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**The Director - Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601**

Case 540 Aluminium extrusions (mill finish); Case 541 Aluminium extrusions (surface finished)

This submission is made on behalf of Milleon Extruder Sdn Bhd, Malaysia, in response to Capral's submission placed on the public file concerning Milleon's verification to the case manager

Premium price sales

Capral states:

*'Milleon contends that it has sales on the domestic market for aluminium extrusions that are not standard profiles or lengths. Milleon states that it only exports standard profiles and lengths to Australia. Milleon is seeking the Anti-Dumping Commission ("the Commission") to exclude the non-standard profiles and lengths from **the goods the subject of the investigation**.*

*Capral submits that the referenced non-standard profiles and lengths cannot be excluded from the goods coverage as they are alike in all respects **to the subject goods**. Milleon is seeking an exclusion on the basis that the non-standard profiles and lengths sell at a premium to standard profiles and lengths. This request cannot be accommodated as the goods correctly fall within the **goods description** and possess characteristics closely resembling the subject goods'.*

Capral appears to have misunderstood the submission. Milleon is not seeking to exclude the certain range of goods in questions from the goods the subject of the investigation. Indeed, this is not possible because the goods the subject of the application are defined at the outset of the inquiry.

The previous submission by Milleon on this issue concerned the issue of a *fair comparison* between export price and the normal value. This is made clear at pages 5 and 6 of that submission. It concerns the question of what are the most closely

matching goods for the purposes of a fair comparison and the proper determination of the dumping margin.

There is no intention to exclude goods from GUC, and Milleon provided all cost and price information as required for all potential like goods to the GUC.

Capral states that the non standard profiles '*.. cannot be excluded from the goods coverage as they are alike in all respects to the subject goods*'; and (the premium profiles) '*..correctly fall within the goods description and possess characteristics closely resembling the subject goods*'.

In this context, we will consider the argument that the special premium goods

- are '*alike in all respects to the subject goods*'
- (can't be excluded) as they '*correctly fall within the goods description and possess characteristics closely resembling the subject goods*'

Capral appears to be submitting that the special premium goods possess characteristics that closely resemble the particular exported goods because they happen to fall within the GUC description itself. Capral seems to be stating that normal value must be worked out by including all goods that meet a description of GUC.

A goods description can cover a wide range. It can include goods which are not like goods to each other as there is no requirement for a GUC to be comprised of goods which must be like goods to each other.

Consequently, the question of 'likeness' is not resolved by merely asking whether a good sold domestically is covered the GUC. As the comparison is between the goods sold on the domestic market and the actual goods being exported to Australia to work out the dumping, there must be a careful analysis to assess 'likeness' between some group of goods and the particular imported products sold by the exporter under investigation.

There is a crucial principle in working out the dumping. An assessment of whether products resemble one another is only permitted in the absence of identity under Article 2.6 of the ADA.

Only if there are no goods which are identical to the product under consideration does Article 2.6 direct attention to whether there is some other good which "*has characteristics closely resembling those of the product under consideration*".

The word 'identical' shows that in the first instance the purpose is to find the nearest exact match. Absent that, it is to use the good which has characteristics closely resembling the exported good. It does not say absent identical it can be just some basket of goods made up of goods closely resembling plus other goods which are not as closely matching as the former. .

The approach followed by Australia shows this. When determining normal value under subsection 269TAC(1) - where different models of the goods exist - it is necessary to select the domestically sold models that are *most directly comparable*

to the particular models exported to Australia. This allows for a proper comparison between the normal value and export price of the goods for the purposes of working out the dumping margin.

This requirement appears to be supported in review cases where in model comparison the most closely matching model is to be considered before any less closely matching model.

Capral submits that the standard profiles, plus the special value added sales, as they together 'fall within the goods description and possess characteristics closely resembling the subject goods' – may only mean it is requiring ADC to compare the standard export profiles to all of these lumped together.

The requirement is to inquire into what are the *most closely or most directly comparable* goods sold on the domestic market to the particular exported good to which it is to be compared.

The particular exported goods are standard profiles. The special value added goods are not exported. Thus has been demonstrated. As such, the most comparable domestically sold goods that most closely match with the particular exported goods are the standard profiles.

