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Email

Mr Justin Wickes
National Manager
International Trade Remedies Branch
Australian Customs and Border Protection
Service
Customs House
5 Constitution Ave
CANBERRA ACT 2601

Our ref 11276/

Dear Mr Wickes

Trade Measures Inquiry No 176 - Structural Timber exported from Austria, Canada, the Czech Republic, Estonia, Germany, Lithuania, Sweden and the USA

We refer to your letter dated 25 January 2012 to Freehills as placed on the public record. The letter responds to an earlier letter received from Freehills requesting that an independent expert be appointed for the purposes of the Inquiry. The letter proposes to appoint Mr Tony Morse as *"an independent consultant ... who has extensive experience in the timber industry"*.

Our client does not oppose the appointment of an independent expert in the context of the inquiry. However, our client understands that Mr Morse has previously held senior management positions in the Carter Holt Harvey group. Our client considers that this history deprives Mr Morse of the requisite independence.

This is not the occasion for an extensive analysis of the rules of procedural fairness. Clearly, the conduct of the Inquiry and subsequent decision-making lies with Customs and the Minister. There is no reason to doubt their impartiality. However, at the very least, it runs counter to the spirit of procedural fairness for Customs to resolve to appoint an independent expert, but then select for appointment a person who held senior management roles in one of the three applicants for dumping duties in the present case.

Of course, Customs could argue that any questionable aspect of his employment history can be taken into account by Customs when determining the weight to be accorded his evidence. However, even if this is legally correct, it is not good practice. Customs should seek out a truly independent expert whose evidence can be given full weight.

Our client urges you to seek out a truly *"independent consultant"* who would supply the *"additional rigour"* you seek.

Yours sincerely

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