

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 *Statement of Essential Facts*, placed on the public record on May 25th, 2015

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") *Statement of Essential Facts* ("SEF"), as placed on the public record on 25 May 2015.

Our submission highlights we are extremely dissatisfied, highly concerned, and totally reject the current findings of the SEF on a number of grounds which we will outline in this submission and provide compelling evidence to support our conclusions. In our view, the SEF findings are flawed, wrongly founded, and based on unreliable inputs.

Considering the detailed information we have already provided the Commission, together with other compelling evidence which will be outlined in this submission, we find the current outcomes of the SEF completely unfathomable.

At all stages of the investigation to date, and as outlined in the SEF the Commission has found the following:

- As defined in s.269T of the Act, and as outlined in the SEF; “The Commission is satisfied that the imported goods and the PVC flat electric cable manufactured by the Australian industry are physically, functionally and commercially interchangeable given the requirements of the Australian Standard, and are manufactured using similar processes. “ (Page 16)
- “The exporter visit report found that, in the absence of evidence to the contrary, the sale price, pricing policy and the close relationship between the parties supported a finding that the transactions involving exportations of PVC flat electric cables to Electra were not at arms length.” “In accordance with s.269TAA(1)(c), the Commission therefore finds that the prices paid by Electra were not at arms length.” (Page 25)
- The Commission has found that the Australian industry has experienced material injury in the form of price depression; price suppression; reduced profits and reduced profitability. (Page 37)
 - “In the context of increasing demand and a growing market (as outlined in section 5.4, above), the Commission considers the decline in prices obtained by the Australian industry to be indicative of price depression.” (Page 33)
 - “The Commission has found that Olex’s prices have therefore been depressed.” (Page 34)
 - “The Commission has found that Olex’s inability to raise its prices to a level that would enable it to either make a profit or reduce its losses is indicative of price suppression.” (Page 35)
 - “The Commission finds that the data provided supports the claims made by Olex that it has experienced material injury through reduced profits and profitability over the relevant period.” (Page 36)

As already outlined in our submission on the Guilin Group Exporter Report, Nexans Olex contention is that the outcomes of the SEF have been largely shaped by the outcomes of the Exporter Visit Report, which has been based on unreliable data and information, and in our view in some instances an incorrect interpretation of the Act and related Regulations. We have already provided our concerns and issues with regards to the Exporter Visit Report, this submission will provide compelling arguments and evidence to show how and why the Commission, with respect, have incorrectly derived the SEF outcomes.

Our submission relies on four main arguments:

1. In our submission Nexans Olex will provide compelling evidence that the data in its present form used to calculate constructed normal values and deductive export price must be either mistakenly calculated or unreliable, or both, and that even if the Commission purely bases its constructed normal value on material inputs only for manufacture of the goods (i.e. extract all the exporters costs of labour, energy, sales and general administration expenses), based on fully verified data,

and measures this against a fully verified deductive export price, they should derive a dumping margin [**CONFIDENTIAL TEXT DELETED – number**].

2. 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 to the Importer.

Nexans Olex firmly rejects the methodology used to verify material quantities and costs used to construct the normal value of the product.

3. 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 is 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.
4. Adjustments to the export price normal value following a submission from Guilin Group are unreasonable and unfounded.

1. *Compelling evidence that the data in its present form used to calculate constructed normal values and deductive export price must be either mistakenly flawed or unreliable, or both*

Based on our original submission and subsequent verification it is clear to Nexans Olex that the Commission has used unreliable data on which to base its conclusions in regard to dumping of the Product. A simple analysis of the direct material costs, freight and duty related to the market price less the known industry rebates produces a significant dumping margin; even before the Exporters manufacturing costs or the Importers selling costs and margins are taken into consideration.

The following table summarises the **[CONFIDENTIAL TEXT DELETED – elements]** and clearly concludes that there is a significant dumping margin **[CONFIDENTIAL TEXT DELETED – number]** for the period of July 2014 to June 2014.

The Commission must take into account the Exporters entire cost to make; however if one was to look only at the Direct Materials of the Exporter **[CONFIDENTIAL TEXT DELETED – number]**.

- 1.1 *Of all of the costs verified during the Exporter visit the cost of Copper and PVC are of the highest concern*

A key element of the CTM is the validation of the content and value of the copper. There are 3 important elements for the commission to consider in verifying the copper cost.

