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By email

Received on 7 September 2017

Dear Bora

Alleged dumping of wire ropes from South Africa Comments of Scaw SA and Haggie Reid regarding SEF/PAD 401

We refer to the *Statement of Essential Facts No 410 and Preliminary Affirmative Determination No. 410 – Alleged dumping of wire rope exported to Australian from the Republic of South Africa* (“the SEF”) as was published on the public record pertaining to this investigation on 16 August 2017.

We now provide the comments of our clients Scaw South Africa (Proprietary) Limited (“Scaw SA”) and Haggie Reid Pty Limited (“Haggie Reid”) as invited pursuant to Section 269TC(4)(f) of the *Customs Act 1901* (“the Act”).

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A Normal value

Before and during the exporter verification we submitted Scaw SA’s evidence and suggestions with respect to the calculation of normal values for the exported models. We clearly stated that there were some models that were identical on both the domestic and the export markets, meaning that a TAC(1) normal value¹ was available and appropriate with respect to those exported models. We also informed the Commission that some exported models had closely similar domestic models, meaning that a TAC(1) normal value with specification adjustments could be considered for those models. For the other exported models, we advised the Commission that there were no comparable domestic

¹ Section 269TAC(1) of the Act.

models, and that a TAC(2)(c) normal value² calculation would be appropriate.

This thinking and these manners of calculation of the individual normal values are typically and regularly adopted by the Commission. We offered the suggestion that if the Commission intended to proceed differently, it would need to be cautious to ensure that invalid comparisons were not made.

In response, the Commission has not done anything we suggested, has thrown caution to the wind, and has come up with a result that has the randomness and extravagance that we feared might eventuate if invalid comparisons were made in the blind pursuit of price-based normal values.

As per section 2.3 of the exporter visit report, instead of using the model-to-model matches advised by Scaw SA, the Commission:

[had] regard to five characteristics:

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

The method of grouping wire ropes according to these characteristics (“PCN method”) ignores our client’s evidence about the importance of design, use and marketing. Wire rope is not a commodity product. Wire rope exhibits different pricing depending on its specific attributes. We demonstrated that there was a great variability in the profitability of domestic sales. The profit (or loss) on different models is not neatly graduated with diameter nor indeed with any other individual feature. The general superiority of the domestic ropes in terms of their standards and features as compared to Australian ropes was also advised to the Commission.

The PCN method has created a very pronounced mismatch in the comparison of domestic models and Australian models. The fact that this amounted to a clear matching of different products is demonstrated by a “cost to make and sell” (“CTMS”) comparison between the models, which shows substantial differences between the domestic PCNs and their “matching” Australian PCNs.

Although the following analysis will not be meaningful to other interested parties, due to the confidentiality of the information to which the analysis refers, we still wish to have it recorded and to have it acted upon by the Commission:

Cost differences between domestic and export models falling into different PCNs

PCN	Q1	Q2	Q3	Q4	Comment
[CONFIDENTIAL TEXT DELETED – PCN CODES]	9%	9%	5%	1%	Export CTMS always higher
	-3%	-3%	-9%	-11%	Export CTMS always lower
	1%		-3%		Export CTMS lower in Q1

² Section 269TAC(2)(c) of the Act.

	0%	1%	-4%		Export CTMS lower in Q2
	-3%	-2%	-6%	-9%	Export CTMS always lower
	5%	6%	2%	1%	Export CTMS always higher
	-15%	-14%		-17%	Export CTMS always lower
	-13%	-15%	-3%	-28%	Export CTMS always lower

This chart shows that the price analysis adopted in working out the dumping margin was unfairly skewed. Put simply, in most cases the prices of lower cost export models have been compared with the prices of higher cost domestic models. This is incorrect, unfair and unnecessary. In so far as there are “swings and roundabouts”, the degree of the swings in the direction of higher domestic costs outnumber the others, and in any case the errors in the approach cannot be cured by “swings and roundabouts”. We submit that a fair comparison has not been achieved.

