Australian Government

Anti-Dumping Review Panel

ADRP REPORT NO.25

Certain Polyvinyl Chloride Flat Electric Cable exported from the People's Republic of China

06 October 2015

Australian Government
Anti-Dumping Review Panel

ADRP Report No.25
Certain Polyvinyl Chloride Flat Electric Cable exported from the People's Republic of China

Review of a Decision of the Commissioner of the Anti-Dumping Commission to Terminate an Investigation to Publish a dumping duty notice in Relation to Certain Polyvinyl Chloride Flat Electric Cable exported from the People's Republic of China

6 October 2015

Table of Contents

Introduction

1. Olex Australia Pty Ltd (Olex) is an Australian manufacturer of certain polyvinyl chloride (PVC) flat electric cable. On 6 August 2015 Olex applied for the review of the decision by the Commissioner of the Anti-Dumping Commission (the Commissioner) to terminate the investigation relating to PVC electric cable exported from the People's Republic of China[1], in terms of s.269ZZQ of the *Customs Act 1901* (the Act).

2. The Senior Member of the Anti-Dumping Review Panel (the Panel) directed in writing, pursuant to s.269ZYA of the Act, that the Panel for the purpose of this review be constituted by me.

3. The application for review was accepted as being in accordance with s.269ZZP and s.269ZZQ and was not rejected pursuant to s.269ZZQA or s.269ZZR of the Act.

Background

4. On 3 September 2014, Olex lodged an application requesting that the then Parliamentary Secretary to the Minister for Industry (the Former Parliamentary Secretary) publish a dumping duty notice in respect of certain PVC flat electric cables (the goods) exported to Australia from China. Olex alleged that the Australian industry has suffered material injury caused by PVC flat electric cables exported to Australia from China at dumped prices.

5. On 22 September 2014, Olex provided additional information to support its application. Further additional information was provided on 10 October 2014.

6. The Commissioner ultimately decided not to reject the application and initiated the investigation. Public notification of the investigation was made on 6 November 2014 in The Australian newspaper and in Anti-Dumping Notice (ADN) 2014/118. The Commissioner established an investigation period of 1 July 2013 to 30 June 2014 for the purpose of assessing dumping. Injury analysis commenced from 1 July 2010 for the purpose of analysing the economic condition of the Australian industry.

7. A response to the exporter questionnaire was received from five companies:
   a) Dongguan Minxing Cables Co. Ltd (Dongguan);
   b) Guilin International Wire & Cable Group Co. Ltd (Guilin International);
   c) Guilin Xianglong Wire & Cable Co. Ltd (Guilin Xianglong);
   d) Guilin Feilong Wire & Cable Co. Ltd (Guilin Feilong); and
   e) Ao Ning Electric Cables Co. Ltd (Ao Ning).

8. On 15 January 2015 the Commissioner made a Preliminary Affirmative Determination (PAD) in relation to PVC flat electric cables. Securities were

[1] See Anti-Dumping Notice No. 2015/85

imposed against all exporters from China, with the exception of Dongguan. The Statement of Essential Facts (SEF 271) was published on 25 May 2015.

9. On 9 July 2014 the Commissioner of the Anti-Dumping Commission (ADC) published a dumping duty notice terminating the investigation in relation to:
   a) Dongguan;
   b) Guilin International, Guilin Xianglong, Guilin Feilong and Ao Ning (together referred to as the Guilin Group); and
   c) all other exporters from China.[2]

10. In Anti-Dumping Notice No. 2015/85, the Commissioner stated that he was satisfied that:
    a) in relation to Dongguan, there has been no dumping by that exporter of any of the goods the subject of the application and, therefore, decided to terminate the investigation in accordance with s.269TDA(1)(b)(i) of the Act in so far as it relates to that exporter;
    b) in relation to the Guilin Group, the goods exported by those exporters have been dumped, but the dumping margin is less than two percent and therefore decided to terminate the investigation in accordance with s.269TDA(1)(b)(ii) of the Act in so far as it relates to those exporters; and
    c) in relation to all other exporters from China, the injury, if any, to the Australian industry, that has been, or may be, caused by those exports is negligible and therefore decided to terminate the investigation in accordance with s.269TDA(13) of the Act.

11. Termination Report No. 271 (TER 271) sets out the detailed reasons for the termination decisions.

The Review

12. In accordance with s.269ZZT of the Act if an application for the review of a termination decision is not rejected under s.269ZZQA or s.269ZZR, the Panel must either affirm the decision under review or revoke it.

13. In making a decision under s.269ZZT, the Panel must have regard only to information that was before the Commissioner when the Commissioner made the reviewable decision.

14. An applicant is required to set out reasons for believing that the reviewable decision is not the correct or preferable decision, and failure to do so may result in rejection of the application. However, as it was stated in ADRP Report No.15[3], because an application is not rejected it does not follow that all grounds advanced in the application are to be viewed, or have been accepted as reasonable grounds for the reviewable decision not being the correct or

---

[2] Anti-Dumping Notice No. 2015/85
[3] See ADRP Report No. 15 concerning Wind Towers exported from the People's Republic of China and the Republic of Korea, paragraph 16

preferable decision. It is also pointed out in the ADRP Report No.15 that the obligation on an applicant to set out the reasons is linked to the task the Panel has in determining whether the ultimate decision (the reviewable decision) was the correct or preferable one.

