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4 October 2022

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By email

Dear Director

Scaw/Haggie Reid

Continuation inquiry concerning steel wire rope from South Africa

Comments concerning Statement of Essential Facts 595

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As you know, we act for Scaw South Africa (Pty) Ltd (“Scaw”) and its Australian subsidiary Haggie Reid Pty Ltd (“Haggie Reid”). Respectively, Scaw and Haggie Reid are the sole exporter and sole importer of the goods under consideration (“the GUC”) that are the subject of this continuation inquiry (“the Inquiry”).

We refer to the Statement of Essential Facts (“the SEF”) published on 14 September 2022. The SEF contains the Commission’s preliminary findings concerning the dumping margin calculation for the GUC exported by Scaw during the inquiry period, and its proposed findings on the likelihood of continuation or recurrence of dumping and the injury to the Australian industry.

Scaw and Haggie Reid have always provided full support and collaboration to the Commission’s investigation since the original investigation 401. Scaw and Haggie Reid are committed to being reliable and sustainable suppliers of quality steel wire ropes, which are an important part of the engineering and operational solution for mining sites in both South Africa and in Australia. Since the publication of the original notice, Scaw and Haggie Reid have worked diligently to ensure the GUC are fairly priced, i.e. not dumped or injurious, whilst meeting its Australian customers’ demand for an alternative source of supply to complement and compete with the products offered by the only domestic producer, Bekaert Wire Ropes Pty Ltd (“BWR”). Such competition is in the interests of the Australian customer base. It is also in the interests of BWR and other steel wire rope manufacturers engaged in the Australian market, in the context of product innovation and industrial efficiency.

Scaw recently notified the Commission of a corporate transition, whereby its Steel Wire Rope Division was [CONFIDENTIAL TEXT DELETED - corporate transition details] being Haggie Steel Wire Rope Pty Ltd (“HSWR”).¹ This transition has [CONFIDENTIAL TEXT DELETED - corporate transition details]. Nonetheless, this represents the latest episode in Scaw’s continued commercial journey of re-privatisation and restructure.

Over recent years there have been fundamental and sustained changes to the competitive dynamics in the Australian market for the goods, and in the economic condition of the domestic producer, BWR. These substantial and sustained changes have removed the need for maintaining or continuing an anti-dumping duty on the goods supplied by HSWR.

In this joint submission, HSWR and Haggie Reid respectfully draw the Commission’s attention to the following matters arising from the SEF:

- the preliminary dumping margin is significantly inflated and distorted by the deduction of a refundable interim dumping duty, and does not correctly reflect the real world dumping margin and the competition between the GUC and the Australian industry;
- as a result of the distorted dumping margin, the SEF’s preliminary assessment of the likelihood of the continuation or recurrence of dumping and injury is misguided and incorrect;
- since the original investigation, HSWR and Haggie Reid have implemented a major corporate restructure and business reforms;

¹ We will refer the relevant exporter of the goods as HSWR hereafter.

- HSWR and Haggie Reid are committed to ensuring their supply of the GUC to Australia is sustainable, and compliant with the anti-dumping regime, and that Haggie Reid's prices are fair and non-injurious to the Australian industry;
- the GUC exported by HSWR are not causing, and are not likely to cause, material injury to BWR; and
- the performance of the Australian industry does not warrant continuation of the measure.

HSWR and Haggie Reid respectfully submit that the current measures should be allowed to expire.

A Margin of dumping and consequent likelihood of dumping are incorrect for continuation inquiry purposes

We note that it is well-established that the statutory task that the Commission must engage with in a continuation inquiry is a “forward-looking” one.² This context is reflected in Section 269ZHF(2) of the *Customs Act 1901* (“the Act”), which provides:

The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent. [underlining supplied]

As such, the key purpose of a dumping margin assessment in a continuation inquiry is to determine the likelihood of continued dumping, or a recurrence of dumping, and consequent material injury. If the likelihood is “more probable than not”, then the question arises as to what dumping margin would be an appropriate level at which the measure should be continued. Even if the anti-dumping measure is to continue, it must only be continued “to the extent necessary to counteract dumping which is causing injury”.³

This overarching statutory and international law context provides relevant guidance for the Commissioner's determination of the dumping margin and for the questions of whether the duty can be continued and at what level.

As such, it is important for the Commission to be cognisant of the accuracy of the dumping margin determination from the perspective of that “forward looking” exercise. The Commission must ask whether the dumping margin so determined reliably and reasonably reflects the likelihood of any recurrence or continuation of dumping after the expiry of the measure, and the level of dumping.

A dumping margin that is merely a snapshot of a past moment, that is bound to change because of factors well-known to and within the control of the same decision maker, would be an insufficient and unreliable predictor of future behaviour. In such a case, the Commission's obligation to undertake the

² Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 105.

