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By email

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Dear Mr Akdeniz

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

We refer to our previous submission in this matter, and to the letter signed by the Vice President Oceania of Bridon-Bekaert dated 30 June 2017 (“the Bridon-Bekaert letter”).

Our client wishes to make the following further submissions in this matter.

A	Comments regarding the Bridon-Bekaert letter.....	1
B	Alleged dumping, and extent of “dumped” goods sold in the POI.....	2
C	Bridon-Bekaert’s illusory injury allegation.....	5
D	Analysis of supply changes in the POI.....	7
E	Analysis of price movements in the POI	9
F	Conclusion	11

A Comments regarding the Bridon-Bekaert letter

The Bridon-Bekaert letter follows a familiar formula in submissions from market-dominating Australian industry applicants, which is to deny the propositions advanced against them, to obfuscate when that becomes impossible, and to assert the primacy of their interests as if the natural market condition that the Australian industry should expect is one that is absent of competition.

Simply rejecting anything that might be said in opposition to the claims it has made in its application does not support the application it has made.¹ For instance, section II of the letter from Bridon-Bekaert presents no facts, reliable or otherwise, nor does it advance any arguments, cogent or otherwise, in response to our client’s submission. It simply presumes that “[t]he Commission’s investigation will establish the accuracy of BBRG Australia’s claims”.

We believe that our client made its position clear. That position was evidenced with supporting information, the providence and nature of which was clearly explained. At the point of competition with Bridon-Bekaert there was no relevant change in our clients’ market behaviour. It did not lower its prices in the period of investigation. It did not take market share from Bridon-Bekaert in the period of

¹ *Application – Australian Industry* (EPR 401 Doc No. 001) (“the Application”).

investigation. The lower level of financial performance of the Australian industry – *which remained profitable throughout*– is due to obvious and admitted facts, and the Australian industry’s own corporate decisions in response to those facts. Our client maintains that position.

On the topic of confidentiality, the Bridon-Bekaert letter complains that information we have provided has been redacted, when it should not have been. With respect to this we would note that our client need not disclose commercially confidential information, and is entitled to the same rights as the Australian industry in this regard. Nonetheless, we are happy to make the subject matter of our clients’ evidence, and what its arguments are with respect to those facts, even plainer.

Accordingly:

- Our client’s letter redacted a confidential graph on page 4 – that graph is clearly entitled “*Haggie Reid Pty Ltd 6 & 8 Strand Rope Tons 2003-2016*”. It demonstrates that the volume trend of Haggie Reid’s sales into the Australian market has been downward trending ever since 2003, and that it decreased in the critical period of 2016, being the period of investigation, as compared to 2015.
- At numbered paragraph 4 of our letter, a confidential graph was redacted – we described both the graph (“*Haggie Reid Pty Ltd - Selling Price Per Ton by Product Group 2014-2017*”) and what it showed:

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:

- At numbered paragraph 5, we expressed our client’s view that Bridon-Bekaert’s claimed “*indexed table of sales quantities*” was incorrect and redacted a graph showing “*market shares 2015-2016*” which, we reiterate, shows Haggie Reid’s market share in 2015 and 2016 as being essentially static.

We submit that the propositions to which our client’s confidential price and market analyses are directed are quite clear, and we trust that the above explanations assist with Bridon-Bekaert’s understanding of same.

B Alleged dumping, and extent of “dumped” goods sold in the POI

The Bridon-Bekaert letter states:

The submission on behalf of Scaw SA and Haggie Reid has not evidenced any supporting information that Scaw SA’s exports of wire rope to Australia were not at dumped prices and, that the exports had not caused injury to the Australian industry manufacturing like goods.

We were not aware that it was incumbent on us to write a letter to the Commission with supporting information evidencing that Scaw SA’s exports of wire rope were not at dumped prices. But if the Australian industry wishes to have our clients’ comments on this aspect, we are happy to oblige.

- 1 First, Bridon-Bekaert’s accusation in its Application was the following:

The dumping margins as a percentage of export price are in the range -8.4 per cent to 103.4 per cent over the period November 2015 to January 2017.

