



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

**STATEMENT OF ESSENTIAL FACTS
NO. 401**

AND

**PRELIMINARY AFFIRMATIVE
DETERMINATION NO. 401**

**ALLEGED DUMPING OF WIRE ROPE
EXPORTED TO AUSTRALIA FROM
THE REPUBLIC OF SOUTH AFRICA**

August 2017

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ABBREVIATIONS

| | |
|---------------------------------|--|
| ABF | Australian Border Force |
| the Act | the <i>Customs Act 1901</i> |
| ADN | Anti-Dumping Notice |
| the applicant or BBRG Australia | Bekaert Wire Ropes Pty Ltd |
| combination method | combination of fixed and variable duty method |
| the Commission | the Anti-Dumping Commission |
| the Commissioner | the Commissioner of the Anti-Dumping Commission |
| CON 401 | <i>Anti-Dumping Commission Consideration Report No. 401</i> |
| CTMS | cost to make and sell |
| FOB | free on board |
| the goods | the goods the subject of the application (also referred to as the goods under consideration) |
| IDD | interim dumping duty |
| the Manual | <i>Anti-Dumping Commission Dumping and Subsidy Manual</i> |
| Material Injury Direction | <i>Ministerial Direction on Material Injury 2012</i> |
| NIP | non-injurious price |
| OCOT | ordinary course of trade |
| PAD | preliminary affirmative determination |
| PAD Direction | <i>Preliminary Affirmative Determinations) Direction 2015</i> |
| the Parliamentary Secretary | Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science |
| ROI | return on investment |
| SEF | statement of essential facts |
| South Africa | Republic of South Africa |
| USP | unsuppressed selling price |

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) relates to the investigation by the Commissioner of the Anti-Dumping Commission (the Commissioner) of the allegations made by Bekaert Wire Ropes Pty Ltd (BBRG Australia) that certain wire rope (the goods) exported to Australia from the Republic of South Africa (South Africa) at dumped prices has caused material injury to the Australian industry producing like goods.

This SEF sets out the facts on which the Commissioner proposes to base a recommendation to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary).¹

1.2 Authority to make decision

1.2.1 General

Division 2 of Part XVB of the *Customs Act 1901* (the Act)² describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to goods covered by an application under subsection 269TB(1) for the purpose of making a report to the Parliamentary Secretary.

1.2.2 Preliminary affirmative determination

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or if satisfied that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction) directs the Commissioner to publish a status report providing reasons why a PAD was not made.³

On 26 June 2017, being 60 days after the initiation of the investigation,⁴ the Commissioner published a status report.⁵

¹ On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this investigation, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

² All legislative references in this SEF are to the *Customs Act 1901*, unless otherwise specified.

³ The PAD Direction is available on the Federal Register of Legislation website at www.legislation.gov.au.

⁴ It is noted that day 60 in relation to this investigation was 25 June 2017, however as this day fell on a Sunday, the effective due date was the following business day, being 26 June 2017.

⁵ No. 6 on the public record.

As required by section 9 of the PAD Direction, if the Commissioner has published a status report in relation to an investigation, the Commissioner must reconsider whether or not to make a PAD at least once prior to the publication of the SEF. The Commissioner has fulfilled this direction at chapter 11.

1.2.3 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation arising from an application under section 269TB, or such longer period as allowed under subsection 269ZHI(3),⁶ place on the public record, a SEF on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary in relation to the application.⁷

In relation to this investigation, the SEF is due to be placed on the public record by 14 August 2017.

1.2.4 Final report

The Commissioner's final report and recommendations in relation to this investigation must be provided to the Parliamentary Secretary on or before 28 September 2017,⁸ unless this timeframe is extended under subsection 269ZHI(3) or the investigation is terminated earlier.

1.3 Findings and conclusions

The Commissioner's findings and conclusions in this SEF are based on available information at this stage of the investigation. A summary is provided below and there is greater detail in the remainder of this SEF.

1.3.1 The goods and like goods (Chapter 3)

The Commissioner considers that wire rope produced in Australia (i.e. locally produced wire rope) are like goods to the goods the subject of the application.

The Commissioner is satisfied that there is an Australian industry producing like goods to the goods the subject of the application, which is BBRG Australia, and that BBRG Australia carried out in Australia, at least one substantial process in the manufacture of like goods.

1.3.2 Australian market (Chapter 4)

The Australian market for wire rope is supplied by BBRG Australia and imported goods, predominantly from South Africa.

⁶ On 14 January 2017, the Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to Anti-Dumping Notice (ADN) No. 2017/10 for further information.

⁷ Subsection 269TDAA(1).

⁸ Section 269TEA.

1.3.3 Dumping (Chapter 5)

The Anti-Dumping Commission (the Commission) considers that:

- all wire rope exported to Australia from South Africa was dumped during the investigation period; and
- the volume of dumped goods from South Africa, and the dumping margins for all exporters from South Africa was not negligible.

The Commission's assessment of the dumping margin for wire rope exported to Australia from South Africa is at Table 1 below:

| Country | Exporter/Manufacturer | Dumping margin |
|--------------|-----------------------|----------------|
| South Africa | All exporters | 39.7% |

Table 1: Dumping margin summary

1.3.4 Economic condition of the Australian industry (Chapter 6)

The Commissioner considers that the Australian industry has experienced material injury in the forms of:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced sales revenue;
- reduced return on investment (ROI);
- reduced capacity utilisation;
- reduced employment; and
- reduced productivity.

1.3.5 Causation assessment (Chapter 7)

The Commissioner considers that the Australian industry has experienced material injury as a result of wire rope imported at dumped prices from South Africa.

1.3.6 Will dumping and material injury continue? (Chapter 8)

The Commissioner considers that imports of wire rope may continue in the future at dumped prices from South Africa, and that continued dumping from South Africa may continue to cause material injury to the Australian industry.

1.3.7 Non-injurious price (Chapter 9)

The Commission considers that the non-injurious price (NIP) can be calculated for all exporters from South Africa by reference to an unsuppressed selling price (USP) equal to

the Australian industry's weighted average selling prices in the 2015 calendar year, less any costs incurred in getting the goods to the free-on-board (FOB) point of export.

1.3.8 Proposed measures (Chapter 10)

The Commissioner proposes to recommend to the Parliamentary Secretary that anti-dumping measures (in the form of a dumping duty notice) for all exports of the goods from South Africa be imposed using the combination of fixed and variable duty method (combination method) and that, due to the NIP being below the normal values calculated for all exporters at chapter 5, the lesser duty rule be applied in relation to the fixed component of interim dumping duty (IDD).

1.3.9 Preliminary affirmative determination (Chapter 11)

In publishing this SEF, the Commissioner is also making a PAD because he is satisfied that sufficient grounds exist for the publication of a dumping duty notice.

The Commissioner is satisfied that securities are necessary to prevent material injury to the Australian industry occurring while the investigation continues. Accordingly, the Commissioner considers that the Commonwealth should require and take securities under section 42 in respect of IDD that may become payable in relation to wire rope exported to Australia from South Africa.

Securities will apply to all imports of wire rope from South Africa entered for home consumption on or after 16 August 2017. The securities applicable to the goods exported to Australia from South Africa are tabulated below:

| Country | Exporter / Manufacturer | Duty Method | Fixed component of securities (<i>ad valorem</i>) | Variable component of securities |
|----------------|--------------------------------|--------------------|--|--|
| South Africa | All exporters | Combination method | 28.9% | Applicable where the actual export price is below the ascertained export price |

Table 2: Securities applicable to the goods exported to Australia from South Africa

2 BACKGROUND AND PURPOSE

2.1 Background

On 26 April 2017, the Commissioner initiated an investigation into the alleged dumping of wire rope exported to Australia from South Africa. The investigation followed an application by BBRG Australia dated 10 March 2017.

In its application, BBRG Australia alleged that the Australian industry has suffered material injury caused by wire rope exported to Australia from South Africa at dumped prices.

Subsequent to receiving further information and data from BBRG Australia on 24 March 2017 and 30 March 2017, and having considered the application, the Commissioner decided not to reject the application. Further background to the initiation of this investigation is contained in *Anti-Dumping Commission Consideration Report No. 401* (CON 401). Public notification of the initiation of the investigation was made on 26 April 2017 in ADN No. 2017/58.

A public record is available for this investigation on the Commission's website at www.adcommission.gov.au. A non-confidential version of the application, CON 401, ADN No. 2017/58 and all subsequent submissions by interested parties are available on the public record.

2.2 Investigation process and timeframes

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as allowed, place on the public record a SEF on which the Commissioner proposes to base his recommendations to the Parliamentary Secretary in relation to the application.⁹

In formulating the SEF, the Commissioner must have regard to the application, and any submissions concerning publication of the notice of initiation that are received by the Commission within 37 days of the date of initiation of the investigation.¹⁰ The Commissioner may also have regard to any other matters considered relevant.¹¹

In respect of this investigation:

- the investigation period¹² for the purposes of assessing dumping is 1 January 2016 to 31 December 2016; and

⁹ Subsection 269TDAA(1).

¹⁰ Subsection 269TDAA(2)(a).

¹¹ Subsection 269TDAA(2)(b).

¹² Subsection 269T(1).

- the injury analysis period¹³ for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods from South Africa is from 1 January 2013.

2.3 Responding to this SEF

This SEF sets out the facts on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary, unless the investigation is terminated earlier. It represents an important stage of the investigation by informing interested parties of the facts established to date and allows them to make submissions in response. It is important to note that this SEF may not represent the final views of the Commissioner.

Following its publication on the public record, interested parties have 20 days to respond to the SEF. Responses to this SEF should be provided to the Commissioner no later than 4 September 2017.¹⁴

The Commissioner will consider submissions received in response to the SEF in either making his final report and recommendations to the Parliamentary Secretary, or in relation to terminating any aspect of the investigation if he decides to do so. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after 4 September 2017, if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the final report to the Parliamentary Secretary due on 28 September 2017.¹⁵

The final report, if the investigation is not terminated earlier, will set out the Commissioner's findings of fact in relation to the investigation and recommend whether a dumping duty notice should be published, and the extent of any IDD that are, or should be, payable. Submissions to this SEF should preferably be emailed to investigations3@adcommission.gov.au. Alternatively, submissions may be sent to fax number +61 3 8539 2499, or posted to:

Director, Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at www.adcommission.gov.au.

¹³ The purpose of the injury analysis period is to allow the Commission to identify and examine trends in the Australian market which in turn assists the Commission in its examination of whether material injury has occurred or is threatened.

¹⁴ The legislated due date is 3 September 2017, however as this day falls on a Sunday, the effective due date is the following business day, being 4 September 2017.

¹⁵ Subsection 269TEA(4).

PUBLIC RECORD

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's verification visit reports and other publicly available documents.

Documents on the public record should be read in conjunction with this SEF.

2.4 Submissions received from interested parties

To date, the Commission has received five submissions from interested parties during the course of the investigation. Each submission has been considered by the Commissioner in reaching the preliminary findings and conclusions contained within this SEF.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner has found that there is an Australian industry consisting of BBRG Australia¹⁶ that produces like goods and carries at least one substantial process in the manufacture of those like goods in Australia.

3.2 Legislative framework

In his report to the Parliamentary Secretary under subsection 269TEA(1), the Commissioner must recommend whether the Parliamentary Secretary ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Parliamentary Secretary must be satisfied of is that there is an Australian industry producing like goods to the goods the subject of the application.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

“...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”.

An Australian industry can apply for relief from injury caused by dumped imports even if the goods it produces are not identical to those imported. The Australian industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

The Commissioner must be satisfied that the like goods are produced in Australia. Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Subsection 269T(3) provides that in order for the goods to be considered as partly manufactured in Australia,

¹⁶ The Commission has identified that BBRG Australia is the sole Australian producer of ‘like goods’, and is therefore referred to in this report on occasion as the Australian industry.

at least one substantial process in the manufacture of the goods must be carried out in Australia.

3.3 The goods

The goods the subject of this investigation are stranded wire rope, alloy or non-alloy steel, whether or not coated or impregnated, having both of the following:

- Not greater than 8 strands;
- Diameter not less than 58mm and not greater than 200mm,

with or without attachments.

Further information regarding the goods is outlined below:

- (i) *Stranded steel wire rope is rope and strand made of high carbon wire (whether or not containing alloys);*
- (ii) *The strand or rope can also be sheathed or impregnated and sheathed respectively in plastic or composites;*
- (iii) *The wires can be layered-up in various configurations in order to give the strand or rope the desired physical properties;*
- (iv) *Variances can include:*
 - *strand diameter;*
 - *number of wires;*
 - *wire finish (e.g. typically black but may be galvanised);*
 - *wire tensile grade;*
 - *type of lubricant;*
 - *strand or rope length; and*
 - *whether or not an attachment is included (but not limited to ferrules and/or beackets).*
- (v) *Cores may be made of:*
 - *natural or synthetic fibre; or*
 - *Independent Wire Rope Cores ("IWRC"), which may or may not be sheathed or impregnated in plastic.*

Typical uses include applications such as dragline hoist, drag and dump ropes, and shovel hoist, crowd and retract ropes.

Goods excluded from this application are:

- *stranded wire rope that is stainless steel as defined under Note (e) "Stainless steel" to the Tariff;*
- *stranded wire rope with more than 8 strands, regardless of diameter; and*

- *stranded wire rope less than 58mm or greater than 200mm in diameter, regardless of the number of strands.*

3.4 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff classification in Schedule 3 to the *Customs Tariff Act 1995*:

| Tariff classification | | | |
|-----------------------|------------------|----------------|---|
| Tariff code | Statistical code | Unit | Description |
| 7312.10.00 | 91 and 92 | Kilograms (kg) | Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated: 91: ...Of a diameter exceeding 50 mm but not exceeding 100 mm 92: ...Of a diameter exceeding 100 mm |

Table 3: Tariff classification summary

3.5 The Australian industry

3.5.1 BBRG Australia

BBRG Australia specialises in the design, manufacture and sale of wire rope, steel cables and strands for various industries.

