

FOR PUBLIC RECORD

Nexans Olex

17th June 2015

Mr Geoff Gleeson  
Director, Operations 1  
Anti-Dumping Commission  
5 Constitution Avenue  
Canberra ACT 2600

Dear Mr Gleeson

**Matter: Dumping Investigation No. 271 - Certain Polyvinyl Chloride (PVC) Flat Electric Cable Exported from The People's Republic of China**  
**Re. Submission of the Australian industry's response to the *Exporter Visit Report*, Guilin International Wire and Cable Group Co. Ltd. And Related Companies, placed on the public record on May 25<sup>th</sup>, 2015**

As previously confirmed I act for the Australian industry applicant, Olex Australia Pty Ltd ("Nexans Olex"), in this matter and refer to the Anti-dumping Commission's ("the Commission") *Visit Report* for the Exporter, Guilin International Wire and Cable Group Co. Ltd. And Related Companies ("Guilin Group"), placed on the public record on 25 May 2015.

Our submission in response to the Exporter Visit Report outlines a range of major concerns the Australian industry applicant has with the evidence, verification methodologies and conclusions drawn within the Visit Report. In summary, these issues and concerns are:

1. The Guilin Exporter Verification Report is highly inaccurate and Nexans Olex has not been given reasonable opportunity to respond to the inaccuracies prior to the release of the Statement of Essential Facts ("SEF"), as both reports were released on the same day, May 25<sup>th</sup>. Nexans Olex is aware the Commission is not required to release the Exporter Visit Report prior to the due date of the SEF, however we are extremely concerned that a significant range of inaccuracies and unjustified conclusions in the Exporter's Visit Report appear to have been used to support the current findings in the SEF. In our view, the timing of the release of the Exporter's Visit Report

has precluded the Commission from testing the accuracy and relevance of the exporter's information in preparing the SEF prior to its release.

2. Having concluded the relationship between the Guilin Group (exporter) and Electra (importer) is not at arms-length under s269TAA(2), due to the significant number of redactions it is unclear how the Commission has derived at the deductive export price as required by s269TAB(1)(b) of the Customs Act ("the Act").
3. The data collected to arrive at the exporter's cost to make and sell should be deemed unreliable considering the cost averaging accounting treatment of all products across the four different manufacturing sites which have been treated as a single entity, (Guilin International Wire & Cable Group Co. Ltd., Guilin Feilong Wire & Cable Co. Ltd., Guilin Xianglong Wire and Cable Co. Ltd., and Guigxi Aoning Electric Cables Co. Ltd.), and this is further compounded by the non-arms length relationship between the exporter parties and the Importer.
4. Nexans Olex rejects the methodology used to verify material quantities and costs used to construct the normal value of the product.
5. The application of zero profit to the Guilin export price is rejected by Nexans Olex on the basis that the Commission has committed an error of law in having regard to the former regulation 181A of the Customs Regulations 1926. The Commission has erred in law by relying on an interpretation of the operation and effect of the former regulation 181A contained in the Dumping and Subsidy Manual (December 2013 edn). The correct provisions concerning the determination of profit in the context of the calculation of the normal value are contained in regulation 45 of the *Customs (International Obligations) Regulation 2015* ("the 2015 Regulations). Furthermore, the Commissions interpretation unreasonably institutionalises damages caused to Australian Industry by condemning local manufacturers to the same zero profit outcome.
6. The very high number of redactions in the Guilin Group *Visit Report* has made it virtually impossible for Nexans Olex to understand verification processes undertaken by the Commission and the required accuracy of information inputs.
7. Adjustments to the export price normal value following a submission from Guilin Group have been incorrectly determined and are unfounded.

