Canberra
6/2 Brindabella Circuit
Brindabella Busines Park
Canberra International Airport
Australian Capital Territory 2609

Brisbane
Level 4, Kings Row Two
235 Coronation Drive
Milton, Brisbane
Queensland 4064

Melbourne
Level 39, 385 Bourke Street
Melbourne
Victoria 3000

Australia

Canberra +61 2 6163 1000
Brisbane +61 7 3367 6900
Melbourne +61 3 8459 2276

www.moulislegal.com

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13 June 2017

Mr Bora Akdeniz
Case Manager
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria 3000

By email

Received on 14 June 2017

Dear Mr Akdeniz

Scaw South Africa (Pty) Ltd and Haggie Reid Pty Limited
Alleged dumping of wire ropes from South Africa

We are the lawyers for Scaw South Africa (Pty) Ltd ("Scaw SA") and Haggie Reid Pty Limited ("Haggie Reid").

Scaw SA manufactures wire ropes, amongst a number of other steel products, and sells them both domestically and for export, including to Australia. Scaw wire ropes have been sold in the Australian market for many years. Scaw and its Australian importer Haggie Reid are valued and trusted suppliers of wire rope to coal industry customers in the Hunter Valley area of New South Wales and in the central and south Bowen Basin area in Queensland.

Scaw and Haggie Reid are strongly aggrieved by the initiation of this investigation. There was no true basis for its initiation, nor can it conclude with anything other than its termination. Key aspects of the application as has been put forward by the Australian industry ("the Application"), as said to be constituted by the Belgian-Canadian owned Bekaert Wire Ropes Pty Ltd ("Bekaert"), are variously incomplete, misleading or wrong. The Application lacks credibility. The evidence that our client has available to it bears that out.

We make the following submissions on behalf of our clients.

A Bekaert is a well-resourced foreign-owned company that should handle the normal "ebb and flow" of business itself

"BBRG Australia" (Bekaert") is a subsidiary of the multinational Bekaert-Bridon Group. On 29 June 2016, the Group released this media statement:[1]

> *Bridon-Bekaert Ropes Group begins business*
>
> *Bekaert, world market and technology leader in steel wire transformation and coating technologies, and Ontario Teachers' Pension Plan, the previous owner of Bridon, have successfully closed the definitive merger of their ropes and advanced cords businesses.*

[1] http://www.bekaert.com/en/about-us/news-room/news/bridon-bekaert-ropes-group-begins-business

> *Andrew Caffyn, previously Chairman of Bridon, has been appointed Chairman of the Board of the new company. Bruno Humblet, previously Chief Financial Officer of Bekaert, has been appointed CEO. Bruno will be replaced by Beatríz García-Cos Muntañola, the newly appointed CFO of Bekaert.*
>
> *The merger deal, announced on 7 December 2015, has satisfied all regulatory requirements and customary closing conditions, including clearance by merger control authorities in the US, EU, Brazil, Chile, Australia, China, and South Korea. Bekaert and Ontario Teachers' have established a joint venture in which Bekaert holds 67% and Ontario Teachers' 33%. The joint venture starts its merged operations today under the Bridon-Bekaert Ropes Group name. Bridon-Bekaert Ropes Group combines the ropes and advanced cords capabilities of approximately 2,500 employees, 19 manufacturing entities across 11 countries, market-focused R&D, and a global sales and services network. The combination of the businesses will leverage the scale and complementary strengths of Bekaert and Bridon and will pursue value creation for customers and for the new group.*
>
> *Bekaert is contributing its advanced cords business and a well-established ropes presence in Latin America, Canada and Australia while Bridon holds strong positions in Europe and the USA with a portfolio of rope wire, strand, and steel and synthetic ropes. The merger will also create opportunities for further growth in Asia.*
>
> *The merger creates the leading ropes group in the world with approximately USD650 million in sales (current equivalent of €580 million) on an annualized basis in a normalized business context. The financial results of Bridon-Bekaert Ropes Group will be included in the consolidated statements of Bekaert as from today. The transaction is estimated to add approximately USD350 million (€315 million at current rates) to Bekaert's consolidated sales on an annual basis in a normalized business context. The Group projects a lower run rate over the first two years due to the current demand instability in oil and gas and mining markets.*

It is accepted that Bekaert manufactures wire rope in Australia. However the fact that it is part of a multinational group of companies, controlled from headquarters that we assume are in Belgium, is not featured in the Application.

