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16 May 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

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

Dear Director

**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 Statement of Essential Facts  
Non-Confidential Version**

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

We now refer to the Statement of Essential Facts ("SEF") 2012/181 issued by the Australian Customs and Border Protection Service ("Customs").

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

We look forward to discussing these matters with you.

**1. Summary**

- 1.1 Following a review of the SEF, our client is of the view that Customs has erred in many of the findings in its SEF and, as a result, the proposed recommendations to the Minister for Home Affairs ("Minister") are incorrect and should neither be made by Customs to the Minister nor made by the Minister.

1.2



- 1.3 The nature of the errors are set out in detail below in relation to each of the paragraphs contained in the SEF but can be summarised as follows.

- (a) Our client believes that Customs has erred in its finding that the ARW for the OEM and the AM are "Like Goods".
- (b) Our client believes that Customs has erred in its approach to determining material injury having been caused by alleged dumping or alleged subsidies or grants for a number of reasons including the following.

- (1) While our client agrees that there should be a separate injury assessment for both the OEM and AM markets, the value of those assessments is entirely undermined by an error in failing to come to separate determinations as to material injury in both of those markets and recommending measures (if any) separately for each market. Our client believes that a correct assessment would have established that there was no material injury caused by alleged dumping or subsidy in the OEM market. However, Customs has erred in then making a general assessment of material injury and measures for the entire ARW industry without making separate assessments of measures for both markets. Given that the size of the AM is significantly larger than for the OEM market then deciding to impose one set of measures would have meant that the findings for the AM would have led to the imposition of measures in the OEM market regardless of findings of injury in the OEM market. In our client's view, should Customs have correctly found that there had been no dumping in the OEM market which caused the material injury and separately (if this remains its view) then found that there had been dumping and subsidy in the AM which caused material injury (which is not conceded), the ultimate finding by Customs as to imposition of measures across both markets would have the effect that those measures are being imposed in the OEM purely due to alleged injury in the AM. That is an unreasonable and unfair consequence.
- (2) Customs has incorrectly continued to have recourse to the period before 1 July 2006 when determining the existence of material injury. In a number of occasions in the SEF (for example in **paragraphs 8.4, 8.11 and 8.11.2 of the SEF**), Customs has referred back to injury or taken consideration of evidence of alleged injury for the period from 2003 and 2006 which is entirely outside of the range of consideration for material injury. While Customs has commented in **paragraph 8.4 of the SEF** that *"it is reluctant to place much weight on trends observed prior to 2006"*, Customs then refers to 2003 levels as the starting points for comparison of employment and capital investment levels. Our client believes that Customs has erred in placing any weight on trends and events between 2003 and 2006. Customs must place no reliance whatsoever on any evidence regarding alleged injury prior to the commencement of the injury period as at 1 July 2006.
- (3) Customs has erred in disregarding other evidence of causes of injury or misrepresented other evidence of material injury. To this effect, Customs has disregarded a variety of other factors being the cause of the alleged injury, namely:
  - (A) the effect of the Global Financial Crisis ("**GFC**");
  - (B) the effect of "restocking" in 2010 after the GFC which pushed up sales;
  - (C) given the restocking in 2010, sales in 2011 would never have been as significant;

- (D) the general drop in OEM sales of PMV which may have contributed to the reduction in demand for ARW;
- (E) the effect of the natural disasters occurring in Japan which would have depressed the demands for ARW for Arrowcrest OEM products for Toyota as its major customer;
- (F) the effect of the increase in value of the Australian dollar;
- (G) the reliance in **paragraph 9.4.1 of the SEF** of evidence of price undercutting but which has not been provided to all interested parties;
- (H) that at **paragraph 9.5.2 of the SEF**, Customs has erred in ruling that "other sales" of ARW to Holden constitutes "evidence" that the ARW produced by Arrowcrest would have been of acceptable quality. Those alleged "sales" were only sales which our client was obliged to make to keep stocks of OEM ARW as spare parts for a period of 10 years. They were not purchases of new product or new OEM from Arrowcrest and it is entirely incorrect of Customs or Arrowcrest to suggest otherwise;
- (I) the error by Customs in **clause 9.9 of the SEF** to identify yet then disregard other causes of injury and state that dumped and subsidised goods exported from the PRC were of a quantum and price which, in isolation, also caused material injury to the Australian industry. It is inappropriate and unsound for Customs to even refer to such effects in isolation and Customs should only be making findings on all evidence rather than isolating such evidence; and
- (J) the views of Holden Special Vehicles ("HSV") as to reasons for past and future decisions not to purchase ARW from Arrowcrest.

