John McDermott and Associates Pty Ltd

ACN 071 413 360
ABN 91 071 413 360

27 Vagabond Cres
McKELLAR ACT 2617
AUSTRALIA
Postal Address
PO Box 3414
BELCONNEN ACT 2617
AUSTRALIA

Received 5 January 2021

Telephone: Mobile: +61412 543 792
Email: jmcd49@optusnet.com.au

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 –Statements of Essential Facts – Normal Value Determination

I refer to the Anti-Dumping Commissioner's (**Commissioner**) Statements of Essential Facts dated 9 December 2020 (**SEFs**) in relation to Investigations Nos 540 and 541. Milleon Extruder Sdn Bhd's (**Milleon**) makes the following submissions in relation to the SEFs, in particular, in relation to the determination of normal values for Milleon's exports of the aluminium extrusions in questions from Malaysia to Australia.

1. Background – difference between special and standard Milleon products

As has been repeatedly submitted to the Anti-Dumping Commission (Commission), with relevant evidence, the aluminium extrusions supplied by Milleon in Malaysia may be categorised into two broad categories, namely, standard products and special products.

The standard product is supplied by Milleon to both the domestic market in Malaysia and to its export markets including to Australia. The special product, however, is only supplied in Malaysia and only to three customers in Malaysia at their request to meet their specifications and requirements, as has been verified.

The difference between the two is that the special products undergo additional production processes as compared with the standard product. These additional production processes are undertaken at the request of three customers to meet their specifications and requirements. The result is that the special product is of a higher quality than the standard product, as has been submitted to the Commission, again with relevant supporting evidence.

Obviously, such additional production processes incur additional production costs. While, as previously advised, these costs have not been individually recorded because Milleon's costs are recorded overall, not by each department, Milleon is well aware of those costs involved and structured its prices accordingly. These additional costs are captured in the price at which the special products are sold to the three customers. It also is important to note that there is not an exact correlation between those additional production costs and the higher price paid by the three customers for the special product, just as there is no exact correlation between the cost to make and sell a product and the price at which it is sold because the price is the reflection of the commercial negotiations between the buyer and seller.

The exception to this is where the buyer and seller agree that the price may be varied by a change in one or more of the costs incurred in the production and/or sale of the product. The obvious example here is the cost of aluminium that may, for example, be linked to changes to the price of aluminium on the London Metal Exchange (LME), which is a common practice in the pricing of aluminium extrusions although not necessarily a universal practice.

In the case of two of the customers purchasing the special product from Milleon (Company names), the prices for the special product included, as a component, an amount for the LME price that was negotiated to be fixed at a time when LME prices were higher.

That 'bundled' price for the special product was inclusive of the additional production processes. That is, premium added for the additional quality production processes, the LME price, and amounts for the mill finish were all incorporated into the price, full details of which have been provided to the Commission. The price negotiations with the customers preceded and were finalised prior to the Investigation. Further, those prices remained fixed following entry into the contracts notwithstanding a subsequent fall in LME prices. There was no automatic or other change in the price due to a change in LME prices.

The differences in pricing for the two customers mentioned above and the one not subject to the same pricing arrangements is addressed later below.

The fixed LME price clearly contributed to the price disparity between the special products and the standard products when the comparison is made during the investigation period. After contracts for the special product were entered into with two of the customers which fixed the LME price in the manner that has been explained, the LME price subsequently declined. The prices for standard products which did not have fixed LME sales contracts varied according to the changes in LME prices.

Nevertheless, despite this disparate effect of the LME, the fact is the special premium for the additional process remained within the price to the special customers for that additional production process. This premium was never a part of the price of the standard product because the exported standard goods (and domestic standard goods) do not undergo the additional production process.

The movements in the LME price which subsequently occurred are irrelevant to the adjustment issue. The presence of the special additional premium in the domestic price of the special quality goods, and the absence of any premium for that process in standard goods (which includes all exported goods), is the price effect which demands adjustment to normal value.

