



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

# **STATEMENT OF ESSENTIAL FACTS NO. 483**

**ANTI-CIRCUMVENTION INQUIRY  
SLIGHT MODIFICATION OF GOODS**

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

**11 February 2019**

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## ABBREVIATIONS

ABF	Australian Border Force
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
the applicant or BBRG	Bekaert Wire Ropes Pty Ltd trading as BBRG Australia
the circumvention goods	the goods described in section 4.1
CON 483	Anti-Dumping Commission Consideration Report No 483
CTMS	cost to make and sell
the Commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
the Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic public record for Inquiry 483 available at <a href="http://www.adcommission.gov.au">www.adcommission.gov.au</a>
the goods	the goods the subject of the notice as described in section 3.1
Haggie Reid	Haggie Reid Pty Ltd
Haggie Scaw	Haggie Reid Pty Ltd and Scaw South Africa (Proprietary) Limited together
IDD	interim dumping duty
inquiry period	from 1 January 2016
IWRC	Independent Wire Rope Cores
MBF/MBL	Minimum Breaking Force/ Minimum Breaking Load
REP 401	<i>Anti-Dumping Commission Report No 401</i>
REQ	Response to Exporter Questionnaire
RIQ	Response to Importer Questionnaire
Scaw	Scaw South Africa (Proprietary) Limited
SEF	statement of essential facts
South Africa	Republic of South Africa
the Manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual</i>
the Minister	Minister for Industry, Science and Technology
the notice	Anti-Dumping Notice 2017/172
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>

## 1. SUMMARY AND RECOMMENDATIONS

### 1.1 Introduction

This statement of essential facts (SEF) concerns an inquiry by the Commissioner of the Anti-Dumping Commission (the Commissioner) into whether a circumvention activity has occurred in relation to Anti-Dumping Notice (ADN) 2017/172 (the notice).<sup>1</sup> The notice was published under subsection 269TG(2) of the *Customs Act 1901* (the Act)<sup>2</sup> and concerns wire rope exported to Australia from the Republic of South Africa (South Africa).

The anti-circumvention inquiry follows an application by Bekaert Wire Ropes Pty Ltd trading as BBRG Australia (BBRG). BBRG alleges that a circumvention activity in relation to the notice has occurred under subsection 269ZDBB(6) in the circumstances prescribed by section 48 of the *Customs (International Obligations) Regulation 2015* (the Regulation). Section 48 of the Regulation states a circumstance in which a circumvention activity occurs, namely through the slight modification of the goods (the goods are described in section 3.1) exported to Australia.

This SEF states the facts on which the Commissioner proposes to base his recommendation to the Minister for Industry, Science and Technology (the Minister). That recommendation will be subject to any submissions received in response to this SEF and any further inquiries by the Commission.

### 1.2 Legislative framework

Division 5A of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting an anti-circumvention inquiry. In particular:

- Section 269ZDBB sets out when circumvention activity occurs in relation to a notice published under subsection 269TG(2).
- Subsection 269ZDBB(6) provides that a circumvention activity occurs in the circumstances prescribed by the Regulation for the purposes of that subsection.
- Section 48 of the Regulation prescribes the slight modification of goods exported to Australia as a circumvention activity for the purposes of subsection 269ZDBB(6).
- Subsection 269ZDBF requires that the Commissioner place a SEF on the public record within 110 days after publication of the notice initiating the anti-circumvention inquiry (or such longer period as allowed). The SEF states the facts on which the Commissioner proposes to base a recommendation to the Minister.

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<sup>1</sup> The original notice is ADN 2017/172, a notice under subsection 269TG(2) of the *Customs Act 1901* that was published on 18 December 2017 following consideration of Anti-Dumping Commission Report No. 401 (REP 401) by the then Assistant Minister for Industry, Innovation, and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science. REP 401 is available on the EPR.

<sup>2</sup> References in this report to a section or subsection are references to a section or subsection of the Act unless the context requires otherwise.

- Subsection 269ZDBG requires, for current purposes<sup>3</sup>, that the Commissioner give the Minister a recommendation within 155 days after publication of the notice initiating the anti-circumvention inquiry (or such longer period as allowed). In making his recommendation to the Minister the Commissioner must, for current purposes<sup>4</sup>, have regard to the application, the SEF and submissions received prior to and following the SEF (subsection 269ZDBG(2)(a)).
- Subsection 269ZDBH(1) provides that, after considering the Commissioner's report and any other information that the Minister considers relevant the Minister must declare that:
  - the original notice is to remain unaltered; or
  - the alterations specified in the declaration are taken to have been made to the original notice, with effect on and after a day specified in the declaration.

### **1.3 Findings**

Based on currently available information the Commissioner has found that:

- the circumvention goods (as described in section 4.1) are exported to Australia from a foreign country in respect of which the notice applies, namely South Africa (Regulation, subsection 48(2)(a)), see section 5.3 below;
- before that export, the circumvention goods were slightly modified (Regulation, subsection 48(2)(b)) by adding an extra strand to what would otherwise be the goods during production of the circumvention goods, see section 5.4 below;
- the use or purpose of the circumvention goods is the same before, and after, they are slightly modified (Regulation, subsection 48(2)(c)), see section 5.5 below;
- had the circumvention goods not been slightly modified, they would have been subject to the notice (Regulation, subsection 48(2)(d)), see section 5.6 below; and
- section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) does not apply to the export of the circumvention goods to Australia (Regulation, subsection 48(2)(e)), see section 5.7 below.

In particular the Commissioner found that patterns of trade, changes in export volumes and marketing by Scaw South Africa (Proprietary) Limited (Scaw) and Haggie Reid Pty Ltd (Haggie Reid) of interchangeable circumvention goods were, taken together, indicative of circumvention activity:

- The exporter exported the goods (and none of the circumvention goods) up to and including the third quarter of 2017, the quarter in which measures took effect through a preliminary affirmative decision.<sup>5</sup> See sections 5.4.11 and 5.4.13 below for the evidence supporting this finding;

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<sup>3</sup> See subsection 269ZDBG(1)(a); subsection 269ZDBG(1)(b) provides for a different period for the circumvention activity described in subsection 269ZDBB(5A).

<sup>4</sup> See subsection 269ZDBG(2)(a); subsection 269ZDBG(2)(b) provides for the Commissioner to have regard to different matters for the circumvention activity described in subsection 269ZDBB(5A).

<sup>5</sup> ADN 2017/116.

- The exporter exported the circumvention goods (and none of the goods) from the fourth quarter of 2017 onwards. See sections 5.4.11 and 5.4.13 below for the evidence supporting this finding; and
- The importer marketed and sold the circumvention goods to the same customers and for use on the same mining machinery as it had for the goods. See sections 5.4.9 and 5.4.4 below for the evidence supporting this finding.

Accordingly, for the purpose of this SEF, the Commissioner finds that a circumvention activity has occurred in relation to the notice under subsection 269ZDBB(6).

## **1.4 Proposed recommendation**

Based on the findings, and subject to any submissions received in response to this SEF and any further inquiries following this SEF, the Commissioner proposes to recommend to the Minister that:

- the notice be altered to change the description of the goods covered by the notice to include wire ropes with no more than nine strands; and
- the alteration to the notice should apply from the date of initiation of this inquiry (6 July 2018).<sup>6</sup>

## **1.5 Responding to this SEF**

This SEF states the facts on which the Commissioner proposes to base his recommendation to the Minister. The SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to make submissions in response to this SEF. The Commissioner must have regard to those submissions in making his final recommendations to the Minister (subsection 269ZDBG(2)(a)). The Commissioner is not obliged to have regard to a submission made in response to the SEF that is received after the 20 day period if, in the Commissioner's opinion, that would prevent the timely preparation of the final report to the Minister (subsection 269ZDBG(3)).

On that basis submissions in response to this SEF should be received by the Commission by no later than **4 March 2019**.<sup>7</sup>

Submissions should be emailed to [investigations2@adcommission.gov.au](mailto:investigations2@adcommission.gov.au).

Alternatively, they may be posted to:

Director Investigations 2  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

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<sup>6</sup> The Commission notes that this date falls within the 18 June 2018 to 17 December 2018 importation period for the goods; an application for duty assessment in relation to goods entered for home consumption in that importation period must be made not more than 6 months after the end of that importation period.

<sup>7</sup> The 20 day period ends on a Sunday and accordingly the deadline for submissions is the next day that is not a Saturday, Sunday or a holiday (subsection 36(2), *Acts Interpretation Act 1901*).

## **PUBLIC RECORD**

When making a submission parties should provide both a confidential version (for official use only) and non-confidential version (public record) of the submission. Interested parties must ensure each page is clearly marked '**FOR OFFICIAL USE ONLY**' or '**PUBLIC RECORD**'.

A guide for making submissions is available at the Commission's web site at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The electronic public record (EPR) for this Inquiry 483 is available at [www.adcommission.gov.au](http://www.adcommission.gov.au). The EPR contains non-confidential submissions by interested parties, non-confidential versions of the Commission's visit reports and other publicly available documents. The public record is available in hard copy by request at the Commission's Melbourne office.

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

## 2. BACKGROUND

### 2.1 Application

BBRG lodged an application on 7 June 2018 requesting an inquiry into circumvention of the notice. BBRG is the sole member of the Australian industry that manufactures the goods.<sup>8</sup> BBRG claimed that the notice should be altered because a circumvention activity has occurred, namely slight modification of the goods (under subsection 269ZDBB(6) and section 48 of the Regulation).

The notice applies to the goods, namely wire rope of no more than eight strands (and otherwise as described in section 3.1), and to like goods.<sup>9</sup> BBRG claims that the exporter of the goods from South Africa, Scaw, has slightly modified the goods and exported the resulting circumvention goods to avoid the original anti-dumping measures.

BBRG proposes that the description of the goods in the notice be altered by amending its wording to include ropes of up to 10 strands, as follows:

*Stranded wire rope, alloy or non-alloy steel, whether or not impregnated, having both of the following:*

- *No more than 10 strands;*
- *Diameter not less than 58mm and not greater than 200mm,*  
*with or without attachments.*

The Commissioner was satisfied of the matters in subsection 269ZDBE(2) and accordingly did not reject the application (see *Anti-Dumping Commission Consideration Report No 483* (CON 483)).

### 2.2 Initiation of the inquiry

The Commissioner initiated this inquiry on 6 July 2018 (see ADN 2018/105). CON 483 provides further details relating to the initiation of the inquiry and is available on the EPR.

The inquiry period has been set to take account of exportations by Scaw that occurred in the period before and after the time when the slight modification is alleged to have occurred and starts from 1 January 2016.<sup>10</sup>

### 2.3 Original notice

Anti-dumping measures were first imposed on certain wire ropes from South Africa on 19 December 2017 following consideration of *Anti-Dumping Commission Report No 401* (REP 401) by the then Assistant Minister for Industry, Innovation and Science.

The notice specified a rate of interim dumping duty (IDD) for all exporters from South Africa of 28.9 per cent using the combination method.

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<sup>8</sup> BBRG has been confirmed to be the Australian industry in this inquiry and in investigation 401.

<sup>9</sup> See subsection 269TG(2), the notice and the definition of “like goods” in section 269T.

<sup>10</sup> EPR 483, document 3 at page 5.



