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Australian Government
Department of Industry, Science,
Energy and Resources

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

FINAL REPORT NO. 536

ACCELERATED REVIEW

**OF THE DUMPING DUTY NOTICE AND
COUNTERVAILING DUTY NOTICE APPLYING TO**

**PVC FLAT ELECTRIC CABLES EXPORTED FROM THE
PEOPLE'S REPUBLIC OF CHINA**

BY

HEBEI HUATONG WIRES AND CABLES GROUP CO., LTD

6 March 2020

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ABBREVIATIONS

the accelerated review period	1 October 2018 to 30 September 2019
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	[the Anti-Dumping Commission's] electronic public record
the goods	PVC flat electric cables, also referred to as the goods the subject of the accelerated review and/or the goods under consideration
Hebei Huatong	Hebei Huatong Wires and Cables Group Co., Ltd
ICD	interim countervailing duty
IDD	interim dumping duty
the Manual	the <i>Dumping and Subsidy Manual</i> , November 2018. Available on the Commission's website at www.adcommission.gov.au .
the Minister	Minister for Industry, Science and Technology
the notices	the dumping duty notice and countervailing duty notice
OCOT	Ordinary course of trade
PVC	polyvinyl chloride
REP 469	<i>Anti-Dumping Commission Report No. 469</i>
REQ	response to the exporter questionnaire
SG&A	selling, general and administrative

1 SUMMARY AND RECOMMENDATION

1.1 Background

This Accelerated Review No. 536 was conducted in response to an application under section 269ZF of the *Customs Act 1901* (the Act)¹ from Hebei Huatong Wires and Cables Group Co., Ltd. (Hebei Huatong). On 27 November 2019, Hebei Huatong applied for an accelerated review of the dumping duty notice and countervailing duty notice (the notices) in respect of PVC flat electric cables (the goods) exported to Australia from the People's Republic of China (China).

Hebei Huatong's application seeks an accelerated review on the basis that the notices are inappropriate because it is currently subject to a dumping duty rate of 18.3 per cent and a countervailing duty rate of 3.7 per cent. These rates reflect the rates for 'All other exporters' as determined in *Anti-Dumping Commission Report No. 469* (REP 469).

Hebei Huatong did not export the goods to Australia during the period subject to the original investigation so is a 'new exporter' as defined in section 269T(1).

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) is basing his recommendations to the Minister for Industry, Science and Technology (the Minister).

1.2 Application of law to facts

Division 6 of Part XVB allows eligible parties to apply for an accelerated review of anti-dumping measures. This Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner when conducting accelerated reviews, for the purpose of making a report to the Minister; and
- provides for the Minister, after consideration of the Commissioner's report, to leave the notice unchanged, or to declare that the notice has effect with regard to the applicant, as if different variable factors had been specified.²
- section 269ZE(1) sets out that a new exporter may apply for an accelerated review. A new exporter is defined in section 269T(1) as an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application for the notices.

1.3 Findings

After considering the application and making further inquiries, the Commissioner is not satisfied there is sufficient information to calculate exporter specific variable factors (and therefore interim dumping duty (IDD) and interim countervailing duty (ICD) rates) for the goods exported to Australia by Hebei Huatong.

¹ All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

² Section 269T(4D) sets out the variable factors relevant to the determination of duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* on particular goods being the subject of a dumping duty notice or countervailing duty notice.

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1.4 Recommendation

The Commissioner recommends, in accordance with section 269ZG(1)(a), that the notices remain unaltered so far as they affect Hebei Huatong.

If the Minister accepts these recommendations, to give effect to the decision, the Minister must, by public notice:

- Declare (by signing the notice at **Non-Confidential Attachment 1**) that:
in accordance with section 269ZG(3)(a) and the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), the notices are to remain unchanged.

The effect of this accelerated review is that exports of the goods to Australia by Hebei Huatong will remain subject to the “*all other exporters*” rate of 22.0 percent which is the combined components of dumping and countervailing duty.

2 BACKGROUND

2.1 The goods

2.1.1 Description

The goods that are the subject of the notices and the subject of this application are:

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 mm² and 3.0 mm², 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.

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.

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.

The goods under consideration exclude:

- single core cables, being cables with a single active core;
- aerial cables as defined by the Australian Standard;
- twin active flat cables, that is, flat cables comprising two active cores but no earth core;
- circular cables as defined by the Australian Standard;
- cables insulated and/or sheathed with non-PVC material, including but not limited to cross-linked polyethylene (XLPE) materials, including a combination of PVC and non-PVC material;
- cables comprising cores made of aluminium conductors; and
- flexible cables (cords) as defined by AS/NZS 3191 and/or AS/NZS 60227.

