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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 – continuation inquiry concening grinding balls Response to Molycop SEF comments

As you know, we represent Compania Electro Metalurgica S.A. ("ME Elecmetal") in this matter.

We refer to the submission of Molycop dated 7 June 2021, as placed on the public record of this matter yesterday ("the Molycop letter").

Not only does the Molycop letter make claims that are different to those Molycop has made before, and claims that have not been made before, those claims are wildly misleading.

We address those claims as now follows.

1 "Merchant bar quality" claim

Molycop claims that the use of what Molycop refers to as "merchant bar quality" billet (plus alloys and conversion costs) is an inappropriate means of working out the grinding bar cost.

Our client wishes to point out that here is no ASTM or any other international standard for the steel bar design or quality used for the production of grinding media. Each supplier makes its own. Molycop claims that it uses so-called "special bar quality" steel as the raw material for its grinding media production. Other suppliers choose to use steel bar of whatever specification they like to make grinding balls, provided that the chemistry meets the specifications required by the customer in its tender

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documents. Our client is not aware of any request for quotation from customers, and has not received a request for quotation, whether in Australia or in any other part of the world, which has required “special bar quality” bar or “special bar quality” billet in making that bar, as an intermediate product in the manufacture of the grinding media that is the subject of the request.

We would point out, as exhaustively investigated previously and as verified again in this inquiry, that the grinding bar used in the manufacture of grinding balls marketed by ME Elecmetal to its Australian customers is manufactured at ME Elecmetal's JV partner's steel mill, and is not purchased from the market. In order to establish a “benchmark”, which is the objective of the exercise, the cost construction method that has been adopted by the Commission is a relevant way of proceeding. We use the word “relevant” (a) in the context of our client's disagreement with the need for any “cost surrogation” in the first place, and (b) because benchmarking is not directed towards working out Longte's actual cost of making grinding bar to the single yuan. It is a benchmark. Using steel billet cost, alloys and conversion costs is entirely appropriate for the Commission's objective. These cost components take into account steel mill materials and operational costs, depreciation, and the alloy addition to reach the chemistry specification of Longte's grinding media.

No costs have been “missed out” in the Commission's grinding bar benchmarking exercise, and Molycop presents no plausible basis for the Commission's methodology to be revised.¹

2 “Multi-country benchmark” claim

Molycop seeks to impugn the steel billet price used for the benchmark grinding bar cost by claiming it is not a multi-country benchmark, in circumstances the Commission says, in Statement of Essential Facts 569 (:the SEF”), that it has used a “multi-country Latin American benchmark”.

In our understanding of the SEF, that claim is a complete distortion of what is meant by the relevant passage, which we now set out in full:

Molycop has proposed alternative data for the basis of a benchmark. On the basis of the information before it, the Commission maintains that the multi-country Latin American benchmark is the preferable approach. This benchmark has previously been considered by the Anti-Dumping Review Panel (ADRP) and the Full Federal Court. Judicial and merits tribunal decision makers have not cast any doubt on the use of the benchmark, provided that it is objective and broadly representative of competitive costs. The Commission considers that the multi-country Latin American benchmark continues to be objective and broadly representative of competitive costs.

¹ We also wish to point out that, MolyCOP's submission appears to conflate the Commission's reference to a cost benchmark in Latin America for the purpose of evaluating the suitability of the cost of production by Longte, as recorded by Longte, with the task of determining the precise cost of production of grinding bar in Brazil or other Latin American countries. This is fundamentally flawed. The more suitable alternative cost benchmark for this purpose is the cost of producing grinding bar in China. For this purpose, the Commission will have a record of the cost of production of grinding bar by Changshu Longteng. Changshu Longteng is a 100% privately owned, integrated producer of grinding bars used for its grinding media production, and relies solely on imported iron ore. Thus, Changshu Longteng's cost of production of grinding bar would provide the best basis for determining the competitive market cost benchmark of such product in China. Such a benchmark would at least be relevant for Longte, which sources grinding bar almost exclusively from Longteng.

