



ARROWCREST
GROUP

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18 April 2012

Ms. Joanne Reid
Director, Operations 2
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Joanne,

Reference : Arrowcrest response to Hunt & Hunt Lawyers submission on behalf of GM-Holden dated 10 April 2012.

I refer to the letter from Hunt & Hunt Lawyers dated 10 April 2012.

Arrowcrest submits that assertions made by Hunt&Hunt are incorrect, as follows.

2. Issue 2 – Like Goods.

Arrowcrest notes that contrary submissions have been made by or on behalf of interested parties claiming that OEM and AM ARWs are not like goods.

For example, users of ARWs from China, such as GM-Holden and Ford Australia, suggest that OEM and AM ARWs are not like goods, whereas at least one Chinese manufacturing exporter, Ningbo Pilotdoer, has affirmed in their visit report (in support of Arrowcrest's position) that OEM and AM ARWs are indeed like goods.¹

In support of its position and in consideration of the time remaining until release of the Statement of Essential Facts (SEF), (due on 27 April 2012), Arrowcrest submits the following succinct like goods

¹ Australian Customs and Border Protection Service Visit Report, Ningbo Pilotdoer Wheel Co., Ltd., 11 April 2012, at page 10, paragraph 1.

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determination by the European Commission in relation to ARWs exported at dumped prices from China to the European Community in 2010² :

" (11) Following provisional measures some parties reiterated their arguments concerning differences between the Original Equipment Manufacturer ('OEM') and aftermarket ('AM') wheels, claiming that the two segments should be treated as two different products. Those parties claimed that OEM wheels should be excluded from the scope of the present investigation because the OEM and AM wheels are produced in accordance with different production processes, have different technical and physical characteristics, different channels of distribution and even different uses.

" (12) It is recalled that, as stated in recital (21) of the provisional Regulation, **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. OEM and AM wheels share the same physical and technical characteristics and are interchangeable** (*emphasis added*).

" (13) Some parties claimed that the ultimate consumer of OEM and AM wheels is different: for OEM it would be the car manufacturer and for AM it would be the car owner. Such an understanding is misguided. Although indeed the OEM wheels are sourced by car makers the use of both OEM and AM wheels is the same: they are fitted on cars and similar vehicles. Hence they have the same ultimate user – the driver (*emphasis added*).

" (14) The most common argument put forward was that the requirements for OEM wheels differ from those for AM wheels. According to that argument measures should not be imposed on OEM wheels because they are not interchangeable with AM wheels (they are purchased to meet the needs of different product markets and differ in terms of design, quality requirements, investment, production process, prices, and import penetration).

" (15) Another argument was that OEM wheels are produced according to car makers' specifications while AM wheels are designed and manufactured according to specifications chosen by the wheel manufacturer without taking into account the requirements of a specific car model. Although the AM wheels are not nominally produced according to the specifications provided by the car makers, they will be fitted on different car models. In fact, eventually, they will be fitted on exactly the same car models for which the OEM wheels had been originally produced. **The fact that specifications come from different sources cannot be considered as such a proof of differences in physical and technical characteristics** (*emphasis added*).

" (16) Additional information was received from the Union producers and car makers. It confirmed that the same production processes (casting, flow forming, rolling, forging, 2-3 parts wheels) are used for both AM and OEM wheels. They are both produced in all weights and diameters. Inserts, the use of certain types of finishing and heat treatment are applicable to OEM and AM wheels alike (*emphasis added*).

² The Council of the European Union Regulation (EU) No 964/2010 of 25 October 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium road wheels originating in the People's Republic of China. L282/1. Pages L282/2 and L282/3, paragraphs 11 to 23 inclusive.

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" (17) Some parties claimed that technical differences between the OEM and AM wheels were reflected in the fact that OEM wheels use primary aluminium whereas in the production of AM wheels aluminium would be often extracted from scrap. The Commission thoroughly analysed those comments. Also, additional information was received from car makers and EU producers. In particular those 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. Additional information collected in the investigation confirmed that the main criterion used to distinguish the type and quality of aluminium used is the percentage of silicon (7 % or 11 %). Both alloys are used for OEM and AM wheels alike (*Emphasis added*).

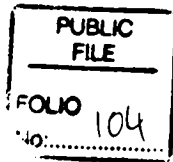
" (18) Differences in testing requirements are also not as such conclusive that OEM and AM wheels are two different products. It has to be noted that there is no general homogeneous set of requirements for aluminium wheels. Standards change according to producer and country. In the end it is not possible to establish a coherent dividing line between AM and OEM wheels on the basis of standards or requirements. According to the information on file, both OEM and AM wheels are subject to various tests (x-ray tests, chemical tests, leakage test, stress tests, anti-corrosion tests, wheel balancing tests, impact tests, radial endurance tests, bending tests, salt spray tests, CASS-tests (Copper-Accelerated Acetic Salt Spray test). Further, it appears that differences in testing as well as differences in standards are an indication of a dividing line between different Member States rather than between OEM and AM wheels as two different products (*emphasis added*).

