

**APPLICATION FOR REVIEW
OF A DECISION BY THE ANTI-DUMPING
COMMISSIONER TO TERMINATE AN
INVESTIGATION**

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City
ACT 2601
P: +61 2 62761781
F: + 61 2 6213 6821
E: ADRP@industry.gov.au

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Department of Industry and Science, or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures
- to terminate an investigation into an application for dumping or countervailing measures
- to reject or terminate examination of an application for duty assessment, and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

Investigations:

- to publish a dumping duty notice
- to publish a countervailing duty notice
- not to publish a dumping duty notice
- not to publish a countervailing duty notice.

Review inquiries:

- to alter or revoke a dumping duty notice following a review inquiry
- to alter or revoke a countervailing duty notice following a review inquiry
- not to alter a dumping duty notice following a review inquiry
- not to alter a countervailing duty notice following a review inquiry
- that the terms of an undertaking are to remain unaltered
- that the terms of an undertaking are to be varied
- that an investigation is to be resumed
- that a person is to be released from the terms of an undertaking.

Continuation inquiries:

- to secure the continuation of dumping measures following a continuation inquiry
- to secure the continuation of countervailing measures following a continuation inquiry

- not to secure the continuation of dumping measures following a continuation inquiry
- not to secure the continuation of countervailing measures following a continuation inquiry.

Anti-circumvention inquiries:

- to alter a dumping duty notice following an anti-circumvention inquiry
- to alter a countervailing duty notice following an anti-circumvention inquiry
- not to alter a dumping duty notice following an anti-circumvention inquiry, and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

WHICH APPLICATION FORM SHOULD BE USED?

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or an application that was lodged late.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for an ADRP review of a decision of the Commissioner to terminate an investigation into alleged dumping and or subsidisation. It is approved by the Commissioner pursuant to s.269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A DECISION TO TERMINATE AN INVESTIGATION?

Only the person who lodged the application for the publication of a dumping duty notice and/or a countervailing notice may apply to the ADRP for review of the Commissioner's decision to terminate an investigation into that application.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after the applicant was notified of the Commissioner's decision to terminate the investigation (s 269ZZP).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under 'Where and how should the application be made?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Commissioner's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application should include a statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZQ(1A)).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made.

Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and **must** take account only of information which was before the Commissioner when the Commissioner made the reviewable decision (s 269ZZT(4)). The ADRP will disregard any information in applications and submissions that was not available to the Commissioner.

HOW LONG WILL THE REVIEW TAKE?

The ADRP must make a decision within 60 days of the receipt of the application for review. In special circumstances the Minister may allow the ADRP a longer period for completion of the review (s 269ZZT(5)).

The Review Panel will publish a notice of the decision in a national Australian newspaper and a copy of the decision through www.adreviewpanel.gov.au.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

The ADRP will either affirm the Commissioner's decision or revoke it (s 269ZZT(1)). The ADRP will provide a statement of reasons to the Commissioner and the applicant identifying why the decision was affirmed or revoked.

If the ADRP revokes the Commissioner's decision, the Commissioner must publish a statement of essential facts in relation to the application for a dumping duty notice or countervailing duty notice that is related to the review (s 269ZZT(2)). The investigation then resumes once that statement is published (s 269ZZT(3)).

The ADRP will publish a notice of the decision in a national Australian newspaper and a copy of the decision through www.adreviewpanel.gov.au.

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Anti-Dumping Review Panel
c/o Legal Services Branch**

**Department of Industry and Science
10 Binara Street
Canberra City ACT 2601
AUSTRALIA**

- OR emailed to:

ADRP@industry.gov.au

- OR sent by facsimile to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
+61 2 6213 6821**

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website (www.adreviewpanel.gov.au) or from:

**Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601
AUSTRALIA**

Telephone:	+61 2 6276 1781
Facsimile:	+61 2 6213 6821

Inquiries and requests for **general information about dumping matters** should be directed to:

**Anti-Dumping Commission
Department of Industry and Science
Ground Floor Customs House
1010 Latrobe Street
MELBOURNE 3008**

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular.

(Penalty: 20 penalty units – this equates to \$3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZQ of the Customs Act 1901. The information is collected to enable the ADRP to assess your application for the review of a decision to terminate an investigation.