³ Anti-Dumping Agreement, Article 11.1

continuation inquiry as a forward-looking exercise mandates that the Commissioner not overlook such known variables and foreseeable changes.

The key issue to take into account in this context is the treatment of the interim dumping duty (“IDD”) that has been reliably and consistently paid by Haggie Reid in accordance with the applicable legal requirements at the importation point. For the purpose of ascertaining export price, the deductive export price calculated for the purposes of the SEF uses Haggie Reid’s resale prices of the GUC during the inquiry period as the base, from which has been deducted the costs of import and sales *including the IDD paid by Haggie Reid during the inquiry period*. At the present time, this IDD is the subject of a duty assessment being undertaken by the Commission, the objective and result of which will be to make a refund of same to Haggie Reid.

The deduction of the IDD, in circumstances where it will soon be given back to Haggie Reid, creates a distorted and inflated dumping margin that is unsuitable for a continuation inquiry purpose. Without such deduction, the weighted average export price would have been **[CONFIDENTIAL TEXT DELETED –export pricing information]**. The dumping margin and the NIP based margin, once the IDD deduction is removed, would have been 7.8% and negative 2% respectively. These margins would have been even lower – both below zero - if the correct resale prices were to be matched to the shipments exported during the inquiry period. This is further discussed below at B below.

As identified above, the continuation inquiry is fundamentally a future looking exercise. Section 269ZHF(2) of the Act requires the Commission to consider what “*expiration of the measures would lead, or would be likely to lead*” to. That is, the Commissioner must consider the likelihood of dumping and injury in a future *without* the measure, and not a future where the measure *continues* to operate.

Naturally, in a future without the measure, Haggie Reid’s imports of the GUC would not attract any IDD. As such, the logical and correct approach for the Commissioner to adopt at this time is to determine whether dumping is likely to continue or recur, and at what level, without deducting an amount for IDD in determining the deductive export price. A determination involving the deduction of the IDD would amount to a determination of what *continuation of the measure* would lead, or would be likely to lead to. Such determination would be contrary to the statutory requirement under Section 269ZHF(2) and Australia’s obligations under Article 11.3 of the Anti-Dumping Agreement.

Separately, the SEF correctly acknowledges that Haggie Reid has consistently applied for duty assessments in recent years, and has received full refunds for all assessments completed to date:⁴

The commission completed 3 duty assessment applications from Haggie Reid where Scaw was the exporter. These duty assessments were relevant to the 3 importation periods from 18 June 2019 to 17 December 2020. In each of these duty assessments, the importer, Haggie Reid, received a full refund. The commission observes that during these relevant importation periods, the NIP as last ascertained, was less than the normal value reported by Scaw. Accordingly, as the NIP was the operative measure, the receipt of a full refund by the importer does not

⁴ Continuation 595 – Statement of Essential Facts, page 48

necessarily indicate that wire rope imported from Scaw was at undumped prices.⁵ A further 2 duty assessments remain ongoing.

The fact that Haggie Reid had received full refund in these duty assessments shows that the GUC had been exported above the non-injurious price – which is by definition a price point not causing injury to the Australian industry. Further, HSWR and Haggie Reid’s consistent engagement with the duty assessment procedures and the outcomes of those duty assessments provide positive evidence for the purpose of assessing HSWR and Haggie Reid’s likely future behaviour and the competitive effects of the GUC in the Australian market in the future.

Relevantly, the data unaffected by the IDD deduction would show that the GUC did not compete with BWR at a price that reflects a 38.5% dumping margin, or a 24.1% non-injurious price-based margin. Such margins do not reflect the real world conditions of the Australian market or the likelihood of future dumping and injury.

It is also relevant to note that the two pending duty assessments processes in which HSWR/HaggieReid have been engaged were consolidated with the inquiry and verification conducted for this Inquiry from the outset, due to the overlap of the duty assessment period and the inquiry period. As such, it would be both procedurally fair, reasonable, and practicable for the dumping margin calculation for the inquiry period and final duty assessment to be determined in tandem. It is presently unreasonable and incorrect for the Commissioner to ignore the likely outcomes of the pending duty assessments, when at the same time it has arrived at preliminary assessments using the same data for the purposes of the parallel continuation inquiry.

Put another way, the 38.5% dumping margin is not a correct finding regarding price behaviour on the part of HSWR/Haggie Reid. Rather, it is a direct result of (a) the existing dumping duty itself and (b) not finalising the duty assessment before or at the same time of determining the dumping margin. A dumping margin generated by the cost of a dumping duty reflects the effect of the dumping duty. It does not say anything about the existence or level of dumping, the pricing behaviour of the exporter and importer or the possible effect of the GUC on the Australian industry.