BBRG Australia produces wire rope at two manufacturing sites in Newcastle, NSW. Its main plant covers 39,000 m² and most of the strand and wire rope (like goods) manufacturing takes place in this facility. There is also a smaller facility that covers 2,208 m² which is dedicated to producing like goods under the brand of RAPTEK™.

BBRG Australia's production process is automated, involves utilisation of specialised machinery and is capital intensive.

3.5.2 BBRG Australia's products

With respect to the end use application, wire rope can be used as:

- Drag Ropes;
- Hoist Ropes;
- Dump Ropes; and
- Shovel Ropes.¹⁷

As per the goods description, wire rope consists of either six strands or eight strands. Wire rope can also be classified according to:

- whether it has a steel core or fibre core;

¹⁷ Further details of these end use applications can be found in the application, at no. 1 on the public record.

- whether it is plasticated or non-plasticated;
- whether it is compacted or un-compacted;
- the design of strands and the geometry of the winding of the strands around the core; and
- whether or not the wire rope has rovings between the strands.

Wire rope can also be sold with or without end attachments such as links, ferrules or beackets.

At an Australian industry verification visit to BBRG Australia, the Commission observed that BBRG Australia has the capability to manufacture all of the goods that are subject to this investigation.

3.6 Production processes

The manufacture of wire rope by BBRG Australia involves two major transformation stages. These include:

- conversion of steel wire to strand; and
- conversion of strand to rope.

The Commission examined BBRG Australia's manufacturing facilities and observed the processes undertaken by it in manufacturing like goods.

Figure 1 below depicts BBRG Australia's production process of wire rope:

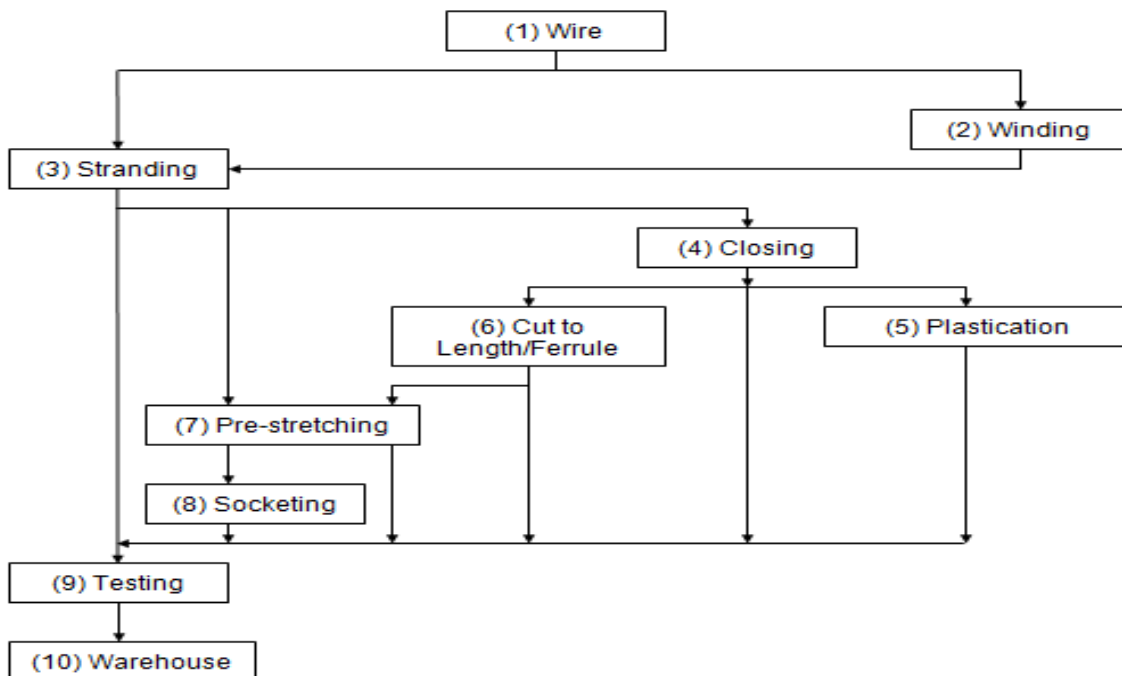


Figure 1: BBRG Australia's wire rope production process

The Commission observed that BBRG Australia purchases the steel wire used in the production process and undertakes a substantial process in the manufacture of like goods. In coming to this conclusion, the Commission has considered:

- BBRG Australia's role in the design of the wire rope; and
- the processes involved in the conversion of wire to strand and conversion of strand to rope as well as other additional processes such as compacting and plastication undertaken by BBRG Australia.

3.7 The Commissioner's assessment

The Commissioner considers that the Australian industry produces goods that are 'like' to the goods the subject to the application for the following reasons:

- the primary physical characteristics of the goods and locally produced like goods are similar;
- the goods and locally produced like goods are commercially alike as they are sold to common users, and directly compete in the same market;
- the goods and locally produced like goods are functionally alike as they have a similar range of end-uses; and
- having regard to the findings of verification visits to the Australian industry and an exporter of the goods from South Africa, the goods and locally produced like goods are manufactured in a similar manner.

Furthermore, by conducting an Australian industry verification visit, the Commission found that the processes undertaken by BBRG Australia comprise substantial processes in the production of like goods.

Based on the Commission's observations, the Commissioner considers that the goods can be taken to have been wholly manufactured in Australia and that they are, therefore, produced in Australia.

The Commissioner is satisfied that:

- the wire rope produced by BBRG Australia are like to the imported goods;¹⁸
- at least one substantial process of manufacture of like goods is carried out in Australia;¹⁹
- the like goods were wholly manufactured in Australia by BBRG Australia;²⁰
- there is an Australian industry, consisting solely of BBRG Australia, in respect of like goods in Australia, in accordance with subsection 269TC(1)(b).²¹

¹⁸ In terms of 'like goods' as defined in subsubsection 269T(1).

¹⁹ For the purposes of subsection 269T(3).

²⁰ For the purposes of subsection 269T(2).

²¹ As defined in subsection 269T(4).

4 AUSTRALIAN MARKET

4.1 Findings

The Commissioner finds that the Australian market for wire rope is supplied by the Australian industry and imports predominantly from South Africa and to a lesser extent from the Republic of India (India), the United States of America (USA) and the United Kingdom (UK).

4.2 Market distribution

The Australian wire rope market is supplied by BBRG Australia and a small number of importers that sell to end-user mining companies.

Wire rope (the goods) subject to this investigation are typically used in open cut mining.

4.3 BBRG Australia

BBRG Australia competes with importers of wire rope in selling the goods to open cut mining companies that operates electric draglines and shovels in NSW and QLD.

The Commission also found that there was a small market in WA which accounts for approximately 2.3 per cent of BBRG Australia's sales. The Commission understands that wire rope imported from South Africa is not sold in WA.

The Commission has found that the wire rope sold by BBRG Australia is its own product range. BBRG Australia sells an insignificant volume of imported products that are not within the goods under consideration for this investigation.

The Commissioner has had regard to the information verified at the visit to BBRG Australia, as well as the matters discussed in the visit report, in preparing this SEF. The visit report for BBRG Australia includes further information on its market practices.²²

4.4 Importers

The investigation to date has found that the vast majority of imports of the goods to Australia are from South Africa. A small volume of goods were imported from India, the USA and the UK.

Following initiation of this investigation, the Commission identified Haggie Reid Pty Ltd (Haggie Reid) as the only importer of wire rope from South Africa and sent Haggie Reid an importer questionnaire to complete. Haggie Reid participated in the investigation and provided a response to the importer questionnaire. The data submitted by Haggie Reid was subsequently verified by the Commission and was found to be relevant, accurate and complete.

²² No. 8 on the public record.

4.5 Demand variability

The Commission has found that demand for wire rope is mainly driven by the demand for coal and other mining commodities. Wire rope is a consumable for electric draglines and shovels in open cut mines and demand in the open cut mining market segment is driven by introduction of new machinery in new mines or rationalising and upgrading of existing equipment in existing mines.

4.6 Market size

As explained in CON 401, eight statistical codes, including statistical codes 91 and 92 for tariff subheading 7312.10.00 which have been identified as most relevant to the goods as described at section 3.3 of this report, were added effective from 1 January 2015. Therefore, the Commission is only able to filter the data from the Australian Border Force (ABF) import database with a greater degree of certainty for the two most recently completed calendar years, 2015 and 2016.

The Commission's analysis and the data collected from BBRG Australia and Haggie Reid shows that, for the investigation period, the Australian wire rope market size was between 10,000 and 12,000 metric tonnes in the investigation period. Figure 2 below depicts the Commission's estimation for the wire rope market size in 2015 and 2016.

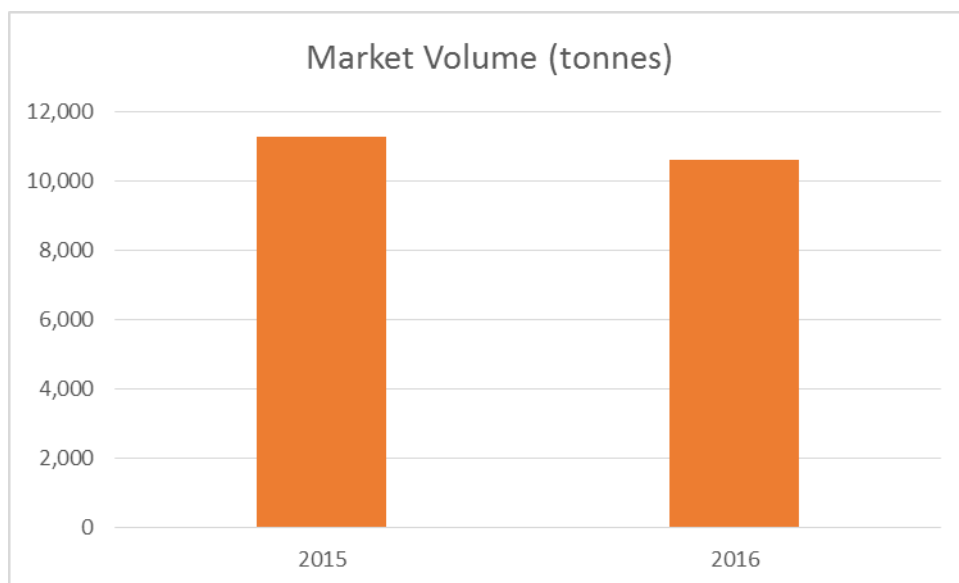


Figure 2: Australian wire rope market size

5 DUMPING INVESTIGATION

5.1 Findings

The Commissioner has found that wire rope exported to Australia from South Africa by the only exporter to Australia, Scaw South Africa (Proprietary) Limited (Scaw), was at dumped prices during the investigation period. The Commissioner has also found that the volume of dumped goods from South Africa was not negligible during the investigation period.

5.2 Introduction and legislative framework

In order to determine whether the goods have been dumped, the export price and normal value of the goods must be compared.²³ Dumping occurs when goods from one country are exported to another country at an export price less than the normal value of such goods. The export price and normal value are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value determinations for this investigation are set out below.

5.3 Exporter

At the commencement of the investigation, the Commission identified Scaw as the only exporter of the goods to Australia from South Africa.

The Commission contacted Scaw and invited it to complete an exporter questionnaire, which requested information necessary to determine whether goods were exported at dumped prices.

Scaw cooperated with the investigation and provided the Commission with a substantially complete questionnaire response.

The Commission conducted a verification visit to Scaw in South Africa and verified the data submitted by Scaw in its exporter questionnaire response.

Following the verification visit, the Commission calculated a dumping margin in relation to Scaw's exports based on the verified information. The Commission intends to publish a verification visit report in due course.

5.4 Model matching

In comparing the goods exported to Australia to like goods Scaw sold in its domestic market over the investigation period, the Commission considers that it is appropriate to have regard to the five characteristics of the goods:

- end use (i.e. dragline or shovel);
- whether the rope is plasticated;
- whether the rope is compacted;

²³ Subsection 269TACB(1).

- diameter ranges between:
 - 58mm to 74mm;
 - 75mm to 99mm;
 - 100mm to 200mm; and
- number of strands (i.e. six or eight).

5.5 Dumping assessment - Scaw

5.5.1 Export price

In determining the export price of the goods exported to Australia by Scaw, the Commission had regard to the findings of an on-site verification visits to Scaw and its related importer, Haggie Reid.²⁴

In respect of the sales from Scaw to Haggie Reid, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter;
- the purchase of the goods by the importer were not arms length transactions because those goods were subsequently sold at substantial losses by Haggie Reid in Australia and that those losses are not recoverable within a reasonable period of time;²⁵ and
- some of the goods sold by the importer were not sold in the condition in which they were imported, to a person who is not an associate of the importer. This was because Haggie Reid further worked some of the goods (e.g. added end attachments) prior to selling those goods to customers in Australia.

In making a finding in relation to the nature of arms length transactions between Scaw and Haggie Reid and in assessing whether the goods were sold by Haggie Reid to customers in Australia at a loss for the purposes of subsection 269TAA(2), the Commission took the following into consideration in accordance with subsection 269TAA(3):

- the amount of the price paid or to be paid for the goods by the importer – subsection 269TAA(3)(a);
- such amounts as determined to be the costs necessarily incurred in the importation and sale of the goods – subsection 269TAA(3)(b);
- the likelihood that the amounts referred to in subsections 269TAA(3)(a) and (b) will be able to be recovered in a reasonable time - subsection 269TAA(3)(c);²⁶ and
- other matters considered relevant - subsection 269TAA(3)(d). Such matters included the nature of certain payment allowances made to Haggie Reid by

²⁴ The Commission intends to publish a verification visit for Haggie Reid in due course.

²⁵ Subsections 269TAA(1), (2) and (3).