## 2.4 ADRP review

On 5 February 2018 the Anti-Dumping Review Panel (ADRP) initiated a review of the then Assistant Minister's decision to publish the notice. Following its review the ADRP recommended to the Minister that the fixed component of IDD as it relates to Scaw be changed to 27.2 per cent.

The Minister accepted the ADRP's recommendation and published a notice to that effect on 5 October 2018.<sup>11</sup>

## 2.5 Conduct of the inquiry

### 2.5.1 Initial submissions, questionnaires, importer and industry visits

The Commission sought initial submissions from interested parties (ADN 2018/105). Public versions of submissions received by the Commission have been published on the EPR.

The importer, Haggie Reid, and Scaw provided responses to the Commission's questionnaires. Public versions of these responses have been published on the EPR.<sup>12</sup>

The Commission made verification visits to BBRG on 14 August 2018 and to Haggie Reid on 12 September 2018. Public versions of the verification reports have been published on the EPR.<sup>13</sup>

### 2.5.2 Statement of Essential Facts

The SEF was initially due on 24 October 2018 (ADN 2018/105). The due date for this SEF was subsequently extended to 11 February 2019 (see ADNs 2018/161 and 2018/188).

### 2.5.3 Final report

The Commissioner's final report and recommendations in relation to this inquiry must be provided to the Minister on or before **26 March 2019** (or such later date as allowed under section 269ZHI) unless the inquiry is terminated earlier.

## 2.6 Submissions received from interested parties

The Commission received submissions from a number of interested parties prior to publishing this SEF and has had regard to those submissions in formulating this SEF (subsection 269DBF(2)). Non-confidential versions of these submissions are available on the EPR.

The Commission received and had regard to the following submissions in preparing this SEF:

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<sup>11</sup> Notice under subsection 269ZZM(4) available at [www.adreviewpanel.gov.au](http://www.adreviewpanel.gov.au).

<sup>12</sup> EPR 483, document 4 (Scaw) and 16 (Haggie Reid).

<sup>13</sup> EPR 483, document 7 (BBRG) and 17 (Haggie Reid).

<b>EPR document</b>	<b>Party</b>	<b>Date published on EPR</b>
5	Haggie Reid and Scaw (together, Haggie Scaw) <sup>14</sup>	18 September 2018
6	Haggie Reid	1 October 2018
8	Haggie Reid	8 October 2018
9	BBRG	12 October 2018
10	Haggie Scaw	24 October 2018
12	Haggie Scaw	9 November 2018
13	BBRG	12 November 2018
14	BBRG	6 December 2018
18	Haggie Scaw	18 January 2019

**Table 1 – Submissions by interested parties on the EPR**

The substantive matters raised in these submissions and the Commission's response to those matters are set out in chapter 5.

The Commission received submissions from BBRG on 31 January 2019 and from Haggie Scaw on 8 February 2019. The Commission has not had regard to these submissions in preparing this SEF as to do so would have prevented the timely placement of the SEF on the EPR (subsection 269ZDBF(3)). These submissions will be considered in the Final Report.

## **2.7 Other information**

### **2.7.1 Report from Mining Electrical and Mining Mechanical Engineering Society**

The Commission requested the Mining Electrical and Mining Mechanical Engineering Society provide a report on any differences between six, eight and nine strand wire ropes.<sup>15</sup>

The Commission considers that the report does not contain expert opinion regarding wire rope that is relevant to the inquiry. Accordingly the Commission placed no weight on the report.

### **2.7.2 Mining companies**

The Commission sought information from a number of mining companies in respect of their wire rope selection and usage. Three mining companies responded:

<sup>14</sup> Haggie Reid is a subsidiary of Scaw (see Haggie Reid company profile at [www.haggie.com](http://www.haggie.com)).

<sup>15</sup> Confidential Attachment 1 – report from Mining Electrical and Mining Mechanical Engineering Society.

- A mining company that uses wire rope provided information to the Commission on its use of the circumvention goods. That mining company has claimed confidentiality over its identity and the information it provided.<sup>16</sup>
- The operator of a second mine provided confidential information to the Commission concerning its purchase of the circumvention goods.<sup>17</sup>
- A third mining company provided confidential information to the Commission concerning its purchase of wire rope.<sup>18</sup>

The Commission agrees with claims of confidentiality made by the mining companies and considers that the information provided is correct. Accordingly the Commission has had regard to that information (subsection 269ZJ(6)).

### **2.7.3 Manufacturers of dragline and shovel excavator machinery**

The Commission sought comments from manufacturers of machinery in which wire rope is used. No responses were provided to the Commission by such manufacturers.

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<sup>16</sup> Confidential Attachment 2.

<sup>17</sup> Confidential Attachment 3.

<sup>18</sup> Confidential Attachment 4.

### 3. THE GOODS THE SUBJECT OF THE ORIGINAL NOTICE

#### 3.1 Description

The goods the subject of the notice (the goods) 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:

- Stranded steel wire rope is rope and strand made of high carbon wire (whether or not containing alloys);*
- The strand or rope can also be sheathed or impregnated and sheathed respectively in plastic or composites;*
- The wires can be layered-up in various configurations in order to give the strand or rope the desired physical properties;*
- 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).*
- 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 the measures 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.*

### 3.2 Tariff classification

The goods are currently generally, but not exclusively, classified to the tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* (Customs Tariff) specified below.

Tariff subheading	Statistical code	Description	Unit
7312.10.00: Stranded wire, ropes and cables ...Ropes and cables, containing not more than eight strands, of alloy or non-alloy steel	91	...Of a diameter exceeding 50 mm but not exceeding 100 mm	Kilograms (kg)
	92	...Of a diameter exceeding 100 mm	Kilograms (kg)

Table 2 –Tariff classification of the goods

## 4. THE CIRCUMVENTION GOODS

### 4.1 The circumvention goods description

The goods the subject of the application are wire ropes consisting of nine strands but would otherwise have the same essential characteristics as the goods.<sup>19</sup>

### 4.2 Tariff classification of the circumvention goods

The circumvention goods are generally, but not exclusively, classified to tariff subheading 7312.10.00 (statistical code 93) of Schedule 3 to the *Customs Tariff Act 1995*.

Tariff subheading	Statistical code	Description	Unit
7312.10.00: Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated	93	Ropes and cables containing more than eight strands, of alloy or non-alloy steel	Kilograms (kg)

**Table 3 –Tariff subheading statistical code description of the circumvention goods**

The tariff subheading under which imports of the circumvention goods are classified includes other wire rope products that are not the goods. All wire rope products other than the circumvention goods are not within the scope of this inquiry, i.e. cables and wire ropes that are captured by exceptions.

<sup>19</sup> EPR 483, document 1 at page 7.

## **5. A CIRCUMVENTION ACTIVITY HAS OCCURRED**

### **5.1 Finding**

The Commission finds that a circumvention activity has occurred under subsection 269ZDBB(6) in relation to the notice as all of the criteria in subsection 48(2) of the Regulation apply, namely:

- a) the circumvention goods were exported to Australia from a foreign country in respect of which the notice applies (see the Commission's reasons in section 5.3 below);
- b) the circumvention goods were slightly modified before export (see the Commission's reasons in section 5.4 below);
- c) the use and purpose of the circumvention goods was the same before and after they were slightly modified (see the Commission's reasons in section 5.5 below);
- d) had the circumvention goods not been slightly modified they would have been subject to the notice (see the Commission's reasons in section 5.6 below); and
- e) section 8 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia (see the Commission's reasons in section 5.7 below).

### **5.2 Legislative framework**

Subsection 269ZDBB(6) provides that a circumvention activity involving the slight modification of goods occurs in the circumstance in which all of the following criteria apply (subsection 48(2) of the Regulation):

- a) the circumvention goods are exported to Australia from a foreign country in respect of which the notice applies (subsection 48(2)(a) of the Regulation);
- b) before that export, the circumvention goods are slightly modified (subsection 48(2)(b) of the Regulation);
- c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified (subsection 48(2)(c) of the Regulation);
- d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice (subsection 48(2)(d) of the Regulation);
- e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia (subsection 48(2)(e) of the Regulation).

Subsection 48(3) provides that, for the purpose of determining whether a circumvention good is slightly modified the Commission must compare the circumvention goods and the goods having regard to any factor that the Commission considers relevant, including any of the following factors:

- a) each good's general physical characteristics;
- b) each good's end use;
- c) the interchangeability of each good;

- d) differences in the processes used to produce each good;
- e) differences in the cost to produce each good;
- f) the cost of modification;
- g) customer preferences and expectations relating to each good;
- h) the way in which each good is marketed;
- i) channels of trade and distribution for each good;
- j) patterns of trade for each good;
- k) changes in the pricing of each good;
- l) changes in the export volumes for each good; and
- m) tariff classifications and statistical codes for each good.

### **5.3 Circumvention goods are exported to Australia from a foreign country in respect of which the notice applies**

#### **5.3.1 The Commission's finding**

The criterion in subsection 48(2)(a) of the Regulation is that the circumvention goods are exported to Australia from a foreign country in respect of which the notice applies.

The Commission has found that the circumvention goods are exported to Australia from a foreign country in respect of which the notice applies. In particular, the notice applies to South Africa and the circumvention goods were exported to Australia from South Africa.

#### **5.3.2 ABF import database**

The Commission found that the circumvention goods were exported to Australia from South Africa by examining records of importations in the Australian Border Force (ABF) import database.

Records of importations in the ABF import database showed that importations declared under tariff subheading 7312.10.00 had goods descriptions that were consistent with the circumvention goods. These goods descriptions contained sufficient detail to confirm that the goods were wire rope with more than eight strands.

#### **5.3.3 Responses to questionnaires**

Information provided by both Scaw and Haggie Reid confirmed that the circumvention goods were exported from South Africa.



## 5.4 The circumvention goods were slightly modified before export

### 5.4.1 The Commission's findings

The criterion in subsection 48(2)(b) of the Regulation is that the circumvention goods were slightly modified before export.<sup>20</sup>

The Commission has found that the circumvention goods were slightly modified before export. In determining that the circumvention goods were slightly modified before export the Commission compared the goods and the circumvention goods having regard to factors that the Commissioner considered relevant including the factors in subsection 48(3) of the Regulation. In particular, the Commission found that:

- a) the goods and the circumvention goods have the same general physical characteristics (see section 5.4.2 below);
- b) the goods and the circumvention goods have the same end use (see section 5.4.3 below);
- c) the goods and the circumvention goods are interchangeable (see section 5.4.4 below);
- d) there is no material difference in the processes used to produce the goods and the circumvention goods (see section 5.4.5 below);
- e) there is no significant difference in the cost to produce the goods and the circumvention goods (see section 5.4.6 below);
- f) the cost of modification is not significant (see section 5.4.7 below);
- g) the evidence concerning customer preferences and expectations relating to the goods and the circumvention goods was inconclusive (see 5.4.8 below);
- h) there is no material difference in how the goods and the circumvention goods are marketed (see section 5.4.9 below);
- i) the goods and the circumvention goods have the same channels of trade and distribution (see section 5.4.10 below);
- j) changes in the patterns of trade for the goods and the circumvention goods are consistent with circumvention activity (see section 5.4.11 below);
- k) changes in the pricing of the circumvention goods were not significant (see section 5.4.12 below);
- l) changes in export volumes of the goods and the circumvention goods are indicative of circumvention activity (see section 5.4.13 below);
- m) there is no difference in the tariff classification for the goods and the circumvention goods (see section 5.4.14 below); and
- n) other factors that the Commission has had regard to would not change the Commission's overall finding that that the circumvention goods were slightly modified before export (see section 5.4.15 below).