Put another way, and using special customer Company name as an example, Milleon informed the Commission how the prices for that customer were negotiated in [redacted] And the information provided to the Commission shows that the prices were based on a LME price that was operative in [redacted]

The price agreed and the contractual terms with Company name became effective from [redacted] These prices carried into the investigation period 2019. The Commission was advised that Company name had requested the fixed price arrangement because at that time the trend of the LME was upwards.

The effect of the premium that has been added for the additional production process, after removing the effect of any LME changes, can be illustrated. In the table below three customers buying standard product are compared to Company name :

- Company name buys all of its product from the additional process, full details of which are in the contract provided to the Commission and detailed in submissions;
- The standard customers, which includes the three identified in the table below, buy their requirements straight from the extrusion line, not having been transferred to the additional production process.

When the LME price it is the same between customers, the table below demonstrates that a price difference exists which is caused by the special premium added for Company name solely for the additional production process that Company name required.

The table below compares the actual prices of the special product (for customer Company name to the actual prices of the standard product (for 3 customers as an example) – with all prices based on the [redacted] for LME:

		Product	**Price MYR/kg**
Premium customer	Company name **	Product no	Price
		Product no	price
Standard customer	Company name	See quotation*	price
	Company name	See quotation*	price
	Company name	See quotation*	price

** Invoice attached

- Quotations attached

When the LME later moved downwards it obviously created a price difference between the special customers Customer names and all other customers buying standard product where LME was not so fixed. All standard goods are sold on either cash LME terms or 3 month average LME terms. This resulted in an increasing disparity between prices of the special goods where the LME was fixed; and prices of the standard goods which varied more frequently because of the LME changes.

It is important to reiterate that the price effect of the special premium added for the additional production process was present at the outset when LME was the same, and it remained an element in the prices being compared regardless of the fact that there were subsequent LME changes.

The three customers are prepared to pay and did in fact pay, as has been verified, a higher price for the special product. That higher price payable and paid for the special product is evidence that:

(a) the special product is not identical to the standard product, that is, the three customers would not be paying a higher price for the special product if it were identical to the standard product; and
(b) if, on the other hand, the special product and the standard product were ‘like goods’ for the purposes of the Investigations, contrary to the definition of ‘like goods’ in Part XVB

of the Customs Act and in the WTO Anti-Dumping Agreement, the price of the special product is affected by the additional production processes in an amount equal to the difference in the prices payable and paid between the special products and standard product.

The determination of the normal values for Milleon's exports to Australia in the SEFs do not properly or adequately take these matters into account.

2. Background – normal value determination

The purpose of a dumping investigation, as the Commission would be aware, is, amongst other things, to determine whether the product under investigation is entering the commerce of the importing country at an export price that is less than that product's normal value.

A product's normal value is in substance, regardless of how it is determined, the price at which that product enters the commerce of the exporting country. The rational for this is that 'dumping' is essentially a form of international price discrimination between the price at which a product enters the commerce of the importing country and the price at which it enters the commerce of the exporting country.

Regardless of how the 'price' at which the product enters the commerce in the exporting country, that is, whether it is based on prices in domestic sales or a constructed normal value, appropriate adjustments are required to effect a fair comparison between the export prices and normal vale (i.e., a like-for-like comparison of prices). This is reflected in s.269TAC(8) of the Customs Act 1901 and Article 2.4 of the WRO Anti-Dumping Agreement.

The point is that 'dumping' is concerned and only concerned with 'price' discrimination, that is, discrimination in the 'price' at which a product is sold for export (i.e., the export price) and the price at which it is sold domestically (i.e., the normal value). While a normal value, in the appropriate circumstances, may be determined using a constructed normal value methodology (i.e., cost to make and sell plus an amount for profit), it ultimately must reflect a 'price' at which the product would have been sold in the domestic market. In other words, the profit in such a calculation must reflect the profit that would have been obtained in the domestic market had it been sold in that market [in competitive market conditions].

It is in the context that the normal value of Milleon's exports to Australia must be determined. For the reasons previously submitted and set out below, it is submitted that the determination of the normal value of Milleon's exports to Australia as set out in the SEFs has not been properly determined and requires correction.

