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16 January 2017

Ms Carina Oh
Assistant Director
Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne
Victoria 3000

By email

Dear Carina

Scaw South Africa and Haggie Reid Anti-circumvention inquiry – wire ropes from South Africa

We write further to our previous submissions and in response to the submissions of BBRG Australia Pty Ltd (“BBRG”) dated 9 November 2018 and 19 November 2018.

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A BBRG’s 9 November submission

Because a substantial portion of the public record version of BBRG’s 9 November submission is redacted, the legitimacy of BBRG’s case studies and assertions cannot be verified. Our clients are unaware of who or what is being referenced. The Commission should ask itself – what is the reason that BBRG cannot provide our clients with such details? Is the concern that Haggie Reid might then contact the customer(s) to verify the facts and then respond to the Commission? If so, we do not see why our clients should not be informed.

Given the falsehoods we have already identified in BBRG’s earlier submissions, the accuracy of BBRG’s 9 November 2018 submission warrants scrutiny. Scrutiny is also necessary because it is unclear whether the author of BBRG’s submission truly understands what is being argued. For example, with reference to one case study, the author asserts that our clients’ 9 strand wire rope

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“was end for ended”.¹ Then, with reference to the same case study, the author asserts the opposite conclusion: *“Therefore, the ropes failed to be end for ended...”*.²

These inconsistencies, and non-disclosure of relevant party/ies, mean that the submissions are unverifiable and unable therefore to be substantiated.

B BBRG’s 19 November submission

BBRG’s 19 November submission simply repeats its previous arguments, which are designed to understate the various and significant differences of our clients’ 9 strand wire rope. The Commission will note that our submission of 8 November 2018 identifies instances in which BBRG:

- misrepresented our clients’ position;
- made false assertions based on software models that were manipulated to undermine 9 strand wire rope;
- made false assertions based on the misapplication of a mathematical equation;
- made false assertions based on the misapplication of Australian Standards; and
- made assertions which contradicted not only its own other assertions in the same submission, but also assertions made in previous submissions.

BBRG’s response to our identification of these errors and inconsistencies is glib, simply that it *“does not seek to engage in an ongoing debate”* about the differences between 9 strand wire rope.

The present slight modification inquiry requires a comparison between wire ropes. From the perspective of manufacturers, suppliers and end users, such a comparison is a highly detailed and technical matter. BBRG attempted to argue its case from a technical standpoint and failed spectacularly. This is of course no fault of BBRG or its author – the fact that our clients’ 9 strand wire rope is not a slight modification is borne out by the technical data and by an understanding of wire rope mechanics, and any contrary argument must fail.

Our clients have provided first-hand evidence regarding the substantial performance differences of 9 strand wire rope. This is to be seen in and has been supported by certified higher breaking strengths across all diameters, wire rope mechanics and customer testimonials. Even BBRG’s case studies – unverified or not - indicate that the performance of our clients’ 9 strand wire rope is substantially different from that of 6 and 8 strand wire ropes. Whether that performance is better or worse, and in what applications, is not to the point. Both our clients *and* BBRG are saying that 9 strand wire rope performs significantly differently from the goods subject to dumping measures.

Thus, without at all detracting from the correctness of everything our clients have put to the Commission, the 9 strand wire ropes cannot constitute a slight modification whoever the Commission chooses to believe.

¹ Ibid, page 4.

² Ibid.

C BBRG acknowledges the different performance characteristics

The confidential test certificates we provided to the Commission on 16 November 2018 prove that our clients' 9 strand ropes are:

- higher tensile strength (more wires and strands);
- more abrasion resistant (increased number and diameter of outer wires of outer strands); and
- more flexible (more wires and smaller overall wire diameter).