APPLICATION FOR REVIEW OF DECISION OF THE COMMISSIONER TO TERMINATE AN INVESTIGATION

Under s 269ZZQ of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Anti-Dumping Commissioner (the Commissioner) to terminate an investigation into whether the Minister should publish:

- ☒ a dumping notice(s), and/or
- ☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:


- provides reasonable grounds for a review to be undertaken
- provides reasonable grounds for the decision not being the correct or preferable decision, and
- is complete and correct to the best of my knowledge and belief.

I have included the following formation in an attachment to this application:

- ☒ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- ☒ Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- ☒ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- ☒ Full description of the imported goods to which the application relates.
- ☒ The tariff classification/statistical code of the imported goods.
- ☒ A copy of the reviewable decision.
- ☒ Date of notification of the reviewable decision and the method of the notification.
- ☒ A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.
- ☒ A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that

should be identified, depending on the grounds that have been raised.

☒ [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature: 
Name: MICHAEL CROCKER-KLOPF
Position: GENERAL MANAGER, OPERATIONS.
Applicant Company/Entity: OLEX AUSTRALIA.
Date: 6 15 15.

**Application for Review of the Decision to Terminate the Dumping Investigation
Concerning Polyvinyl Chloride Flat Electric Cables Exported from the People's
Republic of China**

1. The Applicant

Olex Australia Pty. Ltd. (**Olex Australia**)
207 Sunshine Road, Tottenham, Vic.
PO Box 33, West Footscray
Victoria 3012

2. Contact Person

Mr. Michael Crocker-Kloet
General Manager Operations
Tel: 03 9281 4602
Fax: 03 9315 2017
Email: michael.crocker-kloet@nexans.com

3. Consultant

Mr. Michael Dawson
Director
Michael Dawson and Associates Pty. Ltd.
Tel: 0409 257084
Email: md.associates@bigpond.com

At Attachment A is the authorisation for Michael Dawson and Associates Pty. Ltd.

4. Full Description of the Imported Goods

The imported goods 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, 2.5mm² and 3 mm², insulated and sheathed with polyvinyl chloride (PVC) materials, and suitable for connection to mains electricity power installations at working voltages up to and including 450/750 V, and complying with Australian/New Zealand Standard (**AS/NZS**) AS/NZS 5000.2 (**the Australian Standard**).

The goods are 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.

For the purpose of this definition, 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.

For the avoidance of doubt, reference to "two copper conductor cores" refers to the 'phase core' and 'neutral core'. The earth core (also comprising of copper) is additional to these two active cores.

Specifically excluded from this application are:

- 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.

Range of products

The range of products within the definition of the imported goods the subject of this application are identified by its nominal conductor cross sectional area expressed in square millimetres (mm²) as defined by the Australian Standards. Typically, the product that meets the imported goods description, are cables with a nominal conductor area of 2.5 mm². Within this category, there may be a range of products identified by the colour of their sheathing, or the lengths in which they are sold into the market, and therefore whether or not they are packaged on a spool or reel.

5. Tariff classification and statistical code of the imported goods

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

6. Copy of the reviewable decision

At Attachment B is a copy of the reviewable decision, Anti-Dumping Notice No. 2015/85.

7. Date of notification of the reviewable decision and method of notification

By public notice, email, and phone call on July 9th, 2015. Copy of the notification is found at Attachment C.

8. Statement identifying what the applicant considers to be the correct or preferable decision that results from the grounds raised in the application

The Anti-Dumping Commissioner (**Commissioner**) ought to have been satisfied that in the investigation:

1. there has been no dumping by the exporter, known as Dongguan of any of those goods exported by that exporter;
2. the dumping margin for the exporter, known as the Guilin Group, worked out under section 269TACB of the *Customs Act 1901* (**the Act**), when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is more than 2%; and
3. the goods the subject of the application that have been, or may be, exported to Australia from the Peoples' Republic of China (**China**), the injury to the Australian industry that has been, or may be, caused by that export is not negligible.

Accordingly, the Commissioner ought not properly to have terminated the investigation.

The correct and preferable decision is for the Commissioner's decision to terminate the investigation under subsections 269TDA(1)(b)(i), 269TDA(1)(b)(ii) and 269TDA(13) of the Act, to be revoked.

9. Statement setting out the applicants reasons that the reviewable decision is not the correct or preferable decision

The reviewable decision is not the correct or preferable decision because the Commissioner based his decision to terminate the investigation on a number of errors of fact.

