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17 May 2012

Our ref 139/15955/80127632

**FOR THE PUBLIC FILE**

Dear Mr Turner

**Submission in response to Statement of Essential Facts  
Aluminium Road Wheels from the People's Republic of China  
Ford Australia**

**EXECUTIVE SUMMARY**

In this document, Ford responds to Arrowcrest's submission of 24 April 2012 and addresses the issues of like goods, material injury and causal link in responding to the Statement of Essential Facts.

**Arrowcrest's submission**

This is the first opportunity that Ford has to respond to Arrowcrest's submission as it was placed on the public file on the same date as the Statement of Essential Facts.

Arrowcrest did not respond to the request to provide a submission to the Issues Paper on like goods but on 23 April 2012, provided a response to the submission made by Ford dated 12 April 2012.

Customs had previously stated that no further extension would be given by Customs to allow a late submission. Instead, however, Customs has chosen to treat Arrowcrest's submission as a submission in response - a mechanism allowing Arrowcrest to put in a late submission.

This is of concern as it denies Ford the opportunity to correct the factual inconsistencies raised by Arrowcrest before the SEF was released. This is particularly the case because without any substantiation at all, Arrowcrest has alleged that Ford has been misleading in its responses. This is a most serious allegation which Ford emphatically denies. Arrowcrest has offered no evidence in support of this allegation.

Further, Customs noted that Arrowcrest's response supported the position taken by the EC. Apart from this observation there is no analysis of this submission other than a comment by Customs that it noted the findings made by the EC and that similar arguments had been put up by interested parties in that case. Ford was not given the opportunity of answering this submission.

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## SEF

In Ford's view, the analysis conducted by Customs in relation to the issues of like goods, material injury and causal link is not supported by the weight of probative evidence on the question of like goods, nor has an objective test been applied in considering the question of material injury and causal link. Further, Ford says that the SEF is not a proper consideration of the issues by the decision maker insofar that it:

- refers to the evidence in support of Custom's position but ignores any evidence to the contrary.
- relies upon statements which are unsubstantiated assertions and cannot be properly characterised as evidence sufficient to support the findings made by Customs.

The relevant legal standard has been made clear in two recent Federal Court decisions. The Federal Court in *Siam Polyethylene Co Ltd v Minister of State for Home Affairs* [2009] FCA 837 stated that:

*"Where a decision-maker must consider matters prescribed by law, generally, he or she cannot jettison or ignore some of those factors or give them cursory consideration only in order to put them to one side: East Australian Pipeline Pty Ltd v Australian Competition and Consumer Commission (2007) 233 CLR 229 at 244 [52] per Gleeson CJ, Heydon and Crennan JJ; Telstra 107 ALD at 502 [107]. As Gummow and Hayne JJ, in concurring observed (East Australian Pipeline 233 CLR at 256 [102]):*

*"It was not enough for the ACCC to say in its final determination that it had considered those matters in the sense of having looked at but discarded them."*

In a related case of *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2)* [2009] FCA 838 the Federal Court also considered the role of a decision maker and stated:

*"While the formation of a state of satisfaction under s 269ZHF (2) may involve a question of opinion, there must be a sufficient substratum of fact on which the CEO reasonably can entertain the opinion, before the CEO is entitled to make a recommendation."*

Regrettably the SEF merely gives cursory consideration to major issues which have previously been raised by Ford and other interested parties in the context of this Inquiry, especially in relation to like goods, material injury and causal link. There is a disconnect between the SEF between its findings and the alleged sub-stratum of facts which are relied upon to support those findings. Indeed, in many instances the mere assertions of the applicant have been accepted and inferences made by Customs that are not supported by any probative evidence - and indeed in some instance are contrary to the evidence on the record.

**"Like goods"**

In relation to the issue of "like goods", it is only the applicant that contends that OEM and AM ARW are "like goods". All of the interested parties maintain that OEM and AM ARW are not "like goods"

Of concern is that it appears that all of the evidence by the interested parties that OEM and AM ARW are not "like goods" has not been given proper consideration and has been effectively ignored by Customs.

From the face of the SEF, there is no evidence that Customs has had any real regard or given any detailed consideration to any submission that did not agree with its preliminary view. This is shown by the fact that

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Customs has given cursory dash point responses in the SEF under each of the criteria used by it to determine if goods can be considered "like goods". In relation to the consideration of physical likeness, there are three dash points and regarding functional likeness there are two. It is highlighted by the fact that for production likeness - acknowledged Customs as the key issue put by interested parties - and for commercial likeness there is one dash point answer. This is to be contrasted with a proper consideration where evidence is referred to support and oppose a conclusion on "like goods" with a weighing up of the evidence as to its probative value and weight.

Further, Customs has failed to answer Ford's submission in relation to the *Pineapples* case which supports the position put by Ford in this case that OEM and AM ARW are not "like goods". Customs has not suggested that the findings in the *Pineapples* case were wrong. Nor has it indicated why in this present case the same findings on commercial likeness and physical characteristics differences should not follow, in particular given the stronger factual elements in this case.

Likewise, the fact that an analysis of the two markets, namely the OEM and AM market, will be carried out by Customs does not address the issue of "like goods".

This compounds Customs' previous handling of the "like goods" issue both before and after the Issues Paper. Indeed the history of the treatment of this issue and the failure by Customs to meaningfully consider the responses to the Issues Paper suggests that Customs has pre-judged the issue and Customs is focused only on matters supporting its preliminary review - with the evidence and factors to the contrary being ignored or given only cursory consideration.

**Material Injury**OEM market

The OEM market is in terms of volume the critical market for the applicant. In relation to this market, the evidence establishes the following:

- There are three local car manufacturers, Ford, GMH and Toyota: Mitsubishi ceased manufacturing cars in 2008/9.
- Ford, for reasons other than price, will simply not deal with Arrowcrest and this decision goes back many years prior to this case.
- As Arrowcrest has conceded, GMH's policy from 2002 (originally in relation to sourcing of steel wheels) was to outsource from countries other than Australia and it has never received an order from GMH since that time. Again this has nothing to do with the present anti dumping and subsidy investigation of ARW out of China.
- The decision by GMH not to source ARW domestically for its Holden Cruze was as demonstrated by GMH to do with issues other than price as the primary consideration.
- The reduction in volumes in this segment of the market made by Arrowcrest reflects the fact that Toyota's new vehicle production has gone down with consequent flow on to supply of ARW.