In the corresponding anti-dumping investigation, BBRG affirmed these rope design principles, and agreed that they lead to increased strength, abrasion resistance and flexibility, stating the following:

- *"The large diameter wire used in the outer strands of six strand rope has proven strength, long service life and abrasion resistance. Wire ropes of eight-strand construction provide increased flexibility allowing for more equal distribution of the load, resulting in improved rope life over traditional six strand ropes in certain applications..."*³
- *"[B]reaking strength is determined by...number of wires, number of strands..."*⁴

The performance of our clients' ropes is a question of fact. BBRG's own on-the-record statements support the fact that our clients' 9 strand wire ropes have different performance characteristics. Our clients have further supported this proposition with scientific evidence. There is no room for debate.

D 9 strand wire rope is a new product

In its submission of 9 October 2018, BBRG asserts that the reference to crane ropes *"adds no value"* because crane ropes are *"smaller in diameter"* than the surface mining ropes of the present inquiry.⁵ In essence, BBRG recognises that crane ropes are completely different products from surface mining ropes. To compare the two is akin to comparing the tyres of a bicycle with the tyres of a truck - both are indeed tyres but the comparison ends there.

Fast forward to its latest submissions, and BBRG now compares our clients' surface mining ropes with crane and underground mining ropes (which are also smaller in diameter and completely different products from surface mining ropes).⁶ In particular, BBRG argues that because ropes with 9 strands have been used *"on cranes or in Underground Mining hoisting applications"*,⁷ our clients' 9 strand surface mining ropes must not be new. How can this conclusion be sustainable, particularly given BBRG's own recognition that these smaller diameter crane and underground mining ropes are not relevant to surface mining ropes? Applying BBRG's logic, one would also conclude that the development of truck tyres would not be new in the context of the prior existence of bicycle tyres.

Our clients' 9 strand surface mining ropes are a new and innovative product, the novelty of which

³ See BBRG's submission on 8 March 2017, page 10.

⁴ Ibid, page 13.

⁵ See BBRG's submission of 9 October 2018, page 2.

⁶ See http://www.unionrope.com/Resource_/PageResource/Underground-Mining.pdf

⁷ See BBRG's submission of 9 November 2018, page 1.

cannot be diminished by reference to irrelevant crane and underground mining ropes.

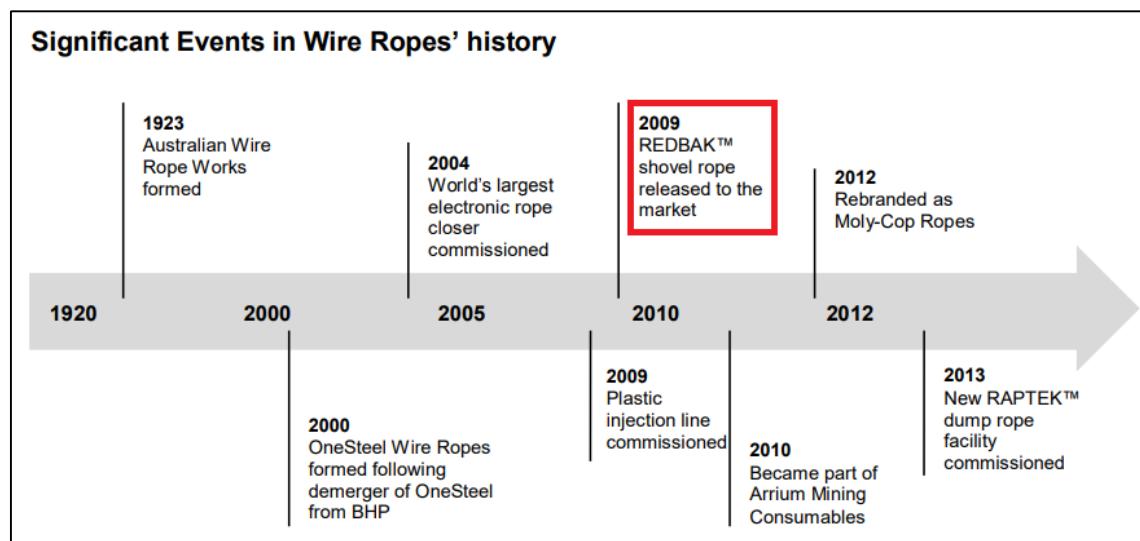
Consider the following:

- BBRG conceded that 9 strand wire rope had never before been “used in any surface mining activities in Australia”⁸.
- BBRG has not provided a single example of another instance of 9 strand wire rope being used in surface mining, anywhere in the world.
- notwithstanding its “extensive global experience”, which our clients do not doubt, BBRG has not been able to produce a single equation, table, etc, from any wire rope literature, including publications from Standards Australia, which can be applied to our clients’ 9 strand wire rope.

We believe it is evident that our clients’ 9 strand wire rope stands in a category of its own, and cannot constitute a slight modification.

E Inconsistency in BBRG’s opinions

The irony of BBRG’s position is highlighted by considering the following diagram⁹ from a BBRG submission made in respect of the corresponding anti-dumping investigation. The emphasis is our own:



According to BBRG, its release of the REDBAK™ shovel rope in 2009 represented one of the most “Significant Events in Wire Ropes’ history”.

BBRG goes on to specify that:

⁸ See BBRG’s submission of 9 October 2018, page 2.

⁹ See BBRG’s submission on 8 March 2017, page 17.

BBRG Australia has developed a premium plastic-infused shovel rope, REDBAK®, which offers enhanced fatigue and abrasion resistance...¹⁰

According to BBRG’s website, this REDBAK® rope is an 8 strand plastic infused wire rope designed to increase performance and life on shovels.¹¹

We are not questioning the significance of REDBAK®. Quite the contrary, the fact that BBRG considers the rope a milestone in its near century-old history suggests the rope is noteworthy. But, if we adopt the lens through which BBRG has been arguing the present anti-circumvention inquiry, this history-defining REDBAK® rope would constitute nothing more than a slight modification.

In BBRG’s own words, the REDBAK® shovel rope would constitute a slight modification because it *“perform[s] exactly the same task, function and [is] used in the same end-use as...[other] 8 strand wire ropes.”¹²*

The development, release and performance of the REDBAK® shovel rope and our clients’ 9 strand wire rope are analogous, as per the below table:

REDBAK®	Comparison	Inno9¹³
Resulting from long term R&D and trials ¹⁴	Same for both	Resulting from long term R&D and trials
Provides improved performance ¹⁵	Same for both	Provides improved performance
“Opportunities to extend this technology to other product applications...” ¹⁶	Same for both	[CONFIDENTIAL TEXT DELETED – Scaw Metals product development]
Considered by BBRG to be one of the most “Significant Events in Wire Ropes’ history”, despite this rope being an 8 strand wire rope, ie of a number of strands that was already in use in the applications concerned.	But... a different conclusion	Considered by BBRG to be a slight modification, despite 9 strand wire rope never having been designed, engineered and used in the history of surface mining.

¹⁰ Ibid, 30.

¹¹ See http://www.wriaustralia.com/index.cfm?prodname=redbak-shovel-ropes&module=storetigerv2&bit=products&product_id=310180&category_code=34688

¹² See BBRG submission of 9 November 2018, page 2.

¹³ The commercial name of our clients’ 9 strand wire rope.

¹⁴ See BBRG’s submission on 8 March 2017, page 31.

