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13 February 2019

Mr Bora Akdeniz
Assistant Director
Investigations 1
Anti-Dumping commission
GPO Box 2013
CANBERRA ACT 2601

By Email: bora.akdeniz@adcommission.gov.au

Dear Mr Akdeniz,

**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 (Investigation)
Response to Nanyang Verification Report and Preliminary Affirmative Determination
NON-CONFIDENTIAL**

We refer to the Exporter Verification Report of Nanyang Cable (Tianjin) Co. Ltd (**Nanyang**) published on the Electronic Public Record (**EPR**) on 22 November 2018 (**Exporter Verification Report**) and the Preliminary Affirmative Determination (**PAD**) published on the EPR on 4 January 2019.

Our clients' have instructed us to make the following submissions in response to the PAD and Exporter Verification Report.

1 Exporter Verification Report

1.1 Nanyang and NAN object to the following findings in the Exporter Verification Report:

- (a) that Nanyang is a non-cooperative exporter; and
- (b) that the transactions between NAN and Nanyang are not arm's length.

Non-cooperative finding

1.2 The Exporter Verification Report states at paragraph 11.3 that Nanyang had been found to be an uncooperative exporter as it did not provide a complete listing of its copper purchases as Nanyang considered this information to be confidential and commercially sensitive.

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- 1.3 Throughout the Exporter Verification Report the ADC notes that while there were some deficiencies in data originally supplied by Nanyang further clarification and additional data was sought and provided by Nanyang. The ADC concluded that it was able to determine that the information provided was complete and relevant to the Investigation in relation to the sales listing and sales accuracy.
- 1.4 In relation to the verification of the Cost to Make and Sell (**CTMS**) the Exporter Verification Report confirms that the ADC:
- (a) was satisfied that the verification of the costs included in the submission was complete and relevant;
 - (b) was able to verify the PVC purchased against another exporter's data;
 - (c) was able to rely on the audited accounting system to verify labour and manufacturing overheads; and
 - (d) was able to rely on data obtained during the upward and downward verification process of the verification visit.
- 1.5 The Exporter Verification Report states that the ADC was satisfied that the allocation methodology for the CTMS and the accuracy of the CTMS information. Two exceptions were identified, being that the raw materials calculations included VAT and the variable overheads were based on budgeted costs rather than actual costs. In both instances the ADC was able to recalculate or verify the actual costs during the verification visit.
- 1.6 We understand from previous correspondence with the ADC that the ADC believes that Nanyang was informed that if it did not provide the complete copper sales information it may be found to be uncooperative. However, we are instructed that Nanyang maintains that it was not aware of the consequences of not providing the complete copper costs as requested by the ADC and considered its position in relation to its confidentiality to be reasonable. Further, Nanyang is not experienced in anti-dumping investigations and this lack of experience and specialised knowledge contributed to Nanyang's concerns in relation to releasing the full copper data. We reiterate that in spite of this a significant amount of data was provided to the ADC during the exporter verification visit. We do not consider it justified or reasonable that Nanyang has been found to be an uncooperative exporter in circumstances where:
- (a) Nanyang has provided all information requested by the ADC including significant data on the copper price (with the exception of the specific information in relation to the copper price which it considered confidential);
 - (b) Nanyang and NAN have actively engaged with the Investigation; and
 - (c) NAN and Nanyang have cooperated fully with the ADC and will continue to do so throughout the Investigation.

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Non-arm's length finding

- 1.7 Subparagraph 6.3 of the Exporter Verification Report states that the transactions between Nanyang and NAN were not arm's length as the ADC considered that the price was influenced by the commercial or other relationship between the buyer and the seller or an associate of the seller. We are instructed that NAN and Nanyang do not accept this finding.
- 1.8 Further, our clients reject the statement in the Exporter Verification Report that *"...there are no price negotiations or other kind of bargaining taking place between NAN and Nanyang and the price for the goods that are on-sold into the Australian market are sold at a loss."*
- 1.9 As discussed in detail during the importer verification visit the transaction price is calculated based on the Shanghai Metal Exchange and the cost to make and export the goods which costs are determined by Nanyang. The calculation is done by using a model developed based on data provided by Nanyang. Pricing is also adjusted to reflect movements in the costs of raw material and exchange rates. While NAN and Nanyang are related entities the cost at which NAN purchases the goods from Nanyang is a commercial and competitive price based on established commercial principles.
- 1.10 Further, as discussed in previous correspondence and at the importer verification visit the goods are subject to robust price competition in the market and are not subject to brand loyalty. We are instructed that all participants in the Australian market operate on minimal to no profit margin in relation to these goods due to the nature of the goods. The fact that NAN may have made a loss on the goods during the investigation period is reflective of the competition in the market and the nature of the goods and does not indicate that the transactions between NAN and Nanyang are not arm's length.
- 1.11 We are instructed that, in the circumstances, NAN and Nanyang do not accept the ADC's position that the transactions between NAN and Nanyang are not arm's length.