²⁶ After having regard to the price paid by the importer, other related importation and selling costs, and the history of losses made by Haggie Reid in prior years, the Commission found that it is unlikely that losses incurred by Haggie Reid in the investigation period will be able to be recovered within a reasonable period of time, which in keeping with the Commission's established policies is generally a period of 12 months.

Scaw and a lack of evidence to support the claim that price negotiations took place between Haggie Reid and Scaw.

The facts support a finding that Haggie Reid made sales at a loss under subsection 269TAA(2). The Commission is satisfied that it is appropriate in the circumstances to:

- consider that the losses incurred by Haggie Reid are not explained by commercial reasons unrelated to dumping and;
- consequently that it is appropriate for the Parliamentary Secretary to treat Haggie Reid's losses 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 for the purposes of subsection 269TAA(1)(c).

Given these findings, and considering that certain goods were not sold by Haggie Reid in the condition in which they were imported, the Commission considers the export price for all goods exported by Scaw cannot be determined under subsections 269TAB(1)(a) or 269TAB(1)(b).

Accordingly, the Commission has determined the export price for all exports to Australia by Scaw during the investigation period under subsection 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the Commission calculated the export price using a 'deductive export price methodology', being the price at which goods were sold by Haggie Reid in the investigation period to customers in Australia less deductions of the kind prescribed by subsection 269TAB(2).²⁷ Where certain goods were not sold by Haggie Reid to customers in Australia in the condition in which they were imported, the Commission ensured that the export price did not include amounts relating to the further working those goods (e.g. the costs of end attachments were removed).

The Commission's export price calculations are at **Confidential Appendix 1**.

5.5.2 Normal value

The Commission is satisfied that there are sufficient volumes of equivalent domestic sales of wire rope (i.e. like goods) for five models exported to Australia that were sold in arms length transactions²⁸, and at prices that were within the ordinary course of trade (OCOT)²⁹ in South Africa. The Commission is therefore satisfied that the prices paid by Scaw's customers in respect of the domestic sales of those five models are suitable for assessing normal value under subsection 269TAC(1).

For models where there were insufficient volumes of domestic sales of wire rope for equivalent models exported to Australian sold in arms length transactions, and at prices

²⁷ It is noted that subsection 269TAB(2)(c) prescribes a deduction for profit, if any, on the sale by the importer. The Commission notes that, in calculating a deductive export price for Scaw, an amount for profit has not been deducted. The Commission considered the historical profitability of Haggie Reid in conjunction with the fact that no other importers of the goods from South Africa existed during the investigation period and determined that no amount of profit should be deducted from the deductive export price, in this instance.

²⁸ Section 269TAA.

²⁹ Section 269TAAD.

that were within the OCOT in South Africa, the Commission also established the normal value under subsection 269TAC(1) using similar (surrogate) models (which are also like goods) with specification adjustments as outlined below at section 5.5.3 to ensure fair comparison of normal values with export prices.

Scaw's verified domestic cost to make and sell (CTMS) is available at **Confidential Appendix 2**.

Scaw's verified domestic sales listing and OCOT calculations are available at **Confidential Appendix 3**.

5.5.3 Adjustments to Scaw's normal value

In using domestic sales as a basis for normal value in accordance with subsection 269TAC(1), the Commission considers that certain adjustments as outlined below, are necessary in accordance with subsection 269TAC(8) to ensure fair comparison of normal values with export prices.

Differences in specification

As outlined above, the Commission found insufficient volumes of equivalent domestic sales of wire rope for certain models and calculated the normal value for those certain models based using a surrogate model. As the export price of the goods are not in respect of identical goods (as per subsection 269TAC(8)(b)), the Commission has applied specification adjustments to the normal values, to ensure any differences to between the model exported to Australian and the surrogate model do not affect comparison with export prices.

These adjustments make allowances for number of strands and compacting, as appropriate, based on verified differences between FOB export prices for different models.

Credit terms

The Commission considers that a downward adjustment to the normal value for domestic credit is necessary to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the number of credit days and the percentage of interest earned on working capital during the investigation period.

The Commission also considers that an upward adjustment for credit extended by Haggie Reid to its customers in Australia (which is included in the deductive export price established above at subsection 5.5.1) is necessary to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the average number of credit days and the bank lending rate.³⁰

³⁰ In Australia, the bank lending rate is the average rate of interest charged on short term loans by commercial banks to companies. Further information is provided [here](#).

Freight and handling

The Commission considers that a downward adjustment to the normal value for domestic freight and handling expenses is necessary to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the inland freight and handling costs listed for each domestic transaction.

The Commission also considers that an upward adjustment for export inland freight and handling expenses is required, to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the weighted average cost (per tonne) for those expenses over the investigation period.

Technical credit costs

The Commission considers that a downward adjustment to the normal value for domestic technical credit costs relating to damaged goods is necessary to ensure a fair comparison to the FOB export price. Scaw has allocated this cost to domestic sales using its percentage of invoice value. The Commission has applied this adjustment based on the technical credit costs listed for each domestic transaction.

The Commission also considers that an upward adjustment for export technical credit costs is required, to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the weighted average (per tonne) cost over the investigation period.

Domestic technical support

Scaw claimed a downward adjustment to the normal value for engineering support services that it provides to end-users in the domestic market, but not to Haggie Reid in Australia. This claim was based on the salary cost (per tonne) of those sales engineers known to provide technical support to domestic customers.

Given it is known that engineering support services are provided to end-users in Australia by Haggie Reid, not Scaw, the Commission considers that this adjustment is warranted in the circumstances.

Domestic cutting costs

Scaw has claimed a downward adjustment to the normal value for domestic cutting costs, on the basis that wire rope sold domestically is (on average) shorter in length than goods sold to Australia, meaning that the domestic sales attract a higher cutting cost per metre. The Commission is satisfied that the evidence provided by Scaw supports its claim that lengths sold domestically are (on average) shorter than those sold to Haggie Reid. This is also consistent with the Commission's knowledge of particular value-add activities undertaken by Haggie Reid in Australia. As a result, the Commission considers there is sufficient evidence to warrant an adjustment for the differences in domestic cutting costs.

Reel returns

The Commission considers that a downward adjustment to the normal value for the costs associated with the return of empty reels from domestic mine sites is necessary to ensure

a fair comparison to the FOB export price. These costs comprise credit that is offered to domestic customers after used reels are returned to Scaw. The Commission has applied this adjustment based on the weighted average cost (per tonne) of the total credit expense over the investigation period.

The Commission also considers that an upward adjustment for costs associated with the return of empty reels from Australia is required, to ensure a fair comparison to the FOB export price. These costs include either reimbursement or credit offered to Haggie Reid for returned reels, as well as the cost of shipping those reels back to South Africa, which is incurred by Scaw. The Commission has applied this adjustment based on the weighted average cost (per tonne) over the investigation period.

Export packaging

The Commission considers that an upward adjustment is required for packaging expenses solely relating to Australian exports (such as straps and plastic wrapping), to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the verified weighted average cost (per tonne) for those expenses over the investigation period.

5.5.4 Adjustments not made to Scaw's normal value

Domestic bad-debt write-off

Scaw claimed a downward adjustment to the normal value to account for a bad debt write-off relating to a particular customer. Scaw allocated this cost to domestic sales using its percentage of invoice value.

The Commission's *Dumping and Subsidy Manual* (dated April 2017)³¹ (the Manual) states that:

'[b]ad debt, like general administration expenses, generally relates to the general cost of doing business and does not, for that reason, normally represent grounds for adjustment. An exception arises where evidence demonstrates that credit risks between the two markets for a particular product were in fact different and that these differences affected price comparability'.³²

Based on the information available, the Commission does not consider that Scaw has adequately demonstrated that credit risks between the Australian and South African markets for wire rope were different during the investigation period, and that these differences affected price comparability.

³¹ Available at www.adcommission.gov.au

³² The Manual, page 70 refers.

Export foreign exchange gain

Scaw has claimed a downward adjustment to the normal value for an exchange rate gain made during the investigation period. Scaw has allocated this gain to Australian sales using its percentage of invoice value.

The Manual states that consideration as to adjustments to the normal value is warranted should be based on ‘... *differences shown to affect price comparability between domestic sales and export sales to Australia*’.³³ The Commission confirmed with Scaw that exchange rate fluctuations do not impact the prices set with Haggie Reid in Australia.

Given the Commission cannot be satisfied that prices to Haggie Reid are impacted by foreign exchange gains/losses, it cannot be satisfied that price comparability has been affected.

Raw material steel incentives

Scaw claimed a downward adjustment to the normal value for certain steel incentive payments that it received on raw materials used in exported goods. Scaw allocated the total (relevant) rebate to Australian sales using its percentage of invoice value.

The Commission considers this arrangement to reflect ‘two-tier’ pricing, whereby a supplier in South Africa is selling raw materials to a manufacturer that produces for both the domestic and export markets. As a result of the rebate, the raw material destined for domestic production of the goods is sold at a higher price than that destined for export production.

According to the Manual an ‘[a]djustment is not made for differences in the two-tier pricing of ... raw materials’. More specifically:

*[t]he domestic price may be adjusted downward to ensure proper comparison with the export price where for example there are local taxes that are part of that price and are not levied on the export sale. Where there are advantages, such as direct or indirect subsidies, which the exporter may have but are not present in the domestic sales prices, there is no requirement for the domestic sale price to be adjusted downwards.*³⁴

In this case, the rebates are paid to Scaw sometime following its purchase of the materials when evidence has been provided against the criteria. As such, the Commission does not consider that a downward adjustment for steel incentive payments is appropriate in these circumstances.

5.5.5 Adjustments – summary

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8), and considers these

³³ The Manual, page 76 refers.

³⁴ The Manual, page 75 refers.

adjustments are necessary to ensure a fair comparison of normal values and export prices:

| Adjustment Type | Deduction/addition |
|---|--|
| Domestic credit | Deduct the cost of domestic credit. |
| Domestic freight | Deduct the cost of domestic freight. |
| Domestic technical credit | Deduct the cost of domestic technical credit. |
| Domestic technical support | Deduct the cost of domestic technical support. |
| Domestic cutting costs | Deduct the cost of domestic cutting costs. |
| Domestic reel returns | Deduct the cost of domestic reel returns. |
| Export inland freight and handling | Add the cost of export inland freight and handling. |
| Export technical credit | Add the cost of export technical credit. |
| Export packaging | Add the cost of export packaging. |
| Export reel returns | Add the cost of export reel returns. |
| Export credit | Add the cost of export credit. |

Table 4: Adjustments to normal value

The Commission's normal value calculations are at **Confidential Appendix 4**.

5.5.6 Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding quarterly weighted average normal value for the investigation period, in accordance with subsection 269TACB(2)(a).

The dumping margin in respect of wire rope exported to Australia by Scaw for the investigation period is **39.7 per cent**.

The dumping margin calculation is at **Confidential Appendix 5**.

The Commission has established that Scaw was the only exporter of the goods to Australia from South Africa during the investigation period. It is recommended that Scaw's dumping margin apply to all exporters from South Africa.

5.6 Volume of dumped imports

Pursuant to subsection 269TDA(3), the Commissioner must terminate an investigation, in so far as it relates to a country, if satisfied that the total volume of goods that are dumped is a negligible volume. Subsection 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period if subsection 269TDA(5) does not apply.

PUBLIC RECORD

Pursuant to subsection 269TDA(6), the volume of goods at negligible dumping margins are not prevented from being taken into account for the purposes of subsection 269TDA(3).

Using the ABF import database and having regard to the information collected and verified from the importer and exporter, the Commission determined the volume of imports in the Australian market. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods from South Africa was greater than three per cent of the total import volume and is therefore not negligible.

Accordingly, the Commissioner considers that there are no grounds to terminate this investigation under subsection 269TDA(3).

6 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

6.1 Findings

Based on an analysis of information and evidence obtained and verified during this investigation, the Commissioner has found that, during the investigation period, the Australian industry experienced:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced sales revenue;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment; and
- reduced productivity.

The Commissioner considers that the injury experienced by the Australian industry was material.

6.2 Introduction and approach to injury analysis

6.2.1 Legislative background

Under section 269TG, one of the matters the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that the Australian industry producing like goods has experienced or is experiencing material injury caused by dumping of the goods.

The matters that may be considered in determining whether an Australian industry has experienced material injury are set out in section 269TAE.

The Ministerial Direction on Material Injury

In assessing material injury, the Commission also has regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).³⁵ The Material Injury Direction makes it clear that material injury from dumping can occur notwithstanding that there is also injury from other sources; or that the Australian industry remains profitable. In such circumstances the relevant comparison is between the condition of the Australian industry with dumping and the condition of the Australian industry without dumping.

³⁵ Available at www.adcommission.gov.au

6.2.2 Application

BBRG Australia alleges that the Australian industry has experienced material injury caused by exports of wire rope to Australia from South Africa at dumped prices through:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced sales revenue;
- reduced capital investment;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment; and
- reduced productivity.

6.2.3 Approach to injury analysis

BBRG Australia claims that injury from dumped exports from South Africa first commenced in 2015, and that the impact of the dumping through loss of sales volume and reduced selling prices had a material impact on its financial position in 2016 (the investigation period).³⁶

The Commission has focused its injury analysis in this chapter predominantly on the investigation period and has used data from 1 January 2013 (referred to as the injury analysis period) for the purpose of determining whether material injury has been caused to the Australian industry.³⁷

This chapter analyses the economic condition of the Australian industry as a whole and provides an assessment as to whether the Australian industry has experienced material injury. All figures below compare years ending 31 December, unless otherwise specified.

Where appropriate, the Commission has chosen to conduct a more detailed analysis (by focussing on certain types of wire rope or certain periods such as the investigation period) to complement its findings regarding injury to the Australian industry as a whole.

The Commission's injury analysis for the purposes of this report is based primarily on:

- BBRG Australia's verified costs, sales and other financial data;
- Verified sales data of Scaw and Haggie Reid; and
- ABF import data.