3. Determination of 'like goods' for normal value purposes

In the submission of 1 December 2020, it was submitted that:

(a) Milleon supplied to the domestic market in Malaysia aluminium extrusions that were identical to those exported to Australia, that is, the standard aluminium extrusions;
(b) the special aluminium extrusions supplied to the Malaysia market by Milleon to particular domestic customers only and were not identical goods to those exported to Australia; and
(c) consequently, the determination of normal value must be based solely on the standard aluminium extrusions supplied by Milleon to the domestic market in Malaysia consistent

with the relevant provisions in Part XVB of the *Customs Act 1901* and the WTO Anti-Dumping Agreement regarding the determination of normal values and definition of 'like goods' for this purpose.

Those submissions are reiterated in this submission.

Further, as indicated earlier above, it is evident that the special aluminium extrusions are not identical to the standard aluminium extrusions. This is evidenced by the fact that the customers purchasing the special product pay a higher price for that product than the price paid for the standard product by customers in Malaysia. Why would a customer pay a higher price for a product that was identical to a product supplied by the same supplier but at a lower price?

The arguments put forward in the previous submission on this issue, and abovementioned facts which were always there to be investigated, have not been taken into account in the SEF. Normal value has not been determined consistent with the facts, as verified, and the applicable law. This must be rectified, and the normal value be re-determined consistent with the foregoing.

4. Normal value adjustment - premium for certain domestic customers

At Section 6.6.2 of the SEF in relation to Investigation No 540 the Commission stated that it was not satisfied that there was "sufficient verifiable information to enable the Commission to reliably quantify the part of the price which would be relevant for an adjustment" in respect of 'additional post-production elements relevant to certain aluminium extrusions'. For the following reasons, Milleon disagrees with the Commission's preliminary finding in this regard.

The 'post-production elements' referred to by the Commission consist of a number of post-production activities undertaken by Milleon at the request of certain customers to enhance the quality of the aluminium extrusions. There is no dispute that the activities in question are actually undertaken and verifiable information was provided to that effect. There also is no dispute that these activities were undertaken only in respect of the aluminium extrusions being supplied to the customers in question and no others.

Further, Milleon does incur additional costs in undertaking these additional 'post-production elements' at the request of the customers in question. Milleon's negotiated prices ensured it recovers costs. Milleon explained to the Commission in its previous submissions how the billet premium; and the mill finish premium; each individually included a profit element.

- The billet premium was explained in detail and it includes a profit margin added
- The mill finish amount represents the extrusion process cost with a profit element included. It relates to a mill finish - that is product without any surface finishing work.

These premiums are in the pricing structure.

Further, it was explained that there is a separate premium added to the prices for the special product for the additional production processes. For two of the special customers - Company names must incorporate in the pricing a premium to cover all of the additional process that are involved in making a higher quality product. And to deliver a profit for those services. All of the various checks and tests performed with dedicated tools in this additional process of production were listed and described in detail.

Milleon knows its total average cost of production. Milleon knows what additional resources are brough into the additional production process such as labour and floor space and consumables. Milleon had structured its prices accordingly with the special additional premium to deliver a profit. In any event, the fact that the negotiated price for these two customers incorporated a fixed LME during 2019 when metal prices decreased ensures these sales prices to special customers are profitable. It is only if the LME price rises above the negotiated fixed LME price will Milleon begin to incur losses on sales to these customers.

Further, Milleon disagrees that there was not sufficient verifiable information to enable the Commission to reliably quantify the part of the price relevant for an adjustment. The part of the price paid by the customers in question that is relevant for an adjustment is that part of the price that represents the additional value to the end product as a result of the 'post-production elements'1 that the customers are prepared to pay and did pay above the price payable for aluminium extrusions that did not undergo these additional 'post-production elements'.

That difference in the prices between standard and premium product is shown in the table below. The 3 customers are prepared and did pay for those additional 'post-production elements' as shown in the table below. It represents the value to the end-product that those additional processes have for those customers and for which they are prepared to pay and did pay a higher price.

