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Mr Paul O'Connor
Panel Member
Anti-Dumping Review Panel
Anti-Dumping Review Panel Secretariat
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Public File

Dear Mr O'Connor

ADRP Review No. 135 & 137 - Aluminium extrusions – mill finish and surface finished exported from Malaysia

I. Introduction

Capral Limited (“Capral”) is an Australian manufacturer of aluminium extrusions and an interested party impacted by the Minister for Industry, Science and Technology (“the Minister”) to impose anti-dumping measures on mill finish and surface finished aluminium extrusions exported from Malaysia.

Capral was the applicant company that requested the imposition of anti-dumping measures on aluminium extrusions exported to Australia from Malaysia by:

- Press Metal Sdn Bhd (“PMB”);
- Milleon Extruder Sdn Bhd (“Milleon”);
- LB Aluminium Sdn Bhd (“LB Aluminium”);
- Kamco Aluminium Sdn Bhd (“Kamco”);
- Superb Aluminium Industries Sdn Bhd (“Superb”); and
- Genesis Aluminium Industries Sdn Bhd (“Genesis”).

Following investigations by the Anti-Dumping Commission (“the Commission”) the following dumping margins were established:

Table 1 – Dumping margins for Malaysian exporters as per Reports 540 & 541

Exporter	Invest 540	Invest 541
PMB	3.3 %	8.6%
Milleon	13.1%	6.1%
LB Aluminium	4.9%	2.6%
Superb	0.2%	12.8%
Kamco	13.2%	18.5%
Genesis	n/a	-6.1%

The Australian importer Criterion Industries Pty Ltd (“Criterion”) and the Malaysian exporter Mileon have requested that the Anti-Dumping Review Panel (“ADRP”) review the Minister’s decision to impose anti-dumping measures on exports of aluminium extrusions (i.e. “the goods”) exported to Australia from Malaysia by the nominated exporters. The Criterion request for review relates to Investigations 540 (mill

finish) and 541 (surface finished) , whereas the Milleon request for review if in respect of Investigation 540 (mill finish) only.

Criterion's grounds for review are:

- (i) There is and was no evidence or sufficient evidence before the Commissioner and, consequently, the Minister that the Australian industry as a whole, as opposed to part thereof, had incurred material injury during the injury period;
- (ii) In the absence of evidence or sufficient evidence that the Australian industry had incurred material injury, the issue of whether exports of the goods under consideration (GUC) at 'dumped' export prices had caused material injury to that industry did not and could not arise; and
- (iii) Even had there been sufficient evidence that the Australian industry as a whole had incurred material injury, there was insufficient evidence that exports of the GUC through the injurious effects of 'dumping' had caused material injury to the Australian industry as a whole during the injury period.

Milleon's grounds for review are:

- (i) The Commissioner failed to properly address the trade level difference identified by Milleon;
- (ii) The Commissioner failed to have proper regard to the evidence of the price premium as warranting an adjustment and chose a relatively minor cutting cost for one of three special domestic customers to make an adjustment for all three customers; and
- (iii) The Commissioner failed to make an adjustment for management costs incurred in selling activities.

Capral will address each of the Grounds for Review identified by the appellant parties.

II. Criterion review

Ground One

Criterion asserts that there was no evidence or a lack of evidence to support a finding that the Australian industry manufacturing the goods had experienced material injury.

At Section 2.1.1 of Reports 540 and 541, the Commission confirms that Capral's application for anti-dumping measures was supported by six other manufacturers of aluminium extrusions, namely:

- Aluminium Shapemakers Pty Ltd ("Alushapes");
- Extrusions Australia Pty Ltd ("EPA");
- G James Australia Pty Ltd ("G James");
- Independent Extrusions Pty Ltd ("INEX");
- Olympic Aluminium Co Pty Ltd ("Olympic"); and
- Ulrich Aluminium Pty Ltd ("Ulrich").

The applications for measures were supported by Australian manufacturers of aluminium extrusions that exceeded the threshold for the applications to be initiated.

At Section 7.2.1 of Report 540 the Commission confirmed that Capral's financial data confirmed that Capral accounted for approximately 40 per cent of production of like goods in Australia.

Following the publication of Statement of Essential Facts No. 540 ("SEF 540") the Commission requested economic data from two further Australian manufacturers – INEX and G James, the two biggest local manufacturers behind Capral. When combined with Capral's data, the three manufacturers accounted for approximately 70 per cent of production of the like goods in Australia. In respect of Investigation 541, Capral accounts for approximately 33 per cent of local production of surface finished goods, and with the INEX and G James data, the Commission was in possession of economic data accounting for approximately 70 of total production for the Australian industry.