³⁶ BBRG Australia application at page 41, no. 1 on the public record.

³⁷ As permitted by subsection 269T(2AD), noting that subsection 269T(2AE) does not allow any determination that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.

6.3 Volume injury

In its application, BBRG Australia claimed that it lost sales volume and market share due to the growth in the volume of imports of wire rope from South Africa.

6.3.1 Sales volume

Figure 3 below illustrates BBRG Australia's sales volumes for wire rope on the Australian market between 2013 and 2016.

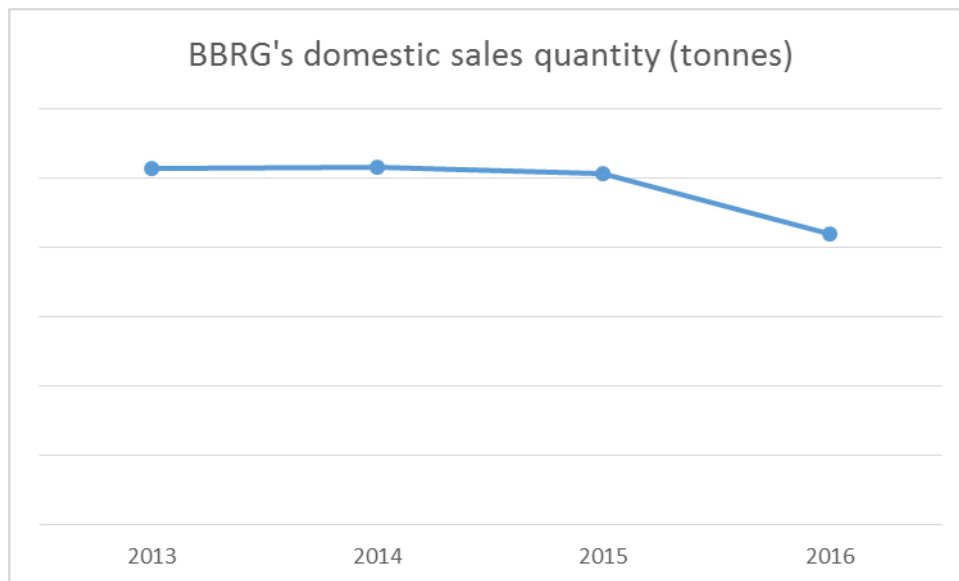


Figure 3: BBRG Australia's sales volume of wire rope on the Australian market – injury analysis period

Figure 3 shows that BBRG Australia's sales volumes of wire rope were stable between 2013 and 2015, but declined significantly in 2016. Figure 4 below shows that BBRG Australia's sales volumes declined within the investigation period.

BBRG Australia's decline in sales volume came despite an improvement in market conditions for coal miners which are BBRG Australia's customers for wire rope (see below assessment of coal prices in 2016 at Figure 12).

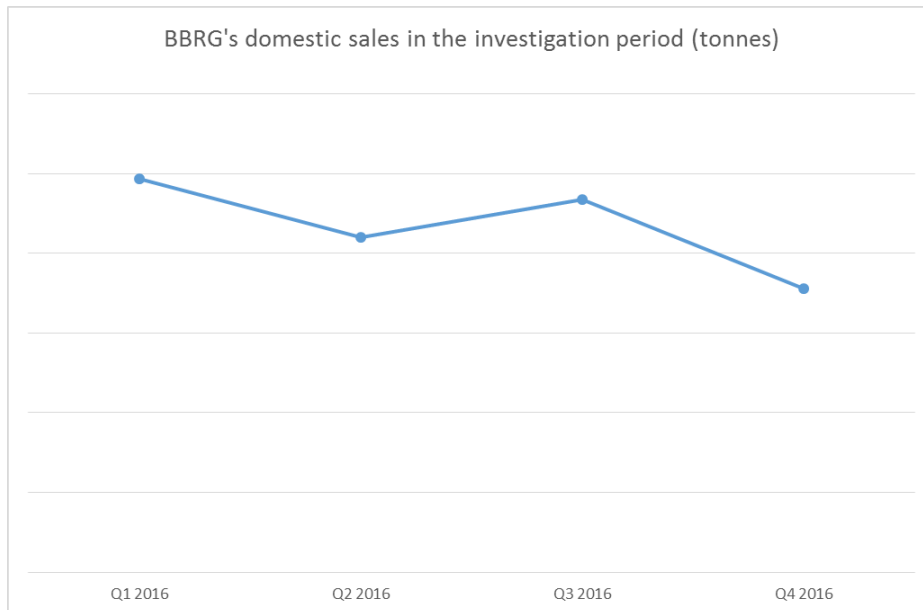


Figure 4: BBRG Australia's sales volumes of wire rope on the Australian market - investigation period

6.3.2 Market share

In their joint submission received on 14 June 2017, Haggie Reid and Scaw claimed that BBRG Australia's application fails to mention the incursion of wire rope from China and from Ushar Martin, from India.

Figure 5 below depicts the market shares for all suppliers of wire rope during the injury analysis period.

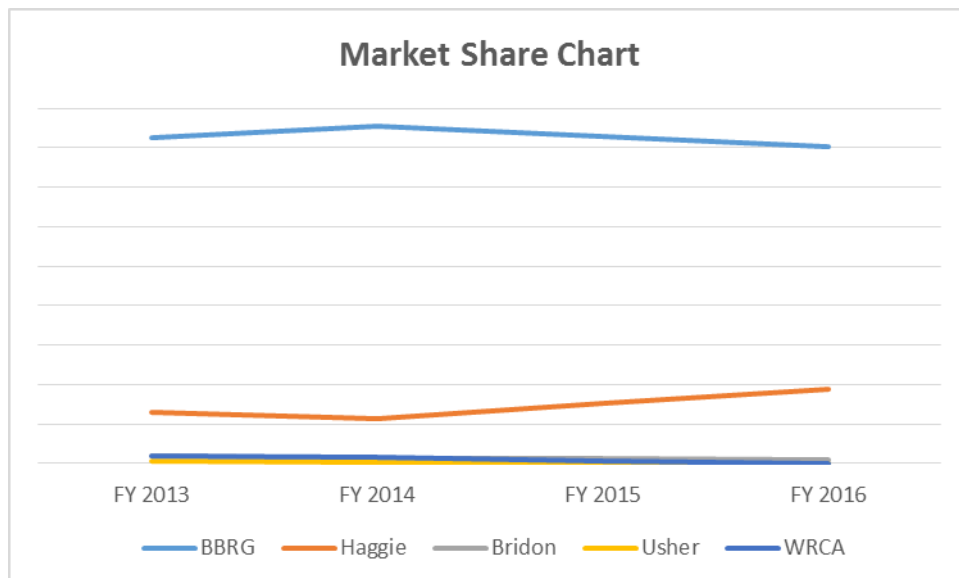


Figure 5: Market shares of all suppliers of wire rope in Australia – injury analysis period

Figure 5 shows that, from 2014, the Australian industry and other suppliers of wire rope such as Bridon from the UK, Usher Martin from India and WRCA from the USA lost market share, noting that imports from China did not feature heavily during any year of

the injury analysis period. The Commission's analysis shows that BBRG Australia lost approximately 6 per cent of the Australian market share from 2014. Conversely, Haggie Reid improved its market share by approximately 7 per cent from 2014, indicating that BBRG Australia's lost market share went to Haggie Reid.

The Commission's analysis is at **Confidential Appendix 6 – Market Share**.

6.3.3 Conclusion – volume injury

Based on the available information, the Commission considers that there is evidence to support BBRG Australia's claim that the Australian industry has experienced injury in the form of lost sales volume and market share.

Further analysis of the Commission's assessment of volume injury is contained in **Confidential Appendix 7 – Injury effects**.

6.4 Price injury

6.4.1 Background

BBRG Australia claims that it experienced injury in the form of price depression and price suppression.

Price depression occurs when a company, for some reason, lowers its prices.

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented.

In determining whether price suppression has occurred, the Commission has compared the Australian industry's sales prices with its costs to assess the relative movements over time.

6.4.2 Price depression and price suppression

BBRG Australia claims that lost sales volumes due to dumped goods have led to production volumes declining, which in turn led to higher unit fixed and selling, general and administrative costs. BBRG Australia claims that the increase in CTMS, along with downwards pressure on its selling prices as a result of the allegedly dumped goods, have led to price depression and price suppression. BBRG Australia contends that it has experienced a reduction in unit sales revenue in an attempt to maintain sales volumes whilst competing and responding to dumped imports from South Africa.

Figure 6 below shows BBRG Australia's unit sales revenue and unit CTMS for all sales of wire rope on the Australian market between 2013 and 2016. Figure 6 demonstrates that price suppression was evident because unit CTMS increased over the course of the injury analysis period without a corresponding increase in unit sales revenue. In particular, the gap between unit sales revenue and unit CTMS narrowed in the investigation period.

The Commission's assessment of price suppression is contained in **Confidential Appendix 8 – Price effects**.

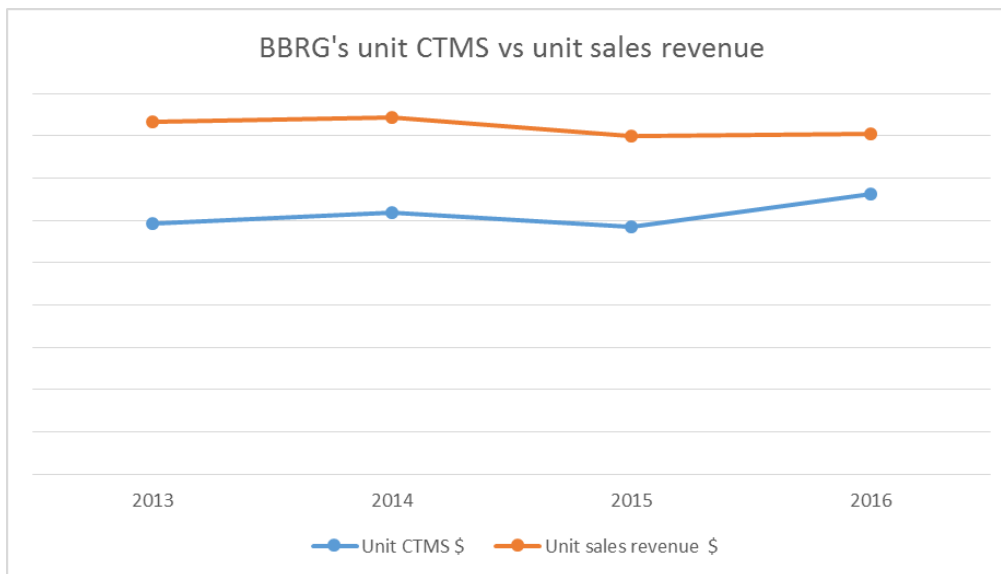


Figure 6: Unit CTMS and unit sales revenue for BBRG Australia's wire rope - injury analysis period

6.4.3 Conclusion – price injury

Based on the available information, the Commission considers that BBRG Australia has experienced injury in the form of price depression and price suppression.

6.5 Profit injury

6.5.1 Reduced profit and profitability

BBRG Australia claims that as a consequence of volume and price effects from dumped imports from South Africa, it experienced injury through loss of profits and reduced profitability.

The Commission found that BBRG Australia's total profits and unit profitability fell generally during the injury analysis period. Figure 7 below shows BBRG Australia's total profit and unit profitability for all sales of like goods. Figure 7 shows a significant decline in total profits and unit profitability in the investigation period compared to previous years.

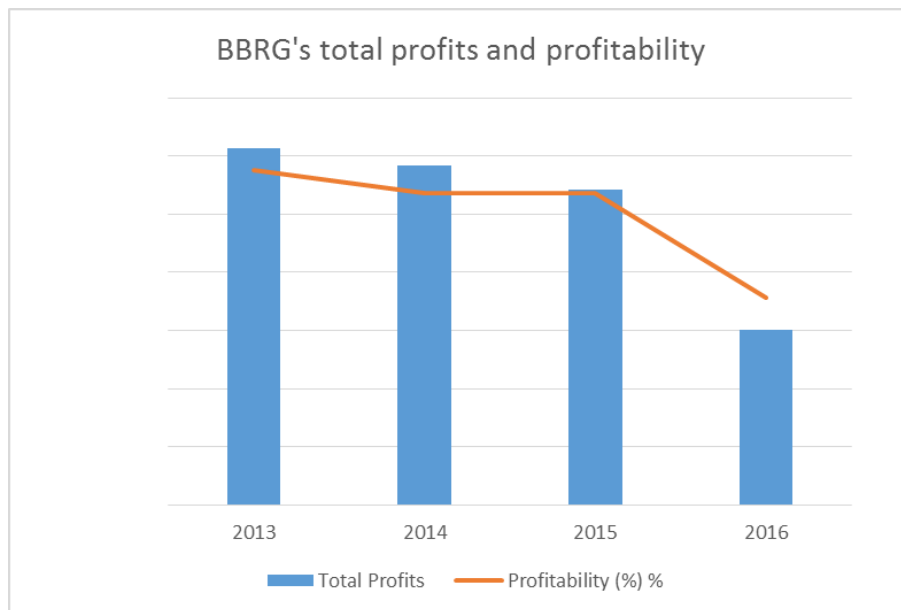


Figure 7: BBRG Australia's total profit and unit profitability - injury analysis period

6.5.2 Conclusion – profit and profitability injury

Despite general trading conditions improving in the coal industry (evidenced by increasing coal prices in 2016), and despite the Commission's findings that demand for wire rope is mainly driven by demand for coal and other mining commodities (as discussed at section 4.5), BBRG Australia's total profit and unit profitability relating to sales of wire rope deteriorated in the investigation period compared to previous years.

Figures 3 through to 7 show that a combination of reduced unit sales revenues, higher unit CTMS and reduced sales volumes have impact profits. The Commission considers that the Australian industry has experienced injury in the forms of reduced profit and reduced profitability.