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Against this background, Customs' reasoning that *ceteris paribus*, price is the determinant and would result in contracts being awarded to the applicant, does not withstand scrutiny. It certainly does not apply to Ford, has no relevance to Toyota and has not applied to GMH since 2002.

The real question is whether when regard is had to non priced factors, price undercutting is a relevant injury factor in relation to the OEM market. The point is that in the OEM market, regard must be had to non price factors in assessing price undercutting. Customs has not had regard to these factors in this case and as a consequence the price cutting analysis is flawed. Ford repeats its previous submissions as to why there cannot be a finding of price suppression or depression. There is no finding of loss of volume overall, notwithstanding that Customs has claimed that it has verified the profit and profitability analysis. The finding on price undercutting depends of course on a finding of dumping. Ford does not propose to make any comments on the dumping findings other than to state that it understands that these findings are strongly contested by the exporters. However it is clear that no finding on price cutting can be made in the OEM market and any finding of price undercutting in the AM market has no application to the OEM market.

The SEF does not on its face indicate that any of the information on price and price suppression has been verified, rather there is mere recital of what the applicant claimed in its application. This is unacceptable.

Ford notes that the market share of Arrowcrest in the AM market started at 5% at the beginning of 2002, and in the next years went down to 1% where it has remained ever since. This reduction has remained consistent and therefore, Ford submits, cannot be attributed to the export of Chinese ARW. There is a statement made by Customs that Arrowcrest has provided unverified information of a higher percentage than 5%, but as it is for the year 2002 and is unverified, it should clearly be disregarded and not contained within the Statement of Essential Facts.

Without a finding of material injury and indeed causal link, given the nature of the market then no overall finding of injury can be made in this case.

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### DETAILED SUBMISSION

This submission deals first with Arrowcrest's submission and second with the SEF.

#### Arrowcrest's submission

##### European Union (EC) decision

Customs fails to make any reference to the findings of the European Union in the SEF. Given the divergent approaches of Arrowcrest and Ford, this is a key issue which should have been the subject of detailed discussion in the SEF.

Arrowcrest correctly states that Ford's submission in the EC case was to the effect that Ford is the customer of the ARW it purchases for inclusion in the finished product the car.

Arrowcrest's submission to the contrary, that is, that Ford is merely a facilitator as the ultimate consumer is the driver who ultimately decides whether or not an ARW is sold as original equipment or as a CDS or as an AM fitment, with respect, is factually incorrect and unconvincing. The facts are that Ford is the sole decision maker as to what wheels it places on cars produced at its factory and delivered to dealers. The wheel that Ford installs on the cars it produces and delivers from its factory are purchased through the OEM market segment, according to Ford's purchasing practices and policies. CDS and AM fitments replace the OEM installed wheels on the cars delivered to the dealers by Ford.

Similarly, the EC position that an OEM wheel and AM wheel serve the same function, as they both are attached to motor vehicles, and hence have the same user i.e. the driver is a sweeping over-generalisation.

There is no dispute that there is an AM market for ARWs. The point is exactly that - an AM market exists because these products are not used by any car manufacturer in Australia (despite the assertion by Arrowcrest to the contrary). The fact that an AM wheel can be used on a motor vehicle of itself does not establish that the goods are like. Detailed reasons as to why they are not alike have already been provided. Ford repeats those submissions.

##### Arrowcrest's other submissions

The weakness of Arrowcrest's submissions on "like goods" is demonstrated by the fact that there is clear market segmentation and different distribution channels, different requirements and technical specifications between an ARW used by an OEM manufacturer and an AM ARW.

To overcome this, Arrowcrest has made assertions that the market is best described as one which is exclusive and non exclusive. This argument has not been raised at any earlier stage of the investigation and interested parties have not been given the opportunity to respond to it prior to the release of the SEF.

Arrowcrest's submission fails to acknowledge that the market is essentially differentiated. Two different products based on different specifications are sold to different customers with different considerations and for different prices. It ignores the most obvious commercial point; the ultimate consumer has no choice in whether an OEM is placed on the production vehicle.

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Further, Arrowcrest correctly acknowledges that AM ARW are styled by the AM manufacturer. It also only states that the AM may meet or exceed the OEM specifications, and have been validated for fitment on OEM vehicles.

Apart from the implicit acknowledgement that higher standards apply to all OEM ARWs, Ford notes that in the SEF the only acknowledgment that Customs makes is that an AM ARW meets Australian design standards, not that they meet OEM standards.

Can Arrowcrest provide examples of where an AM ARW has been found to be factory fitted?

Arrowcrest states that it has fitted AM ARW as OEM ARW to Chrysler, Ford, and Mitsubishi vehicles as recently as 2009.

Ford would note that Arrowcrest does not claim that it has supplied AM ARW as recently as 2009 to any Toyota vehicle.

The statement Arrowcrest fitted an AM ARW as an OEM as recently as 2009 is incorrect as far as Chrysler and Mitsubishi ceased passenger motor vehicle production in Australia prior to 2009 and as Customs would be aware from Fords submission and Industry visit, it is clear this statement could not apply to it.

Ford in its submission in response to the Issues Paper on Like Goods addressed the question of Arrowcrest supplying Tickford ARW to Ford. As Ford stated in that submission, the reference to the Tickford ARW is irrelevant given the fact that the situation referred to occurred in 2002 whereas what is being considered is the present distinction between OEM and AM ARW. Further, and critically, the ARWs produced by a related company of Arrowcrest for fitment to Tickford branded Ford vehicles were tested to (and met) all of Ford's requirements for wheels and were therefore OEM ARWs not AM ARWs as alleged by Arrowcrest.

Are OEM and AM ARWs commercially competitive?

In response to the question of whether or not an AM and OEM ARW are commercially competitive, Arrowcrest states that OEM and AM ARW compete for sales but in each market segment, meaning there is no commercial competitiveness between the OEM and AM segments. Arrowcrest acknowledges that the prices are different between an ARW sold on the AM market compared to one sold to an OEM manufacturer.

Reference is made to the EC statement that many manufacturers produce for both segments and OEM and AM wheels are produced on the same production line. There is no evidence that this statement is true in Australia. Regardless, this statement does not prove anything. The fact that one manufacturer produces two different products does not prove that the goods are like goods. Likewise, the fact that one manufacturer can enter a different market segment does not provide any proof that the goods it now produces for a different market are the same.

How critical is price?

On the issue of price, Arrowcrest states that Ford suggests that the AM market is more concerned about price, with the OEM market more concerned about quality and technical specifications, with price being secondary. This is correct. All of the interested parties agree with Ford and the fact that Toyota selected Arrowcrest was based on considerations other than price.