HSWR and Haggie Reid respectfully request the Commissioner to revisit its determination of the likelihood of dumping and the likely variable factors in the final report to the Minister. The correct approach, in light of the requirement of Section 269ZHF(2) of the Act, is not to deduct the IDD paid by Haggie Reid during the inquiry period as part of such “likelihood” determination and recommendation.

At a minimum, such determination should be made by taking into account the amount of IDD *overpaid* as will need to be or is likely to be refunded through the duty assessment procedures. Similarly, the Commission could complete the duty assessment procedures, and declare the amount to be refunded, thereby avoiding the illusion of injury caused by the presently well-overstated dumping margin.

B Deductive export price not correctly matched

We note that the SEF determined the deductive export price by using Haggie Reid’s quarterly resale prices during the inquiry period as the basis for HSWR’s export price for the same quarters during the

⁵ The dumping margin for the more recent two out of the three duty assessments were in fact “negative” or “undumped”.

inquiry period. However, as the Commission is aware, *via* the verification and the multiple duty assessments, Haggie Reid places orders with HSWR based on [CONFIDENTIAL TEXT DELETED – order placement process].

As advised in Haggie Reid’s response to the importer questionnaire:

[CONFIDENTIAL TEXT DELETED – order placement process]

In DA0220, the average time difference between the invoice date of Haggie Reid’s resale and the invoicing date from HSWR was [CONFIDENTIAL TEXT DELETED – turnover period]⁶ During the verification in this inquiry, Haggie Reid demonstrated that its inventory turnover for selected samples was [CONFIDENTIAL TEXT DELETED – turnover period] (not taking into account the period for shipping/delivery and any delays in Haggie Reid’s own invoicing to customers).⁷

As such, there is usually [CONFIDENTIAL TEXT DELETED – turnover period] between shipment from HSWR and resale by Haggie Reid. As such, “*the price at which the goods were so sold by the importer*” under Section 269TAB(1)(b) of the Act needs to be identified by tracing the shipment from HSWR during the inquiry period to the subsequent sales by Haggie Reid on an order by order basis, in order to account for the timing differences and to appropriately reflect the pricing and the business model of Haggie Reid.

Haggie Reid has traced the GUC shipments from HSWR during the inquiry period to the actual resales. The tracing and matching, and the source documents establishing same, are attached to this submission.⁸ The updated worksheet shows that the correctly matched deductive export price is 12% higher for the GUC exported during the inquiry period, and resulting in a dumping margin of negative 4%.

C Findings on the effect of expiry are not supported by the evidence

1 No evidence that BWR is suffering or is likely to suffer material injury due to expiry of the measure

BWR’s financial reports since 2015 indicate that it has been enjoying increasingly strong financial health at a company wide level. The before-tax profit/loss demonstrated in BWR’s statements are shown below:⁹

⁶ Refer to “DA0220 - Haggie Reid - Appendix 1a - Deductive export price”, not taking into account the “master reel” sales, which is not traced on an order by order basis.

⁷ Refer to “20220531 Attachment V-A5.c Inventory turnover for selected samples”

⁸ See **Confidential Attachment A** – Haggie Reid sales tracing export price worksheet.

⁹ Bekaert Wire Ropes Pty Ltd Financial report 2016, page 6 (**Confidential Attachment B**); Bekaert Wire Ropes Pty Ltd Financial report 2017, page 6 (**Confidential Attachment C**); Bekaert Wire Ropes Pty Ltd Financial report 2019, page 6 (**Confidential Attachment D**); Bekaert Wire Ropes Pty Ltd Financial report 2020, page 6 (**Confidential Attachment E**); Bekaert Wire Ropes Pty Ltd Financial report 2021, page 6 (**Confidential Attachment F**).

	2015	2016 ¹⁰	2017	2018	2019	2020	2021
Revenue	\$46,460,674	\$48,168,030	\$58,686,103	\$68,105,745	\$65,458,152	\$63,340,369	\$79,254,746
Profit/loss before income tax	-\$3,278,899	-\$13,220,796	-\$2,155,937	\$2,215,049	\$3,588,664	\$5,028,600	\$7,529,594

BWR's company-wide profit position for the 2018 to 2021 period is consistent with the Commission's verification report, which show both BWR's profit and profitability more than doubled between 2018 and the inquiry period:¹¹

