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18 July 2018

The Director  
Investigations 1  
Anti-Dumping Commission  
GPO Box 2013  
CANBERRA ACT 2601

Dear Sir/Madam,

**NAN Electrical Cable Australia Pty Ltd and Nanyang Cable (Tianjin) Co. Ltd  
Investigation into the alleged dumping of certain PVC flat electrical cables exported to  
Australia from the People's Republic of China number 469  
NON-CONFIDENTIAL VERSION**

We refer to the Consideration Report, NAN's Importer Questionnaire and Nanyang's Exporter Questionnaire.

We confirm that we are instructed to make this submission on behalf of both NAN and Nanyang both of which are willing to cooperate with the Investigation.

An extension of time was granted for NAN to submit the Importer Questionnaire to 15 July 2018 and for Nanyang to submit the Exporter Questionnaire to 18 July 2018. An extension of time was also granted to NAN and Nanyang to 18 July 2018 to make written submissions. We confirm both NAN and Nanyang have lodged the completed Importer and Exporter Questionnaires.

For the purposes of this Submission all defined terms have the meaning set out in the attached Schedule of Definitions.

**1 Purpose of the Submission**

- 1.1 The purpose of this Submission is to express NAN and Nanyang's opposition to the position set out in the Application that the Australian industry has suffered material injury as a result of the dumping and subsidisation of the Goods.<sup>1</sup>
- 1.2 Our clients also generally reject the findings in the Consideration Report that there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the Goods.
- 1.3 The reasons for this position are set out below.

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<sup>1</sup> Application, page 23.

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## 2 Investigations 178 and 271

- 2.1 The ADC conducted previous investigations into alleged dumping and subsidisation of the Goods between September 2011 and February 2012 (Investigation 178) and November 2014 and July 2015 (Investigation 271). This Investigation is the third attempt by the Australian industry to have dumping and countervailing duties imposed on the Goods.
- 2.2 Investigation 178 was initiated by Nexans Olex, Prysmian and Advance Cables. The ADC terminated investigation 178 as it was found that the Goods were not exported from China at dumped prices (dumping margins were found to be - 4.8% for the Guilin Group (a Chinese exporter) and -1.9% for all other exporters).
- 2.3 Investigation 271 was initiated by Nexans Olex. The ADC terminated Investigation 271 as:
- (a) certain exporters were exporting the Goods at dumped prices but this was below the *de minimis* 2% threshold;
  - (b) certain exporters were not exporting the Goods at dumped prices; and
  - (c) those exporters deemed non-cooperative were exporting the Goods at dumped prices but any injury to the Australian industry was negligible.
- 2.4 We submit that the situation in relation to Chinese exports of the Goods has not changed significantly since Investigation 271 was terminated in July 2015 and that it is unlikely that there will be a finding that dumping has occurred, or if the Goods are found to be exported at dumped prices that there has been no or negligible material injury caused to the Australian industry.
- 2.5 Further, as discussed below, the Goods are only one element of a large portfolio of electrical cable supplied by the Australian industry. We submit that it appears that, after a series of unsuccessful applications by the Australian industry, Prysmian has targeted a particular product and a particular year in its Application which presents the relevant data in an especially favourable light and that this is not necessarily representative of the true market situation.

## 3 Background

- 3.1 NAN is an importer of PVC flat electrical cables (**Goods**). NAN is a [REDACTED] [DETAILS OF NAN'S COMPANY STRUCTURE] subsidiary of Nanyang which supplies it with the Goods. Nanyang is a [REDACTED] [DETAILS OF NANYANG'S COMPANY STRUCTURE] subsidiary of Tianrongxin which is listed on the Shenzhen stock exchange. Both Tianrongxin and Nanyang have operated as private companies in China since their establishment.
- 3.2 Neither Nanyang nor Tianrongxin have ever been Chinese Government owned entities.
- 3.3 The Goods are 2.5 mm thermoplastic sheathed cable capable of connection to mains electricity power installations at voltages exceeding 80 volts but not exceeding 1,000

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volts. The Goods comply with the Australian Standard. The Goods are imported under tariff classification 8544.49.20.