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However, it is not correct to say that, all things being equal, price is the determinative factor in the OEM sector. In this respect, Ford repeats its previous submissions. The comment that in the EC case, Ford submitted that when choosing a car the consumer is driven by important factors such as price is a non sequitur. It has no relevance to price being a determinative issue when considering the OEM market for ARW. Again this statement is a mere assertion for which no evidence has been provided for the OEM market.

Within a market sector are goods similarly positioned?

Arrowcrest neglects the issue of whether the AM and OEM ARW produced by Arrowcrest are similarly positioned in the market place, which is important given the acknowledged market segmentation between the AM and OEM markets. Instead, Arrowcrest focuses on competition by dealerships for AM ARW which, notwithstanding comments by Arrowcrest to the contrary, is dealt with in the Issues Paper.

The question of competition at this level, however, is irrelevant to the fact of how Arrowcrest is positioning its product in the AM and OEM markets.

Arrowcrest acknowledges the point made in Ford's submission in response to the Issues Paper that notwithstanding who supplies AM at the dealer level, no warranty is offered by Ford and these wheels are not incorporated in a production car but can only be fitted after the vehicle leaves the factory. Arrowcrest acknowledges in its definition under the heading "7. What is AM", that it is an automotive component fitted to a new car after it has been shipped from the OEM car factory.

The statement that volumes might affect the price paid and that for all intent and purposes, OEM, CDS and AM ARW share sufficient commercial likeness to be wholly competitive is an assertion for which no evidence has or can be provided. The competition at the dealer level is only in the AM and not between the OEM and AM. The clear and unequivocal evidence is that there are no sales of AM to the OEM market.

Willingness to switch between sources

Arrowcrest's statement that it has provided evidence to demonstrate functional and commercial interchangeability is not correct.

It can be tested in this way. Car manufacturers do not switch between and OEM and AM ARW when it comes to producing a car. Both Ford and GMH have made this clear in their submissions and visit reports. Arrowcrest specifically excludes Toyota as a company that sources AM ARW as an alternative to OEM wheels. The assertion by Arrowcrest that it has provided AM wheels to an OEM manufacturer to be placed on a production vehicle is unfounded.

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**RESPONSE TO STATEMENT OF ESSENTIAL FACTS**

In responding to the SEF below, Ford adopts the order in which the issues arise in the SEF and has referenced its responses using the headings set out in the SEF.

**3.5 Like goods**

Customs found that the Australian industry produced "like goods" on the following grounds:

**Physical likeness**

The two main points raised relied upon by Customs were that:

- Products made in Australia have physical likeness to the good exported from China
- The "like goods" manufactured by Arrowcrest meet Australian design standards

Ford submits:

This generalised comment on physical likeness and reference to Australian design standards does not deal with the substantive issue of quality differences between an OEM and an AM ARW. All interested parties have provided detailed submissions either in the visit reports or in responding to the Issues Paper. These submissions have not been addressed or have been given only cursory attention by Customs in the SEF.

**Commercial likeness**

Customs states that:

Australian industry products compete directly with imported goods in the Australian market, both OEM and AM, as evidenced by the supply of Chinese ARW to many customers of the Australian industry.

Ford submits:

In making this statement, Customs is saying that all the goods are the same and compete in the same market place. This is notwithstanding that Customs acknowledges that the market itself is segmented into an OEM and AM market. What Customs has done is state a conclusion as a fact without giving any consideration to the factors referred to in the Dumping and Subsidy Manual. The relevant factors to be taken into account are:

*Commercial likeness refers to attributes identifiable from market behaviour.*

- *Are the goods directly competitive in the market? e.g. do the goods compete in the same market sector? Within a market sector, are the goods similarly positioned?*
- *To what extent are participants in the supply chain willing to switch between sources of the goods and like goods? e.g. willingness of participants to switch between sources may suggest commercial interchangeability.*
- *How does price competition influence consumption? e.g. close price competition may indicate product differentiation is not recognised by the market.*



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- *Are the distribution channels the same?*
- *How similar is the packaging used? Does different packaging reveal significant differences in the goods, or highlight different market sectors?*

These matters have been discussed in both Ford's submission and the submissions by other interested parties. The submissions make clear that there is no commercial likeness between an ARW sold into the OEM market and the AM market.

Further, a considered examination of the criteria demonstrates that there is no commercial likeness between goods sold into the OEM and AM markets. No AM ARW is used by any car manufacturer in Australia and there is no evidence to the contrary (other than Arrowcrest's assertions). Further, the distribution channels are completely different.

In addition, any suggestion that Chinese firms are supplying both the OEM and AM market is evidence that these markets compete with each other is again just an assertion. In fact there is evidence to the contrary. The car manufacturers in the OEM market have stated that they do not buy an AM to put on production cars and that there are significant quality and design differences which are also reflected in physical differences.

In relation to Chinese exporters, Customs attention is directed to the submission from Corrs Chambers Westgarth of 5 April 2012. It provided detailed reasons why its client CITIC Dicastal does not consider that there is one market or that there is commercial likeness between the OEM and AM ARW. Your attention is also drawn to the submission made on behalf of GMH in respect of this issue.

Functional likeness

Customs state that:

- both imported and Australian produced goods have comparable or identical end uses as evidenced by Australian industry customers who source equivalent Chinese-made ARW;
- both imported and Australian-produced goods may be fitted on passenger motor vehicles and used for the same purpose.

Ford submits:

The statement is made in the SEF that the sales processes of OEM manufacturers are driven by the motor vehicle manufacturers and that the design of the ARW is predetermined by the motor vehicle manufacturer, specifically the outer appearance, with the task of producing safe and reliable ARW left to the ARW manufacturer.

This statement is factually contradicted by both Ford's submission and GMH's submission. There is no evidence to support the statement that:

- the design of an OEM wheel is specifically about the outer appearance;
- the task of producing safe and reliable ARW is left to the manufacturer.

Ford repeats the following submission:

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"Ford seeks sustainable suppliers that can meet its global product strategy, in all countries in which a particular vehicle is being produced. On a global basis, its suppliers must be able to reliably maintain quality, volume, and delivery requirements to all plants producing that vehicle.