All these factors constitute strong evidence that reasons other than alleged dumping or subsidy caused material injury to Arrowcrest in the OEM market for ARW during the injury period. As a consequence, our client believes that there should be separate investigations and findings as to "injury" in the OEM and AM markets.

- (c) Customs has made a number of errors in determining "normal value", "export price" and the "dumping margin" which can be summarised as follows.

(1)



- (2) In **paragraph 6.3 of the SEF**, Customs states that there is a "particular market situation" for ARW in China such that sales in the Chinese ARW market are not suitable for use in determining normal values under section 269TAC(1) of the Customs Act 1901 ("Act"). However, at paragraph 11.2 of the Exporter Visit Report ("**Exporter Report**") on CITIC Dicastal Wheel Manufacturing Co. Limited ("**CITIC Dicastal**"), Customs has stated:

*"Based on the information provided by CITIC Dicastal under verification conducted on site, we are satisfied that prices paid in respect of those domestic sales are suitable for assessing normal value under section 269TAC(1) of the Act."*

- (3) At **paragraph 6.1 of the SEF** Customs has indicated a dumping margin of 9.1% on exports from CITIC Dicastal. However, in paragraph 12 of the Exporter Report, Customs has stated that:

*"Using a comparison on the basis of kilograms, which we recommend, the weighted average product margin, for aluminium road wheels exported to Australia by CITIC Dicastal in 2010-11 was negative 0.2%."*

*Using a comparison on the basis of pieces the weighted average product margin was 4.71%."*

There appears to be no explanation given as to the difference between these margins referred to in the Exporter Visit Report and that set out in **paragraph 6.1 of the SEF**.

As a consequence, our client believes that there should also be a further separate investigation as to normal value, export price and dumping margins for the sales by CITIC Dicastal to our client.

- (d) Customs has erred in determining that a "particular market situation" exists in China to allow the use of constructed normal value. There is no compelling basis stated by Customs on which it has diverted from the legislative requirement of treating the Chinese market for ARW as a "full market economy" for the purposes of the SEF and have recourse to "constructed" normal values. Indeed, Customs' comments at paragraph 11.2 of the Exporter Report are to the effect that prices paid in respect of domestic sales are suitable for assessing normal value under section 269TAC(1) of the Act.
- (e) Customs has disregarded the fact that our client purchases ARW with prices based on the LME so that even if Customs strikes normal value based on LME rather than Chinese prices, then the prices paid by our client (ie the export price) must be very close.
- (f) Customs has incorrectly characterised the nature of the operations of Holden and HSV on **page 20 of the SEF at paragraph 5.2.1**. At that point, Customs refers to our client and Ford Motor Company "together with their performance brands Holden Special Vehicles ("**HSV**") and Ford performance vehicles ("**SPV**")". A similar erroneous comment is made at **paragraph 9.8.1. of the SEF**. Our client has been at pains to point out on several occasions that

Holden and HSV are separately owned and make separate decisions regarding the purchase of parts and the design and manufacture of their respective products. Not only are the statements incorrect, it appears to underline an ongoing error by Customs in taking the activities of Holden and HSV as "one".