Arising from Bridon/Bekaert's media statement are matters to which the Anti-Dumping Commission (and the wider mining industry, if not also the Australian Competition and Consumer Commission) should pay careful attention.

1 The Application shows that Bekaert has a huge 83% share of the Australian market for the goods under consideration, and separately shows that Bridon has a 3% share of the market. What the Application fails to declare is that Bridon's share is effectively part of Bekaert's market share, in that it is Bekaert's own imports. This inconvenient fact, from the Applicant's perspective, is not mentioned anywhere, not in the Application nor in the Consideration Report. What that means is that this Application has been brought forward by a multinational company that controls, on its own admission,[2] close on 90% of the Australian market for mining rope.[3]

2 Bridon-Bekaert Ropes Group claims in the media statement to be *"the leading ropes group in the world"*. We are instructed that it is now the world's largest wire rope manufacturer,

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[2] Application, page 24.

[3] The Commission should request the applicant to answer question 8 of the application form as it is posed, rather than to offer an answer which does not address the question. Simply, does "BBRG Australia" have any relationship with an exporter to Australia of wire ropes? Is the answer to that question "yes" or "no". And if it is "yes" the question asks for details to be provided.

exceeding the level of the Wireco World Group, and is therefore the dominant player in the worldwide industry. Bekaert's attempt to portray itself as a true-blue Australian industry that requires government protection from normal economic conditions – conditions that have equally affected industries operating all over the world - is not credible. Historical references in the Application to things that happened in "1923" and "1925", to BHP's long association with Newcastle, and to the fact that *"[t]he business still operates from the original site"* are tokenistic. Bekaert is part of an international, well-resourced operation, with all the depth, support and flexibility that such organisations have available to them.

3 The media statement proclaims that the newly merged group intends to pursue *"value creation"*. In light of this Application, our client is confused about Bekaert's definition of that phrase. Unjust success in this investigation would result in a *"welfare transfer"* from the Australian mining industry and the Australian public to a foreign multinational. In our understanding *"welfare transfer"* is not *"value creation"*.

4 As per the media statement, the newly merged group projects that it will achieve *"a lower run rate over the first two years due to the current demand instability in oil and gas and mining markets"*. This acknowledges the true reason for the reduced financial performance of the Bekaert entity in Australia. Bekaert is therefore aware that the normal ebb and flow of economic conditions causes higher or lower *"run rates"* – ie, higher or lower production volumes. Its Application contains financial data which presents the classic picture of what happens in times of a market downturn, when prices flat-line and throughput drops, thereby causing increased costs and lower profitability. This is not some kind of unusual phenomenon, it is basic economics. In the absence of any contribution to the problem by Haggie Reid's imports, they are not to be blamed.[4] All that has happened is that the market *status quo* has been interrupted by a market downturn, which in dumping parlance is an "other factor" that has caused injury (whether or not there is any dumping). Moreover, and we wish to stress this point, despite this downturn Bekaert *was profitable* in the very period in which it complains of injury.

5 Presumably, also, Bekaert's awareness of these lower run rates was factored into the major investment decision that brought Bekaert and Bridon together, as is referred to in the media statement. That would mean that any unjustly successful outcome in this investigation would lead to it exceeding the profit expectations that were the basis of its own projections, and that were the basis of its own business decision.

B Haggie Reid's participation in the Australian market cannot be said to have caused "injury" to Bekaert in the sense required

The Australian industry is the only Australian producer and has been, and remains, the most dominant player in the market by far. Haggie Reid broadly agrees with Bekaert's estimation that Baekert-Bridon has in the region of 86% market share. Haggie Reid's market share is minor in comparison. Bekaert has a market share that on Bekaert's own numbers is more than six times larger than Haggie Reid's. Just as importantly, for the purposes of the Commission's assessment of "material" injury and of causation, are these facts:

- overall market volumes have shrunk dramatically, and this has affected both Bekaert and Haggie Reid equally;
- there has been no impact of Haggie Reid's imports that is in excess of the effect of that market downturn or that has aggravated Bekaert's financial position, at all or in a material way;

4 **[CONFIDENTIAL TEXT DELETED – price trends]**. See B.5 below.