Difference to price from the premium added for the additional production process:

	Additional premium incorporated into the price for additional production process (Price per metric ton) (MYR)	**Additional premium incorporated into the price for additional production process (Price per kg) (MYR)**
Company name	Price	price
Company name	Price	price
Company name 1		price

In terms of the overall difference in prices between the special product and standard product are shown in the Table below. As explained in detail at the early part of this submission this difference reflects the effect of the fixed LME price for the two customers concerned. It also reflects the effect of the premium that was added for the additional production process as this was part of the price negotiated as explained earlier above.

Average price of standard product	**MYR/kg**	**MYR/kg**
Company name	price	%
Company name*	price	%
Company name*	price	%

*Note: these are the two customers subject to the fixed price contracts.

[1] The 'additional post production process' means those additional processes undertaken in the department designed to add the special quality characteristics for the 3 customers – processes which occur are after the extrusions have left the main extrusion production line".

Milleon notes that despite a lengthy discussion of this issue in Section 6.6.2 of the SEF, the Commission does not dispute that the customers in question did not pay the premium in question or that it could not verify the prices that these customers had paid for these 'special' aluminium extrusions. It is unclear what other evidence could be required or that would be 'better' evidence than that Milleon actually incorporated a premium in its pricing calculations which predated this investigation, and the customers actually paid a premium for these additional post-production processes.

For example, it is unclear what probative value or relevance any of the 'evidentiary materials', such as price lists' or 'invoices', have for whether an adjustment is required in the determination of a normal value in accordance with s. 269TAC(8) of the Customs Act 1901. What such documents are 'evidence' of is unclear and not explained.

By contrast, what the three customers actually pay for the products that undergo the additional -pos-production elements' above the 'standard products' accurately reflects and is evidence of the additional value those 'post-production elements' have for those customers in the end products.

Additional support for this adjustment consists of the following arguments that have previously been put to the Commission.

3.1 Level of trade

In submissions, Milleon also has explained that in support of this adjustment that there is a difference in the level of trade between the aluminium extrusions supplied following the additional post-production processes and those that do not undergo these additional post-production processes.

Adjustments to take account of differences in level of trade between export sales and domestic sales, which differences in level of trade affect prices, is a common and accepted adjustment in normal value calculations. Typically, those level of trades involve differences between wholesale, distributor and retail levels of trade. However, these are not the only kinds of levels of trade that affect prices.

Another form that levels of trade that may occur is between standards in the quality of the products being sold. That is, between high quality, premium products and those perceived to be of a lower standard or quality. These are usually referred to as different market segments for a product and are common in consumer products.

Here, the argument advanced is that the 'special' products, that is, those undergoing the additional post-production quality assurance processes are premium products commanding premium prices and, therefore, are sold to customers at a different level in the market to those that do not undergo these additional processes.

That these products compete and sold at different levels in the aluminium extrusion market in Malaysia is evidenced by the premium prices they command as compared with those that do not undergo these additional processes. Were this not the case then, presumably, customers would purchase the lower priced products and there ultimately would not be a market for the higher priced, premium products. That is, the market would consolidate into a single commodity market.

Customer	Additional production process
Customers buying the product via this process.	Company names for a model number
Do customers in Australia buy product via this process?	No. Australian customers only buy standard products which are direct from the extrusion line
Do other domestic customers buy product via this process?	No. Other domestic customers only buy standard products which are direct from the extrusion line

As shown in the Table above, no comparable customers exist in Australia because the special products are not exported. From the point of view of the buyer there is clearly a difference in the level of sales between the high-quality customers in Malaysia and the customers in Australia who only buy standard grade product. For Company name their purchases are, in their entirety, produced in the additional quality assurance process.

Clearly, there is a level of trade difference between sales of standard product in Malaysia and sales of the special product. The standard product does not go through the additional production processes that the special products are subjected to. Two of the customers – Company name – purchase the special product only. They do not purchase and have not purchased any of the standard product. For Company name, purchases of the special product still account for 85% of its purchases from Milleon. Clearly, these three customers prefer the special product due to the additional production processes and pay for the additional quality to the product that they perceive those process impart.

