25 May 2016

Mr Reuben McGovern  
Case Manager  
Anti-Dumping Commission  
Level 35  
55 Collins Street  
MELBOURNE VICTORIA 3000

By email:  operations3@adcommission.gov.au

Dear Mr McGovern,

**Dumping and Subsidy Investigation No. 316**  
**Comments on Changshu Longte Grinding Ball Co., Ltd letter dated 11 May 2016**

Moly-Cop refers to the submission of the exporter, Changshu Longte Grinding Ball Co., Ltd (Longte), in response to **Statement of Essential Facts No. 316 (SEF 316)**, and observes a number of assertions based on errors of law and factual inaccuracies contained therein.

Indeed, many of these factual inaccuracies appear to have remained buried until Longte’s submission in response to SEF 316. This is due to:

- the lack of detail contained in the Anti-dumping Commission’s (Commission) exporter and importer verification visit reports;
- the lack of disclosure by the exporter and importer entities; and
- lack of detail in SEF 316.

Until Longte disputed some of the Commission’s factual findings in response to SEF 316, it was not possible for Moly-Cop to provide a more substantive response to some of the factual matters identified below. This is a problem with the current reporting and disclosure structure of the Commission, and unless remedied may serve to preclude Australian industry applicants from providing adequate representations to the Commission on technically complex matters.

**Summary**

Therefore, it is in light of Longte’s submission that Moly-Cop has identified the following matters requiring urgent consideration by the Commission:

- The Commission’s approach to the determination of profit applicable to Longte’s normal value calculation is correct under Australian domestic law and WTO jurisprudence – Longte’s submission ought to be rejected;
- The extent of non-arms-length transactions within the exporter’s group of companies has not been accurately assessed by the Commission, and this affects the following key elements of the Commissioner’s proposed recommendation to the Parliamentary Secretary:
  - the completeness of Longte’s administrative, selling and general costs,
  - the accuracy of Longte’s administrative, selling and general costs,
  - the completeness of Longte’s costs of production or manufacture,

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1 EPR Folio No. 316/040.
the accuracy of Longte’s costs of production or manufacture,
the determination of the export price, and
any necessary upward adjustments to the normal value on account of export trader’s margin.

1. **Determination of profit applicable to Longte’s normal value calculation under sub-paragraph 269TAC(2)(c)(ii) of the Customs Act 1901**

The exporter has asserted that the Commission has erred in its determination of an amount for profit under regulation 45(2) of the *Customs (International Obligations) Regulation 2015*:

“The Commission proposes to recommend that the Minister work out Longte’s cost of production for the purposes of Section 269TAC(2)(c) by determining an uplifted cost of production, based on a combination of Longte’s own costs and the grinding bar benchmark. If this recommendation remains unchanged – despite everything we have said to the contrary in [Part] A above - the Commission must at least adopt a consistent approach and use the same uplifted cost of production in the calculation of the amount of profit under Regulation 45(2).”

The exporter’s interpretation of regulation 45(2) is inconsistent with the language of the provision and WTO jurisprudence on the issue.

For the avoidance of doubt, regulation 45(2) provides as follows

“(2) The Minister **must**, if reasonably practicable, work out the amount [to be the profit on the sale of goods] **by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.**”

Regulation 45(2) applies Article 2.2.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement)*, which provides inter alia:

“2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation…”

This provision has been the subject of review by the WTO Appellate Body in *European Communities – Anti-dumping duties on malleable cast iron tube or pipe*

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2 Hereinafter, references to provisions of any statute shall be references to provisions of the *Customs Act 1901*, unless expressly stated otherwise.
3 Hereinafter, references to provisions of any regulations shall be references to provisions of the *Customs (International Obligations) Regulation 2015*, unless expressly stated otherwise.
4 EPR Folio No. 316/040 at p. 6.
5 Hereinafter, references to articles of any international agreement or treaty shall be references to articles or provisions of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, unless expressly stated otherwise.
fittings from Brazil\(^6\) (EC — **Tube or Pipe Fittings**). In that case the Appellate Body was asked to consider the data to be used by an investigating authority when constructing normal value, and concluded that an attempt must in the first instance be made to use ‘actual data’ when determining amounts for SG&A and profits:

