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3 March 2021

Mr Reuben McGovern
Assistant Director
Anti-Dumping Commission
Level 6, 215 Spring Street
Melbourne
Victoria 3000

By email

Dear Reuben

ME Elecmetal

Grinding balls exported from China - expiry of measures

We refer to the Commission's Continuation Inquiry 569 in this matter, and the pending publication of the Statement of Essential Facts.

Under Section ZHF(2) of the *Customs Act 1901*:

The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

Our client submits that there is no likelihood, as a matter of probability, that expiry of the measures as against ME Elecmetal would lead to a recurrence of injury to the Australian industry of a kind that the measure is intended to prevent.

In our opinion, evidence as to whether injury would either continue or would recur would include evidence of the financial performance and condition of the Australian industry while the measures concerned have been in place. That, it seems to us, would be directly relevant to gaining an understanding of how the Australian industry has performed during a period of time in which the imported grinding balls have been in place and, from that, gaining an understanding of what is likely to

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continue to happen. For example, if the Australian industry has been performing very well, this would indicate its ability to compete with imports. That it had performed well behind an anti-dumping “fence” does not mean that the “fence” needs to be kept in place. The two phenomena – anti-dumping measures and profitability – have no mandatory connection.

The dynamics of a market change when dumping duties are introduced. Duties of this type are a kind of “exogenic shock”, to which market participants respond in different ways. The simple assertion that any exporter or importer released from the obligation to pay interim dumping duties would rush to reduce its prices commensurately ignores the fact that profits are maximised at higher prices, not lower ones. Such an assertion also neglects to consider how a market participant has behaved during the time that the measures have been in place, whether new market participants have entered the market, and how the needs and attitudes of customers change over time.

ME Elecmetal’s participation in the Australian market is a good case study in this context. We refer to the submissions and supporting evidence provided by our client in response to the Australian Market Questionnaire issued by the Commission. The evidence attests to these technical and behavioural facts:

- (a) there are recognised and measurable differences in the performance of grinding balls marketed and sold by ME Elecmetal, which are relevant to any particular customer’s buying decision;
- (b) customer work practices are modelled around the predictable performance of mills, such performance being dependent on the relationship between the performance of grinding balls and site conditions;
- (c) because of the foregoing factors, no customer is able to purchase one manufacturer’s grinding ball one day, then another manufacturer’s grinding ball the next day;
- (d) sales in the Australian market are made under settled customer relationships governed by long term or continuing contracts;
- (e) that ME Elecmetal has not disrupted the Australian industry’s settled customer relationships on a price basis during the time the measures have been in place; and
- (f) that ME Elecmetal has a proven resistance to competing at low price levels in the Australian market.

We request that the Commission take particular note of the information submitted by our client, to ensure that evidence-based conclusions are reached. All that the Australian industry has done, in requesting that the measures be continued, is to assert that the Commission should use dumping constructs to “prove” dumping, and through those constructs to contrive the highest possible dumping duties going forward. We see no information in either its application or in the Australian Industry Questionnaire it was asked to complete by the Commission about its financial performance, no interpretation of that performance, and no market analysis.

Indeed, the Commission requested, in A-10 of the Australian Industry Questionnaire, that the Australian industry detail its injury claims. That question specifically asks for information on market trends for the goods in question for the last three years, and on factors other than dumped imports that may have caused injury to the industry. The Commission required that the Australian industry’s response should be as accurate and as comprehensive as possible, and supported by evidence. The Commission made

clear that it would not be sufficient simply to assert that the measure should remain in force. The Australian industry replied to question A-10 by saying:

Molycop has detailed in its application for the continuation of the anti-dumping measures the reasons that it considers are relevant to the Minister taking steps to secure the continuation of anti-dumping measures on grinding balls exported from China.

We have reviewed the Australian industry's application, to try to find the details that the Australian industry suggests deal with the Commission's eminently reasonable and entirely relevant A-10 request. All we can find is this:

Molycop continues to encounter price undercutting across its customer base as the Chinese exporters seek to increase export volumes to Australia. Indeed, the Australian market for grinding balls is price sensitive. The Commissioner's conclusions concerning price undercutting as evidenced in the original investigation period continue in 2020.

The "evidence" of price undercutting in the original investigation is not "evidence" of anything that might have happened in 2020. If that is not mere assertion, then we do not know what is. Further, if there is any confidential information to back this up, then where is the non-confidential summary of same to be found? No trend information is to be seen on the public record, whether indexed or described in words, and certainly no instances of price undercutting are disclosed to enable interested parties to have a reasonable understanding of what is being asserted.

The assumptions that are open to us are these:

- that the Australian industry is not suffering material injury, whether at all or by reason of Chinese imports;
- that it cannot support the proposition that grinding balls from China will cause material injury to recur, due to changes to the market, and in the participants in the market, being changes which have been encouraged by the imposition of dumping duties;
- that it cannot support the proposition that grinding balls from ME Elecmetal, in particular, will cause injury should the measures be allowed to expire, because:
 - ME Elecmetal has not caused price injury to the Australian industry while those measures have been in place; and
 - there is nothing to suggest that ME Elecmetal would reduce its prices, and consequently its profitability, if they were to expire.

The Commission need not rely on assumption, given that it will have the benefit of verifying the Australian industry's information and coming to its own conclusions based on that information and on the information supplied by ME Elecmetal and other interested parties.

Our interpretation of affairs is that the objective to which the measures were directed, and that could be expected in response to the measures, has been achieved. Accordingly, the measures against grinding balls exported from China should be allowed to expire entirely.

Further, if they are not to be expired in their entirety, then they should at least be allowed to expire against ME Elecmetal specifically, for the cogent reasons we have outlined in response to the Australian Market Questionnaire and in this letter.

Yours sincerely



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