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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 Statement of Essential Facts ("the SEF") published by the Anti-Dumping Commission ("the Commission") on the public record of this Continuation Inquiry 569 on 18 May 2021.

These are the comments of our client Compania Electro Metalurgica S.A. ("ME Elecmetal" and "our client") as invited by the Commission in the SEF, and to which the Commissioner is required, under Section 269TEA(3)(a)(iv) of the *Customs Act 1901* ("the Act"), to have regard in finalising its recommendations to the Minister.

To recap, in the SEF the Commission has come to this conclusion:

*For the reasons set out in this SEF, the Commissioner is not satisfied that the expiration of the anti-dumping measures in respect of exports of grinding balls from China would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping, subsidisation and the material injury that the anti-dumping measures are intended to prevent.*

*Based on the above preliminary findings, the Commissioner proposes to recommend to the Minister that the notices in respect of the goods exported to Australia from China be allowed to expire on the specified day (being 9 September 2021).<sup>1</sup>*

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<sup>1</sup> SEF, page 7.

Our client supports the preliminary recommendation to allow the measures to expire, as it applies to ME Elecmetal, whether in its own capacity as an exporter, or in as a direct supplier of grinding balls “exported” by Changshu Longte Grinding Ball Co., Ltd.

## 1 Evidence of ME Elecmetal product differences

In a submission placed on the public record on 12 May 2021,<sup>2</sup> Molycop accurately notes that our client had made submissions “aimed at differentiating its product from the locally produced like grinding balls manufactured by Molycop”. That is true – on behalf of our client we did make such submissions, backed up by written evidence that, for good commercial reason, was required to be kept confidential.<sup>3</sup>

Instead of grappling with the proposition that ME Elecmetal’s market offering is different to that of Molycop, the Molycop submission offers two propositions.

(a) The first is this:

*Molycop has been manufacturing grinding balls for 100 years. Over this time, Molycop has enhanced its product offering with investment in new technologies, ongoing R&D, and ongoing re-investment in its forged balls.<sup>4</sup>*

ME Elecmetal does not doubt that Molycop and its predecessors have been manufacturing grinding balls for 100 years. Nonetheless, customer demands and requirements are ever-changing, and the technology required to respond to such demands requires continuing investment in research and development activities.

In that regard the Australian industry verification report provides the following chart and summary of Molycop’s more recent research and development expenditure:<sup>5</sup>

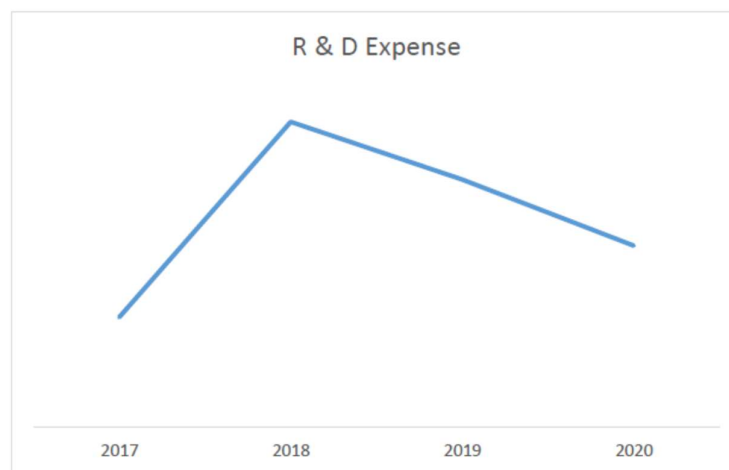


Figure 9 - Research and development expenditure

<sup>2</sup> EPR 569, document 017.

<sup>3</sup> See EPR 569, document 13, Confidential Attachments 4, 5, 6 and 7.

<sup>4</sup> See EPR 569, document 017, page 1.

<sup>5</sup> See EPR 569, document 011, page 25.