- (g) We believe that Customs has erred in placing undue reliance upon the findings in the European Commission ("EC") in the investigation conducted in that jurisdiction in relation to ARW. This arises in a number of instances as follows.
- (1) Customs appears to have found, more readily than otherwise, that there is a "particular market situation" in China for ARW;
  - (2) it unnecessarily accepted the findings of the EC in relation to "Like Goods" even though the facts of the Australian market are different and our client's operations were not in question in the EC investigation; and
  - (3) it has unnecessarily come to the same conclusion as in the EC decision regarding the need for dumping and countervailing measures without comprehensively considering the relative merits of this case.

## 2. Chapter 1 – Summary and recommendations

### 2.1 Paragraph 1.1 – Proposed recommendations

In our view, the proposed recommendations are incorrect in that they include a recommendation that a *"Countervailing Duty Notice be published in respect of ARW exported to Australia from China by all exporters"*. However, later in the SEF, Customs has indicated that it proposes to terminate the investigation in relation to alleged countervailing duty on exports from Dicastal.

### 2.2 Paragraph 1.3.1 – Australian industry

As stated before in our submissions including, in particular on the "Issues Paper" from Customs on "like goods", our client objects to any finding that, in relation to the OEM, the Australian industry produces "Like Goods" to those exported from China and imported by our client.

### 2.3 Paragraph 1.3.2 – Dumping

As stated above, our client is of the view that Customs has erred in its determination that a "particular market situation" exists in relation to the domestic market for ARW in China during the investigation period rendering selling prices in that market as being unsuitable for normal value purposes. Customs has expressed no compelling reasons for diverting from the legislated requirement that it treat the Chinese market for ARW as a "full market economy". Indeed, Customs' comments in paragraph 11.2 of the Exporter Report state that domestic sales in China are suitable for assessing normal value under section 269TAC(1) of the Act.

### 3. Chapter 2 – Background

In the last paragraph of **paragraph 2.1 of the SEF**, Customs states that:

*"The injury analysis period, for the purpose of determining whether material injury has been caused to the Australian industry was from 1 July 2006".*

Our client remains of the view that notwithstanding the injury analysis period referred to in the SEF, Customs has incorrectly continued to take into account the alleged market situation going as far back as 2003. Reference to this has been made in earlier submissions on behalf of our client and also in paragraph 1.3 (b) (2) above. Given that the injury analysis period commences from 1 July 2006, our client is of the view that any reference to an earlier period is incorrect when assessing injury. The inclusion of reference to and assessment of the period from 2003 fundamentally undermines the findings in the SEF and would not support the findings in the SEF.

Under no circumstances should Customs take into account events preceding 1 July 2006 and a proper injury analysis should be undertaken disregarding any events prior to 1 June 2006.

### 4. Chapter 3 – The Goods and Like Goods

- (a) In previous submissions our client has set out extensive reasons why ARW for the AM are not "like goods" to the ARW for the OEM. Those submissions also agreed with submissions by other interested parties as to why ARW for the OEM and AM markets are not like goods. In **paragraph 3.4 of the SEF**, Customs has apparently treated this as mainly being an argument supporting separate markets based on commercial likenesses. Our client wishes to reiterate that the arguments as to "like goods" is not confined to seeking separate investigations and separate markets but is also a legitimate argument that there are so many differences between ARW exported from China and those manufactured by Arrowcrest that they are not "like goods". Those differences go beyond issues of "commercial likeness". Our client remains of the view that Arrowcrest does not produce like goods to those exported from China for the reasons set out in earlier submissions by our client and other interested parties.
- (b) As a result of its views on "like goods" our client is of the opinion that the preliminary finding on like goods in **paragraph 3.7 of the SEF** is incorrect and that the criteria set out by Customs are not sufficient to warrant treating the exported and locally manufactured ARW for the OEM as being "like goods".
- (c) Our client is also of the view that Customs has placed undue reliance on the decision by the EC in supporting the finding that Arrowcrest produces like goods to those exported from China.
- (d) That said, our client believes that the differences between the Arrowcrest products and those exported from China still support separate investigations for the OEM and AM markets as well as separate injury findings and separate measures (if required). This would be consistent with the approach in the "pineapple" investigations in very similar circumstances where there were two very separate goods being sold into two very separate markets even though

they came from the same "raw material" in pineapple. Considering OEM and AM ARW as one market for the imposition of measures is totally inconsistent with the logic of having separate investigations. As discussed above, our client is of the view that there has been no injury in the OEM market so the imposition of measures based on the AM market alone is inappropriate.

