

4 September 2017

Mr Bora Akdeniz
Case Manager
Operations 3
Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne Victoria 3000

Public File

Dear Mr Akdeniz

BBRG Australia response to Statement of Essential Facts and Preliminary Affirmative Determination No 401 - Wire Rope exported from South Africa

I. Statement of Essential Facts and Preliminary Affirmative Determination

BBRG Australia Pty Ltd ("BBRG Australia") welcomes the findings of the Anti-Dumping Commission ("the Commission") as detailed in Statement of Essential Facts ("SEF") and Preliminary Affirmative Determination ("PAD") No. 401 concerning exports of wire rope exported to Australia from South Africa.

The findings of the Commission as outlined in SEF and PAD 401 include:

- The Australian industry manufactures like goods to imported wire rope from South Africa;
- The Australian market is supplied with wire rope manufactured by BBRG Australia and imported goods, predominantly from South Africa;
- Wire rope exported to Australia during the investigation period¹ was at dumped prices;
- The weighted average dumping margin for goods exported by Scaw South Africa ("Scaw S.A.") was 39.7 per cent;
- The volume of dumped exports from South Africa was not negligible;
- The Australian industry suffered material injury during the investigation period;
- The Commission is satisfied that the injury experienced by the Australian industry was caused by the dumped exports from South Africa; and
- The dumping and material injury is likely to continue in the future; and
- Anti-dumping measures are required to ensure further material injury does not occur to the Australian industry manufacturing like goods.

Coinciding with these findings, the Commission published PAD 341 announcing sufficient grounds exist for the publication of a dumping duty notice. With effect from 16 August 2017, goods entered for home consumption imported from South Africa attract a provisional measure (based upon a non-injurious price) at an *ad valorem* rate of 28.9 per cent.

The Commission's findings in SEF and PAD 401 are wholly supported by BBRG Australia. By its application, BBRG Australia detailed that it had suffered material injury from dumped wire ropes exported from South Africa and that anti-dumping measures were required to prevent ongoing material injury to BBRG Australia.

BBRG Australia provides comments hereunder in response to SEF and PAD 401.

II. Timeliness of published exporter and importer visit reports

In responding to SEF and PAD 401, BBRG Australia highlights that inconsistent with the Commission's usual practice of releasing exporter and importer visit reports prior to the publication of the SEF, it is noted that the reports of the only exporter (i.e. Scaw S.A.) and its related party importer (i.e. Haggie Reid Pty Ltd "Haggie Reid")

¹ Investigation period in Inquiry No. 401 is 1 January to 31 December 2016.

were only made available on the electronic public record (“EPR”) a further 16 days following the publication of the SEF on Day 110 (published on 14 August 2017).

The delayed publication of the reports is a concern to BBRG Australia as it was prevented from commenting on the Commission’s findings as detailed in the reports in advance of the SEF (in addressing, for example, any findings that may relate to the Commission’s assessment of like goods following the verification visit with the exporter).

The Commission’s findings in the SEF, therefore, represented the first notification in the Commission’s investigations with the exporter and importer.

III. Like goods

The Commission is satisfied that BBRG Australia manufactures wire ropes that are considered ‘alike’ to the exported goods (i.e. the goods the subject of the application) from South Africa based upon the following²:

- *The primary physical characteristics of the goods and the 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.*

BBRG Australia concurs with the Commission’s analysis that locally produced wire ropes are alike in all respects to imported wire ropes from South Africa.

IV. Australian market

BBRG Australia agrees with the Commission’s assessment that the Australian market is supplied from local production and imports, with the vast majority of imports supplied from South Africa. The Australian market for wire ropes is primarily in New South Wales (NSW) and Queensland where open cut mining companies operate electric draglines and shovels. A small proportion of sales are made into the Western Australian (“W.A.”) market.

BBRG Australia further agrees with the Commission’s assessment of the size of the Australian market in 2015 and 2016. It is noted that only a small volume of imports from India, the USA and the United Kingdom were identified by the Commission.

V. Dumping investigation

(a) *Model matching*

The Commission has correctly identified the following five key characteristics for contrasting domestic and export sales of the goods (i.e. for model matching purposes). The five characteristics used by the Commission were:

- end use (i.e. drag line or shovel);
- whether the rope is plasticated;
- whether the rope is compacted;
- diameter ranges between:
 - 58mm to 74mm;
 - 75mm to 99mm;
 - 100mm to 200mm; and
- number of strands (i.e. six or eight).