- imports from other countries are present and available, and the pricing and price offers of exporters from other countries is a factor that appears to have been relevant to Bekaert's price behaviour;

- the change in Haggie Reid's market share in 2016 over 2015 has been **[CONFIDENTAL TEXT DELETED – market intelligence]**, based on Haggie Reid's own internal assessments;

- Haggie Reid's prices in the Australian market **[CONFIDENTAL TEXT DELETED – price trends]**;

- the volumes of Haggie Reid's sales in the Australian market **[CONFIDENTAL TEXT DELETED – market intelligence]**, as can be seen from the below graph; and

- as can also be seen from the below graph, the volume trend of Haggie Read's sales into the Australian market over the past six years **[CONFIDENTAL TEXT DELETED – market intelligence]**.[5]

[CONFIDENTAL GRAPH DELETED – Haggie Reid Pty Ltd 6 & 8 Strand Rope Tons 2003-2016]

The coal industry – being that part of the market that Haggie Reid exclusively services – has been significantly depressed over recent years. The downturn in market conditions for wire rope customers has impacted on the volumes of wire rope that are able to be sold into the market. This is undeniable and has been significant. It can only be that factor, and other market factors unrelated to Haggie Reid's imports, that have caused any claimed injury to the still-profitable Bekaert.

Our client strongly contests the following claims and assertions in the Application:

1 Bekaert claims that:

> *The imported rope supplied by Haggie Reid Pty Ltd ("Haggie") competes directly with BBRG Australia's locally manufactured wire ropes across all applications in the mining industry.*[6]

This claim exaggerates the degree of competitive interaction between Bekaert and Haggie Reid. Haggie Reid only services customers in the defined regions of Australia we have mentioned, and not elsewhere. Haggie Reid does not supply wire rope to other parts of Australia. The Commission should verify Bekaert's pricing to those other regions. If its prices in those regions have not increased, the Commission should ask itself why. If Bekaert claims that competition with Haggie Reid has forced it to behave in one way, why has it not behaved in a different way, by increasing its prices, when competition from Haggie Reid is absent? Further, Haggie Reid does not *"compete across all applications"*. This is just wrong and Bekaert must know that to be the case. For example, Haggie Reid does not supply pendant wire ropes to the Australian market, which Bekaert has included in the goods under consideration. Thus, if its sales of pendant ropes have been affected, how can that be said to be due to Haggie Reid's wire rope sales?

2 Similarly to its media statement, Bekaert mentions that reduced market size has caused reduced demand:

> *In the last 3 years, the open cut mining segment has seen a reduction in demand for ropes through the closure of mines such as [names of customer mines that have*

5 **[CONFIDENTAL TEXT DELETED – market intelligence]**.

6 Application, page 11.

closed] being placed on care and maintenance.

Bekaert also mentions another factor that has reduced the market size of wire rope:

There has been growth in hydraulic shovels (that do not consume ropes)…[7]

However, despite noting these things, Bekaert does not see fit to credit them as a cause of injury, which they definitely must be.[8]

3 The Application shows that Bekaert has experienced reduced production of 13% between 2015 and 2016, and a cost variation over the same period of 8%.[9] These numbers, we submit, are totally consistent with the experience that would naturally be expected in the situation of a reduction in the overall size of the market, in that reduced volumes would cause reduced factory throughput and thus higher per unit fixed costs.

4 Bekaert's own *"index of price variations"*[10] as between 2015 and 2016, showing a 4% *decrease*, does not at all correlate with Haggie Reid's experience over the same period. **[CONFIDENTAL TEXT DELETED – price trends]**.[11] The truth is that Haggie Reid has not reduced its prices such as might "force" Bekaert to reduce its own prices, nor has Haggie Reid tried to win market share through price reductions. This is ably demonstrated by the following table:

[CONFIDENTAL GRAPH DELETED – Haggie Reid Pty Ltd Selling Price Per Ton by Product Group 2014-2017]

5 We believe that Bekaert's claimed *"indexed table of sales quantities"*[12] is incorrect in so far as it concerns *"Dumped Imports"* (which is the wording used to describe allegedly dumped imports). Haggie Reid's very detailed market intelligence shows **[CONFIDENTAL TEXT DELETED – market intelligence]** variation in Haggie Reid's market share in 2016 over 2015, as illustrated below:

[CONFIDENTAL GRAPH DELETED – market shares 2015-2016]

The suggestion in the *"indexed table of sales quantities"*[13] that Haggie Reid has purchased or sold 20% more wire rope in 2016 than in 2015 is plainly incorrect.

6 Despite being invited by the application form[14] to generally describe *"any other factors influencing the market"*, Bekaert fails to mention the incursion of wire ropes from China and from Ushar Martin, from India, in circumstances where it is commonly known in the market

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7 Application, page 34.

