



ANTI-DUMPING NOTICE NO. 2014/89

Certain aluminium road wheels

Exported from the People's Republic of China

Reconsideration of Certain Findings

Customs Act 1901 – Part XVB

Purpose

The purpose of this Anti-Dumping Notice is to:

- inform interested parties that the Federal Court of Australia (Federal Court) has recently handed down its decision in respect of litigation relating to certain decisions to impose anti-dumping measures on aluminium road wheels exported to Australia from the People's Republic of China (China); and
- advise interested parties that, as a result of the decision of the Federal Court, the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary) will be reconsidering certain decisions in respect of the measures applying to those goods.

Background

On 7 November 2011 the Chief Executive Officer (CEO) of Australian Customs and Border Protection Service (ACBPS) initiated an investigation into the alleged dumping and subsidisation of aluminium road wheels exported to Australia from China.

On 12 June 2012 the CEO provided his final report to the former Minister for Home Affairs (former Minister) setting out his recommendations. On 5 July 2012 the former Minister published his decision to impose dumping and countervailing duties in *The Gazette* and *The Australian*. This decision was for anti-dumping and countervailing measures to apply to aluminium road wheels from China with certain exporters being excluded from measures (see *Australian Customs Dumping Notice No. 2012/33*).

Following the former Minister's decision to publish dumping and countervailing duty notices, the then Trade Measures Review Officer (TMRO) accepted nine applications for review of this decision. In December 2012, the TMRO recommended, amongst other things, that the former Minister direct the CEO of ACBPS to reinvestigate the calculation of the dumping margins for all "residual exporters".

Based on the former Minister's direction, the CEO of ACBPS reinvestigated the findings and provided his report and recommendations to the former Minister. On 8 May 2013, the former Minister published his decision affirming the reviewable decisions made on 27 June

2012 to publish dumping and countervailing duty notices (see *Australian Customs Dumping Notice No. 2013/34*).

On 24 June 2013, GM Holden Limited (an importer of the goods) applied for judicial review of the abovementioned decisions in the Federal Court.

Federal Court decision and Orders

The Federal Court handed down its decision in *GM Holden Limited v Commissioner of the Anti-Dumping Commission* [2014] FCA 708 on 4 July 2014. The Commission successfully defended eleven of the twelve grounds for judicial review set out in GM Holden Limited's application. GM Holden Limited was successful on one ground with the Federal Court finding that the recommendations of the CEO, and the findings of the former Minister, were affected by jurisdictional error because of a misunderstanding and misconstruction of the defined terms "selected exporter" and "residual exporter". The Federal Court's decision has been made available on the Commission's website at <http://www.adcommission.gov.au/reference-material/federal-court-cases.asp>.

The Federal Court's Orders in this matter were entered on 14 August 2014.

The Federal Court ordered that the decision made by the former Minister on 8 May 2013, affirming the reviewable decisions made on 27 June 2012 to publish dumping and countervailing duty notices in relation to certain aluminium road wheels exported to Australia from China, be set aside.

The Federal Court also ordered that the Minister for Industry, who currently has responsibility for anti-dumping matters, further consider certain findings relating to the categorisation of certain exporters as "selected non-cooperating exporters" in the decisions of 27 June 2012 to publish dumping and countervailing duty notices. The Minister for Industry has delegated responsibility for anti-dumping matters to the Parliamentary Secretary.

Commissioner's further report to the Minister

As a result of the Orders of the Federal Court, the Commissioner will be re-examining the relevant matters and will provide a further report with findings and recommendations to the Parliamentary Secretary who is the relevant decision maker in relation to anti-dumping matters.

The Commissioner will be limiting his examination to the materials relevant to the decisions of 27 June 2012. Accordingly, the Commissioner is not inviting submissions to inform his considerations in formulating the further report to the Parliamentary Secretary.

The Commissioner's further report to the Parliamentary Secretary will be made as soon as practicable.

Following the Parliamentary Secretary's further decision in relation to this matter, the Commission will publish the report and also issue a further Anti-Dumping Notice advising on the outcome of this process, and any action required by interested parties.

Commission contact

Enquiries about this notice may be directed to the case manager on telephone number +61 3 9244 8844, fax number 1300 882 506 or +61 2 6275 6888 (outside Australia) or at operations4@adcommission.gov.au.

Dale Seymour
Commissioner
Anti-Dumping Commission

29 September 2014