² Statement of Essential facts and Preliminary Affirmative Determination 401, P. 16.

BBRG Australia considers the identification of the key characteristics is integral to the model matching process and ensuring normal values are fairly compared with export prices.

(b) Export price

The Commission determined export prices for Scaw S.A. under subsection 269TAB(1)(c) based upon the deductive export price methodology. The Commission's reasons for not determining export prices under either subsection 269TAB(1)(a) or 269TAB(1)(b) included the following:

- The importer, Haggie Reid, sold the goods in Australia at substantial losses and those losses were not recoverable within a reasonable period of time;
- Further concerns were identified that *"having regard to the price paid for the goods by Haggie Reid, and other related importation and selling costs, and the history of losses made by Haggie Reid in prior years, the Commission has 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"*³ (emphasis added); and
- Some of the goods were not sold in the condition in which they were imported – that is further value-adding occurred following importation (e.g. the addition of ferules), prior to the goods being sold.

BBRG Australia had formed the view in the preparation of its application for measures that Haggie Reid was selling wire ropes at a loss during 2016. This assessment was based upon information sourced from Haggie Reid's ASIC reports in earlier periods (as referenced by the Commission). The Commission's findings concerning ongoing losses therefore were further validated by the Commission during the Haggie Reid importer verification visit (and are consistent with information reported to ASIC for earlier periods).

BBRG Australia also notes the Commission's findings in the Scaw S.A. exporter visit report concerning the payment terms between the exporter (Scaw S.A.) and importer (Haggie Reid) that:

*"...payment terms identified in the relevant commercial invoices for SCAW's Australian customer (as reported in the Australian sales listing) were not reflective of the actual timing of payments. Specifically, it was observed that the period between the invoice and payment was significantly different than the payment terms shown on the invoice"*⁴ (emphasis added).

Further, in relation to the Commission's finding as to the arm's length nature of the export sales between the related parties:

*"...the [verification] team considered that by making certain payment allowances to Haggie Reid, there was evidence that the customer had received a benefit for, or in respect of, the whole or any part of the price. In addition, the verification team observed SCAW did not adjust the prices it charged Haggie to reflect changes in costs and foreign exchange fluctuations over the investigation period. As a result, the verification team is of the view that the price SCAW charged to Haggie was influenced by a commercial or other between the parties"*⁵.

The Commission correctly considered the requirements of subsection 269TAA(1) and (2) concerning the losses, and subsection 269TAA(3) concerning the payment allowances made by the exporter that benefitted the importer.

BBRG Australia is in full agreement with the Commission determining export prices for Scaw S.A. using the deductive export price methodology in accordance with subsection 269TAB(1)(c) as the declared export prices do not reflect the full cost associated with the production and sale of the goods incurred by the exporter.

³ Note 26, SEF & PAD 401, P.20.

⁴ Scaw S.A. exporter visit report, P.6.

⁵ Scaw S.A. exporter visit report, P. 8.

(c) Normal value

SEF and PAD 401 confirms that the Commission has determined normal values for Scaw S.A. in accordance with domestic sales of the goods on the South African domestic market. Where there were insufficient volumes of domestic sales of the goods made in the ordinary course of trade, the Commission determined normal values under subsection 269TAC(1) using 'surrogate' models with specification adjustment. The adjustments were based upon pricing differences between export prices for different models of wire ropes.

Whereas BBRG Australia recognizes the requirements of section 269TAAD that unless the unprofitable sales on the domestic market exceed 20 per cent for a particular model, the unprofitable sales will be included in the subsection 269TAC(1) normal value determination. However, BBRG Australia noted that costs verified by the Commission for Scaw S.A. were initially based upon 'standard' costs which were at historically low levels until mid-2016. Post mid-2016, steel input prices increased and hence actual costs were higher in the second half of 2016 than the first. It is therefore likely that selling prices in the second half of 2016 were not sufficient to recover increasing raw material costs, thereby potentially impacting the sales at a loss threshold of section 269TAAD once actual costs were taken into account. The Commission is requested to confirm all of the exporter's actual costs were taken into account (including increasing raw material input costs in the second half of 2016).