As a result of experience, Ford has learned that it is not good business practice to press its suppliers so hard on specific elements, such as price, that doing business with Ford endangers the continued viability of the supplier. Ford has learned that if a supplier cannot profitably sell to Ford, Ford jeopardizes its own production. While price alone has never been the determinative factor in Ford's selection of a supplier, where all other elements are equal and price is the differentiator, Ford has learned to appreciate that it cannot always simply select the supplier with the lowest price. Rather, Ford must select sustainable suppliers, those which will be able to supply parts and components meeting all of Ford's specifications and requirements for the life of the vehicle program.

Ford's experience shows that Chinese wheels were neither the lowest priced nor were they used as benchmark to reduce price quotations offered by Asia Pacific suppliers. Furthermore, Ford has not and does not use prices or quotes from unqualified suppliers in its procurement process.

Ford's consistent position is that price is only one factor in the overall process by which Ford chooses a supplier. Quality, capacity and engineering capability are other decisive factors and Ford is prepared to select suppliers that are capable of delivering more judged against these criteria, even if their price might be high"

and

"For OEM wheels, once the supplier has been selected, it begins the design and development of the wheel it is to supply to the car manufacturer according to the car manufacturer's strict specifications and requirements. These requirements include material content specifications (i.e. limitations on recycled or scrap metal content), performance and durability of the wheel.

The end result of the design and development process is a prototype that Ford used to determine whether the part will be acceptable for use in production of the new vehicle model. Throughout this process, both Ford and the supplier engage in extensive testing and modifications, as required to ensure that the part meets all of Ford's specifications and requirements, which cover not just the wheel, but any modifications to the vehicle itself which affect the suitability of the wheel for that vehicle.

None of the above process is carried out when AM wheels are developed. As mentioned they are independently designed by wheel makers. And, it is Ford's view that the design criteria for AM wheels are the complete opposite of those for OEM wheels: where an OEM wheels is designed for a specific vehicle model, AM wheels must be designed for all makes and models of vehicles that use that wheel size."

Further:

## Quality

Due to the stringent criteria used by car manufacturers in ensuring the quality of OEM wheels, the final product is very different from an AM wheel: it must meet a series of very demanding requirements imposed, such as the car manufacturers' engineering specifications (such as Ford's Global Wheel Functional Specification), Design Failure Mode Effects Analysis (Potential Failure Mode and Effects Analysis — Design FMEA) and other controls; vehicle structural durability; lab durability; ride, handling, steering and noise, vibration and harshness (NVH) evaluations, corrosion resistance testing; numerous paint and finish tests (e.g., paint performance specification WSS-M2P122-C), appearance sign-off tests, critical characteristics and capacity verification (part of car manufacturers' Production Parts Approval

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Process PPAP), a number of Scheme Development Standards (SDS) applicable to wheel and tire durability, Supplier Requests for Engineering Approval (SREA's) specs and others.

For example, Ford's Engineering Material Specification for Aluminium Alloy (A356-T6 Modified, Cast Wheel (ESA-M2A123-A) imposes on OEM wheels suppliers' requirements regarding:

Chemical composition

mechanical properties (yield strength, tensile strength, elongation, and hardness);

heat treatment; and

microstructure.

In addition, Ford's Design Verification Plan Report for Wheels envisions over 60 different tests with 80 separate acceptance criteria, testing everything from wheel retention - wheel clamp load performance to paint quality (for acceptance criteria such as initial hardness; colour and gloss, initial adhesion, thermal shock, gasoline/wheel-cleaner/tire-sealant resistance, stone chip resistance, weathering resistance, water resistance, and filiform resistance). In order to be accepted, the OEM wheel must pass every one of these tests. Any failure stops the process until the problem has been fixed and the test passed.

### Physical and chemical differences

In addition to the overall higher quality, resulting from strenuous testing requirements, OEM wheels also have different physical and chemical characteristics, because a number of standards and specifications explicitly require the use of special materials or certain performance deliverables. For example, Ford has special material specifications for aluminium and paint (Ford's Paint Performance), as well as specific heat treat furnace performance requirements. In addition, suppliers of raw materials to the component manufacturers (such as wheel makers) must in some cases be pre-approved by Ford. The suppliers' compliance with Ford's various requirements for special physical qualities is continually verified in production, must be shown on the manufacturer's control plan, which in turn is verified during Supplier Technical Assistance (STA) audits.

In addition, a number of quality requirements result in tangible physical differences, such as resistance to:

- corrosion, or certain chemicals (salt),
- climatic factors (humidity, temperature), and
- physical obstruction (impediments on the road, rocks and sand, snow, holes in the ground, washing).

CITIC Dicastal in its submission of 5 April 2012 provided a detailed analysis of the question of "like goods" including in Confidential Attachment A and B, "OEM Market v Aftermarket" a consideration of the differences between the OEM v AM markets and the differences between an ARW produced for each market. It concludes - correctly in Ford's submission - that there is no basis for considering the products to be like products.

These matters have not been properly or fairly considered by Customs in the SEF, notwithstanding that an Issues Paper was issued and submissions sought.

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### 5.4 Australian Market Volume by Source

#### Customs:

In the SEF, Customs provides a bar chart which sets out the proportion of volume by source, divided into Australia, China and Other sources for the injury investigation period. With it, there is a statement that the Chinese supplied both the OEM and AM markets during this period. However, there is no commentary on the trends established over this period, comparing the performance of the Australian industry, the Chinese exports and exports of other importers relative to each other. The SEF just states: "Chinese imports supplied both OEM and AM markets during the investigation period."

A different chart and commentary was provided underneath to express views on the observations arising from that information. What the chart shows - as stated by Customs - is that although export volumes had increased by 35% over the injury investigation period, it had declined by 6% during the investigation period. Customs also noted that the export volumes from other countries increased slightly during the investigation period.

#### Ford:

Customs saw it appropriate to make observations in percentage terms when making a preliminary assessment. It does not do so when making findings in the SEF when the need is more apparent.

The purpose of the chart is to make overall observations of underlying volumes during the injury investigation period and then compare those trends with the trend in the investigation period. Unfortunately, however, the bar chart does not enable any assessment of what those percentage differences were and the changes between sources especially during the investigation period. This is a key assessment in any material injury and causal link argument.

From the bar chart for Y11 (the investigation period), it is clear that Chinese exports decreased in volume and that imports from other exporters increased at the expense of the Australian industry. However, no percentage figure is given.

In the Consideration Report, percentage amounts and explanations were provided. Ford submits that a similar discussion is also needed in the SEF. If the amount of imports for other Sources is now lower than the stated 6% referred to in the Consideration Report, Ford submits Customs is required to give a reason for the different figure.