15. In conducting this review I have had regard to the application (including documents submitted with the application). I have also had regard to TER 271 and information relevant to the review which was referenced in TER 271. I have also had regard to SEF 271 and to documents referenced in SEF 271.

16. After the application for review was accepted by the Panel, the ADC was invited to provide comments on the grounds raised in the application for review (the Invitation to Comment Letter). The response from the ADC was received on 11 September 2015 (the ADC Response). I have had regard to the ADC Response only to the extent that the ADC has identified information to which the Commissioner had regard in making its decision to terminate the investigation and which it considered responsive to the claims made by the Applicants.

17. In conducting the review I also requested (by email) certain clarifications from the ADC on the methodology it adopted in the investigation and on the accounting system and standard costing of the Guilin Group. A follow-up teleconference was held on 1 October 2015 with the ADC for further clarification. No new information was provided to me that was not before the ADC during the investigation. I shall refer to the email correspondence and teleconference together as "ADC response to clarification questions posed by the ADRP".

Grounds of Review

Olex

18. The grounds of review relied upon by Olex are set out in its application for review:

    a) the Commissioner failed to identify the exporter, by determing that four related entities (Guilin International, Guilin Xianglong, Guilin Feilong and Ao Ning) comprised a single exporter for the purpose of calculating a dumping margin;
    b) the Commissioner's calculation of the normal value for the Guilin Group is incorrect in so far as he relied on unreliable information by:
        i. verifying only the financial information of the export trading company, Guilin International; and
        ii. estimating the key cost of production, namely copper, from a non-manufacturing entity within the Guilin Group, as well as PVC;
    c) the Commissioner erred in his calculation of the cost of production and manufacture of the GUC - Copper;

d) the Commissioner erred in his calculation of the cost of production and manufacture of the GUC - PVC;and
e) The Commissioner erred in his calculation of the cost of production and manufacture of the GUC - Treatment of hedging gains and losses.

Consideration of Grounds of Review

Olex

19. I will now deal with the various grounds of review put forward by Olex in its application for review.

The Commissioner failed to identify the exporter, by determing that four related entities comprised a single exporter for the purpose of calculating a dumping margin

20. Olex contends that the Commissioner failed to identify the exporter, by determing that four related entities (Guilin International, Guilin Xianglong, Guilin Feilong and Ao Ning) comprised a single exporter for the purpose of calculating a dumping margin. During the relevant investigation period, these four entities (together referred to as the Guilin Group) were considered by the Commissioner to constitute the largest exporter of the goods under consideration (GUC).

21. According to Olex, it is not clear from Report 271 whether or not each of the four entities did in fact export the GUC during the relevant investigation period, compared to a theoretical capacity to export. Olex contends that if the Commissioner did not in fact satisfy himself that each of these entities exported the GUC during the relevant period, then their inclusion in the single entity was an error of fact.

22. While in its application for review Olex refers to the Commissioner's reliance on the Panel Report in Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia[4] (Korea - Certain Paper) and the relevant matters that the Commissioner considered relevant to treating the companies as a single exporter, it seems that the only aspect of the decision that Olex is challenging is the lack of clarity as to whether each of the four entities did in fact export the GUC during the relevant investigation period. As stated above, Olex contends that if the Commissioner did not satisfy himself that each of the entities exported the GUC during the relevant investigation period, then their inclusion in the single entity "was an error of fact".

23. The ADC addressed this issue in the ADC Response with particular reference to the Exporter Visit Report for Guilin International and Related Companies[5] (the

[4] WT/DS312/R
[5] The non-confidential version of which is #23 of the Public File

Exporter Visit Report). It states that the Exporter Visit Report indicates at various places that all four entities that comprise the Guilin Group submitted their own response to the exporter questionnaire and that the Exporter Visit Report clearly indicates that all four entities manufactured and exported the goods under consideration during the investigation period[6]. The ADC further states in the ADC Response that the 13 export sales transactions selected for the purpose of verification included at least one sales transaction from each entity. The ADC was therefore able to satisfy itself that all four entities exported the goods. The ADC also verified the manufacturing costs of Guilin International and was satisfied that Guilin International manufactured the goods. Further, the ADC stated that it, "was able to identify intercompany sales made to Guilin International from other members of the Guilin Group as amounts entering the finished goods ledger. Those amounts matched the CTMS for the manufacturing entity."[7]

24. From an examination of the Exporter Visit Report and the relevant Confidential Attachments, it seems clear to me that the Commissioner was in fact satisfied that each of the four entities exported the GUC during the relevant period. There would therefore appear to be no basis for Olex's contention that the Commissioner did not satisfy himself that each of these entities exported the GUC during the relevant period. In any event, it would seem that the ADC's decision to treat the Guilin Group companies as a single entity is reasonable and in accordance with World Trade Organisation (WTO) jurisprudence. The Panel in Korea – Paper stated:

> We consider the commonality of management among these three companies, coupled with the fact that they were all owned by the same parent company, to be indications of a close legal and commercial relationship between these three companies. Given these similarities, one might, in our view, expect that commercial decisions for the three companies could be made in substantial part by the same closely interlocked group of individuals, and the management of all three companies could ultimately be answerable to their majority shareholder.... We note that the record also indicates that one of these companies...sold the subject product to the other two during the POI. This also indicates that these companies could harmonize their commercial activities to fulfil common corporate objectives. The ability and willingness of the three companies to shift products among themselves is, in our view, of some importance to the consideration of whether the three companies should be treated as a single exporter and subject to a single margin determination.[8]

25. The ADC indicated that calculating a separate dumping margin for each member of the Guilin Group would have no practical effect because all future exports by the Guilin Group might be exported by the company with the lowest dumping margin.