- (e) Further, and without limiting the effect of the preceding argument, our client remains of the view that 20" wheels cannot and should not be substituted for 22" wheels and that 22" wheels should be excluded from the investigation as they are not produced by Arrowcrest. As set out in the last paragraph of **paragraph 3.7 of the SEF**, our client has established that Arrowcrest does not manufacture and offer for sale in Australia like goods to those of the 22" wheels imported from China and on that basis such 22" wheels for the OEM market should be excluded from duty notices and measures.

## 5. Chapter 5 – Australian market

- (a) As discussed above, our client is of the view that the comments by Customs at **paragraph 5.2.1 of the SEF** regarding the OEM market reveal a fundamental error by Customs in its understanding of the OEM market. HSV is a separate legal entity and operates separately to our client
- (b) In relation to the comments at **paragraph 5.4 of the SEF** and the associated "Graph 1" on "Market size", our client has requested that we point out that the increase in the market for FY08 related primarily to a switch in the Australian market from steel wheels to ARW. The drop in market volume in FY09 relates to the effect of the GFC. The increase in the FY10 reflects resumption in demand and re stocking post the GFC. There has been a subsequent minor reduction in the market in the FY11 but that decrease appears to have been spread evenly between reductions for each of the Australian industry, Chinese exports and from other imports.

## 6. Chapter 6 – Dumping investigation

- (a) At **paragraph 6.3 of the SEF**, Customs refers to its finding that there was a *"situation in the Chinese ARW market during the investigation period such that sales are not suitable for use in determining normal value under section 269TAC (1) of the Act"*. Customs then sets out its reasons for that conclusion in **Appendix A of the SEF**. Our client believes that Customs has erred in its finding that a particular market situation exists and that Customs has unreasonably dismissed the comments by the GOC which explains its position in relation to the alleged causes of the situation in the Chinese market. Customs seems to have dismissed explanations by the GOC as to the real intent and effect of its own programs and substituted them with its own views.
- (b) Our client has reservations as to findings on dumping levels even where Customs has adopted a "constructed normal value" based on LME data plus adjustment for alloy manufacture where appropriate as the benchmark. Without accepting that this is a correct approach, even if it is correct, it should be noted that our client's purchase prices for ARW (ie the export price) are based on the LME subject to similar adjustments. As a result, our client believes that the constructed value and the export price for its purchases

would have had to be very close which would suggest that any dumping margins would be very minimal.

- (c) Customs has made a number of errors in determining "normal value", "export price" and the "dumping margin" which can be summarised as follows.

(1)



- (2) In **paragraph 6.3 of the SEF**, Customs states that there is a "particular market situation" for ARW in China such that sales in the Chinese ARW market are not suitable for use in determining normal values under section 269TAC(1) of the Act. However, at paragraph 11.2 of the Exporter Report, Customs has stated:

*"Based on the information provided by CITIC Dicastal under verification conducted on site, we are satisfied that prices paid in respect of those domestic sales are suitable for assessing normal value under section 269TAC(1) of the Act."*

- (3) At **paragraph 6.1 of the SEF** Customs has indicated a dumping margin of 9.1% on exports from CITIC Dicastal. However, in paragraph 12 of the Exporter Report, Customs has stated that:

*"Using a comparison on the basis of kilograms, which we recommend, the weighted average product margin, for aluminium road wheels exported to Australia by CITIC Dicastal in 2010-11 was negative 0.2%."*

*Using a comparison on the basis of pieces the weighted average product margin was 4.71%."*

There appears to be no explanation given as to the difference between these margins referred to in the Exporter Report and that set out in **paragraph 6.1 of the SEF**.