### 8.4 Commencement of injury

#### Customs:

Customs states that in response to the claim that imports of ARW causing material injury commenced in 2003, it is reluctant to place weight on trends observed prior to 2006 given the lack of relevant sales and cost information available for the earlier period.

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Ford:

Ford has specifically addressed this issue in both its original submission and in the last submission it made to Customs. In short, Customs has made plain in its latest draft of the Dumping Manual that there can be no finding of dumping prior to the investigation period.

### 8.6 Price depression and suppression

#### Price depression

Customs:

Arrowcrest suffered some price depression in the AM segment during the investigation period. It says that the OEM price although declining during the injury analysis period, increased during the investigation period and that overall Arrowcrest did not suffer price depression during the investigation period as the sales to the AM market were low compared to total sales.

Ford:

There is no finding of price depression overall and none in the OEM market which comprises 95% of sales by volume.

In respect of price suppression, Customs' preliminary view was that in the OEM market, Arrowcrest was unable to sustain gains made in FY 2010 in the investigation period and that this constituted price suppression which had a material impact on Arrowcrest's revenue, profit and profitability.

#### Price suppression

Customs:

Set out below is the diagram regarding OEM and AM unit prices, the basis of Customs' preliminary findings:

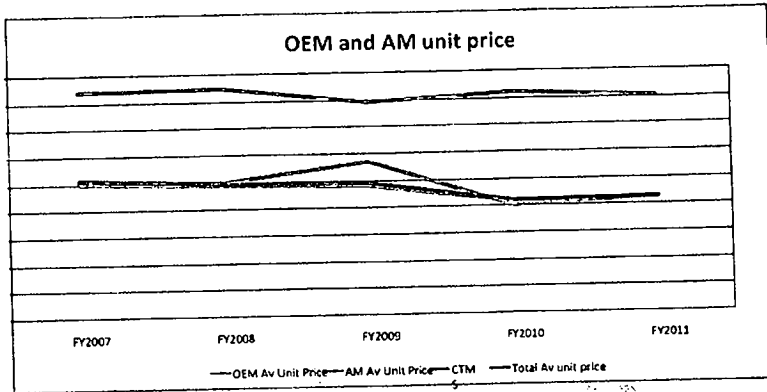
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Diagram 1:



The findings in relation to price suppression were that:

- Arrowcrest's overall average price closely followed the CTMS sell line during the injury analysis period (except for FY2009).
- The overall average price increased in FY 2011, but not to the same extent as costs.
- CTMS decreased in FY 2010 by 29%. Arrowcrest claims it was due to Arrowcrest's self help initiatives.
- The graph shows that the gains made by the company in 2010 were unable to be sustained in the investigation period.
- The conclusion reached was that the significance of OEM sales to Arrowcrest's business during the investigation period meant that any price suppression in this market had a material impact on Arrowcrest's revenue profit and profitability.

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**Ford:**

Any finding of price suppression must be significant - as is stated in article 3.2 of the Anti Dumping Agreement. This is acknowledged in the Dumping and Subsidy Manual:

"Price suppression: in terms of Article 3.2 of the ADA, is where price increases for the Australian industry's products, which otherwise would have occurred, **have been prevented to a significant degree.**"

Having regard to the chart above (disregarding FY 2009 due to the effects of the GFC), the overall average price closely follows the CTMS. Indeed, for FY 2007 and FY 2008, they run nearly together, and then separate out during FY 2008 and FY 2009. However, by FY 2010 the historical relationship is re-established. When looking at the average OEM price (which Customs states is the most significant as it accounts for 94% of all Arrowcrest's sales) it is practically impossible to distinguish between the CTMS and average cost line. Indeed, based on the chart above, Arrowcrest's relationship between CTMS and average selling price returned to normal levels prior to the GFC effect.

Having regard to this chart, however, Ford does not see upon what basis Customs can claim that the overall price increases in FY 2011 were not to the same extent as cost increases. Customs has failed to express the difference in any percentage terms which would allow a judgement as to what the difference was and whether it could be treated as significant. Even if significant is defined as "not being insignificant", a generous interpretation, there is no basis for making a finding other than any minor discrepancy is in fact insignificant.

The other claim that is made is that the gains made by self-help initiatives by Arrowcrest were not capable of being sustained during the investigation period. This comment is not supported by other evidence - see further discussion under Causal Link. Any price suppression must be considered significant and there is no evidence to this effect.

Ford notes that one of the requirements imposed by the provisions of article 3.1 of the Anti Dumping Agreement and any determination of injury must be based on "positive evidence involving an objective examination of both the volume of dumped imports and the effect of the dumped imports on prices".

The evidence in the SEF does not meet this requirement. It follows that the conclusion made by Customs on the material impact on Arrowcrest's revenue, profit and profitability cannot be sustained.

**8.7 Volume effects****Ford:**

Customs stated in relation to the investigation period that:

- Overall market volume increased significantly in 2008, declined in 2009 (which coincided with the GFC), partially recovered in 2010 and remained stable in 2011.
- Arrowcrest lost sales volume in 2009 and 2011 but increased volume in 2010 due to the decision by Toyota to replace steel wheels with ARW in producing PMV.
- Arrowcrest lost volume in 2011 when the Australian ARW appears to have stabilised.

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- Volume from imports other than China appear to have been relatively stable.
- Although Arrowcrest's total market share over the injury investigation period declined by 4%, it increased in FY 2010 and remained at increased levels in FY 2011.
- China's market share increased in the AM market by 24% - but at the expense of imports from other countries.
- In the AM market, Arrowcrest lost market share in FY 2008 and none of it was recovered in the injury analysis period.

Customs stated that it could not provide details of the OEM market due to issues of confidentiality but its analysis showed that Arrowcrest's OEM market share decreased through 2010 before increasing in 2011.

Ford:

As a general comment, Ford notes that Arrowcrest held only 5% market share in 2007 and this decreased and remained at 1% for FY 2008, 2009, 2010 and during the investigation period in 2011. This demonstrates that there were non-dumped factors occurring in the three years prior to the investigation period which caused a loss of market share.

Importantly, the amount of market share held by Arrowcrest is insignificant, with 99% of the market held by others. As Customs noted, the effect of Chinese imports was not to cause Arrowcrest to lose market share but to take market share from other importers.

### OEM market

The key question is what effect did the loss of volume have on Arrowcrest's market share in the OEM market?

