Public Version

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

Milleon has made these submissions:

- Response to the Verification Report which was placed on the public record on 21/9/20
- Response to Capral which was placed on the public record on 27/10/20
- Two videos showing the checking and packing for the value added process that was sent to the ADC on Friday 6 November.

This submission restates that a 'fair comparison' adjustment is required in the normal value determination to take account of the differences that arise in the production and sale of certain aluminium extrusions for domestic consumption that are not incurred in the production of the aluminium extrusions produced for export to Australia.

This difference in characteristics is reflected in the prices at which certain aluminium extrusions are sold, namely to three domestic customers, when compared to the export prices of the aluminium extrusions exported to Australia. These differences may be summarised as follows:

Special Extrusions	Additional Production Processes	Additional Costs	Additional Characteristics	Prices	Price Difference
Company 1	Precision cuts; Tests for flatness and bows; Dimension checks; 100 % final quality check; 100% individual wrapping	While costs are incurred in the process, Milleon's costing system works out costs as an overall weighted average.	A significantly higher quality product reflecting the results of the tests, and without a single dent or scratch; handling from the extrusion line is with care for same reasons.	[redacted] MYR/kg Av'ge [redacted] MYR/kg	The average price for domestic sales of the standard goods is [redacted] MYR/kg *Premium added MYR/kg*: [redacted]=[redacted]
Company 2				[redacted] MYR/kg Av'ge [redacted]	
Company 3				[redacted] MYR/kg	

Company names and prices above are confidential

The exports to Australia do not go through this process and hence do not acquire the characteristics that are described. Consistent with Australia's antidumping legislation and WTO rules, a 'fair comparison' adjustment is required in these circumstances.

<u>'Value added' sales</u>

"Value added' is a word Milleon uses to describe special services that are undertaken in an additional production process, after the extrusion line. This is designed to give the goods the characteristics that are described in the table above, that is enhanced product quality. The quality of the goods is significantly higher than usual 'standard' goods that do not go through this process.

The reason why Milleon has submitted documents, pricing details, photographs and videos is to provide details about this process.

This additional production process summarised in the table above is described in more detail below:

1) Precision Cutting. The cutting is labour intensive and must meet an order of accuracy of plus or minus 0.5mm, in the quality area. For Company 1 a caliper must be used to ensure accuracy as the length is short.

2) Flatness and bow tests to examine the flatness and curving.
3) Dimension check where a customs made Jig set is used to manually check each profile.
4) A 100% quality check process applied with these tests and a high reject rate.
5) On completion of this production process each of these profiles are these activities have been performed are individually wrapped in order to protect the quality enhancements.

This additional production process is not something that is performed for the sales to Australia, where such high-quality goods are not purchased. This enhanced high quality product is required by the three customers identified in the table above.

The submission by Capral placed on the public record on 4 November 2020, is incorrect wherein Capral has stated:

> "Milleon has again referred to its alleged premium products that it sells domestically and does not export to Australia. It is suggesting that the Anti-Dumping Commission ("the Commission") must adjust the domestic normal value for "premium value added services" that it does not incur on export sales.
>
> This further Milleon submission details the value added services it claims apply only to the premium sales namely, precision cutting, quality control checks including flatness and curving, dimensional checks, and individual wrapping. <u>Capral considers that these quality control checks undertaken by Milleon would be conducted for all products (whether domestic or export sales)</u>.
>
> Capral submits that Milleon would provide technical services and quality control checks for all of its product – irrespective of whether it describes the goods as "premium" in nature or whether they are sold on the domestic or export markets. <u>As such, no adjustment for service is warranted".</u> (Emphasis has been added).

Capral states that '..*no adjustment for service is warranted*' because '..*these quality control checks undertaken for by Milleon would be conducted for all products (whether domestic or export sales*)'.

The inevitable corollary of Capral's argument is that if all goods do *not* have additional services added, but only some of them do on the domestic market, then an adjustment is warranted for the difference in quality characteristics/services added as compared to export sales.

This is the nub of the matter because Milleon has provided evidence what these special services are; which sales they relate to; and which sales they do not relate to including Australian sales. Further, the effect that this has on prices is evidenced by the higher, premium prices paid by the three customers

for these high quality products as compared with the prices paid for 'standard' products in the domestic market.

The sales which are affected by the additional production process

Two customers in the domestic market, who are unrelated to Milleon, require the entire quantity of product they purchase from Milleon to be via this additional process. They are Company 1 and Company 2. These two customers account for [redacted]% of the domestic sales.