3.4 NAN was established in Australia in January 2013 and has grown quickly since that time. NAN began its operation in Melbourne and purchased a warehouse in Laverton, Melbourne and began operating from this premise in January 2015.

3.5 NAN has since established warehouses in Brisbane (in August 2016) and Sydney (in June 2017). NAN purchased a second warehouse in Truganina, Melbourne in June 2017 and relocated its main operation to that warehouse.

## 4 NAN and Nanyang's business

4.1 As discussed above NAN has been importing the Goods since 2015. NAN has experienced consistent growth since it was established in 2013 with sales per annum increasing as follows:

- (a) 2013 [REDACTED];
- (b) 2014 [REDACTED];
- (c) 2015 [REDACTED];
- (d) 2016 [REDACTED]; and
- (e) 2017 [REDACTED].

[DETAILS OF NAN'S FINANCES]

4.2 We are instructed that [REDACTED]  
[REDACTED]. [DETAILS OF NAN'S FINANCES]

4.3 We are instructed that the Goods are sold by all members of the Australian market at a loss or at a very small margin. The Goods are sold with little or no profit margin and are fully interchangeable with other products due to their compliance with the Australian Standard and common end use.

4.4 It is general practice for the Goods to be priced monthly and that pricing is submitted to wholesalers. It is generally expected that pricing will remain static for one month. Pricing varies frequently as it is highly dependent on copper prices which fluctuate daily. As prices are fixed for each month it is very difficult for suppliers to recover any increase in copper prices during the month.

4.5 The Goods are generic, interchangeable PVC flat cables which are commonly used in commercial and residential electrical installation. [REDACTED]  
[REDACTED]. [DETAILS OF HOW NAN IMPORTS THE GOODS]

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- 4.6 NAN have supplied well in excess of [REDACTED] [NUMBER] different cable variants into the Australian market and the product under investigation represents less than [REDACTED] [PERCENTAGE] of the total number of products sold by NAN

[REDACTED] The Goods are purchased by NAN from Nanyang on a Free on Board basis. NAN is responsible for the shipping costs. [REDACTED]

[REDACTED] [DETAILS OF NAN AND NANYANG'S PRICING]

## 5 Australian Market

- 5.1 We are instructed that NAN agrees with the ADC's assessment that the Australian market is comprised of annual sales of approximately 180 to 200 million metres of the Goods. NAN sold approximately [REDACTED] [NUMBER] metres of the Goods in 2017, comprising less than [REDACTED] [PERCENTAGE] of the Australian market.
- 5.2 The suppliers of the Goods to the Australian market are Nexans Olex, Prysmian, Electra, Advance Cables, APEC and NAN. Prysmian and Nexans Olex are estimated to have in excess of 50% of market share in Australia.
- 5.3 Sales of the Goods occur predominately through electrical wholesalers in Australia. There are other channels of sale, such as retailers, however these channels make up a very small percentage of sales.
- 5.4 The Application states, in reference to the ADC's findings in the Consideration Report, that Electra is in vigorous competition with the Australian industry, specifically Nexans Olex, and that both companies engage in price competition including price undercutting.<sup>2</sup> The behaviour of these major participants in the Australian market further emphasises the vigorous competition which has had significant effect on the pricing strategies of all participants in that market. Electra and Nexans Olex have the ability and the resources to engage in this form of competitive behaviour. In order to remain competitive all other participants in the market must price the Goods accordingly.
- 5.5 Electra is by far the largest Chinese exporter of the Goods. Market share data is commercially confidential so is unavailable but it is believed that Electra has in excess of 30% of the market share. NAN's market share by comparison is minimal. If dumping has occurred and this has caused material injury to the Australian industry it is likely NAN and Nanyang have made a negligible contribution, if any contribution, to that injury.
- 5.6 NAN does not consider itself to be a "price setter" in the Australian market. As discussed above, domestic pricing is highly competitive in Australia with Nexans Olex, Prysmian and Electra engaging in aggressive pricing strategies to ensure market share. We are instructed that these market conditions have also affected

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<sup>2</sup> Application, page 26.