> “Examining the text of the chapeau of Article 2.2.2, we observe that this provision imposes a general obligation (‘shall’) on an investigating authority to use ‘actual data pertaining to production and sales in the ordinary course of trade’ when determining amounts for SG&A and profits. Only ‘[w]hen such amounts cannot be determined on this basis’ may an investigating authority proceed to employ one of the other three methods provided in subparagraphs (i)–(iii). In our view, the language of the chapeau indicates that an investigating authority, when determining SG&A and profits under Article 2.2.2, must first attempt to make such a determination using the ‘actual data pertaining to production and sales in the ordinary course of trade’. **If actual SG&A and profit data for sales in the ordinary course of trade do exist for the exporter and the like product under investigation, an investigating authority is obliged to use that data for purposes of constructing normal value; it may not calculate constructed normal value using SG&A and profit data by reference to different data or by using an alternative method.**

> “As the Panel correctly observed, it is meaningful for the interpretation of Article 2.2.2 that Article 2.2 specifically identifies low-volume sales in addition to sales outside the ordinary course of trade. In contrast to Article 2.2, the chapeau of Article 2.2.2 explicitly excludes only sales outside the ordinary course of trade. **The absence of any qualifying language related to low volumes in Article 2.2.2 implies that an exception for low-volume sales should not be read into Article 2.2.2.**” [emphasis added]

Therefore, just as the text of Article 2.2 excludes actual data outside the ordinary course of trade, but does not exclude data from low-volume sales, neither does it exclude data from a particular market situation in the domestic market of the exporting country. The overarching requirement of Article 2.2.2; and the corollary to that provision in Australian domestic law, namely regulation 45(2); is that the actual data pertaining to production and sales in the ordinary course of trade must be used when determining amounts for SG&A and profit. Therefore, the Commission’s proposed approach is completely consistent with Australian law and WTO jurisprudence, and the exporter’s submission should be rejected.

2. **Determination of Longte’s actual SG&A costs**

The exporter asserts that the Commission has allocated its actual SG&A costs on the basis of the wrong denominator.

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\(^7\) Appellate Body Report, *EC — Tube or Pipe Fittings*, [97]–[98].
"The problem is that the margin calculation spreadsheet uses the uplifted CTM as the denominator for the purpose of working out SG&A and the CTMS, rather than using Longte’s actual SG&A costs. Essentially, due to this incorrect calculation, Longte’s SG&A costs have been inflated by the same percentage as the uplift to its CTM using the grinding bar benchmark." 

Regardless of the exporter’s protests on this issue, Moly-Cop is more gravely concerned that all the exporter’s SG&A costs have not in fact been captured by the Commission, due to the collapsing of the various related entities into a single corporate structure as outlined in SEF 316:

"Considering the close structural and commercial relationship between Longte, Longteng and ME Longteng, the verification team considered it was appropriate to treat these companies as a single entity for the purpose of calculating a dumping margin."

Therefore, Moly-Cop suggests that the Commission first be satisfied that all the SG&A expenses of the various related entities within the group of companies be accounted for, and that the allocation method (if it is to be calculated on the basis of the entities’ total cost to make as the denominator), be applied by that ratio to the normal value calculation.

3. Alleged incorrect calculation of SG&A ratio for the collapsed entities

Moly-Cop’s above concern around the completeness of the exporter’s SG&A calculation is clearly borne out by the following submission by the exporter:

"The current SG&A ratio is worked out by a simple aggregation of the ratio based on [CONFIDENTIAL TEXT DELETED – details of the SG&A calculation for each entities]. The combined ratio ([CONFIDENTIAL TEXT DELETED – number]%) is then applied to Longte’s CTM for grinding balls. [CONFIDENTIAL TEXT DELETED – detailed explanation about the SG&A calculation, and comments that the SG&A costs should be attributed correctly]. Accordingly, for the purpose of working out the amount of SG&A costs [CONFIDENTIAL TEXT DELETED – relevant proportion of the SG&A cost] which is attributable to grinding ball, the denominator should be the sum of [CONFIDENTIAL TEXT DELETED – the relevant entities’] revenue – being the total revenue of the collapsed entity. Based on Longte’s re-calculation, this reduces the total SG&A ratio from [CONFIDENTIAL TEXT DELETED – number]% to [CONFIDENTIAL TEXT DELETED – number]%.  