A third customer, Company 3, also unrelated to Milleon, purchases one model number via this additional process.

In total, [redacted]% of the domestic sales have been produced in this fashion. The balance of the domestic sales are standard profiles and all exports to Australia are standard profiles. The word 'standard' is used to mean the goods have not been through the additional production process to produce the enhanced, high-quality product with the additional quality assurance.

Only the three identified customers require the products they purchase to undergo this additional process to produce the enhanced, high quality product with the additional quality assurance that meets their respective requirements.

The basis for Milleon's claim

The exports to Australia do not go through this process and hence do not acquire the characteristics that are described. Consistent with Australia's antidumping legislation and WTO rules, a 'fair comparison' adjustment is required in these circumstances.

That is, a 'fair comparison' adjustment is required to take account of the price differences between the 'special' sold on the domestic market and the 'standard' product sold for export to Australia, which price differences reflect the quality differences between the products that undergo the additional process.

Milleon's first submission referred to a level of sale difference. A 'level of trade' difference is not defined in legislation – having regard to the nature of the purchaser it is clear that only some customers purchase the high quality goods. This can be described as a level of trade difference.

(Capral's statement in a submission of 30 October concerning trade level that "..The goods are sold to customers direct, not via a third party, and as such an adjustment to Milleon's normal value cannot be applied" restricts sales level issues to the nature of the seller not the purchaser. Level of sale differences can occur in more than one circumstance, but even were the sales level considered from a point of view of a seller, whether a third party is involved is not determinative. For example, an exporter can sell to a retailer in one market and to a manufacturer in the other market and no third party is involved).

What is very clear however is that certain domestic sales by Milleon must go through an additional process of production. And this extra process imparts to the products distinctive quality enhancements and characteristics making them different in terms of quality and in price from goods that have not been through this additional process.

<u>The ADC's investigative responsibility</u>

The ADC's verification report, placed on the public record on 28 August 2020 and its accompanying confidential spreadsheets, shows that the dumping margin was worked out using the entirety of Milleon's domestic sales. The domestic sales listing showed unit prices varying from a low of $[redacted] to $[redacted] MYR/kg, and as high as $[redacted]MYR/kg.

In making a dumping calculation an investigative authority bears a responsibility to examine the facts and analyse differences affecting price comparability in each case on its merits.

A WTO Panel report on *Egypt - Steel Rebar* read Article 2.4 as explicitly requiring a fact-based, case-by case analysis when considering the adjustments required for fair comparison:

> "[W]e read Article 2.4 as explicitly requiring a fact-based, case-by-case analysis of differences that affect price comparability. In this regard, we take note in particular of the requirement in Article 2.4 that '[d]ue allowance shall be made *in each case, on its merits*, for differences which affect price comparability' (emphasis added). We note as well that in addition to an illustrative list of possible such differences, Article 2.4 also requires allowances for 'any other differences which are also *demonstrated* to affect price

> comparability' (emphasis added). Finally, we note the affirmative information- gathering burden on the investigating authority in this context, that it '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' (emphasis added). In short, where it is demonstrated by one or another party in a particular case, or by the data itself that a given difference affects price comparability, an adjustment must be made. In identifying to the parties the data that it considers would be necessary to make such a demonstration, the investigating authority is not to impose an unreasonable burden of proof on the parties. Thus, the process of determining what kind or types of adjustments need to be made to one or both sides of the dumping margin equation to ensure a fair comparison, is something of a dialogue between interested parties and the investigating authority, and must be done on a case-by- case basis, grounded in factual evidence

Unfortunately, the 'dialogue' which that Panel anticipates as part of the information gathering burden placed on the investigative authority on due allowance has not occurred in ADC's dealings with Milleon. This lack of discussion would be shown on the record.

That ADC did not inquire of Milleon during the verification about the reasons for the wide spread of prices in the domestic sales. This fact was obvious from just one column in a spreadsheet. All domestic sales were used in the dumping calculation in that verification report yet the Australian sales (which had not gone through the additional production process) were on average about $[redacted]MYR/kg without any similar range of unit prices.

Milleon would have provided an explanation to the ADC had it inquired. Matters such as whether sales are in the ordinary course, trade level, arms-length, quality or any other differences affecting price comparability could only have been properly examined had ADC had this meaningful 'dialogue' with Milleon.