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NAN's profitability due to the need to price competitively with other members of the Australian market.

- 5.7 We consider there to be healthy and robust competition in the Australian market between members of the Australian industry as well as Australian importers. Any fluctuations in the pricing of the Goods is the result of strong and legitimate price competition in the market including an aggressive approach taken by Electra, Prysmian and Nexans Olex towards NAN's entry into the Australian market between 2016 and 2017 which has driven the price of the Goods down independent of any alleged dumping. While NAN began supplying the Goods in 2015 it was not considered a viable alternative to the three major suppliers (Nexans Olex, Prysmian and Electra) until 2017 after its growth in Brisbane and Sydney. NAN's growth as a supplier significantly increased competition in the market at this time.
- 5.8 Further, we are instructed that the Goods are sold by all participants in the Australian market as a small component of a large portfolio of goods. The Goods must be priced competitively in order to achieve market penetration. As discussed above, price competition and the use of the Goods by market participants as a "wedge" into the market is common practice. The Goods are generic and substitutable between brands and the pricing of the Goods must remain competitive in order for all members of the Australian market to maintain their market share.
- 5.9 We submit that any reduction in market share or profitability experienced by the Australian industry is not the result of alleged dumping but is instead the result of a highly competitive market which engages in aggressive pricing strategies, led by Nexans Olex and Electra, regardless of whether the Goods are imported or manufactured domestically.

## 6 Findings of dumping and material injury

- 6.1 While the Consideration Report indicates that the minimum threshold to initiate the Investigation has been met the threshold required to publish a dumping notice is higher.
- 6.2 The Consideration Report states that while there may be reasonable grounds to support a claim that the Australian industry has suffered injury in the form of reduced return on investment, reduced capacity utilisation and employment hours for the production of the Goods, further investigation of these factors and other factors relating to the Goods will need to be undertaken.
- 6.3 The Consideration Report also states that further information and investigation will be necessary throughout the Investigation in relation to Prysmian's return on investment and the effect its export volumes may have on that return on investment before a determination as to dumping or material injury can be made.
- 6.4 The claim of price undercutting is also based on Prysmian's understanding of discounts and rebates provided by the importer of the Goods from China to their own downstream customers. We submit that this claim should be investigated further with input from importers and exporters of the Goods during the investigation before there can be a finding that price undercutting is occurring and that it is causing material injury to the Australia industry.

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- 6.5 We refer the ADC to statements in the Investigation 271 Termination Report in relation to price undercutting:

*“Olex argues that the Commission’s methodology for calculating rebates (based on Electra’s ‘total value of all cable sales’) has a high risk of distorting the rebates actually paid. Olex argues that the Commission need to verify the net prices actually paid by each customer...”*

*The Commission subsequently examined all of the rebates and discounts which are payable by Electra to its customers under the terms of the supplier agreements that were in place at the time of the investigation period... The Commission is satisfied that its methodology is reasonable, and the price undercutting analysis... which shows very close price competition between the net prices obtained by Olex and Electra for sales to common customers, provides further confidence as to the accuracy of the analysis.”*

- 6.6 We request that in any analysis of price undercutting the ADC take into account actual data available from Nanyang in relation to any rebates or discounts payable.

- 6.7 We also note that while Prysmian’s estimated dumping margin was 53.7% the ADC’s estimated dumping margin is only 2.7%. While the ADC’s estimated dumping margin is not below the *de minimis* 2% threshold it is very low as compared to the significantly higher dumping margin proposed by Prysmian.