As a consequence, our client believes that there should also be a further separate investigation as to normal value, export price and dumping margins for the sales by CITIC Dicastal to our client.

- (d) As a further general comment, our client notes that the amount it pays per unit to Dicastal is less than the amount it pays per unit to Baoding. On that basis our client cannot see how the measures proposed for Baoding (even as a non co operating exporter) could be higher than those recommended for Dicastal.



**7. Chapter 8 – Economic conditions**

- (a) As discussed below, based on comments in **paragraph 8.4 of the SEF**, it would appear that Customs has not totally disregarded evidence of injury before 2006, even though it falls outside of the period for the injury analysis. On this ground alone, the findings in the SEF appear to be unreliable.
- (b) In **paragraph 8.6 of the SEF**, Customs refers to a claim from Arrowcrest that *"the average selling prices for ARWs have not tracked the rise and fall in the rest – of – the – world LME prices for primary aluminium which is the raw material for ARWs"* as evidence of price depression and suppression. However, as set out in previous submissions by our client, the selling prices for our client are, in fact, based on LME prices which would suggest that there had been no such price depression and suppression.
- (c) The comments in **paragraph 8.6 of the SEF** refer to *"gains made by the Company (Arrowcrest) in FY 2010 were unable to be sustained in the investigation period"*. However the SEF does not consider other possible explanations for this apparent development, including the fact that FY 2010 was a unique situation of "re stocking" and recovery after the GFC and the fact that natural disasters in Japan meant decreased demands from Japan, the main source of OEM manufacture for Arrowcrest pursuant to its Toyota contracts.
- (d) In the last paragraph of **paragraph 8.6 of the SEF**, Customs makes the observation that OEM sales are very significant to Arrowcrest's business. That would support separate findings on material injury and recommended measures for the OEM market. In any event, during much of the investigation period, Arrowcrest would presumably have had fixed price contracts with OEM manufacturers to whom it supplied which would have mitigated against any price suppression or depression. That suggests that any real effects of price suppression and depression must have been in the AM market where demand and prices are more flexible. Again, this supports the arguments for separate injury analysis and separate measures.
- (e) In **paragraph 8.7 of the SEF**, Customs does not appear to have analysed how much loss to Arrowcrest's volume was occasioned by Arrowcrest being unsuccessful in contracts to supply either of Ford or our client for legitimate reasons other than "price" when considering volume effects.
- (f) The assessment of "sales volume" in **paragraph 8.7.1 of the SEF** does not take into account other factors which could specifically have affected Arrowcrest such as the natural disasters in Japan and the consequential effect on the demand by Toyota.
- (g) In terms of "Market Share" in **paragraph 8.7.2 of the SEF**, we note that Customs has concluded that overall, Arrowcrest did not lose any market share in the investigation period. This would suggest that Arrowcrest had stabilised its market share beyond the injury period.
- (h) The scant analysis by Customs in **paragraph 8.9 of the SEF** ("Other economic factors") appears to have overlooked the effect of the natural disasters in Japan and the consequential natural suppression of demand from

Toyota in the OEM market, which would have affected the demand from Toyota on Arrowcrest for OEM product


- (i) The reference to certain machines "sitting idle due to cessation of production for Holden and Ford" in **paragraph 8.10 of the SEF** is irrelevant given that Arrowcrest stopped producing for those customers in large part before the injury period. In this case "capacity" seems to refer back to 2003 when there was production for Holden and Ford but which is before the injury period and which therefore gives a misleading view on the alleged effect of dumping and subsidy on capacity.
- (j) As discussed earlier, **paragraphs 8.11 and 8.11.2 of the SEF** refer to starting reference points for consideration of the effects on employment and capital investment being 2003 which is several years before the starting point for the injury analysis. As a result, the purported effect of dumping and subsidy on employment and capital analysis in the SEF cannot be relied upon to support the proposition that there has been material injury.
- (k) **Paragraph 8.11.5 of the SEF** ("Productivity") reflects that there has been little change to productivity due to contractual nature of employment. Our client is of the view that it is such contractual arrangements which underlie the real causes of the alleged injury rather than any alleged dumping or subsidy