1. The Commissioner has failed to identify the exporter

The Commissioner determined that four related entities specifically, Guilin International Wire and Cable Group Co. Ltd., Guilin Feilong Wire and Cable Co. Ltd., Guilin Xianglong Wire and Cable Co. Ltd., and Ao Ning Electric Cables Co. Ltd., comprised a "... single exporter for the purpose of calculating a dumping margin."¹ During the relevant investigation period, these four entities, the Guilin Group, were considered by the Commission to constitute the largest exporter of the goods under consideration (**GUC**).

The Commissioner relied on the Panel Report in *Korea - Anti-Dumping Duties on Imports of Certain Paper from Indonesia*² in support of this position.

The Commissioner considered the following matters as relevant to treating the companies as a single exporter:

- "the common ownership links between the companies";
- "orders from the Australian customers may be filled by any of the four companies in the Guilin Group. In addition, intercompany transfers occur to allow any one company to fulfil an order";
- "the export price is the same or similar for each of the companies";
- "staff from each of the companies attended the visit (verification visit) and information was made available in relation to activities undertaken by all members of the Guilin Group at the visit."

It is not clear from the Commissioner's reasons whether or not **each** of the four entities **did in fact** export the goods under consideration (GUC) during the relevant investigation period, compared to a theoretical capacity to export.

If the Commissioner did not in fact satisfy himself that each of these entities exported the GUC during the relevant investigation period, then their inclusion in the single entity was an error of fact.

¹ Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p. 25.

² WT/DS312/R

2. The Commissioner's calculation of the normal value for the Guilin Group is incorrect

The Commissioner erred in his determination of the normal value for the Guilin Group. The Commissioner erred in fact, in so far as he relied on unreliable information. The information was unreliable to the extent that the Commissioner verified only the financial information of the export trading company of the Guilin Group of four companies (specifically, Guilin International Wire and Cable Group Co. Ltd.), and being satisfied of the "accuracy" of its information, accepted the financial information of the three other members of the Guilin Group of companies, reasoning that:

"As all four companies use the same accounting methodology and the audited accounts were in accordance with the generally accepted accounting principles applicable to China, the accuracy of the sampled data therefore provided a high level of confidence that the data for the other three companies would also be accurate."³

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 goods under consideration ("the GUC"), the Commissioner has 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 subsection 269TAC(2)(c)(i) of the *Customs Act 1901* ("the Act").

Indeed, the Commissioner admits to having regard to an "estimate for copper values" in the exporter questionnaire, which he claims to have verified in Guilin International's accounts.⁴ In other words, the Commissioner has:

- (a) estimated the key cost of production or manufacture, namely copper;⁵ and
- (b) has done so from a non-manufacturing entity within the Guilin Group of companies.

The Commissioner's approach in estimating the copper values and the costs of production or manufacture of goods are inherently flawed because in so doing, the Commissioner applied 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. Indeed, Guilin International admits to this weighted averaging cost methodology in its response to exporter questionnaire by stating they:

"use the weighted average actual costing method to move goods from raw materials to finished goods inventory"⁶

Such verification methodology is flawed as it has allowed unrelated product manufacturing costs to affect the normal value calculation of like goods to the GUC.

³ Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p. 29.

⁴ *Ibid.*, p. 25.

⁵ ADC Visit Report, *Guilin International*, p. 27.

⁶ Response to Exporter Questionnaire, *Guilin International*, p. 8.

When challenged by the applicant Australian industry to demonstrate its satisfaction that the Commissioner's cost to make the GUC satisfied the material input requirements of the applicable Australian Standard for the goods, in terms of the volume of copper and polyvinyl chloride ("PVC") content consumed in production, the Commission was unable to demonstrate that it was satisfied that the volume or the actual weights of the key raw materials consumed in the production of a kilometre of the GUC accorded with the Australian Standard⁷, or aligned in any way to the actual measurement data presented by the applicant.

The applicant Australian industry advised the Commission on the 17th June 2015⁸ that a failure by the exporter to comply with the minimum parameters of copper and PVC material inputs placed the GUC at risk of non-compliance with the Australian Standard. 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, or has not made the necessary upward adjustments for the physical differences to the normal value so determined.

Unless remedied, the Commissioner has relied on an error of fact, and has failed to make the correct and preferable decision.

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

Copper is the highest cost raw material and represents approximately [CONFIDENTIAL TEXT DELETED – data with regards to the high proportional cost of copper in the cost to manufacture]. (Refer CONFIDENTIAL Attachment E⁹) Poor verification of this cost poses an extremely high risk to the outcome of the case.