## 7 Subsidisation

- 7.1 We are instructed that Nanyang has not received any benefits from the subsidy programs or financial grants specified in the Application by Prysmian. [REDACTED]

[REDACTED] [DETAILS OF NANYANG’S FINANCES]

- 7.2 Accordingly, if it is found that the Australian industry has suffered material injury we submit that no countervailing duty should be imposed in relation to Nanyang as it has not received the benefit of any subsidies, financial grants or preferential taxation rates.

## 8 Other factors

- 8.1 We consider there to be other significant factors which are likely to be contributing to any material injury the Australian industry has allegedly suffered including:

- (a) the effects of the secondary market in the Goods;
- (b) the influence of the ChAFTA;
- (c) other economic factors;
- (d) issues of quality of imported Goods in 2015 and 2016;

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- (e) the high levels of price competition domestically between Australian suppliers; and
  - (f) Prysmian's business practices.
- 8.2 The Goods are commonly used and often purchased in bulk by wholesalers. The Goods are also required to conform to the Australian Standard which makes them generic, interchangeable and rarely subject to quality or design issues. It is not difficult nor uncommon for the Goods to be sourced from secondary sources. It is reasonable to expect that this secondary market is contributing to any alleged injury suffered by the Australian industry.
- 8.3 Further, the ChAFTA entered into force on 20 December 2015. The ChAFTA introduced preferential duty rates in relation to the Goods exported from China, reducing the customs duty payable from 4% to 0%. This change in the customs duty payable had an impact on the pricing of exports from China to Australia as a result of the lower cost of the duty free imports.
- 8.4 Prysmian state in its application that:
- "In 2015, selling prices for PVC cable increased and then fell away in 2016 due to increased competition from cheaper imports from China."*<sup>3</sup>
- 8.5 This decrease in selling price in 2016 is more appropriately explained as the delayed result of the 0% duty applicable to the Goods subject to the ChAFTA and not the result of dumped Chinese exports. We are instructed that the effects of the ChAFTA were delayed as stock that was ordered prior to the implementation of the ChAFTA had to be sold and subsequently replenished with the duty free Goods. There was also a period where market participants sought to maintain prices at a higher level in order to benefit from a higher profit margin. This margin was subsequently eroded for all suppliers of the Goods as a result of intense competition in the Australian market.
- 8.6 We are also instructed that Prysmian operates its business in a variety of areas including telecommunications, major infrastructure construction, and the electricity and generation market. Prysmian supplies a multitude of different products in addition to the Goods. We consider it unlikely that all contributing factors to the injury allegedly sustained by Prysmian, including factors relating to the other facets of its business, could have been wholly taken into consideration in its position that dumping and material injury has occurred.
- 8.7 During 2016 and 2017 certain economic factors also influenced the profitability of the Australian industry including the fluctuating price of copper and the strength and stability of the Australian dollar. The value of the Australian dollar fell significantly in 2015 which made importing the Goods a less commercially viable option. Further, the price of copper in 2016 was at a five year low. Copper prices then rose in 2017. The relationship between economic conditions between 2015 and 2017 and the performance of the Australian industry is complex and multifaceted. We submit that

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<sup>3</sup> Application, page 24.

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these economic conditions should be considered as another factor in any injury that the Australian industry may have suffered.

- 8.8 Further, we are instructed that a major competitor, General Cable, ceased supplying the market with the Goods in 2015 and completely withdrew from the Australian electrical cable market in 2016. Any shift in the performance and profitability of other participants in the Australian market must also have been affected by the removal of a major competitor in that market.
- 8.9 In 2015 there was a nationwide recall of Chinese made cables sourced from a company known as Infinity Cables. There was a subsequent loss of confidence in Chinese made cables in the market between 2015 and 2016. It is arguable that any increase in market share by importers of the Goods from China in 2017 represents a return to confidence in the quality of Goods imported from China. It is also reasonable to suggest that the performance of the Goods supplied by the Australian industry during 2015 and 2016 was impacted positively by the loss of confidence in Chinese Goods.
- 8.10 As such, we request that the ADC take into consideration the alternative factors discussed above in its investigation.