Bridon-Bekaert is an expert wire-rope maker, as is Scaw SA. Therefore it would be somewhat incredible for Bridon-Bekaert to claim that it was unaware of the nature of the one (and only) South African domestic selling price for wire rope on which it based its normal value

estimation, and which generated the high dumping margins it alleged in its Application. Scaw SA has identified that rope as a premium product known as a “UHP Compact Strand – Cushion Cored Earthmoving Rope”. This D95 design product is a premium product which comprises a specialised core and rovings. Its manufacture involves additional processing routes and processes which add significant costs:

[CONFIDENTIAL TEXT DELETED – technical and production details of specialised Scaw SA wire rope product]

These are expensive to make and are much heavier ropes than the usual range of more “conventional” dragline hoist and drag ropes.

The different cross-sections of each are shown below:

[CONFIDENTIAL DIAGRAMS DELETED – technical diagrams of Scaw SA wire rope products]

Design D95

UHP - Compact strand cushion cored rope

Design D94

Uncompacted non-cushion core rope

They are not exported to Australia by Scaw SA. Indeed that type of wire rope is not even used in the Australian market. Haggie Reid has not introduced this product to the Australian market because there is no competition at the higher price point that would be needed to make this viable. A similar product is not made by the Australian industry because, as supposed by Haggie Reid, the Australian industry’s stranding equipment does not have sufficient pulling force for the process required. Similar smaller diameter fully plasticated and compacted strand ropes are used on electric shovel machines, and not in draglines. However shovel machines only use ropes up to 73mm in diameter, whereas these ropes are 95mm in diameter and require stranding machines with significantly high capstan pull forces.

We submit that Bridon-Bekaert must have known that the single domestic selling price that was submitted in its Application as the basis for its case was inappropriate for comparison to export prices, and that it would cause a massive exaggeration of dumping margin estimates.

On that basis the Application which served as the basis for the initiation of this investigation was a contrivance, in respect of which our client reserves its rights.

- 2 Secondly, it would not be a surprise to us if the Commission was to identify that there was “dumping”, on the basis of methodologies it typically adopts, and the specific facts of this case. Positive dumping findings range in accuracy from being “bullet proof”, in simple calculation cases, to being “random” in other cases, where more complex market and product issues are involved. This case is one of the latter. These are not commodity products. They are highly designed and have different specifications from each other. Different ranges and different individual types of products are sold domestically in South Africa as compared to those exported to Australia. Generally speaking the domestic products are higher value, due to various specification differences that are entrenched in the South African market.

Significantly, Scaw SA does not have evidence to provide the Commission with respect to the quantification of a level of trade adjustment, because all of its domestic sales are to end-users. The upshot of this is that the Commission is likely to compare distributor level prices on the export market with what are higher level (end-user) sales on the domestic market.

Scaw SA trusts in the objectivity of the Commission in grappling with these issues in both its consideration and its calculations. However it must also be recognised that, ultimately, the outcomes may contradict commercial reality. In other words, an element of “randomness” in this regard cannot be discounted.

- 3 Thirdly, even if it is determined that there was dumping of products that were exported in the period of investigation, the reality is that about half of the products exported to Australia in the period of investigation were actually sold to end-users in Australia in that period. This is demonstrated by the following chart:

[CONFIDENTIAL GRAPH DELETED – Haggie Reid Pty Ltd - 2016 Stock and Sales Tons - 2015 v 2016 Stock, showing stock movements]

What this shows is that **[CONFIDENTIAL TEXT DELETED – number]**% - just over half - of the goods exported to Australia by Scaw SA in 2016 were actually sold to end-users in Australia in 2016. Therefore, the applicant’s estimates of the market share held by so-called “dumped imports” in 2016 are overstated by **[CONFIDENTIAL TEXT DELETED – number]**%. Or, to put it another way, if all the goods exported to Australia in the period of investigation are said to have been dumped their share of the market in the period of investigation was not the **[CONFIDENTIAL TEXT DELETED – number]**% estimated in our previous letter as being the overall market share of Haggie Reid in that year, but rather only **[CONFIDENTIAL TEXT DELETED – number]**%.²

The obstacle this presents to Bridon-Bekaert’s claim is admitted by Bridon-Bekaert itself, when it says in its Application:

It is the BBRG Australia understanding that the price offers for wire ropes imported from South Africa are for goods that have potentially been imported from mid 2015 to end of 2016 due to the extended nature of the order-manufacture-supply timeframe which (that can extend to 22 months). [sic.] [underlining supplied]

In summary, there may well be a finding of dumping in this case, but it will provide no legal or moral “high ground” for the Australian industry in the circumstances of this case. It would merely be a constructed fact which satisfies the first part of the test set out in Sections 269TG(1) and (2) of the Act. However the applicant’s case conclusively fails when it comes to the second part of that test, because Scaw SA’s exports to Australia have not caused material injury to the Australian industry.