---

[6] Section 2.2 of the Exporter Visit Report
[7] Section 5.4 of the Exporter Visit Report
[8] At para 7.165

The Commissioner's calculation of the normal value for the Guilin Group is incorrect in so far as he relied on unreliable information

26. Olex contends that that the Commissioner erred in his determination of the normal value for the Guilin Group, in so far as he relied on unreliable information by:
    a) verifying only the financial information of the export trading company, Guilin International; and
    b) estimating the key cost of production, namely copper, from a non-manufacturing entity within the Guilin Group, as well as PVC.

27. I will discuss these two parts of this ground of review separately.

Verifying only the financial information of the export trading company, Guilin International

28. Olex claims that the Commissioner, being satisfied of the "accuracy" of Guilin International's information then accepted the financial information of the three other members of the Guilin Group, reasoning that:

    > As all four companies use the same accounting methodology and the audited accounts were in accordance with generally accepted accounting principles applicable to China, the accuracy of the sampled data therefore provided a level of confidence that the data for the other three companies would also be accurate.[9]

    Olex claims that in verifying the financial information of the export trading company and imputing accuracy to the financial information of those entities actually responsible for the production of the GUC, the Commissioner failed to take reasonable steps to satisfy himself of the accuracy of the sum of such amount to be the cost of production or manufacture of the goods in the country of export in accordance with s.269TAC(2)(c)(i) of the Act.

29. In response to this ground of review the ADC reiterated that the Commissioner had found that Guilin International both manufactured and exported the goods under consideration during the investigation period. It is also clear from the response of the ADC to the first ground of review (relating to the identification of the exporter) and from an examination of the Exporter Visit Report that all four entities of the Guilin Group submitted their own response to the exporter questionnaire and that all four entities manufactured and exported the goods under consideration during the investigation period. The ADC pointed out that the 13 export sales transactions selected for the purpose of verification included at least one sales transaction from each entity. The ADC was therefore able to satisfy itself that all four entities exported the goods.

30. I therefore consider that the approach and methodology adopted by the ADC in the verification of the data of the Guilin Group is reasonable and that the ADC

[9] TER 271, page 29

took take reasonable steps to satisfy itself of the accuracy of the information submitted.

Estimating the key cost of production, namely copper, from a non-manufacturing entity within the Guilin Group, as well as PVC

31. Olex claims that the Commissioner estimated the key cost of production (being copper) and relied on the cost information submitted by a non-manufacturing entity (Guilin International). Olex claimed that the Commissioner admitted that regard was had to "an estimate for copper values" in the exporter questionnaire. Olex also claims that the Commissioner used a flawed methodology, applying "an estimate of an average cost of production of the Guilin Group of companies across a range of products, which included both relevant and irrelevant costs to the production of the GUC" and relying on the "weighted average actual costing method" for raw materials such that unrelated product manufacturing costs have affected the normal value calculation.

32. As part of this ground of review, Olex argues further that the Commissioner was unable to demonstrate that he was satisfied that the volume (actual weight) of the key raw materials consumed in the production of the goods (copper and PVC) as recorded by the Guilin Group accorded with the Australian Standard or "aligned in any way to the actual measurement data presented by the applicant". Olex therefore contends that unless the Commissioner is suggesting that the GUC did not comply with the Australian Standard, the Commissioner appears to have determined a normal value that is not comparable to the GUC. This contention of Olex, however, overlaps with its third and fourth grounds of review, challenging the ADC's calculation of the cost of production and manufacture of the GUC in respect of copper and PVC respectively. I will therefore address this issue more fully under those grounds of review.

33. In the ADC Response the ADC stated:

> "As noted in the Exporter Visit Report, due to limitations in its costing system, Guilin International indicated that it (and, by implication, the other three entities in the Guilin Group) had estimated the proportions of copper and PVC for the purpose of completing the CTMS spreadsheet [footnote omitted]. The confidential version of the report indicates these proportions.
>
> These estimates of copper and PVC costs have not been relied upon by the Commission at any stage. Although not explicit in the Exporter Visit Report, Guilin International demonstrated how the total material costs in the CTMS spreadsheet in the exporter questionnaire response was derived from its cost of production worksheet (5.2.5 refers), and the Commission was able to trace how the verified costs (that is, the actual costs incurred, not budgeted or estimated costs) of copper, PVC, direct labour, manufacturing overheads and other expenses (addressed in 5.2.2, 5.2.3 and 5.2.4) were recorded in that cost of production worksheet.

As noted above, although the component "material costs" in the CTMS worksheet comprised an arbitrary allocation between copper and PVC for the purposes of completing the CTMS spreadsheet, the Commission confirmed that the total material cost was correct and therefore this amount was included in the calculation for normal values [footnote omitted]. Furthermore, as a result of the verification process, the Commission was satisfied that the costs included in the CTMS worksheet were specific to the goods under consideration, and did not include any irrelevant costs (nor did it exclude any irrelevant costs."[10]

34. In response to Olex's contention that relying on the weighted average costing method for raw materials results in unrelated product manufacturing costs affecting the normal value calculation, the ADC stated that it considers that the use of a weighted average cost methodology for raw materials is a common accounting approach, and was being used by the members of the Guilin Group in accordance with generally accepted accounting principles. The Commission considered the Guilin Group approach was reasonable in the circumstances, noting that:
    a) the Guilin Group only manufactured the goods to order;
    b) copper, the most expensive raw material and the one most subject to movements in price, was able to be purchased at short notice in response to production scheduling requirements;
    c) there was a relatively short period of time between the purchase of copper and that copper entering production; and
    d) the Guilin Group maintained low levels of both raw material stocks and finished goods.