1. *The timing of release of the Exporter Visit Report*

- 1.1 The timing of release of the Exporter Visit report was the same day as the release of the Statement of Essential Facts (“SEF”), May 25<sup>th</sup>, and this has precluded Nexans Olex from reviewing the report and providing our input with regards to a significant range of inaccuracies and unjustified conclusions, which appear to have been used to support the current findings in the SEF
- 1.2 The SEF is a significant milestone with regards to the views being formed by the Commission on the likely outcomes of the case, and Nexans Olex have not been afforded the opportunity to correct the inaccuracies in the Exporter Report, which, with due respect to the Commission, has led to unsubstantiated findings made in the SEF

2. *Having concluded the relationship between the Guilin Group (exporter) and Electra (importer) is not at arms-length under s269TAA(2), it is unclear how the Commission has derived the deductive export price as required by s269TAB(1)(b) of the Act*

- 2.1 Under s269TAB(1)(b)(ii) of the Act where the purchase of the goods by the importer was not an arms length transaction the export price is to be determined as follows:

“A reference in paragraph (1)(b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:

- (a) any duties of Customs or sales tax paid or payable on the goods; and
- (b) any costs, charges or expenses arising in relation to the goods after exportation; and
- (c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.”

Due to the very high level of redactions Nexans Olex cannot find clarity in the Exporter Visit Report as to how the deductive export prices have been derived.

3. *The verification data collected to arrive at the exporter's cost to make and sell should be deemed unreliable for this purpose on the basis of the cost averaging accounting methods provided by the Guilin Group and use by the Commission, and that the Guilin Group of plants has been treated as a single entity (page 21) potentially distorting the real cost of specific product materials, CTM&S, shipping and SG&A costs. This process of verification is further exacerbated by the Commission's finding that the relationship between Guilin Group and Electra is not at arms length*

The following points provide some examples from many available in the report which illustrate how the reliability of the information should be discarded due to the use of 'averaging' data inputs from the Groups manufacturers in the format provided. Considering this along with the Commissions approach to verifying this information, with respect, has compromised the overall accuracy and output of the Exporter Visit Report.

- 3.1 As stated at 4.3.2: "The Guilin Group calculated the export freight cost by dividing the total export freight cost of each company by the total export quantity (length) which we (the Commission) consider reasonable." (page 20)
- 3.2 Credit costs at 4.3.3: "The Guilin Group advised that [CONFIDENTIAL TEXT DELETED – details of credit period arrangements] Guilin International provided an accounts receivable turnover ratio by running a report from the respective ledger to show accounts receivable at 1 July 2013 and 30 June 2014" .... "An average of those two amounts was divided by export sales receipts for the investigation period and multiplied by 360." (page 21)
- 3.3 Treatment of Guilin Group as a single entity at 4.4: "Although separate questionnaire responses were submitted by each of the four companies, the closeness of the relationship between the four companies is such that we consider it appropriate to treat the companies as a single importer. **We therefore aggregated the Guilin Group's entire domestic and export data to determine a single export price, normal value and dumping margin.**" (page 22)
- 3.4 Arms length at 4.7: In referring to the sales between Guilin Group and Electra the Commission found... "we have not observed any factors beyond those already examined in the importer visit report that would support a finding that the sales were at arms length." (page 24)
- 3.5 Material costs at 5.2.1: In referring to material costs data, ..."Guilin International explained that material costs include copper, PVC, packaging, wrapping, spools etc. Guilin International explained that while copper is the main cost, the costing system [CONFIDENTIAL TEXT DELETED – details of the record maintained by the costing system]. **For the purposes of completing the CTMS spreadsheet, Guilin International estimated that copper was** [CONFIDENTIAL TEXT DELETED – number] percent of the raw materials and PVC [CONFIDENTIAL TEXT DELETED – number] percent." (page 27)

We are extremely concerned that such approximations, estimates and averaging methods used in the verification process coupled with the fact that the exporter and importer's relationship has been found by the Commission not to be at arms length, that the overall exporter verification has been compromised. As illustrated at 3.5 (above), copper materials costs, which constitute approximately 80 percent of the overall product cost, were estimated by Guilin International. This cannot constitute reliable information by the Parliamentary Secretary under s269TAC(7) of the Act.

