

Non-Confidential

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Anti-Dumping Commissioner
Anti-Dumping Commission
Level 35
55 Collins Street
Melbourne Victoria 3000

Attention: Mr Gavin Crooks
Assistant Director, Investigations 3

Dear Mr Crooks,

RE: Dumping investigations – exports of certain aluminium extrusions from Malaysia – Investigations Nos 540 and 541 – Milleon Extruder – Information Request - Fair Comparison Adjustment – Non-Confidential Summary

The following is a non-confidential summary of a submission made to the Anti-Dumping Commission (Commission) in connection with a request for further information made by the Commission to assist it in its normal value determination for exports of certain aluminium extrusions by for Milleon Extruder Sdn Bhd's (**Milleon**) following a number of submissions made by Milleon on this issue, non-confidential versions of which are on the public file.

Those previous submissions identified the following issues:

- (a) what additional production processes are undertaken in respect of aluminium extrusions or certain aluminium extrusions for domestic consumption that are not undertaken for aluminium extrusions for export to Australia; and
- (b) what effect do such additional production processes have on the prices of the aluminium extrusions in question produced and sold for domestic consumption?

What those additional production processes that are undertaken for domestic consumption that are not undertaken for aluminium extrusions produced for export to Australia is a question of fact. This distinction between the aluminium extrusions that are subjected to the additional production processes and those that are not have previously been referred to as 'special' products and 'standard' products respectively.

The additional production processes are undertaken at the specific request of particular customers and those additional production processes impart on the aluminium extrusions a higher quality and are so certified. As a result, they command a higher price.

What effect those additional production processes have on the aluminium extrusions requires consideration of the proper application of ss.269TAC(1) and (8)(b) and(c) of the *Customs Act 1901* for the purposes of normal value determination.

That is, are the aluminium extrusions subjected to the additional production processes 'like goods' to those exported to Australia. That is, are they identical to the aluminium extrusions exported to Australia and, if not, does Milleon produce and sell aluminium extrusions in the domestic Malaysian market that are identical to those exported to Australia?

If the aluminium extrusions that are subjected to the additional production processes are not identical to those exported to Australia but Milleon does produce and sell identical goods in the domestic Malaysian market to those exported to Australia, then only the latter are to be included in the normal value determination. That is because, on the proper construction of the definition of 'like goods' in s.269T(1) of the *Customs Act 1901*, having due regard as well to the definition of that term in Article 2.6 of the WTO Anti-Dumping Agreement, only the identical goods are the 'like goods' to those exported to Australia and can be used in the normal value determination.

Alternatively, if somehow the aluminium extrusions that are subjected to the additional production processes fall within the definition of like goods for the purposes of s.269TAC(1) of the *Customs Act 1901*, then appropriate adjustments are required to be made in the normal value calculation pursuant to ss. 269TAC(8)(b) and (c) of the *Customs Act 1901*.

That is, to effectively render the aluminium extrusions subjected to the additional production processes as identical goods to those exported to Australia in the price comparison and/or to take account of the circumstances of the sales of the aluminium extrusions subjected to the additional production processes to the extent that they modify the price of those aluminium extrusions in domestic sales differently from those in export sales. These, of course, are questions of fact.

Further support that adjustments must be made to effect a fair comparison is that the aluminium extrusions subjected to the additional production processes are sold at a different level of trade to those that are not subjected to those additional production processes. That is, as has been explained previously, those additional production processes result in a higher-quality aluminium extrusions than those not subjected to those additional processes and, consequently, are sold as such – i.e. as higher quality products or, in other word, a different level of trade.

They also are not sold in the ordinary course of trade. That is, the ordinary course of trade is the sale of aluminium extrusions in the ordinary course of trade is the sale of aluminium extrusions that are not subjected to these additional production processes. Sales of aluminium extrusions that are subjected to these additional production processes are exceptional, namely, not in the ordinary course of trade. Those additional production processes are specifically required by particular customers.

WTO jurisprudence exists in support of these contentions. See, for example: '*US – Hot Rolled Steel*' and '*US – Softwood Lumber V (Article 21.5 Canada)*'.

Finally, there appears to have been an element of confusion by the Commission in its assessment of 'like goods' at section 2 of the verification report for Milleon. The following was stated in that section of the verification report:

"The verification team considers that the goods manufactured for domestic consumption are identical to, or have characteristics closely resembling, the goods exported to Australia, as they:

- *are not distinguished from the exported goods during production (the exported goods and goods sold on the domestic market are produced in the same way, subject to individual customer specifications, and the costs of production for models sold domestically and for export are the same);*
- *are produced at the same facilities, using the same raw material inputs and manufacturing processes;*
- *the goods compete in the same market sector, are interchangeable and use similar distribution channels; and*
- *can be considered functionally alike, as they have similar end uses."* (underlining added) (section 2.5)

It is evident from the above extract that Milleon manufactures for domestic consumption both 'identical' goods to those exported to Australia and goods with 'characteristics closely resembling' those exported to Australia. Two distinct and separate goods – one identical and the other not - otherwise there would be no need to refer to both.

If goods manufactured by Milleon for domestic consumption are 'identical' to the goods exported to Australia, as is the case, then those goods are the 'like goods' and only those goods for the reasons set out earlier above. Whether other goods produced by Milleon 'have characteristics closely resembling the goods exported to Australia' is irrelevant and must be disregarded, as must the matters mentioned in the dot points that are irrelevant in any event as none are 'characteristics' of a good.

Yours faithfully,

Andrew Percival
Principal