35. I consider the methodology and approach of the ADC with regard to the issues referred to above, to be adequate and reasonable.

The Commissioner erred in his calculation of the cost of production and manufacture of the GUC - Copper

36. Olex challenges two aspects of the Commissioner's calculation of the cost of production of copper, which are dealt with separately below.

The Cost of Copper

37. Olex claims that the ADC has failed to accurately verify the cost of copper in the GUC.

38. According to Olex the cost of copper in the GUC is made up of the following components:
    a) the cost of copper cathode (normally referred to on the London Metal Exchange (LME) and Shanghai Futures Exchange (SHFE) index)

[10] ADC Response, pages 4 and 5

b) the cost of the conversion premium which has three components:
    i. the cathode conversion cost of copper cathode to 8mm rod (normally referred to as the "cathode premium")
    ii. the credit cost or the cost of funding the working capital for the material purchases (which is the highest cost component and cannot be ignored)
    iii. the freight and transport cost (which also represent a significant cost due to the bulk of copper)

39. Olex contends that the Commissioner failed to accurately verify the copper premium paid by the exporter (which must include the cathode premium, credit costs for the material purchases and freight delivery costs). Olex submits that there is no evidence the Commissioner has accurately verified all three components relating to copper procurement costs.

40. The ADC stated in the ADC Response that it had previously examined Olex's claim that the ADC failed to correctly verify the cost of copper in TER 271 and had found that there was no evidence which supported a view that the verified data was incomplete or otherwise unsuitable for the calculation of normal values. In TER 271 the ADC states:

> …the Commission has considered whether the evidence before it supports Olex's submission that the cost of copper has been underestimated in the calculation of the normal value. The Commission examined the evidence presented to it regarding the cost of copper cathode in China (based on SHFE prices) and the typical premium charged by Chinese suppliers as shown in Confidential Appendix 2, and compared this to the actual prices paid by the Guilin Group for 8mm copper rod from unrelated third parties. The analysis indicates that the Guilin Group has paid a price which is commensurate with the contemporaneous SHFE price plus copper premium. This analysis is included at Confidential Appendix 3…
>
> The Commission has used the verification process to satisfy itself that the prices actually paid by the Guilin Group for copper are accurate and the cost of scrap has been accounted for and is accurate, and that these costs have been correctly allocated in the Guilin Group's accounts. Although the Commission has had regard to Olex's submissions on copper, the weight of the evidence leads the Commission to conclude that the verified data is the most relevant and reliable for the purpose of calculating the normal value.[11]

41. The ADC pointed out in the ADC Response that in terms of the three cost components that Olex claims that the ADC failed to verify:
    a) the copper costs verified by the ADC were inclusive of the premium;
    b) relevant financing costs were captured in the selling, general and administrative (SG&A) costs and appropriately allocated to the goods;
    c) the Exporter Visit Report notes (at section 4.1.4) that the Guilin Group uses its own trucks to collect raw materials; the ADC reported that it was

[11] TER 271 page 30

satisfied that these costs were captured in the relevant accounts and were therefore also incorporated in the normal value calculation.

42. As indicated in the statement quoted from TER 278 above, the ADC also compared the verified cost of the Guilin Group's copper purchases with the copper costs anticipated by Olex, contained in Confidential Appendix 3, and this comparison did not cause the Commission to doubt the accuracy of the verified costs.

43. I examined the confidential appendices to TER 271 referred to as well as the confidential version of the Exporter Visit Report relating to the copper costs and the relevant Confidential Attachments to the Exporter Visit Report.[12] I also examined the confidential attachments to Olex's application for review. The ADC sets out in detail the full process of verification of the copper costs that it followed. This included a full listing of copper purchases and the verification to source documents of three selected invoices, having sight of accounting vouchers, printouts of the entries into accounts payable ledger and proof of payment via bank slips. The ADC was able to match the source documents to the PVC purchase summary, and then to the respective PVC raw material ledgers. From the PVC raw material ledger the ADC was able to match the volume and unit price entering the raw materials cost of production ledger via the corresponding warehouse out slip and accounting vouchers.

44. These costs verified were inclusive of the premium, as stated by the ADC.[13] It is noted in Section 5.5 of the Exporter Visit Report[14] that the SG&A calculations include financial costs. In the Exporter Visit Report, particular reference is made to the cost of transporting copper and that the exporter provided details of the accounting vouchers demonstrating the copper freight costs.[15] While Olex points out that freight and transport costs represent a significant cost due to the bulk of copper it is important to note that the Guilin Group uses its own transport fleet to collect raw materials and due to the "proximity of its suppliers", receives deliveries daily with the lead time being as early as the next day.[16] These factors would appear to contribute to a comparatively low transport and freight cost and low level of copper inventory.