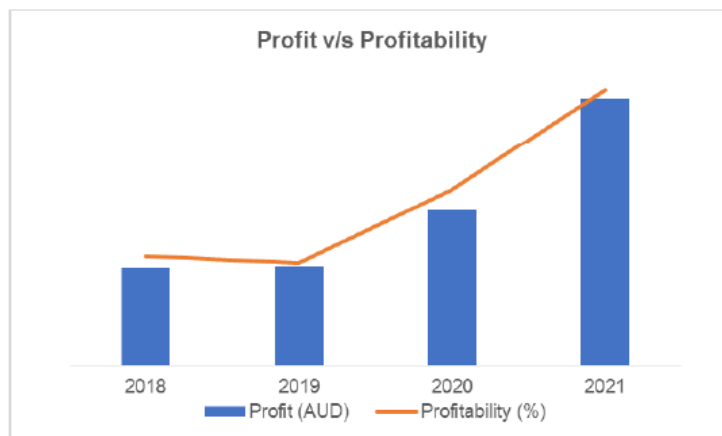


Figure 6: Profit & profitability trend of like goods

The significant discrepancy in BWR's company wide profit position for 2015 and 2016:

- as shown in its financial statement – being unprofitable; and
- as demonstrated for the like goods in the SEF – being significantly profitable,

should raise concerns for the Commission. BWR's performance as shown in the financial statement lodged with ASIC should be the preferred source of evidence for judging its annual business performances, given its statutory nature and consistency with the period its financial year.

Other economic factors as provided by BWR and verified by the Commission further demonstrate BWR's excellent financial performance over the past five years, because:

- return on investment has more than tripled since 2017;¹²
- revenue from the like goods has increased by 17%;¹³

¹⁰ Note: In 2016, 14 million of BWR's loss was attributable to a loss of goodwill, which was unrelated to its sales of wire rope to the Australian market. Bekaert Wire Ropes Pty Ltd Financial Report 2016, page 6.

¹¹ Australian Industry Verification Report, page 20.

¹² Continuation 595 – Australian industry verification report, page 21.

¹³ Ibid.

- (c) market share has remained consistent despite a contracting market;¹⁴
- (d) “after experiencing price suppression in 2016 (the original investigation period) BWR’s prices increased in line with its costs. In 2020 and 2021, the rate of increase in price was marginally greater than the increase in costs.”;¹⁵
- (e) BWR’s total profit has improved in each year since the imposition of measures, with the most significant improvement in total profit and profitability occurring in 2021.¹⁶

The Ministerial Direction on Material Injury 2012 states that

...an industry which at one point in time is healthy and could shrug off the effects of the presence or dumped or subsidised products in the market, could, at another time, weakened by other events, suffer material injury from the same amount of degree or subsidisation.

In the same vein, an industry which is thriving and robust is inherently less susceptible and vulnerable to a recurrence of injury. BWR’s financial performance demonstrates an Australian industry which is strong and performing well. Accordingly, it can be expected to be more resilient and to participate strongly in a properly competitive market.

Put simply, given the current strength of the Australian industry it is highly unlikely that the removal of measures would result in a recurrence or continuation of injury.

2 No evidence of continued or recurrence of material injury caused by dumping

The SEF considers there is sufficient evidence to conclude that the expiration of the measures would likely lead to a continuation of or a recurrence of material injury that the anti-dumping measure is intended to prevent. With respect, we submit that this view is not supported by the evidence shown in the SEF and is affected by incorrect methods of analysis.

a Price undercutting analysis is incomplete, selective, and not objective

It is important to put any competition analysis between the GUC and the like goods into perspective. For the Australian market for wire rope, the SEF confirms that:

- the total GUC exported by HSWR during the inquiry period accounted for only 12% of the total market
- the wire rope imported from other countries accounted for about 7% of the market; and
- BWR itself accounted for about 81% of the total market share.

HSWR/Haggie Reid’s small presence in the market necessarily *limits* its impact on the Australian industry. However, instead of recognising such limits and examining the impact of the GUC proportionate to its market share and its competitive effect, the SEF has adopted an approach that

¹⁴ Continuation 595 – Australian Industry Verification Report, page 19; Continuation 595 – Statement of Essential Facts, page 7.

¹⁵ Continuation 595 – Statement of Essential Facts, page 33.

¹⁶ Ibid.

exaggerates and disproportionately attributes one-off negative aspects of the Australian industry's sales performance to the GUC.

In sections 7.7.2 and 7.7.3, the SEF incorrectly depicts Haggie Reid's sales of the GUC as undercutting the Australian industry and of having a much larger impact on the Australian industry than it actually could. Section 7.7.2 of the SEF states:

The commission considers that exporting at dumped prices gives Scaw and Haggie Reid a price advantage in the Australian market (refer Chapter 7.6.2).

Both Haggie Reid and BWR cite price competition as a deciding factor in winning a contract. BWR claimed that competition for tenders with Haggie Reid for "...critical customers to BWR [that] continue to materially influence contract negotiations and outcomes."

