

20 January 2012

The Chief Executive Officer  
Australian Customs and Border Protection Service  
Customs House  
Constitution Avenue  
Canberra ACT 2601

Attention: Officer John Bracic  
International Trade Remedies Branch

**Statement of Essential Facts response: Electric Cable**

Dear Sir

I am writing to you on behalf of the Australian cable manufacturers comprising Advance Cables Pty Ltd, Olex Australia Pty Ltd and Prysmian Power Cables and Systems Australia Pty Ltd ("ACM")

The ACM have reviewed the Statement of Essential Facts ("SEF") issued recently by Customs following its investigation into the dumping of electric cable into Australia from China. The ACM advise that they have concerns about a number of the findings arrived at by Australian Customs and Border Protection Service ("Customs")

**Issues with the SEF.**

The ACM believes that the recommendations contained within the SEF that the cable dumping case be terminated, should be re-assessed for the following reasons.



The pricing strategy apparently entered into by Guilin and Electra suggests that prices have been structured with the purpose of preventing a positive Customs finding of dumping being brought down and,

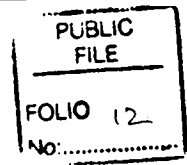
- The same strategy resulted in Customs arriving at an incorrect export price.
- The ACM acknowledges that the relationship existing between Guilin and Electra constitutes a non-arms length relationship (as did Customs); The ACM contends that the pricing strategy entered into by Guilin/Electra has involved significant price cutting which has resulted in Electra making sales at a loss in Australia. This impacts upon the determination of the export price and the ACM request that Customs re-determine the export price under the provisions of section 269TAA(2) of the Customs Act 1901.
- The ACM suggest that the use of weighted averages in the determination of normal value and export prices are inappropriate given the unique situation present in the cable market in Australia. It recommends the use of transactionally based normal values and export prices.
- The period of investigation chosen by Customs (July 2010 to June 2011) is inappropriate given significant price variations which occurred within that period and which were brought about by the importer.

### **Guilin Pricing Strategy**

The ACM wish to address a number of issues which are directed, primarily, at what it considers to be a pricing strategy entered into by the exporter of the cable in Guilin and its related party importer in Electra Cables.

From reading the various Customs reports, the ACM understand that Electra's profit is lower than would be expected from an Australian distribution business. The ACM also understand that Guilin is a profitable business and the Guilin Group (including Electra) is profitable. The lower than expected profitability of Electra is concerning and directly impacts on the export price used by Customs in its dumping calculation.

The ACM believe that the strategy of the Guilin Group (including Electra) to avoid dumping claims involves:



- Guilin keeping their Chinese export prices to Electra at a high level so as to make profits in China, and not in Australia; and
- Selling some cable in Australia at low prices and incurring losses in Australia.

This strategy has the impact of avoiding dumping as the export price is “artificially high” and the losses are incurred in Australia.

Customs must take the above strategy into consideration in its determination of the export price

### **Related parties issue**

The pricing strategy that the ACM believe has been adopted by Guilin and Electra certainly brings into question Custom’s assessment that the transactions between them are arm length transactions. Both the shared ownership of the Guilin and Electra businesses and the pricing strategies they have devised between themselves that allow them to demonstrate a higher export price whilst still dumping this product in the Australian market at some very low prices (especially the flat twin and earth cables), appear to bring into question the arms-length nature of the transaction and relationship between Electra and Guilin. This Electra & Guilin combined pricing strategy has suppressed market prices and injured the Australian manufacturers whilst appearing prima facie to be arms-length to Customs.

The ACM believe that Electra is making less than a commercially justifiable profit on the sale of the goods under consideration.

Many transactions at the export prices charged between Guilin and Electra, when compared with Electra’s Australian selling price, result in Electra making a loss. Arguably this position exists for all sales of certain product lines within the goods under consideration. Section 269TAA(2) of the Customs Act 1901 (“the Act”) specifically provides that when such a circumstance exists (i.e. Australian domestic sales at a loss), then these sales can be treated as an indication that Electra will directly or indirectly be reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or part of the price for the purposes of section 269TAA(1)(c).