1.1.1 The **copper content**

1.1.2 The **copper price** at the same or comparable cost

Meaning that either a Standard Copper Cost should be used in both examples, or

Actual Copper Cost should be used provided that the costs are derived from a comparable index such as SHFE / LME in the same period

1.1.3 The **copper conversion cost**, ensuring that the entire cost is considered being the Cathode Premium, the Rod Premium, Freight, Terms.

From the data presented below on copper content, copper cost and copper conversion cost the Commission will see **[CONFIDENTIAL TEXT DELETED – number]**.

[CONFIDENTIAL TEXT DELETED – table].

From the data presented below on PVC content and PVC cost the Commission will see that there is an **[CONFIDENTIAL TEXT DELETED – number]**, which would translate into **[CONFIDENTIAL GTEXT DELETED – number]**.

1.1.1 Copper Content

Nexans Olex carries out extensive and continual benchmarking of **[CONFIDENTIAL TEXT DELETED – material]**. This benchmarking in conjunction with the relevant Australian Standard determines that there is an absolute minimum conductor weight required (assuming ideal processing conditions) and also includes the actual weight of **[CONFIDENTIAL TEXT DELETED – product]**.

Whilst the Commission verified the Guillin copper content to the standard BOM and other local products, due to the level of redaction it is not possible to confirm if the Commission applied the actual or standard copper content to the Exporters CTM and whether the Commission gave regard to the actual copper content as measured in the actual product as it is delivered to Australia.

[CONFIDENTIAL TEXT DELETED – table].

The results of the benchmarking show that the **[CONFIDENTIAL TEXT DELETED – product measurement]** and that after taking into account a modest allowance for manufacturing waste **[CONFIDENTIAL TEXT DELETED – number]**.

[CONFIDENTIAL TEXT DELETED – number] relative to the Olex manufacturing standard of **[CONFIDENTIAL TEXT DELETED – number]**.

1.1.2 Copper Price

The confusion created by the daily variations in Copper Prices quoted in the various Exchanges is the reason the cable industry worldwide generally applies a standard cost and a copper percentage which is later translated into actual cost for the purpose of directly comparing different offers.

Nexans Olex believes that the Commission may have misinterpreted the data presented by Guillin when referenced to the equivalent Olex Product. Whether or not the Commission may have correctly verified the Guillin actual copper price, the Commission may have then applied the actual copper and not the standard copper cost in its models to determine the difference in CTM between Guillin and Olex.

Table 01 below demonstrates the daily copper price monthly average difference between the SHFE copper price, the LME copper price and the Olex Standard copper price.

[CONFIDENTIAL TEXT DELETED – table].

The above table demonstrates the volatility of the copper price on both exchanges and the relativity of the two exchanges which average out over a 12 month period.

[CONFIDENTIAL TEXT DELETED – data showing differences between SHFE, LME and Olex].

1.2.3 Copper Conversion Cost

The cost of copper must include a conversion cost. The conversion cost may be expressed as one, or more separate elements depending on the commercial agreement. The cost categories for the conversion of copper from Cathode to Rod are:

- Copper cathode premium
- Copper rod premium
- Financing
- Transport.

Nexans Olex carries out annual benchmarking of [CONFIDENTIAL TEXT DELETED – material] and concludes that [CONFIDENTIAL TEXT DELETED – number and table].

1.2.4 PVC Insulation and Sheath

Nexans carries out continual internal and external benchmarking on [CONFIDENTIAL TEXT DELETED – materials]. The Commission needs to be advised 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 [CONFIDENTIAL TEXT DELETED – product].

Nexan Olex is a global organisation with [CONFIDENTIAL TEXT DELETED – confidential information about Nexans Olex].

The confidential table below clearly concludes [CONFIDENTIAL TEXT DELETED – material information and table].

[CONFIDENTIAL TEXT DELETED – table].

Nexans Olex urges the Commissioner to dismiss the data presented in the Exporter Visit Report and apply the average quoted cost of PVC to the exporters actual weight of material used in the product. [CONFIDENTIAL TEXT DELETED – material costs].

2. *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 to the Importer.*

The Commission has decided to treat the four Guilin Group manufacturers of cable as a single entity following an interpretation undertaken by a World Trade Organisation (“WTO”) dispute settlement panel in dealing with the case of *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia*.¹

“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)

With respect to the Commission we submit that due to the fact that Guilin Group's four plants manufacture a broad range of cable products of varying costs and sell price levels, both for the domestic and export markets, the collation of financial data across all areas of the four plants bundled into the ‘collapsed’ entity has the very high potential to distort the information used to assess the specific financial elements of the product being assessed in this case.