2.1.2 Tariff classification

The goods are classified to the tariff subheading 8544.49.20 (statistical code 41) in Schedule 3 to the *Customs Tariff Act 1995*.

2.1.3 Like goods

Section 269T(1) defines like goods as:

...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

During this accelerated review, the definition of like goods is relevant in:

- a. determining the normal value of goods exported to Australia;
- b. the non-injurious price; and

- c. the goods subject to the notices.

The Commission's framework for assessing like goods is outlined in Chapter 2 of the Commission's *Dumping and Subsidy Manual* (the Manual).

2.2 Accelerated review process

If a dumping duty notice and/or a countervailing duty notice has been published in respect of certain goods, a new exporter may request an accelerated review of that notice as it affects that exporter.³

If an application for an accelerated review of a dumping duty notice and/or countervailing duty notice is received and not rejected, the Commissioner has up to 100 days after the application is lodged to inquire and report to the Minister on the accelerated review.⁴

Under section 269ZG(1), the Commissioner must, after considering the application and making such inquiries as the Commissioner thinks appropriate, give the Minister a report recommending the dumping duty notice and/or countervailing duty notice:

- remain unaltered; or
- be altered so as to apply to the applicant as if different variable factors had been fixed.

Following the Minister's decision, a notice is published on the Commission's website advising of the decision.

2.3 Existing measures

The anti-dumping measures on exports of the goods from China have been in place since 15 May 2019.⁵ Hebei Huatong is currently subject to the 'all other exporter' rates of 18.3 per cent and 3.7 per cent for IDD and ICD, respectively (taken in the form of a security), while its application for accelerated review is being considered.

Further details of the measures in place on exports from China are available in the *Dumping Commodity Register* on the Commission's website.⁶

2.4 Notification and participation

On 27 November 2019, Hebei Huatong lodged an application for an accelerated review of the notices applying to the goods exported to Australia from China in so far as the notices affect Hebei Huatong.

The Commissioner considered the application to determine if it was made in accordance with sections 269ZE and 269ZF. The Commissioner did not reject the application because:

- the circumstances in which an accelerated review can be sought under section 269ZE(1) were satisfied;

³ Section 269ZE(1).

⁴ Section 269ZG(2).

⁵ Refer to *Anti-Dumping Commission Report No. 469* and Anti-Dumping Notice (ADN) No. 2019/047.

⁶ www.adcommission.gov.au

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- the conditions for rejection under section 269ZE(2) were not satisfied; and
- the application satisfied the requirements of section 269ZF(1).

The commencement of this accelerated review was notified in ADN No. 2019/154, which was published on 20 December 2019 and made available on the public record on the Commission's website.⁷

ADN No. 2019/154 advised that the Commissioner's recommendation will be made in a report on or before **6 March 2020**.

For the purposes of the accelerated review, the period examined is **1 October 2018 to 30 September 2019** (the accelerated review period).

2.5 New exporter status

Section 269ZE(1) outlines the circumstances in which a new exporter may seek an accelerated review.

A new exporter, as defined in the Act, is an exporter who did not export the goods to Australia at any time during the investigation period in relation to the original application for anti-dumping measures.⁸ The relevant period, in which the applicant must not have exported the goods to Australia is 1 January 2017 to 31 December 2017, being the original investigation period.

The Commission reviewed the information available to it from the original investigation period and data recorded in the Australian Border Force's import database to determine if Hebei Huatong is a new exporter, according to the Act. The Commission found that Hebei Huatong exported cables under the same tariff code as the goods, however information obtained during the original investigation confirms that many products are sold under the same tariff classification and the goods are a narrow subset of these goods. The applicant further confirmed that it did not export the goods during the original investigation period.

The Commission also sought to establish that the applicant was not related to an exporter whose exports were examined in relation to the original application. The Commission found no evidence that the applicant, under its current or any former names, was related to an exporter whose exports were examined during the original investigation.

The Commission is, therefore, satisfied that Hebei Huatong is a new exporter for the purposes of this accelerated review.

2.6 Exporter questionnaire response

Upon the commencement of the accelerated review, the Commission sent an exporter questionnaire to Hebei Huatong for completion.

On 6 January 2020, the Commission received a response to the exporter questionnaire (REQ) from Hebei Huatong.

Hebei Huatong cooperated with the accelerated review, however provided limited information and data, within the required timeframe. The Commission reviewed the

⁷ Section 2.6 refers.

⁸ Refer to EPR 469 on the Commission's website for further information.

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REQ and considered there were a number of omissions that would need to be addressed to be able to consider the response complete.

While the Commission acknowledges that Hebei Huatong is not able to provide certain key information, such as the cost to make and sell the goods, as it has not manufactured, produced or sold the goods previously, it also did not give information that the Commission considers relevant, such as:

- company information;
- financial information and documents; and
- details of subsidies and grants received.