### **Arms length "test" used by Customs**

Customs has used export sales by Guilin to an unrelated third party, at the same prices paid by Electra to Guilin, as justification that the sales between Guilin and Electra are at arms length. The ACM believe that there are not sufficient such sales to the unrelated third party to use them as justification that the sales between Guilin and Electra are at arms length.

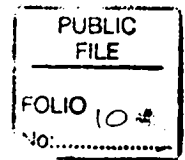
Further, the ACM believe that the unrelated third party is General Cables, and it is a matter of public record that the General Cable New Zealand Australia Group Financial Statements for the 2009 year show a net loss of NZ\$15.56m.

Clearly, export sales to an unrelated third party loss making entity can only indicate non-arms length pricing, not arms length pricing.

The ACM expects that Guilin would be willing to make sales to General Cables at the "artificially high" export price, as they know General Cables are a loss maker and will sell the product into the market at low prices and "buy" more market share for Guilin product.

For this reason, if the "other" buyer nominated by Customs and used for benchmarking export prices is General Cables, the ACM recommend that this buyer not be used for comparison purposes as General Cables are believed to be selling this cable at a loss.

In summary, for these reasons, and the reasons mentioned earlier in this submission, the ACM believe that the transaction between Guilin and Electra are not arms length transactions.



**Average Selling Price Methodology is not reflective of Electra's Dumping practices**

Electra use aggressively low spot prices to drive down prices and capture market share; this is especially the case for the flat twin and earth cables. Some of the ACM had to follow that low pricing in order to gain business and then maintain the low prices to keep the business. Using this aggressively low pricing strategy, Electra significantly reduced market pricing to a level that the cable is unprofitable to produce and sell. This low market price that Electra has created is the price level the ACM have used in the estimate of Electra's selling prices. However, as Customs weighted average selling price is not reflective of the ACM estimate, it can be assumed that at least one of the following situations has occurred:

1. Electra has put forward to Customs that it does have higher pricing, but this is not actually the case
2. The period used by Customs for review has abnormally high pricing
3. Electra does have higher pricing also, and this increases the average

Unfortunately, the market price for these cables is generally determined by Electra's low transactional pricing. Given this fact, the ACM do not concur with the weighted average pricing approach that Customs has used in its dumping margin calculations.

The export price should be determined under section 269TAB (1) (b) or (c) of the Act. In this regard Customs should take account of two matters.

Firstly, many Australian domestic sales by Electra are at a loss. It is these loss-making sales that are causing the injury suffered by the Australian industry (as found in the SEF). It is these loss making sales (rather than weighted average sales prices) that should be used by Customs as the price at which the goods were sold for the purposes of section 269TAB(1)(b) or the price for the purposes of 269TAB(1)(c).

Secondly, further justification for using these loss-making sales (rather than weighted average sales prices) is that over the period under investigation Electra increased its sales prices in response to the anti-dumping action so as to artificially inflate its weighted average sales prices for the period.



Electra's transactions should be reviewed and the lower prices should be used in the export price calculation.

### **Verification of Electra Weighted Average Selling Prices**

In determining whether dumping has occurred the ACM understand that Customs takes guidance from section 269TACB of the Act.

This provision allows Customs to calculate a dumping margin by comparing the weighted average of export prices with the weighted average of corresponding normal values or to compare the export prices determined in respect of individual transactions with the corresponding normal values determined over a similar period.

The ACM believes that the use of a weighted average provides a distorted result which is not reflective of the true position in the Australian cable market and the way in which that market operates (particularly as this segment of the market is substantially spot price driven. By using weighted averages, there is the suggestion that no dumping has occurred when, in fact, many of the nine models nominated may have been dumped in Australia.