The Commission had access to economic data from Australian manufacturers of mill finish and surface finish aluminium extrusions account for 70 per cent of total Australian production. This level of data was considered sufficient by the Commission to be representative of the economic performance of the industry. Capral agrees with the Commission's assessment.

In Reports 540 and 541, the Commission was satisfied that that the available industry data permitted the Commissioner to assess the material injury impact to "the Australian industry as a whole". Having access to data that was representative of the whole of the Australian industry, the Commission was satisfied that the Australian industry 'as a whole' suffered injury in the following:

- loss of sales volumes;
- reduced market share;
- price depression;
- price suppression;
- reduced profit and profitability.

The Commission also concluded that the injury was also evident in the form of reduced revenue (for all three members of the industry) and for Capral injury could also be observed in reduced return on sales, reduced capacity utilisation, reduced employment and wages.

It was therefore reasonable for the Commission to conclude – in respect of both Investigations 540 and 541 – that the Australian industry as a whole had suffered injury.

It is further noted by Capral that the share of the Australian market held by the subject exporters from Malaysia had increased in 2019, whereas the Australian industry's share had decreased. In respect of price undercutting from the subject Malaysian exporters the Commission found¹:

"the Australian industry's prices to the customers who source from the subject exporters were lower than the prices achieved generally by the Australian industry during the investigation period. This evidence satisfies the Commission that the Australian industry has actively competed against the prices of the goods imported from the subject countries."

The Commission was further satisfied:

"that the Australian industry has responded to the prices of cheaper dumped goods from the subject exporters. Further, regardless of whether the Australian industry's price reductions were sufficient to eliminate price undercutting in relation to it (sic) entire sales volume, Australian industry has nonetheless experienced price depression and price suppression due to the presence of those dumped goods on the Australian market."

In respect of the impact on the industry's profit and profitability the Commission concluded that "the Australian industry's prices would likely have been higher in the absence of lower-priced dumped goods from the subject exporters".

The Commission was satisfied that the Australian industry's FIS prices were undercut by the subject exporter's FIS prices. But for the dumping, the Australian industry's selling prices (for mill finish and surface finish) would have been higher, resulting in higher sales volumes and market share, and improved profit and profitability (in both products).

The Commission concluded therefore that the injury experienced by the Australian industry in the investigation period as a result of the dumped exports from the subject exporters "was material and is not immaterial, insubstantial, or insignificant" in respect of mill finish and surface finish markets.

Capral agrees with the Commission's resounding findings. The assertions by Criterion that there was no evidence or sufficient evidence before the Commission (or the Minister) to be satisfied that the Australian industry had not experienced injury that was material, is not supported by the facts. The Minister's

¹ Refer Section 8.7.1, Reports 540 and 541.

decision that the Australian industry suffered material injury that was not immaterial, insubstantial or insignificant from the exports at dumped prices from the subject exporters in Malaysia was the correct and preferable decision.

Ground two

Ground two of Criterion's application for review must surely fail as the Commission substantiated that it had evidenced the Australian industry manufacturing like goods – for both mill finish and surface finish – had suffered material injury from the dumped exports from Malaysia, that was not “immaterial, insubstantial or insignificant”.

As material injury was evidenced and substantiated, the relevance of the dumping by the Malaysian exporters was relevant to the Minister's findings. The Minister's decision concerning the material injury sustained by the Australian industry as a result of the exports at dumped prices was the correct and preferable decision.

Ground three

Capral has addressed the issue raised by Criterion in respect of the Commission considering injury to the “whole of the Australian industry” in respect of comments on Ground One (above).

The Commission obtained relevant economic data for Capral, INEX and G James that accounted for approximately 70 per cent of production of like goods in Australia (in both Invest 540 and 541). The data examined by the Commission was considered to be representative of the whole of the Australian industry manufacturing like goods.

The Commission's recommendations to the Minister concerning the data being representative of the whole of the Australian industry was accepted by the Minister. The Minister's decision in respect of material injury to the producers Capral, INEX and G James as representative of the whole of the Australian industry was the correct and preferable decision.

III. Milleon review

Ground one

Milleon has sought to obtain a level of trade adjustment to its normal value to account for sales to three domestic customers for goods which it alleges are not the “standard” profiles which Milleon exports to Australia.

Milleon asserts in its application for review that the level of trade adjustment was not due to “a difference between the roles of the seller, rather it arises from the fact that the buyers of the high quality product are located in Malaysia”². Milleon's comments suggest that the adjustment is not in fact for a ‘level of trade’ difference but due to a specification difference (i.e. premised on quality) between Milleon's domestic sales and the goods exported to Australia by Milleon.