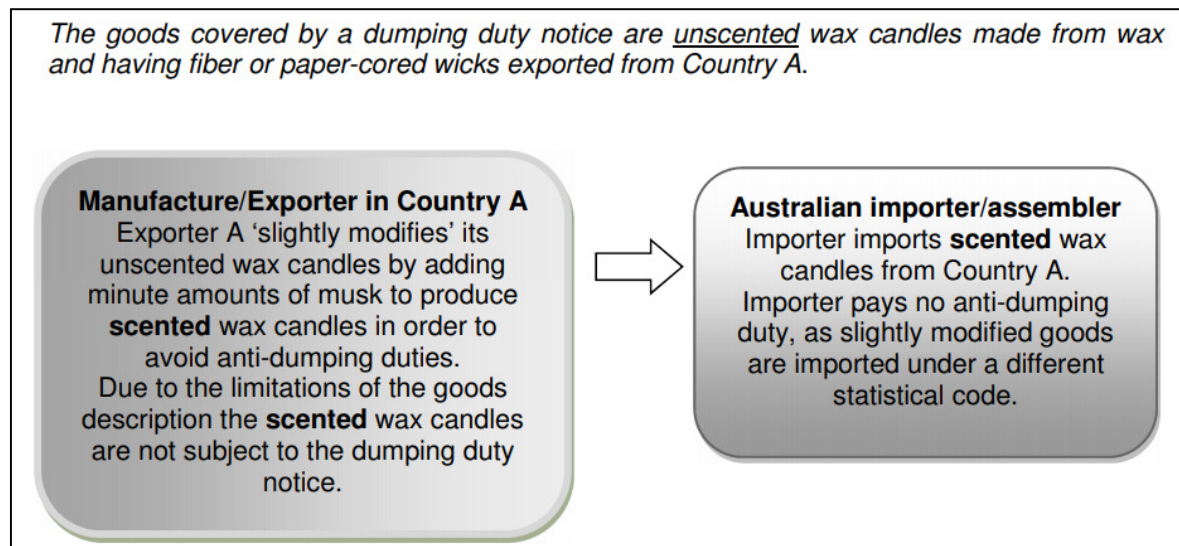
¹⁵ Ibid, page 30.

¹⁶ Ibid.

If roles were reversed and BBRG had invented 9 strand surface mining ropes, we expect that the event would be referred to by BBRG as one of the most “*Significant Events in Wire Ropes’ history*”.

F Indicators of slight modification

The slight modification provisions are intended to “*address the minor modification of exported goods*”.¹⁷ The word “slight” must be appreciated. The modifications of concern are ones that are small in degree. Anti-Dumping Notice No. 2015/44 provides an example of a slight modification, reproduced below:



In the above example, a slight modification involves “*adding minute amounts of musk*”. This is a far cry from the development, engineering and manufacture of a 9 strand wire rope when previously only 6 and 8 strand wire ropes were available in the market.

Australian industries have supported the interpretation and understanding of what constitutes a slight modification as explained in Anti-Dumping Notice No. 2015/44. In a Parliamentary Report on Circumvention, Australian industries provided the following examples which they considered to involve a slight modification:

- adding a low-cost additive to cement or cementitious products;¹⁸
- adding micro levels (8 parts per million) of boron to hollow steel structures;¹⁹
- adding minimal amounts of calcium to ammonium nitrate.²⁰

In the above examples, the manufacturers/producers can be seen to have merely added miniscule amounts of an additive to their products. Indeed, a hallmark of a modification being slight is that it is

¹⁷ See House of Representatives Standing Committee on Agriculture and Industry, The Parliament of the Commonwealth of Australia, *Circumvention: Closing the Loopholes* (2015) [15].

¹⁸ Ibid [16].

¹⁹ Ibid [17].

²⁰ Ibid [19].


“low cost and high gain to the exporter”.²¹ In contrast, 9 strand wire rope does not involve minute or low-cost changes, and there is hardly any gain, let alone high gain, for the exporter when the product costs more to make in comparison to the existing wire ropes (6 and 8 strand) in the market.

During the corresponding anti-dumping investigation, BBRG revealed that one of its key investments was an 8 strand rope closer (i.e. this rope closer can only form wire ropes with a maximum of eight strands). The relevant excerpt from BBRG’s submission²² is reproduced below:

Capital Development

BBRG Australia has invested heavily to support the surface mining rope market in Australia. Such investments include the following:

- \$xxx m investment in 8 strand rope closer in 2004;
- \$xxx m investment in Plasticated Rope Manufacturing facility in 2009; and
- \$xxx m investment in innovative rope termination facility, RAPTEK in 2013.