Customs notes that the ACMs estimates of Electra's prices are not indicative of the weighted average selling price calculated using Electra's sales information. However, Customs also note that the ACM selling price estimates for Electra align with the end users records.

The ACM understand that Customs has verified the low selling prices by Electra into the end users sales information. The ACM want to ensure that the selling prices used by Customs are accurate. Currently, the ACM disagree with the methodology used by Customs in arriving at the Electra selling prices and the ACM encourage Customs to review the manner in which it arrived at selling prices in Australia by Electra. The ACM request that Customs conduct an examination of an appropriate sized sample of the higher selling prices shown by Electra to the end users records and they also feel that without agreeing both low and high points, that the Customs conclusions in this matter are not reflective of actual pricing.

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## Copper Price Movements

The ACM note that continuous copper price movements affect the nature of cable pricing. Using a weighted average for comparison purposes may give a distorted result. The comparison of export prices determined in respect of the individual transactions over the investigation period with corresponding normal values in the same period are more credible. This would allow the effects of copper to be shown in a transaction-by-transaction calculation.

### Section 8.3.4 - Dumping Margin should be calculated on each model

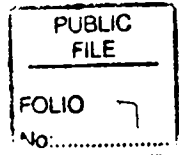
As suggested above, Customs has the information and ability to calculate the following:

- Dumping margin across all models combined (averaging approach)
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- Dumping margin on each individual model (non-averaging approach)

The goods under consideration ("GUC") are not sold as a package to the customers and therefore should not be bundled as a group for the evaluation of dumping. Each model should be evaluated separately. By not determining dumping on each particular model, the ACM believe the review outcome does not give an accurate assessment of the dumping that is occurring in the Australian market.

The ACM believe the current approach has the impact of masking where dumping is occurring. If Customs has found that dumping is occurring on some models, this should be made clear and dumping duty must be assessed on those models.

If dumping was to be found overall, the ACM understand that Customs would only apply the dumping duty on the individual models that were dumped. The approach the ACM would like applied has the same outcome. By applying an individual model approach to the dumping calculation, this will give Customs the information and ability to assess the dumping occurring on each model and apply dumping duty only on the models that are dumped.



### **Expansion of Section 8.3.4 SEF- Dumping Margin**

Customs has decided to use the averaging approach which does mask dumping. The SEF does not detail the dumping margin at each model level, therefore all participants in the market have no knowledge that dumping might actually be occurring on at least one or more models.

If Customs maintains the overall averaging approach to the dumping margin, the ACM believe the SEF dumping margin section 8.3.4 should be expanded to include the dumping margins for each of the 9 models.

This will give Australian End Users a more accurate view of where dumping if occurring (if it is) and therefore they can then make a fully informed decision when deciding whether or not to buy dumped cable from Electra.

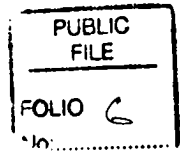
The ACM believe that the dumping margin should be calculated for each separate product in the goods under consideration, if only for the fact that if a positive dumping margin is found, dumping duty is imposed on a product by product basis.

Alternatively the ACM believe that the dumping margin for Guilin should have been calculated under section 269TACB(2)(aa), with the export price determined under section 269TAB(1)(b) or (c), to take account of the abnormal and artificial pricing referred to below, including the fact that over the period under investigation Electra ultimately increased its sales prices in response to the anti-dumping action so as to artificially inflate its weighted average sales prices for the total period.

Further, the ACM believe that the dumping margin for Guilin should have been calculated under section 269TACB(2)(b) or (c), using Custom's current determined export pricing, because many Australian domestic sales by Electra are at a loss and it is these loss-making sales that are causing the injury suffered by the Australian industry (as found in the SEF) and/or to take account of the abnormal and artificial pricing referred to below.