The Commission has observed the following throughout the investigation:

"that 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 Guilin Group."¹⁰

3.1 The Cost of Copper

Copper is traded in the form of cathode bar, and suppliers convert the cathode into 8mm rod, which can then be processed by cable manufacturers into copper wire

⁷ CONFIDENTIAL Attachment D

⁸ Submission of the Australian industry's response to the *Statement of Essential Facts*, placed on the public record on May 25th, 2015

⁹ CONFIDENTIAL Attachment E

¹⁰ Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p.29

through a drawing process. This service the suppliers provide of converting the cathode bar to 8mm rod is called the “copper premium.” This fact was made known to the Commissioner at all relevant times.

The cost of copper in the GUC is made up of the following components:

- The cost of copper cathode
 - This is the cost that is normally referred to on the LME and SHFE index
- The cost of the conversion premium which has three components
 - The cathode conversion cost of copper cathode to 8mm rod
 - This is normally referred to as the “cathode premium”
 - The credit cost or the cost of funding the working capital
 - In China where many transactions are in cash or 7-14 day terms the credit cost may not be found in the “cathode premium” value but must then be accounted for as a separate Cost to Make
 - As this is the highest cost component the credit cost is a significant value and cannot be ignored **[CONFIDENTIAL TEXT DELETED – information with regards to credit cost]**.¹¹
 - The freight and transport cost
 - Due to the bulk of the copper this also represents a significant cost.

The Commission made the following observations with regards the cost of copper cathode:

“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”..... and compared this to the prices paid by the Guilin Group for 8mm copper rod and determined that..... “the analysis indicates that the Guilin Group has paid a price which is commensurate with the contemporaneous SHFE price, plus copper premium.”¹²

We have asserted in previous submissions¹³ the Commissioner has failed to accurately verify the copper premium paid by the exporter, and in particular the cost of credit for this specific procurement activity. These costs must include the cathode premium, credit costs for the material purchases, and freight delivery costs. We submit there is no evidence the Commissioner has accurately verified all three components relating copper procurement costs.

¹¹ CONFIDENTIAL Attachment D; see also CONFIDENTIAL Attachment D1

¹² Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p.30

¹³ Submissions in response to SEF and Guilin Visit Report, placed on the public record on 18th June, 2015

3.2 The Quantity of Copper

The Commission has not made any attempt to verify the actual quantity of copper used per unit manufactured which is a major flaw and error of fact.¹⁴ The Commission has stated it verified the prices paid for copper by the Guilin Group, and that these costs were correctly allocated in the Guilin Group accounts.¹⁵ There is no evidence provided by the Commission that the actual quantities required for the manufacture of the GUC to the Australian Standard have been adequately assessed and verified.

The applicant Australian industry provided the research analysis which clearly shows the minimum **[CONFIDENTIAL TEXT DELETED – data with regards to copper quantities]**. (Refer to CONFIDENTIAL Attachment D)

By clarifying the applicant Australian industry's best possible copper price available in China, and submitting benchmarking analysis on the minimum copper quantities required to produce the GUC and to meet the Australian Standard specifications, the applicant Australian Industry has provided the minimum copper material cost per quantity manufactured which would be available to the exporter. We submit the Commission has erred in fact during the exporter verification and has failed to assess the accurate cost and actual quantity of copper material per unit produced for the GUC.

Even though there appears to be such a significant gap between the lowest possible prices paid by the exporter for copper materials found through the applicant Australian industry's research, with what the Commission found during the verification visit; and there is no evidence the Commission has adequately verified both the prices paid for copper and the actual quantity of copper material required per unit manufactured for the GUC, the Commissioner has made the following observation:

"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."¹⁶

The applicant Australian industry finds 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. This is especially so given the benchmarking evidence provided by the applicant Australian industry to the Commission as

¹⁴ See CONFIDENTIAL Attachment F

¹⁵ Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p.30

¹⁶ Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p.30

to the exporter's minimum copper quantities used in the product, and the known prices paid for copper in China.

In light of these circumstances, the Commissioner has significantly erred in his interpretation of the facts, and displayed an error in judgment to accept the broad disparity between the copper material prices the Commission has alleged to have 'verified' in the exporter's cost to make and those asserted by the applicant Australian Industry.