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<sup>20</sup> See finding in section 5.4.15.1 below, namely that the circumvention goods need not have been modified after the goods were manufactured.

#### 5.4.2 The goods and the circumvention goods have the same general physical characteristics<sup>21</sup>

The Regulation provides that the Commissioner may have regard to general physical characteristics when comparing the circumvention goods and the goods (Regulation subsection 48(3)(a)).

The Commission finds that the goods and the circumvention goods have the same general physical characteristics except for the addition of the ninth strand.

##### 5.4.2.1 Comparison to have regard to *general* physical characteristics.

Haggie Scaw argued that physical similarity depends on the level of generality at which a comparison is made.<sup>22</sup> Haggie Scaw considered that BBRG's comparison of the goods and the circumvention goods was at an artificially high level of generality.<sup>23</sup>

Haggie Scaw submitted that the comparison should rather be at the level that BBRG uses when promoting the advantages of its own ropes over others.<sup>24</sup> Haggie Scaw points to some of BBRG's promotional material in which it states the distinct advantages of its own ropes and compares its ropes to those of its competitors.<sup>25</sup> It appears to be on that basis that Haggie Scaw proceeds to state the differences in physical characteristics in terms of specific differences in *performance* between the goods and the circumvention goods.<sup>26</sup> Haggie Scaw submitted that the circumvention goods are stronger, more flexible, have increased abrasion resistance, have non-rotation properties and increased fatigue resistance.<sup>27</sup>

The Commission refers to the words of the Regulation to determine the level of generality in comparing physical characteristics of the goods and the circumvention goods. The Regulation states that the Commission may have regard to each good's *general* physical characteristics (subsection 48(3)(a)). In contrast, Haggie Scaw's preferred level of generality in comparing the goods and the circumvention goods concerns highly specific measures of performance.

Haggie Scaw's comparison does not address the general physical characteristics of wire rope, namely: general composition, diameter, length, weight and appearance.

The Commission considers that the goods and the circumvention goods have the same general physical characteristics including that both:

- comprise a core and a number of strands made up of wound steel wire;<sup>28</sup>

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<sup>21</sup> Subsection 48(3)(a) of the Regulation.

<sup>22</sup> EPR 483, document 5 at page 14.

<sup>23</sup> EPR 483, document 5.

<sup>24</sup> EPR 483, document 5.

<sup>25</sup> EPR 483, document 5 at page 16.

<sup>26</sup> EPR 483, document 5 at page 18–22.

<sup>27</sup> EPR 483, document 5 at page 18-21; Haggie Scaw later resiled from its claims concerning non-rotation properties – see section 5.4.2.2 below.

<sup>28</sup> EPR 483, document 9 at page 4-6; EPR 483, document 5 at page 3.

- are made to the same diameter and length for a given application (drag, dump or hoist);<sup>29</sup>
- have very similar appearances;<sup>30</sup> and
- have similar per metre weights for a given diameter.<sup>31</sup>

In addition neither the circumvention goods nor the goods are constructed with non-rotation properties, despite the claims made by Haggie Scaw.<sup>32</sup>

The Commission understands that there are not substantial differences in the views of the parties concerning these general physical characteristics.

A comparison of physical characteristics should not be made at a greater level of specificity than the description of the goods and the further information regarding the goods (see section 3.1 above). For example, the further information regarding the goods states that the goods are made up of high carbon wire, may be sheathed, impregnated and may be layered-up in various configurations in order to give the rope the desired physical properties. The Commission observes that, but for the additional strand in the circumvention goods, the circumvention goods would come within the description of the goods (including the further information regarding the goods).

Accordingly, the Commission finds that the goods and the circumvention goods have the same general physical characteristics except for the slight modification of the circumvention goods by the addition of the ninth strand.

#### **5.4.2.2 Haggie Scaw claimed non-rotation properties not supported by the evidence**

Haggie Scaw's primary submission<sup>33</sup> (Haggie Scaw primary submission) provided the Commission with a description of wire ropes, their construction and the key differences between the goods and the circumvention goods.

Under the heading "Rope differences"<sup>34</sup> the Haggie Scaw primary submission describes claimed differences in general physical characteristics between the goods and the circumvention goods in the following terms:

- *"This brings us to the actual physical characteristics of Scaw's 9 strand wire rope";*<sup>35</sup>
- *"The 9 strand wire rope exported by Scaw provides various advantages over Scaw's 6 and 8 strand ropes";*<sup>36</sup> and,

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<sup>29</sup> Haggie Reid's RIQ, part C sales; BBRG application at attachment 3.

<sup>30</sup> EPR 483, document 1 (BBRG application) at page 9; EPR 483, document 5 at page 17; EPR 483, document 17 at page 8.

<sup>31</sup> Haggie Reid's RIQ, part C sales; EPR 483, document 1 (BBRG application), at attachment 3; see the Manual at section 2.3 concerning physical likeness.

<sup>32</sup> EPR 483, document 5 at page 20.

<sup>33</sup> EPR 483, document 5.

<sup>34</sup> EPR 483, document 5 at page 12.

<sup>35</sup> EPR 483, document 5 at page 17.

<sup>36</sup> EPR 483, document 5.

- “...the below outlines advantages of Scaw’s 9 strand wire rope over Scaw’s 6 and 8 strand wire ropes”.<sup>37</sup>

Directly following those statements, the Haggie Scaw primary submission described the “actual physical characteristics” of the circumvention goods under five headings.<sup>38</sup> The fourth heading, “Non-rotation properties”, described and illustrated a method of rope construction in which the rope’s core is wound in the opposite direction to the outer strands (see ‘Figure 20’), indicating that non-rotation properties were actual physical characteristics of nine strand wire rope.<sup>39</sup> Haggie Scaw’s primary submission concluded:

*“With ropes having no more than 8 strands, the cross-sectional area of the core is typically not large enough, relative to the cross-sectional area of the strands, to generate any meaningful counteracting torque. However, with ropes having 9 or more strands, torque generated in the core can begin to have significant rotation-resistant effects”.*<sup>40</sup>

A BBRG submission subsequently addressed claims made in the Haggie Scaw primary submission.<sup>41</sup> The BBRG submission provided evidence demonstrating that the circumvention goods were not constructed with non-rotation properties; rather the circumvention goods were constructed in the same manner as the goods.<sup>42</sup>

Haggie Scaw made the following defence in response to BBRG’s submission:

*“BBRG says that it has deconstructed one of our clients’ 9 strand wire ropes, and observes that it is not laid as per Figure 20 in our clients’ submission. Any sensible reader would understand that Figure 20 was used illustratively to explain rotation-resistant rope properties. Our clients have never claimed that their 9 strand wire rope is laid as per Figure 20, and to say otherwise is a misrepresentation”.*<sup>43</sup>

The Commission considers that Haggie Scaw claimed that the circumvention goods were constructed with non-rotation properties and illustrated that claim in ‘Figure 20’ of the Haggie Scaw primary submission. The evidence shows that that claim is not supported.

#### **5.4.3 The goods and the circumvention goods have the same end use<sup>44</sup>**

The Regulation provides that the Commissioner may have regard to each good’s end use when comparing the circumvention goods and the goods (subsection 48(3)(b)).

The Commission has found that the goods and the circumvention goods have the same end use.

It is not disputed that the goods and the circumvention goods are capable of being fitted to dragline excavators and shovels in open cut mining operations.

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<sup>37</sup> EPR 483, document 5 at page 18.

<sup>38</sup> EPR 483, document 5 at page 18-22.

<sup>39</sup> EPR 483, document 5 at page 20 and the illustration at Figure 20.

<sup>40</sup> EPR 483, document 5 at page 20-21.

<sup>41</sup> EPR 483, document 9.

<sup>42</sup> EPR 483, document 9 at page 9.

<sup>43</sup> EPR 483, document 12 at page 3.

<sup>44</sup> Section 48(3)(b) of the Regulation.

Haggie Scaw indicated that the circumvention goods and the goods do “*the same thing in a broad sense*” while asserting that consideration should also be given to whether they are “*suited to the exercise*”.<sup>45</sup>

The Commission does not consider the suggested suitability test to be within the scope of assessment for the purpose of this subsection.

Haggie Reid’s sales data<sup>46</sup> indicates that the circumvention goods directly replaced the goods for identical end uses and Haggie Scaw did not refute the applicant’s claims that each good’s end uses are identical to each other.<sup>47</sup>

Based on the available information, the Commission concludes that the circumvention goods are intended to have the same end use as the goods the subject of the original notice.

#### **5.4.4 The goods and the circumvention goods are interchangeable.<sup>48</sup>**

The Regulation provides that the Commissioner may have regard to the interchangeability of each good when comparing the circumvention goods and the goods (subsection 48(3)(c)).

The Commission has found that the goods and the circumvention goods are interchangeable.

In disputing the applicant’s claims that the good and the circumvention goods are interchangeable, and that the circumvention goods were introduced to replace the goods “*solely to avoid the impost of measures*”,<sup>49</sup> Haggie Scaw have stated:

- the goods and the circumvention goods are not readily interchangeable as switching to a new product requires a significant amount of re-engineering, education, and training of staff;<sup>50</sup> and
- the interchangeability of six and eight strand wire rope and nine strand wire rope is poor, and that this is evident from the extensive marketing campaign that had been conducted by Haggie Reid to market the *Inno9* due to their customers’ reluctance to switch to the new product.<sup>51</sup>

The Commission considered two aspects of interchangeability (mechanical interchangeability and functional interchangeability) in order to best understand and determine the level of difficulty an end user would experience in switching between different wire ropes.

While the Commission acknowledges that some secondary features may be more important to one end user than others, mechanical and functional requirements are the

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<sup>45</sup> EPR 483, document 10 at page 2.

<sup>46</sup> Confidential Attachment 13.

<sup>47</sup> EPR 483, documents 4, 5, 8, 10, 12, and 18.

<sup>48</sup> Section 48(3)(c) of the Regulation.

<sup>49</sup> EPR 483, document 14 at page 2.

<sup>50</sup> EPR 483, document 4 at page 28.

<sup>51</sup> EPR 483, document 4 at page 28.

first considerations when selecting wire ropes from the end user's perspective instead of the number of strands a wire rope has.

*Mechanical interchangeability*

Wire rope is not a stand-alone product in that it cannot be used independently. It must be fitted to a designated machine to function and therefore an essential characteristic to make each good substitutable is the fitting requirements of the designated machine.<sup>52</sup>

Scaw has confirmed this view stating that a wire rope cannot be offered in the market to replace the goods unless it is somewhat interchangeable.<sup>53</sup>

While discussing interchangeability, Scaw reiterated that the circumvention goods have different performance characteristics in comparison to the goods but did not provide specific details as to how this affects the circumvention goods' interchangeability.<sup>54</sup>

The Commission understands that mechanical interchangeability is to be determined by essential characteristics of wire rope including its specific diameter, length, weight, and type of attachments.<sup>55</sup>

The Commission considers that a modification to the goods at a rate greater than 'slight' would affect essential characteristics of the rope and consequently, the fitness of the modified goods to the designated machines.