45. In my view the approach and analysis of the ADC in regard to the verification of the copper cost is thorough and takes into account the conversion premium,

---

[12] Section 5.2.2 of the Exporter Visit Report (Confidential Version), pages 28 to 29
[13] The notes in Confidential Attachment 2 to Report 271 (Olex comparison of copper premium) make it clear that premiums differ according to the supplier and the proximity of the customer. [redacted]
Section 5.5 of the Exporter Visit Report, page 33
[15] Confidential Attachment CTMS 8
[16] Section 5.22 of the Exporter Visit Report, page 28

credit costs for the material purchases and freight delivery costs. The ADC's conclusion that the verified data in the relation to copper costs is the most relevant and reliable for the purpose of calculating the normal value, is in my view, reasonable.

The Quantity of Copper

46. Olex contends that the ADC has not made any attempt to verify the actual quantity of copper used per unit manufactured which it considers to be a major flaw and error of fact. Olex further contends that that there is no evidence provided by the ADC that the actual quantities required for the manufacture of the GUC to the Australian Standard have been adequately assessed and verified. Olex argues that the Commissioner was unable to demonstrate that he was satisfied that the volume (actual weight) of the key raw materials consumed in the production of the goods (copper and PVC) as recorded by the Guilin Group accorded with the Australian Standard or "aligned in any way to the actual measurement data presented by the applicant". Olex therefore contends that unless the Commissioner is suggesting that the GUC did not comply with the Australian Standard, the Commissioner appears to have determined a normal value that is not comparable to the GUC.

47. Olex provided research analysis showing minimum actual quantities for copper used in the manufacture of the GUC by the Guilin Group [17] and submitted benchmarking analysis on the minimum quantities of copper required to produce the GUC and to meet the Australian Standard specifications. Olex also provided the actual copper material quantity used by the exporter based on weights and measures of the actual product available in the market and tested by Olex.

48. Olex claims that given the Guilin Group's cost accounting treatment and "averaging" of all manufacturing cost inputs for all cable products manufactured, it is, "incomprehensible that the Commission has not attempted to accurately verify the actual quantity of copper used for the GUC". According to Olex this is especially so given the benchmarking evidence it provided to the ADC as to the exporter's actual copper quantities used in the product, and the known prices paid for copper in China. Olex points out that it had advised the ADC of the minimum volume of copper required per kilometre of the goods.[18]

49. Olex contends that this has been a serious error of fact which has a very significant influence on the dumping margin result, found by the ADC.

50. This issue relating to the quantity of copper was not addressed by the ADC in TER 271, other than an observation by the ADC that throughout the investigation the volume of copper used in the actual production of the goods and the accounting treatment of copper and copper waste differs between Olex and the Guilin Group and that the ADC's task had been, "to verify whether the

[17] Confidential Attachment D to Olex's application for review
[18] Confidential Attachments D and G to Olex's application for review.

costs reported by the parties are accurate and reasonably reflect the actual cost."

51. In the ADC Response, the ADC stated:

> With regard to copper volumes, the Commission has compared the standard and actual consumption of PVC by both the Applicant and the Guilin Group and their respective accounting practices. The Commission has also had regard to the evidence presented by the Applicant regarding its measurement of copper usage in both products. These comparisons occurred throughout the investigation, but were not formally incorporated into TER 271 as they were not considered to be relevant at the time.
>
> The Commission has verified that the copper costs were accurate, were correctly allocated to the goods and that the Guilin Group and the Applicant were not paying identical prices for copper. Accordingly, the discrepancy between the Applicant's copper usage and that of the Guilin Group has less significance than the Applicant contends.

52. Since the issue was not addressed in any detail in TER 271, I examined the Exporter Visit Report and relevant Confidential Appendices to understand the standard costing methodology used by Guilin and how the standard unit consumption of the GUC (product SRF3025V) was calculated. I also requested further clarification from the ADC on the methodology it used and on the Guilin's Group's standard costing. I noted that the standard unit consumption of copper was measured in kg/km.[19] However, according to the ADC, a percentage yield loss[20] was then applied to the standard consumption to generate an "accounted consumption", which was the copper consumption value used in the CTM to calculate the normal value and the dumping margin. [21]

53. Olex's concern that standard consumption of copper (and PVC) in the Guilin Group does not reflect actual copper usage (and PVC) has, in my view, some merit. This was recognised by the ADC at the time of the Exporter Visit Report and Guilin International was asked whether it conducted testing to determine how close the actual copper usage was to the standard consumption. The ADC set out the explanation of the Guilin Group in the Exporter Visit Report:

> It explained [redacted]

---

[19] [redacted]

[20] Section 5.2.5 of the Exporter Visit Report, page 30.This percentage accounts for an assumed yield loss which Guilin applies consistently across all product codes manufactured within the Guilin Group.