Milleon refers to the sales to the domestic customer as being in “special circumstances” and continues to argue for a level of trade adjustment. Milleon continues to detail the “additional production processes” required for the three domestic customers, although the sales appear to have been made directly to the customers (similar to the export sales to customers in Australia).

We consider Milleon's claims for a level of trade adjustment to be misrepresented as the adjustment sought – as confirmed by the claimed ‘additional production processes’ relates to a specification adjustment.

The Minister's decision in respect of the treatment by the Commissioner of Milleon's claimed level of trade adjustment is therefore the correct and preferable decision.

² Milleon Application for Review, P.8.

Before we depart from Milleon's level of trade adjustment claim, it should be noted that the Commission could not verify claimed additional costs against "*production cost accounts*", nor were the price premiums for the 'special' sales of domestic goods specifically identified in "*price quotations furnished by Milleon*". The Commission has correctly dismissed the claims by Milleon for an adjustment to normal value (whether for a level of trade adjustment or a specification adjustment) as the amount for the adjustment could not be readily quantified by Milleon, nor could it be demonstrated as existing in price lists or quotations supplied to the domestic customers.

Where it cannot be demonstrated that the claimed additional costs influence the selling prices for the domestic goods, the adjustment should not be allowed.

Ground two

Milleon's second ground of appeal relates to the price "premium" it asserts that it achieves on domestic sales to three customers that purchase *quality* product. Milleon further contends that precision cutting is required for the goods sold to the three domestic customers.

The Commission has afforded Milleon an adjustment for a cost that it considered could be substantiated in relation to the precision cost cutting of the goods. The Commission did not provide an adjustment to Milleon's normal value for claimed price "premium" differences as the claimed additional costs that are associated with the premium (i.e. quality control, higher level of rejects) could not be adequately substantiated by Milleon.

Capral agrees with the Commission's findings that allow for an adjustment to only be made where it can be demonstrated that there exist additional, verifiable costs which the Commission can be satisfied influence the selling prices to the three domestic customers.

We agree with the Minister's decision to not allow an adjustment for a price premium to Milleon's normal value and consider the Minister's decision is the correct and preferable decision.

Ground three

Milleon's third ground of appeal relates to the management costs it claims it incurs in relation to domestic selling expenses.

Importantly, the Commission identified the claimed management costs were "*indirect expenses which are relevant to all sales, not just domestic sales which do not have a commission*". The Commission considered that "*The amount claimed by Milleon is based on an observation of the management team's total wages and salaries expense allocated to the company's total non-commissioned sales volume using an estimated allocation rate. Details regarding the allocation rate were **not** outlined by Milleon and the specific roles and functions of the staff relevant to the claim are **unclear**.*" (emphasis added).

Milleon was unable to demonstrate that the indirect expenses were related solely to domestic sales and could not substantiate the basis for the claimed adjustment. The Commission was correct to reject Milleon's claim for a downward adjustment for management costs.

The Minister's decision to not make an adjustment to Milleon's normal value for management costs it claims related to domestic sales only was the correct and preferable decision.

IV. Recommendations

Criterion has not demonstrated that the Commission's findings that the Australian industry suffered injury that was material (i.e. injury that was not immaterial, insubstantial or insignificant) during the investigation period (in both Investigations 540 and 541) were incorrect. Criterion has further not established that the price undercutting experienced by the Australian industry from the dumped exports of the goods by the subject Malaysian exporters did not cause the Australian industry to suppress its selling prices.

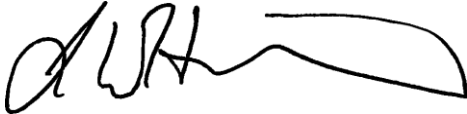
The Minister's decision in respect of the finding in Investigations 540 and 541 that the dumped exports from Malaysia had caused (and threatened to cause) material injury to the Australian industry was the correct and preferable decision.

Milleon has not demonstrated that the Commission's findings in respect of the level of trade adjustment was warranted. Similarly, Milleon cannot demonstrate the existence of a price premium in any of its price lists or on invoices due to the claimed additional costs incurred (i.e. quality control, level of higher rejects, etc). Finally, Milleon has also not been able to demonstrate to the Commission that an adjustment for management costs that are allegedly related to domestic sales can be substantiated.

The Minister's decision to not allow adjustments to Milleon's normal value for level of trade, price premium and management costs is therefore the correct and preferable decision.

Please do not hesitate to contact me if you have any questions concerning this submission on (02) 8222 0113.

Yours sincerely

A handwritten signature in black ink, appearing to read 'LHAWKINS', with a long horizontal flourish extending to the right.

Luke Hawkins
General Manager – Supply and Industrial Solutions