The Commission allowed certain adjustments to Scaw S.A.'s normal value. The adjustments made appear reasonable. Certain claimed adjustments were not allowed, including:

- Domestic bad-debt write-off;
- Export foreign exchange gain; and
- Raw material steel incentives.

BBRG Australia supports the Commission's rejection of the domestic bad-debt write-off as Scaw S.A. could not adequately evidence that bad debts incurred on the domestic market exceeded, or were greater than, those on the export market. Evidence is required by the exporter to substantiate the claimed adjustment. In respect of the foreign exchange gain, it is noted that Scaw S.A. did not alter its export prices to reflect fluctuations in exchange rates. The claimed adjustment should therefore be disallowed. For the claimed raw material incentives, BBRG Australia concurs with the Commission citing the Dumping and Subsidy manual (p.75) that rejects normal value adjustments for incentives (or subsidies).

(d) Dumping margin

BBRG Australia agrees with the Commission that the 39.7 per cent dumping margin is above negligible levels and the investigation should not be terminated under subsection 269TDA(3).

VI. Economic Condition of the Australian industry

The Commission's findings on injury to the Australian industry concurs with BBRG Australia's claims contained in its application. The Commission's assessment of material injury takes account of the Ministerial Direction on Material Injury 2012 ("Material Injury Direction") that material injury from dumping can occur when injury from other causes also occurs.

The injury experienced by the Australian industry during the investigation period was in the following form:

- Loss of sales volume;
- Loss of market share;
- Price depression;
- Price suppression;
- Loss of profits;
- Reduced profitability;
- Reduced sales revenues;
- Reduced return on investment;

- Reduced capacity utilisation;
- Reduced employment; and
- Reduced productivity.

Importantly, it was confirmed by the Commission that BBRG Australia lost 6 per cent market share from 2014, whereas Haggie Reid improved its market share by 7 per cent over the same period. BBRG Australia also concurs with the Commission's conclusions on 'trialing' of imported rope that this also reflects "*a process by which the Australian industry is injured by dumped wire rope*".

The injury experienced by BBRG during the investigation period was material and not insignificant. BBRG Australia's decline in profit in 2016 was 40 per cent – a material decline in a single year's operations.

VII. Causation

The Commission's price undercutting analysis confirmed that for ropes in the same categories (i.e. dragline and shovel ropes), wire ropes from South Africa undercut the Australian industry's selling prices by between 13 and 16 per cent. The level of price undercutting was ably afforded by the 39.7 per cent dumping margin determined for the exports in 2016.

The Commission further observed that for contracts between a mining company and supplier, the contracts were "non-exclusive" and mining companies could switch between suppliers as appropriate. Price, therefore, was the key influencing factor aided by the substantial dumping margins evident.

BBRG Australia's submission of 28 July 2017⁶ detailed the impact of Scaw S.A.'s exports on volumes and prices, by mine site, throughout the investigation period. BBRG Australia considers the impact of the dumped exports can only be viewed as 'material' and had a consequential significant impact on BBRG Australia's profit for the period.

BBRG Australia is also aware that Haggie Reid has secured additional volumes with product that may have been imported prior to the investigation period at [company and mine name] in Queensland. The product is understood to be consignment stock and Haggie Reid has encouraged [company] to take up the offer to use. It may be recalled that a similar offer was made to [company] in the [location] for product at a price "too good to refuse". BBRG Australia is also aware of imported Scaw S.A. wire rope that was delivered at [company and mine name] and at [company and mine name], however, this is recently imported product.

The foregoing highlights the continued impact of dumped wire ropes exported from South Africa that have been imported prior to the investigation period and continue into and beyond (and have most likely been identified as the forward orders by the Commission) that will continue to cause material injury to the Australian industry.

BBRG Australia notes the Commission's analysis of the impact of 'other' factors on the Australian industry's performance in 2016. BBRG Australia welcomes the Commission's analysis confirming "the injury from goods exported from South Africa at dumped prices can be separated from other potential causes of injury". In applying the Ministerial Injury Direction, the Commission was satisfied that the dumping had caused injury to the Australian industry producing like goods and that injury is 'material'. The Commission's finding is consistent with BBRG Australia's experience in the Australian market during 2016 where the cause of price depression and price suppression in a price transparent market, was the dumped exports.