## 9 Preliminary Affirmative Determination and imposition of securities

- 9.1 We do not consider it necessary for the ADC to make a PAD in this matter as:
- (a) the ADC will still need to investigate Prysmian's claims that material injury has occurred and that material injury has in fact been caused by the alleged dumping;
  - (b) there are multiple other contributing factors to any alleged material injury that may have been suffered by the Australian industry including the effects of the secondary market and the ChAFTA, discussed above;
  - (c) Securities should only be imposed in circumstances where they are necessary to prevent injury being caused during a dumping investigation.<sup>4</sup>
  - (d) Our clients are willing to cooperate fully with the Investigation;
  - (e) If securities were imposed our client would suffer significant disadvantage as the pricing of its goods would become uncertain having an adverse effect on its business operations.
- 9.2 The *Customs (Preliminary Affirmative Determinations) Direction 2015* permits the ADC to make either a PAD or to publish a Status Report setting out its reasons why a PAD was not made. In circumstances where no finding of dumping has been made, other factors which are likely to have caused injury to the Australian industry have not yet been considered and in consideration of the adverse consequences to our clients

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<sup>4</sup> *World Trade Organisation Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, Paragraph 7.1(iii).



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we do not consider a PAD or the imposition of securities to be appropriate in this case.

## 10 Conclusions

- 10.1 We consider it unlikely that it will be found that the Goods have been exported from China at dumped prices or that the situation in relation to the Goods has changed significantly since the termination of Investigation 271.
- 10.2 If it is found that the Goods are exported from China at dumped prices any material injury sustained by the Australian industry cannot be attributed to NAN or Nanyang due to their minor share in the Australian market being less than [REDACTED] [PERCENTAGE].
- 10.3 Any effect on the Australian industry's pricing or profitability is likely to be the result of legitimate and vigorous competition between members of the Australian industry as well as Australian importers. It is common practice throughout the Australian market to engage in aggressive pricing strategies, led by Nexans Olex and Electra, in order to remain competitive in the market.
- 10.4 The Goods make a loss across the industry as a result of the intense competition amongst the participants in the Australian market. The Goods are sold at negligible margins or more commonly at a loss by most if not all participants in the Australian market including importers in order to remain competitive. The pricing competition in the Australian market led by Prysmian and Nexans Olex has also affected NAN's ability to make a profit on the Goods.
- 10.5 The introduction of the ChAFTA in December 2015 is also a significant factor in relation to Chinese exports of the Goods as a result of the low cost of the customs duty free Goods. The change in the customs duty payable on the Goods from 4% to 0% had a direct impact on the selling price of Chinese imports as opposed to any dumping allegedly occurring.

In circumstances where further investigation is required and there are multiple alternative factors to be considered we do not consider it likely that it will be found that material injury has been incurred by the Australian industry. Accordingly, we do not consider it necessary or appropriate for a PAD to be published or securities to be imposed.

We request that the ADC take this submission into consideration. We would be pleased to provide any further information the ADC may require.

Yours faithfully



Andrew Hudson  
Partner

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## Schedule of Definitions

- (a) "**Act**" means the *Customs Act 1901* (Cth);
- (b) "**ADC**" means the Anti-Dumping Commission;
- (c) "**Advance Cables**" means Advance Cables Pty Ltd;
- (d) "**Anti-Dumping Notice**" means the Anti-Dumping Notice No. 2018/86 of initiation of the investigation into alleged dumping and subsidisation;
- (e) "**Application**" means the Application made by Prysmian to the ADC in relation to alleged dumping of certain PVC flat electrical cables published on 4 June 2018;
- (f) "**Australian Standard**" means AS/NZS 5000.2 Electric Cables;
- (g) "**ChAFTA**" means the China-Australia Free Trade Agreement;
- (h) "**Consideration Report**" means Consideration Report No. 469 in this Investigation;
- (i) "**Electra**" means Electra Cables (Aust) Pty Ltd;
- (j) "**EPR**" means Electronic Public Record;