On the same theme, the following chart shows the cost variances within a single PCN when applied to the exported models. The percentages represent the difference between the cost of six models within the Commission’s PCN and the weighted average cost of all the export models in the PCN.

Cost differences within the models in export PCNs

PCN	Q1	Q2	Q3	Q4
	23.2%	25.6%	24.4%	21.9%
	5.3%	7.1%	7.4%	5.3%
[CONFIDENTIAL TEXT DELETED – PCN CODE]		3.2%	3.8%	1.9%
	1.5%			1.9%
	-10.6%	-9.4%	-7.7%	-9.3%
	-14.2%	-13.1%	-11.1%	-12.6%

Again, we submit that there is no precision or consistency. This has opened the way for a dumping margin outcome that is illogical and unfair.

The approach adopted towards certain specification adjustments, for the purpose of calculating the normal value for three PCNs where there was a lack of domestic sales of identical or matching PCNs, further underlines the curious nature of the PCN method. The adjustment to which we refer was not done on the basis of a domestic market based cost or price difference. Instead, it was done based on the difference between weighted average deductive export prices. For example, to account for the lack of domestic sales of the PCN [CONFIDENTIAL TEXT DELETED – PCN CODE], the Commission applied a 30% increase to the normal value of the PCN [CONFIDENTIAL TEXT DELETED – PCN CODE]. The 30% was based on differences between the deductive export price of the same two PCNs. In the first place, we disagree with the idea that an export price difference can be relevant to work out the specification difference that would be relevant in the domestic market. Secondly, and to emphasise our point about the distortions that have arisen, the actual cost difference between the two PCNs on the export side was only 2%.

Our client Scaw SA has already indicated that it disagrees with the various adjustments that were made and that were rejected in working out its normal value. We now wish to add the following

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additional comments about those adjustment for the Commission's further consideration:

- Bad debt - we believe that the information available was clear and unequivocal with respect to our client's bad debt adjustment claim. The failure of the customer concerned was a high profile event, which was discussed at sales meetings. Those staff were conscious of the need to recover that cost, so far as they were able to do so, in price negotiations. In other words, the bad debt incident had an upwards pull on Scaw SA's pricing.
- Foreign exchange gain - we see no justification for the rejection of the foreign exchange gain that accrued on payments to Scaw SA in the period of investigation with respect to its Australian sales. Foreign exchange gain is simply the receipt of a greater amount of money in the home currency of the exporter, for sales made by the exporter that were denominated in a different currency, where the exchange rate between the two currencies has moved favourably for the exporter. The rejection of this adjustment as a favourable adjustment for our client is more than disappointing. Whether it is characterised as a benefit of exporting that is not achieved when making domestic sales, or as additional income on export sales, makes no difference. It should be accepted as an adjustment, in the same way that it has ordinarily been accepted, in case after case in which we have been involved in past years.
- Steel price rebate - openly negotiated, private sector price rebates are valid, commercial market outcomes. They should not be removed from the calculation of costs or rejected from consideration as a valid adjustment.

B Export price

The Commission has stepped outside its remit under the Act with respect to the approach adopted in ascertaining the export price of the goods. The export price has been worked out with respect to a universe of goods that not only includes goods that are within the scope of the goods to which the investigation applies. The universe also includes goods that are outside that scope. The argumentative defence of the inclusion of all of Haggie Reid's sales in Australia in the period of investigation instead of just its sales of the goods exported from South Africa in that period, which is set out at 7.10.2 of the SEF, is emblematic of the SEF's aggressive attitude towards our clients and their submissions throughout.

The Commission has the statutory duty and responsibility to work out an export price for the goods exported to Australia. The goods to which the application applied and which were cited in the notice issued under Section 269TC(4) of the Act, and which are the goods to which Section 269TG(1) and (2) of the Act may be applied, are the goods exported to Australia during the investigation period of 1 January 2016 to 31 December 2016.