2 Preliminary Affirmative Determination and Causation of Material Injury

- 2.1 The Preliminary Affirmative Determination (**PAD**) was published on the EPR on 4 January 2019 and confirmed that securities would be put in place from 7 January 2019.
- 2.2 Our clients do not consider it necessary for securities to be put in place in this Investigation in circumstances where causation of material injury as a result of dumping has not been established and alternative causes of any injury that may have been suffered by the Australian industry have not been fully investigated.
- 2.3 The PAD repeats the finding of the ADC that Nanyang is an uncooperative exporter. As discussed above, our clients do not consider it reasonable or appropriate for Nanyang to be considered an uncooperative exporter in circumstances where it has cooperated with the ADC and continues to engage with the Investigation.

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- 2.4 The PAD discusses the alleged injury to the Australian industry and refers specifically to volume injury during the period 2014 to 2017. Prysmian and Olex both claim that they suffered loss of sales volume during the investigation period. However these losses are unlikely to have been caused by any alleged dumping that may have occurred.
- 2.5 We note the ADC has observed that the alleged loss of sales volume experienced by Prysmian and Olex during the investigation period occurred during a time of growth in housing construction, renovations and building fit-outs. However, as discussed below, it cannot be said definitively that any loss in sales volume was caused by alleged dumping without considering other more likely causes.
- 2.6 The PAD also discusses price and profitability injury to the Australian industry finding that, while Prysmian's profitability increased during 2015, it has been falling since 2016. Olex also experienced loss of profitability from the last quarter of 2016 onwards despite having experienced increased profitability in quarters 1 to 3 of 2016.
- 2.7 We note that the ADC's analysis of volume and profit losses during the investigation period demonstrates that both Olex and Prysmian experienced losses in 2016. However, prior to 2016 neither Prysmian nor Olex were experiencing profitability in relation to the goods. We refer to a previous dumping investigation number 271 in relation to PVC electrical cable. We note that the Termination Report published on 8 July 2015 in that investigation found that no dumping was occurring but also found that Olex and Prysmian were not experiencing profitability in relation to the goods for a 4 year period from 2011 to 2014. We consider this to be further indication that Prysmian and Olex' profitability was artificially inflated in 2016 for the reasons discussed below.
- 2.8 We refer to our submission of 18 July 2018 which has been published on the EPR and reiterate our position in relation to alternative causes of any alleged injury suffered by the Australian industry.
- 2.9 In our submission of 18 July 2018 we discussed other contributing factors to the alleged injury. The issue of Prysmian's own business practices was also discussed further during the importer verification visit at NAN's premises.
- 2.10 In light of the publication of the PAD we are instructed to provide further detail in relation to:
- (a) Prysmian's business practices and the reaction of retail suppliers in the Australian market;
 - (b) the implications of the increased cost of copper during the investigation period; and
 - (c) the impact of the China-Australia Free Trade Agreement (**ChAFTA**).
- 2.11 We are instructed that Prysmian altered its business practices during the investigation period. During this time Prysmian engaged in highly competitive pricing practices

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beyond what was necessary to compete in the Australian market. In particular in October 2017 Prysmian sold low priced PVC cables to Bunnings in significant quantities which served to undercut other wholesalers' prices in the Australian market.

- 2.12 We are instructed that Prysmian's behaviour in selling to Bunnings at low prices resulted in the alienation of a portion of those wholesalers which would otherwise purchase goods from Prysmian to reduce their purchases in late 2017. Details of this issue were discussed confidentially with the ADC at the importer verification visit.
- 3 We also refer to section 2 paragraph (c) of the submission made by Electra Cables (Aust) Pty Limited (**Electra**) dated 8 February 2019. We agree with Electra's position that the Australian industry regards the goods under consideration as a loss leader product and prices those goods at consistently low prices despite competition from imported products.
- 3.1 Further, we note that the ADC had determined in the PAD that:
- "The evidence before the Commission suggests that the Australian industry members sought to increase prices to respond to increasing copper costs, but instead reduced pricing in subsequent months in an attempt to maintain market share (which appeared to be unsuccessful.)"*
- 3.2 We are instructed that our clients' do not consider this interpretation of pricing practices in 2016 and 2017 to be accurate. NAN has very little market share in comparison to Prysmian, Olex and Electra and does not have the ability to control pricing in the market. Instead, NAN's pricing is in general reactionary to the pricing set by the major participants in the market (Prysmian, Electra and Olex). Our clients do not consider it accurate to suggest that the Australian industry intended to increase its pricing during the 2016 and 2017 periods but was unable to do so in order to maintain its market share when competing with other members of the Australian market.
- 3.3 We are also instructed that local suppliers are able to raise their prices and react quickly in response to changes in the often fluctuating copper price due to the shorter lead time local industry has. We are instructed that importers are not able to react as quickly to changes in the copper price as they have a manufacturing lead time plus a shipping time of more than one month. For purchase orders placed after a cost increase in raw materials or fall in exchange rates there is a 2 month delay in receiving the goods. In this time local manufacturers may seek to increase prices while importers are able to sustain existing prices creating the artificial appearance that the importers operate with lower prices. However, this is simply due to differences in the lead times of importers as compared to local suppliers and is not a result of alleged dumping.
- 3.4 The ADC notes that profitability, market share and sales volume during the investigation period prior to 2016 for both Prysmian and Olex remained relatively consistent despite not being profitable. In 2016 both Prysmian and Olex experienced increases in profitability and market share as compared to 2014 and 2015. As discussed in our 18 July 2018 submission we consider Prysmian and Olex' market