The Commission's assessment of profit and profitability injury is contained in **Confidential Appendix 9 – Price and profit effects.**

6.6 Other economic injury factors

In its application, BBRG Australia claimed that it had experienced injury in the form of other injury factors including:

- reduced revenue;
- reduced capital investment;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment; and
- reduced productivity.

The Commission has analysed each of BBRG Australia's claims below.

6.6.1 Reduced revenue

BBRG Australia's sales revenues decreased substantially after 2014, particularly in relation to the investigation period.

6.6.2 Reduced capital investment

Figure 8 below depicts BBRG Australia's total capital investment which consists of expenditure on plant, equipment, land, buildings and intangibles associated with the production of like goods over the injury analysis period. The Commission notes that there has been a constant decline in BBRG Australia's capital investment over the injury analysis period however considering that there has been significant changes in BBRG Australia's ownership structure, the Commission considers that analysis of BBRG Australia's capital investment analysis does not provide conclusive evidence in relation to any injury BBRG Australia experienced due to dumping.

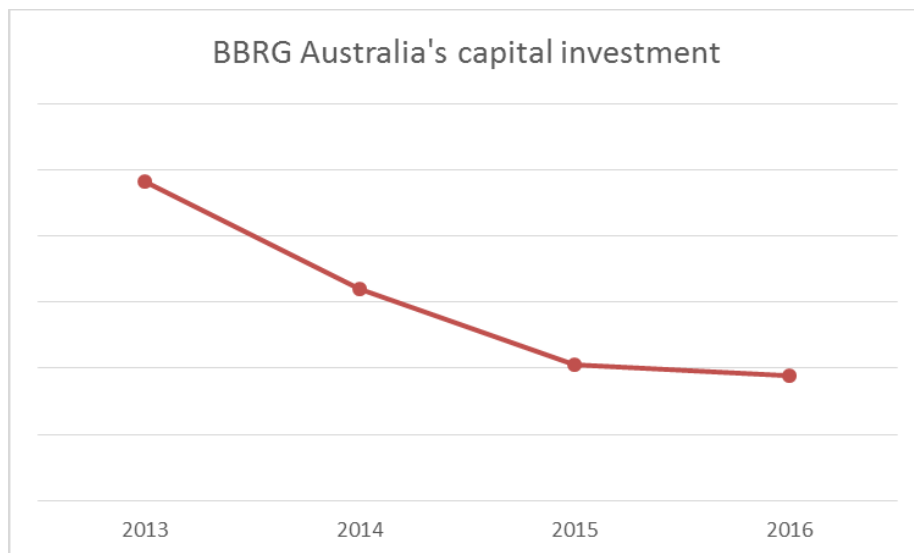


Figure 8: BBRG Australia's capital investment – injury analysis period

6.6.3 Reduced ROI

Figure 9 below depicts BBRG Australia's ROI for like goods over the injury analysis period. The Commission notes that there has been a constant decline in BBRG Australia's ROI over the injury analysis period. Figure 9 shows that the most substantial decline in ROI took place in relation to the investigation period.

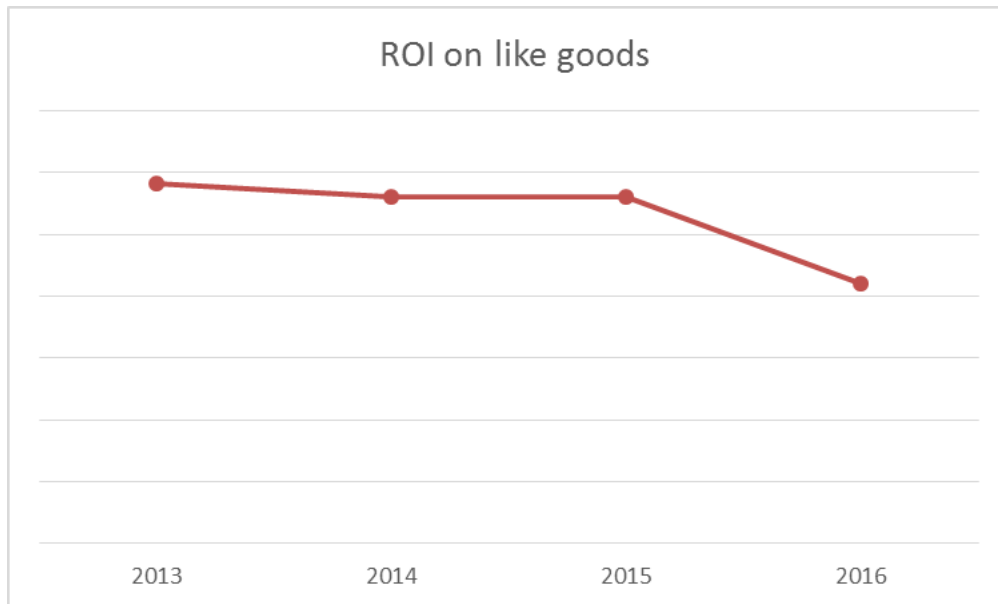


Figure 9: BBRG Australia's ROI for like goods – injury analysis period

6.6.4 Reduced capacity utilisation

Figure 10 below depicts capacity utilisation for BBRG Australia's production of like goods over the injury analysis period. The Commission notes that there has been a constant decline in BBRG Australia's capacity utilisation for like goods over the injury analysis period. Figure 10 shows that the most significant decline in capacity utilisation took place in relation to the investigation period.

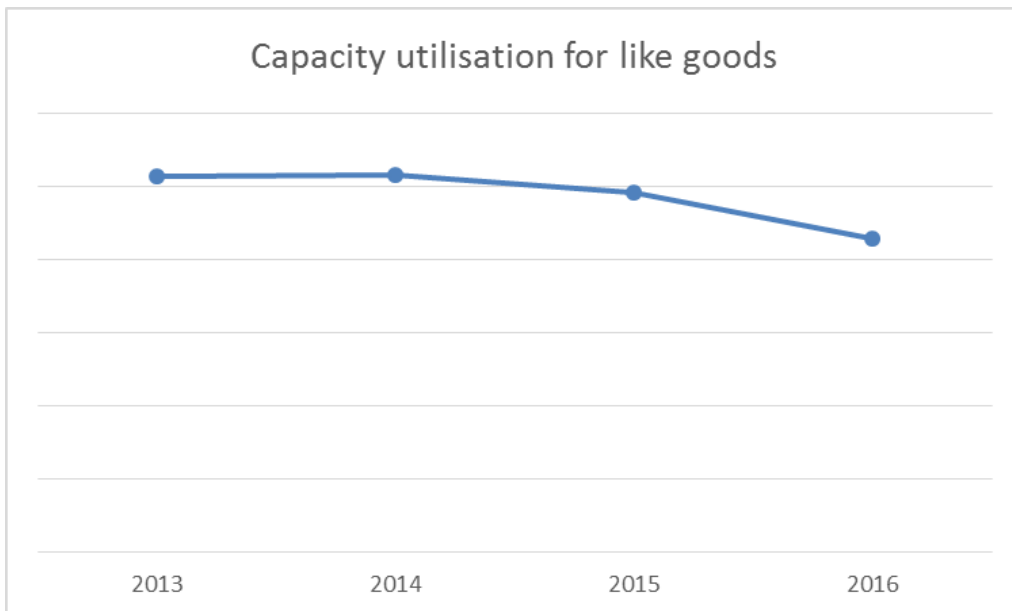
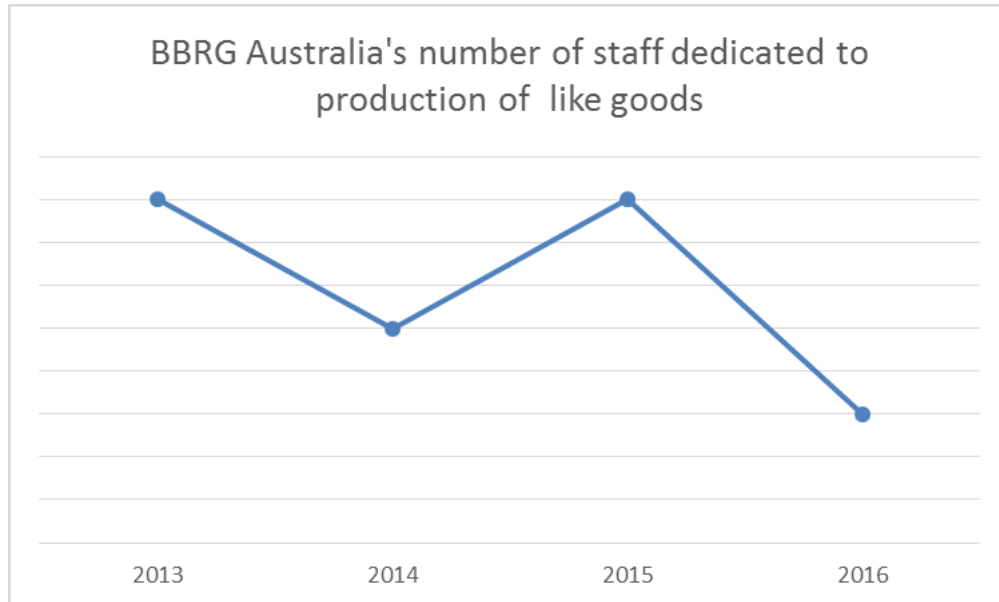


Figure 10: BBRG Australia's capacity utilisation for like goods – injury analysis period

6.6.5 Reduced employment

Figure 11 below depicts BBRG Australia's employment numbers dedicated to the production of like goods over the injury analysis period. The Commission observes that BBRG Australia's total employment numbers fluctuated over the injury analysis period but declined sharply in relation to the investigation period.



**Figure 11: BBRG Australia's employment numbers
- production of like goods - injury analysis period**

6.6.6 Reduced productivity

The Commission considers that a significant manifestation of injury to BBRG Australia's operations was that it had sufficient business to run only 2 shifts during the investigation period. The reduction from 3 shifts to 2 in 2015, and having insufficient business for 3 shifts during the investigation period, came with:

- reduced capacity utilisation of its wire rope making equipment and its Newcastle premises;
- reduced ROI in productive capacity and other investments such as technical know-how;
- reduced employment as staff are no longer required for the third shift; and
- reduced productivity as remaining BBRG Australia staff are less able to specialise and productive capacity is not operated at efficient scale.³⁸

The Commission accepts that the downturn in the coal-mining industry may have contributed to BBRG Australia moving from 3 shifts to 2 shifts, however the Commission considers that dumping and BBRG Australia's consequent loss of sales volumes to

³⁸ The Commission considers that efficient scale for BBRG Australia would involve 3 shifts as this would more fully utilise capital-intensive wire rope making machines.

dumped imports has been a material factor in BBRG Australia operating at 2 shifts rather than 3 during the investigation period.

6.6.7 Conclusion – other economic injury factors

The Commission considers that there is evidence to show that BBRG Australia has experienced injury in the form of:

- reduced revenue;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment; and
- reduced productivity.

6.7 Submissions received in relation to injury

6.7.1 Haggie Reid: BBRG Australia should handle the ebb and flow of business

Haggie Reid claimed that BBRG Australia is a well-resourced foreign-owned company that should handle the normal “ebb and flow” of business itself.³⁹ In support of its claim Haggie Reid:

- Described a merger that formed the Bridon Bekaert group of companies with its headquarters in Belgium, noting that BBRG Australia is a member of the Bridon Bekaert group.

The Commission’s response: It is unclear to the Commission how Haggie Reid’s claims relate to the Commission’s assessment. Haggie Reid did not suggest how this might be taken into account in the Commission’s assessment. BBRG Australia’s membership of the Bridon Bekaert group is a matter of public record and BBRG Australia made no attempt to claim otherwise.

- Observed that BBRG Australia currently has a majority share of the Australian market for wire rope.

The Commission’s response: Haggie Reid did not state how this should be taken into account in the Commission’s assessment. The Commission does not consider that the bare fact of BBRG Australia’s market share, without more, is relevant to its assessment of whether dumping has occurred and whether the Australian industry has been injured by that dumping.

- Opined that the true reason for BBRG Australia’s reduced financial performance was due to demand instability in oil and gas and mining markets.

The Commission’s response: The Commission accepts that the historical backdrop to the Australian wire rope market is that trading conditions for wire rope buyers (Australian coal miners) have been worsening from 2013 to 2015. However these trading conditions improved during the investigation period. The graph of coal prices in the following chapter demonstrates these changing conditions. In any event the Material Injury Direction states that dumping need not be the sole cause

³⁹ No. 4 on the public record, at pages 1 to 3.

of injury to the Australian industry and that injury from dumping may be exacerbated by other factors.

- Observed that BBRG Australia was profitable during the investigation period.

The Commission's response: The Commission assesses profit and profitability injury to determine whether these have been affected by dumping. The Australian industry may remain profitable notwithstanding that its profits have been affected by dumped goods. The Material Injury Direction states that injury may be found in circumstances where the Australian industry is prospering but less prosperous than it would be absent dumping.

6.7.2 Haggie Reid: trialling of imported of wire rope is not evidence of injury

Haggie Reid observed that customers in the Australian market trial wire rope of a supplier before switching to that supplier. Haggie Reid argued that mere trialling of its ropes by mines should not be considered evidence of injury to the Australian industry.

The Commission's response:

The Commission accepts that the process of competition in the Australian wire rope market generally involves a customer trialling a supplier's ropes before it switches to that supplier. However the Commission similarly considers that rope trialling is also the process by which the Australian industry is injured by dumped wire rope. Noting that trials can take place over several months and by the time a customer is trialling a dumped wire rope, the customer is seriously demonstrating that it will or is likely to switch supplier, the Australian industry is losing volume and is under significant pressure to reduce its prices in response to the possibility of losing sales volume. The Commission considers that, due to the facts explained above, trial sales should not be differentiated from sales made subsequent to a sales contract in an injury analysis context. Therefore, when conducting volume, price and profitability analysis the Commission included all sales (including trial sales) of the goods by Haggie Reid in its consideration.