All our client is saying, as it is entitled to say both as a matter of fair comment and of legal right, is that the Commission's findings as to Haggie Reid's profitability, and as to any effect of the goods in the Australian market, have not been confined to the goods that are the subject of this investigation.

The SEF states that:

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.

That is true. But it is not Haggie Reid's problem. Clearly, it is of concern to the Commission. However what the legislation *does not contemplate* is not something that can contradict or subvert what it *does contemplate*.

The SEF further responds to our client's submission in this regard by saying:

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.

This is not of concern to Haggie Reid either. That an exporter could “dump with impunity” sounds far-fetched, and is obviously of concern to the Commission. However, the Commission is confined by the requirements of the legislation and cannot interpret the law or make new law to head off every perceived ill it can think of.

The SEF also states:

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.

It is not for Haggie Reid to invent a counter-argument to a proposition that it seeks to put to the Commission, and then provide evidence to refute it, and the failure to do so does not diminish the need for the Commission to deal with the issue on its merits. Again, it is irrelevant to Haggie Reid how importers might try to “get around” Australia's anti-dumping legislation. That certainly is not Haggie Reid's practice or intention, but that is not to the point.

Our clients submit that it is the goods exported to Australia during the period of investigation that are actually subject to the investigation, and that may have dumping margins assessed in respect of them. Also, it is those goods to which the Commission's injury analysis must be directed. Haggie Reid operates in an industry, and operates a business model, which meets customer requirements from inventory and on consignment. The stock can be slow moving. It needs to be available. Our client's business model is not set up to frustrate anti-dumping investigations or to evade dumping duty findings. It is what it is, and the Act says what it says.

Lastly, the SEF states:

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.

The relevance of this to Haggie Reid is not clear to us. What a company will or may do, and how it prices its inventory, is not to the point. The questions are:

- what is the export price of the goods exported during the period of investigation; and
- was material injury caused by the dumped goods?

With respect to the first question, we submit that the Commission has not worked out the export price of those goods, because its conclusions about the transactions between Haggie Reid and Scaw SA, and between Haggie Reid and its customers, relate to a wider class of goods than only the goods that are under investigation. We accept that in many cases, indeed in most cases, an importer will have starting and closing inventory on hand which would impact on the analysis. However we note that this investigation covers a 12 month period, as opposed to a longer period such as those adopted in other cases involving “capital goods”. We have not been involved in a case in which it has occurred at quite the same scale as this one.

With respect to the second question, we provided the Commission with a chart showing the split

between sales in the period under investigation of goods exported before that period and during that period, and when in the period they were sold.

Our client is not only concerned with the Commission's opinion about "unprofitability", and how it reached that opinion, but also about the way in which it was expressed. At 3.8 of the importer visit report, the Commission states:

...purchases of the goods by the importer were sold at substantial losses by Haggie Reid
[underlining supplied]

The Commission's own conclusion was that the loss was a low single-digit percentage – **[CONFIDENTIAL TEXT DELETED – NUMBER]**%. In **[CONFIDENTIAL TEXT DELETED – NUMBER]** of the **[CONFIDENTIAL TEXT DELETED – NUMBER]** months Haggie Reid was profitable. Given those facts we are perplexed, and our client is perplexed, by this exaggeration. We would be grateful to be informed of the basis for that exaggeration, or to have it withdrawn.

C Dumping margin

Our clients reject the dumping margin of 39.7% that has been arrived at. It is wildly overstated. It is not based on a fair comparison. It uses the wrong goods for comparison on both the domestic and the export sides. Adjustments that are ordinarily allowed and that should be allowed, and that were claimed and evidenced by our clients, have not been allowed. The margin was announced in the SEF, and was used as the basis for the PAD, without hearing our clients' opinions on what was proposed.

Going on our clients' experience of this investigation so far, and the wholesale rejection of just about everything it has had to say, it would be remarkable to expect the Commission to review its position for the purposes of its final report. Nevertheless our clients request that their submissions be duly and fairly considered by the Commission in formulating its future recommendations.

