

14th July 2017

Mr Bora Akdeniz  
Case Manager  
Dumping Operations 3  
Anti-Dumping Commission  
Level 35, 55 Collins Street  
Melbourne Victoria 3001

Received on 17 July 2017

**Public File**

Dear Mr Akdeniz

**INVESTIGATION NO. 401 – WIRE ROPES EXPORTED FROM SOUTH AFRICA – ARMS' LENGTH SALES;  
UNSUPPRESSED SELLING PRICE; FORM OF MEASURES**

I. Introduction

In the conduct of the industry verification visit with BBRG Australia Pty Ltd (“BBRG Australia”), the Anti-Dumping Commission (“the Commission”) investigation team invited<sup>1</sup> BBRG Australia to provide a submission concerning a proposed unsuppressed selling price (from which a non-injurious price may be established) and the preferred form of measures to be applied to the dumped exports from South Africa.

This submission addresses these matters.

II. Export Price

In arriving at a non-injurious price (“NIP”) from the Australian industry’s unsuppressed selling price (“USP”) the Commission’s practice is to deduct the applicable post-exportation charges. The Dumping and Subsidy manual confirms<sup>2</sup>:

*“Data gathered from importers and exporters includes the post exportation costs, which form the basis of deductions from the USP to calculate the NIP.”*

The Commission will recall that BBRG Australia’s application relied upon deductive export price calculations for the purposes of establishing dumping margins for wire rope exported by Scaw South Africa Pty Ltd (“Scaw SA”) to Australia. BBRG Australia’s methodology for arriving at Scaw SA’s deductive export price included appropriate amounts for activities undertaken in Australia that is considered ‘value-adding’ to the bare wire ropes exported to Australia. These activities include the addition of attachments (including, but not limited to, ferrules and/or beackets).

It is BBRG Australia’s understanding that Scaw SA’s related-party Australian importer, Haggie Reid Pty Ltd (“Haggie Reid”), [further value-adding processes]. The cost of incorporating attachments (i.e. the ferrules and/or beackets) represents a significant cost outlay and must be considered by the Commission in its assessment of the arms-length nature of the export sales to Australia and the eventual selling price(s) of the imported goods. BBRG Australia urges the Commission to carefully scrutinise the arms-length nature of the export transactions. BBRG Australia notes the provisions of s.269TAA(2) which enables the Minister to “*treat the sale of those goods at a loss*

<sup>1</sup> Refer Australian Industry Verification Report, EPR Document No. 8, P. 26.

<sup>2</sup> Dumping and Subsidy manual, P.131.

as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.”

It is therefore important that the Commission’s verification of all Haggie Reid importer costs is comprehensive and accurate. The Haggie Reid costs in Australia must reflect the cost of the incorporating attachments, as well as the general costs of business associated with Haggie Reid’s warehouse and sales team that services the Australian market. BBRG Australia’s deductive export price calculations included in its application estimated Haggie Reid’s costs in Australia on the basis of disclosures in financial statements [*regulator*]. As a minimum, these costs should be verified by the Commission. Once the Commission has identified all of the relevant post-exportation costs incurred by Haggie Reid then the Commission will be able to establish the profitability of the Haggie Reid sales of imported wire rope on the Australian market.

Where it is determined that the Haggie Reid sales are unprofitable, the Commission should determine export prices on a deductive basis in accordance with s.269TAB(1)(b).

### III. Unsuppressed Selling Price

The Commission’s preferred methodology for the determination of a USP involves an initial examination of establishing the Australian industry’s weighted average selling price for a period unaffected by dumping.

Typically, the Commission will examine the period immediately prior to the commencement of the dumping, with a preference for a one year minimum period. Selling prices typically no older than five years will be considered.

Where market selling prices prior to the commencement of the dumping cannot be used, the Commission will consider:

- The Australian industry’s cost-to-make-and-sell (“CTM&S”) in the investigation period plus an appropriate amount for profit; or
- Selling prices for non-dumped imports that are in sufficient volumes to influence market selling prices.

BBRG Australia considers that market selling prices for the goods the subject of the investigation in the 2013 and 2014 years, by model, represents an appropriate basis for a USP that is in accordance with the Commission’s preferred methodology (i.e. based upon market selling prices). BBRG Australia does not consider selling prices in 2015 can be considered untainted or not influenced by dumping, as BBRG Australia highlighted in its application that the dumping of wire rope exports from South Africa had commenced during 2015.