The ACM believe that most appropriate way to calculate the dumping margin for Guilin is under section 269TACB(2)(b) or (c), with the export price determined under section 269TAB(1)(b) or (c), because the transactions between Gulin and Electra are not arms length transactions, many Australian domestic sales by Electra are at a loss and it is these loss making sales that are the real cause of the injury suffered by the Australian





industry. Further, this calculation would more correctly reflect the realities of this segment of the cable market being purely price driven.

Many of the end users in Australia would prefer to buy Australian made product, but it must be price competitive. Publishing the SEF with only the averaged dumping margin, does not give the End Users the appropriate information so they can make informed buying decisions. In fact, only publishing the overall dumping margin could be misleading Australian end users into believing none of the 9 models are dumped.

As the dumping margins are calculated over a full year of transactions, the ACM do not believe publishing each of the 9 models dumping margins will give the ACM or end users any greater understanding of Electra's pricing than already known.

**Investigation year includes an abnormal pricing period that should be excluded**

The period investigated by Customs has an abnormal period in it that should be excluded from the calculation of the weighted average export prices, when determining dumping margins.

The July 2010 to June 2011 market pricing was not entirely normal and not fully reflective of normal market pricing. This period should be broken up as follows:

- Jul 10 to Oct 10 – normal trading activities reflective of dumping
- Nov 10 to Jan 11 – “Abnormal Pricing Period”
- Feb 11 to Jun 11 – “Artificial Pricing Period”

The attached charts illustrate both Olex's and Prysmian's sales prices excluding the impact of copper (Hollow Price) from January 2008 through to December 2011 and Prysmian's Hollow Price from January 2010 to June 2011. The three distinct pricing periods are easily observed. The attached (confidential) tables illustrate the gross margins in these three periods.

**Exclude the "Abnormal Pricing Period"**

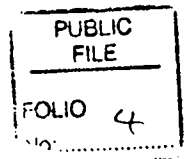
"Prysmian had a strike in October/November 2010. The strike lasted for 7 weeks. Prysmian produced no cable during the strike, and therefore there was a market perception that there was a shortage of cable stock in the market. This created favourable pricing conditions for the other cable suppliers. This perceived shortage price effect lasted in the market for approximately three months."

During the Prysmian strike period ("Abnormal Pricing Period"), all suppliers including Electra significantly increased prices on numerous occasions (Olex raised prices 4 times in 3 months). These significant price increases in the three months should be considered extremely abnormal. These prices rises and higher margins were only able to occur during these three months as the Prysmian strike took Prysmian's capacity from the market thereby creating a situation where the other suppliers (Electra included) were able to push prices much higher as supply to the market was constrained. Electra certainly did follow with prices increases during this time.

By including the "Abnormal Pricing Period" in the calculation of weighted average selling prices, the result is the Customs average selling prices are not reflective of a normal market supply period. If the Prysmian strike did not occur, we do not believe Electra would have increased prices during this period and the July 10 to October 10 prices would have prevailed.

The ACM believe Customs should exclude these three months sales from Electra's sales when calculating the weighted selling price in order to determine the weighted average export price used in the dumping calculation.

Olex's four (confidential) price increase letters can be supplied to Customs if required.



If Customs was to continue to use this "Abnormal Pricing Period" in its calculations of its dumping margins, this period masks the dumping issues that had already occurred.

### **Exclude the Artificial Pricing Period**

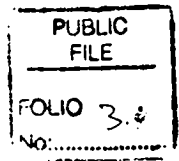
Following the Prysmian strike impact, Olex has tried to maintain prices at these higher levels where marginal profits can be made. During this period, Olex observed as much of the very low prices and price undercutting behaviour from Electra. The ACM believe the only reason for this more rational price behaviour from Electra is that Electra knows their prices during this period would be under scrutiny from Customs as their competitors were putting together an anti-dumping submission.