The Commission is referred to regulation 44(2), which provides in relevant part:

“(2) If:

(a) an exporter or producer of like goods keeps records relating to the like goods; and

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8 EPR Folio No. 316/040 at p. 8.
9 EPR Folio No. 316/040 at p. 8.
(b) the records:

(i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect the administrative, general and selling costs associated with the sale of the like goods;

the Minister must work out the amount by using the information set out in the records.”

However, further in regulation 44(3):

“(3) If the Minister is unable to work out the amount by using the information mentioned in subsection (2), the Minister must work out the amount by:

(a) identifying the actual amounts of administrative, selling and general costs incurred by the exporter or producer in the production and sale of the same general category of goods in the domestic market of the country of export; or

(b) identifying the weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information.”

Given the concerns expressed by the exporter, and the hopelessly difficult task of “using the information set out in the [exporter’s] records” such that the conditions of sub-paragraph (ii) being satisfied, Moly-Cop submits that it is entirely appropriate for the Commission to have regard to the methodologies permitted under regulation 44(3).

4. **Inclusion of internal profit in the cost of production**

The Commission’s capacity to satisfy the requirements of regulation 43 also appeared to be impaired by the exporter’s complex related-party structure. The exporter submits:

“As acknowledged by the Commission, Longte’s cost of production data contains [CONFIDENTIAL TEXT DELETED – cost element] represents the fully absorbed costs incurred [CONFIDENTIAL TEXT DELETED – entity] and an amount of profit [CONFIDENTIAL TEXT DELETED – entity]. In light of the collapsed entity approach, the profit retained...
[CONFIDENTIAL TEXT DELETED – entity] is an internal profit within the single entity and therefore should be excluded from the cost calculation.\(^{10}\)

By reason of subparagraph 269TAC(5A)(a), the Commission is required to have regard to the requirements of regulation 43(2)(b)(ii), specifically the requirement that the costs “reasonably reflect competitive market costs associated with the production or manufacture of like goods”. If the Commissioner is not satisfied that the costs of production as presented to him by the exporter reflects this condition, then it should be rejected, and best available information considered.

5. Export price incorrectly determined

It is obvious from the exporter’s response to SEF 316, that the relationships between the various parties relevant to export sales of the goods to Australia produced and exported by Longte or a related-party associate are affected by a series of non-arms-length transactions.

The level of redaction in the verification report, and the cursory assessment of the issue in SEF 316 made it difficult for Moly-Cop to ascertain the true extent of related party transactions, but the exporter’s submission has shed some light on the complex nature of these under-examined relationships and their impact on the final margin calculation for the exporter. We have identified the various problems inherent in the determination of costs of production or manufacture, and administrative, selling and general costs, as a result of the extensive web of related party transactions, above, but we are indeed surprised that notwithstanding the less than arms-length relationship between the exporter, and the importer, Compañía Electro Metalúrgica S.A. \[identified incorrectly by the Commission as CIA ElectroMetalúrgica\] and trading as Elecmetal \[\textit{Elecmetal}\]\(^{11}\), the Commission nevertheless determined the export price under paragraph 269TAB(1)(a). It is Moly-Cop’s submission that the export price for sales between the exporter and Elecmetal ought to have been determined under paragraph 269TAB(1)(b) as “the purchase of the goods by the importer was not an arms-length transaction”.

The related party association between the importer and exporter may be best summarised from the following entry in the importer’s 2014 Annual Report:

“In 2009, as part of the development of new products and markets, Elecmetal began the sale of grinding balls for large mining companies. In 2011, Elecmetal and Longteng Special Steel Co., Ltd. – an important steel company- established a 50/50 Joint Venture in China, named ‘ME Long Teng Grinding Media (Changshu) Co.Ltd.’

“The joint venture company initiated the construction of a manufacturing plant in Changshu, China, which will produce 420,000 tons of grinding balls with ME Elecmetal’s technology. The third stage of the project was initiated in 2014.”\(^{12}\)

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\(^{10}\) EPR Folio No. 316/040 at p. 8.