Indeed, the applicant Australian industry advised the Commissioner on July 2nd 2015¹⁷ that the minimum volume of copper required per kilometre of the goods was **[CONFIDENTIAL TEXT DELETED – volume data]**.¹⁸

We submit this has been a serious error of fact which has had a very significant influence on the dumping margin result found by the Commissioner.

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

The Commission recognised PVC is the second highest cost raw material relevant to the GUC. The Commissioner outlined in the Termination Report:

"The Commission has observed throughout the investigation that 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. The Commission's task has been to verify whether the costs reported by the parties are accurate and reflect the actual cost." ¹⁹

The Commission sought an independent third party for prices paid during the investigation period, which provided spot prices for South China for known grades used for the product.²⁰ After considering the spot prices for PVC provided, the Commissioner made the following observation:

"The Commission recognises that spot pricing is not necessarily indicative of the actual cost of obtaining a regular, consistent supply of PVC in the grades required to meet the Australian Standard for the goods under consideration. However, the trends and relationships between the spot prices and the prices actually paid by the Guilin Group

¹⁷ CONFIDENTIAL Attachment D

¹⁸ CONFIDENTIAL Attachment G

¹⁹ Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p.30

²⁰ Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p.31

maintains the Commission's confidence in the verified data."²¹

4.1 The Commission has Erred by Relying on Spot Pricing as a Price Benchmark

This highlights two errors of fact the Commission has failed in; 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 anyway be used as an accurate benchmark for longer term contractual material supply prices.

The Commission 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. 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. The only circumstance where there might be a relationship between the two is where average spot prices and contract prices are compared over an extended period of time during which the market has experienced a complete cycle.

4.2 The Quantity of PVC

In previous submissions, Nexans Olex has highlighted to the Commission that it's research shows the **[CONFIDENTIAL TEXT DELETED - information with regards to PVC material prices]** (See CONFIDENTIAL Attachment H ²²)

We submit 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, other than to state;

"The Commission has used the verification process to satisfy itself that the prices actually paid by the Guilin Group for PVC are accurate and have been accounted for."²³

However, again the Commissioner has demonstrated a fundamental error of fact in not having regard to the minimum and maximum quantities of PVC required to produce the GUC in compliance with the standard. The applicant Australian industry advised the

²¹ Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p.31

²² CONFIDENTIAL Attachment H

²³ Anti-Dumping Commission, *Termination Report No. 271 – Alleged Dumping of PVC Electric Cables exported from China*, 8 July 2015, p.31

Commissioner on July 2nd, 2015²⁴ **[CONFIDENTIAL TEXT DELETED – data in relation to PVC volumes]** the minimum volume of PVC required per kilometre of the goods.²⁵

The Industry Application has provided benchmarking data on the actual quantity of PVC used in GUC with regards to both the insulation and sheath materials.²⁶

5. The Commissioner has erred in his calculation of the cost of production and manufacture of the GUC – Treatment of hedging gains or losses

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.

It is the applicant Australian industry's position 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.

In summary, we submit the reviewable decision is not the correct or preferable decision, and this decision should be revoked because the Commissioner has based his decision to terminate the investigation on a number of errors of fact, which include:

- the Commissioner has failed to identify the exporter
- the Commissioner's calculation of the normal value with regards to the GUC for the Guilin Group is incorrect
- the Commissioner has erred in his calculation of the cost of production and manufacture of the GUC - Copper
- the Commissioner has erred in his calculation of the cost of production and manufacture of the GUC - PVC
- the Commissioner has erred in his calculation of the cost of production and manufacture of the GUC – Treatment of hedging gains or losses.

²⁴ CONFIDENTIAL Attachment G

²⁵ CONFIDENTIAL Attachment G

²⁶ CONFIDENTIAL Attachment I; and CONFIDENTIAL Attachment J

Attachments:

- Attachment A; Copy of Authorisation for the consultant Michael Dawson and Associates Pty Ltd
- Attachment B; copy of the reviewable decision, Anti-Dumping Notice No. 2015/85
- Attachment C; Copy of the written advice from ADC to terminate, July 9, 2015
- CONFIDENTIAL Attachment D
- CONFIDENTIAL Attachment D1
- CONFIDENTIAL Attachment E
- CONFIDENTIAL Attachment F
- CONFIDENTIAL Attachment G
- CONFIDENTIAL Attachment H
- CONFIDENTIAL Attachment I
- CONFIDENTIAL Attachment J