[21] It should be noted that the standard consumption figure is higher than the minimum copper consumption (as submitted by Olex) required for the Australian Standard

[redacted]

54. To test the reasonableness of the standard consumption of copper used in SRF3025V and recognising the risk of the potential for certain product groups to have a bias built into the standard consumption, the ADC undertook the following exercises:

i. the verification team obtained evidence of the standard consumption values for three similar products that were not the goods (one exported, two for domestic sale) but did not detect any such bias that could not also be explained by differences in manufacturing efficiency (the exported goods were being produced on very new equipment that was heavily automated); [23]

ii. the ADC also compared the standard consumption of copper for SRF3025V to the standard consumption of copper for the Australian industry. The ADC stated that it had evidence (provided by Olex) which indicates that the applicant has a lower volume of copper (and PVC) than the product manufactured by the Guilin Group;[24]

iii. the ADC asked Guilin International to provide the cost of production worksheet for a month in which a different model designation of the goods was manufactured. The month was December 2013. This confirmed that Guilin International separately identifies the CTMS for each product model;[25]

iv. the ADC compared the standard consumption with the average actual consumption reported by Olex's testing of the exporter's goods sold in the Australian market. It found that after the application of the yield loss "aligned quite closely" to the average actual consumption reported by Olex's testing. The standard copper consumption (including the yield) was [redacted] percent less than the Olex–measured copper consumption, expressed as a proportion of the Olex–measured consumption.[26] This provided the ADC with "some greater level of comfort that the methodology reflected actual costs" [27] and the ADC was satisfied that the standard copper consumption for SRF3025V (adjusted to account

[22] Section 5.2.5 of the Exporter Visit Report, 5.2.5, page 51
[23] Section 5.2.5 of the Exporter Visit Report, page 30 and 31; Confidential Attachment CTMS 17 and the ADC response to clarification questions posed by the ADRP
[24] Section 5.2.5 of the Exporter Visit Report, page 31. This would not appear, however, to be relevant to the test as to whether the standard consumption is representative of the actual consumption
[25] Section 5.2.4 of the Exporter Visit Report, page 31 and Confidential Attachment CTMS 18
[26] ADC response to clarification questions posed by the ADRP. This percentage was based on the Olex-measured copper consumption.
[27] ADC response to clarification questions posed by the ADRP

for the yield loss) is representative of the actual volume of copper used in its production"

55. With regard to Olex's claim relating to the minimum quantities of copper required to meet the Australian Standard, the ADC stated in the ADC Response that it understands that there is a minimum theoretical volume of copper and PVC which must be present in the goods under consideration in order to satisfy the requirements of the Australian Standard. It stated that it had evidence (provided by Olex) which indicates that Olex's product has a lower volume of copper and PVC than the product manufactured by the Guilin Group. The ADC stated:

> Given the inherent variability in manufacturing processes, the Commission is satisfied that neither the Applicant nor the Guilin Group is able to consistently use exactly the same volume of copper and PVC in every metre of product, and that neither is able to reliably produce cable which contains exactly those minimum theoretical volumes.
>
> At no stage has the Commission found or implied that the products exported by the Guilin Group do not meet the Australian Standard.

56. The ADC did not address this issue any further. although the standard copper consumption used in the calculations of normal value is higher than the minimum consumption required (according to Olex) to meet the Australian Standard.

57. There seemed to be some merit in Olex's contentions relating to the quantities of copper and PVC that should be used in the calculation of the normal value and that the cost of production should reflect the actual costs of production of the GUC, as far as possible. It seems reasonable to me to presume that since the GUC would be required to meet the Australian Standard, that the cost of production calculation should reflect at least the minimum quantities of PVC required to meet that standard or the actual quantities, if available. The question is to what extent the ADC was able to go, and what evidence was available, to satisfy itself that the standard consumption of copper reflected the actual costs or at least to ensure that standard consumption met the minimum consumption requirements for the Australian Standard that the GUC was known to meet.

58. The ADC used the above-mentioned methodologies to test the reasonableness of the standard consumption volumes. The most significant test, in my view, being the comparison between the standard consumption and the average actual consumption reported by Olex's testing of the exporter's goods. The ADC could, however, only conclude that the standard consumption (as adjusted for the yield loss) "aligned quite closely" with actual measured consumption of the exporter's products. In my view a more thorough test would have been to use the actual consumption volumes (as determined by Olex's testing, or testing by an independent third party commissioned by the ADC) in the CTM and the resulting normal value calculations, to determine if the standard consumption

volumes were realistic and whether the dumping margin would be affected significantly by the different consumption values.

59. In my request for further clarification on its methodology, I requested the ADC to indicate how the normal value calculation (and the resulting dumping margin) would change if the actual consumption figures (as measured by Olex) were used instead of the standard consumption figures. The ADC responded that it did not calculate normal values by using consumption rates – normal values were based on the Guilin Group's verified CTM drawn from its accounts. It stated that it does not have sufficient information to re-calculate the CTM using alternative usage rates. The other complication pointed out by the ADC is that the usage rate doesn't automatically result in a predictable cost because of the Guilin Group methodology, with the cost of copper actually allocated to the goods in the CTMS (and therefore the normal value) varying depending on the mix of production in that month. The ADC pointed out that using the increased consumption rate would likely increase the dumping margin, would not be possible to say by how much. The ADC also pointed out that they accepted Olex's testing on face value for the purpose of the comparison. However, Olex relied on 20 samples to generate the average usage rate, which the ADC considered may not be a valid basis on which to calculate the actual material composition of some 50 million metres imported during the investigation period.[28]

60. I accept the ADC's statement relating to the obstacles in providing a recalculation of the dumping margin. The Panel does not undertake its own investigation in the sense of gathering fresh information and is confined, to the information that had been before the Commissioner.[29] It is unfortunate, in my view, that the ADC did not take the testing of the reasonableness of the standard copper (and PVC) consumption further by obtaining its own third party tests of the copper and PVC consumption of the GUC (which was suggested by Olex) and obtaining all the necessary information to do the normal value calculation using the actual consumption data of the GUC, which would have resulted in a more accurate outcome than using the standard consumption figures. However, it does not mean that the ADC's methodology or verification of the standard consumption was incorrect. The methodology adopted by the ADC in testing the appropriateness of the standard consumption of copper was reasonable and the ADC was able to satisfy itself that the copper costs were accurate and correctly allocated to the GUC.