D Material injury and causal link

Our clients lodged detailed submissions regarding the injury allegations of the Australian industry by way of letters dated 13 June 2017 and 19 July 2017.

In the period of investigation, which is the only relevant period for deciding whether injury has been caused by dumping, the size of the Australian market reduced quite significantly. That was singlehandedly the cause of material injury to the Australian industry in that period, noting, as we have emphasised on a number of occasions, that it remained profitable at all relevant times.

Cutting aside all of the "bluff and buster" of the Australian industry's position on injury and what has caused it to be injured, the key complaint of the Australian industry is that it should not have lost sales volumes and market share. To replace its market share losses, which plainly were not caused by South African exports, it claims to have been entitled, in the investigation period of 2016, to replace its lost sales by taking sales away from Haggie Reid.

Before considering that reasoning further, we wish to address the main findings in the SEF with regard to injury. The findings set out in the below table are the findings upon which the Commission's conclusion that South African exports caused material injury to the Australian industry entirely depends. Every other head of injury is a sub-effect, arising from the price and volume effects themselves.

Key findings on volume and price injury

Ref	SEF extract	Comment
SEF, 6.3.2	<i>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.</i>	This analysis extends back three years, when the period in which injury and causation must be adjudged is 2016. The Commission quotes no figures pertaining to the change from 2015 to 2016.
SEF, 6.3.3	<i>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.</i>	Our clients have fully documented and addressed what happened at the mine sites serviced by the Australian industry in 2016. Multiple machine shutdowns had a severe effect on the Australian industry's sales volumes. That is not injury caused by dumping.
SEF, 6.4.2	<i>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.</i>	Figure 6 shows, with respect to the investigation period of 2016, that the Australian industry's prices did not decline. Its costs increased. That is not injury caused by dumping.
SEF, 6.5.2	<i>Figures 3 through to 7 show that a combination of reduced unit sales revenues, higher unit CTMS and reduced sales volumes have impact [sic.] profits. The Commission considers that the Australian industry has experienced injury in the forms of reduced profit and reduced profitability.</i>	Profit and profitability are driven by throughput, costs generally, and sales revenue. In the investigation period of 2016, the Australian industry's volumes declined over the previous period by reason of multiple machine shutdowns at the mines it serviced. Its costs increased. It appears from Figure 6 that its prices stayed the same or even increased. Thus, the reduced profit flows directly from factors that were not related to dumped imports.

We return now to the proposition that we think is being put by the Commission in the SEF. The Commission appears to maintain that:

- the Australian industry should have been able to increase its sales of wire ropes, and its prices of wire ropes,
- in a declining market,
- to replace its sales that were lost for reasons unrelated to dumping,
- but was prevented from doing so because of the presence in the market of dumped wire

ropes from South Africa.

There are flaws in this argument.

First, the proposition itself establishes that the injury to the Australian industry was not caused by the imports from South Africa. Rather, the Australian industry claims to have been entitled to have its injury remedied by taking sales away from Haggie Reid, either because that would replace the sales it lost (being sales that were lost because of factors unrelated to dumping), or that it should be able to charge prices that would generate more revenue to replace the money it lost because of factors unrelated to dumping.

Secondly, the SEF makes clear that Haggie Reid’s submissions with respect to its own prices (that they did not change at all in the investigation period of 2016) and its own volumes (that they did not increase in the investigation period either) are correct and are accepted by the Commission. There was no change in Haggie Reid’s prices or its volumes that could constitute an “effect” on the Australian industry.

Thirdly, everything that the SEF has to say about which supplier was the higher or lower priced supplier at any shared mine site – of which there are only a small number – is irrelevant in circumstances where Haggie Reid did not change its prices in the investigation period of 2016, and also lost sales for the same reasons (but on a lesser scale) as did the Australian industry. Sales in greater volumes or at higher prices were just not available to be had in the market situation of 2016, for any supplier.