Three end user mining companies that purchased wire rope from Haggie Reid during the inquiry period responded to the Commission's request for information.<sup>56</sup>

One of the three end users indicated that the weight of the wire rope is one of a number of considerations for interchangeability.<sup>57</sup>

Figure 1 below shows the change in weight per meter of comparable wire ropes sold by the importer to the Australian market, and the number of sales the nine strand wire ropes contributed to. Most of the circumvention goods that were sold in Australia during the inquiry period are models which are comparable to a particular model of the goods. Analysis of information from the sales data provided within the RIQ reveals that there is a moderate change in the average weight per meter between the goods and the circumvention goods.<sup>58</sup>

Only Model 1 of the circumvention goods (see Figure 1) had a more than slight increase in weight, however this model accounted for an insignificant portion of the total circumvention good sales to the Australian market. Therefore it would have a minimal impact on the overall changes in weight.

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<sup>52</sup> EPR 483, document 4 at page 30.

<sup>53</sup> EPR 483, document 4 at page 30.

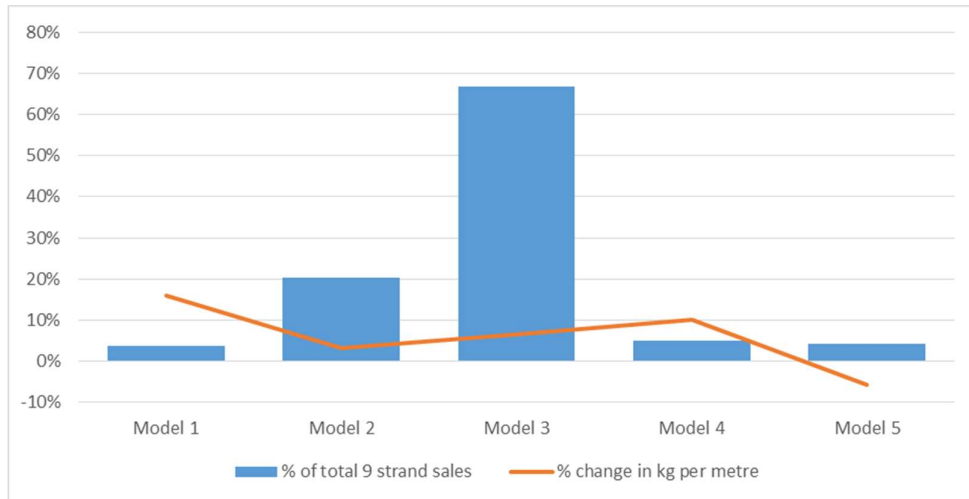
<sup>54</sup> EPR 483, document 4.

<sup>55</sup> EPR 483, document 4 at page 30.

<sup>56</sup> Confidential Attachments 2 to 4.

<sup>57</sup> Confidential Attachment 2.

<sup>58</sup> Confidential Attachment 9.



**Figure 1: Change in weight per metre by comparable model and volume of sales**

Based on the above findings, the Commission considers that there has been no more than a moderate change in weight per metre. That would have negligible impact on its mechanical interchangeability.

Accordingly, the Commission concludes that the circumvention goods are mechanically interchangeable.

#### *Functional interchangeability*

The mine site who purchased wire rope from Haggie Reid confirmed<sup>59</sup> that the strength of a wire rope is determinative of interchangeability under this category. Each good's load capacity must meet the required minimum breaking force (MBF) assessment to ensure safe operation of the designated excavator machine.

From the available evidence, the Commission understands that the end user of the wire rope will need to ensure that the MBF rating of the wire rope is suitable for the intended usage before it can be purchased, regardless of the number of strands making up the wire rope.

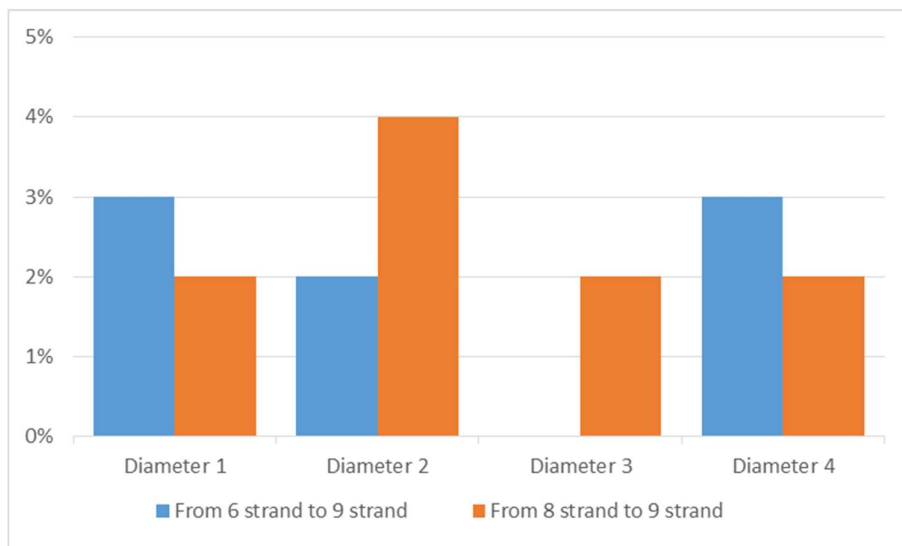
In summary, the goods and the circumvention goods for the same end uses are directly competitive and substitutable as they must comply with the same fitting requirements of the designated machine and MBF standard for safe operation.

Haggie Scaw provided test results of wire ropes of different diameters to support their claim that the circumvention goods have superior strength - this data provided by Haggie Scaw is based on performance testing conducted by a third party.<sup>60</sup> Figure 2 compares the change in strength between two types of wire ropes (i.e. six strand and eight strand) with the circumvention goods based on the provided data.

<sup>59</sup> Confidential Attachment 2.

<sup>60</sup> Confidential Attachment 7.





**Figure 2: Change to wire rope strength from the goods to the circumvention goods by diameter**

Figure 2 shows differences in the strength of the goods to the circumvention goods by rope diameter. Although Figure 2 shows an increase in the strength of the circumvention goods, the Commission has concluded that difference between the goods' and the circumvention goods' MBFs are no more than 'slight' increases.

Haggie Scaw stated that the evidence it provided in relation to performance were not declarations "*that all 9 strand wire ropes offer these advantages over lesser-stranded ropes*" and that the claims were only in relation to six and eight strand wire ropes.<sup>61</sup>

Haggie Scaw stated that nine strand wire rope outperforms six and eight strand wire ropes in some aspects of rope performance. The Commission considers that this statement is not supported by substantive evidence that showed the alleged performance improvements were more than slight; nor did Haggie Scaw provide evidence showing comparisons with other lesser stranded wire ropes.

The Commission has found that when rope diameter and minimum requirements such as MBF and product life are met, nine strand wire ropes are interchangeable with six and eight strand wire rope. Accordingly they are functionally interchangeable.

#### *Extensive marketing effort*

Haggie Scaw claims that the interchangeability of the goods and the circumvention goods is poor and that this was evident from the extensive marketing campaign conducted by Haggie Reid for *Inno9* and its customers' reluctance to switch to the new product.<sup>62</sup>

#### *Commission comments on marketing and interchangeability:*

- Haggie Scaw did not establish a logical link between interchangeability and the need for extensive marketing. The nature of the claimed interchangeability issues being addressed by the marketing was not specified.

<sup>61</sup> EPR 483, document 5 at page 18.

<sup>62</sup> EPR 483, document 4 at page 28.



- Promotional material provided to the Commission by Haggie Scaw indicated that the marketing activity concerned the product being new, not because it was nine strand *per se*.<sup>63</sup>

Accordingly the Commission considers that additional marketing was required due to the untested nature of the circumvention goods not because of poor interchangeability.

#### **5.4.5 There is no material difference in the processes used to produce the goods and the circumvention goods<sup>64</sup>**

The Regulation provides that the Commissioner may have regard to the differences in the processes used to produce each good when comparing the circumvention goods and the goods (subsection 48(3)(d)).

The Commission has found that there is no material difference in the processes used to produce the goods and the circumvention goods.

The applicant claims that “*the goods and the circumvention goods are produced in similar manners*”.<sup>65</sup>

Haggie Scaw stated the following in its primary submission:

- The time taken to change tooling from producing six to eight strand wire rope, or vice versa, is similar to the time taken for changing to nine strand production.<sup>66</sup>
- The introduction of the *Inno 9* product has resulted in more instances of production and tooling changes for Scaw because there is a greater variety of products being made.<sup>67</sup>
- That when considered in general terms, the processes of producing wire rope of different strands appears to be similar because they fit into “*the same family category*”.<sup>68</sup>

Haggie Reid did not dispute that that the goods and circumvention goods are produced on the same production line in a similar manner.

Scaw outlined the differences in production between the goods and the circumvention goods - the production sequence and processes of the circumvention goods closely resembles that of the goods, other than the requirement for additional bobbins and a different pre-former head.<sup>69</sup>

The differences indicated in the production diagram are that the circumvention goods require a different number of wires per strand and a different bobbin to close the nine strand wire rope, hence the tooling adjustment.<sup>70</sup> This tooling adjustment is not a unique

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<sup>63</sup> Confidential Attachment 15.

<sup>64</sup> Section 48(3)(d) of the Regulation.

<sup>65</sup> EPR 483, document 14 at page 2.

<sup>66</sup> EPR 483, document 5 at page 28.

<sup>67</sup> EPR 483, document 5.

<sup>68</sup> EPR 483, document 5 at page 22.

<sup>69</sup> Confidential Attachment 8.

<sup>70</sup> Confidential Attachment 8.

requirement to produce a nine strand wire rope, as switching production from six strand to eight strand wire rope would require a very similar production tooling adjustment.<sup>71</sup>

From the information available, the Commission considers that nine strand wire rope is manufactured in the same premises as six and eight strand wire rope, using similar materials, with identical processes using the same machinery, although adjustments of tooling would be required when switching production to a wire rope with a different number of strands.

The Commission considers that in comparison with six and eight strand wire rope, the processes to produce each good are similar.

#### **5.4.6 There is no significant difference in the cost to produce the goods and the circumvention goods<sup>72</sup>**

The Regulation provides that the Commissioner may have regard to differences in the cost to produce each good when comparing the circumvention goods and the goods (subsection 48(3)(e)).

The Commission has found that there is no significant difference in the cost to produce the goods and the circumvention goods.

The applicant argues that the circumvention goods cost slightly more to produce (by less than 5%) than the eight strand wire rope, and that the applicant considers this to be minor.<sup>73</sup>

Haggie Reid asserted that Scaw was already able to manufacture nine strand wire rope in a smaller diameter, and in order to manufacture the circumvention goods, Scaw undertook research and development and invested in new tooling.<sup>74</sup> Haggie Scaw argued that nine strand wire rope costs significantly more to produce, mainly due to material costs such as steel and grease as well as more processing time.<sup>75</sup>

Haggie Scaw described the process of manufacturing nine strand wire rope.<sup>76</sup> Haggie Scaw states that there are differences that result in relatively higher complexity, time and financial costs for the production of nine strand wire rope.<sup>77</sup> These differences require the manufacturing of nine strand wire rope to:

- use more and thinner wire to produce the core which must be relatively larger (this requires more raw material, bobbins and time);<sup>78</sup>
- use different tooling (closers and pre-former heads);<sup>79</sup>

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<sup>71</sup> Confidential Attachment 8

<sup>72</sup> Section 48(3)(e) of the Regulation.