The special value added goods it has identified are not goods which *most closely* resemble standard profiles. They should not be brought into the comparison.

However, if the ADC decides to not apply the most closely matching good principle - and use any goods which fall into some broader category along the lines Capral argues - then Milleon has identified a very important difference affecting price comparability in the case of these special value added sales.

The premium added for value added services - not present in the export price being compared - is required to be adjusted for in order to achieve a fair comparison.

Model Control Codes

A model control code identifies the most comparable goods (models). The codes concern differences in physical characteristics that have a significant effect on price eg alloy, finish.

The special value added sales fall within a model code as identified in the exporter questionnaire response because of the physical characteristics identified.

The special value added services Milleon has identified are not something which could have easily been incorporated in the MCC description. This is because the special services are being added post the extrusion production process.

Milleon has demonstrated the effect on price of the value added services. For [REDACTED], it represents about [REDACTED]% of the average price paid by that company. Put another way, the average price paid by [REDACTED] IS [REDACTED]% higher than the average price for standard goods which have no value added work incorporated in the price.

269TAC (8) *Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:*

- (a) relate to sales occurring at different times; or*
- (b) are not in respect of identical goods; or*
- (c) are modified in different ways by taxes or the terms or*

circumstances of the sales to which they relate;

that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

ADA Article 2.4

'A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.'[\(7\)](#)

In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.'

In the previous submission, and in this one, it has been shown how the terms and circumstances of the value added goods are different from those concerning standard profiles which are the exported goods.

We showed the terms of the sales concerning value added goods in the agreement with [REDACTED]. They differ from sales of standard profiles and directly result in significant additions to price. We showed how the circumstances of the sales of the value added goods differ.

ADC has made adjustments for some model differences under the control code system for some physical differences. It has made some adjustments for a set of standardised allowances called 'direct selling expenses' such as freight, credit terms, packing. These differences are minor compared to the value added premium that only exists in the particular sales that have been identified and which are not incorporated in the export prices to Australia. ([REDACTED], [REDACTED], and the [REDACTED] product).

The ACT expressly requires adjustment where the normal value and the export price of the good to which it is being compared are modified in different ways by taxes or the terms or circumstances of the sales to which they relate.

The word “circumstances’ connotes something broader than ‘terms’ It is unlikely they have an identical meaning. It is like the provision in Article 2.4 which requires that 'allowances' be made for 'any other differences which are also demonstrated to affect price comparability.' There are, therefore, no differences 'affect[ing] price comparability' which are precluded, as such, from being the object of an ‘allowance’.

Further description of the characteristics of the value added goods as compared to the standard profiles

Further to information provided in the previous submission, attached are some photographs providing more details about the value added services:

1) Precision Cut measurement for [REDACTED] and [REDACTED] (currently no orders from [REDACTED]) so we can't provide the pictures. You can also see that for [REDACTED] we need to use a Caliper to ensure accuracy as the length is too short to use a normal measurement tape.

- a) PrecisionCut-[REDACTED]
- b) PrecisionCut-[REDACTED]
- c) PrecisionCut-[REDACTED]-Caliper

The cuts in the special value added profiles have to meet an order of accuracy of plus or minus [REDACTED]mm, performed in the quality area. On the other hand, standard profiles only need to meet an order of accuracy of plus or minus [REDACTED]mm performed in the production line. This much higher level of accuracy in the value added profiles is one reason for the premium being as high as it is.

2) Flatness and bow to check the flatness and any curving (bow) for [REDACTED] and [REDACTED] This is specially designed and made for checking.

- a) FlatnessBowCheck-[REDACTED]
- b) FlatnessBowCheck-[REDACTED]

3) Dimension check for [REDACTED] and [REDACTED] using [REDACTED] Jig set which is custom made to check the profiles. And 1 profile custom to 1 jig set.

- a) [REDACTED]-Jig-[REDACTED]
- b) [REDACTED]-Jig-[REDACTED]

4). The value added profiles must all be individually wrapped in order to preserve the quality after all of these checks have been completed. Attached are several photographs showing the final check, and the completion/ packing. This is not required for standard profiles.