6.8 Conclusion on injury

Based on an analysis of the information contained in the application and obtained and verified during the investigation, the Commissioner considers that BBRG Australia has experienced injury in the form of:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced sales revenue;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment; and
- reduced productivity.

7 CAUSAL LINK

7.1 Finding

The Commission has found that dumped exports to Australia from South Africa have caused material injury to the Australian industry.

7.2 Causation in the Australian wire rope market

The Australian wire rope market is predominantly supplied by two suppliers, BBRG Australia (the Australian industry) and Haggie Reid. In addition there are few customers and a high degree of transparency concerning the extent to which each supplier supplies a given customer. Accordingly, it is generally clear when sales are lost by the Australian industry to an importer of dumped goods (and what the counterfactual would be) and when those sales are lost for some other reason. The Commission has not attributed injury to the Australian industry from lost sales for reasons unrelated to dumping (subsection 269TAE(2A)).

7.3 Legislative framework

Under section 269TG one of the matters the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that, because of the dumping material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines the factors that may be taken into account in determining whether material injury to an Australian industry has been, or is being, caused or threatened.

7.4 Size of the dumping margin

Subsection 269TAE(1)(aa) provides that regard may be had to the size of the dumping margins in determining whether material injury to an Australian industry has been caused for the purposes of section 269TG.

The dumping margin outlined in chapter 5 in respect of wire rope exported to Australia for the investigation period is **39.7** per cent. Given that the Australian market for wire rope is price sensitive, the Commissioner is satisfied that this significant level of dumping enabled the importer of wire rope from South Africa to have a competitive advantage on price compared to the Australian industry.

7.5 Price undercutting

Price undercutting occurs when imported goods are sold at a price below that of the domestically produced like goods.

The Commission undertook a comprehensive price undercutting analysis in order to determine whether BBRG Australia's prices had been undercut by wire rope imported

from South Africa. The Commission analysis compared weighted average prices for the imported goods to the Australian industry's like goods:

- in aggregate;
- for the same rope categories; and
- to shared customers at a mine level and for all customers in general.

The Commission's price undercutting analysis at the mine level for dragline ropes over the investigation period is shown in the Figure 12 below. Customer 1 – 4 depict the mines that are jointly supplied by Haggie Reid and BBRG Australia. The Commission also calculated the level of price undercutting by Haggie Reid in the sales of dragline (dump, drag and hoist) ropes for all customers. The Commission calculated that the overall price undercutting by Haggie Reid in sales of dragline ropes is 16 per cent for the investigation period.

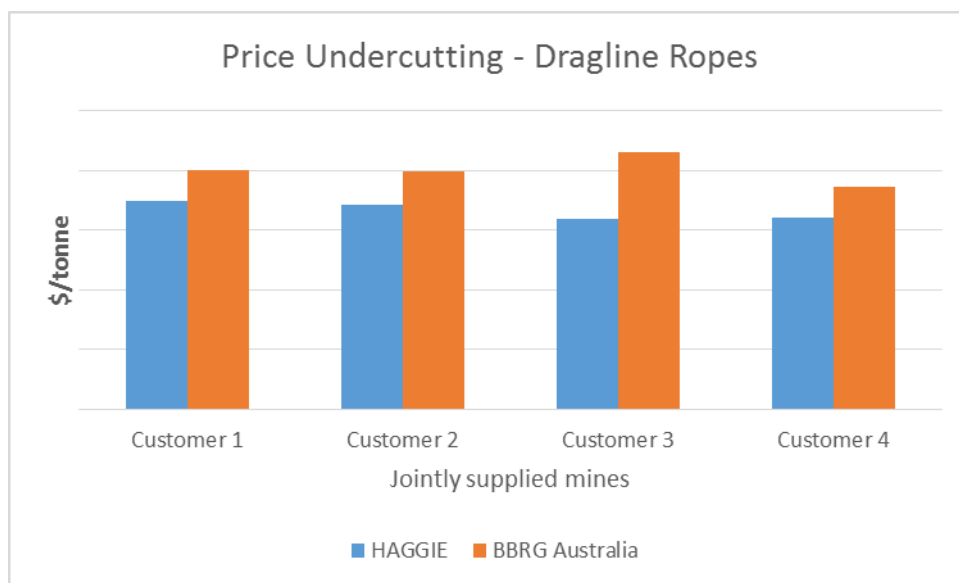


Figure 12: Price undercutting at dragline ropes

The Commission's price undercutting analysis for shovel ropes is shown in Figure 13 below. In Figure 13, customer 1 depicts the common customer of Haggie Reid and BBRG Australia that purchase shovel ropes from both suppliers. The Commission calculated that the overall price undercutting by Haggie Reid in the sale of shovel ropes is 13 per cent for the investigation period.

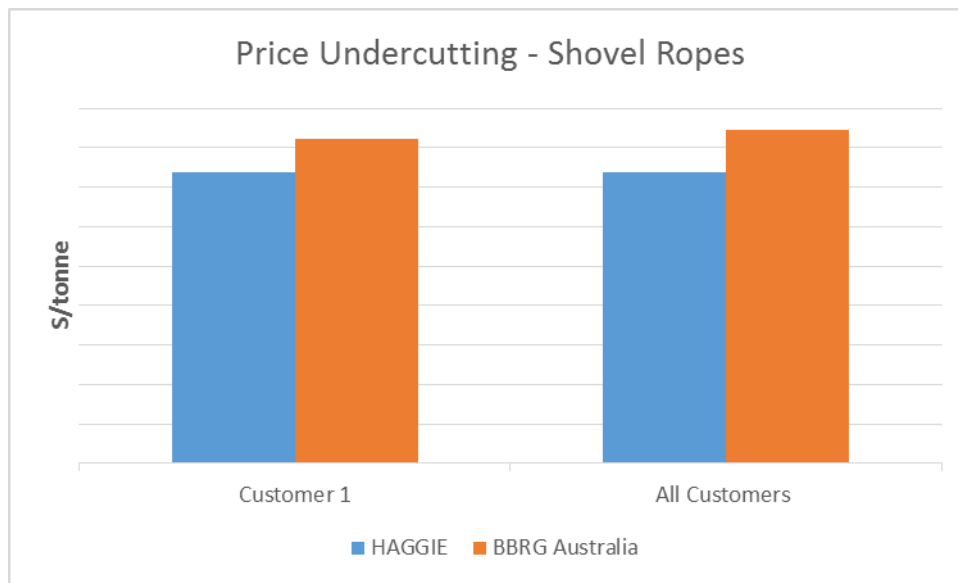


Figure 13: Price undercutting for shovel ropes

The Commissioner considers that there is sufficient evidence from the price undercutting analysis to conclude that dumping created a significant competitive benefit to Haggie Reid and demonstrates that the Australian industry faced price pressure from imported goods from South Africa.

In addition, the Commission notes that, in a counterfactual scenario where Haggie Reid's selling prices of the goods imported from South Africa were to be increased to include an amount of IDD at the fixed rate of 28.9 per cent (calculated by reference to the NIP at section 11.3 below), this would be sufficient to remove the price undercutting observed.

The Commission's price undercutting analysis is at **Confidential Attachment 1**.

7.6 Price effects

The Commission understands that, in the Australian market for wire ropes, sales are often made according to contractual arrangements. The Commission has analysed examples of sales contracts and has observed that contracts between a mining company and a supplier are non-exclusive and did not guarantee continuous sales of wire rope for the duration of the contract as the mining companies often sought or accepted offers from third party suppliers during the contract periods. The Commission found that these supply contracts did not include any punitive clauses against the mining companies should they prefer to procure their wire rope requirements from third parties. The Commission also understands that the mining companies would have the discretion to end the contract or cease placing orders at any time without providing any reasons to the supplier of wire rope. As a result, even during the life of the supply contract, mining companies receive and consider wire rope sales offers from other suppliers. The Commission understands that when the mining companies received offers that are below their current purchase prices, they often seek to re-negotiate the prices with the current supplier benchmarking the price on the newly received offer.

BBRG Australia supplied the Commission with positive evidence by way of email correspondence with its customers that showed price negotiations expressly referencing

the price of wire rope imported by Haggie Reid. It is clear from these negotiations that BBRG Australia, in order to retain specific customers, lowered its prices in response to Haggie Reid's prices to prevent the risk of losing business. Examples of these negotiations are contained in **Confidential Attachment 2 – Negotiation summary**.

7.7 Volume effects

As explained earlier, effectively there are two main suppliers in the Australian wire rope market, BBRG Australia and Haggie Reid. Accordingly, when the effects of market contraction is isolated from the volume injury analysis, sales volumes lost by BBRG Australia are almost invariably lost to imports by Haggie Reid. The Commission notes that, in a capital intensive industry such as the wire rope industry, the success of an Australian industry is volume dependent, and with any loss of volume, there can be effects in terms other injury factors, in particular profit.

The Commission also notes that there is a high level of transparency in the Australian market for wire rope due to the small number of suppliers and customers and that many of the mines supplied by Haggie Reid are also supplied by BBRG Australia. This means that when a customer stops using BBRG Australia's wire rope on a given machine, BBRG Australia field staff are able to observe first hand whether the customer is switching to Haggie Reid wire rope or whether there is another reason why the customer has stopped using BBRG Australia's wire rope. An example of another reason why a customer has stopped using BBRG Australia's wire rope is that a customer has "parked" a machine that used BBRG Australia's wire rope.

Confidential Attachment 3 lists the mines where Haggie Reid supplied wire rope during 2016.

7.8 Profit effects

As explained above, the Commissioner has found that the Australian industry has experienced injury in the form of price depression and price suppression and that injury was caused by sales of the goods exported from South Africa at dumped prices.

Injury from price depression and price suppression has in turn impacted negatively on the Australian industry's profits and profitability over the investigation period.

Based on the price undercutting observed, the dumping margin calculated and the price effects experienced by the Australian industry, the Commissioner considers that the Australian industry has experienced injury in the form of loss of profits and reduced profitability and that injury was caused by sales of the goods from South Africa at dumped prices.

7.9 Injury caused by factors other than dumping

In assessing whether there has been material injury to the Australian industry, the Commission considers whether injury is being caused by a factor other than the exportation to Australia of the allegedly dumped goods. The Commission does not attribute any such injury to the exportation of dumped goods (subsection 269TAE(2A)).

7.9.1 Coal prices

BBRG Australia stated that there had been a sustained downturn in the price of coal following the global financial crisis.⁴⁰ This downturn had seen some coal mines close operations entirely and some others had reduced output. Mines that remain in operation have become increasingly cost sensitive in recent years as falling coal prices reduced their margins. BBRG Australia stated that there were no new mine expansions or mines opening, either currently or expected in the next 2 to 3 years.

The Commission's research indicates that coal prices reached their lowest point in April 2016 for the injury analysis period but rose during the remainder of 2016 before spiking to their highest point in November 2016 as shown in the following graph.⁴¹

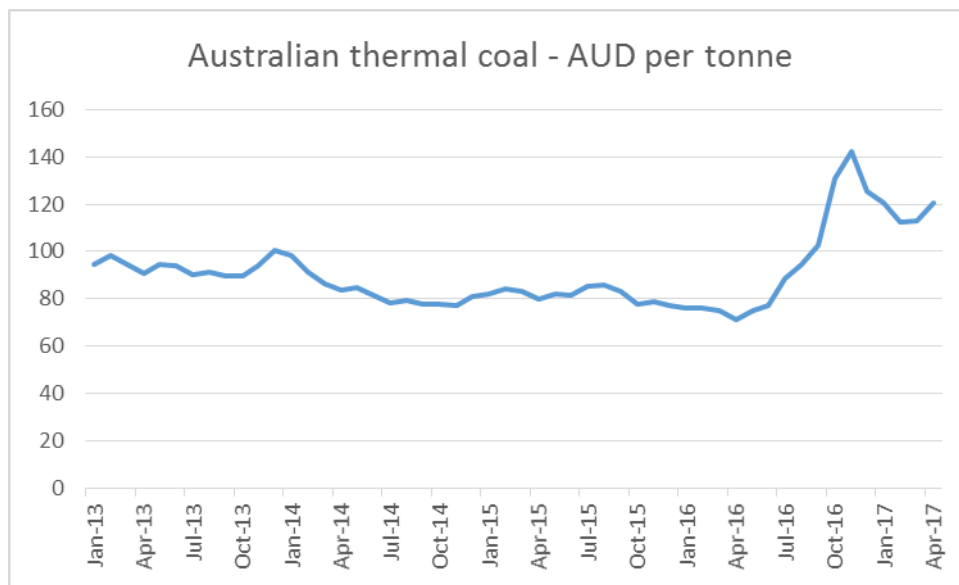


Figure 12: Monthly Australian thermal coal prices from January 2013

BBRG Australia considers that the spike in coal prices was due to flooding in QLD during 2016. However the Commission considers that the recovery in prices is more enduring than BBRG Australia suggests.⁴²

The Australian market for wire rope operated in the shadow of coal price reductions for most of the injury analysis period however coal prices increased significantly during 2016 such that average prices for coal during 2016 were 16 per cent higher than in 2015. Accordingly the Commission considers that material injury experienced by BBRG Australia during 2016 was not caused by conditions in the coal industry.

⁴⁰ The Commission notes that the global financial crisis predates the injury analysis period, therefore it has analysed coal prices from 1 January 2013 only.

⁴¹ Coal, Australian thermal coal, 12000- btu/pound, less than 1% sulfur, 14% ash, FOB Newcastle / Port Kembla, AUD per tonne; World Bank.

⁴² *Economic outlook brightens on coal, iron ore price recovery*, The Australian, Alan Kohler, 5 November 2016.