<sup>73</sup> EPR 483, document 14 at page 2.

<sup>74</sup> EPR 483, document 17 at page 11.

<sup>75</sup> EPR 483, document 5 at page 16.

<sup>76</sup> EPR 483, document 5 at pages 22-28.

<sup>77</sup> EPR 483, document 5 at pages 22-28.

<sup>78</sup> EPR 483, document 5 at page 24.

<sup>79</sup> EPR 483, document 5 at page 25.

- have more occasions to change tooling resulting in more down-time in production;<sup>80</sup>
- have significantly greater production costs due to the use of more steel, more grease, reduced throughput, longer winding and closer loading times, more scrap and other processes.<sup>81</sup>

Scaw provided quarterly cost to make and sell (CTMS) information for both domestic and Australian sales.<sup>82</sup>

CTMS data provided by Scaw indicates that it is cheaper to produce the circumvention goods for both domestic sales and Australian exports when comparing the information in the fourth quarter of 2017 and second quarter of 2018.<sup>83</sup>

There is a slight increase in CTMS for the circumvention goods in the third quarter of 2017 – the only period where both the goods and the circumvention goods were produced. However the Commission analysed Scaw's cost to produce six, eight and nine strand wire ropes domestically, and found that the cost to make and sell data provided did not support Haggie Scaw's argument that the circumvention goods are more expensive to make than the goods.

The Commission's analysis of CTMS data showed that the cost of materials decreased for the circumvention goods being exported to Australia compared to the circumvention goods produced for domestic consumption.<sup>84</sup> The incremental rise of material costs over the relevant periods largely reflects the changing price of wire rod.<sup>85</sup>

There is no CTMS information for the goods for the fourth quarter of 2017. This shows that production of the goods for export to Australia ceased in the third quarter of 2017 at which time Scaw began producing the circumvention goods. This coincides with the introduction of interim dumping measures in August 2017.<sup>86</sup>

Figure 3 is also reflective of the increased material costs, comparing the production costs per meter for goods exported to Australia by diameter.

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<sup>80</sup> EPR 483, document 5 at page 28.

<sup>81</sup> EPR 483, document 5.

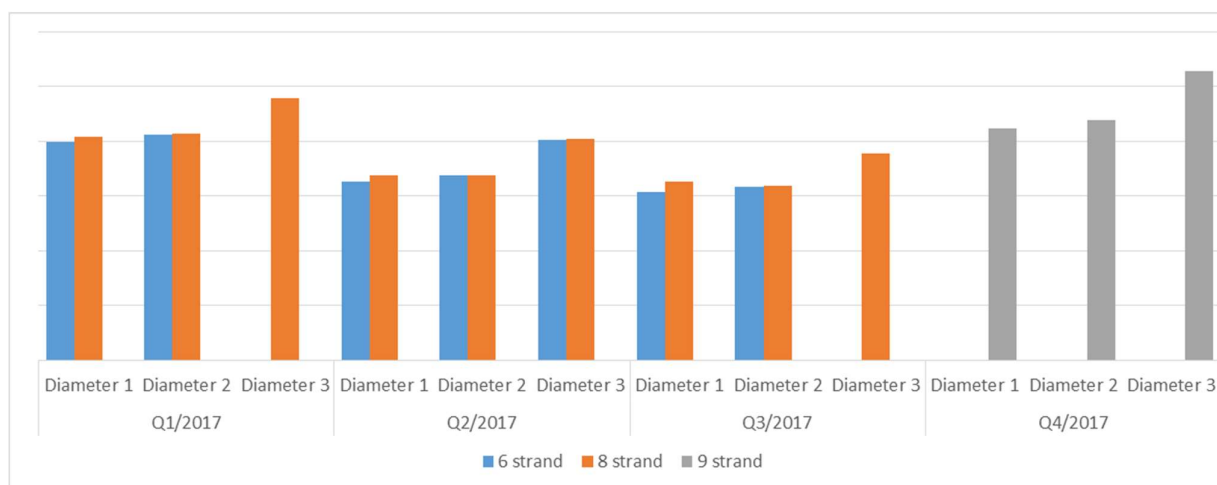
<sup>82</sup> Confidential Attachment 9.

<sup>83</sup> Confidential Attachment 9.

<sup>84</sup> Confidential Attachment 9.

<sup>85</sup> Confidential Attachment 6.

<sup>86</sup> ADN 2017/172.



**Figure 3: Cost to produce per rope metre**

Scaw claimed that it cost significantly more to produce the circumvention goods than it does to produce the goods. Scaw provided information that showed increased costs to produce nine strand wire rope in Q4/2017.<sup>87</sup>

However directly comparative evidence between the goods and the circumvention goods during the same period is not available as Scaw ceased producing the goods in Q3/2017.

#### **5.4.7 The cost of modification is not significant<sup>88</sup>**

The Regulation provides that the Commissioner may have regard to the cost of modification when comparing the circumvention goods and the goods (subsection 48(3)(f)).

The Commission has found that the cost of the modification is not significant.

In their separate submissions, Haggie Scaw submitted that the production of the circumvention goods suits production equipment better than that of the goods.<sup>89</sup>

During the verification visit, Haggie Reid advised that Scaw was already able to manufacture nine strand wire rope, but in order to manufacture the *Inno9* product, Scaw undertook research and development and invested in new tooling, and that Scaw had a patent application pending on its nine strand wire rope.<sup>90</sup>

The Commission has analysed Scaw's costs to develop new tooling and to conduct research and development to include the production of nine strand wire rope.<sup>91</sup> The Commission has found that Scaw was able to make nine strand wire rope, albeit in different diameters to the circumvention goods, for a period of time prior to its exports to Australia hence, Scaw would not have the costs of additional bobbins.

<sup>87</sup> Confidential Attachment 9.

<sup>88</sup> Section 48(3)(f) of the Regulation.

<sup>89</sup> EPR 483, document 4 at page 28.

<sup>90</sup> EPR 483, document 17 at page 11.

<sup>91</sup> Confidential Attachment 10.

The costs of manufacturing the pre-former head and verifiable research and development (R&D) costs were not substantial considering the total value of export of the circumvention goods to Australia.<sup>92</sup>

Scaw has been producing nine strand wire rope in a smaller diameter, therefore purchasing or building a new bobbin to produce the circumvention goods would not have been required.<sup>93</sup> This would mean that the only actual cost of modification would have been the cost of a new pre-former head to facilitate the closing process of the circumvention goods.

The Commission notes that evidence to confirm that the pre-former head is registered on Scaw's asset register was not provided when requested.

#### *Cost of research and development*

Haggie Scaw claimed that it incurred R&D costs specific to the circumvention goods.<sup>94</sup>

Scaw responded to a request by the Commission to provide documentary evidence to substantiate the claim in the following manners:<sup>95</sup>

- 1) Scaw did not provide requested evidence of:
  - Board minutes approving R&D expenditure;
  - Project plans;
  - Financial records, and in particular, extracts from the general ledger and/or other source documents which demonstrates the specific costs incurred as a result of R&D activity;
  - payment for the alleged expense associated with engineer movements in connection with R&D; and
  - internal or external documents that attest to the product's performance such that it conforms with necessary industry and/or internal and/or external product standards.
- 2) Scaw partially responded to the Commission's request for documents by providing test results conducted by a third party in South Africa and invoices without proof of payment and what appears to be a list of human resources allocation for the claimed R&D activity.

Scaw advised that the individual cost of R&D was expensed as occurred without specific R&D cost centres.<sup>96</sup>

The Commission understands that an immediate expensing occurs when the benefit of the individual amount of costs applicable to the future cannot be measured with any high degree of precision and any future benefits would be received is considered as doubtful.

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<sup>92</sup> Confidential Attachment 10.

<sup>93</sup> EPR 483, document 18 at page 3.

<sup>94</sup> EPR 483, document 10 at page 2.

<sup>95</sup> Confidential Attachment 11.

<sup>96</sup> Confidential Attachment 12.

The Commission was not provided with sufficient information to demonstrate the research and development costs were more than slight nor evidence to link these costs to the circumvention goods.

#### *Innovation Patent*

The Commission acknowledges that Scaw has been granted an innovation patent by IP Australia for shovel and drag wire ropes with at least nine strands. It is noted that the patent application does not include hoist rope use.

The IP Australia website provides that an innovation patent is only legally enforceable if it has been examined by IP Australia (the patent granting authority), is found to meet the requirements of the *Patents Act 1990*, and has been certified.<sup>97</sup>

In other words, the innovation patents are not examined by IP Australia prior to being granted, and until the circumvention goods have been examined and granted certification by IP Australia, the innovation patent does not carry any legal status other than having been applied for and made public. The public record does not indicate that Scaw has been issued a certificate of examination.

Taking into consideration the costs of filing a patent application and the annual fees associated with maintaining a patent should not be considered as a cost of modification. This is because the cost of filing a patent application is not only an optional protection, but also not a cost directly associated with modifying the goods and is not a unique cost to the production of nine strand wire rope – the cost applies to the filing of any patent application for any product.

Noting that the granting of an innovation patent does not mean that nine strand wire rope is a more than slightly modified version of the goods, the Commission concludes that information provided by Haggie Scaw does not demonstrate that the cost of modification has been more than 'slight'.

#### **5.4.8 Evidence concerning customer preferences and expectations is inconclusive**

The Regulation provides that the Commissioner may have regard to customer preferences and expectations relating to each good when comparing the circumvention goods and the goods (subsection 48(3)(g)).

The Commission has found that the evidence concerning customer preferences and expectations relating to the goods and the circumvention goods was inconclusive.

#### *Performance – claimed longer service life span*

Haggie Scaw claimed<sup>98</sup> in theory that the circumvention goods should have a longer service lifespan due to improved resistance against abrasion and bending fatigue.

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<sup>97</sup>IP Australia, 'Types of patents', IP Australia, Canberra, Australian Government, 2018, <<https://www.ipaustralia.gov.au/patents/understanding-patents/types-patents>>.

<sup>98</sup> EPR 483, document 5at page 33-34.

The Commission obtained an independent research paper<sup>99</sup> which states that the service lifespan of a wire rope is affected by several key parameters including but not limited to:

- loading condition – affecting fatigue from tension stress;
- operator practice – blast patterns and ability to keep dragging practice to the minimum;
- digging condition – metal loss from abrasion, especially for drag ropes;
- wire rope construction – selecting the correct wire rope with suitable properties;
- sheave and drum size – bending fatigue;
- maintenance of ropes and equipment in contact with wire rope for example, lubrication, end-for-ending and re-socketing etc.; and
- the storage and handling of the ropes.

The Commission seeks to establish a factual basis on the existence of the asserted improvements and whether those improvements are dominating factors affecting the service lifespan of wire ropes. The Commission has not been provided with evidence to assess the claims made.

Consequently, the Commission is unable to reach a conclusion on the claim that the circumvention goods have a longer service life span.