Customs' analysis does not disclose the true nature of the question of volume in the OEM market. The broad statement that sales decreased through FY 2010 before increasing is at odds with that of Table 3 on sales to market segment, which given the nature of the sales is a good guide to trends in volume. Those sales show that (apart from the effect of the GFC) there was strong growth which coincided with Arrowcrest supplying Toyota with all its OEM ARW.

In short, there was a significant increase in the key market for volume by Arrowcrest due to its contract with Toyota. The fact that there was a decrease in the FY 2012 can be attributed entirely to the decline in Toyota production of PMV, not importation of OEM ARW from China.

### **8.8 Profit and Profitability effects**

Customs repeats Arrowcrest's claims on profit and profitability based on the information it put forward in the application. Customs then states that based on this analysis, Arrowcrest has suffered injury in the form of reduced profit and profitability.



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Ford:

Ford notes that Customs has merely repeated the applicant's claims in the application. Although it has conducted a verification visit to the applicant, it has not endorsed those findings as being verified - an extraordinary outcome.

It is one thing to state that *the conclusions* in the Statement of Essential Facts are preliminary. But, it is not appropriate for Customs to state that *findings of fact* upon which it intends to base its final decision are preliminary. The purpose of a Statement of Essential facts is set out in Article 6.9 the Anti Dumping Agreement:

"The authorities shall, before final determination is made, inform all interested parties of the essential facts under consideration which form the basis of the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for parties to defend their interests".

The Draft Dumping and Subsidy Manual also states:

### 26.2 POLICY

A SEF is issued at day 110 in all investigations except for an accelerated review. The Minister can extend the time to make an SEF under s. 269ZH1 of the Act.

The SEF is a provisional document placed on the public record so that interested parties are provided the opportunity to address issues. **It sets out the essential facts on which the CEO proposes to base recommendations to the Minister. It shows the main conclusions and recommendations as they are known at that point.**

The SEF sets out the CEO's recommendations and findings and provides particulars of the material evidence relied on. Customs and Border Protection is not bound to investigate each and every avenue suggested by an interested party - it will conduct the investigation having regard to the evidence that is material so that the investigation can be concluded within the time available.

A SEF does contain proposed recommendations in relation to matters such as export price, normal value and adjustments effecting the normal value however, the SEF is about reporting the facts, analysis and findings rather than detailing proposed recommendations in relation to issues such as causation and the imposition (or otherwise) of measures.

In this case, Customs has conducted an on-site verification visit to Arrowcrest and its cost to make and sell information; profit etc ought to have been the subject of a verification process.

Ford submits that it is unacceptable for Customs to merely repeat the claims of Australian industry as to profit and profitability or indeed on any material injury claim. The purpose of the SEF is for all interested parties to know what the findings are at the end of the investigation process that will be used in the final report to the Minister. It allows parties the opportunity to make submissions on what they consider are factual errors. Customs cannot abrogate the responsibility for making a finding at the end of the investigation by merely repeating the claim by the applicant on profit and profitability.

Ford asks Customs to clarify this issue as a matter of some urgency. Ford requests that it either confirms that it has verified the claims of profit and profitability following the visit to the applicant, or alternatively state that it is not in a position to do so. In Ford's view, any failure to do so will place Customs in breach of its obligations under Article 6.9 of the Anti Dumping Agreement.

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### 8.9 Other economic factors

Ford's response to this is contained in Attachment A. In summary there is no evidence that the Chinese imports of ARWs have caused any injury in relation to "Other economic factors".

### 9. Has Dumping and Subsidy Caused Material Injury

Customs stated that it would separately analyse material injury factors for the OEM and AM markets.

Ford:

In considering causal link, however, Customs has not done so in relation to key indicators such as profit and profitability, or the AM and OEM markets. This is especially important where issues of price undercutting and price suppression and depression are being considered.

Further, even if Arrowcrest's profit and profitability showed a decrease in the investigation period (after this information was verified), this would be explained by the fact that it lost market share in the AM market to non-Chinese imports and that the number of vehicles produced by Toyota reduced during the investigation period compared to the previous year.

#### Price as a factor

##### 9.4.1 Price Undercutting

Customs:

Customs stated that it has observed that:

- Arrowcrest's prices were undercut in every size by one or more of the importers, in both the OEM and AM market.
- Arrowcrest had reduced its prices as a direct result of price pressure from imported products from China.
- The total undercutting margin for each importer was between 21% to 45% when analysing data including chrome finishes.
- When examined in isolation, Discastal exports of wheel sizes 16 inches to 19 inches established price undercutting from around 20% in smaller sizes to up to 65% on the larger size.

Ford:

Price undercutting is, as stated by Customs, where an imported product is sold at a price below that of an Australian producer. It can only be an indicator of material injury if the imported product is sold at dumped and/or subsidised prices. Ford is not commenting on the findings on either dumping or subsidisation other than to note that these issues are highly contested by Chinese exporters and the Government of China.

In assessing the effect of price undercutting on prices in the domestic market, regard must be had to other factors, in order to come to a factual assessment on the effect on the market of price undercutting as an indicator of injury.

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In *Siam Polyethylene Co Ltd v Minister of State for Home Affairs* (No 2) [2009] FCA 838 concerning continuation inquiry, Rares J noted that a finding of price undercutting was only a start and that regard must be had to the range of factors set out in section 269TAE (2A) of the Customs Act. There is no consideration of these matters in the SEF.

Given the clear market segmentation and difference in product sold into the OEM and AM markets and that no AM ARW is used on production vehicles, then no finding on price undercutting in the AM market has any relevance to the OEM market.

There are only three car manufacturers: Ford, GM and Toyota. As Ford will not deal with Arrowcrest, the question of price undercutting is irrelevant. The SEF acknowledges that Ford's decision not to deal with Arrowcrest is not related to price. Toyota have already awarded the contract to supply ARW to Arrowcrest. This occurred before the investigation period. As a matter of law, therefore, no inference can be drawn that Chinese prices were either dumped or subsidised.

Further, the Visit report to Arrowcrest states that when asked about why they were awarded the Toyota contract, Arrowcrest said that:

Toyota was the major client of Arrowcrest in that it supplied all of Toyota's OEM ARWs and the OEM market was the most significant market by sales and volume for Arrowcrest.

In Arrowcrest's Visit Report, at page 33, Arrowcrest states under the heading of OEM market that:

- One reason why Toyota would not have chosen the Chinese model, included Toyota's stated objective is to support local component manufacturing in Australia.
- "Toyota maintains long term relationships with its suppliers. This is evidenced by the advice provided by Toyota to Arrowcrest on methods to achieve efficiencies and cost savings, which Arrowcrest has implemented" and
- "Toyota may perceive that Arrowcrest technology is superior to the Chinese manufacturer".