It will be evident from the attached confidential chart, when Olex moved from the dumping price level set by Electra in September 2009, Olex lost significant business. Customs can also see that the price level in the market place at present is not reflective of the dumping prices in the 2009 to October 2010 period. The current price level is artificial and only in existence due to the fact that Electra knew Customs would be scrutinising these prices closely.

The ACM firmly believe if a "no dumping" finding is the outcome of this review; Electra will certainly go back to the dumping pricing behaviours that existed pre November 2010.

The ACM believe Customs needs to look at the period where Electra were clearly dumping product in the Australia market place and market prices were not impacted by either abnormal pricing condition (Prysmian Strike) or the artificial pricing due to the customs investigation.

Customs should review the period when dumping clearly occurred which is pre November 2010.



### **Copper content**

The attached spreadsheet shows a construction breakdown of weights of an Electra SRF3025V cable. The ACM would be grateful if Customs could conduct a verification check against the weights that Guilin claim they use in their cost to make and sell.

### **Countervailing**

The ACM encourages Customs to examine whether Guilin is in receipt of Government sponsored subsidies which assist in the subsidisation of exports of the cable from China, especially, in relation to taxes. If countervailing is present, it would change the cost base of Guilin and therefore Guilin can have a lower export price than they should.

Guilin is set up as an export orientated group. It is well known that the PRC Federal Government, the PRC Local Government in the Guilin region and other PRC government affiliated bodies provide subsidies for export sales.

Guilin is almost certainly receiving subsidies to a greater extent than found and verified by Customs

In discussion with numerous Chinese manufacturers, the ACM have been told Guilin does in fact receive favourable treatment from the Chinese Governments and this is why they can dump product into foreign countries.

### **Summary**

The ACM notes that a number of factors impinge on the recommendation made in the SEF that no dumping has occurred on the sale of cable from China to Australia.

The ACM do not believe that the sales between Guilin and Electra are at arms length and they suggest that Customs reject the prices charged from Guilin to Electra and employ another method of arriving at a normal value and an export price.

The ACM encourage Customs to disregard the weighted average method of arriving at a normal value and an export price and instead, as permitted by the relevant legislation, arrive at a normal value and export price calculated on a transactional basis. The use of the weighted averages ignores that fact that dumping may well be present but that dumping margin may be "lost" when averages are used. In fact, the ACM have recalculated dumping margins using the original normal values presented to Customs in the public file but with significantly reduced export cost calculations. In all but two cases, dumping is evident using the transactional method. (Refer attached B1 and B2 calculations.)

Thirdly, the period of investigation chosen by Customs is unsuitable because of pricing variations engaged in by Electra. These variations which saw the prices offered rise considerably from what had been on offer in the previous months from Electra, had the effect of showing a higher selling price than was a reflection of the true situation. To use the period chosen by Customs results in a significant distortion of the facts, overall, as the Electra actions impacted adversely on the Australian marketplace.

In light of the comments and observations made by the ACM, the complainants would encourage Customs to revisit its initial findings with a view to rescinding them and relacing them with a finding that dumping has occurred, injury has been sustained as a result of the dumping and that the imposition of dumping duties will be recommended to the Minister.

In closing, the ACM note that the Federal Government recently announced significant reforms were to be introduced to the Australian dumping investigative procedures. The (former) Customs Minister the Honourable Brendan O'Connor MP and his colleague in the Member for Isaacs Mark Dreyfus said

***"Australia's anti-dumping and countervailing system is an important part of our trade environment and helps to support local industry and jobs.***

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***The Gillard Government will take action against injurious dumping which has the potential to hurt local manufacturers and the Australian economy more widely. These changes will help to bring greater certainty to manufacturers and primary producers, and their workers, families and communities..... Our reforms will help keep the economy strong and support local manufacturers and primary producers to remedy the harmful effects of unfair trading practices like dumping and the subsidisation of goods by other countries."***

The ACM look forward to receiving that support from the Federal Government.

Yours sincerely

Richard Farrell  
Principal