in this investigation. As stated on many occasions and as with the data provided by CITIC Dicastal in its Exporter Questionnaire response and fully verified by the visit team during the on-site verification at CITIC Dicastal, all of its cost data and pricing methodology is based on a per kilogram weight basis.

A proper and relevant analysis of data using pieces can not be made between like for like export sales and domestic sales and of sales by the Australian industry, when, in regards to the wheels produced by CITIC Dicastal for the OEM market:

- each wheel for a particular model of motor vehicle is unique to that model of motor vehicle;
- wheels sold in the domestic market are not the same as wheels sold in the export market;
- wheels sold by one exporter are not the same as wheels sold by other exporters; and
- evidence has been presented and verified that the cost and pricing of such wheels are, in the normal course of business, recorded and determined on a per kilogram basis.

Further, the artificial grouping by rim size and finishes distorts the final outcome of any assessment. The rim size is not directly linked to the weight of the wheel and nor are the finishes directly linked to the weight per rim size. Also, the rim size is not the determining factor in the processing costs of a wheel. The per kilogram weight is the most important factor in determining the cost and price of an OEM wheel. The grouping of the wheels by rim size and finishes creates a misleading and distorted result. The rim diameter and finish are not the determining factors in the weight of the wheel, the processing costs or the price of the wheel. For example, wheel A and wheel B may be of the same rim size but have a different rim width, a different number of spokes, a different number of bolt holes, etc, and, therefore, different weights. A wheel with 10 spokes may have more weight than 5 spokes and will have a greater machined surface area and painted area.

This is a fact recognized by the visit team where at point 5.4, page 14 of the Visit Report it is stated state:

"Furthermore, the shape of the wheel also varied from model to model and different designs resulted in different weights for the same rim size."

The rim size and weights are compared in a table at page 14 of the Visit Report.

Again at point 11.1, page 53 of the Visit Report, it is stated that:

"We note that there are significant weight differences between wheels of the same rim size. Therefore, we are of the view that a normal value should be determined on the basis of kilograms by finish, regardless of rim size and this has been done below."

Further, a wheel sold domestically compared to a wheel of the same rim size sold for export to Australia will be of a different weight and, therefore, the costs and prices will be

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different. This is acknowledged by the Visit Team at point 11.1 on page 53 of the Visit Report:

"We compared the weighted average weight of wheels (by kilogram) of different sizes and finishes sold on the domestic market and exported to Australia, as shown in the table below:"

The table shows, for example, that a machined 17 inch rim wheel sold domestically had a weighted average weight of [REDACTED] whereas an exported machined 17 inch rim wheel had a weighted average weight [REDACTED] higher at [REDACTED] and a painted 18 inch rim wheel sold domestically had a weighted average weight of [REDACTED] whereas an exported painted 18 inch rim wheel had a weighted average weight [REDACTED] lower at [REDACTED].

These distortions are further exaggerated if 'pieces' are used as the basis for assessment.

As stated above, to do the assessment on a 'piece' basis or rim size plus finish will only result in an incorrect and unfair comparison as there are many factors that lead to wheels being different weights even if they are of the same rim size. For example:-

- 1) different rim widths, e.g. 18x7, 18x7.5, 18x8, 18x8.5, 18x9.5, etc.
- 2) different number of spokes;
- 3) thickness of rim, hub and spokes;
- 4) shape of the wheel (rim, hub and spokes) and brake clearance;
- 5) different number of stud holes; and
- 6) mechanical properties (hardness, elongation and strength).

Refer to Confidential Attachment 2 "Sample of different wheels with same rim diameter"

The same incorrect and unfair comparison could apply when comparing painted to painted and machined to machined as the surface area may be different due to the above factors, therefore, the weight is different.

No matter what kind of grouping is done, it will lead to a misleading result. Grouping is not necessary or relevant. As verified by the visit team there are many determining factors involved in the final weight, cost and price of a wheel. The per kilogram weight is the most important factor in determining the cost and price of an OEM wheel.

By using a 'price per kilogram', the many determining factors relating to the weight, cost and price of a wheel are fairly accounted for, the export sales are readily comparable with domestic sales and export sales are readily comparable with the Australian industry's sales without the need for extensive and complex adjustments to try to ensure a comparison of like-with-like.