## 8. Chapter 9 – Has dumping and subsidy caused material injury?

- (a) We have previously made comment on some aspects of the analysis in **Chapter 9 of the SEF**. Those comments need to be read in the context of other comments below and otherwise in the earlier submissions by our client.
- (b) As a general proposition and as listed earlier in this submission, our client believes that Customs has failed to properly take into account other reasons for any injury suffered by Arrowcrest, namely the failure to secure ongoing contracts with Ford and Holden for reasons other than price, the discontinuance of TRD in 2009, Arrowcrest's failure to update products and quality, high overheads not managed down like with other manufacturers, the appreciation in value of the \$AUD, the GFC and the impact of the natural disasters in Japan.
- (c) Our client disagrees with the approach set out in the first paragraph of **paragraph 9.2 of the SEF** – our client believes that it is necessary to show how much injury is caused by any alleged dumping or subsidy as that affects the level of measures
- (d) The conclusions by Customs in relation to "Price undercutting" in **paragraph 9.4.1 of the SEF** rely on "confidential" attachments to the Arrowcrest Visit Report which makes it impossible for our client to respond to the events alleging such price undercutting. This is unreasonable in the circumstances. Similarly in the second last paragraph of **paragraph 9.4.2 of the SEF**, Customs refers to evidence of negotiations with one customer supporting the idea that Chinese prices were used to reduce a price increase proposed by Arrowcrest. However such evidence has not been provided to be reviewed and disputed

- (e) The comments on alleged price undercutting in the OEM market raise questions. Arrowcrest was not producing for either our client or Ford but was supplying all of Toyota's product of ARW, and doing so presumably under a contract. How could price undercutting have an effect in that instance?
- (f) **Paragraph 9.5.2 of the SEF** refers to evidence of recent sales to our client in support of the proposition that "*Holden perceives at least some of Arrowcrest's ARW's to be of sufficient quality for its needs*". As discussed earlier the only purchases by our client were to meet the requirement to support spare parts for the OEM ARW for the industry 10 year period and for no other reason. Further, the purchases were relatively minor. Those purchases should not be construed as Holden accepting that the Arrowcrest product was in all respects suitable in quality. The main issue is that Arrowcrest lost sales to our client and others in the OEM sector for reasons other than price. It is incorrect for Customs to make assumptions as to the impact of prices in the process of making decisions.
- (g) In **paragraph 9.5.2 of the SEF**, Customs refers to allegations from Arrowcrest that it quoted to supply Holden ARWs and having been unsuccessful in a tender. Our client has instructed us to point out that this contact between our client and Arrowcrest has been misrepresented. Our client only issued a "Request for Interest to supply" not a "Request for Quotation" as part of a tender process and any business including price would have been subject to negotiations once Arrowcrest had advanced beyond that initial point where assessment was based on criteria other than price, which did not occur. For these purposes it is difficult to see how these developments could be construed as being "material injury" when Arrowcrest was not producing for our client at the time and did not lose existing contracts or production.
- (h) In relation to comments on Arrowcrest's production, the suggestion in **paragraph 9.8.2 of the SEF** is that HSV is looking elsewhere for certain production as evidence of another cause for alleged future injury. However, we note from paragraph 5.5 of the End User Visit Report on Premoso Pty Ltd trading as HSV ("**End User Report**"), there are a number of other compelling, non-price reasons provided by HSV as to why it is not proposing to acquire ARW from Arrowcrest in the future. Further we believe that Customs is being unreasonably dismissive of reasons provided by others in not purchasing Arrowcrest product.
- (i) **Paragraph 9.8.4 of the SEF** includes alleged comments made by our client regarding means of production of ARW. These were not comments by our client.
- (j) **Paragraph 9.9 of the SEF** includes findings on causal link. Our client believes the findings to be inaccurate as being based on certain incorrect findings and conclusions earlier in **paragraph 9 of the SEF**. Further the approach to consider dumping and subsidy as the proposed basis for injury in isolation is difficult to maintain given the wide variety of other potential causes of injury, many of which have not been analysed in detail (such, but not limited to, the GFC and natural disasters in Japan).