The SEF suggests that the proposition that wire ropes from South Africa caused material injury to the Australian industry is justified. Those justifications are variously dubious, unsupported or speculative, as we now wish to explain:

Rebuttal of the various reasons in the SEF for the proposition that material injury was caused by imports

SEF extract	Comment
<p>SEF, 6.3.1</p> <p><i>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).</i></p>	<p>Coal prices were at historically low levels in 2016, reaching a nadir in June of that year. The “improvement in market conditions” claimed in the SEF only applied to the second half of the POI (see below) and did not lead to some kind of newfound generosity from mine site managers in their approach towards prices. Nor was it accompanied by increased coal production or by increased demand for wire ropes.</p>
<p>SEF, 6.5.2</p> <p><i>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</i></p>	<p>With respect, the assumption that all was rosy in the coal mining industry in the investigation period, and that any alleged industry downturn is not a relevant factor in the Commission’s analysis, is incredible. It flies in the face of the available evidence. The documented reduction in the market size and in the respective sales volumes of both the Australian industry and of Haggie Reid is itself evidence that some major, external contractive factor or factors were at play in the investigation period.</p> <p>The following chart shows how prices tracked in 2016:</p>

<p>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.</p>	<p>Coal prices \$US/tonne</p> <p>Source: Bloomberg</p>
<p>SEF, 7.9.1</p> <p><i>BBRG Australia stated that there had been a sustained downturn in the price of coal following the global financial crisis. 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.</i></p> <p><i>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...</i></p> <p><i>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.</i></p> <p><i>The Australian market for wire rope operated in the shadow of coal price reductions for most of the injury analysis period however coal prices</i></p>	<p>Here we see the Australian industry acknowledging the impact of falling coal prices, but the Commission disagreeing with that acknowledgement. We feel that in this regard the applicant itself should know what it is talking about. However, the Commission <i>contradicts</i> the Australian industry, ending its own analysis of the coal industry and coal prices by concluding that “<i>material injury experienced by BBRG Australia during 2016 was not caused by conditions in the coal industry</i>”.</p> <p>This view is untenable. There are many in the industry who have different views to those of the Commission:</p> <ul style="list-style-type: none"> • <i>Coal price slump caught BHP boss by surprise - http://www.theaustralian.com.au/business/mining-energy/coal-price-slump-caught-bhp-boss-by-surprise/news-story/f4dfaecfb2ce6cc6b187db70856d19c0</i> • <i>But coal is the unexpected big one for Australia in 2016. The coking coal price is now [November 2016] \$US253.50 a tonne, up from \$US90 in June — a rise of 180 per cent. Thermal coal has smashed through \$US100 a tonne and is now \$US108.60, up from \$US54 a tonne. [underlining supplied] http://www.theaustralian.com.au/business/opinion/alan-kohler/economic-outlook-brightens-on-coal-iron-ore-price-recovery/news-story/8d10cc6d24b4708916de2ac02eeb678e</i> • <i>Mining industry to lose 50,000 more jobs as boom comes to an end: NAB - http://www.abc.net.au/news/2016-06-10/mining-boom-halfway-down-the-mining-cliff/7500700</i> • <i>Mining, oil and gas to face further headwinds in the new year as China slows, but India a bright spot - Coal price to remain in the doldrums for some time http://www.abc.net.au/news/rural/2016-01-04/2016-mine-oil-gas-outlook-subdued/7063246</i> <p>In conclusion we submit that there can be no doubt that the resources sector and the coal sector in particular was hit by poor trading conditions in at least the first half of 2016. The prices in June of 2016 were at all-time lows, before picking up in the second half of the period. Further, our clients saw no evidence of a sudden change in the mood of the various mine sites in the second half of the year.</p>