In any event, regulation 180(2) of the Customs Regulations stipulates that if an exporter keeps records in relation to the goods in question and those records:-

- (i) are in accordance with generally accepted accounting principles in the country of export; and
- (ii) reasonably reflect the costs associated with the production, or manufacture, of those goods,

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the cost of those goods must be calculated using the information in those records.

Clearly here the records of our client are in accordance with generally accepted accounting principles in the country of export and reasonably reflect the costs associated with the production, or manufacture, of those goods. Accordingly, the calculation relating to the aluminium road wheels produced by our client must be calculated on a per kilogram basis.

To do otherwise would not only be inconsistent with, and a breach of, regulation 180(2) of the Customs Regulations but also of article 2.2.1.1 of the WTO 'Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994' (Anti-Dumping Agreement).

If you believe that Australian Customs and Border Protection Service is entitled to assess our client's data on a different basis, please provide us with the reasons for that belief.

Finally, as you would be aware, Article 2.4 of the Anti-Dumping Agreement provides as follows:-

- " *A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. ...* "

This provision has been considered by the WTO Panel and by the Appellate Body: see, for example, 'Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey' (WT/DS211/R, 8 August 2002), 'United States – Final Dumping Measures on Stainless Steel from Mexico' (WT/DS344/R, 20 December 2007) and 'United States – Anti-Dumping measures on Certain Hot-Rolled Steel Products from Japan' (WT/DS184/AB/R, 24 July 2001).

Specifically, those bodies of the WTO have determined that Article 2.4 of the Anti-Dumping Agreement requires that:-

- there be a comparison between export prices and normal value of the goods under investigation and that comparison be "fair";
- the second sentence of the article elaborates on considerations pertaining to the "fair comparison" (e.g. level of trade, etc.);
- the third sentence of the article deals with allowances for "differences" that affect price comparability and provides an illustrative but non-exhaustive list of such differences;
- the article imposes on the investigating authority an obligation to make due allowance, in each case on its merits, for differences that affect price comparability;
- at a minimum the investigating authority has to evaluate identified differences in physical characteristics, for example, to see whether an adjustment is required to maintain price comparability and to ensure a "fair comparison"; and
- the investigating authority cannot exclude any differences affecting price comparability from being the object of an adjustment to ensure a "fair comparison".

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We note that our client has identified, and Customs has verified, that the weight of a wheel affects its price and, indeed, is determinative of its price. We also note that in the dumping margin calculation using the "pieces" methodology no adjustments have been made to ensure that the comparison is between wheels of equal weight. Absent such adjustments, the comparison between export prices and normal value based on a "pieces" methodology does not involve a "fair comparison" and, consequently, is in breach of Article 2.4 of the Anti-Dumping Agreement. If this methodology were to be used, then such adjustments must be made in accordance with sub-section 269TAC(8) of the *Customs Act 1901*.

For the reasons set out earlier above, we submit that the appropriate methodology for undertaking a "fair comparison" between export prices and normal value is on a price per kilogram basis as this is the methodology that is:-

- applied by CITIC Dicastal to costing the aluminium input and related production cost in the manufacture of its aluminium road wheels;
- applied by CITIC Dicastal to determine the price of its aluminium road wheels;
- part of CITIC Dicastal's historical and normal accounting records and practice; and
- the industry standard in the OEM market.

We are at a loss as to why the case management team has instructed the visit team to include in the Visit Report calculations based on "pieces" when such a methodology is contrary to all evidence and industry practice in the OEM market. Calculations based on "pieces" are not relevant to a proper analysis of the data of our client or the assessment of alleged injury to the Australian industry.

While we have no objection to the Visit Report containing a discussion on calculating dumping margins on a weight versus piece basis and why the weight basis is recommended by the visit team, the calculation of a dumping margin on a piece basis should be removed from the Visit Report as it is not only not recommended but also, in the absence of adjustments to account for differences in weight affecting price, the outcome of that calculation is inaccurate and misleading.

Please let us know if you have any queries.

Yours faithfully

Corrs Chambers Westgarth

Andrew Percival
Special Counsel

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Confidential Attachment 1

"Comparison between weight and area"

[Confidential chart depicting the direct proportional relationship between machining and painting and the weight of the wheel.]

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Confidential Attachment 2

"Sample of different wheels with same rim diameter"

[Confidential table showing wheels of the same rim diameter but with different widths, spoke configurations, etc, and establishes that wheels of the same rim diameter can have different weights.]