Bridon-Bekaert is the dominant market player. It has suffered the natural effects of a downturn in the fortunes of the mining industry. It opportunistically seeks to blame South African imports for those effects. However the period of investigation exports sold by Haggie Reid only constitute an estimated **[CONFIDENTIAL TEXT DELETED – number]**% of the market in that period. Moreover there have been no changes in the pricing or market positioning of Haggie Reid’s sales that could *cause* the financial changes of which Bridon-Bekaert complains.

No material injury has been suffered by the applicant. It continued to be profitable. Sales of allegedly dumped goods did not *cause material injury*. There were other, more significant factors at play in the market in the period of investigation. Price reductions the applicant claims to have suffered in one part of the market (the smaller “contested” part) were neither encouraged nor forced by anything done by Haggie Reid in that part of the market. Moreover, on the basis of more recent information

² The applicant has cited injury alleged to have been caused in the years before the period of investigation in its Application, presumably in an attempt to bolster its contentions. The application states:

Whilst the injury from the dumping commenced in 2015, the materiality of the injury only filtered through to BBRG Australia’s bottom line in the 2016 year as lost sales volumes translated to reductions in production volume and increased dollars per tonne fixed costs.

We would reiterate that the correlation of dumping and injury must take place in the period of investigation. Thus these pre-POI considerations are inadmissible and the conclusion the applicant urges cannot be made.

placed on the public record, any price reductions of the applicant in the contested part of the market would appear to have been offset by price increases it has achieved in the larger, uncontested part of the market. And the applicant continued to be profitable.

The evidence demonstrates that the applicant's claim that dumped goods caused it material injury in the period of investigation is groundless.

C Bridon-Bekaert's illusory injury allegation

It is not the *legal fact* of the export price being less than the normal value of goods exported during a period of investigation that justifies the imposition of dumping measures. The mere presence of dumped imports in Australia is not evidence of them *causing material injury*. Superadded to the legal finding of dumping is the requirement that *material injury* must be found to have been *caused* by dumped imports.

We have already pointed out that only **[CONFIDENTIAL TEXT DELETED – number]**% of the imports of the goods actually investigated by the Commission were actually sold by Haggie Reid in the Australian market in the period of investigation. Even more critically, in 2016, being the period of investigation:

- the prices of Scaw SA wire ropes under Haggie Reid's open price lists with its customers (ie the lists from which the customers could purchase wire ropes from Haggie Reid, as already agreed in previous years) did not change;
- only **[CONFIDENTIAL TEXT DELETED – number]** offers of new prices were actioned in the period of investigation, namely **[CONFIDENTIAL TEXT DELETED – commercial details relating to sales]**; and
- Haggie Reid made **[CONFIDENTIAL TEXT DELETED – number]** new price offers in the period of investigation, **[CONFIDENTIAL TEXT DELETED – commercial details relating to offers]**.

To identify whether injury has been caused to Bridon-Bekaert in the period of investigation, there must be something about the sales of South African wire ropes, as exported in the period of investigation, that have *caused material injury* to the Australian industry in that period. What were the changes in the market behaviour of Haggie Reid, at the point of competition with Bridon-Bekaert, such as to have caused it material injury? Or is Bridon-Bekaert's recent experience the result of the obvious and undoubted ebb and flow of competition, in the context of the significant mining market downturn which has also been obvious to all concerned? If Haggie Reid did not reduce its prices in the period of investigation, then how can it be said to have caused material injury? If Bridon-Bekaert's concern was that it wanted to achieve higher throughput in the period of investigation, then that would not constitute injury caused by dumping. Rather, it would constitute a corporate decision to forsake price in favour of volume, in circumstances where Haggie Reid had not done anything to cause that to happen.

