

10 August 2017

**Mr Bora Akdeniz**  
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**By email**

Dear Bora

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

We refer to your email dated 8 August 2017, in which you advised as follows:

*The delegate of the Commissioner agrees with Scaw Metal and Haggie Reid's request to extend the time to provide comments on the exporter and importer visit reports and corresponding calculations until COB, 14 August 2017. However, please be advised that the Commission will not delay the publication of the SEF which is also due on Monday, 14 August 2017.*

The exporter and importer visit reports were only provided to us on 2 and 4 August 2017 respectively. A myriad of data and calculations are attached to them. This subject of those reports – namely the verification of our respective clients' exporter and importer questionnaire responses – took place on 5 June 2017 and on 21-26 June 2017 respectively. The reports were considered and prepared over a period of eight weeks with respect to the importer's data, and over a period of five weeks with respect to the exporter's data. Our clients were initially given a week to comment on each such report.

You may or may not be aware that there was no consultation with us with respect to the approach adopted in the identification of models of wire rope sold on the domestic and export markets for the purposes of comparison. Additionally, the calculations are extremely complex and contain a number of errors and incongruities that our client and ourselves are still studying. Our clients wish to address those matters with the Commission. They are critical to its commercial interests.

In that context the delegate of the Commissioner has now given us an extension of time until Monday August 14 to comment on those reports. However the Commission has also indicated that it will not actually take into account what it is that our clients have to say about those reports before publishing a finding which may contain opinions and recommendations, and will have outcomes, which are adverse to our clients' interests.

An administrative decision maker cannot arrive at a decision that is adverse to an affected party without hearing that party on the report or other material on which the decision is to be made. Legal precedent uniformly mandates this principle, in the context of the surrounding laws that set out any procedures applicable to the process involved. In the present instance the Commission has acknowledged that our clients should have more time to comment, but at the same time has said that the comments will not be considered before a potentially adverse announcement is made by the Commission with respect to our clients. These two things – an extension of time to comment, but a denial of any consideration of those comments - are diametrically opposed.

It may well be the case that the Commission considers that any statement or determination that it intends to issue on Monday is not adverse to our clients, which in our view could only be the case if the Commission intends to recommend that the investigation should be terminated. We would hope and expect that to be the case, in line with our comprehensive submissions in that regard. If that is not the case, we respectfully suggest that the Commission obtain legal advice as to its position, and reconsider its position, such that no decision is arrived at or announcements made that are adverse to the commercial interests of our clients until our clients have had an opportunity to be heard, being the opportunity that the extension of time is intended to provide.

That opportunity needs to be the period of time after next Monday 14 August that the Commission believes to be a sufficient period of time for it to fairly consider our clients' comments on the visit reports and the calculations appended to them.

If we do not hear from you in this regard before 12 noon tomorrow we will seek instructions from our clients to commence urgent legal proceedings to prevent the Commission from issuing any statement of essential facts as per the Commission's stated intention.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Moulis', with a long horizontal flourish extending to the right.

**Daniel Moulis**  
Principal Partner