VIII. Will the dumping and material injury continue?

BBRG Australia notes the Commission's comments that forward orders exist for the supply of further export volumes from South Africa (at date of the SEF & PAD 341). Additionally, the Commission found that in the first seven months of 2017, the volume of imports of wire ropes from South Africa represented 88 per cent of the volume of 2016, indicating a higher level of imports from South Africa for the total 2017 year is likely.

⁶ Electronic Public Record, Investigation 401, Folio 11.

The Commission also established that the South African exporter has excess capacity that could be directed to increased export volumes to Australia.

It is therefore reasonable to conclude that in the absence of anti-dumping measures, further dumping from South Africa would occur, and that the industry would be exposed to further material injury.

IX. Non-injurious price

BBRG Australia acknowledges the Commission's comments at Section 9 of SEF and PAD 401 in response to BBRG Australia's view that an unsuppressed selling price should be based upon selling prices for 2013 and 2014. The Commission noted BBRG Australia's claims that injury from wire ropes exported from South Africa commenced in 2015, however, stated that as the dumping analysis only examined exports in 2016, it could not conclude that dumping was occurring in 2015.

BBRG Australia would highlight the Commission's findings that the exporter in South Africa did not adjust its export prices in the investigation period to reflect changes in costs of exchange rate fluctuations. An analysis of Scaw S.A.'s export prices from 2015 contrasted with 2016 will confirm that export prices have fallen – but not be the level of the margin of dumping determined by the Commission.

The Commission's view that 2015 selling prices must form the basis of the USP suggests that South African export prices to Australia declined substantially at the end of 2015. This was not BBRG Australia's experience, as it commenced losing sales volumes to the dumped and injurious exports prior to 2016.

BBRG Australia urges the Commission to reconsider the basis for the unsuppressed selling price to reflect:

- 2013 and 2014 selling prices; or
- average 2013, 2014 and 2015 selling prices.

It is BBRG Australia's view that unsuppressed selling prices determined solely on the 2015 year are less than what is required to remove the injurious effects of dumping.

X. Form of measures

BBRG Australia welcomes the Commission's proposed recommendation to the Parliamentary Secretary that the form of measures to be applied on exports of wire ropes from South Africa be based upon the combination method. Additionally, where exports are determined to be at non-arm's length, the combination method form of measure is suitable in such circumstances. Further, the Commission considers the combination method to be appropriate as the exporter and importer are related parties and is effective in reducing duty absorption opportunities.

BBRG Australia concurs with the Commission's analysis and urges the Commission to recommend the combination method form of measure to the Parliamentary Secretary in the final report.

XI. Submissions on behalf of Scaw S.A. and Haggie Reid dated 10 and 30 August 2017

BBRG Australia notes the submissions dated 10 and 30 August 2017 on behalf of Scaw S.A. and Haggie Reid. It is contended that the exporter and importer were provided with reports on 2 and 4 August 2017 respectively and that each party had insufficient time to respond to the Commission's stipulated deadline for comments.

BBRG Australia notes, however, that the exporter and importer visit reports were not placed on the EPR until 30 August, a further 16 days post the publication of SEF and PAD 401. Reasons for the delayed release of the reports are not clear, however, it is hoped that disagreement with the Commission's findings should not have been the cause of the delays in releasing the reports. Whilst it is also noted that the exporter and importer disagreed with a number of the Commission's findings (including the treatment of claimed adjustments that were disallowed by the Commission), the Scaw S.A. and Haggie Reid submissions do no detail the grounds as to why the Commission's treatment was incorrect.

XII. Recommendations

BBRG Australia welcomes the Commission's proposed recommendations to the Parliamentary Secretary that anti-dumping measures (in the form of a dumping duty notice) apply to all exports of wire rope from South Africa. BBRG Australia agrees with the Commission's findings that anti-dumping measures are justified to limit further material injury from dumped exports of wire rope from South Africa. BBRG Australia supports the form of measures to be applied be based upon the combination method to ensure opportunities to absorb the measures are minimized.

BBRG Australia does consider, however, that in determining a non-injurious price for exports from South Africa, the unsuppressed selling price should be calculated based upon 2013 and 2014 selling prices – periods that were free of the effects of injurious dumping.

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

Yours sincerely



Stuart Callender
Vice President Oceania