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share and profitability to have been artificially buoyed by the departure from the market of a major competitor in General Cable.

3.5 The ADC states in the PAD that:

“The Commission observes that, at undumped and unsubsidised prices, the Australian industry members would be able to increase prices by more than 7 per cent on average to match the lowest undumped price on the market”

3.6 Our clients do not consider this analysis to be sufficient as it does not take into account the highly competitive nature of the market (with or without allegedly dumped goods) due to the nature of the goods as generic and the lack of brand loyalty. It is not necessarily the case that, given market competition and other contributing factors, the Australian industry would be able to increase its prices significantly absent allegedly dumped goods.

3.7 In relation to volume effects the ADC has found that there is considerable desire amongst the Australian industry to increase or at least maintain their sales volumes. As discussed above, both Olex and Prysmian’s sales volume arguably increased artificially when a major competitor, General Cables, withdrew from the Australian market in 2016. Our clients consider the decrease in sales volume experienced in 2017 to be a legitimate correction in the market to levels similar to those in 2015 caused by factors other than any alleged dumping.

3.8 The ADC has specifically considered the increase in the copper price during the investigation period as a factor contributing to injury to the Australian industry however considers the injury allegedly suffered to have been exacerbated by alleged dumping. As discussed above our clients consider Prysmian’s own actions, the withdrawal from the market of General Cable and the nature of the goods as highly competitive to be significant factors, in conjunction with the rise in copper price, in any injury that may have been suffered by the Australian industry.

3.9 Our clients do not consider any alleged dumping to have caused the injury the Australian industry claims it has suffered.

4 **Publication of Statement of Essential Facts**

4.1 We note the Statement of Essential Facts (**SEF**) was due to be published on 24 September 2018. An extension of time was then granted to publish the SEF to 30 November 2018. On 30 November 2018 a notice extending the time for the publication of the SEF to 22 February 2019 was published on the EPR.

4.2 This Investigation commenced on 4 June 2018 and has continued for over 6 months with the SEF yet to be published.

4.3 The ongoing delays in this matter and the uncertainty as to the duty that may or may not be payable on the goods is detrimental to our clients’ business and is creating continuing difficulties for our clients’ in terms of pricing and business planning.

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5 Conclusions

- 5.1 Our clients do not consider it reasonable or justified for a PAD to be made and securities put in place in circumstances where causation of material injury by factors other than alleged dumping has not been fully investigated.
- 5.2 NAN and Nanyang object to the following findings in the Exporter Verification Report:
- (a) that Nanyang is a non-cooperative exporter; and
 - (b) that the transactions between NAN and Nanyang are not arm's length.
- 5.3 Nanyang has cooperated throughout this Investigation and continues to engage with the Investigation. Nanyang maintains that it was not aware of the consequences of not providing the complete copper sales listing to the ADC.
- 5.4 Pricing between NAN and Nanyang is calculated based on established commercial principles and they maintain that they consider the transactions to be arm's length.
- 5.5 Our clients do not accept that any alleged injury suffered by the Australian industry is being caused by supposed dumping. Our clients consider other factors including:
- (a) the increased copper price;
 - (b) overly aggressive pricing strategies engaged in by Prysmian;
 - (c) the highly competitive nature of the goods; and
 - (d) the withdrawal from the Australian market of General Cable
- to be major contributing factors to any alleged injury suffered by the Australian industry.
- 5.6 Further our clients do not consider it reasonable to conclude that alleged dumping by Nanyang has caused material injury to the Australian industry particularly given NAN's previously discussed minor share in the market.
- 5.7 Our clients consider that the ADC has an obligation to actively investigate alternative causes of material injury and should not rely purely on submissions from interested parties to the Investigation. Accordingly, our clients request that these alternative factors be fully investigated and considered in any determination of causation of material injury in this Investigation.
- 5.8 This Investigation commenced in June 2018 and has suffered multiple delays which have caused significant uncertainty and difficulties in the operation of NAN and Nanyang's business and we request that this Investigation be concluded in a timely manner.

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We would be pleased to provide the ADC with any further information it may require.

Yours faithfully



Andrew Hudson
Partner