4. *Nexans Olex has particular concerns about the material quantities and costs used to construct the normal value of the Product. The material content is clearly described in the Australian Standards and the materials are worldwide commodities that are openly traded and have fully transparent costs*

4.1 CONDUCTOR WEIGHT: Nexans Olex carries out extensive and continual benchmarking of the Copper used to make cable conductors for the Product. This benchmarking in conjunction with the relevant Australian Standard determines that there is an absolute minimum conductor weight (*assuming ideal processing conditions*) and also includes the actual weight of the Exporters Product.

(Refer to confidential appendix SEF submission # 3)

It is very concerning to Nexans Olex that there is no validation given in the verification report, (see 5.2.1 Material costs and 5.2.2 Copper costs), as to the quantity of copper used in the product being investigated, being model "SRF3025V"; rather the Exporter Visit Report provides some estimates of copper use and a checking of copper invoices for the Guilin International Group:

"For the purposes of completing the CTMS spreadsheet, Guilin International estimated that copper was [CONFIDENTIAL TEXT DELETED – number] percent of raw materials." (5.2.1 Materials costs, page 27)

"To test the completeness of the copper purchase summary, we attempted to match the volume from the copper purchase summary to the raw materials ledger for March 2014 and noted that there was a minor variance between the two amounts." (5.2.2 Copper costs, page 28).

4.2 CONDUCTOR COST: When considering the cost of copper in the Product, the Commission needs to take several cost factors into account, which have not been illustrated in the Exporter report.

4.2.1 The cost of the copper is calculated by gross weight multiplied by the cost of copper from the LME or SHFE index

- 4.2.1.1 Nexans Olex has demonstrated that these 2 indices follow each other with an average 2 percent net deviation over time, which therefore clearly illustrates the same copper cost should be applied to the gross measured conductor weight. (Refer to confidential appendix SEF # 1)
- 4.2.2 The cost of copper must include a conversion cost. The conversion cost may be expressed as one, two or more separate elements depending on the commercial agreement. The cost allocations for the conversion of copper from Cathode to Rod are:
- 4.2.2.1 Copper cathode premium
- 4.2.2.2 Copper rod premium
- 4.2.2.3 Financing and Transport.

Nexans Olex carries out annual benchmarking of the conversion cost of copper **[CONFIDENTIAL TEXT DELETED – regions]** and concludes that the conversion cost of copper **[CONFIDENTIAL TEXT DELETED – number]** (Refer to confidential appendix SEF submission # 4). Nexans Olex urges the Commissioner to use the benchmark cost applied to the gross measured conductor weight.

Furthermore, as described in the Exporter Report, the Guilin Group costing system works from raw material averages across total production, which leaves open the very strong possibilities for copper costs for the export product to be valued incorrectly:

“The Guilin Group explained that its costing system has the following basic route” .....  
“...when raw materials are entered to production, the weighted average cost is transferred to the cost of production ledger.” (5.1 General, page 26)

- 4.3 PVC INSULATION and SHEATH: Nexans Olex carries out continual internal and external benchmarking on all insulation and sheathing grade materials **[CONFIDENTIAL TEXT DELETED – materials]**. It is critical to alert the Commission that cable grade materials are normally covered by governing standards and that cable supplied to Australia for this Product must meet the relevant Australian Standard.
- The Commission also needs to be advised that the Australian Standard specifies average and minimum point thickness for both the Insulation and the Sheath; and that Nexans Olex routinely measures competitor’s cables for compliance and continuous improvement purposes.

Nexans is a global organisation with a **[CONFIDENTIAL TEXT DELETED – confidential organisation information]** has conducted two benchmarking exercises for Australian Standard Cable Sheathing and Insulation Grade PVC in the past 12 months and has determined the cost of the PVC in quantities needed to manufacture the Product.

