23 May 2016

The Director
Operations 3
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria 3000

By email

Dear Director

Changshu Longte Grinding Ball Co., Ltd
Comments on Moly-Cop letter dated 11 May 2016

We refer to the letter from Commonwealth Steel Company Pty Limited (“Moly-Cop”) to the Anti-Dumping Commission dated 11 May 2016, a copy of which is on the public record of this investigation (“the Moly-Cop letter”).

Our client makes the following comments:

1. The Moly-Cop letter claims that the “benchmark” for steel billet should be derived from statistics derived from the domestic market of Mexico. In response, we wish firstly to point out that our client did not purchase steel billet for its production of grinding balls. Nor does our client agree that the prices in its domestic market sales were or are unsuitable for normal value purposes. Further, it is denied that any cost our client’s financial accounts did not or does not reasonably reflect competitive market costs. And lastly, it is not accepted by our client that any out-of-country cost – whether at the ports of Latin American countries or in Mexico - can somehow be “parachuted in” to a constructed normal value.

Given that the country of export of the grinding balls is China, and that Mexico is not in China, the Mexican cost or any other out-of-country cost does not meet the requirement under Section 269TAC(2)(c)(i) of the Customs Act 1901 that the Minister determine the cost of production or manufacture of the goods “in the country of export”. The opportunistic suggestions in the Moly-Cop letter could be directed towards the construction of normal values in cases of exports from “non-market economies” (Section 269TAC(4) refers, ie costs “in a country determined by the Minister”) or from “economies in transition” (Section 269TAC(5D)(a) refers, ie costs determined “having regard to all relevant information”). However, they cannot be directed towards the construction of normal values for our client.

In case it were thought to be necessary for our client to contest the choice of one “benchmark” cost over another, we would add the following comments:

(a) Moly-Cop’s crusade to find the highest steel billet cost in the world is a vastly different exercise to the legislative test that the Commission has adopted in its administration of Regulation 43, namely that it will use costs that reasonably reflect competitive market costs;

(b) Our client stands behind everything it has already said on the public record about the MEPS organisation, and again refers the Commission to the concern we expressed...
2 The Moly-Cop letter claims that the most appropriate form of measures is the “combination” method rather than the *ad valorem* method. The accusations in this part of the Moly-Cop letter are quite inflammatory, however the claim can be objectively and simply responded to as follows:

(a) from our research, the combination method of dumping duty imposition is not practised by other anti-dumping user countries, or if it is then we believe that such usage would be exceptional;

(b) WTO Member countries are obliged under the WTO *Anti-Dumping Agreement* to collect dumping duties only in the amount of the margin of dumping, which is something that the combination method of collecting dumping duty is much worse at doing than the *ad valorem* method;

(c) Australia has legislated elaborately for the purposes of what is referred to as circumvention by way of what the Moly-Cop letter refers to as “absorption”, therefore there are other remedies in place should the outlandish circumstances mentioned by Moly-Cop arise;

(d) even if there was not such an anti-circumvention law, the anti-dumping system already catered for changes of variable factors by way of variable factors review before any “anti-circumvention” laws were enacted, and still does;

(e) the proposed duty rates – not that they are agreed to by our client – are extremely high.

Lastly, in relation to the claim that our client has reduced its prices, we wish to point out that over [CONFIDENTIAL TEXT DELETED – number]% of our client’s exports since the end of the investigation period are sold to [CONFIDENTIAL TEXT DELETED – number] customers under [CONFIDENTIAL TEXT DELETED – selling arrangements], and that evidently those prices [CONFIDENTIAL TEXT DELETED – selling arrangements]. Further, we are instructed that there has been [CONFIDENTIAL TEXT DELETED – selling arrangements and statement of degree], consistent with [CONFIDENTIAL TEXT DELETED – statement of degree] international iron ore prices and other costs, and because of [CONFIDENTIAL TEXT DELETED – production arrangements] our client’s production.