8 Haggie Reid is the distributor of Fibremax synthetic fibre intermediate pendant ropes manufactured in The Netherlands, **[CONFIDENTAL TEXT DELETED – sales information]**. This underlines the fact that there are alternatives to the goods under consideration, and that customers are considering and purchasing such alternatives. This is a new market factor and, inevitably, must be something that is of concern to Bekaert.

9 Application, page 41.

10 Application, page 42.

11 In assessing price behaviour, the Commission is asked to investigate Bekaert's "free trial" programs, **[CONFIDENTAL TEXT DELETED – market intelligence]**

12 Application, page 35.

13 Application, page 35.

14 Application, question A-4.2.

that product is being offered by one of those suppliers for half price or even for free.[15]

We believe there is some realisation on Bekaert's part of the difficulty it faces in presenting any tangible evidence of injury caused by wire rope imported by Haggie Reid from South Africa when it states:

> *BBRG Australia estimates that it has lost sales volumes in 2015 and 2016 to Haggie Reid of approximately xxxx tonnes, which represents an approximate xx per cent in market share. BBRG Australia does not view the lost sales volumes and market share <u>as the 'normal ebb and flow of business'</u> as the volumes are sales previously held by BBRG Australia that it is willing and capable of supplying over the two-year (and beyond) period.*

Bekaert has not *"lost sales volume to Haggie Reid"*. Its Application attempts to exclude or downplay the effect of the market factors that have truly impacted on it, and that have "caused" it "injury" (if you can call continued profitability in the presently depressed conditions "injury). If there have been any "change agents" in the market in 2016 they certainly do not include Haggie Reid's imports which, as we have proven, **[CONFIDENTAL TEXT DELETED – sales and price trends]**. Under the mining industry conditions that are relevant to this investigation, and on the basis of the evidence you have before you, we submit that Bekaert's financial performance in the only period that can be relevant for that determination, namely, 2016, is clearly and certainly representative of the *"normal ebb and flow of business"*. The increased costs it faced are a symptom of reduced throughput in a downturned mining industry market. That is not a situation that has been caused by Haggie Reid's sales in the Australian market. Changes in the market conditions in 2016 were introduced by factors other than Haggie Reid's imports.

And Bekaert was still profitable, with sales revenue exceeding its costs.[16]

Bekaert itself sums up the position, with the following admission in its Application:

> *Accordingly, BBRG Australia's forecast performance is largely underpinned by the outlook for the Australian coal sector…*[17]

****

We submit that the Application has no merit.

We request that the Commission conduct its investigation as fully and as fairly as possible, and that it keep in mind the instructive comments of Nicholas J of the Federal Court, in the *Panasia* case to the following effect:

> *Further, I do not agree with [the Australian industry] that the purpose of Part XVB of the Act is "to protect Australian industry". The purpose of Part XVB is far more complicated. It is apparent from the scheme of Part XVB that the legislature has sought to strike a balance, as*

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15 Over the past 12 to 18 months the BHP Billiton Mitsubishi Alliance ("BMA") group has set up an internal "Low Cost Vendor Group". This has involved the establishment of a small team whose sole purpose is to look outside Australia and investigate the possibility of engaging directly with manufacturers (mainly in China and in other parts of Asia) to buy products currently used by the BMA group at better prices. **[CONFIDENTAL TEXT DELETED – market intelligence]**. Price pressure from buyers, assisted by both the reality and the threat of offers from exporters in other countries, have emerged as a very significant factor in the market. We opine that Bekaert has felt the need to respond to these external price indications by reducing its own prices. It is implausible to suggest that Haggie Reid has encouraged or forced any reduction in Bekaert's prices, as asserted by the Application, **[CONFIDENTAL TEXT DELETED – price trends]**.

16 Consideration Report, page 29.

17 Application, page 25.

> *the relevant international agreements no doubt seek to do, between various interests including not only those of Australian industries but also other WTO members and their own domestic industries, Australian consumers (in the broadest sense of that word) who may have an interest in acquiring imported goods at the lowest available prices and Australian exporters that supply their goods to other countries that are also members of the WTO.*[18]

We ask for the termination of this investigation as soon as the Commission feels that it is in a position to do so, under Section 269TDA(13) of the *Customs Act 1901*.

Yours sincerely

Daniel Moulis
Principal Partner

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[18] *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870 at para 148.