- 4.3.1 The PVC specification are not complex, therefore we are very confident we are comparing equivalent specifications
- 4.3.2 The price quoted is provided by **[CONFIDENTIAL TEXT DELETED – suppliers]**, and they are consistent with other industry and Nexans benchmarks
- 4.3.3 In Q1 2015 Nexans Olex have run a benchmarking exercise with **[CONFIDENTIAL TEXT DELETED – name]** and achieved a very similar result (Refer to confidential appendix SEF submission # 5)
- 4.3.4 The Nexans Olex operation in **[CONFIDENTIAL TEXT DELETED – company information]**
- 4.3.5 The confidential appendix SEF submission # 5, 6, and 7 clearly shows that the appropriate grade of PVC to the relevant Australian Standard available to the **[CONFIDENTIAL TEXT DELETED – cost and site]**.  
Nexans Olex urges the Commissioner to dismiss the data collected during the Exporter Visit and apply the average quoted cost of PVC to the exporters product against the measured weights indicated in the table below.
- 4.4 SHIPPING COSTS: Nexans Olex has serious concerns about the cost averaging method used to determine the freight costs from the Exporter to the Importer. The specific Product is shipped in such large quantities that it is reasonable to obtain a bespoke shipping cost of full containers of the Product to fully understand the cost of the supply chain and the actual quantity shipped.  
The cost to ship is readily available information from the main shipping lines port to port, including all handling, port and clearance charges plus duty.  
**[CONFIDENTIAL TEXT DELETED – shipping information]**.  
Nexans Olex urges the Commissioner to dismiss the cost averaging method used to determine the Shipping costs and apply Industry benchmark costing per tonne to ship the Product from the Exporter to the Importer.
- 4.5 SELLING, GENERAL and ADMINISTRATION EXPENSES: At 5.5 the Commission compared total SG&A expenses to Guilin Groups management accounts and noted, (page 5);  
“Selling expenses in the management accounts include amounts for freight. For the purposes of calculating SG&A, the Guilin Group deducted transport from selling expenses as transport expenses were calculated separately.” (see 4.3.2 and 6.3.2)  
“Guilin International also incurred promotional costs relating to domestic sales in its administrative expenses. These were removed from the calculation of SG&A for export sales.”

“As a result of the above, we calculated domestic and export SG&A separately and apportioned the SG&A expenses on the basis of sales revenue. We noted the calculations include financial costs. The SG&A calculations are at **Confidential Attachment CTMS 23.**” (Page 32)

Nexans Olex is troubled by this verification methodology for two reasons. Firstly the non related SG&A costs of freight and promotional costs were deducted by Guilin Group which would have lowered the overall SG&A costs. There is no clear understanding as to how this process was verified by the Commission, and it appears the separation of costs calculation has been undertaken in an arbitrary fashion. Secondly it is apparent the Commission has not verified the addition of the related export promotional costs back into the export product normal value calculation.

5. *The application of zero profit to the Guilin export price is rejected by Nexans Olex on the basis that the Commission has committed an error of law in having regard to the former regulation 181A of the Customs Regulations 1926. The Commission has erred in law by relying on an interpretation of the operation and effect of the former regulation 181A contained in the Dumping and Subsidy Manual (December 2013 edn).*

The Commission has committed an error of law in having regard to the former regulation 181A of the Customs Regulations 1926. The Commission has erred in law by relying on an interpretation of the operation and effect of the former regulation 181A contained in the Dumping and Subsidy Manual (December 2013 edn). It is important to note that regulation 181A was relevant to the issue of applying an amount for profit to the ordinary course of trade test for the profitability and recoverability of the exporter’s domestic sales. It was not relevant to the determination of an amount for profit in the construction of the exporter’s normal value. To conflate the policies between these two outcomes are an error in law by the Commission.

The correct provisions concerning the determination of profit in the context of the calculation of the normal value is contained in regulation 45 of the *Customs (International Obligations) Regulation 2015* (“the 2015 Regulations), which provide, in relevant part:

“Regulation 45 Determination of Profit

...

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

(a) identifying the actual amounts realised by the exporter or producer from the 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 realised by other exporters or producers from the 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.