7.9.2 Foreign exchange movements

The South African rand had a period of weakness against the Australian dollar during the investigation period. However, Haggie Reid indicated during the importer verification that internal transfer pricing between Haggie Reid and Scaw was in Australian dollars and so Haggie Reid does not generally take the Australian dollar / South African rand exchange rate into consideration when setting prices. On that basis the Commission does not consider that the Australian industry was injured by the Australian dollar / South African rand exchange rate during the investigation period.

7.10 Submissions received in relation to causation

7.10.1 Haggie Reid: Haggie Reid's participation in the Australian market did not cause injury to BBRG Australia

Haggie Reid pointed out that BBRG Australia is the largest wire rope supplier in Australia and claims that injury to the Australian industry was not due to imports by Haggie Reid.⁴³ In support of its claims Haggie Reid:

- Claims that BBRG Australia had been injured by an overall decline in the market for wire rope, which had affected Haggie Reid also.

The Commission's response: The Commission accepts that the historical backdrop to the Australian wire rope market is that trading conditions for wire rope buyers (Australian coal miners) worsened during 2013 to 2015. However the Commission found that trading conditions for Australian coal miners improved markedly during the investigation period.

- Argues that there are imports of wire rope from other countries.

The Commission's response: The Commission has found that there are only small quantities of wire rope imported from countries other than South Africa. The Commission found that service is a significant component of Australian wire rope supply in Australia and other suppliers do not have sufficient field staff to provide the service needed by buyers of wire rope. Accordingly these other suppliers have not achieved any significant penetration in the Australian market.

- Claims that Haggie Reid's market share and prices had been more or less static in recent years and its sales volumes had decreased significantly during the last 6 years.

The Commission's response: The Commission has considered these variables in greater detail elsewhere in this SEF (e.g. chapter 6). However the Commission's assessment is focussed on the extent to which there has been dumping and whether any such dumping has caused material injury to the Australian industry. The Commission accepts that overall volumes in the Australian market have reduced in recent years but this, without more, does not demonstrate that dumping

⁴³ No. 4 on the public record at pages 3 to 7; Haggie reiterated some of the points made in section A of a further submission at No 10 on the public record.

has not occurred nor does it demonstrate that any such dumping has not injured the Australian industry.

- Claims that BBRG Australia and Haggie Reid have only limited competitive interaction (and therefore Haggie Reid causes limited injury) because Haggie Reid does not supply at all of the mines that are supplied by BBRG Australia.⁴⁴

The Commission's response: The Commission does not accept that injury is limited to the mines that Haggie Reid currently supplies. Haggie Reid has not demonstrated that there are any significant barriers to expansion such that it could not start to supply mines that it currently does not. Rather there is evidence before the Commission that a customer with a number of mines has used Haggie Reid prices at one mine in an attempt to force down BBRG Australia's prices across all of the customer's mines. The Commission also notes the Material Injury Direction which directs the Commission that, in circumstances where dumped goods hold a small share of the Australian market, no minimum standard should be used to determine whether dumped goods have a sufficient market share to cause material injury.

- Claims that Haggie Reid does not "compete across all applications", in particular Haggie Reid does not supply pendant wire rope to the Australian market. Haggie Reid claims that BBRG Australia included these in the goods under consideration.

The Commission understands that pendant wire rope are not included in the goods under consideration in this investigation.

7.10.2 Haggie Reid: some of the goods sold by Haggie Reid in the investigation period were imported prior to the investigation period

Haggie Reid claimed that the some of the goods sold by Haggie Reid in the investigation period were imported prior to the investigation period. Haggie Reid argues that dumped goods that cause injury should comprise only those both imported and sold within the investigation period. On that basis Haggie Reid claims that the significant proportion of wire rope sold by Haggie Reid in the investigation period but imported prior to the investigation period cannot be said to be dumped rope that caused injury.⁴⁵

The Commission's response

The Commission considers that there are a number of issues with Haggie Reid's argument including:

- The legislation does not contemplate that the Commission would trace every imported good from import to final sale. In practice this would be a protracted task and in many cases there may be insufficient evidence to trace every transaction.
- The effect of Haggie Reid's argument, without more, is that an exporter could dump with impunity provided its importers carry sufficient inventory – the Commission does not consider that the legislation can have intended this.

⁴⁴ See also section D of No. 10 on the public record.

⁴⁵ Sections B and C of No. 10 on the public record.

- Haggie Reid made no submission and provided no supporting evidence on how to treat wire rope that was dumped during the investigation period and that remained in inventory at the end of the investigation period. On Haggie Reid's argument such dumped inventory would likely cause injury following the investigation period, noting that Haggie Reid was participating in the market making offers and sales during the investigation period.

Further, the Commission considers that a company will in many cases set prices for goods it sells based on the cost to replenish its inventory, not the historical cost of its inventory. In those circumstances, the Commission considers that injury from goods dumped in the investigation period would be manifested in the investigation period notwithstanding that some inventory sold was imported prior to the investigation period.

Haggie Reid similarly argues that a customer switching to Haggie Reid after the investigation period following negotiations during the investigation period cannot result in injury during the investigation period.⁴⁶ The Commission accepts that volume injury in that instance may not have been manifest during the investigation period however it is uncontroversial that negotiations of this nature during the investigation period would result in downward pressure during the investigation period on BBRG Australia's prices.

7.10.3 Haggie Reid: injury caused to the Australian industry at mines supplied by Haggie Reid was offset by gains to the Australian industry at mines not supplied by Haggie Reid

Haggie Reid argues that the injury experienced by the Australian industry at mines supplied by Haggie Reid was offset by gains to the Australian industry at mines not supplied by Haggie Reid. In support of its claim Haggie Reid points to findings made by the Commission that BBRG Australia's prices and volumes in the investigation period were reducing at mines supplied by Haggie Reid and increasing at mines not supplied by Haggie Reid.⁴⁷

The Commission's response

The Commission considers that gains experienced by BBRG Australia in mines not supplied by Haggie Reid are irrelevant to the question of whether injury was experienced by the Australian industry at mines supplied by Haggie Reid. The Commission is satisfied that the Australian industry was forced to compete head to head with dumped prices at mines supplied by Haggie Reid and suffered material injury as a result. In addition, the Commission found that the Australian industry had to match dumped prices affecting non Haggie Reid supplied mines. The Commission considers that the difference between the Australian industry's prices and volumes at Haggie Reid supplied mines and non Haggie Reid mines demonstrates a causal link between dumped imports and injury. For Haggie Reid's argument to carry any weight, increased prices and volumes at non Haggie Reid mines would have to be somehow causally linked to price and volume losses at Haggie Reid supplied mines. Haggie Reid has not claimed that this is the case. On the contrary, the Commission considers that increases in volumes and prices at non Haggie Reid

⁴⁶ Section C of No. 10 on the public record.

⁴⁷ Sections B and C of No. 10 on the public record.

mines are due to external factors other than dumping, namely the turnaround in fortunes of wire rope purchasers during 2016.

7.10.4 Supply changes during the investigation period

Haggie Reid provided a breakdown that showed which mines BBRG Australia and Haggie Reid supplied. Haggie Reid argued that its breakdown of mines showed that during the investigation period Haggie Reid supplied only a relatively small proportion of mines and exclusively supplied an even smaller number of mines. Haggie Reid claims that this demonstrates that Haggie Reid has only a limited effect on BBRG Australia's sales.⁴⁸

Haggie Reid also claimed that it was effectively excluded from mines where it had not been pre-qualified as a wire rope supplier.

BBRG Australia's response

BBRG Australia responded to Haggie Reid's breakdown of mines and Haggie Reid's claims based on the breakdown.⁴⁹ BBRG Australia:

- Argued that Haggie Reid had too narrowly classified sites that Haggie Reid and BBRG Australia shared. Haggie Reid had excluded sites from its list of shared sites if Haggie Reid's ropes were being trialled at a site.
- Pointed out that 5 of the mines Haggie Reid claimed were supplied only by BBRG Australia were also supplied by Haggie Reid.
- Pointed out that 5 other mines were supplied the goods by neither BBRG Australia nor Haggie Reid for a number of reasons including mines that were not currently operating.

BBRG Australia disagreed that Haggie Reid's lack of pre-qualification at some mines excluded Haggie Reid from supplying those mines. BBRG Australia argued that in such situations, suppliers would term the supply of product as a "trial", however, the fact was that both suppliers are then supplying that mine.

The Commission's response

The Commission has found the mine breakdown and subsequent further information provided by BBRG Australia useful in assessing the breadth of the direct effect of dumped imports on the Australian industry. The Commission agrees that Haggie Reid has too narrowly classified sites that Haggie Reid and BBRG Australia shared; there is clearly direct competition and injury at mines where Haggie Reid is competing with BBRG Australia through trialling its wire rope.

⁴⁸ No.10 on the public record at section D; Haggie's initial submission heavily redacted the mine breakdown however Haggie later agreed to provide BBRG Australia with a less redacted version to enable BBRG Australia to comment on the mine breakdown.

⁴⁹ No. 11 on the public record at section III.

Furthermore, there is evidence before the Commission that BBRG Australia has been injured more broadly, including at mines where Haggie Reid does not currently supply wire rope. The Commission notes that Haggie Reid supplies rope to mines that form part of larger groups of mines under common ownership.⁵⁰ There is evidence before the Commission that central purchasing personnel of one of these larger groups of mines indicated that the group would switch all its mines to Haggie Reid if BBRG Australia did not match Haggie Reid's prices. On that basis the Commission considers that the Australian industry faces competition, and associated injury from dumping, across the great majority of its supply.

The Commission does not accept that Haggie Reid's lack of pre-qualification at some mines excluded Haggie Reid from supplying those mines.⁵¹ Evidence, including evidence from Haggie Reid, showed that mines would readily trial Haggie Reid wire rope as a mechanism for qualifying Haggie Reid and as a precursor to ongoing supply. The Commission considers that such trials using dumped wire rope displace Australian industry volumes and therefore constitute injury to the Australian industry.

7.10.5 BBRG Australia losses breakdown

Haggie Reid provided a breakdown of losses suffered by BBRG Australia during the investigation period. Haggie Reid claims that the losses breakdown showed that only a small percentage could have been caused by dumped imports because the majority of BBRG Australia's losses were due to other factors. These other factors included:

- Mines closing or machines parked;
- Rope sold that was imported prior to the investigation period;
- Rope sold was not at reduced prices compared to pre-2016 pricing;
- Different rope designs offered by Haggie Reid.

For the small percentage of losses that could have been caused by dumping, Haggie Reid claimed that its customers told it that price was not a factor in switching to Haggie Reid from BBRG Australia.

BBRG Australia's response

BBRG Australia provided its own assessment of losses during 2016. BBRG Australia agreed with some of Haggie Reid's losses breakdown but disagreed that its losses were as low as claimed by Haggie Reid. BBRG Australia claims that its losses due to dumping during 2016 were substantial and comprised approximately 10 per cent of the Australian wire rope market.

⁵⁰ BHP is a large shareholder in a number of coalmines in Queensland through the BHP Mitsubishi Alliance (BMA) and BHP Mitsui Coal (BMC) assets; these operate under the Queensland Coal banner. Rio Tinto Coal Australia has coal mining operations in Queensland and New South Wales.

⁵¹ The Commission understands that contracts between a mine and a wire rope supplier are generally not exclusive nor do they guarantee that any given amount of wire rope would be purchased by the mine; Haggie did not claim that it was locked out of any mine due to contractual exclusivity.

The Commission's response

The Commission notes that a key argument in Haggie Reid's losses breakdown was that Haggie Reid did not reduce its prices from pre-2016 levels for many of the sales gained by Haggie Reid in 2016. An implicit assumption in this argument is that dumping did not occur prior to the investigation period or that dumping must be evidenced by a change in prices. The Commission does not investigate dumping, and so makes no finding whether there was dumping, prior to the investigation period; however the absence of a dumping finding is not evidence that dumping did not occur prior to the investigation period. The Commission assesses whether the Australian industry has been materially injured during the investigation period by dumping during the investigation period whether or not the dumping started before or during the investigation period. In any event the Commission notes that dumping occurs when export price is less than normal value; it is not a requirement that export price (or some downstream price) changes for dumping to occur.

The Commission notes that periods prior to the investigation period may be considered for the purposes of determining whether material injury has been caused to the Australian industry (pursuant to subsection 269T(2AD)). This may include consideration of, among other things, wire rope sales imported prior to the investigation period.

There appear to be some disagreements between BBRG Australia and Haggie Reid concerning some of the factual matter that Haggie Reid sought to rely on in its losses breakdown. The numbers provided by BBRG Australia accord with data collected and verified at the industry visit and BBRG Australia has been transparent in providing that data. Haggie Reid provided its figures without providing any evidence to substantiate these. Other information provided by Haggie Reid for the mine breakdown was found not to be reliable. The Commission may place less weight on information that is not supported by evidence.⁵²

7.11 Commissioner's assessment – causal link

The Commission has established that:

- the Australian industry experienced injury in a number of forms as outlined at section 6.8. In particular, the Australian industry experienced injury in respect of volume, price and profit in the context of an Australian market which is volume dependent and price sensitive;
- sales of wire rope imported from South Africa were dumped at a significant margin of 39.7 per cent and that this dumping contributed to price undercutting in the investigation period;
- sales of wire rope imported from South Africa would not have undercut the Australian industry's prices if the goods were not exported at dumped prices;
- the Australian industry competed head to head with South African imports throughout the investigation period, noting that South African imports were in volumes which are not negligible; and

⁵² In accordance with subsection 269TAE(2AA): A determination for the purposes of subsection (1) must be based on facts and not merely on allegations, conjecture or remote possibilities.

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- the injury from goods exported from South Africa at dumped prices can be separated from other potential causes of injury.

The Commissioner has applied the principles of the Material Injury Direction, noting in particular that:

- material injury can exist where an Australian industry would have been more prosperous if not for the presence of dumped imports;
- dumping or subsidisation need not be the sole cause of injury to the Australian industry;
- an Australian industry which at a particular point in time is healthy and could shrug off the effects of the presence of dumped imports, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping; and
- the range of factors in which the industry has experienced injury, when considered together, is material in degree and greater than that likely to occur in the normal ebb and flow of business.