The commission therefore examined sample tender processes and the resulting price competition that occurred between BWR and Haggie Reid in 2020 and 2021. The samples included tender offers from both BWR and Haggie Reid to common large mine operators in Australia, with multiple mine sites. These mines operators were significant as they represented over 60% of the Australian market (by volume) in the inquiry period.

The commission's examination in this chapter is at Confidential Attachment 1.

The examination showed that customers referenced Haggie Reid's lower prices when negotiating with BWR through the tender process and therefore sought from BWR a lower price offer, despite increases to BWR in its raw material costs.

The commission concludes that Haggie Reid's dumped prices directly influence BWR to lower its prices in the tender process. Haggie Reid's dumped prices influence competition for tenders in the Australian market and also affect BWR's profit and profitability.

The commissions consider these effects are likely to continue if the measures expire.

We respectfully submit that these findings are incorrect. Instead of analysing any possible injurious effect of the GUC supplied by Haggie Reid on the Australian industry as a whole, the SEF limited its price analysis to a small slice of the market – concerning the price competition with respect to "Group 1" sales which accounted for 40% of BWR's total sales of like goods.¹⁷ Even then, there is no evidence that the GUC supplied by HSWR, whether dumped or not, had a "price advantage" in the Australian market. On the contrary, Figure 15 of the SEF shows that, at the "all mines" level, Haggie Reid's prices have been consistently higher or at the same level as BWR since 2019:

¹⁷ Continuation 595 – Statement of Essential Facts, page 29.

Group 1 dragline - d&h rope price - Qld

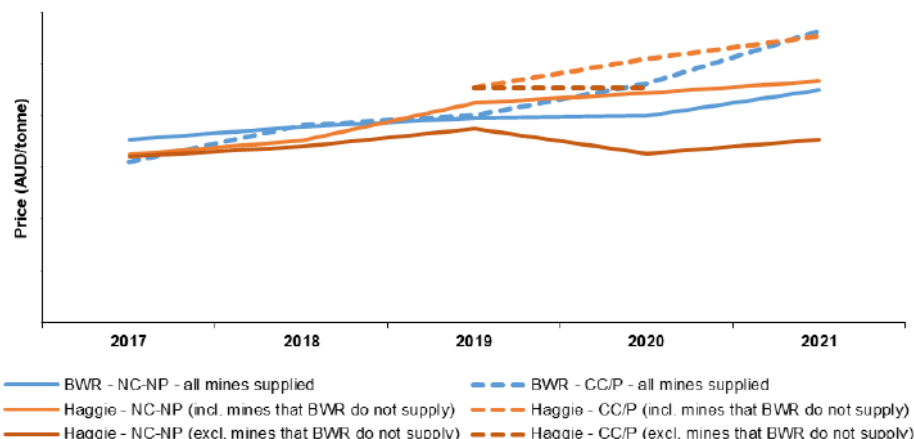


Figure 15: Drag and hoist rope price for Group 1 draglines

However, the SEF has drawn an opposite conclusion - that Haggie Reid’s supply of the GUC undercut BWR - by *further* limiting the analysis to only the “NC-NP” product within Group 1 *and excluding* Haggie Reid’s sales to mines that BWR did not also supply. With respect, the SEF’s observation concerning this very small and selective portion of the GUC cannot depict the effect of the GUC on the Australian industry as a whole. Even within the Group 1 level, the conclusion reached by the SEF is contrary to its own data at the “all mines” level. Even when the sales of such a minority group was viewed as whole, there was no evidence of undercutting by Haggie Reid.

Further, Haggie Reid presented information in its response to the Importer Questionnaire, and additional information in response to the Commission’s questions during the verification, which show that Haggie Reid has been [CONFIDENTIAL TEXT DELETED – commercial contract arrangement] and that Haggie Reid had only been able to maintain contracts [CONFIDENTIAL TEXT DELETED – commercial contract arrangement].¹⁸

The SEF’s price comparison data fully supports Haggie Reid’s view. The fact is that BWR occupied just over 80% of the total market, consistent with [CONFIDENTIAL TEXT DELETED – commercial information], and that its prices were either overall *lower* than those from Haggie Reid or did not face effective price competition from the GUC supplied by Haggie Reid.