Therefore, price undercutting allegedly caused by dumped and subsidised imports played no part in the decision. To the extent reference is made to price undercutting, Toyota's decision highlights the importance of non-price factors as being the determinative issue, as they were for Toyota in choosing Arrowcrest over Chinese imports. This is made more obvious when regard is had to price undercutting figures found by Customs.

GMH conducted a competitive tendering process but made it clear in their submissions and Visit Report that there were a range of factors other than price, that the lowest price did not mean that a tender was successful and that there were factors other than price that were used by it to award the contract to a Chinese company.

Reference was made to Suzuki's tender to supply OEM ARW. It is not a car manufacturer in Australia and this tender occurred prior to the investigation period. Therefore there can be no presumption that the price undercutting resulted from Chinese imports either being dumped or subsidised.

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### 9.4.2 Price suppression

Customs states:

- That during the period 2006 to 2009, Arrowcrest prices did not match cost increases during this period but that around 2009 it introduced cost saving measures and efficiencies aimed at reducing the impact of raw material costs and falling prices and that this had resulted in unit prices above costs in the years 2010 and 2011 although to a small degree.
- Some major AM customers multi source and this gives them an advantage by enabling them to exert considerable leverage over the Australian industry.

Arrowcrest has provided evidence of negotiations with one customer that shows Chinese prices were used to reduce price increases (but without specifying which customer, in what year and whether this occurred during the investigation period).

Other relevant evidence listed in Article 9.4 supports Arrowcrest's claim of price suppression.

Ford

The Draft Dumping Manual states that the following methodology is used in making a finding on price suppression:

"Customs and Border Protection normally examines the weighted average net realised prices, for example monthly, achieved by importers of the goods and Australian industry at equivalent levels of trade. In some cases, where sales data for imports and local industry allows a more detailed analysis of prices to the same customer, Customs and Border Protection can determine the amount of price undercutting per unit of quantity."

In this case, the normal practice has not been followed to consider the question of causal link, unlike the earlier discussion at section 8.6 where a broader approach was taken.

The reason for the policy statement is obvious: one cannot fairly and objectively consider price suppression unless one employs a weighted average methodology. Not to use such a methodology would lead to distortion when considering price suppression as one would not be able to conclude that it was significant and that dumped imports indeed did have such an impact on a domestic industry.

In this case, Custom has ignored its own recently announced policy.

In analysing injury in a segmented market, any finding in the AM market has no application in the OEM market for the reasons mentioned.

Customs has also not stated that it conducted a price suppression analysis based on using multi sourced suppliers. There is only a statement that multi sourced suppliers exist and an unsubstantiated allegation that this affords considerable leverage over the Australian industry.

The reference to section 9.4.1 - where there is discussion on price undercutting but no mention of price suppression - cannot be seen as credible evidence. The fact that it is the final point and comprises only one sentence confirms that no weight can be attached to this statement. Even Arrowcrest have not purported to rely upon this argument.

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It is Ford's submission that the conclusion that Customs has sufficient evidence is wrong. It is not based on any evidence which Customs normally uses in determining price suppression notwithstanding that a methodology is one of the new matters included in the Draft Dumping and Subsidy Manual for comment.

**9.5.1 AM Market**

Customs states that:

- It is aware of major customers of Arrowcrest who multi source their ARW requirements from Australian industry and Chinese manufacturers.
- Arrowcrest argue that the key reason is price undercutting.
- Given the level of price undercutting found by Customs, it is reasonable to conclude that if Australian industry were unable to match or come close to prices offered by Chinese manufacturers it would lose volume.
- That price undercutting is most prevalent in the AM sector which accounts for 73% of the ARW[?] market.
- Arrowcrest's share of the AM segment was low during the investigation period.
- Due to the extent of price undercutting it was not possible for Arrowcrest to gain market share that was potentially open to it.
- Arrowcrest provided non verified data which showed its market share was higher than 5%.
- Those sales to four key customers were down between 8% and 36% during the investigation period.
- Arrowcrest provided evidence that it attempted to regain or increase sales to Customers but it had to offer significant rebates which it would not do.

**Ford**

The decline from 5% to 1% market share prior to the investigation period points to factors other than imports of Chinese products, especially as this figure did not change, even during the GFC. This indicates that there were other factors at play which had nothing to do with Chinese imports -- given that they took sales away from other importers, not Arrowcrest.

**9.5.2 OEM market**

Customs states that:

- Ford has not been a customer of Arrowcrest for some years and that this had nothing to do with price.
- Arrowcrest had been unsuccessful in its quote to supply GMH.

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- Arrowcrest advised that the reason it had been unsuccessful was solely due to pricing.
- GMH has advised that the reason it was not successful was not solely due to pricing.
- Customs said it was reasonable to conclude that pricing was an important factor in the tender process.
- The evidence of Arrowcrest's supply of other ARW to GMH supports a view that GMH perceived at least some of Arrowcrest's ARW to be of sufficient quality for its needs.

### Ford

One difficulty which is not addressed by Customs is that Arrowcrest still supplies Toyota with all its OEM equipment and there is no allegation that this price has been influenced by Chinese exports.

GMH provided evidence that it did not select Arrowcrest because of non price issues. Whilst not denying that price was a factor, it was not the factor in its decision. The statement by Customs that it was an important factor in the GMH tender process, to have any force, must be supported by evidence. Once again there is no evidence to support this statement other than the assertion by Arrowcrest that it did. This assertion must be contrasted with the clear statements by GMH that it did not. There is no finding by Customs that these statements were incorrect.

The reference that Customs had a perception that at least some ARW were of sufficient quality for GMH's needs is to be given no weight - just as an allegation that GMH perceived that the ARW made by Arrowcrest were not of sufficient quality would not be probative.

### 9.5.3 Preliminary finding

Customs' preliminary finding that Arrowcrest lost volume in both the AM and OEM segments in the investigation period and that this was caused by dumped and subsidised exports from China is not supported by the evidence.

This statement appears before consideration of "Other causes of injury" and before consideration of "Changes in the PMV market" which are discussed below.