- a) Checking
- b) Completion
- c) Packing

The quality control report records details by the specific department. Reports are also attached – [REDACTED] in pdf. For example report [REDACTED] shows [REDACTED] pieces had to be rejected after failing bubbles/bow tests highlighting the stringent quality control.

The standard profiles are not subjected to any of these tests. The standard profiles are cut in the extrusion line. The special value added product is taken to a separate quality control area post extrusion where the various tests must be undertaken. The quality checks on standard profiles are in line and performed to a far lesser level. The special value added profiles are clearly of a much higher quality.

Commercial and Functional comparison between value added profiles and standard profiles

■■■■, and ■■■■ only supply ■■■■ and ■■■■ with these expensive profiles. It would be commercially impossible for them to compete with standard profiles for sales into any other market given the large price difference between these profiles and the standard ones. These customers identified do not buy standard profiles.

Again, we emphasise that only the standard profiles are being exported to Australia. This is evident in the details within the purchase orders. No profiles that have special value added services are sold to Australia. As in the domestic market their much higher price precludes them from the usual run of the mill export market.

■■■■ additional commitments set out in the terms of sale

As shown in the attachment '*Milleon Extruder Minutes Discussion Attachment with ■■■■*' that was enclosed in the previous submission, there are the additional commitments, over and above the quality control and precision cutting which has been detailed above, which contribute to the significant value added premium.

These services are not incorporated in the price of exported goods to Australia to which it has been compared to work out the dumping. They fall within the terms of the Act where it refers to adjustment where prices being compared '*are modified in different ways by taxes or the terms or circumstances of the sales to which they relate*'.

Adjustment for management sales

Capral opposes a downward adjustment on subsection 269TAC(1) sales that are made directly by Milleon which it refers to as "management sales".

Capral states it is not the Commission's practice to adjust for estimated amounts which are normal SG&A sales by the exporter on domestic sales. It states adjustments to normal value are typically made in respect of identified actual amounts for commissions incurred.

The previous submission provided an extract from the manual about management expenses. It shows an allowance is able to be made for relevant selling expenses incurred in the market where the commission had not been paid'. Applicant appears to state that this part of the manual ought to have no consequence whatsoever.

The words 'normal SG&A sales by the exporter on domestic sales' suggest these expenses are required to be treated as a general overhead expenses. The

expenses identified relate to the cost of personnel who are directly involved in making sales to non- commission customers.

Most direct costs are variable but this may not always be the case. Salary of managerial personnel can be a fixed overhead and a general cost of doing business. However, where those personnel also undertake a specific activity - in this case selling activities to certain customers - it is a normal accounting practice to allocate those particular expenses as a direct fixed cost incurred.

These costs are described as mixed costs as some part of a cost can be a direct expense, and a remaining part an indirect overhead expense.

In the case of the selling expenses incurred for making sales to non- commission customers, the actual costs incurred were taken directly from the ledger and for the three relevant account items. The time devoted to sales activities as compared to other general activities of the company has been reasonably calculated based on the historical experience of the company. The former being a calculated direct selling expense; the latter being the general overhead or indirect costs. Time taken is a reasonable and valid allocation basis.

This method of calculation/allocation is like any other calculation that may be made of an expense or cost item, for example for cost allocations which can impact on specification adjustments. Allocations are accepted when working out adjustments, and allocations can be based on certain reasonable calculations. Items such as freight, or credit can be allocated in absence of a known actual amount.

Reasonable assumptions are always being made when working out an expense or cost item. In usual accounting practice a 'charge' or expense item is often based on an allocation of an amount to an account on any basis consistent with generally accepted cost accounting principles and practices.

On page 65 the manual states: "An allocation of expenses is accepted by the Commission where actual expenses incurred cannot be obtained". In this context we recall the provision in the ADA article 2.4 cited above which states: "...The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties".

Milleon has worked out in a reasonable and valid manner the selling expenses it incurs when making sales to the non- commission customers. These are legitimate expenses to be taken into account when making adjustments to normal value. Export commissions are added; local commissions deducted; and selling expenses to non-commission customers deducted.

These direct selling expenses sought for adjustment are sufficiently pertinent to the sales for which the adjustment is requested, and represent a proper adjustment claim.

Yours Sincerely

John McDermott