*The chart indicates that Molycop engaged in increasing research and development expenditure until 2018, after which time research and development spending has declined.*

Research and development continues to be a prime focus of the Longte and ME Elecmetal companies. This is especially important in a time when product substitutes such as high chrome cast balls and new competitors enter the market, as has been the case over recent years.

- (b) The second proposition advanced by Molycop in its submission was that there is nothing about ME Elecmetal's submissions concerning product differentiation that would cause the Commission not to maintain its settled position that the grinding balls produced by the Australian industry are "like goods" to those subject to the measures. However, our client never argued that the goods produced by Molycop were not "like goods", in the sense described by the definition of "like goods" in Section 269T of the Act.

The point we cogently advanced on behalf of our client in our submission is that there are "other factors" which influence customer choices, and that one of those differences is the technical performance of grinding balls. This point was supported by the confidential information provided to the Commission, and by the higher-end pricing of ME Elecmetal that recognises such differences. Indeed, it is submitted that such pricing is itself evidence of the value proposition offered by ME Elecmetal's high quality grinding balls in the Australian market, and the satisfaction of its customers with the performance of its products.

## 2 The continuation application was unmeritorious

Anti-dumping measures are a response to proven dumping in a specific period of time (in this case, the original investigation period), where such dumping is shown to have caused material injury to the Australian industry producing like goods. A recommendation by the Commission to the Minister to continue those measures may only be made if the Commissioner is satisfied that expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of the dumping and the material injury that the measures were intended to prevent. This satisfaction must be reached on the basis of probability, and not possibility.

The Molycop submission to which we have referred<sup>6</sup> relies on findings made by the Commission in investigations and reviews prior to this continuation inquiry. It focusses very little on the inquiry period. It does not consider the evidence that Molycop itself presented about its own, much-improved financial condition. It ignores the consistent increases in Molycop's unit selling prices over the past four years. It does not mention the increasingly favourable gap between Molycop's revenue and its costs. It does not consider the emergence of significant quantities of grinding balls from countries not subject to measures. It does not consider the cost-rationalisation and stronger market position achieved by Molycop as a result of its acquisition of Donhad. It ignores the relevance of the higher prices of ME Elecmetal's grinding balls in the Australian market. And, of course, Molycop's submission was made in the absence of the knowledge, gained from the SEF that was published soon after, that ME Elecmetal had not engaged in "dumping" of the grinding balls during the inquiry period.

We reiterate our view that Molycop seeks support for its contention that the measures must be continued on nothing more than the evidence that was used for the purposes of deciding whether to

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<sup>6</sup> See EPR 569, document 017.

impose dumping measures in the first place. To remind – that decision was made in September 2016, and it related to an investigation period from October 2014 to September 2015. A lot has changed since then. An *“it happened before, it might happen again”* argument cannot sustain a decision to continue anti-dumping measures. Our previous submission pointed out, we think accurately, that Molycop’s continuation application did not update the Commission, or properly inform the Commission, of the changes in the market over the period in which the measures have been in place, so as to present an arguable basis for continuation. Looked at in that manner, it is respectfully submitted that it was not appropriate for Molycop to lodge the application with the Commission.

### 3 Conclusion and request

In sum, these submissions by ME Elecmetal appear to have been borne out by the Commission’s findings in the SEF:

- the Australian industry is not suffering material injury, whether at all or by reason of Chinese imports;
- the Australian industry 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;
- ME Elecmetal has not caused price injury to the Australian industry while those measures have been in place;
- there is nothing to suggest that ME Elecmetal would reduce its prices, and consequently its profitability; and
- the objective to which the measures were directed, and that could be expected in response to the measures, has been achieved.

Added to that, the SEF concludes that there was no dumping by Chinese exporters during the inquiry period.

Accordingly, ME Elecmetal requests the Commission to recommend to the Minister that he decide not to secure the continuation of the anti-dumping measures concerned, and that a declaration under Section 269ZHG(1)(a) of the Act be made to that effect.

Yours sincerely



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