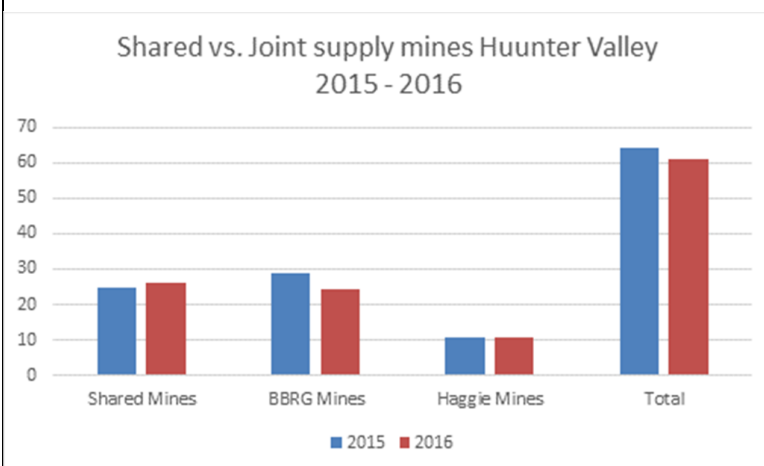
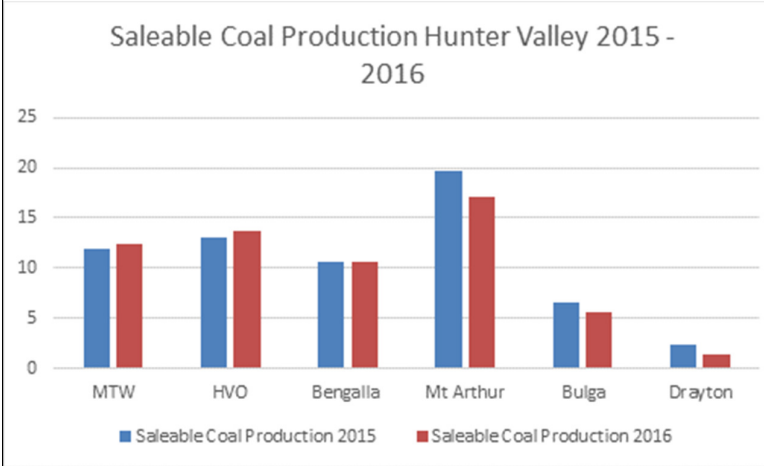
<p><i>increased significantly during 2016 such that average prices for coal during 2016 were 16 per cent higher than in 2015. Accordingly the Commission considers that material injury experienced by BBRG Australia during 2016 was not caused by conditions in the coal industry.</i></p>	
<p>SEF, 7.9.1</p> <p><i>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.</i></p>	<p>An underlying assumption of the Commission's belief that industry conditions did not cause injury to the Australian industry could be that the coal price increases in the second half of the period of investigation would have led to the consumption of more wire ropes, presumably due to increased production of coal. That was not and has not been the experience of the Australian industry.</p> <p>Increased prices do not automatically equate to increased production. Even in the mildly improved coal price conditions presently being observed, production does not simply ramp up as a function of price (see footnote 3).³ Further, the industry has seen a significant number of changeovers to hydraulic excavators, which do not use wire ropes. Increased coal prices or production levels therefore do not equate with nor require increased wire rope consumption.</p> <p>The reduction in the volume of steel wire rope supplied on draglines in 2016 as a result of machine park-ups curtailed the supply of wire ropes. Mine sites have in a number of cases responded to the market disruption by shifting their method of extraction from using electric draglines to fleets of hydraulic diggers and trucks to maintain and later increase production levels.</p> <p>As an example, in 2016 BMA purchased three hydraulic diggers at its Goonyella mine, and Downer Mining increased its contract digging capabilities with an additional two hydraulic diggers at the same mine site. At the Peak Downs site, also in 2016, BMA began to utilise seven hydraulic diggers (two on hire) and also extended the digging contract of HSE Mining, a contractor also employing hydraulic machines. At BMA's Saraji mine site, a hydraulic digger was brought onto site by a contractor to move the equivalent of 20m MT of dirt in the 2016 calendar year. The Daunia and Blackwater mine sites also brought in hydraulic diggers (one at each site) in 2016.</p> <p>The changes within BMA are part of a trend across the industry</p>