*Performance – claimed loading capacity*

Haggie Scaw claimed that the circumvention goods have higher “MBL” (Minimum Breaking Load) because of its greater “*fill factor*” than the goods.<sup>100</sup> The term *fill factor* appear to be referring to the filler wires in the three of six models of *Inno 9* product.<sup>101</sup>

During the course of assessing the claim, Haggie Scaw did not respond when the Commission sought to clarify whether any of those *Inno 9* model with filler wires were exported to Australia.

In the absence of evidence to show *Inno 9* products that were exported to Australia between 1 January 2016 and 1 June 2018 had the *fill factor*, the Commission concludes that the *fill factor* is not applicable for the purpose of the current inquiry and therefore, the Commission considers that the validity of claim that the circumvention goods have higher MBL is not demonstrated.

The applicant referred to an article published by Scaw that reads as follow:

*“Nine strand ropes are occasionally required for extreme flexibility, but their strength is almost 20% lower than a six strand rope of the same size, and resistance to crushing is poor... In general, however, the best combination of strength and resistance to crushing and abrasion is to be found in a six strand rope”.*<sup>102</sup>

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<sup>99</sup> D.Dayawansa et al, ‘Wear of Dragline wire ropes’ (paper presented at the Coal Operators’ Conference, University of Wollongong, 2005.

<sup>100</sup> EPR 483, document 5 at page 18.

<sup>101</sup> EPR 483, document 6, Figure 1- Figure 6.

<sup>102</sup> EPR 483, document 1, Non-confidential Attachment 6 at page 1.



Haggie Scaw responded to the submission by the applicant that referenced the article, stating that the finding in the article can no longer be considered valid because it is outdated, and the circumvention goods are an improved version of the nine strand wire rope that was subject to the finding in 2005.

Haggie Scaw did not provide any comparative details of the purportedly different two nine strand wire ropes.

The Commission's assessment of the evidence concerning the performance of the circumvention goods is contained at Confidential Attachment 5. Based on the evidence available, the Commission is not satisfied that Haggie Scaw's claim that the circumvention goods have a higher MBL is supported.

The Commission accordingly considers that, on the available evidence, customer preferences and expectations concerning the circumvention goods in comparison to the goods is inconclusive.

**5.4.9 There is no material difference in how the goods and the circumvention goods are marketed.<sup>103</sup>**

The Regulation provides that the Commissioner may have regard to the way each good is marketed when comparing the circumvention goods and the goods (subsection 48(3)(h)).

The Commission has found that there is no material difference in how the goods and the circumvention goods are marketed.

Haggie Scaw did not dispute BBRG's view that the marketing and distribution practices are the same for both the goods and the circumvention goods<sup>104</sup> and stated they *"do not switch customers and/or industries rapidly, and it would be a rather strange marketing strategy to simply start marketing new goods and services in entirely different manners"*.<sup>105</sup>

The Commission considers that the respective qualities of a new or modified product must be explained and supported by evidence. Such evidence may be obtained by various methods, including product trialling or conducting various tests of the product's qualities.

Based on the available information, the Commission has found that the alleged needs for Haggie Reid to make certain extra marketing efforts to introduce nine strand wire rope to its customers were largely due to the untested nature of the circumvention goods, not specific to the product being a nine strand wire rope.

The investment required by Haggie Reid's customers to purchase wire rope is such that any potential shortcomings or failure of the product represent some level of business risk.

The Commission considers that the marketing effort required to be applied by Haggie Reid to introduce nine strand wire rope to its customers does not appear to be dissimilar to approaches required by any company in any market to introduce new products or variations of existing products.

The Commission concludes that Haggie Reid has produced marketing brochures, communicated with its customers and used the same personnel to market the circumvention goods as it has the goods. The Commission considers that Haggie Reid has

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<sup>103</sup> Section 48(3)(h) of the Regulation.

<sup>104</sup> EPR 483, document 7 at page 11.

<sup>105</sup> EPR 483, document 5 at page 29.



marketed nine strand wire rope in a manner that has no material difference to that of its other wire rope.

**5.4.10 The goods and the circumvention goods have the same channels of trade and distribution<sup>106</sup>**

The Regulation provides that the Commissioner may have regard to the channels of trade and distribution for each good when comparing the circumvention goods and the goods (subsection 48(3)(i)).

The Commission has found that the goods and the circumvention goods have the same channels of trade and distribution.

The applicant claims that the goods and the circumvention goods have the same distribution channels to market.<sup>107</sup>

Haggie Scaw agreed that distribution practices were the same for the goods and the circumvention goods.<sup>108</sup>

Accordingly the Commission considers that the goods and the circumvention goods have the same trade and distribution channels.

**5.4.11 Changes in the patterns of trade for the goods and the circumvention goods are consistent with circumvention activity<sup>109</sup>**

The Regulation provides that the Commissioner may have regard to the patterns of trade for each good when comparing the circumvention goods and the goods (subsection 48(3)(j)).

The Commission has found that changes in the patterns of trade for the goods and the circumvention goods are consistent with circumvention activity.

During the verification visit, the applicant advised that the nine strand wire rope has been “*around for a long time*”, but had not been used in open-cut mining operations in Australia until the circumvention goods were introduced.<sup>110</sup>

The applicant claims that “*the exporter ceased exports of the goods and replaced them with the circumvention goods once measures were imposed*”.<sup>111</sup> Scaw’s REQ did not contain information about Scaw’s export sales channels. Instead, the Commission was provided with Scaw’s domestic sales channel which is not within the scope of this inquiry.

All exports of wire rope to Australia by Scaw are to Haggie Reid. Figure 4 below illustrates sales and exports of the goods by Scaw ceased and were replaced by exports and sales of nine strand wire rope.

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<sup>106</sup> Section 48(3)(i) of the Regulation.

<sup>107</sup> EPR 483, document 1 at page 8.

<sup>108</sup> EPR 483, document 17 at page 12.

<sup>109</sup> Section 48(3)(j) of the Regulation.

<sup>110</sup> EPR 483, document 7 at page 11.

<sup>111</sup> EPR 483, document 14 at page 2.



**Figure 4: Scaw sales to Haggie Reid of the goods and the circumvention goods**

The Commission considers that this indicates that Haggie Reid's imports of the goods have been replaced by imports of the circumvention goods from the time that anti-dumping measures were first imposed in the third quarter of 2017.

The Preliminary Affirmative Determination (PAD) was issued on 16 August 2017 which advised that the Commonwealth would require and take securities for the goods exported from South Africa and entered for home consumption on or after 16 August 2017.<sup>112</sup> Sales of the goods from Scaw to Haggie Reid ceased shortly after the PAD was issued. Haggie Reid began purchasing the circumvention goods from Scaw approximately one month after the PAD was issued.

Based on the above information, the Commission concludes that exports to Australia of the circumvention goods intended to replace previous export volumes of the goods for the purpose of avoiding the measures.

#### **5.4.12 Changes in the pricing of the circumvention goods were not significant <sup>113</sup>**

The Regulation provides that the Commissioner may have regard to changes in pricing for each good when comparing the circumvention goods and the goods (subsection 48(3)(k)).

The Commission has found that changes in the pricing of the circumvention goods, compared to the goods, were not significant.

The applicant argues that the circumvention goods are below the non-injurious price of the goods despite the claims of increased manufacturing costs.<sup>114</sup> The applicant states that the pricing of the circumvention goods is similar to that of the goods "*when taking into account raw material costs since January 2016 and the additional costs of manufacturing*" the circumvention goods.<sup>115</sup>

<sup>112</sup> ADN 2017/116.

<sup>113</sup> Section 48(3)(k) of the Regulation.

<sup>114</sup> EPR 483, document 14 at page 2.

<sup>115</sup> EPR 483, document 14 at page 2.

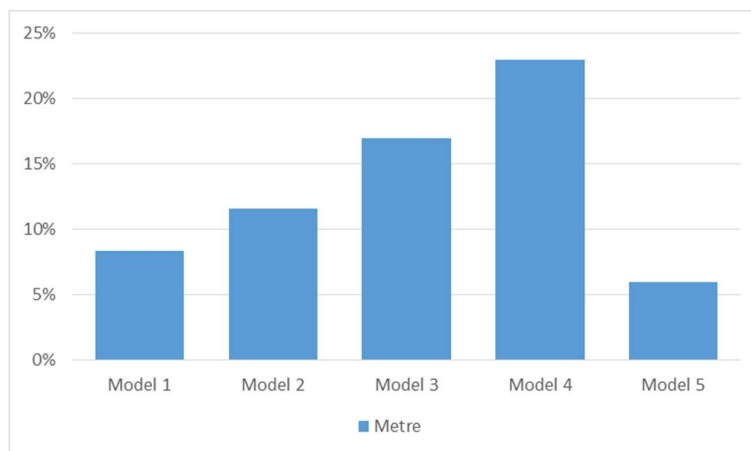
The applicant also asserted that the change in pricing between the goods and circumvention goods is substantially lower than otherwise would be the case in normal market conditions.<sup>116</sup>

Haggie Reid claimed that:<sup>117</sup>

- the circumvention goods cost significantly more to produce, thus are more expensive for end users to purchase;<sup>118</sup> and
- that the Australian industry has lowered the price of its six and eight strand wire ropes since anti-dumping measures were imposed and they perceive this pricing behaviour indicates no injury to the Australian industry.

Haggie Scaw anticipates higher product profitability on the basis of being a unique product, not manufactured by Scaw's competitors and providing greater value through improved performance, which in turn justifies the higher *Inno9* prices.<sup>119</sup>

Figure 5 demonstrates the price movements of the circumvention goods with a comparable six or eight strand model sold by Haggie Reid to Australian end users. The most sold nine strand model is Model 1. The price for this model has increased by 8.4%.



**Figure 5: Price movements by comparable configuration sold to Australian end users by the metre**

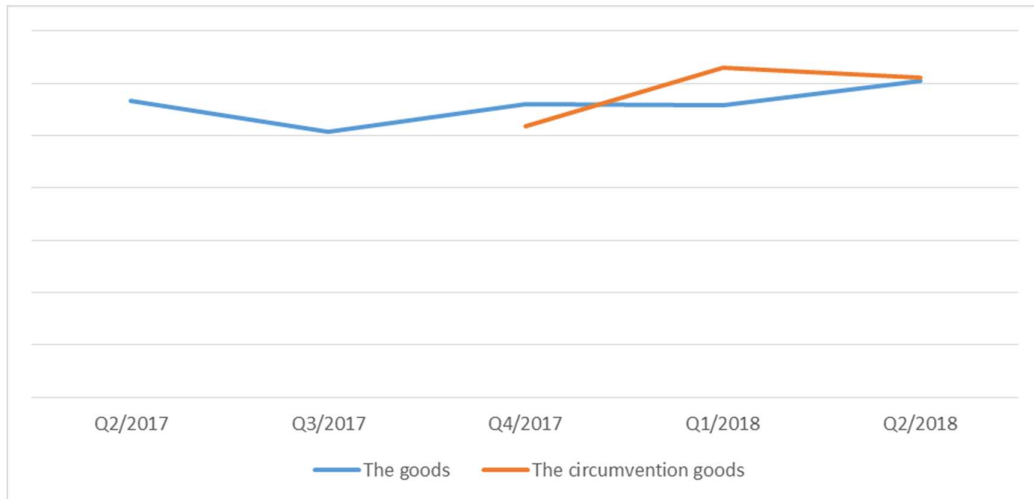
The Commission has analysed purchase orders and invoices between Haggie Reid and Scaw. The Commission has also analysed purchase orders and invoices between Haggie Reid and its customers. This analysis showed that wire ropes are sold and purchased as individual units by the length, and not on the basis of weight. Figure 6 below shows that the average sale price of the circumvention goods and the goods is similar. In order to compare like with like Figure 6 does not include prices of compacted and plastic coated wire ropes. In any event compacted and plastic coated wire ropes account for a small number of sales.