Haggie Reid has interrogated its sales correspondence to find that it made only **[CONFIDENTIAL TEXT DELETED – number]** price offers, other than with respect to the sales referred to in the second dot point above, in the entire period of investigation. These are referred to in the third dot point above. **[CONFIDENTIAL TEXT DELETED – commercial details relating to offers]** They were neither accepted nor acted upon by those customers in the period of investigation.³ "Material injury" flowing from these "offers" in the period of investigation is not apparent to Haggie Reid and cannot

³ Please see E below for a full explication of those price offers and our submissions in respect of them.

be substantiated. Further, if Bridon-Bekaert made a knee-jerk reaction to rumours of price changes by Haggie Reid, that can only have been speculation on its part.⁴

Moreover we remind the Commission that its inquiry is about *material* injury in *the period of investigation*. The recent Australian industry visit report placed on the public record shows *offsetting* trends in Bridon-Bekaert's pricing – offsetting in the sense that its prices in that part of the market that was uncontested by Haggie Reid went up, even if its prices in the other, “contested”, part of the market went down. If Bridon-Bekaert did reduce its prices to the mine sites supplied by Haggie Reid, but increased its prices on its other mine sites, would those two phenomena not be *offsetting* in terms of injury, to the extent that any injury could not be said to be material? These *offsetting* trends would indicate that any alleged injury caused by dumping was *offset* by price increases that Bridon-Bekaert otherwise enjoyed. Indeed, the mine sites supplied by both Haggie Reid and Bridon-Bekaert account for around **[CONFIDENTIAL TEXT DELETED – number]**% of the total Australian market.⁵ They are a much lesser part of the overall market in volume terms than the mine sites supplied only by Bridon-Bekaert, and Haggie Reid only has a little over **[CONFIDENTIAL TEXT DELETED – fraction]** of the wire rope business of those sites.

If Bridon-Bekaert's profitability was reduced, we continue to insist that it could only be due to its reduced market volumes, the increased costs arising from those reduced volumes (and the fear that this would continue), and its own corporate decisions to reduce price. These were made in the absence of any lower prices charged by Haggie Reid in the period of investigation, because there were none. In so far as Bridon-Bekaert now advances its claim on the basis that it was trying to increase its *future* market share and boost its sales in some *future* period, we would maintain, firstly, that that reduction was speculative and, secondly, that the injury in the period of investigation flowing from that reduction is not apparent. It is far-fetched to suggest that Bridon-Bekaert's decision to “cave in” to price demands from one or two mine sites in the period of investigation represents injury caused by dumping. Apart from **[CONFIDENTIAL TEXT DELETED – commercial details relating to sales]**,⁶ no sales were made by Haggie Reid at reduced prices in the period of investigation.⁷ And, we reiterate, the injury *caused by dumping* must take place in the period of investigation and be *material*. In the latter regard the information recently placed on the public record shows *offsetting* trends in Bridon-Bekaert's overall pricing.

Customer resistance to increased costs is a symptom of an industry downturn. In-house cost cutting units have been set-up in the various owner groups to achieve those reduced costs, and buyers can say what they want to extract lower prices from suppliers. A knee jerk reaction by Bridon-Bekaert to reduce *some* prices in the period of investigation, in response to prospective sales at reduced prices by Haggie Reid *after* the period of investigation, in circumstances of *increased* prices by Bridon-Bekaert to other customers, does not have the “look and feel” of material injury caused by dumping. Rather, it has the look and feel of an Australian industry looking for a scapegoat to blame for injury caused by a market downturn and its own quixotic behaviour in response to that downturn. Imported wires ropes from South Africa have no responsibility for any of these things.

⁴ This is not a case in which the Australian industry alleges that the evidence of things occurring in the period of investigation establishes that it is “threatened” with material injury. No such claim has been made. In fact it has been disavowed.

⁵ Haggie Reid's estimates are that the shared sites in Queensland consumed **[CONFIDENTIAL TEXT DELETED – number]** MT in the period of investigation, and that the shared sites in NSW consumed **[CONFIDENTIAL TEXT DELETED – number]** MT. This amounts to **[CONFIDENTIAL TEXT DELETED – number]** MT out of a total Australian market estimated at **[CONFIDENTIAL TEXT DELETED – number]** MT, or **[CONFIDENTIAL TEXT DELETED – number]**%. On the basis of total Australian sales in 2016 of **[CONFIDENTIAL TEXT DELETED – number]** MT, Haggie Reid enjoyed just over **[CONFIDENTIAL TEXT DELETED – number]**% of the volume consumed at the “shared” sites.