The Australian industry also provided Commission staff with the following corporate overview:\textsuperscript{13}:

\begin{center}
\begin{tabular}{|l|c|c|c|}
\hline
Sociedad Emisora & Elecmetal & Hendaya & Inversiones Elecmetal \\
\hline
Hendaya S.A. & 99,99\% & - & - \\
Cristaleras de Chile S.A. & 34,03\% & 10,30\% & - \\
Inversiones Elecmetal Ltda. & 99,99\% & 0,01\% & - \\
Fundicion Tollera Ltda. & 98,00\% & 2,00\% & - \\
Eso Elecmetal Fundicion Ltda. & 50,00\% & - & - \\
ME Global Inc. & - & - & 99,90\% \\
ME Long Teng Grinding Media (Changshu) Co. Ltd. & - & - & 50,00\% \\
ME Elecmetal (China) Co. Ltd. & - & - & 100,00\% \\
ME Hong Kong Co. Limited & - & 1,00\% & 99,99\% \\
\hline
\end{tabular}
\end{center}

It is not clear to Moly-Cop whether or not the Commission has tested the arm-length nature of the transactions between the exporter and the importer, Elecmetal, in accordance with the provisions of section 269TAA. Although the Commission has considered it prudent to treat “Longte, Longteng and ME Longteng” as a single entity for the purposes of calculating a dumping margin, it is unclear whether other related entities potentially involved in the export transactions have been given due consideration. As per the Elecmetal 2013 Annual Report\textsuperscript{14}, apart from Elecmetal’s 50% ownership in ME Long Teng Grinding Media (Changshu) Co. Ltd., Elecmetal also wholly owns ME Elecmetal (China) Co. Ltd and has 99% ownership of ME Hong Kong Co. Limited, refer extract below:

\textsuperscript{13} Referenced in EPR Folio No. 316/017 and extract included as CONFIDENTIAL ATTACHMENT A.

\textsuperscript{14} http://www.me-elecmetal.com/documentos/memorias/memoria_elecmetal_25_03.pdf refer pg 164

\textsuperscript{15} Ibid., at p. 17.
value on account of the exporter’s trader’s margin. Moly-Cop provides an example of how a significant trader’s margin could be earned by the related Hong Kong entity.  

6. **Inclusion of blast furnace gas supplied by Longteng**

The exporter has made the following claim in its response to SEF 316:

“As stated in the Longte visit report:

“4.2.1 Blast furnace gas

“Longte’s cost to make included costs for blast furnace gas supplied by Longteng. As the verification team considers it appropriate to collapse Longte and Longteng into a single entity (see section 3.4 above), it follows that the cost of blast furnace gas supplied by Longteng should be excluded. The verification team was able to verify that blast furnace gas revenue was not included as a cost offset for steel bar supplied by Longteng.

“Longte notes that the latest cost calculation spreadsheet in SEF 316 omitted the mathematical step for the exclusion of blast furnace gas. Longte respectfully requests that this calculation error be corrected.”

The question here for the Commission to resolve is a factual one. If the blast furnace gas supplied by Longteng to the ball producer Longte is used to reheat grinding bar in order to produce grinding balls, then the cost of the gas is a legitimate cost to be included in the conversion cost calculation from grinding bar to balls, irrespective of whether it is supplied by a related entity or non-related gas supplier. The collapsing of entities should not negate actual costs (including gas) from being included in the conversion cost for grinding bar to grinding balls, in the same way that grinding bar supplied by Longteng provides an input feed cost into the grinding ball manufacturing operation.

Moly-Cop would nevertheless welcome the opportunity to address the Commission directly, in-person, on this complex factual matter.

**Conclusions**

The related party nature of the numerous entities responsible for the production, sale and export to Australia of the goods has not been adequately considered by the Commission, especially the impact on the determination of costs of production or manufacture, administrative, selling and general costs, profit and export price determination. Moly-Cop submits that the Commission has the opportunity to put these matters beyond doubt, in terms of their relevance, accuracy and completeness, and that the Commissioner must recommend that the exporter’s data be rejected as unreliable, and have regard to best available information where applicable.

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16 **CONFIDENTIAL ATTACHMENT B.**

17 **EPR Folio No. 316/040 at p. 7.**
If you have any queries in relation to this submission, do not hesitate to contact me.

Yours sincerely

Matthew Voigt
Manager Finance & Commercial Services Moly-Cop Australasia