<sup>116</sup> EPR 483, document 7 at page 11.

<sup>117</sup> EPR 483, document 17 at page 12.

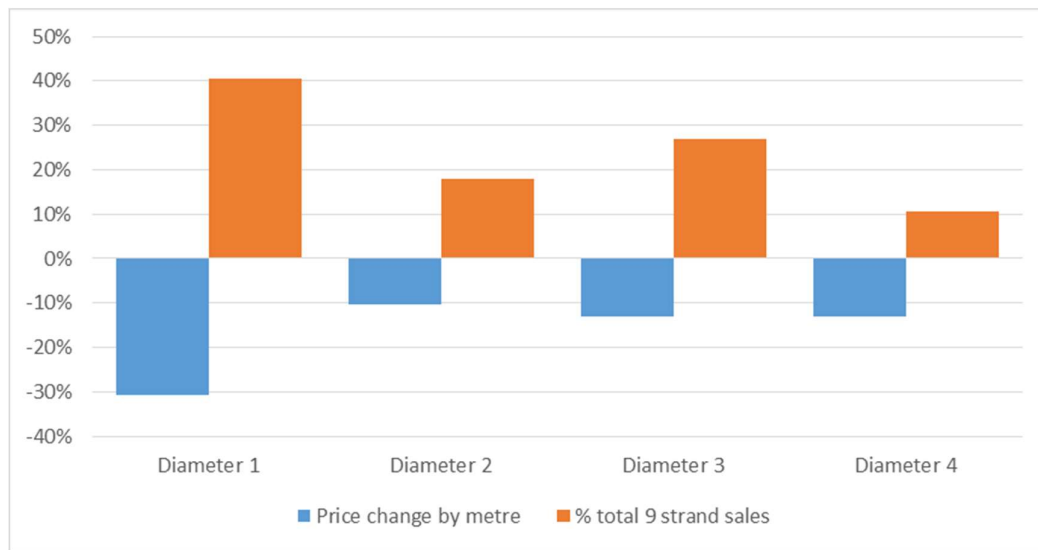
<sup>118</sup> See also EPR 483, public record No. 4 at page 27.

<sup>119</sup> EPR 483, document 4 at page 28-29.



**Figure 6: Weighted average sale price in Australia per metre**

The Commission analysed Haggie Reid's wire rope selling prices by the metre. Figure 7 compares the price movements from the goods to the circumvention goods by diameter (excluding prices of plastic coated and/or compacted wire ropes). Figure 7 and indicates that the circumvention goods are cheaper than the goods when compared by diameter.



**Figure 7: Price movements in Australia from the goods to the circumvention goods by metre**

Figure 8 shows the price change from the goods to the circumvention goods by the type/use of wire rope (i.e. hoist rope, dump rope, drag rope), and indicates the prices for the circumvention goods is more than that of the goods when comparing wire ropes by type/use.



**Figure 8: Average price change in Australia by rope type**

The Commission considers that the above Figures 5, 6 and 7 are the most reliable metrics in determining the differences in the price of the circumvention goods and the goods.

Based on the analysis above the Commission concludes that, as Haggie Scaw has moved from supplying the goods to the circumvention goods, the pricing of the circumvention goods has not changed significantly. Accordingly the Commission finds that changes in the pricing of the circumvention goods were not significant.

#### **5.4.13 Changes in export volumes of the goods and the circumvention goods are highly indicative of circumvention activity<sup>120</sup>**

The Regulation provides that the Commissioner may have regard to changes in export volumes for each good when comparing the circumvention goods and the goods (subsection 48(3)(l)).

The Commission has found that changes in export volumes of the goods and the circumvention goods are highly indicative of circumvention activity.

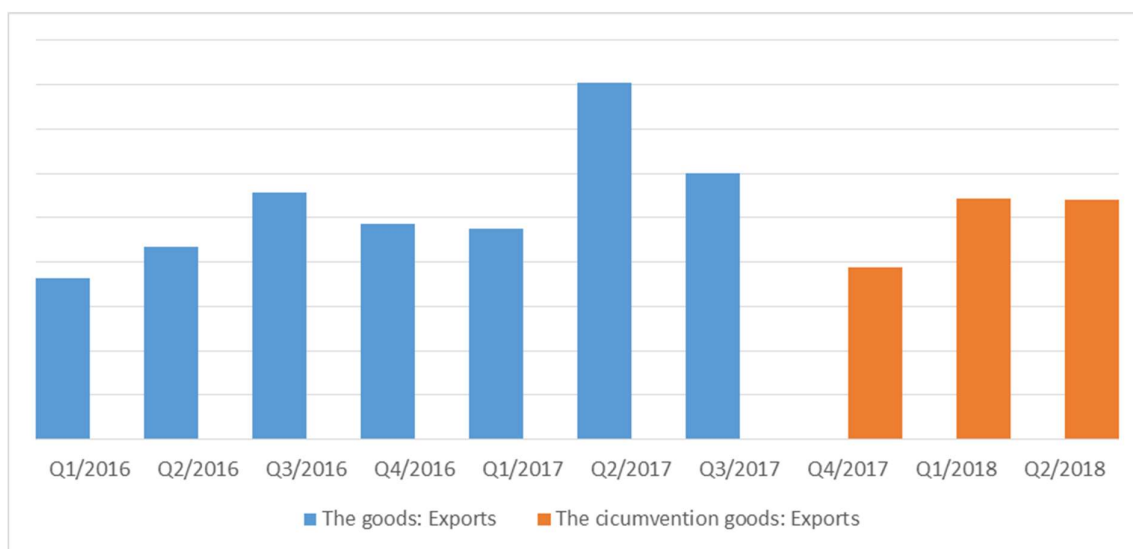
The applicant claims that exports of the circumvention goods to Australia were intended to replace previous export volumes of the goods to avoid the measures.<sup>121</sup> Figure 9 below shows that exports of the goods ceased in the third quarter of 2017.<sup>122</sup> No goods were exported in the fourth quarter of 2017 or thereafter. On that basis production of the goods in South Africa would have ceased during the third quarter of 2017. Measures in the form of securities were imposed in the third quarter of 2017.<sup>123</sup>

<sup>120</sup> Section 48(3)(l) of the Regulation.

<sup>121</sup> EPR 483, document 7 at page 11.

<sup>122</sup> Confidential Attachments 13 and 14.

<sup>123</sup> ADN 2017 / 116.



**Figure 9: Scaw exports to Australia of the goods and the circumvention goods**

The Commission considers that these changes in export volumes of the goods and of the circumvention goods, and the fact that such changes closely coincide with the imposition of measures, are highly indicative of circumvention activity.

#### **5.4.14 There is no difference in the tariff classification for the goods and the circumvention goods<sup>124</sup>**

The Regulation provides that the Commissioner may have regard to the tariff classification and statistical code for each good when comparing the circumvention goods and the goods (subsection 48(3)(m)).

The Commission found that imports of circumvention goods are classified under the same tariff subheading with a different statistical code due to the slight modification; the slight modification being the additional strand in the circumvention goods.

#### **5.4.15 Other factors**

The Regulation provides that the Commissioner may have regard to any factor that the Commissioner considers relevant when comparing the circumvention goods and the goods (not only those factors in subsections 48(3)(a) to (m)).

The other factors that the Commission has had regard to below would not change the Commission's overall finding that the circumvention goods were slightly modified before export.

##### **5.4.15.1 The circumvention goods need not have been modified after the goods were manufactured**

Haggie Scaw argued that its 9 strand wire rope was an entirely new product and an entirely new product could not be a slight modification of a product already subject to measures.<sup>125</sup> Haggie Scaw considers that it is only when a slight modification is made to

<sup>124</sup> Section 48(3)(m) of the Regulation

<sup>125</sup> EPR 483, document 10 at page 1.

the actual goods subject to measures that the modified product can be a circumvention good. On that basis, Haggie Scaw argues, the only basis for finding a slight modification of Haggie Scaw's 8 strand wire rope was if something additional had been done to that wire rope to turn it into something different.

*The Commission's comments:*

The Commission observes that the argument raised by Haggie Scaw was made to the ADRP during ADRP review 2016/38. The ADRP rejected that argument, relying instead on legal advice that took a different view of the meaning of section 48 of the Regulation.<sup>126</sup> That legal advice stated, among other things, that the argument now made by Haggie Scaw was "artificial" and would open up a gap in the anti-circumvention regime that could be exploited by someone seeking to circumvent the notice.<sup>127</sup> That would be contrary to the purpose of the anti-circumvention provisions in the Act and the Regulation. The Commission rejects Haggie Scaw's argument in this case for the same reasons.

**5.4.15.2 Relationship of wire rope strength and strand metallic area**

In the REQ,<sup>128</sup> Scaw asserted that the circumvention goods are constructed to meet and exceed AS3569, the Australian standard for steel wire rope which is used for reference by various stakeholders to ensure the appropriate selection and application of wire ropes.<sup>129</sup>

Haggie Reid argues that nine strand wire rope can bear higher loads because of its larger core which gives a higher ratio of metallic cross section and results in a stronger rope because the size of the core is a determinant of strength instead of the strand's metallic area.

However the Commission understands that the strand metallic area has a direct impact on strength – and the contribution factor for six and eight strand ropes to be 92.5% of their measured strength.<sup>130</sup> Considering the circumvention goods have less strand metallic area than the goods, Haggie Scaw's statements on the alleged superior strength of the circumvention goods are questionable.

**5.4.15.3 There is no "administrative precedent" indicating that the circumvention goods are not slightly modified**

Haggie Scaw claims that "administrative precedent" imports an evaluation that must be made as to whether goods are the "same", "almost the same" or more than "slightly different".<sup>131</sup> Haggie Scaw appears to claim that this was the Commission's approach in anti-circumvention inquiries 291, 290 and 298.<sup>132</sup>

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<sup>126</sup> ADRP Report No 38 – Zinc Coated (Galvanized) Steel exported from The Republic of Korea, Taiwan and The People's Republic of China at [84] to [98].

<sup>127</sup> The legal advice relied on by the ADRP is available on the ADRP website on the case page for ADRP review 2016/38.

<sup>128</sup> EPR 483, document 4 at page 30.

<sup>129</sup> Australian Standard AS3569 – 2010 Steel Wire Ropes, product specification.

<sup>130</sup> Australian Standard AS3569 – 2010 Steel Wire Ropes, product specification.

<sup>131</sup> EPR 483, document 10 at page 3.

<sup>132</sup> EPR 483, document 10 at page 4.

The Commission does not accept any proposed evaluation that would depart from the test prescribed in subsections 48(2) and 48(3) of the Regulation. The Commission considers in any event that the question of whether goods have been slightly modified requires a factual assessment and does not lend itself to precedent, administrative or otherwise. The Commission must assess whether the circumvention goods are slightly modified on the facts before it; it would not be open to the Commission to make a finding by reference to the facts of other cases that Haggie Scaw refers to.