An alternative to making an adjustment, where there is a different trade level of trade that is reflected in pricing, as is here the case, that different level of trade may be excluded in its entirety from the normal value determination. This would, of course, mean no 'adjustment' to the normal value calculation is required because the particular sales do not remain in the population of sales used to work out normal value. This is a common practice of investigating authorities in dumping investigations in other jurisdictions and is consistent with the Commission's policy and practice as set out in its Dumping and Subsidy Manual.

3.2 Ordinary course of trade

Further support for the adjustment contended for is the argument advanced in previous submissions that sales of the 'special' aluminium extrusions are not in the ordinary course of trade.

Typically, the issue of 'ordinary course of trade' is considered in the context of whether sales are being made at a loss and, if so, whether those losses are likely to be recovered in a reasonable period of time. If not, those sales are usually treated as not being in the ordinary course of trade.

However, this raises the question of why such sales are regarded as not being in the ordinary course of trade in those circumstances? What is it that takes sales at a loss over an extended period out of being treated as being in the ordinary course of trade?

Arguably it is because that sales at a loss is not the usual or common practice of a business whose 'ordinary course of trade' and reason for being is to generate revenues and, consequently, profits. Sales at a loss over an extended period, as opposed to intermittent sales at a loss for brief periods for a variety of valid commercial reasons, is arguably not in the 'ordinary course of trade' of a business.

Equally, it is arguably not in the 'ordinary course of trade' for a business, at the request of a small number of customers, to undertake additional production processes to enhance the quality of the product produced and supplied by the business. It is not dissimilar to a limited production run undertaken at the request of a specific customer to meet its unique specification requirements. In both cases, the production of those products is not in the 'ordinary course of trade' of that business. This, again, is evidenced by the premiums it charges for those products.

3.3 Management Costs

The Commission has made an error in not making an adjustment for management costs. It has no followed its own practice and policy as set out in its Dumping and Subsidy Manual. The Manual provides a clear policy and practice guide on his issue. Milleon has previously provided details of the relevant account codes for management costs incurred in selling activities and has allocated those costs to its domestic sales. Milleon explained to the Commission that for non-commission domestic sales all of the sales functions are undertaken by management.

The sales activities performed by Milleon management for these non-commission sales are the same as the activities that are undertaken on the domestic market by a sales commission agent. Management performing these functions receive phone calls from customers, respond to their queries and concerns regarding the supply of product including terms, conditions and prices, meet with the customers where necessary, negotiate and finalise contracts including prices, deal with subsequent issues and problems in fulfilling orders including quality issues and address issues with drawings for product profiles or new fabrications.

No reason has been given by the Commission for not following the policy and practice set out in the Manual for making an adjustment for management costs that are incurred in domestic sales and not in export sales. Milleon identified the costs incurred from relevant ledgers and that they were properly allocated. The Commission did not dispute the incurring of these additional management costs in domestic sales or their allocation, nor sought further clarification of those costs.

3.4 Adjustment for costs associated with thickness for powder coating

The SEF states that:

> *"Milleon's submission refers to the Commission's treatment of the cost associated with powder coated extrusions. As Milleon costs its powder coating as an amount per square meter, there is no difference in the powder coating cost between two extrusions with the same surface area. When two extrusions with the same surface area have different weights, the cost per weight of the powder coating will be different.*
>
> *For the purposes of determining sales in the ordinary course of trade, it is the Commission's practice to use the unit cost to make and sell of the relevant domestic models58 and, in the case of aluminium extrusions, the unit cost is calculated per kg. Thus, for the costs associated with powder coating, the Commission will covert these*

> *into a per kg amount for use in the relevant calculations. If two extrusions of the same surface area have different weights, and this causes the unit cost to make to be different, the Commission considers that this is a natural consequence of the costing methodology used by the manufacturer. The Commission further notes that it was not provided information that allowed it to calculate the unit cost to make for powder coated goods based on product thickness."*

Milleon advised in submissions to the Commission that the powder coating cost has implications for a proper dumping margin calculation in Investigation 541. Milleon provided the Commission with a document titled 'PC & WG Cost for ADC .xlsx'. (copy attached.) This document was provided during verification and demonstrated how the powder cost had been calculated in each of the cost of product destined for domestic consumption as well as for export to Australia.