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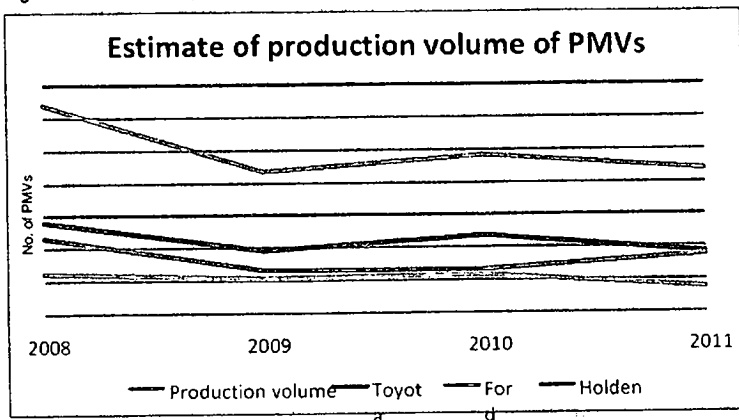
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### 9.8 Other Possible causes of injury

#### 9.8.1. Changes in the Australian market for PMV

The SEF set out a chart of Estimate of Production Volumes of PMVs and therefore only has relevance to the OEM market.

Diagram 5: Estimate of production volume of PMVs



Source: Federation of Automotive Products Manufacturers (FAPM):  
Automotive Production Build Forecast, November 2011.

Customs stated that:

- The sale process in the OEM segment is driven by the PMV manufacturers which therefore drives the size of the market.
- There was a reduction in Australian industry sales, particularly in the first 6 months of 2009 but that market started to recover in 2010 and in 2011.
- The reduction in the overall size of the ARW market did not decline by the same amount due to an increase in market share held by AM ARW.
- The reduction in Arrowcrest's sales volume during the investigation period was greater than the reduction in the overall market size.

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- Based on the evidence provided in relation to this loss of volume, the overall reduction in PMV does not displace a finding that volume injury to the industry was caused by dumping and subsidisation.

Ford:

These statements do not constitute an adequate consideration of the other factor issue of reduction in PMV numbers as having an influence on volume and ultimately profit and profitability.

Clearly such a reduction in PMV numbers had a significant influence. What is of particular importance is that Toyota's Production of PMV were reducing from FY 2010 to FY 2011 and this had nothing to do with the importation of Chinese ARW.

As Customs noted, Arrowcrest did not suffer any loss of volume during the investigation period. This matter is not addressed by Customs, yet is of critical importance.

In relation to the overall findings of volume, it should be noted that by:

- using the Tables on volume in the SEF during the investigation period,
- using as a basis of comparison the FT 2010 to remove effect of GFC in previous year, and
- comparing it to the investigation period

the change in overall volumes during that period showed a decline by Arrowcrest of 7.5%, a decline in Chinese imports of 10% but an increase of 1.6% of the imports from other countries.

If regard is had to overall market share, another factor becomes apparent which is not addressed under causal link. Table 4 shows that after a comparison FY 2010 with FY 2011, Arrowcrest's market share only went down by 1%, that the Chinese market share stayed exactly the same and that other imports went up by 1%. The only conclusion that can be drawn from this is that any loss of market share can only be attributed to non dumped sources.

Reference is made to loss of sales volume, but one key factor is that in the OEM market, any such loss can only be attributed to a reduction in PMV production by Toyota. The loss of sales to Toyota was a significant in relation to volume of sales to Arrowcrest but is given cursory treatment by Customs. Indeed, the loss of production by Toyota as noted in the Mullins Wheel submission in response to the SEF was in the order of a reduction from FY 2010 to 2011 of some 14,991 vehicles which represented some 59,964 OEM ARW which represented in total a reduction of 16% of Arrowcrest's sales volume during the injury investigation period and some 6% during the investigation period. Ford also agrees with the comments that this reduction in overall sales volume received scant attention. The only available conclusion is that this reduction was the cause of injury to Arrowcrest.

Although Customs is not required to exactly quantify the injury caused from other factors, it is required to come to an assessment of these factors, and it has failed to do so in any meaningful manner. An objective examination of the facts would lead to the conclusion that it was the reduction in the production volumes from Toyota and increased volume of non dumped imports that was the cause of the material injury to Arrowcrest and any injury from alleged dumped and subsidised imports would at best be insignificant.



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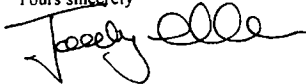
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Ford does not propose to make detailed comment on the AM market under causal link other than to say that Customs relied on assertions from parties who did not participate in the investigation. There are no submissions or visit reports for these parties, contrary to those of the interested parties which participated in the investigation and which made submissions or were subject to on site verification. The reference to loss of sales volume, and indeed price effects made by Customs to support a claim that in isolation the impact of Chinese imports of ARW caused material injury can have no relevance in the OEM market. Ford questions whether in the absence of such a finding there can be an overall finding that the Australian industry, in effect Arrowcrest, has suffered material injury.

Finally, Ford states that it does not consider that the ARW made for the OEM market are "like goods". The fact that no finding of injury can be made in this segment demonstrates that the goods are not commercially alike and supports the view that OEM ARW are not a like good when compared to the ARW produced for the AM market.

Yours sincerely



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### Attachment A - Consideration of Other Injury Factors

#### Other injury factors

Arrowcrest visit report.

Customs made the following findings:

#### Assets

There had been only a minor decrease in value of assets

#### Capital investment

Capital investment had actually increased. Confining the examination to the injury investigation period showed that it peaked in 2006 and again in 2011

#### Research and development

Arrowcrest's investment in research and development had not changed

#### Return on Investment

Arrowcrest's return on investment in relation to ARW had decreased by almost 50% in 2011

In the application, Arrowcrest refers to its ROI as 6% in 2003, and that it has gone down since. This statement again is a broad generalisation and there is no evidence offered as to whether this figure was ever sustainable, or indeed has any relevance during the actual injury investigation period. Customs has made no attempt to assess if the figure was reasonable.

#### Capacity

The analysis of capacity went back to 2003 and it was claimed that it had been in decline since 2003, which cannot be attributed to Chinese exports. Likewise the loss of Ford volume, which likewise would be from 2003, has nothing to do with Chinese imports. The GMH business was lost also in 2001.

It should be noted that it is not clear if Customs were referring to "like goods", given that for example the lost GMH production was for steel aluminium wheels.

#### Employment levels

Again the reference point is to 2003 which is irrelevant as a base year comparison. No adverse conclusions can be drawn that any reduction in employment was due to Chinese imports.

#### Productivity

There was little change in productivity.

#### Stocks

There had been no change in stock on hand.

#### Cash flow

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Accounts receivable balance, receivables turnover and inventory turnover have remained stable.

### Wages

Total and average wages remained stable during 2011.