⁶ These were sales of wire ropes exported to Australia before the period of investigation – see the table in D below.

⁷ See the details set out in the table in D below for proof that Haggie Reid pricing in the period of investigation was static, as we have previously advised the Commission.

We now demonstrate the illusory nature of Bridon-Bekaert’s injury allegation – first as it relates to volume, and second as it relates to price and the necessary implication of price, which is profit.

D Analysis of supply changes in the POI

Before commencing with an analysis of the supply changes in the period of investigation, it is important to understand the context in which sales of wire ropes are made in the Australian market.

The first thing to note is that these are not commodity products. They are specialised products. Quality of design and construction, and the servicing of both the product and the customer, are important features of both securing customers and maintaining sales. Sales to different mine sites and to different mine managers are impacted by the different conditions of the resource and the different machines in operation, as well as the different expectations and different preferences of the mine managers themselves.

Trials are required before a supplier can be accredited as a supplier to any mine site, and it is only when the product is deemed to be suitable that price negotiations take place and prices are settled. A trial involves the sale of a small volume of wire ropes for the purposes of the trial, but without an offer or commitment to longer term commercial pricing. The fact that a supplier’s wire ropes are being trialled at a mine site is not evidence of volume or price injury whether caused by dumping or not. Even when “contracts” are agreed, they are typically nothing more than an availability to order under an agreed price list. **[CONFIDENTIAL TEXT DELETED – commercial details relating to sales]** Haggie Reid believes that Bridon-Bekaert engages in rebate pricing, such that its prices are reduced if higher volumes are purchased.⁸

Another important context to keep in mind is that the number of mine sites that are prequalified for Scaw SA wire ropes and that have price lists available for orders to be made from Haggie Reid are very few. As we have pointed out, shared sites accounted for **[CONFIDENTIAL TEXT DELETED – number]**% of total Australian market volume in the period of investigation, and Haggie Reid’s share of these sites was around **[CONFIDENTIAL TEXT DELETED – number]**%. Moreover, every Haggie Reid mine site is a “shared” mine site, in that Bridon-Bekaert also has a supply arrangement in place with those mine sites. Outside of those mine sites Bridon-Bekaert does not face competition from Haggie Reid.

This break-up can be observed in the following table:

[CONFIDENTIAL TABLES DELETED – identification of suppliers of wire ropes to specific mine sites]

In summary, in the period of investigation, Bridon-Bekaert supplied **[CONFIDENTIAL TEXT DELETED – number]** of the **[CONFIDENTIAL TEXT DELETED – number]** mine sites, and *exclusively* supplied **[CONFIDENTIAL TEXT DELETED – number]** of them. Haggie Reid supplied **[CONFIDENTIAL TEXT DELETED – number]** mine sites, and had exclusivity at only **[CONFIDENTIAL TEXT DELETED – number]** of these sites. In other words, **[CONFIDENTIAL TEXT DELETED – number]** of Haggie Reid’s **[CONFIDENTIAL TEXT DELETED – number]** mine sites were “shared” with Bridon-Bekaert.⁹

What this means is obvious. The competition between Bridon-Bekaert and Haggie Reid is limited. Haggie Reid is engaged in a smaller part of the market than Bridon-Bekaert. Mine sites do not easily or quickly change from one supplier to another, and would be loath to rely entirely on import supply

⁸ The Commission should inquire as to whether lower prices claimed by Bridon-Bekaert are actually due to *increased* sales to individual customers (for example, **[CONFIDENTIAL TEXT DELETED – name of mine site owner]**) because of volume rebates previously agreed by Bridon-Bekaert. If this is the case, it would have nothing to do with Haggie Reid’s sales of allegedly dumped imports in 2016.

⁹ **[CONFIDENTIAL TEXT DELETED – commercial details relating to sales]** These are premium products, the market for which is controlled by Bridon-Bekaert.

for logistical reasons. Bridon-Bekaert therefore has strong command of the majority part of the Australian market. Haggie Reid has solid, longstanding customers, in areas that it is able to service with its small sales and service presence in Australia. Its market share is small.¹⁰ The effect of Haggie Reid on Bridon-Bekaert’s national sales, in terms of both volume and pricing, is limited.