³ See also *Thermal coal – Resources and Energy Quarterly June 2017*, at page 47: *In 2016–17, production is estimated to be similar to 2015–16, at 250 million tonnes... In 2017–18, production is forecast to increase marginally, to 251 million tonnes, driven by relatively firm thermal coal prices, but constrained by forecast lower import demand from traditional consumers such as South Korea... Ramp-ups in production are expected at some large mines, including at the Hunter Valley Operations, Narrabri and Moolarben. In 2018–19, production is forecast to be stable at 251 million tonnes. Output is expected to be supported by ramp-ups in production at Mangoola (up to 8.3 million tonnes a year capacity) and Ravensworth (up to 9.3 million tonnes a year capacity), but is likely to be constrained again by lower import demand from South Korea.* <https://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyJune2017/documents/Resources-and-Energy-Quarterly-June-2017-Thermal-Coal.pdf>

towards hydraulic machines. Indeed it was Peak Downs which experienced the highest rate of transition to hydraulics of any BMA mine site in 2016. And as we have pointed out in previous submissions, the dragline park-ups at Peak Downs had the biggest impact on the Australian industry's rope sales in 2016. Because of the prospect that draglines will be replaced by hydraulic machines, a supplier cannot assume that lost volumes will be recovered when coal prices increase and production is brought back on line.

Further, the Australian wire rope industry was more severely impacted by reduced production, because it was the mines serviced by the Australian industry which were themselves most severely impacted. *Why* those impacts were more severely felt by the Australian industry and not by our clients was fortuitous for our clients but otherwise irrelevant.

In the Hunter Valley production went down by 3.3 million tonnes overall. However on an individual mine basis, production at the Haggie Reid-supplied mine sites went up in 2016 by 1.25 million tonnes, whereas production at the Australian industry-supplied mine sites went down by 4.6 million tonnes:



Another example of the “misfortune” of the Australian industry is that the “shared sites” in the Hunter Valley, none of which are BMA owned, did not change their operational methods (ie did not park

	<p>draglines or face shovels in preference for hydraulic diggers) in 2015 and 2016, and ended up increasing their combined output in the latter period.</p>
<p>SEF, 7.5</p> <p><i>The Commission calculated that the overall price undercutting by Haggie Reid in sales of dragline ropes is 16 per cent for the investigation period.</i></p> <p>...</p> <p><i>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.</i></p>	<p>Nothing is to be gained from a price undercutting analysis in the circumstances of this case. At all relevant times the Australian industry and Haggie Reid each had established supply lines to certain mine sites and certain machines, The market was then hit by the industry downturn, which unfortunately for the Australian industry had a radical effect on the sites and machines it supplied and serviced. Haggie Reid lost volumes as well, did not adjust its prices, and did not win new business. Wire ropes are not packets of spaghetti.⁴ Wire rope buyers do not buy one manufacturer's wire rope for a particular machine one day, then a different manufacturer's wire rope for the same machine the next day. If that was not the case there would be no need for trials of wire ropes. Simply stating that there was a price differential does not mean that dumping caused material injury in the investigation period.</p> <p>Our clients also query the price basis used in making such comparisons. The Australian industry's pricing does not necessarily proceed on a cost/metre basis, but instead uses a formula based on actual performance. How the Commission has reconciled two different price bases as between the Australian industry and Haggie Reid – or if it has attempted to do so at all – is a matter of concern to Haggie Reid. Further, our clients would also be concerned to ensure that the Commission has factored in actual or prospective rebates. Our client has it on good authority that these are offered by the Australian industry (most prominently with respect to BMA). [CONFIDENTIAL TEXT DELETED – COMMERCIAL ARRANGEMENTS]</p>
<p>SEF, 7.10</p> <p><i>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</i></p>	<p>Haggie Reid stands behind all of the evidence, information and data it has provided. Our clients have been meticulous in their recitation of events that impacted upon the market in 2016, and with respect to the implications of those events.</p> <p>The way in which the SEF dismisses the things our clients have had to say, and the way in which it prefers what the Australian industry has had to say, is disturbing. The Commission is an investigator, not a court of law. Our clients have brought things to the attention of the Commission for the purposes of its investigation, and not so that they can be dismissed simply because the Commission thinks those things are somehow unreliable. Our clients are not making this stuff up. If this is a question of credibility, why is it assumed that our clients are less credible than the Australian industry?</p> <p>Our client was asked by the Commission to give permission for our client's detailed, and up-to-then confidential, analysis of machine park-ups and other market impacts in un-redacted form so that it could be passed on to the Australian industry for comment (our</p>