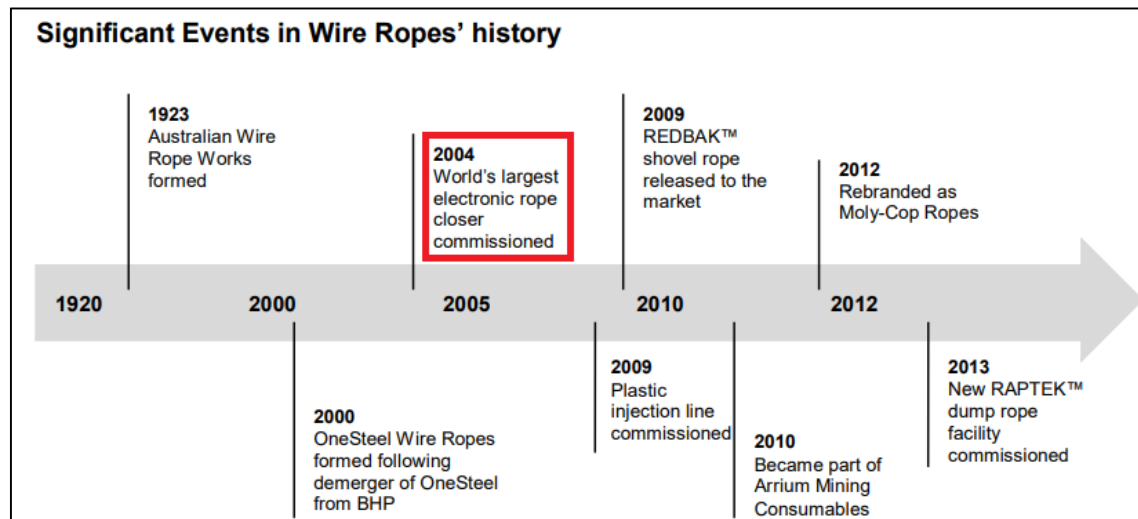


8 Strand closer located at the main Wire Ropes manufacturing plant

²¹ Ibid [17].

²² See BBRG’s submission on 8 March 2017, page 33.

The commissioning of this 8 strand wire rope closer is also considered by BBRG to be one of the most “*Significant Events in Wire Ropes’ history*”²³ (the emphasis is our own):



Evidently, this 8 strand wire rope closer represents one of BBRG’s most significant investments, and signals the company’s long-term commitment to producing surface mining ropes with a maximum of 8 strands. Our clients have now developed an innovative new product which BBRG cannot produce. In response, it is in BBRG’s interests to extinguish our clients’ innovation before it gains market acceptance.

In these circumstances we suggest that BBRG has not engaged in an objective discussion about slight modification, and is unable to do so.

G Conclusion

Our evidence proves that our clients’ 9 strand wire rope does not constitute a slight modification. It is clear that our clients’ 9 strand wire rope:

- is the result of long term, thoughtful and paid-for R&D;
- has substantially different physical and performance characteristics;
- can be used in an entirely new way which promises significant cost-savings to Australian mines;
- requires new and custom-made equipment to produce, leading to increased production time and costs;
- is expected by customers to have different performance characteristics;
- is marketed as a completely new product;

²³ See BBRG’s submission on 8 March 2017, page 17.

- is sold at a premium price because of the substantial increase in labour and materials required for its production (cost) and its improved performance and the cost savings that brings (profit).

In view of these facts, to decide that our clients' 9 strand wire rope constitutes a "slight modification" would be an enormous departure from established precedent, from the opinions expressed by customers and from the types of minor modifications that the slight modification provisions are intended to address.

We request the Commission to report in its Statement of Essential Facts that our clients' 9 strand wire rope does not constitute a slight modification of the 6 and 8 strand wire ropes that are subject to dumping measures.

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