61. Although the ADC did not directly deal with Olex's contention that the copper consumption should at least meet the minimum consumption requirements of Australian Standard specifications, it is clear that the standard consumption of copper used in the calculation of normal value is higher than what Olex contends is the minimum consumption required to meet the Australian Standard.

---

[28] ADC response to clarification questions posed by the ADRP
[29] s.269ZZT of the Act

It was pointed out by the ADC that using the theoretical minimum consumption rate would likely reduce the dumping margin.[30]

62. I therefore do not consider that there has been an error of fact in relation to the ADC's finding on the quantity of copper.

The Commissioner erred in his calculation of the cost of production and manufacture of the GUC - PVC

63. Olex challenges two aspects of the Commissioner's calculation of the cost of PVC, which are dealt with separately below.

Commissioner's Reliance on Spot Pricing as a Price Benchmark

64. This relates to the ADC seeking a independent third party information for spot prices paid in Southern China for known grades of PVC used for the product, during the investigation period.[31] While recognising that spot pricing is not necessarily indicative of actual cost of obtaining a regular, consistent supply of PVC in the grades required to meet the Australian Standard for the goods under consideration, the ADC noted that the trends and relationships between the spot prices and the prices actually paid by the Guilin Group, "maintains the Commission's confidence in the verified data."[32]

65. Olex contends that firstly, whilst the Commissioner recognises spot pricing is not a suitable surrogate for the actual cost of securing a regular consistent supply of PVC materials for a manufacturer, they used this material's benchmark for a very significant cost input anyway, and secondly, material spot prices cannot in any way be used as an accurate benchmark for longer term contractual material supply prices.

66. Olex contends that the ADC has made a fundamental error by referring to spot price data in order to validate the exporter's PVC material prices because at any given point in time spot prices are likely to be significantly different to a "contracted price" of supply. According to Olex, spot pricing for manufacturers' material inputs is generally much more dynamic and is influenced by a range of real time economic factors, which include market demand, surplus supply availability at the time, opportunistic supplier sales or cash targets. Generally contract pricing is fixed for an extended period of time using an agreed forecast methodology.

67. The ADC examined Olex's claim that the ADC failed to correctly verify the cost of PVC in TER 271. Olex had cited its own data with regard to the cost of the raw material and submitted quotes for PVC which were obtained in the period

---

[30] ADC response to clarification questions posed by the ADRP
[31] TER 271, page 31
[32] TER 271, page 31

from January 2015, doubting that the Guilin Group could be obtaining cheaper material. The ADC recognised that PVC is the second highest cost raw material relevant to the goods and therefore the accuracy of the PVC cost represents a high risk in the context of the dumping margin calculation. The ADC noted that the evidence submitted by Olex was not contemporaneous with the investigation period and also that it provided no evidence which would cause the ADC to doubt the actual PVC prices paid by the Guilin Group during the investigation period. Nevertheless the ADC sought independent third party information regarding PVC spot prices paid in Southern China during the investigation period, and compared them to the prices actually paid by the Guilin Group for known grades of PVC used in the manufacture of the goods. This analysis is included at Confidential Appendix 4 to TER 271.

68. The ADC in the ADC Response claimed that the analysis of spot prices was undertaken solely for the purpose of examining whether the actual, verified costs of PVC were somehow unreliable (as was alleged by the Applicant). The information on spot prices was purchased by the ADC and was the best available independent evidence obtained during the investigation with which to compare PVC prices in China with the actual prices paid by the Guilin Group. That analysis did not cause the ADC to doubt the reliability of the Guilin Group's data. The ADC therefore relied on the actual, verified costs of PVC for the purpose of calculating constructed normal values. [33]

69. It seems clear from TER 271, the ADC's comments in the ADC Response and from an examination of Confidential Appendix 4 to TER 271 that the ADC did not rely on the information on spot prices during the investigation period, but merely used the information (as the best available independent evidence) to test the allegations of Olex that the actual, verified costs of PVC of the Guilin Group were unreliable, although not supported by evidence contemporaneous with the investigation period. The results of the analysis did not cause the ADC to doubt the reliability of the actual, verified data in this regard, which it did in fact rely on. I cannot find fault with the approach taken by the ADC or its analysis in this regard.