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- (k) **"Goods"** means the goods the subject of the Application, more particularly described in the Consideration Report as follows:

Full description of the goods, as subject of the application				
Flat, electric cables, comprising two copper conductor cores and an 'earth' (copper) core with a nominal conductor cross sectional area of between, and including, 2.5 mm <sup>2</sup> and 3 mm <sup>2</sup> , insulated and sheathed with polyvinyl chloride (PVC) materials, and suitable for connection to mains electricity power installations at voltages exceeding 80 volts (V) but not exceeding 1,000 V, and complying with Australian/New Zealand Standard (AS/NZS) AS/NZS 5000.2 (the Australian Standard), and whether or not fitted with connectors.				
Further information				
<p>Prysmian's application notes the following additional information:</p> <p>The locally produced goods are 2.5 Twin and Earth (TE) PVC flat cable (2.5 TE cable) that is commonly referred to as 'building wire', because of its use by the building and construction industry in domestic, commercial and industrial mains power supply low-voltage wiring installations.</p> <p>The term 'flat cables' mean cables where the conductor and earth cores are laid parallel in the same plane, as defined by the Australian Standard. The reference to "two copper conductor cores" refers to the 'phase core' and the 'neutral core'. The earth core (also comprising copper) is additional to these two active cores.</p>				
Exclusions				
<p>Prysmian specifically excluded the following from the application:</p> <ul style="list-style-type: none"> <li>• single core cables, being cables with a single active core;</li> <li>• aerial cables as defined by the Australian Standard;</li> <li>• twin active flat cables, that is, flat cables comprising two active cores but no earth core;</li> <li>• circular cables as defined by the Australian Standard;</li> <li>• cables insulated and/or sheathed with non-PVC material, including but not limited to cross-linked</li> <li>• polyethylene (XLPE) materials, including a combination of PVC and non-PVC material;</li> <li>• cables comprising cores made of aluminium conductors; and</li> <li>• flexible cables (cords) as defined by AS/NZS 3191 and/or AS/NZS 60227.</li> </ul>				
Tariff classification (Schedule 3 of the <i>Customs Tariff Act 1995</i> )				
Tariff code	Statistical code	Unit	Description	Duty rate
8544.49.20	41	metre	Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors [...] <i>For a voltage exceeding 80V but not exceeding 1000V [...]</i>  <i>- Insulated with P.V.C materials</i>	China: 0%

- (l) **"Investigation"** means the Investigation into the alleged dumping of certain PVC flat electrical cables exported to Australia from the People's Republic of China;
- (m) **"Investigation 178"** means Investigation 178 into alleged dumping of electrical cables from China;
- (n) **"Investigation 271"** means Investigation 271 into alleged dumping of PVC flat electrical cables exported from China;
- (o) **"NAN"** means NAN Electrical Cable Australia Pty Ltd;

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- (p) **“Nanyang”** means Nanyang Cable (Tianjin) Co. Ltd;
- (q) **“Nexans Olex”** means Olex Australia Pty Ltd trading as Nexans Olex;
- (r) **“PAD”** means Preliminary Affirmative Determination;
- (s) **“Prysmian”** means Prysmian Australia Pty Ltd;
- (t) **“Submission”** means this submission on behalf of NAN and Nanyang;
- (u) **“Termination Report”** means the Termination Report published on 8 July 2015 by the ADC in Investigation 271;
- (v) **“Tianrongxin”** means Nanyang Tianrongxin Technology Group Holding Co. Ltd.