**9. Chapter 10 – Will dumping and subsidy and material injury continue?**

- (a) Our client remains of the view that, even if there had been dumping or subsidies (which is not conceded), they did not cause material injury of the type to warrant the imposition of measures. As a result, our client does not consider that any dumping, subsidy or material injury will continue in the future.
- (b) It needs to be considered that the OEM market for PMV is very competitive. Given that Arrowcrest produces ARW for Toyota that would suggest that its prices are, in fact, competitive or comparable to those of Chinese exporters. As a result, decisions by Ford, Holden and other OEM to purchase from Chinese exporters must be the result of issues other than price.
- (c) Our client would like to point out that contracts to supply major OEM such as our client and Ford are "locked in" for some time and the opportunities to supply to our client and Ford may only arise at some stage in the future (being 2015 for Ford and 2016 for our client). Accordingly, in the absence of any new OEM being established or any increase in sales of PMV by Toyota, there is little real prospect of any increase in sales by Arrowcrest in the OEM in the foreseeable future. That "injury" is not occasioned by dumping or subsidy but by failure by Arrowcrest to secure contracts for other reasons.
- (d) 
- (e) Our client would also like to draw attention to the comments in paragraph 5 of the End User Report in which it identified other compelling reasons for HSV not purchasing ARW from Arrowcrest in the future.
- (f) Customs should be aware that the imposition of measures may well confer an additional advantage on Toyota which will not be affected by the measures to the extent that it purchases ARW from Arrowcrest. This consequence does not appear to have been considered by Customs.


**10. Chapter 12 – Proposed measures**

We note that the proposed recommendation as to measures is for the imposition of a countervailing duty notice in respect of ARW exported to Australia by all exporters. However, on **page 9 of the SEF**, Customs has stated that it proposes to recommend that the subsidy investigation be terminated so far as it extends to Dicastal. Presumably then the reference to proposed measures in Chapter 12 should also include the recommendation to terminate the subsidy investigation and then impose measures on all "other" exporters?

**11. Paragraph 1 of Appendix A - Introduction**

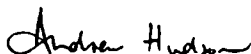
We note that in **paragraph 1.1 of Appendix A of the SEF**, Customs refers to the fact that Arrowcrest has strongly relied on the findings of the EC in its own ARW investigation in support of a submission that a "particular market situation" exists in the Chinese ARW industry and certain raw material inputs which rendered sales in that market unsuitable for determining normal values for ARWs under section 269TAC (1) of the Act. In our previous submissions, we have previously expressed views as to why it is inappropriate to rely on the decision in the EC to support a finding in Australia on a "particular market situation". Our client remains of the same view as previously expressed in its submissions on this aspect and that Customs should not have concluded that there is such a "particular market situation". Indeed, at paragraph 11.2 of the Exporter Report Customs stated that prices paid in respect of domestic sales are suitable for assessing normal values under section 269TAC(1) of the Act.

**12. Conclusion**

- (a) For the reasons set out above, we are of the view that the findings in the SEF are unreliable and should not form the basis of the proposed recommendations to the Minister.
- (b) We request that Customs should now revise its investigation and recommendations in light of the above comments including, without limitation:
  - (1) 
  - (2) no use of "constructed" normal values for exports from CITIC Dicastal; and
  - (3) separate and corrected investigations as to material injury and its causes in the OEM and AM markets.

We believe that Customs is then able to differentiate any required measures between different exporters and different markets through its use of statistical codes.

Yours faithfully  
**Hunt & Hunt**



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