No laws, dumping or otherwise, can insulate Moly-Cop from the need to compete in the same markets as everyone else. In this regard we note that Moly-Cop is part of a group of companies – the Arrium group – that has been heavily impacted by the corporate decision made by the group some years ago to vertically integrate into upstream resource extraction and processing. The degree to which Moly-Cop has access to market prices, or whether it is internally subsidised by transfer pricing arrangements, is a matter that is relevant to the Commission’s injury considerations, and to the question of Moly-Cop’s ability to compete with other sellers on the same terms.

3 The Moly-Cop letter claims that “retrospective” dumping duties should be imposed in respect of imports in the period 90 days prior to the imposition of securities. As extracted in the Moly-Cop letter, the Section to which Moly-Cop refers is conditioned on a number of matters, one
of which is the knowledge of an importer “who the Minister considers knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and that by reason thereof material injury would be caused to an Australian industry”.

The Commission has indicated (in the verification report applicable to our client) that “the customers listed in the Australian sales listing were the beneficial owners of the goods at the time of importation and therefore were the importers of the goods”. Thus, for the purposes of satisfying the contingency to which we have referred, the Commission would need to recommend to the Minister that he be satisfied that our client’s mining industry customers knew or ought to have known that our client was dumping in circumstances where:

(a) our client has constantly denied that it has engaged in dumping;
(b) there is a lack of any knowledge on the part of our client’s importers as to our client’s financial records and what they disclose;
(c) the Commission itself was unable to determine whether our client had engaged or was engaging in “dumping” at any time before 18 January 2016, as evidenced in the Day 60 report that was placed on the public record by the Commission on that day; and
(d) the Commission made a finding that our client was not dumping as evidenced in the verification report that was placed on the public record on 11 April 2016.

Even if the Commission takes the view that the publication of the Statement of Essential Facts (“SEF”) was sufficient notice to importers (which is not something that our client would agree with), we note that the SEF was published on 21 April 2016; that the import statistics mentioned by the Commission and which are cited by Moly-Cop only go up to 31 March 2016; and that even a single order requires [CONFIDENTIAL TEXT DELETED – number] weeks between order date and shipment date.

For all of these reasons we submit that the Commission must reject Moly-Cop’s claim that retrospective duties be imposed. There are no grounds for such a claim.

4 The Moly-Cop letter asserts that “pass-through… of benefits conferred to upstream inputs, specifically steel billet and electricity” has not been correctly considered. In that our client does not purchase steel billet, the proposition that something used as an input in the production of steel billet that is itself subsidised could cause that subsidy to pass through to the production of grinding balls by our client is a non sequitur.

In relation to electricity, we must admit to some confusion in that we do not clearly understand what it is that the Moly-Cop letter is trying to say. It cannot be doubted that a subsidy can be “specific” if it is applicable to a region, and it is not necessary to cite to numerous WTO reports to establish that proposition. However specificity does not override the questions of whether a benefit is conferred (see SCM Agreement, Article 1.1(b) and Article 14(d)). Working out whether a subsidy is provided in the provision of electricity is not merely an exercise of finding the highest rate for electricity somewhere in a country and then comparing it with the rate paid by the recipient concerned. Industry rates will differ from residential rates, generation costs will be different in different electricity grids and in local environments – there are many factors which can cause differential pricing.

It is apparent that the Commission has developed an understanding – based on its long experience of dealing with this issue – that China adopts a cost-recovery model as the determinant of pricing, and that local factors can reasonably be taken into account in this exercise. In that context a finding that electricity is not provided at less than adequate
remuneration, when that remuneration is the same amount paid by the class of users of which the alleged beneficiary is part, is entirely rational. The Commission's approach towards particular members or parts of an industry grouping that are “singled out” for the supply of electricity at what the Commission might consider to be an undervalue is a different question altogether.

We request the Commission to reject each and every claim advanced in the Moly-Cop letter.

Should you have any questions please do not hesitate to contact us.

Yours sincerely

Charles Zhan
Senior Lawyer