To be fair, ADC did investigate physical differences and the model codes used for this investigation, and it verified the usual allowances which are part of the standardised exporter questionnaire.

Milleon accepts it had some responsibility to advise of an allowance at verification itself and in responding to the questionnaire. In this regard, it is important to note that Milleon did not have any prior experience with dumping authorities. It was previously treated by ADC as a residual exporter in the earlier investigation concerning extrusions from Malaysia and for that reason was not investigated.

Further, throughout the verification phase Milleon was not receiving any external advice. Milleon had overlooked the importance of raising the value added sales issue with ADC in the verification phase.

However, when Milleon received the verification report on 18 August 2020 it responded with several emails. In emails dated 18 and 19 August Milleon advised of the need to account for the value added sales. Those responsible for the verification report chose not to engage with Milleon on this issue and told Milleon to communicate with the Case Manager. Milleon appointed J McDermott & Associates soon after receiving the verification report, and the first submission provided detail about the additional production process.

On balance, having regard to the requirements concerning the investigative authority's own direct responsibilities concerning adjustments, it would be very unreasonable for the ADC to consider that Milleon did not raise the claim in a timely manner. It would also be unreasonable in the circumstances that have been explained if the ADC considers the claim did not warrant investigation because it was not raised during the verification itself.

Milleon made the claim directly after the verification report. The ADC has extended the investigation from mid-June to December 2020 and this extension has meant that there was ample time for the ADC to engage with and have a proper dialogue with Milleon's adjustment claim.

<u>Standard profiles</u>:

The submissions distinguished special value added sales from sales of standard profiles. The standard profiles it was explained:

1) Do not go through the additional production process for special value added services/quality enhancement.
2) Checks that do occur on quality is significantly different from the special value added labour intensive process – for standard profiles the checks are performed in the production line only during the extrusion process. `
3) The cutting is done in line and these standard profiles to a significantly lower accuracy as described in the submissions.

<u>Costs measured by the ADC; the Model Control Codes;</u>
<u>Measuring quality differences</u>

The ADC calculated costs at a model control code level. The initiation Notice of 24 February 2020 gave details of the model code structure and it stated in context of the codes that the Commission will have regard to "*differences in physical characteristics*" that give rise to distinguishable and material differences in price. It gave details of the code to be followed by exporters when completing the questionnaire.

The MCC, as the Initiation Notice stated, is designed to measure differences in 'physical' characteristics. Milleon's claim concerns a quality difference between goods.

The purpose of the MCC is to categorise goods produced for the domestic market into MCC models that are 'most comparable' to the MCC model to which exports are categorised. It is evident that the goods produced for domestic consumption are not identical to those exported. If they were, the MCC categorisation would be redundant. It follows that there will be differences between the goods produced for domestic consumption categorised to a MCC category with the comparable export goods in that MCC category. Such differences, if affecting price, must be accounted for and an appropriate adjustment made in the normal value calculation to ensure a 'fair comparison'.

That is the case here.

The additional production process gives the product different characteristics. They are qualitatively different being of enhanced quality resulting from the rigorous tests performed. Further, the additional production process, that is, the enhanced quality processes clearly means that these products have undergone additional production processes that the 'standard' product has not undergone and, therefore, has significantly greater quality assurance. This is reflected in the higher price that is mandated by such greater quality assurance.

These quality assurance processes and characteristics do not readily fit into a MCC system. Nevertheless, a quality differential will have to be examined as a relevant adjustment factor as it is present in some products produced for domestic consumption but not in products for export to Australia and this differential is reflected in pricing differences.

It also must be noted that this additional production process is at the request of the three customers identified earlier above, who are unrelated to Milleon, and is reflected in enhanced product quality with greater quality assurances that mandates a higher price premium, which is evidenced by the higher prices that each pays as has been verified.

The quality adjustment is covered by the terms of s269TAC(8)

The Act allows an adjustment for a quality difference between the sales being compared. The terms of s269TAC(8) were shown in the previous submission and are repeated for convenience:

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.

Adjustment for a quality difference is provided for in the provision at (c) which states: "*are modified in different ways by taxes or the terms or circumstances of the sales to which they relate*". An adjustment for differences in quality is found in the regulations and procedures of other investigating authorities.

There has been a GATT panel - in *EC-Audio Cassettes* – which considered the question of additional functions being performed in one market beyond those performed in another. At para 376 the Panel noted that where the price in one market was based on a price charged by a seller who performed additional functions beyond those performed in another market, comparability of the prices can be affected.