(4) However, if:

- (a) the Minister uses a method of calculation under paragraph (3)(c) to work out an amount representing the profit of the exporter or producer of the goods; and
- (b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;

the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.

(5) For this section, the Minister may disregard any information that he or she considers to be unreliable.

(6) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.”

At the outset, the Australian industry does not observe that *the 2015 Regulations* precludes the calculation of profit, nor does it prescribe, as the Commission appears to assert on the basis of the former Customs Regulations that:

1. “in some instances, it may be appropriate to include a zero rate of profit”; nor
2. It is not possible to calculate the weighted average of actual amounts realised by other exporters, because as stated in the Manual, there need to be data submitted by two other exporters”.

The Commission has erred in law by completely disregarding sub-regulation 45(3)(c), in that it has neglected or failed to “us[e] any other reasonable method and having regard to all relevant information”.

The Commission has determined a dumping margin of 6.6 percent for the uncooperative exporters, presumably on the relevant financial information submitted by those exporters. The Commission also obtained financial information from Donggan, which has not separately been disclosed to interested parties. The Australian industry submits that there is sufficient relevant information under subregulation 45(3)(c) for the Commission to ascribe a profit margin to Guilin.

Nexans Olex firmly believes the application of zero profit to the constructed normal value of the Guilin's product is totally unreasonable, and runs contrary to the provisions of the Act and the Regulations.

6. *The very high number of redactions in the Guilin Group Exporter Report has made it virtually impossible for Nexans Olex to understand verification processes undertaken by the Commission*

6.1 TERMS of TRADE: The export shipping terms of trade have been redacted, (page 16);

"In most cases, Guilin International's export sales team arranges (via a broker) for the goods to be shipped to Australia. [CONFIDENTIAL TEXT DELETED - shipping arrangement]."

With the large amount of redactions regarding shipping and freight arrangements, Nexans Olex has no confidence that all shipping costs have been adequately verified against suitable benchmark costs. Furthermore, considering the risk of data being distorted by the single entity treatment of manufactured products across four different operations by the Commission, Nexans Olex urges the Commission to fully verify all shipping and freight costs which have been provided for the product exported to Australia using first principles benchmarking.

6.2 DEDUCTION FOR IMPORTER PROFIT: At 4.8.1 the Commission examined the findings from previous investigations and a sample of current transactions to determine a suitable importer profit margin to determine the export price for exports by Guilin to Electra, (page 25). The profit margin applied has been redacted, and it is implied that this number is zero. As already outlined, Nexans Olex finds it implausible and an incorrect interpretation under the Act that zero profit be applied.

6.3 DEDUCTION FOR CONFIDENTIAL SALES ARRANGEMENT: At 4.8.2 the Commission has made a deduction on the export price for a confidential sales arrangement, (page 25);

"In an export price for exports [CONFIDENTIAL TEXT DELETED – sales arrangement], we have deducted an amount to reflect the [CONFIDENTIAL TEXT DELETED – sales arrangement]."

This is yet another redaction which has left Nexans Olex confused and bewildered as to how the Commission has verified the Guilin Group export price, and provides diminished confidence in the overall findings in the Guilin Group Exporter Visit report.

6.4 DEDUCTIONS FOR ADJUSTMENTS: The Commission made adjustments to the export price normal value for a number of factors which are not clear and will be discussed further at 8.0, below.

A deduction was made to the export price normal value at 8.2.3 (page 37) for domestic inland transport, and Nexans Olex is unclear as to why this deduction was at all necessary, and at what quantum level this deduction to export price normal value was made because it has been redacted;

“We consider a downward adjustment for domestic inland freight is required to ensure fair Comparisons to the export price. We calculated a weighted domestic inland transport Adjustment of [CONFIDENTIAL ATTACHMENT TEXT DELETED – number] RMB per km.”