Our client has compiled the following blow-by-blow description of the events that impacted on the relativity of sales as between the wire ropes produced by the Australian industry and those imported from South Africa in the period of investigation, in order to demonstrate that other factors, and not exports from South Africa in the period of investigation, have caused whatever injury it is of which the Australian industry complains. Where Bridon-Bekaert has experienced a loss of sales in the period of investigation by reason of factors unrelated to the price of the goods under consideration exported from South Africa, the relevant cells have been shaded pink.

There were no instances in which Bridon-Bekaert experienced a loss of sales in the period of investigation by reason of the price of the goods under investigation exported from South Africa.

2016 wire rope market Market factors impacting on relativity of Haggie Reid-Baekert sales					
Owner/ Mine site	Market impact	Did HR gain sales by reason of the impact?	Did HR gain sales without reducing pre-2016 pricing?	Did BBRG lose sales by reason of the impact?	Did BBRG lose sales to HR as a result of changed pricing of sales of goods under consideration?

[CONFIDENTIAL TEXT DELETED – market intelligence]

Total sales lost by Bridon-Bekaert	[CONFIDENTIAL TEXT DELETED – number]MT
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On the basis of Haggie-Reid’s analysis, Bridon-Bekaert developed a “hole” in its order book for wire ropes in the period of investigation, as compared to previous years, of some [CONFIDENTIAL TEXT DELETED – number] MT, for reasons unrelated to the price of the allegedly dumped goods. If those sales had not been lost by Bridon-Bekaert, they would have amounted to a whopping [CONFIDENTIAL TEXT DELETED – number]% of the market.¹¹ Of these lost sales, [CONFIDENTIAL TEXT DELETED – number] MT was unarguably as a result of machines being parked, mines shutting down and intermittent use of machines. Of the remaining [CONFIDENTIAL TEXT DELETED – number] MT, [CONFIDENTIAL TEXT DELETED – number] MT were wire ropes exported from South Africa *prior to* the period of investigation, and are therefore not under investigation. These factors have nothing to do with the goods under consideration. They must therefore be considered as factors *other than* the exportation of those goods from South Africa that caused injury (Section 269TAE of the Act refers).¹²

¹⁰ We remind that although Haggie Reid estimates that there is [CONFIDENTIAL TEXT DELETED – number]%/[CONFIDENTIAL TEXT DELETED – number]% split as between the Australian industry and Haggie Reid (with minor adjustments for other imports), the market share of the goods under investigation, being the goods exported to Australia in 2016, was less again, at [CONFIDENTIAL TEXT DELETED – number]% according to Haggie Reid estimates.

¹¹ Based on Haggie Reid’s estimate of the total actual market volume in 2016 of [CONFIDENTIAL TEXT DELETED – number] MT.

¹² In terms of the WTO *Anti-Dumping Agreement*:
The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports.

With respect to the remaining **[CONFIDENTIAL TEXT DELETED – number]** MT of wire ropes sold by Haggie Reid, being goods that are under consideration in this investigation and which we will assume, for the purposes of this exercise, have been dumped, the customers concerned have indicated to Haggie Reid that price was not the relevant factor in their decision to purchase. These are the sales referred to in the above table with reference to **[CONFIDENTIAL TEXT DELETED – customer names]**. Even if that were not the case, those sales cannot have been materially injurious to Bridon-Bekaert because they represented a mere **[CONFIDENTIAL TEXT DELETED – number]**% of the 2016 market volume.¹³

E Analysis of price movements in the POI

Certain injury case studies are advanced by Bridon-Bekaert in its Application, referring to events that are said to have taken place in “YE-2014”, “YE-2015” and “YE-2016”, with respect to three discrete customers.¹⁴ One would expect that these are the best examples of injury alleged to have been caused by dumped imports that Bridon-Bekaert could come up with. If that is the case, then on the face of things Bridon-Bekaert has no real evidence of injury caused by the sale of wire ropes exported from South Africa in the period of investigation at all.