BBRG Australia has attached a summary form of Confidential Appendix A3 with all Australian sales by major model from Quarter 1, 2013 to Quarter 4, 2016. Hoist and drag (uncoated) rope is the highest volume and value model of rope sold by BBRG Australia. The Commission can determine weighted-average USP’s for each model or wire rope identified in Confidential Appendix A3 attached.

The weighted-average USP by model can then be used as the basis for determining a non-injurious price (for each model of wire rope).

### IV. Form of measure

Once the Minister is satisfied that wire rope exported from South Africa has been at dumped prices and that dumping has resulted in material injury to the Australian industry, the Minister has the power to impose interim duties under section 8 of the *Dumping Duty Act*. The *Customs Tariff (Anti-Dumping) Regulation 2013* describes four forms of dumping duty, namely:

- Combination of fixed and variable duty method ('combination' duty);
- Fixed duty method;
- Floor price duty method;
- *Ad valorem* duty method.

BBRG Australia notes that the selected form of measure may be better suited to the particular circumstances of a case, than the other forms of measure. The Commission's "Guidelines on the Application of Forms of Dumping Duty" detail the *pros and cons* of each of the four forms of measure. BBRG Australia concurs with the discussion concerning the downside associated with a Floor Price Duty method, which quickly becomes outdated with changes in prices. Similarly, the fixed duty method is not appropriate where there are a range of models of goods the subject of measures and in a 'rising' market (the steel industry is coming off record lows in 2015/16).

BBRG Australia notes the Commission's caution concerning the combination of fixed and variable duty method that "*This form of duty, like the floor price duty method and fixed duty method, may not suit those situations where there are many models or types of the good with significantly different prices.*" However, it is further noted that the combination duty method may be suited "*to circumstances where there are complex company structures with related parties; and where circumvention of measures is likely.*"

The Commission identifies the *ad valorem* duty method as "the simplest and easiest form of duty to administer when delivering the intended protective effect". It is also advantageous where there are numerous models (as it is not reliant upon an ascertained export price). However, the *ad valorem* methodology is open to exporters further reducing export prices to absorb the impact of the measures on its customers (i.e. to avoid the intended effects of the duty).

BBRG Australia acknowledges that there are a number of different wire rope models that are the subject of the investigation. That said, there is one or two models that account for xxx per cent or more of the total export volumes by Scaw SA. BBRG Australia has formed a preliminary view that the combination form of measure will deliver the most effective outcome to deliver the intended effect of the measures. This preliminary view is predicated on:

- There being a number of models exporter to Australia, however, one or two models account for a majority of total wire ropes exports to Australia by Scaw SA;
- The exporter and importer are related parties, raising the potential for possible circumvention of measures between the parties which the combination method operates best to prevent;
- The combination method includes the determination of an ascertained export price that will ensure if the exporter reduces export prices to Australia, a variable component of interim duty would become payable; and
- The duty assessment mechanism provides an avenue for the Australian importer to seek a refund of excess interim duties paid.

Whilst retaining the right to reconsider this matter, it is BBRG Australia's preliminary view that the most appropriate form of measure to address dumping and injury on exports by Scaw SA to Australia is the combination method.

## V. Conclusions

BBRG Australia welcomes the opportunity to comment on an appropriate USP and form of measures to apply to dumped and injurious exports of wire rope from South Africa. BBRG Australia submits that an appropriate USP may be derived from market selling prices by the Australian industry during the 2013 and 2014 years – periods prior to the commencement of injurious dumping.

In arriving at a non-injurious price, BBRG Australia draws to the attention of the Commission the need to conduct a thorough analysis of the costs incurred by Haggie Reid in Australia that must be reflected in final selling prices to customers for the goods under consideration. This analysis will confirm whether the export price between the exporter and importer can be considered at arms-length or, whether it is appropriate to base export prices on the deductive export price methodology.

BBRG Australia is of a preliminary view (and retains the right to alter this view at a subsequent time) that the combination form of measure is the most appropriate form of measure to address injurious dumping on exports of dumped wire rope from South Africa.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4968 6500 or BBRG Australia's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



**Stuart Callender**  
Vice President Oceania