6.5 COPPER SCRAP ARRANGMENTS: At 5.2.2 the arrangement in place by which Guilin sells copper scrap has been redacted, and it is not clear to Nexans Olex that this arrangement has been fully financially tested by the Commission in order to verify the net impact on the export price, (page 28);

“Guilin International advised that copper scrap is sold to an unrelated party to process the Copper. [CONFIDENTIAL TEXT DELETED – commercial arrangement with unrelated party Regarding copper scrap].”

#### 7. *Deductions for adjustments following a submission from Guilin Group*

Following a submission from the exporter with regards to requested adjustments to the export normal value calculation (page 37 to 39), the Commission made two downward adjustments to the normal value.

##### 7.1 Deductions for domestic inventory carrying costs, at 8.2.1 (page 37):

A deduction was made to the export price normal value at 8.2.3 (page 37) for domestic inland transport, and Nexans Olex is unclear as to why this deduction was at all necessary, and at what quantum level this deduction to normal value export price was made. The Commission makes the observation that during the exporter visit plant tour they did not witness “larger quantities of inventory for domestic sales than inventory for exports.” The Commission rightly calculated the average inventory days for the export product.

The Commission then made an adjustment to inventory carrying costs as stated as follows, (page 37);

“For export sales we made an adjustment to the cost to make upwards to account for export warehouse carrying costs and cost to make downwards to account for domestic warehouse carrying costs. Calculations for the warehouse cost adjustments are at Confidential Attachment ADJ 2.”

What is most concerning for Nexans Olex is why the Commission has sought to make a downwards adjustment on the normal value for the impact of the domestic warehouse carrying costs, which has had no bearing on the export inventory carrying costs, when the net impact of the export inventory carrying costs has been separated and valued. In our view this downward adjustment on the normal value to the cost of the domestic inventory is not warranted, nor justified.

7.2 Deductions for domestic inland transport, at 8.2.3 (page 37):

As discussed previously at 6.6, a deduction was made to the export price normal value for domestic inland transport. The Commission calculated a “weighted average domestic inland transport adjustment of [CONFIDENTIAL TEXT DELETED – number] RMB per km”, (page 37). The exporter has highlighted that domestic inland freight costs are lower than export inland freight costs due to different distances travelled, however it is unclear to Nexans Olex what samples and testing measures (if any) were used by the Commission to fully verify this gap in costs; and as per 8.1 above, why the Commission has accepted the need to adjust the normal value downwards.

Summary

In summary Nexans Olex has very serious concerns that the Exporter’s Visit Report grossly under values the costs incurred by the Guilin Group in the manufacture and export to Australia of Polyvinyl Chloride Flat Electric Cable, and we maintain that the information contained in the report is not reliable for the following reasons:

- (1) The data collected to arrive at the exporter’s cost to make and sell should be deemed unreliable considering the cost averaging accounting treatment of all products across the four different manufacturing sites which have been treated as a single entity
- (2) The issue of unreliable data is further compounded by the non-arms length relationship to the Importer
- (3) We cannot find clarity in the Exporter Visit Report as to how the required deductive export prices have been derived
- (4) The verification process and use of data in relation to material costs, manufacturing CTMS, SG&A costs, freight and delivery costs, are grossly undervalued at each stage; Nexans Olex urges the Commission to compare these costs using proven industry standards and benchmarks. It must be understood that copper and PVC materials constitute a large proportion of the overall product costs, and Nexans Olex is highly concerned that the verification process used for these materials has distorted the report findings, and therefore that of the SEF

- (5) The application of zero profit to the Guilin export price is rejected by Nexans Olex on the basis that the Commission has committed an error of law in having regard to the former regulation 181A of the *Customs Regulations 1926*. The Commission has erred in law by relying on an interpretation of the operation and effect of the former regulation 181A contained in the Dumping and Subsidy Manual (December 2013 edn).
- (6) The late adjustments which have been made to the products normal value have not been justified in any reasonable manner
- (7) For the reasons as clearly outlined, the calculated normal value of the product in the domestic market has been grossly underestimated.

Yours Sincerely

Michael Dawson

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