Case Study 1¹⁵ states, with respect to “YE-2014” and “YE-2015”, “*Price reduction*”. However for “YE-2016” it states “*Price not accepted; but sales reduced*”. What this must mean is that in the period of investigation – being the only period that is relevant for the purposes of determining whether alleged dumping caused material injury - Bridon-Bekaert offered a new price, which apparently was not even accepted, and its sales were reduced. Nothing that Haggie Reid did in the period of investigation can have any relevance to this set of alleged facts. Bridon-Bekaert had already reduced its prices in 2014 and 2015, being periods in which dumping is not under investigation and cannot be said to have occurred. This bears out what our client is saying – which is that it is not apparent, from this case study, how it is said that South African wire ropes *caused material injury* in “YE-2016”.¹⁶

In Case Study 2,¹⁷ the alleged “*Lost sales and Price reduction*” took place in “YE-2015” and not in the period of investigation. Case Study 3¹⁸ is entirely redacted and does not contain a meaningful summary to enable us to provide any comment.

The next part of the analysis that Haggie Reid wishes to present to the Commission in this submission relates to the question of “price changes” in the period of investigation, and what are referred to as “price offers”. These points are relevant:

- 1 In the period of investigation there were no changes to any of the Haggie Reid price lists with respect to the sale of wire ropes on any of the shared mine sites. This is a key point, because Bridon-Bekaert cannot say that its decision to reduce its prices to “shared” customers (if that is what it did) was based on any necessity arising from Haggie Reid’s behaviour, because Haggie Reid did not reduce its prices.

¹³ Again based on the estimated total actual market volume in 2016 of **[CONFIDENTIAL TEXT DELETED – number]** MT.

¹⁴ We assume that the periods meant by the acronym “YE” are calendar years.

¹⁵ Application, page 46.

¹⁶ Bridon-Bekaert stated in its Application:

Due to the extended timeframes from quotation to instalment (including quotation analysis and confirmation, manufacture of rope, delivery of rope to Australian warehouse, delivery to store for installation), BBRG Australia submits that a 24 month dumping investigation period is required for goods sourced from South Africa. BBRG Australia notes that in Consideration Report No. 219, the Commission stated (P.7):

The period of investigation is not 24 months. If Bridon-Bekaert’s true position is that it was caused injury in a prior period, then this investigation cannot proceed on that basis and should be terminated.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

Presumably, the Bridon-Bekaert price decline as shown in the recent Australian industry visit report placed on the public records related to new price offers that it made to sites that Haggie Reid services, all of which are “shared” sites.¹⁹ Why was there a need for it to bid lower prices:

- in the absence of any new pricing from Haggie Reid;
- in circumstances in which it was already making sales to those sites, at higher prices; and
- when its costs had increased?

2 In the circumstances of this industry, and of these goods, “trials” are not accompanied with price changes or price offers that can be the source of material injury to the Australian industry. **[CONFIDENTIAL TEXT DELETED – Haggie Reid sales negotiation]** If that is not “the general rule”, then it was certainly the position with respect to the trials of Haggie Reid’s wire ropes that are referred to in the tables in D above.

3 Apart from the **[CONFIDENTIAL TEXT DELETED – commercial details relating to sales]**, no Haggie Reid price offers were accepted and actioned by customers, whether existing or prospective, in the period of investigation. Haggie Reid made a grand total of **[CONFIDENTIAL TEXT DELETED – number]** other price offers in the period of investigation. **[CONFIDENTIAL TEXT DELETED – commercial details relating to offers]**.

Those price offers were as follows:

[CONFIDENTIAL TEXT DELETED – commercial details relating to sales, which can meaningfully be summarised as follows:

- **procedure followed by customers in issuing requests for tender;**
- **comments about prices offered by Haggie Reid;**
- **Haggie Reid offers not accepted]**²⁰

Ultimately, it may well be that Bridon-Bekaert’s major gripe, and the motivation for its Application, is that Bridon-Bekaert made reduced price offers to **[CONFIDENTIAL TEXT DELETED – number]** customers in the period of investigation, when those customers requested them to do so. Bridon-Bekaert may have reduced prices far more than it now believes it should have done, and it might be uncertain as to how it will fare with respect to its sales to those mine sites in the future. However neither of those things represent the *causation of material injury by exports from South Africa in the period of investigation*. Unconsummated price offers made in the period of investigation cannot rewrite the reality of what actually transpired in the period of investigation. In that period the Australian industry was badly assailed by factors unrelated to any alleged dumping, and suffered lower sales and increased costs as a result. Despite that it continued to dominate the local market, lifted its prices on the greater proportion of its sales, and maintained its profitability.