The above supports a conclusion that BBRG Australia has experienced material injury from goods exported from South Africa at dumped prices. The Commissioner is satisfied that injury was caused by dumping and that the injury from dumping is material.

8 WILL DUMPING AND MATERIAL INJURY CONTINUE?

8.1 Finding

The Commissioner considers that exports of wire rope to Australia from South Africa in the future may be at dumped prices, and that this continued dumping may continue to cause further material injury to the Australian industry producing like goods.

8.2 Introduction

Pursuant to subsection 269TG(2), where the Parliamentary Secretary is satisfied that dumping has occurred and may continue, and because of that material injury to an Australian industry producing like goods has been or is being caused or is threatened, anti-dumping measures may be imposed on future exports of like goods.

8.3 Will dumping continue?

In order to assess whether dumping will continue, the Commission has had regard to a number of factors explained below.

As outlined at chapter 6, the Commission has found that Scaw's dumping margin for wire rope exported to Australia from South Africa for the investigation period is 39.7 per cent (noting that this dumping margin applies to all exports of the goods to Australia from South Africa). The Commission considers that this dumping margin is substantial in absolute terms and notes that, for each quarter of the investigation period, the dumping margin was above 30 per cent.

The Commission has established (through its verification activities) that forward orders exist in relation to the goods from South Africa and that wire rope exported to Australia from South Africa has significant market share and influence in the Australian market.

In addition, the Commission has examined import statistics from the ABF import database in detail for the investigation period and an additional seven months following the end of the investigation period that is 1 January 2017 to 31 July 2017. Based on this examination, the Commission observes that

- the import volume of the goods from South Africa for the seven months following the end of the investigation period represented 88 per cent of the total verified import volumes during the investigation period. Should import volumes continue at this rate for the remainder of the 2017 calendar year, they will exceed those of the investigation period; and
- the South African weighted average FOB export prices as recorded in the ABF import database are similar to and sometimes lower than the declared export prices reported in the ABF import database during the investigation period.

The Commission's analysis of ABF import statistics is at **Confidential Appendix 10**.

The Commission also verified Scaw's production capacity utilisation rate during the investigation period and notes that it has excess capacity, which may be an indicator that Scaw will continue to sell the goods to Australia in the future.

Based on the above observations, the Commission considers that dumping will continue if anti-dumping measures are not imposed.

8.4 Will material injury continue?

The Commission has reviewed the Australian industry's performance over the injury analysis period and has made a finding that wire rope exported to Australia from South Africa at dumped prices has caused material injury to the Australian industry during the investigation period.

The Commission considers that the continuation of price competition from dumped imports from South Africa is likely to have a continuing adverse impact on the Australian industry. For example, Haggie Reid pointed to instances where negotiations took place during the investigation period for switching from Australian made wire rope to imported goods following the investigation period; this will result in volume injury following the investigation period.

8.5 The Commissioner's assessment

Based on the available evidence, the Commissioner considers that exports of wire rope from South Africa in the future may be at dumped prices and that this continued dumping may continue to cause further material injury to the Australian industry.

9 NON-INJURIOUS PRICE

9.1 Assessment of NIP

The Commission has assessed that the NIP can be established by reference to an USP equal to the Australian industry's weighted average selling price for a period unaffected by dumping (being the year immediately preceding the investigation period - the 2015 calendar year).

The Commission has calculated that the NIP is less than the normal value of the goods and therefore, considers that the Parliamentary Secretary is required to have regard to the lesser duty rule. Accordingly, the Commissioner proposes to recommend that the NIP be the operative measure for all exports of wire rope exported to Australia from South Africa. Specifically, the Commissioner recommends that any fixed component of IDD (referred to in chapter 11) not be collected at an amount that, together with the export price of the goods, exceeds the NIP (i.e. the Commissioner recommends that the 'lesser duty rule' be applied).

9.2 Introduction

IDD may be applied where it is established that dumped imports have caused or threatened to cause material injury to the Australian industry producing like goods. The level of IDD imposed by the Parliamentary Secretary cannot exceed the margin of dumping. Further, the Parliamentary Secretary must have regard to the desirability of fixing a lesser amount of IDD if the NIP is less than the normal value of the goods.⁵³ This requirement is commonly referred to as the 'lesser duty rule'.⁵⁴

The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping.⁵⁵

Anti-dumping measures are generally based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms to compare to the country of export. To arrive at a NIP, the Commission first establishes an USP, following this hierarchy:

- Market approach: using the Australian industry's weighted average selling price at a time when the Australian market was unaffected by dumping;
- Construction approach: using the Australian industry's CTMS, plus where applicable, a reasonable rate of profit; or

⁵³ Subsection 8(5B) of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act).

⁵⁴ The requirement for the Parliamentary Secretary to have regard to the desirability of fixing a lesser amount of duty has changed for applications lodged with the Commission after 1 January 2014. The Parliamentary Secretary is no longer required to have mandatory consideration of the lesser duty rule where the Parliamentary Secretary is satisfied that prescribed circumstances exist. In relation to a dumping duty notice, the prescribed circumstances are outlined at subsection 8(5BAA) of the Dumping duty Act. However, none of the prescribed circumstances exist in relation to this investigation.

⁵⁵ The relevant NIP for this investigation is defined in subsection 269TACA(a).

- Selling prices of un-dumped imports in the Australian market.⁵⁶

Having established the USP, the Commission then calculates the NIP by deducting costs necessarily incurred in getting the goods to the FOB point at export. The deductions normally include overseas freight, duty, insurance, into store costs and amounts for importer expenses and profit.

9.3 Submissions received in relation to USP and NIP

In its submission received on 17 July 2017,⁵⁷ BBRG Australia stated that the Australian industry's selling prices for like goods in the Australian market in the 2013 and 2014 years, by model, represents an appropriate basis for establishing an USP. BBRG Australia also claimed that the Australian industry's selling prices in 2015 cannot be considered unaffected by dumping.

9.4 The Commissioner's assessment

In keeping with its preferred hierarchy, the Commission considers it appropriate to base the USP on the Australian industry's weighted average selling prices at a time unaffected by dumping.

The Commission notes BBRG Australia's claims both in its application and its submission received 17 July 2017 that the dumping and injury from exports of wire rope from South Africa commenced in 2015. However, the 2015 calendar year precedes the investigation period and the Commission has not examined dumping in relation to this period. On this basis, the Commissioner considers it appropriate to use the Australian industry's weighted average selling prices in the 2015 calendar year for the purpose of calculating the USP.

The Commission has calculated the NIP for all South African exporters at FOB terms to align to the respective export price calculations as discussed in chapter 5.

Based on available information, the Commission has calculated that the NIP is less than the normal value and therefore considers that the Parliamentary Secretary is required to have regard to the lesser duty rule. The Commissioner proposes to recommend that the NIP be the operative measure for all exports of wire rope from South Africa and that any IDD payable be calculated by reference to the lesser duty rule.

Preliminary NIP calculations are at **Confidential Appendix 11**.

⁵⁶ The Manual at chapter 23.

⁵⁷ No. 9 on the public record

10 PROPOSED MEASURES

10.1 Finding

The Commissioner proposes to recommend to the Parliamentary Secretary that anti-dumping measures (in the form of a dumping duty notice) be imposed in respect of any IDD that may become payable by all exporters from South Africa, using the combination method.

10.2 Forms of duty available

The forms of duty available to the Parliamentary Secretary when implementing IDD are prescribed in section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013* and include the:

- combination method;
- floor price duty method;
- fixed duty method (\$X per tonne); or
- ad valorem duty method (i.e. a percentage of the export price).

10.3 Submission from the Australian industry

The Commission received a submission from BBRG Australia on 17 July 2017 submitting its view that the most appropriate form of anti-dumping measure in relation to IDD for this investigation is the combination method.⁵⁸ BBRG Australia explained that:

- although there are a number of models of the goods exported to Australia from South Africa (and the combination method may not suit such situations), one or two models account for the majority of the goods exported to Australia by Scaw;
- the exporter (Scaw) and importer (Haggie Reid) are related parties, raising the potential for possible circumvention of anti-dumping measures between the parties, which in its view, the combination method operates best to prevent. In contrast, the ad valorem duty method allows exporters to further reduce export prices to absorb the impact of the anti-dumping measures;
- 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 IDD will apply; and
- [in the event that the combination method results in an over collection of IDD] the duty assessment mechanism provides an avenue for the Australian importer to seek a refund of excess IDD paid.

10.4 Commissioner's assessment

The Commissioner, in considering which form of anti-dumping measures to recommend, has had regard to the Commission's *Guidelines on the Application of the Form of*

⁵⁸ No. 9 on the public record

Dumping Duty 2013 (the Guidelines),⁵⁹ relevant factors in the wire rope market and BBRG's submission.

The Guidelines set out issues to be considered when determining the form of IDD. It is important to note that the various forms of IDD available all have the purpose of removing the injurious effects of the dumping. However, in achieving this purpose certain forms of IDD will better suit particular circumstances more so than other forms of IDD.

The Guidelines list the key advantages and disadvantages of each form of IDD. The combination method is considered appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the market. Conversely, the combination method is less suitable in situations where there are many model types of the goods under consideration which exhibit a large price differential or where a falling market exists.

On the other hand, the ad valorem duty method is one of the simplest and easiest forms to administer when delivering the intended protective effect, is common in other jurisdictions, is similar to other types of Customs duties, is advantageous where there are many models or types and is suitable where the market prices of goods fluctuate over time. The ad valorem duty method may also require fewer duty assessments and reviews than other duty methods. Conversely, the ad valorem duty method has a potential disadvantage in that export prices might be lowered to avoid the effects of the duty.

Based on information available to date, the Commissioner proposes to recommend to the Parliamentary Secretary that:

- a dumping duty notice be published in respect of wire rope exported to Australia in relation to all exporters from South Africa; and
- IDD be calculated using the combination method. In proposing such a recommendation, the Commissioner notes that there are complex company structures involving related parties in this investigation (Scaw and its related party importer Haggie Reid). In addition, as outlined in chapter 5, the Commissioner considers that the exporter and importer did not deal at arms length during the investigation period. As outlined in the Guidelines, the combination method is suitable in such situations. The Commissioner considers that the advantages of the combination method outweigh its disadvantages for this particular investigation.

The proposed combination duty in relation to South Africa includes a fixed ad valorem rate equal to the lesser duty calculated by reference to the NIP (as shown in Table 5 below) and a variable amount of duty if the actual export price is below the ascertained export price.

⁵⁹ Refer to Guidelines on the Application of Forms of Dumping Duty available at - <http://www.adcommission.gov.au/reference-material/documents/Guidelineformsofdumpingduty-November2013.pdf>

11 PRELIMINARY AFFIRMATIVE DETERMINATION

11.1 Introduction

Under section 269TD, at any time not earlier than 60 days after the date of initiation of an investigation into whether there are sufficient grounds for the publication of a dumping duty notice in respect of goods the subject of an application under section 269TB, the Commissioner may, if he is satisfied that:

- there appears to be sufficient grounds for the publication of such a notice; or
- it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;

make a PAD to that effect.

In relation to a dumping investigation, the Commonwealth may, at the time of the Commissioner making a PAD or at any later time during the investigation, require and take securities under section 42 in respect of any IDD that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

11.2 Finding

As outlined previously, the Commissioner has found that wire rope exported from South Africa during the investigation was at dumped prices and those exports have caused material injury to the Australian industry. The Commissioner therefore is satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice. Accordingly, the Commissioner considers that there are grounds to make a PAD under section 269TD(1).

Under section 42, the making of a PAD allows the Commonwealth to require and take securities in respect of any IDD that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to the Australian industry occurring while the investigation continues.

The Commissioner is satisfied that dumped wire rope exported to Australia from South Africa in the investigation period has caused material injury to the Australian industry and that it is likely that importations of wire rope from South Africa will occur in the future.

For the reasons set out above, the Commissioner has decided to make a PAD under section 269TD and is satisfied that it is necessary to require and take securities under section 42 to prevent material injury to the Australian industry occurring while this investigation continues.

11.3 Securities

The PAD, including the level of securities, will be publicly notified by way of an ADN.⁶⁰ Securities will be collected from wire rope exported from South Africa and entered for home consumption on or after 16 August 2017. This report sets out the reasons for the PAD, including all the material findings of fact and law on which the determination is based.

The Commonwealth will calculate the amount of securities payable using the combination method. The securities applicable to the goods exported to Australia from South Africa are tabulated below:

| Country | Exporter / Manufacturer | Duty Method | Fixed component of securities (ad valorem) | Variable component of securities |
|--------------|-------------------------|--------------------|--|--|
| South Africa | All exporters | Combination method | 28.9% | Applicable where the actual export price is below the ascertained export price |

Table 5: Securities applicable to the goods exported to Australia from South Africa

⁶⁰ In accordance with subsections 269TD(4)(a) and 269TD(5).

12 APPENDICES AND ATTACHMENTS

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| Confidential Attachment 1 | Price undercutting analysis |
| Confidential Attachment 2 | Summary of mine level price negotiations |
| Confidential Attachment 3 | List of mines that Haggie Reid supplied |
| Confidential Appendix 1 | Export price calculations |
| Confidential Appendix 2 | Scaw's domestic CTMS |
| Confidential Appendix 3 | Scaw's domestic sales and OCOT test |
| Confidential Appendix 4 | Normal value calculations |
| Confidential Appendix 5 | Dumping margin calculations |
| Confidential Appendix 6 | Market share |
| Confidential Appendix 7 | Injury effects |
| Confidential Appendix 8 | Price effects |
| Confidential Appendix 9 | Price and profit further analysis |
| Confidential Appendix 10 | Post IP volume and price analysis |
| Confidential Appendix 11 | NIP calculations |