⁴ As per the Australian industry's submission dated 28 July 2017:
BBRG Australia agrees with Scaw S.A. and Haggie that the wire ropes sold in Australia are not commodity products. The goods are manufactured to the specification requirements of the end-use customer, with unique design and performance attributes BBRG Australia offers a full range of products supported by its TRM rope management program that meet the markets high requirements as a leading global rope supplier.

<p><i>found not to be reliable. The Commission may place less weight on information that is not supported by evidence.</i></p>	<p>letter dated 19 July 2017 refers). Our clients gave that permission.</p> <p>In response the Australian industry continued to maintain that it had lost sales to Haggie Reid (the Australian industry's letter dated 28 July 2017 refers). That is a matter of opinion. However the central matters of fact that our clients' analysis established – namely that the Australian industry's sales had been affected by significant and extensive park-ups and machine shutdowns as a result of the industry downturn – was not addressed by the Australian industry at all. The reason for that is because the facts in that analysis are unchallengeable.</p>
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E Non-injurious price

The concept that an Australian industry can be buffeted by a major industry contraction, still command over 80% of the market, still remain profitable, and be “granted” the kind of price increase that would be achieved by the application of a proposed interim dumping duty level of 28.9%, is wrong, and is antithetical to the anti-dumping remedy itself. It is wrong because of the hugely overstated level of the dumping margin calculated by the Commission in the first place. It is antithetical to the anti-dumping system because there is no suggestion, in the SEF, that the non-injurious price takes into account any other injury factor at all. The non-injurious price attempts to remove all “injury” to the Australian industry, from any cause.

F Duty method

There is no call for the combination method to be imposed. A 28.9% ad valorem rate is punitive enough.

The Commission states:

The Commissioner considers that the advantages of the combination method outweigh its disadvantages for this particular investigation.

Scaw SA and Haggie Reid have been servicing the Australian market for generations. They are good corporate citizens. They have been eminently cooperative with the Commission. The implication that they would engage in behaviours pursuant to which they would misstate the value of imported goods or try to rot the system is a fantasy. The goods under consideration are within a large price spread and Haggie Reid competes across all levels of that range. A single floor price across the range will actually create the market distortions that such a mechanism is intended, when implemented in other cases, to prevent.

If our clients' *bona fides* are called into question, the applicant can apply to the Commission for a review, pursuant to which the Commission can reconsider the situation and potentially change the duty collection method as a result, and as it has done in past cases.

In the circumstances of this case, and given the huge *ad valorem* duty percentage, we see no call for the application of the combination method and ask that no fixed duty be “superadded” to what is already a seriously increased selling cost.

As will be plain from the above, our clients do not agree with the preliminary findings set out in the SEF.

The Commission is requested to reconsider its preliminary findings, and to terminate the investigation on the basis that South African exports of wire rope did not cause material injury to the Australian industry during the period of investigation.

Yours sincerely

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

Daniel Moulis
Partner Director