The Commission has selected a benchmark for billet based on reported export prices from Latin America because the Commission considers it to be representative of a competitive cost of production that would be payable in China in the absence of GOC influence. While the Commission notes Molycop's preference for using a single country benchmark, the Commission still contends that a multi-country benchmark, due to its larger sample size, is less susceptible to influence of differing market circumstances in individual countries. A benchmark based on a single country is more likely to indicate the costs payable in that country, whereas the purpose of the benchmark is to ascertain a cost which would be payable in China.²

Molycop's assertion that the reference price used by the Commission was a market price of one manufacturer or not, or was an average of export prices from numerous countries or not, is not to the point. The "multi-country" reference is a reference to an export price for steel billet sold into a multi-country market, as opposed to a domestic price, whether of a single company or of multiple companies, in the one country, which is the kind that Molycop has urged the Commission to adopt in previous cases and in its earlier submission in this inquiry.³

An export price, of the kind that the Commission has previously used, is subject to multi-country competition. Whether the Commission feels it is necessary to clarify the SEF or not is up to the Commission, however a "loose language" argument cannot undo the validity of the underlying data for the purpose it has been used by the Commission. It is purely and simply a competitive market cost, of the kind that the Commission has validly considered in the context of Regulation 43(2)(b)(ii) of the *Customs (International Obligations) Regulation 2015*.

3 "Full cost recovery" claim

The Molycop letter claims:

This assertion is also inaccurate as the export prices are from a single port in Brazil for export that must compete on the global market – that is, the price represents what the Brazilian exporter must compete against – primarily with China as it accounts for the major proportion of global steel exports. In addition, the reference to a "competitive cost of production" is also misleading as the Commission has not verified whether the "competitive cost" is reflective of full cost recovery.⁴

Molycop's argument here – that the competitive cost is questionable because it is not known whether it "is reflective of full cost recovery" - also misses the point. The Regulation 43 test is not an opportunity to use a "double standard" against Chinese exporters in anti-dumping investigations. In order to fully respond to Molycop's specious argument, one merely needs to refer to the manner in which the Commission explains the approach it has used in arriving at the normal value for ME Elecmetal's supplier, and to the Commission's own Dumping Manual on the topic.

² EPR 569, Document 21, page 36.

³ EPR 569, Document 5, un-numbered page 4/5.

⁴ EPR 569, Document 23, page 5.

(a) Longte's normal value:

The Commission has found that, when compared to the benchmark set out in chapter 6.5.1, the cost of grinding bar for Longte was at a competitive market cost during the inquiry period.

Therefore, the Commission considers that Longte's grinding bar costs are not artificially low due to government intervention during the inquiry period. While the effect of a market situation may be borne out in the prices of goods without there needing to be an artificially low priced input, there is no evidence before the Commission for it to be satisfied that a proper comparison cannot be made between the domestic and export prices. The Commission is therefore not satisfied that the situation in the market of the country of export during the inquiry period is such that sales in that market are not suitable for use when determining a price under section 269TAC(1) for Longte.⁵

(b) Dumping Manual:

The concept of a competitive market price is not taken to prevent an exporter buying inputs from arms length suppliers at the prevailing price even if that input had been sold at below cost or dumped. This is because a company should not be penalised for making commercial decisions to buy inputs at the best price, and a dumping authority would not be able to verify input costs from uncooperative and unrelated companies.⁸

⁸ *This is because a company should not be penalised for making a sensible commercial decision to buy inputs at the best possible price; or a dumping authority would not be able to verify the cost of producing an input from a company not associated with the importer as such companies would not normally cooperate with a dumping inquiry; and finally there is recognition that dumping inquiries have to be conducted against a timetable that imposes limits on how much time can be spent on verification visits.⁶*

Our client is deeply concerned by the unsubstantiated disruption that Molycop has introduced into this inquiry by the lodgement of these submissions at such a late stage. It is acknowledged that Molycop has the right to make whatever comments it likes in response to the SEF. However our client has due process rights also. Thus, we request that the Commission also have regard to the submissions we have made on behalf of our client in this matter, on the basis that:

- Molycop has made new claims in its SEF comments;
- our client has responded to those allegations immediately; and

⁵ Ibid, page 39.

⁶ https://www.industry.gov.au/sites/default/files/2019-05/adc_dumping_and_subsidy_manual.pdf , at page 45 of 187.

- consideration of our client's submissions would not be likely to prevent the timely preparation of the report to the Minister.

Yours sincerely



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