The SEF’s observation of price undercutting or price suppression from the GUC supplied by Haggie Reid is isolated to a small slice of the Australian market for wire rope and a very small part of the Australian industry’s business. The problem here is that the SEF gave disproportionate weight to sales “where both BWR and Haggie Reid have opportunities to sell”. This mischaracterises a small sector in the Australian market as an indicator of impacts on the entirety of the Australian market for the GUC, an indication which is contradicted when industry wide data is considered. This is wrong. Both BWR and Haggie Reid have opportunities to sell to the entire Australian market for wire rope, and the effect of competition must be analysed on that basis. Evidence shows that Haggie Reid tried to compete with

¹⁸ Refer to Haggie Reid IQR spreadsheet - C-5 Contracts and Tenders, and “20220407 Haggie Reid verification - selected tenders - HR comment”.

BWR in many more projects than those jointly supplied by both parties, but was unsuccessful, mostly because its prices were considered not to be competitive with or were undercut by BWR.

b No evidence of price based injury

The SEF states that “[b]oth Haggie Reid and BWR cite price competition as a deciding factor in winning a contract.”¹⁹ This is contradicted by the SEF’s price undercutting analysis, which observed that:

[w]here BWR is the preferred supplier, it does not appear to have a price advantage (as is the case for Haggie Reid). Rather, BWR’s prices are influenced by Haggie Reid’s prices in direct competition. This trend can be observed in 2019 and 2020, until BWR was able to negotiate a price increase with some mines in 2021.”²⁰

This observation is consistent with the evidence provided by Haggie Reid that non-price related factors are often more decisive; that BWR is the price setter in the market; and that Haggie Reid’s supply are more in response to customer’s request for a diversified source of supply than as a result of price advantage over BWR. In this regard we cite these extracts of the SEF:

Customers will typically prioritise several factors in making its purchasing decisions. The most important consideration is the performance and useful life of the rope, and stock availability. Ropes that have a longer useful life allow less down time for the excavator machine, which is a critical expenditure for a mine site. Customers will try and maximise rope performance within planned scheduled change outs. This means the per tonne price offered by suppliers itself is less meaningful to a customer’s purchasing decision, in comparison to the cost of operation over the useful life of the rope, and the impact of the expected performance the rope has on the customer’s operation. Wire rope customers in Australia are more performance sensitive than price sensitive, especially in times when the mineral prices are strong. Haggie Reid considers that the focus on performance and life-time operational cost is likely to continue for the foreseeable future, in light of strong demands for coal and the need for energy security.

Further, each customer and site will have its own preference for the rope specification based on the relevant machine and mine site requirements. These requirements will dictate the number of rope strands required, whether the rope is compact or non-compact strands and whether it has plastic or non-plastic coverage.²¹

and

As explained at F-3 above, [CONFIDENTIAL TEXT DELETED – discussion of customer consideration of commercial factors and product attributes].²²

Similarly, BWR has emphasised that the key product attributes which influence purchasing decisions are rope quality and working life, and in addition to that, technical support, availability of supply,

¹⁹ Continuation 595 – Statement of Essential Facts, page 51.

²⁰ Ibid, page 52.

²¹ Haggie Reid Response to Importer Questionnaire, at F-3.

²² Ibid, at F-4

reliability of supply and timeliness of supply.²³ BWR also acknowledges that its ropes are “*recognised locally in Australia and overseas as high-quality ropes*”,²⁴ and that it charges a price premium which reflects the quality of product and the services offered. This is because, as stated by BWR, “*machine downtime is a significant cost to the customer and securing quality, reliable rope with a longer than average life is beneficial.*”²⁵

The importance of quality and durability has been acknowledged in other parts of the SEF itself, noting that the coal industry has developed a strong preference for durable quality rope, with the wire rope industry experiencing increased sales of models with better durability.²⁶ What this means is that price can be an important consideration, but it is the price over the period of supply, not simply the price offer, which eventuates in a successful sale. If a rope does not meet its performance requirements, or a supplier does not have a ready supply of the products, the cost of any machine downtime and maintenance will very quickly outweigh any benefit from a cheaper upfront price offering. This dynamic between price and quality is evident in the volume impact of such sales, as the Commission noted that “*...this decline in sales volume in 2020 and in 2021 is in part, due to BWR increasing sales of CC/P wire rope*”.²⁷

Such an acknowledgement must also flow through to the SEF’s analysis of the price impacts of the expiry of the measure and any potential dumping. The fact that Haggie Reid succeeded in supplying projects not jointly supplied by BWR at higher prices further demonstrates that price was not the only nor the decisive factor, and that those prices, even if dumped, did not cause injury to the Australian industry. Likewise, to the extent that BWR was able to charge a higher price for a project that was not also supplied by Haggie Reid (being a vast majority of BWR’s sales – given its much larger market share), it must be the case that price was not the decisive factor and /or that any effect of price competition from the GUC was isolated and did not materially affect the performance of the Australian industry.