The Commission did not request Hebei Huatong give further information because, based on the Hebei Huatong's circumstances, new variable factors would not be ascertained, even with a complete response for the reasons set out in chapters 3-5 of this report.

2.7 Public record

There is no legislative requirement for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public record for this accelerated review has been maintained and is accessible on the Commission's website at www.adcommission.gov.au.

3 EXPORT PRICE

3.1 Findings

The Commission found that Hebei Huatong did not export the goods to Australia during the accelerated review period.

As such, the export price of the goods cannot be determined under section 269TAB(1). Specifically, sufficient information is not available to determine the export price of the goods using the price:

- paid or payable by the importer;⁹
- in Australia less prescribed deductions;¹⁰ or
- having regard to all the circumstances of the exportation.¹¹

The Commission considered whether an export price could be determined under section 269TAB(3), for the purposes of this accelerated review, having regard to all relevant information.

In particular, for the purpose of determining:

- any dumping duty payable, the Commission considered whether sufficient and relevant information existed to establish a floor price by determining the export price as equal to an amount determined to be the normal value.

Under the floor price duty method, dumping duty is payable if the export price of future exports of the goods is below the floor price. However, for the reasons outlined below in Chapter 4, after having regard to all relevant information, the Commissioner was not satisfied that this approach was appropriate given the circumstances of this accelerated review; and

- any countervailing duty payable, the Commission assesses an amount of countervailable subsidy received by Hebei Huatong and determines the subsidy margin as a percentage of the ascertained export price.

Notwithstanding that a new exporter, for the purposes of an accelerated review, doesn't need to have exported the goods to Australia, for this specific case the Commission is satisfied that an exporter specific export price of the goods was not able to be ascertained for Hebei Huatong.

⁹ Section 269TAB(1)(a).

¹⁰ Section 269TAB(1)(b).

¹¹ Section 269TAB(1)(c).

4 NORMAL VALUE

4.1 Findings

The Commissioner has concluded that it is not appropriate, having regard to the circumstances of this accelerated review, to determine a normal value for PVC flat electric cable exported by Hebei Huatong.

4.2 The Commission's assessment of normal value

4.2.1 Approach taken in REP 469 to determining normal value

On the basis that no sales of like goods were sold in the Chinese domestic market by the cooperating exporters, the Commission concluded that normal value could not be ascertained under section 269TAC(1), consequently assessing normal value under section 269TAC(2)(c), using:

- the cost of production or manufacture of the goods by the exporter in China; and, on the assumption that the goods, instead of being exported, had been sold for home consumption in China in the ordinary course of trade (OCOT);
- the selling, general and administration (SG&A) costs associated with such sales; and
- the profit on these sales.¹²

4.2.2 The Commission's assessment of available and relevant information

In a telephone call on 29 November 2019, prior to sending the exporter questionnaire, the Commission communicated its preliminary concerns to Hebei Huatong regarding the sufficiency and relevance of information that may be available to calculate an export price and normal value for the purposes of this accelerated review.

In assessing normal value for Hebei Huatong, the Commission considered that:

- the normal value could not be established under section 269TAC(1) because Hebei Huatong did not sell like goods in OCOT for home consumption in the domestic market;
- it was not reasonable for the Commission to construct a normal value, as per section 269TAC(2)(c), and consistent with the methodology taken in REP 469 because there was no information relating to the cost of producing the goods that might be exported to Australia by Hebei Huatong;
- it was not possible to calculate a normal value based on comparable third country sales under section 269TAC(2)(d), consistent with the Commission's operational practice as set out in Chapter 10.3 of the Manual. The Commission could not select a third country as, in its REQ, Hebei Huatong stated that it did not export the goods to any third countries; and that
- it was not appropriate to calculate a normal value under section 269TAC(6), having regard to all relevant information, as the Commission does not have any

¹² As required by sections 269TAC(5A) and (5B), the costs of production or manufacture, the SG&A costs and profit must be established in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015*, respectively.

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reliable or verified information concerning comparable selling prices and / or production costs of other exporters during the accelerated review period, and there is no other information before the Commission which would be relevant for this task.

The Commission was, therefore, unable to establish a normal value for the purpose of this accelerated review.

5 COUNTERAVAILABLE SUBSIDIES

5.1 Findings

The Commission considers that Hebei Huatong received countervailable subsidies during the accelerated review period. However, the Commission does not have sufficient information available to review the amount of the countervailable subsidy received by Hebei Huatong during the accelerated review period.

The Commission considered there were a number of omissions in Hebei Huatong's REQ. The Commission did not request Hebei Huatong address the omissions as, given any additional information, the Commission would still have been unable to calculate an export price and consequently calculate a subsidy margin for this accelerated review.