Nor can Bridon-Bekaert seek to rely on any alleged *threat* of material injury, both because it would be hard pressed to establish the clear foreseeability and imminence of such a threat, or the conditions referred to in Article 3.7 of the WTO *Anti-Dumping Agreement*, and because in its Application it has expressly disavowed that to be the case:

¹⁹ *Visit Report – Australian Industry* (EPR 401 Doc No. 008, at page 19).

²⁰ Mine owners do not divulge price information to tenderers. **[CONFIDENTIAL TEXT DELETED – confidential details relating to customer policies]**

This application for anti-dumping measures is not based upon a threat of material injury, but on injury that has already been experienced by the Australian industry manufacturing wire rope the subject of this application.

This question [C-2 Threat of material injury] therefore does not apply.²¹

F Conclusion

We believe we have again made our clients' position clear, and that the evidence supports what they are saying.

To recap:

- 1 At all relevant times Bridon-Bekaert held by far the largest proportion of the Australian market.
- 2 Bridon-Bekaert predicted, in public statements at the time of its merger in mid-2016, that it would *"achieve 'a lower run rate over the first two years [of its merger] due to the current demand instability in oil and gas and mining'"*.
- 3 Its Application demonstrates exactly that – that it has experienced lower run rates (throughput) and that its costs have naturally increased as a result.
- 4 Bridon-Bekaert's drop-off in profitability is due to a major contraction in mining industry demand, machinery changes and mine consolidations that have been taking place over a number of years. Its claimed injury is reduced profitability, not loss-making.
- 5 In the period of investigation, Bridon-Bekaert has been impacted heavily (and one might even say rather uniquely, going by the specific impacts on its customers) by the downturn in the mining industry. We have documented this in the table set out in D above with great particularity.
- 6 Scaw SA's exports to Australia in the period of investigation, being the goods under investigation, only accounted for part of Haggie Reid's sales in that period, and not all of them.
- 7 There was nothing about Haggie Reid's price behaviour which could be said to have caused material injury to Bridon-Bekaert – it was "business as usual" in the period of investigation, with no changes to the prices at which Haggie Reid made its sales in the market.
- 8 Offsetting trends in prices as between that part of the market that was shared as between Haggie Reid and Bridon-Bekaert, and that which was not, indicates that the Australian industry did not suffer injury or at least did not suffer material injury, whatever the cause.
- 9 Haggie Reid's **[CONFIDENTIAL TEXT DELETED – number]** price offers with respect to the goods under investigation were unconsummated in the period of investigation and cannot reverse the reality of Bridon-Bekaert's experience in that period, which is that it was not *caused material injury* in the period of investigation by the sales of wire ropes exported from South Africa in that period.

As stated by Bridon-Bekaert itself, in its Application:

²¹ Application, page 57.

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 closed] being placed on care and maintenance.

This is correct. As we noted in our previous letter:

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%. 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.²²

The information and submissions we have provided clearly illustrate the insuperable problem that Bridon-Bekaert faces in establishing its claim. Reductions in demand have impacted it very heavily. Throughout it all, it has managed to adjust its prices and maintain its profitability. The inescapable conclusion to be drawn from the above analysis is that South African imports – dumped or not - cannot be found to have *caused material injury* to the Australian industry in the period of investigation.

We respectfully request the Commission to find that Bridon-Bekaert's accusation against South Africa wire ropes has no merit, and to terminate this investigation under Section 269TDA(13) of the Act as soon as it is in a position to do so.

Finally, we note that the Bridon-Bekaert letter disparages the “purposeful” use of “colourful adjectives” in our previous submission.

We are instructed to advise that our client will use as many “colourful adjectives” as it takes to ensure that its rights are respected, and that its position on the matters raised for determination by the Commission get the attention they deserve.

Yours sincerely



Daniel Moulis
Principal Partner

²² The Commission will note that the [CONFIDENTIAL TEXT DELETED – number]% reduction reported in the Application is precisely the same percentage as arrived at by Haggie Reid when it calculated Bridon-Bekaert's reduction in sales “the long way”, in the table set out in D above.