#### 5.4.16 Summary of findings and conclusion

The table below summarises the Commission's findings in relation to the factors determining whether the circumvention goods are slightly modified.

Factor under subsection 48(3) of the Regulations	Description	Differences between the goods and the circumvention goods
(a)	Each good's general physical characteristics	Slight
(b)	Each good's end use	No difference
(c)	The interchangeability of each good	Highly interchangeable
(d)	Differences in the processes used to produce each good	No difference other than one minimal adjustment
(e)	Differences in the cost to produce each good	Slight, insignificant
(f)	The cost of modification	Slight, insignificant
(g)	Customer preferences and expectations relating to each good	Inconclusive
(h)	The way in which each good is marketed	No difference
(i)	Channels of trade and distribution for each good	No difference
(j)	Patterns of trade for each good	Patterns in trade are consistent with circumvention activity.
(k)	Changes in the pricing of each good	Slight, insignificant and inconsistent
(l)	Changes in the export volumes for each good	The goods ceased being exported upon the imposition of the measures, and Scaw began exporting the circumvention goods.
(m)	Tariff classifications and statistical codes for each good	No difference to tariff subheading, although the circumvention goods have a different statistical code.

**Table 4 – Summary of differences**

Based on the application made by BBRG, the Commission's analysis of submissions by interested parties and other analysis described in this SEF, the Commissioner makes the preliminary finding in relation to stranded wire rope exported by Scaw from South Africa that a circumvention activity in the form of slight modification of the goods exported to Australia has occurred.

Having regard to the factors outlined in subsection 48(3) of the Regulation, the Commission considers that the circumvention goods have been slightly modified before



exportation. Accordingly, the requirements of subsection 48(2)(b) of the Regulation are satisfied.

## **5.5 The use or purpose of the circumvention goods was the same before and after they were slightly modified**

### **5.5.1 The Commission's finding**

The criterion in subsection 48(2)(c) of the Regulation is that the use or purpose of the circumvention goods is the same before and after they were slightly modified.

At section 5.4.3 the Commission assessed that there was no difference between the end use or purpose of the circumvention goods and the goods the subject of the notice. The Commission's assessment at section 5.4.4 also concluded that both the circumvention goods and the goods the subject of the notice were interchangeable. This was further supported by the finding on patterns of trade at section 5.4.11 and 5.4.13 where it is demonstrated that imports of the circumvention goods directly replaced the goods, the subject of the notice.

The Commission considers that the end use or purpose of the circumvention goods are the same before and after the slight modification. Accordingly, the requirement of subsection 48(2)(c) of the Regulation is satisfied.

## **5.6 Had the circumvention goods not been slightly modified they would have been subject to the notice**

### **5.6.1 The Commission's finding**

The criterion in subsection 48(2)(d) of the Regulation is that had the circumvention goods not been slightly modified, they would have been the subject of the notice.

Based on the earlier analysis in Chapter 5, the Commission has found that the circumvention goods would have been the subject of the original notice if they weren't slightly modified during the production process.

The goods description and statistical codes within the tariff subheadings which are relevant to the imports of the circumvention goods brings about the situation that the circumvention goods are specifically excluded from the current measures applying to stranded wire rope.

Accordingly, the Commission concludes that the requirement of subsection 48(2)(d) of the Regulation is satisfied.

## 5.7 Section 8 of the Dumping Duty Act does not apply to the circumvention goods

The criterion in subsection 48(2)(e) of the Regulation is, for current purposes, that section 8 of the *Dumping Duty Act* does not apply to the export of the circumvention goods to Australia.<sup>133</sup>

The original dumping duty notice under subsection 269TG(2) declared that section 8 of the *Dumping Duty Act* applies to the export to Australia of the goods under consideration in the original investigation and to the export to Australia of like goods.<sup>134</sup> Accordingly the Commission must assess whether the circumvention goods are like goods.

The Commission considers, on balance, that the circumvention goods are not like goods because of the additional strand and so are not subject to the original dumping duty notice under subsection 269TG(2). Accordingly, section 8 of the *Dumping Duty Act* does not apply to the export of the circumvention goods to Australia. On that basis the requirement of subsection 48(2)(e) of the Regulation is satisfied.

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<sup>133</sup> The criterion in subsection 48(2)(e) of the Regulation is that sections 8 (dumping duty) or 10 (countervailing duty) of the *Dumping Duty Act* does not apply, however section 10 does not apply as there are no countervailing duties on wire rope imported to Australia. The Commission has not considered section 10 further in relation to this case.

<sup>134</sup> ADN 2012/172.

## 6. PROPOSED ALTERATIONS TO NOTICES

### 6.1 Legislative framework

Section 269ZDBH details the Minister's powers in relation to an anti-circumvention inquiry.

Subsection 269ZDBH(1) provides that the Minister may declare alterations to the notice. Without limiting subsection 269ZDBH(1), subsection 269ZDBH(2) provides that the alterations may be of the following kind:

- a) the specification of different goods that are to be the subject of the original notice;
- b) the specification of different foreign countries that are to be the subject of the original notice;
- c) the specification of different exporters that are to be the subject of the original notice;
- d) in relation to existing exporters that are the subject of the original notice--the specification of different variable factors in respect of one or more of those exporters;
- e) in relation to exporters that are to be the subject of the original notice--the specification of variable factors in respect of those exporters.

### 6.2 Applicant's proposed alterations

BBRG's application proposes that the original notice be extended to cover the circumvention goods described in the following:

*Stranded wire rope, alloy or non-alloy steel, whether or not impregnated, having both of the following:*

- *No more than 10 strands;*
- *Diameter not less than 58mm and not greater than 200mm,*

*with or without attachments.*

### 6.3 Commission's proposed recommendation

Based on the preliminary finding described in chapter 5 of this SEF, namely that a circumvention activity has occurred, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend that the Minister alter the original notice under subsection 269ZDBH(1) relating to wire rope from South Africa to include the circumvention goods.

Under subsection 269ZDBH(8), the Minister's declaration that the original notice be altered may take effect from the day the notice under subsection 269ZDBE(4) or (5) was

published. The Commission considers that in this inquiry it is appropriate to recommend that the alteration to the notice take effect from that day.<sup>135</sup>

The Commissioner proposes to recommend, subject to the consideration of submissions made in response to this SEF, that the original notice be altered to include measures at the rate applicable to all exporters from South Africa on exports of nine strand wire rope.

### 6.3.1 Goods description

The Commission's analysis of imports of the circumvention goods established that the majority of these goods were exported to Australia by Scaw from South Africa in diameters that are those already captured in the goods description. The only difference that allows the circumvention goods to fall outside the scope of the goods description is that the circumvention goods are produced with an additional strand.

The Commission intends to partially accept the applicant's request to alter the description of the goods in the original notice to include up to nine strand wire rope instead of up to ten strand wire rope as all evidence to support the current application before the Commission applies to nine strand wire rope only.

As a result, the Commission recommends that the goods description in the original notice made under subsection 269TG(2) be altered to read as follows:

*Stranded wire rope, alloy or non-alloy steel, whether or not impregnated, having both of the following:*

- *No more than nine strands;*
- *Diameter not less than 58mm and not greater than 200mm,*

*with or without attachments.*

The goods excluded from the measures would consequently be amended to include wire ropes made up of nine strands:

- *stranded wire rope that is stainless steel as defined under Note (e) "Stainless steel" to the Tariff;*
- *stranded wire rope with more than 9 strands, regardless of diameter; and*
- *stranded wire rope less than 58mm or greater than 200mm in diameter, regardless of the number of strands.*

Exports to Australia from South Africa that fall within the tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* (Customs Tariff) specified below would be affected by the measures.

Tariff subheading	Statistical code	Description	Unit
7312.10.00:	91	...Of a diameter exceeding 50 mm but not exceeding 100 mm	Kilograms (kg)

<sup>135</sup> ADN 2018/105.

Stranded wire, ropes and cables ...Ropes and cables, containing not more than eight strands, of alloy or non-alloy steel	92	...Of a diameter exceeding 100 mm	Kilograms (kg)
7312.10.00: Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated	93	Ropes and cables containing more than eight strands, of alloy or non-alloy steel	Kilograms (kg)

### 6.3.2 Form of measures

The Commission's *Guideline on the Application of Forms of Dumping Duty* outlines that the combination duty method is suitable in situations to assure the effectiveness of the measures where there is a likelihood of price manipulation or circumvention.<sup>136</sup> The form of anti-dumping measures imposed on wire ropes from South Africa is the combination method. The Commission proposes to leave this unchanged.

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<sup>136</sup> Commissions Guideline on the Application of Forms of Dumping Duty at page 7, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

## 7. PROPOSED DATE OF EFFECT

### 7.1 Legislative provisions

Subsection 269ZDBH(1)(b) requires that, when making a declaration that an original notice is to be altered, the Minister's declaration must specify the date from which those changes take effect.

Subsection 269ZDBH(8) provides that, when specifying a date in a declaration under (1)(b), the Minister is not able to specify a date earlier than the date of publication of the public notice of initiation of an anti-circumvention inquiry.

### 7.2 Proposed date of effect of changes to original notices

To ensure any alteration to the original notice provides an effective remedy to the injurious effects caused by circumvention behaviour, it is necessary to alter the original notice in such a way that the changes are applied both retrospectively and prospectively.

The Commissioner proposes to recommend that, in relation to South Africa:

- the notice be altered to change the description of the goods covered by that notice to include the circumvention goods. It is recommended that this revision have retrospective effect and take effect from the day of publication of the notice about the conduct of this inquiry, i.e. 6 July 2018.<sup>137</sup> As a result of this recommendation, importers of the circumvention goods would be subject to IDD in respect of the circumvention goods entered for home consumption on and after 6 July 2018.

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<sup>137</sup> The retrospective element to the proposed date of effect of the change to the notice recognises the finding that a circumvention activity was found to have been occurring since at least 2017. Applying the notice retrospectively ensures that anti-dumping duty is collected in relation to goods which would have been the subject of the notice had it not been the case that these goods were slightly modified to avoid payment of such duty.

## 8. ATTACHMENTS

<b>Confidential Attachment 1</b>	Report from the Mining Electrical and Mining Mechanical Engineering Society
<b>Confidential Attachment 2</b>	Confidential information from mining company 1
<b>Confidential Attachment 3</b>	Confidential information from mining company 2
<b>Confidential Attachment 4</b>	Confidential information from mining company 3
<b>Confidential Attachment 5</b>	Commission's assessment of the evidence concerning the performance of the circumvention goods
<b>Confidential Attachment 6</b>	All data analysis
<b>Confidential Attachment 7</b>	Haggie Scaw's performance testing documents
<b>Confidential Attachment 8</b>	Scaw 8 and 9 strand production differences
<b>Confidential Attachment 9</b>	Raw CTMS data
<b>Confidential Attachment 10</b>	Scaw R&D costs
<b>Confidential Attachment 11</b>	Scaw R&D information
<b>Confidential Attachment 12</b>	Scaw R&D expense methodology
<b>Confidential Attachment 13</b>	Haggie Reid sales data
<b>Confidential Attachment 14</b>	CRE data
<b>Confidential Attachment 15</b>	Haggie Scaw promotional material