The Quantity of PVC

70. Olex contends that the Commissioner has not accurately and completely assessed relevant information to fully verify the exporter's quantities and cost of PVC material inputs per unit manufactured. Olex claims that the Commissioner has demonstrated a fundamental error of fact in not having regard to the minimum quantities of PVC required to produce the GUC in compliance with the Australian standard. Olex advised the Commissioner of the minimum volume of PVC required per kilometer of the goods in kg/km, separated into PVC Dialectric

---

[33] In Confidential Appendix 4 the ADC concluded in the summary of the analysis that;

"The Commission considers that, in the absence of further evidence, the verified prices that were paid by the Guilin Group amount to reasonable costs and therefore can be incorporated into the constructed normal value calculation."

and PVC Sheath[34]. Olex provided benchmarking data on the actual quantity of PVC used in GUC with regards to both insulation and sheath materials.[35]

71. As with the issue of the quantity of copper, the issue relating to the quantity of PVC was not addressed by the ADC in TER 271, other than an observation by the ADC that throughout the investigation the volume of PVC used in the actual production of the goods and the accounting treatment of PVC differs between Olex and the Guilin Group and that the ADC's task had been, "to verify whether the costs reported by the parties are accurate and reasonably reflect the actual cost."[36]

72. The ADC stated in the ADC Response:

> With regard to PVC volumes, the Commission has compared the standard and actual consumption of PVC by both the Applicant and the Guilin Group and their respective accounting practices. The Commission has also had regard to the evidence presented by the Applicant regarding its measurement of PVC usage in both products. These comparisons occurred throughout the investigation, but were not formally incorporated into TER 271 as they were not considered to be relevant at the time.
>
> The Commission has verified that the PVC costs were accurate, were correctly allocated to the goods and that the Guilin Group and the Applicant were not paying identical prices for PVC. Accordingly, the discrepancy between the Applicant's PVC usage and that of the Guilin Group has less significance than the Applicant contends.

73. The contention of Olex relating to the quantity of PVC is similar to that relating to the copper consumption, discussed above. The ADC's methodology with regard to standard consumption was the same with regard to both inputs and therefore the consideration of the PVC claim will be similar to that of copper. I will not therefore repeat the discussion in full, but will just point out any differences in regard to PVC.

74. As with copper, I examined the Exporter Visit Report and relevant Confidential Appendices to understand the standard costing methodology used by Guilin and how the standard unit consumption of PVC for SRF3025V was calculated. I also requested clarification from the ADC on the methodology. I noted the standard unit consumption of PVC Dielectric and PVC Sheath, measured in kg/km. However, according to the ADC, the PVC consumption values used in the CTM to calculate the normal value and the dumping margin increased in accordance with the yield loss.[37]

---

[34] Confidential Attachment G to Olex's application for review
[35] Confidential Attachment I to Olex's application for review, Olex SEF submission to the ADC, Appendix 6 – benchmark insulation; and Confidential Attachment J, Olex SEF submission to ADC, Appendix 7 – benchmark sheath.
[36] TER 271, page 30
[37] ADC response to clarification questions posed by the ADRP.

75. The ADC tested the reasonableness of the standard consumption of PVC used in SRF3025V in the same way as it tested copper. It also found that after the application of the yield loss the PVC consumption "aligned quite closely" to the average actual consumption reported by Olex's testing. The total PVC consumption (PVC Dielectyric and PVC Sheath) was [redacted] percent less than the Olex–measured PVC consumption, expressed as a proportion of the Olex-measured consumption. [38] As with copper this provided the ADC with some greater level of comfort that the methodology reflected actual costs and the ADC was satisfied that the standard volumes for PVC were reasonable based on the information available to them.

76. As with copper, the ADC did not directly address Olex's claim relating to the minimum quantities of copper required to meet the Australian Standard, making some general remarks in the ADC Response. However, as with copper it is clear that the total standard consumption of PVC (both Dielectric and Sheath together) used in the calculation of normal value is higher than the minimum consumption required to meet the Australian Standard.[39]

77. While the ADC may have been able to better ensure that the PVC consumption volumes were realistic by using actual consumption volumes (as measured by Olex or an independent third party) and then calculating the actual effects on the dumping margin, I consider that the methodology adopted by the ADC in testing the appropriateness of the standard consumption of PVC was reasonable and the ADC was able to satisfy itself that the PVC costs were accurate and correctly allocated to the GUC.

The Commissioner erred in his calculation of the cost of production and manufacture of the *GUC* - Treatment of hedging gains and losses

78. Olex contends that the Commissioner has failed or refused to demonstrate that he had regard to the treatment of hedging gains or losses earned or incurred on behalf of any one of the Guilin Group of companies. Olex states that it's position is that hedging gains or losses do not form part of the cost of production or manufacture of the goods, in fact constituting non-operating gains or losses. Olex provided minimal information relating to this issue and no apparent substantiation for this ground of review.

79. In the ADC Response the ADC stated that it had appropriate regard to the treatment of hedging gains or losses and referred to the Exporter Visit Report where it was noted that no adjustments were made to the constructed normal value for any gains or losses associated with foreign exchange.[40] The ADC further pointed out that the selling, general and administrative costs calculation included any relevant financial costs.[41] It was pointed out further that the ADC

[38] ADC response to clarification questions posed by the ADRP. This percentage was based on the Olex-measured PVC consumptions of PVC Dielectric and PVC Sheath.
[39] This is based on the total PVC consumption (Dielectric and Sheath)
[40] Section 8.3 of the Exporter Visit Report, page 39
[41] Section 5.5 of the Exporter Visit Report, page 33

obtained no evidence which indicated that the Guilin Group engaged in hedging activities relevant to material costs during the investigation period. It also appears from the Exporter Visit Report that the ADC did not accept the Guilin Group's request for an adjustment to the normal value to account for exchange gains and losses.[42] I do not therefore find any basis for this ground of review.

Decision

80. For the reasons set out above, the decision to terminate the investigation so far as it relates to the Guilin Group is affirmed.

Leora Blumberg
Member
Anti-Dumping Review Panel
6 October 2015

[42] See Section 8.3.3 of the Exporter Visit Report, page 39