5.2 Legislative requirement for countervailable subsidies

Section 269T provides a definition of a 'subsidy' for the purposes of the Commission's assessment in relation to countervailable subsidies. '[C]ountervailable subsidy' is also further defined in section 269TAAC.

Sections 269TACC and 269TACD relate to determinations by the Minister as to whether a benefit has been conferred by a financial contribution or price support, and the amount of this benefit. Generally, the existence of a benefit is determined by comparison of costs with a benchmarked market price for the respective cost. If the alleged benefit relates to tax revenue foregone, the existence of a benefit is determined by comparing the actual tax rate applied to the tax rates of the country in question.

Section 269ZG requires the Commissioner to make such inquiries as the Commissioner thinks appropriate in order to make a recommendation to:

- leave the notice unaltered; or
- alter the notice, so as to apply the newly determined variable factors.

The Commissioner is required to set out reasoning for the recommendation.

5.3 Programs reviewed

There were a number of omissions in Hebei Huatong's REQ to allow the Commission to fully examine any subsidy programs, including the programs determined to be countervailable in the original investigation relating to the goods exported to Australia from China.¹³

In its REQ, Hebei Huatong provided a list of grants it had received in the 2017 and 2018 financial years. This list contains the name, the financial year the grant was received, amount of funds received and whether the grant is attributable to the whole company or exports sales only.

In the exporter questionnaire sent to the exporter by the Commission, detailed information is requested in relation to any financial grants received by Hebei Huatong. Information requested, and not provided by Hebei Huatong, includes:

¹³ Refer to REP 469 and ADN No. 2019/047.

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- copies of the company's non-operating income or other relevant business ledgers for the accelerated review period and the preceding two years;
- name of the authority providing the grant;
- eligibility criteria to receive the grant;
- identifying if the grant relates to the goods exported, and/or exports generally;
- details of the application process;
- a copy of any blank application forms;
- a copy of the company's completed application forms;
- approval from the authority for the grant;
- proof of payment for receiving the grant; and
- any fees charged, or expenses incurred by the company for the purposes of receiving the grant.

The Commission, in its exporter questionnaire, also requests information relating to company turnover for the most recent financial year and the accelerated review period, and income tax liability for the previous three tax years. Hebei Huatong did not provide this information in its REQ.

5.4 The Commission's assessment of countervailable subsidies

Whilst the information available indicates that Hebei Huatong received countervailable subsidies during the accelerated review period, the Commission is not able to rely on the information provided by Hebei Huatong to assess the subsidy programs.

In addition, the Commission was unable to calculate an export price as outlined in chapter 3. Accordingly, the Commission is also unable to determine how much of any countervailable subsidy would be properly attributable to Hebei Huatong's potential future exports of the goods to Australia.

6 CONCLUSION

6.1 Findings regarding a dumping margin

As the Commission has been unable to establish an export price or normal value of the goods, in accordance with legislation, there is no way to calculate a dumping margin for the purpose of ascertaining variable factors for this accelerated review.

6.2 Findings regarding countervailable subsidies

As the Commission has been unable to establish an export price for the goods it is unable to determine how much of any countervailable subsidy would be properly attributable to Hebei Huatong's potential future exports of the goods to Australia, for the purpose of reviewing variable factors for this accelerated review.

6.3 Effect of the accelerated review

If the Minister accepts the recommendations in this report, in respect of PVC flat electric cables exported by Hebei Huatong to Australia from China, Hebei Huatong will remain subject to the dumping and countervailing duties imposed in the notices at the rates applicable to 'all other exporters'.

The Commission notes that if the Minister accepts the recommendations in this report, Hebei Huatong will be eligible to seek another accelerated review at a later date.

7 RECOMMENDATIONS

The Commissioner found that, in relation to PVC flat electric cables exported to Australia from China by Hebei Huatong, that:

- the dumping notice should remain unchanged; and
- the countervailing duty notice should remain unchanged.

The Commissioner recommends that the Minister consider this report, and if agreed, issue a public notice to:

- declare that:
under section 269ZG(3)(a) of the Act and the Dumping Duty Act, the notices remain unchanged.

The Commissioner recommends the Minister be satisfied that:

- in accordance with section 269TAB, sufficient information is not available to enable export prices for the PVC flat electric cables exported to Australia from China by Hebei Huatong to be determined;
- in accordance with section 269TAC, sufficient information is not available to enable the normal value of goods exported to Australia to be determined; and
- in accordance with section 269TACD, sufficient information is not available to ascertain an amount of countervailable subsidy received in respect of PVC flat electric cables to Australia from China by Hebei Huatong.

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8 ATTACHMENTS

Non-confidential Attachment 1	Notice of decision
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