" (19) According to the information on file, quality requirements imposed by the car industry lead to a highly standardized product which is easily interchangeable between all producers worldwide. In the AM segment quality requirements can also be laid down by the customers and those wheels also have to meet international and national requirements. Consequently, more stringent requirements or specifications may apply to certain wheels in both segments, meaning that some AM wheels might comply with more stringent standards than OEM wheels (*emphasis added*).

" (20) The fact that AM wheels are customarily not installed on new cars and that car makers use wheels produced by selected manufacturers under their brand name is a sourcing decision which has no bearing on the conclusion on the interchangeability of OEM and AM wheels. Physically an AM wheel, i.e. a wheel bearing a brand name of a wheel manufacturer, could be installed on a new car (*emphasis added*).

" (21) These conclusions are confirmed by the fact that car makers also source and sell aftermarket wheels. Some of these are sold under the car maker brand name (Original Equipment Supplier, OES), some under the brand name of the wheel manufacturer (*as in the Australian market*).

" (22) Many comments concerned the requirements imposed by car manufacturers on suppliers of wheels (e.g. evidence of a fully-functioning ISO certified quality management system, assessment of quality performance based on experience from previous projects and delivery and field quality, product specific and project specific risk assessment). However, aluminium road wheels share the same physical, technical and chemical characteristics and uses regardless of imposed requirements which are not pertinent to those characteristics (*emphasis added*).



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“(23) It should finally also be recalled that many wheel manufacturers produce for both segments and OEM and AM wheels are produced on the same production lines. Producers active in one segment can enter the other segment (emphasis added).”

For the reasons outlined in its application and summarized in the recent EU determination, Arrowcrest agrees with Customs that OEM and AM ARWs are like goods and that there is a single ARW market in Australia that comprises two segments – OEM and AM.

Arrowcrest responds to other claims made by Hunt&Hunt on behalf of GM-Holden, as follows.

(b) (1) Arrowcrest does not produce ARW to standards that meet or exceed the relevant GMH specifications.

Arrowcrest does in fact continue to manufacture ARWs for GM-Holden which it supplies to GM-Holden’s spare parts division for replacement parts on GM-Holden vehicles.³

Arrowcrest also continues to supply ARWs to Holden Special Vehicles (HSV) who draw their specifications for ARWs specifically from GM-Holden. (See also footnote 4 of this submission.)

Arrowcrest also supplies ARWs to Toyota Australia whose standards for ARWs exceed those of GM-Holden. (Arrowcrest clearly has the ARW specifications for both GM-Holden and Toyota, as it supplies both companies as well as the performance offshoot at HSV.)

Arrowcrest cannot therefore accept the contrary claims that [a] it does not produce ARWs to standards meeting or exceeding the specifications of GM-Holden, [b] that it has not manufactured such items for GM-Holden for a significant period of time, nor [c] that Arrowcrest has no basis to assert that it manufactures its ARWs to standards that meet or exceed the relevant GMH specifications. Arrowcrest’s recent supply to GM-Holden refutes these claims.

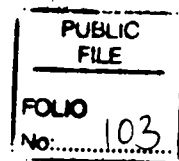
(b) (2) The last production by Arrowcrest for our client was well before the subject of the investigation by Customs.

As noted, Arrowcrest last produced ARWs for GM-Holden in September 2011. Arrowcrest has continued to supply GM-Holden with ARWs over the period 2003 to 2011 inclusive.

(b) (3) HSV is not an OEM.

This is not and has never been HSV’s position.

³ See attached email correspondence, delivery docket and invoice for ARWs supplied by Arrowcrest to GM-Holden on 5 September 2011, for example.



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HSV has always negotiated supply of ARWs on terms similar to GM-Holden, as if it were an OEM, and it has frequently reiterated that its terms and conditions reflect those of GM-Holden in particular.

Requests for quotation for supply of ARWs, together with the accompanying Statement of Requirements (SOR) for ARWs, have always cross-referenced to GM-Holden specifications and standards.⁴

HSV assembles its vehicles at its Clayton, Victoria factory in a manner not dissimilar to the way in which GM-Holden assembles its vehicles at its Elizabeth, South Australia facility. The fact that GM-Holden might do more in-house production than HSV does not render HSV anything other than an OEM.