The document demonstrated that when powder costs are worked out on a per kg basis in line with the Exporter Questionnaire requirements, the powder cost is [redacted] on domestic sales as compared with export sales. This flows through to the CTMS calculations and a higher CTMS for the product destined for domestic consumption.

Also, in terms of price comparison generally, the price per kg for product destined for the domestic market is higher as such products are thinner on average, whereas those destined for export to Australia are thinner. [

Also, the Commission stated [in the SEF] that "If two extrusions of the same surface area have different weights, and this causes the unit cost to make to be different, the Commission considers that this is a natural consequence of the costing methodology used by the manufacturer". It is unclear what point the Commission is seeking to make in this statement. That is, if the unit cost of extrusions of different weights are different, then that is the fact presumably regardless of what methodology is used to calculate the difference?

However, Milleon records no cost difference for powder coat costs according to a weight difference. Prices do not vary due to powder coat cost differences that are due to differences in weight. This is because price differences are best reflected and calculated by surface area, as opposed to weight. Milleon understands that this is a common practice in this industry.

The difference in powder coat cost arises solely because of the approach used by the Commission to measure unit costs in terms of kg per unit. The Commission's method has increased the powder coat costs for export sales compared to domestic sales and this of itself artificially creates a dumping outcome. Accordingly, Milleon is seeking an adjustment to correct this bias in the calculation method.

The SEF also states that:

> *"The Commission further notes that it was not provided information that allowed it to calculate the unit cost to make for powder coated goods based on product thickness."*

Milleon provided a worksheet to the Commission showing the effect of the cost of powder coated products according to product thickness. It provided a detailed listing of sales showing thickness in each market. The worksheet which was submitted during verification (copy attached). It calculated the cost difference. The Commission did not advise Milleon that further information was required or needed clarification to support its claim. It, therefore, assumed that the adjustment would be made.

3.5 Conclusion on adjustments

The Commission must ensure a 'fair comparison' is undertaken in the comparison of export prices with the normal value. This must entail either excluding the higher prices sales undergoing the additional production processes altogether from the normal value or by making an adjustment for the additional amount payable for the additional process for the special products as quantified above and in previous submissions.

The adjustment the Commission has made using a cutting cost quote for only one of the customers, Company name, is incorrect. The cutting costs for that one customer only reflect that customer's circumstances. It significantly undervalues the correct adjustment that is required to ensure proper and 'fair' comparison. The adjustment by the Commission for the cutting costs for one customer are only a small part of the special additional production process. This is illustrated in the Table below:

	Adjustment for cutting cost as a % of the premium that was added to price for the additional production processes
Company name	%
Company name	%
Company name	%

Further, it assumes that there is a direct correlation between production costs and price. That is rarely ever the case and misconceives the difference between 'costs', which are to be recovered in the 'price', and the 'price' of a product that is broader than merely the CTMS that are to be recovered in a 'price'. A 'price' does more than that if it is to provide the supplier with a profit. That is the case in the prices of both the standard and special products, with the difference in price between the two evidencing that purchasers of the special product value it more highly and are prepared to pay and do pay a higher price.

5. Conclusion

In light of the foregoing, it is submitted that:

(a) special product should be excluded from the normal value calculation as identical goods to the standard product exported to Australia are also sold by Milleon in the domestic Malaysian market;
(b) if the special product were to be included in the normal value calculation for some reason, appropriate adjustment must be made in the normal value calculation to take account of the higher price paid for the special product due to the additional production processes that they undertake, which enhance the quality of the special product according to the customers purchasing it in preference to standard product;
(c) additional adjustments must be made in the normal value calculation to take account of:

(i) the additional management costs incurred in domestic sales; and
the cost of powder coating according to thickness.

Yours faithfully,

John McDermott