The reality is that BWR’s sales of like goods, and its associated price, profit and profitability, were largely unaffected by the GUC exported by HSWR and supplied by Haggie Reid during the inquiry period.

c Non-injurious nature of HSWR’s exports when IDD refund considered

Lastly, as observed in Part A above, the Commission has determined that the GUC supplied by Haggie Reid during the 2020 period were not dumped, and were exported at prices above the NIP. Further, during the inquiry period, once the distortive effect of the IDD on the deductive export price calculation is taken into account, the average prices of the GUC supplied by Haggie Reid were also above the non-injurious price – being the “*the minimum price necessary to prevent the injury, or a recurrence of the injury*” under Section 269TACA of the *Act*. This further supports the non-injurious nature of the GUC supplied by HSWR/Haggie Reid.

²³ Continuation 595 – Australian Industry Questionnaire Response, page 8.

²⁴ Ibid, page 7.

²⁵ Ibid, page 8.

²⁶ Continuation 595 – Statement of Essential Facts, page 28.

²⁷ Continuation 595 – Statement of Essential Facts, page 32.

3 Findings of “likely effect of expiry of measures on pricing by Haggie Reid” is unsubstantiated

HSWR and Haggie Reid take issue with the following statement in the SEF:

If the measures expire, the commission’s analysis suggests that there is no incentive for Scaw to increase its export prices to the point that it would not be dumping. Scaw’s exports are not competitive in the Australian market unless exported at dumped prices. Its related party customer, Haggie Reid, achieved a break-even position to manage the effect that IDD had on its costs during the inquiry period.²⁸

Haggie Reid supplies the GUC to the Australian market by [CONFIDENTIAL INFORMATION – pricing considerations] Haggie Reid’s prices have been driven by the market and the upfront costs [CONFIDENTIAL INFORMATION – pricing considerations]. Haggie Reid’s sales prices are not driven by or “because of dumping”, and there is no evidence supporting such a proposition.

Further, as noted in Part A of this submission, to the extent that the phenomenon of “dumping” is the product of the existing dumping measure and the IDD itself, there is no evidence that “in order to continue selling wire rope to the suppressed Australian market, Haggie Reid must continue to sell dumped wire rope.”

Contrary to the assertion that “there is no incentive”, HSWR and Haggie Reid have consistently advised the Commission that a key purpose of their engagement with the duty assessment procedures is “aimed to allow Scaw to increase its transfer prices and returns for the Australia sales.”²⁹ In fact HSWR has already started to implement price increases on the back of the conclusion of the three duty assessments. This is well supported by the Commission’s TRINDEX data:³⁰



²⁸ Continuation 595 – Statement of Essential Facts, page 54.

²⁹ Refer to Scaw response to the exporter questionnaire, at B-1(b).

³⁰ <https://www.industry.gov.au/publications/trade-remedy-index-trindex>

The reality is that HSWR's export prices have been suppressed by the presence of the dumping duty itself and by BWR's prices. HSWR has been forced to lower its export prices in order to ensure that Haggie Reid [**CONFIDENTIAL INFORMATION – pricing methods**]. On the other hand, Haggie Reid's prices have been undercut and suppressed by its competitors in the Australian market.

Further, as the SEF observes, "*Scaw's exports are not competitive in the Australian market unless exported at dumped prices*". This is due to a combined effect of the existing dumping duty, and the fact that HSWR has a high-priced domestic market. If the measure expires – being the counterfactual that the Commissioner is required to consider, the former will not apply – there would be no impediment caused by the dumping duty. In such a case, there would be a strong incentive for HSWR and Haggie Reid to continue to achieve non-injurious prices, maximise commercial returns and avoid the compliance costs associated with a potential dumping measure in the future.

High domestic prices in South Africa provide an effective disincentive for HSWR to seek to dump and to cause injury to the Australian industry, and to do so at a lower commercial return. HSWR is a market leader in South Africa with the majority market share in wire rope, and consistently achieves strong profits on its domestic sales. There is no commercial incentive for HSWR to expand its sales to Australia at dumped prices that injure the Australian industry. HSWR and Haggie Reid's past behaviour and pattern of exports since the measures were imposed strongly support HSWR and Haggie Reid's *bona fide* efforts to maintain non-injurious pricing. There is nothing that indicates that this would change as a result of expiry of the measure.

Again, we note that the average export prices of the GUC during the inquiry period were in fact *above* the non-injurious price once the IDD deduction is removed. This means that even if the goods are dumped or are likely to be dumped in the future at the same level, the effect of dumping, if any, has not been and is unlikely to be injurious to the Australian industry.

D Non-injurious price and appropriate form of measure

Without detracting from HSWR and Haggie Reid's primary position stated above – which is that there is no evidence supporting the continuation of the measure - we would like to provide additional comments concerning the proposed calculation of non-injurious price and the form of duty if the measure is to continue.