Certainly from a sourcing perspective, HSV is an OEM.

(b) (4) Fitment of AM ARWs to Holden vehicles by GM-Holden dealers.

Arrowcrest is aware that Holden dealers do fit AM ARWs to Holden vehicles.

In one case that Arrowcrest is aware of, this involved a quantity of copy ARWs from China that prompted both GM-Holden and HSV to seek the services of Arrowcrest to test the copy wheels – which Arrowcrest duly did. Arrowcrest understands that a not insignificant settlement for damages was secured by GM-Holden/HSV as a result of these activities.

Arrowcrest cannot comment on what may or may not constitute a breach of an agreement between GM-Holden and any of its dealers.

(b) (5) OEM and AM ARWs do not possess all essential characteristics to render them completely interchangeable.

If this were the case then AM ARWs would not exist and Holden dealers could not fit them to GM-Holden vehicles.

As noted above, "the fact that specifications come from different sources cannot be considered as such as a proof of differences in physical and technical characteristics (and) although indeed the OEM wheels are sourced by car makers, the use of both OEM and AM wheels is the same: they are fitted on cars and similar vehicles. Hence they have the same ultimate user – the driver."

⁴ For example, see attached confidential copies of a recent SOR for HSV's 2014 ARWs and a 2007 HSV SOR, both of which reference GM-Holden specifications and standards. Arrowcrest supplies the wheels described in the 2007 SOR that meet GM-Holden's specifications.

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(b) (6) AM ARWs do not compete with OEM ARWs.

AM ARWs do compete with OEM ARWs that are factory fitted. PMV dealers use AM ARWs alternatively to "shift" vehicles and to improve their bottom line margin on sales.

Arrowcrest estimates that approximately 40% of all AM ARWs sold in Australia are sold by tyre retailers to dealers of new and used motor vehicles (PMVs), including 4wd vehicles. The fact that a "retro fit" might void new car warranty does not in any way constrain their interchangeability and competition for sales.

GM-Holden's ARWs are not fundamentally different to any other OEM or AM ARWs and tyre seat diameter, offset, brake caliper clearance, wheel diameter and rim width are the essential characteristics (dimensions) for all ARWs.

AM ARWs which share the same essential characteristics as their OEM counterparts are completely interchangeable with those OEM ARWs and vice versa.

Conversely, Arrowcrest does agree that there are two paths to market for ARWs, one being via new car sales as original equipment factory fitment (OEM), and the other being via interchange for OEM ARWs through aftermarket ex-factory fitment (AM).

OEM and AM ARWs are interchangeable and they have the same ultimate consumer – the driver.

(b) (7) Aluminium grade is not the sole determinant of similarity.

As noted, aside from aluminium grade and chemistry, the other essential characteristics shared by all ARWs regardless of when they are fitted to a vehicle (in OEM or AM transactions), include tyre seat diameter, offset, brake caliper clearance, wheel diameter and rim width.

Incidentally, the standard for the size and shape of the tyre seating area in particular (regardless of their construction or material – i.e. aluminium or steel), is common to all PMV wheels globally. Each country might have its own association that publishes these common dimensions⁵, however the essential dimensions are the same. Otherwise a Chinese-made tyre, for example, could not fit an American, Australian, European or Japanese-made wheel.

⁵ For example, *The Tyre & Rim Association* in Australia, *JATMA* in Japan, the *ETRTO* in Europe and *The Tyre and Rim Association Inc.* in America.



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Similarly, most developed nations share similar standards for validating ARWs for PMV use. Similar test standards are published by various countries and it these minimum criteria upon which OEMs build their own (often extended) test criteria.⁶

If it were not for a global minimum standard for ARWs for PMVs, wheels would be literally falling off cars everywhere, regardless of whether they were sourced in OEM or AM transactions.

(b) (8) Arrowcrest would not be aware of the details of the processes for development and manufacture of ARWs in all instances.

Arrowcrest is aware of the details of the processes for development and manufacture of ARWs by gravity diecasting, low pressure diecasting, forging, liquid forging, cast flow-forming, spinning and two & three-piece construction including by welding or bolted assembly.

Arrowcrest is not aware of any other significant or relevant production-capable processes by which to manufacture ARWs.

As noted, there are no fundamental and important differences between the essential characteristics (properties) for OEM and AM ARWs.

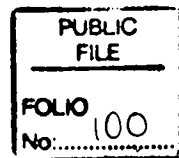
(b) (9) Arrowcrest is not in a position to suggest that AM ARWs meet and can often exceed factory OEM specifications for GM-Holden or Ford.

