



23 November 2020

Mr Martin Squire
General Manager
Trade and International Branch
Department of Industry, Science, Energy & Resources
Industry House
10 Binara Street
Canberra ACT 2601

Via email: antidumping@industry.gov.au

Dear Mr Squire

Electra Cables (Aust.) Pty Ltd v Minister for Industry, Science and Technology and others

Thank you for your letter of 6 November 2020.

Nexans Olex is an Australian manufacturer of electrical cables for supply to the energy, construction and industrial markets. Your letter notified of the Orders of the Federal Court concerning an appeal by Electra Cables (Aust) Pty Ltd of the decision of the Minister for Industry, Science and Technology decision dated 8 May 2019 to declare, under section 269TG of the Customs Act 1901, that section 8 of the Customs Tariff (Anti-Dumping) Act 1975 applies to PVC flat electrical cables exported from China to Australia by Guilin International Wire & Cable Co.

You have requested submissions from Nexans Olex in respect of:

- (i) whether the Minister should make a direction under paragraph 269TAB(2)(c) when re-determining the export price of the goods, as set out in section 6.5.1.2 of Report 469 below: PVC Flat Electrical Cables Exported from the People's Republic of China (Report 469); and
- (ii) any changes in circumstances since Report 469 was delivered to the Minister on 8 April 2019 as they relate to whether dumping and material injury will continue.

We understand that the matter for reconsideration by the Minister therefore relates to the direction in accordance with subsection 269TAB(2) and not whether a level of profit is to be included in the export price calculation or otherwise.

The relevant Subsection 269TAB(2) states:

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



- (a) ...
- (b) ...
- (c) *The profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph 1(b), is to be regarded as the rate of profit on the sale by the importer. (emphasis added).*

We consider that the reconsideration requires the Minister to direct the Commissioner to include a level of profit in the export price calculation in accordance with subsection 269TAB(2)(c). The amount of profit to be included is *“Electra’s company-wide profits as it represents the profit realized by Electra from the sale of the general category of goods (considering Electra’s principle (sic) activity as stated in its audited financial statements is the distribution of cables).”*¹

It is Nexans Olex’ view that the reconsideration requires nothing more than the direction of the Minister to be applied.

You have further sought advice as to whether there has been a “change in circumstances” following the issuance of Report 469. We consider that the anti-dumping measures applied by the Minister are warranted to ensure the Australian industry does not again experience the injurious effects of dumping. That is, the measures have been effective in rectifying the injurious pricing that occurred prior to the imposition of measures. We are firmly of the view that the measures are justified to prevent material injury from dumping recurring. We also consider that any reduction in the level of interim dumping duty (“IDD”) would cause material injury to Nexans Olex and the other Australian industry members.

Recommendation

Nexans Olex requests that the Minister directs the Commissioner to include the level of profit (as per Report 469, Section 6.5.1.2) in the calculation of Electra’s export price. We further consider that the anti-dumping measures on PVC cable exported from China are justified and warranted to prevent further dumping and material injury to the Australian industry.

Please contact me on (03) 9281 4208 if you have any questions concerning this matter.

Yours sincerely

A handwritten signature in black ink that reads "Greg Stack". The signature is written in a cursive, flowing style.

Greg Stack
Chief Executive Officer APAC

¹ Report No. 469, Section, P. 35.