In relation to non-injurious price, the SEF describes the method and reasoning as follows:

As Scaw's exports to Australia were dumped, (refer Chapter 6) the commission considers that BWR was affected by dumping during the inquiry period. The commission has therefore established a USP through the construction approach by using BWR's weighted average CTMS during the inquiry period, plus an amount for profit. The commission used an amount for profit from a period unaffected by dumping, which, based on the approach taken to calculating a USP in REP 401, was the 2015 calendar year. BWR's weighted average profit in 2015 was higher than the profit it achieved during the inquiry period.³¹

Firstly, as established above, there is insufficient evidence suggesting that BWR was "*affected by dumping during the inquiry period*". Instead, BWR's performance overall was unaffected by competition

³¹ Continuation 595 – Statement of Essential Facts, page 55.

from Haggie Reid. This is evident from its ability to recover from price suppression since 2016,³² and its improved total profit in each year since the imposition of measures, with the most significant improvement in total profit and profitability occurring in 2021.³³

Secondly, the concluded duty assessments DA0206 and DA0220, mostly covering the period of calendar year 2020, also show that the GUC imported from HSWR were not dumped. This indicates that BWR's prices and profit level during 2020 and 2021 reasonably reflected conditions unaffected by dumping.

Thirdly, the use of a 2015 profit cannot appropriately account for the significant changes to the Australian market for wire rope since the original investigation. These new impacts, which are unrelated to dumping, include the following:

- Sales of CC/P wire rope have increasingly replaced sales of non-compacted and non-plasticated (NC-NP) wire ropes since 2018;³⁴
- Both unit price and unit cost are at historical high during the inquiry period,³⁵ which provide natural constraint on the profit margins;
- Reduced market demand due to competition from non-GUC products and improved longevity of products;³⁶
- BWR's ability to increase prices in line with its costs. *In 2020 and 2021, the rate of increase in price was marginally greater than the increase in costs.*³⁷

Given that the starting point for the USP calculation is BWR's cost to make in 2021, which reflects the changed product mix and market dynamic, the reasonable reference point for profit should be BWR's average profit during 2020 and/or 2021. This is because BWR's prices during 2020 was clearly not affected by dumping, as supported by the outcome of DA0206 and DA0220. Further, BWR was apparently able to increase prices during 2021 and achieve the highest level of profit since imposition of the measure with respect to like goods, and with respect to its Australia business as a whole.

Separately, in relation to the form of duty, we respectfully request the Commission to take into account HSWR and Haggie Reid's proven record of complying with the non-injurious price; their full cooperation with the Commission through duty assessments; and Haggie Reid's fair engagement in its response to tenders and in the Australian market generally.

Evidence shows that Haggie Reid has not sought to win tenders through price undercutting or sales at a loss during the inquiry period, and that it has endeavoured to price its product in a way that **[CONFIDENTIAL INFORMATION – pricing methods]**. This shows that the presence of a non-injurious price itself would provide adequate protection for the Australian industry. The fact that the unit cost and

³² Ibid, page 33.

³³ Ibid, page 34.

³⁴ Ibid, page 28

³⁵ Ibid, page 33.

³⁶ Ibid, page 50, 53

³⁷ Ibid, page 33.

price level has reached a historic high during the inquiry period provides further assurance that a duty measure based on a non-injurious price will likely provide sufficient protection for the Australian industry.

As such, even if the Commission is satisfied that the conditions for securing continuation of the measure is met, we respectfully urge the Commission to change the form of duty to a floor price method, based on the unit non-injurious price. This form of duty would be particularly desirable and more reasonable, if the deductive export price is affected by the existing IDD paid during the inquiry period, rather than the real world export price that the Australian industry needs to compete with (which is unaffected by any deduction of IDD).

E Conclusion

In conclusion, HSWR and Haggie Reid submit that the Commission cannot have the required degree of satisfaction to recommend continuation of the measure as required by Section 269ZHF(2) of the Act, based on the matters stated in the SEF. The need to conduct a forward-looking determination of the effect of *expiry* of the measure necessarily requires the Commission to ascertain such effect without assuming a deduction of full IDD paid based on a continuation of the existing measure.

Further, facts from the inquiry period shows that there is insufficient evidence that the Australian industry is or is likely to experience material injury caused by dumping due to expiry of the measure.

In any case, the SEF's proposal to secure a continuation of the measure at a rate of 24.1% does not correctly or reasonably reflect the measure required to prevent continuation or recurrence of injury, and significantly exceeds the level of injury caused by dumping or the actual level of dumping once the effect of IDD is removed.

Yours sincerely



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