Furthermore, during the verification visit the Commission decided as the accounting system is the same for all companies, ... “to focus the majority of the verification on goods manufactured by Guilin International.” (Page 26, SEF) We again contend such an approach brings in the high risk that the data verified could well be distorted by the broad range of products manufactured by Guilin International.

As the Commission has found the Guilin Group also has a non arms length relationship with Electra (page 24, SEF), by treating the Guilin Group as a single entity we submit that the potential for verification inaccuracies are further compounded, and that with respect the Commission needs to apply a series of other verification tests for all elements using broader industry benchmarks and standards. Our concern for verification accuracy is found in comments throughout the Exporter Report and SEF, and is further illustrated as follows:

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

¹ WT/DS312/R

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, Exporter Visit Report)

Such estimates used for major inputs into the verification process cannot constitute reliable information by the Parliamentary Secretary under s269TAC(7) of the Act.

3. *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% 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.

With due respect Nexans Olex urges the Commissioner to consider other reasonable alternatives to determine a suitable profitability for the Product, having regard to relevant information under Regulation 45 *Determination of Profit*.

Nexans Olex firmly believes the application of zero profit to the constructed normal value of the Guilin's product is totally unreasonable, runs contrary to the provisions of the Act and the Regulations as discussed above, and in every respect falls outside the intent of the Commonwealth Anti-dumping system.

4. *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, Exporter Report), the Commission made two adjustments downwards to the normal value export price.

4.1 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 inventory carrying costs, 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 observed "larger quantities of inventory for domestic sales than inventory for exports" (page 37). 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 an adjustment downwards on the normal value for the impact of the domestic warehouse carrying costs, which has had no bearing on the export inventory carrying costs, and when the net impact of the export inventory carrying costs has been separated and valued. We submit this adjustment on the normal value downwards by the cost of the domestic inventory is not warranted, nor justified.

4.2 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.

We are perplexed by these downward adjustments to the normal value and contend they are unwarranted and not justified.

Summary

In this submission, Nexans Olex has provided compelling, unequivocal evidence that the Commission should undertake reconsideration of the SEF based on the verification inputs and processes of the Exporter Report being flawed. As clearly illustrated in this submission, our validated and documented evidence shows:

- A dumping margin of [CONFIDENTIAL TEXT DELETED – number] is found even when only applying material costs inputs (excluding all other manufacturing costs) to the product CTM
 - By considering all CTM manufacturing cost inputs a dumping margin of [CONFIDENTIAL TEXT DELETED – number] is clearly evident.
-
- 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
 - The verification processes and use of data in relation to material costs, manufacturing CTMS, SG&A costs, freight and delivery costs, are flawed and grossly undervalued at each stage; Nexans Olex urges the Commission to verify these costs using proven industry standards and benchmarks. It must not be forgotten that copper and PVC materials constitute a large proportion of the overall product costs, and Nexans Olex is highly concerned that the verification process and data used for these materials has greatly distorted the report findings, and therefore that of the SEF
 - The Commission have erred in law with the application of zero profit to the constructed export price as prescribed under the Act and by disregarding sub-regulation 45(3)(c), and Nexan’s Olex submit this is totally unacceptable and subsequently request this be reviewed
 - The late downwards adjustments which have been made to the products normal value have not been justified in any reasonable manner

- For the reasons as clearly outlined, the calculated normal value of the product in the domestic market has been grossly underestimated.

Nexans Olex respectfully requests the Commission conduct a complete review of the SEF, importer and exporter verifications, and apply external industry benchmark tests to all constructed normal value and deductive export price inputs.

Yours Sincerely

Michael Dawson

Michael Dawson
Director
Michael Dawson & Associates Pty. Ltd.
E: md.associates@bigpond.com

Appendix

1. [CONFIDENTIAL ATTACHMENT]
2. [CONFIDENTIAL ATTACHMENT]
3. [CONFIDENTIAL ATTACHMENT]
4. [CONFIDENTIAL ATTACHMENT]
5. [CONFIDENTIAL ATTACHMENT]
6. [CONFIDENTIAL ATTACHMENT]
7. [CONFIDENTIAL ATTACHMENT]
8. [CONFIDENTIAL ATTACHMENT]
9. [CONFIDENTIAL ATTACHMENT]
10. [CONFIDENTIAL ATTACHMENT]
11. [CONFIDENTIAL ATTACHMENT]
12. [CONFIDENTIAL ATTACHMENT]