In the Audio-Cassette case the export price and normal value were being constructed, hence the question of extra investments and costs involved was relevant. The Panel stated that when working out the constructed normal value or export price these additional functions performed in one market could justify an adjustment by way of an amount for profits related to those activities.

Circumstances differ in that case as it concerned constructed values. However, it demonstrates the policy principle that additional services added can be the basis for an adjustment. In a case where there is a comparison of prices between two markets, which is the case for extrusions, if one of the markets has additional functions being performed and reflected in a price, which is not in prices in the other market, an adjustment must be examined.

Milleon has provided evidence of the significant quality differentials. Most profiles do not have these quality enhancements so they are not directly comparable. It is not relevant for ADC to speculate whether this premium is too high, because this is an amount the particular customers are prepared to pay to get the product they need. That premium does not get applied to standard profiles sold to Australia or in Malaysia.

The ADC would be misinformed if it regarded the sales to Company 1 and Company 2 as simply being a standard profile that enjoys a higher price because:

1) Standard profiles do not go through the additional production process. The standard profiles are from the extrusion line and for clarity we repeat – they do not go through the special value added services production process.
2) Only goods which have special services incorporated in this additional process go to the 2 customers that have been identified.

In the section above titled Costs measured by the ADC it commented on the control codes and its limitation so far as cases like this where special services have been added to a good.

The dumping legislation does not require a cost difference to have to be measured at a MCC level before there can be a quality adjustment. This follows from the fact that a cost difference only becomes important where a price difference cannot be observed and the cost difference is a proxy for the likely price difference after adding profit.

This principle is made clear in the ADC's manual which Milleon assumes is important to the ADC procedures. At page 67, the Manual refers to differences in 'Physical characteristics and quality':

> '*Adjustment is allowed for differences in physical characteristics where the differences can be quantified to ensure fair comparison. Relevant differences include quality, chemical composition, structure, or design.*

> *<u>Evidence should be provided of different selling prices for products with different physical characteristics or quality. In such cases, the size of the price difference may be used as the basis for any adjustment.</u>*
>
> *However, there may be situations where direct evidence of price differences cannot be provided (e.g. models sold domestically and exported to Australia are different). In these situations, adjustments for differences in physical characteristics or quality, where it reasonably affects price comparability, may be based on production cost differences plus the addition of the gross margin (i.e. the administrative, selling and general costs and profit) to the production cost difference. This is a means for calculating an adjustment that reflects the market value of the production cost difference. Where neither of these methods may be utilised, the Commission may consider other reasonable methods to make adjustments for physical characteristics or quality.'*

The price difference is sufficient for making an adjustment for a quality difference. The price difference takes a priority over the cost difference, and nothing in s269TAC(8) requires that an adjustment must be based solely on a cost differential. It refers to prices.

The adjustment contended for is consistent with the ADC's policy and practice as set out in its Manual as extracted above, which, of course, is consistent with Australian legislation and WTO rules and jurisprudence.

It is irrelevant for the purpose of the quality adjustment sought that the MCC cost system used by the ADC in this investigation has not captured costs to the level of the value added sales or for the quality difference. Milleon has explained the reasons and means by which a proper and fair comparison is to be achieved:

1) By comparing the standard profiles exported to Australia (which is all of the exports shown in the EQR) to the standard profiles sold in Malaysia (which is all of the sales but for the sales to Company 1 and Company 2).
2) However, if ADC does incorporate sales to these 2 customers in a dumping calculation it will have to make an adjustment
3) The amount of the adjustment has been quantified to account for the very significant quality differential/services added via a separate process of production.

The adjustment quantified directly reflects the price effect of the premium that has been added to account for the work and effort that is being incorporated into the sales that have been through this additional production process.

Conclusion

In light of the foregoing, it is apparent that an adjustment is required to the determination of the 'normal value' of the product produced by Milleon and sold for export to Australia to account for the differences in product quality, quality assurances and price between the product produced and sold for domestic consumption that undergo additional production processes and the product sold for export to Australia that does not.

Such an adjustment is consistent with the ADC's practice and policy as set out in its Manual, which properly reflects Australian antidumping legislation and WTO rules and jurisprudence. Such an adjustment must be undertaken to effect a 'fair comparison'.

Accordingly, it is requested the correct normal value determination for Milleon's product and dumping margin calculation include this adjustment with the revised determination and calculation for review.

J McDermott
17/11/2020