Arrowcrest produces its AM ARWs to suit a variety of vehicles. Its Ford fitment ARWs are interchangeable with Toyota vehicles, for example. (Ford and Toyota share interchangeable stud patterns and similar offsets and brake clearances).

As noted by the European Commission, "the same production processes are used for both AM and OEM wheels. They are both produced in all weights and diameters. (A)luminium road wheels share the same physical, technical and chemical characteristics and uses regardless of imposed requirements which are not pertinent to those characteristics. Quality requirements imposed by the car industry lead to a highly standardized product which is easily interchangeable between all producers worldwide. In the AM segment, quality requirements can also be laid down by the customers and those wheels also have to meet international and national requirements. Consequently, more stringent requirements or specifications may apply to certain wheels in both segments, meaning that some AM wheels might comply with more stringent standards than OEM wheels."

⁶ For example, the Australian Standard AS1638 for ARWs is higher than but essentially equivalent to the American Standard SAE J328.

⁷ The Council of the European Union Regulation (EU) No 964/2010 of 25 October 2010.



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Accordingly we agree with Customs that the Australian ARW market must be treated as a single market and that OEM and AM ARWs are two market segments of the ARW market, (and for all intents and purposes, like goods).

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

There is no restriction in Australia that prohibits the fitment of 22-inch diameter wheels to PMVs, provided that the outside diameter of the wheel and tyre combination is no more than 15mm over the largest diameter wheel and tyre combination specified for the vehicle, or not more than 15mm below the smallest diameter wheel and tyre combination specified for the vehicle.

22-inch ARWs are imported and sold in the Australian aftermarket and 22-inch diameter tyres are available with outside (rolling) circumferences that are legally equivalent to 20-inch tyres, (for example), and vice-versa.

20-inch ARWs are substituted by the imported 22-inch ARWs and, therefore, are considered to be included in the goods covered by Arrowcrest's application.

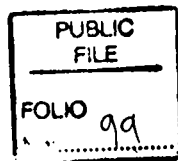
For these reasons, in the Australian market 22-inch ARWs from China are legal substitutes for, and like goods to, the Australian industry's 20-inch OEM and AM ARWs.

Yours sincerely,

Bill Davidson
General Manager

4/17/12

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Dao Nguyen <dao@roh.com.au>

MOQ

5/11/2011 1:11 PM

Dao Nguyen <dao@roh.com.au>
To: Peter Goonan <peter.goonan@gm.com>

Thu, Jun 9, 2011 at 1:11 PM

Hi Peter,

Please be advised the MOQ for 92056241 and 92082401 needs to be 96 wheels per order batch. Please confirm if you wish me to place an order on your behalf.

Regards,
Dao

Dao Nguyen

Purchasing Officer
ROH AUTOMOTIVE / WHEELS AUSTRALIA
28 Sheffield Street
Woodville North , SA 5012 AUSTRALIA
Tel: 61 8 8468 4163
Fax: 61 8 8468 4101
email: dao.nguyen@roh.com.au

peter.goonan@gm.com <peter.goonan@gm.com>
To: Dao Nguyen <dao@roh.com.au>

Thu, Jun 9, 2011 at 2:19 PM

Dao,

Yes to both, please

Kind Regards

Peter Goonan

Tel: 61 3 9647 9566
Fax: 61 3 9797 7354
email: peter.goonan@gm.com

Dao Nguyen <dao@roh.com.au>

To: Peter Goonan <peter.goonan@gm.com>

09/06/2011 01:41 PM

cc

Subject: MOQ

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Dao Nguyen <dao@roh.com.au>

Thu, Jun 9, 2011 at 4:05 PM

To: Camillo Luciano <camillo.luciano@roh.com.au>, Steve Sofianos <steve.sofianos@roh.com.au>

FYI

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Page 1



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HOLDEN LIMITED
VENDOR CODE 18259
GRJ BOX 4375
MELBOURNE VIC 3001

Ship To
HOLDEN SERVICE PARTS OPERATI
77 PRINCESS HIGHWAY (N2)
DANDENONG
VIC 3175

34 BURLING AVE, WOODVILLE NORTH, S.A. 5012
POSTAL ADDRESS: P.O. BOX 2486, REGENCY PARK, S.A. 5942
Telephone: (08) 8468 4100 Fax: (08) 8468 4101
Email: poh@poh.com.au

DO DATE	DATE	QTY	UNIT	PRICE	TOTAL
527322	01/05/09/2011	NE04239	L	15	19
527322	01/05/09/2011	05/03/2011			527322
10825416	WH LB SS P&A 17X8.0	92056241 EA	24		0
TOTAL					527322

TOTAL

FRIGHT DUCKET DATE SHIPPED PACKED BY CHECKED BY

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