



CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 483**

**APPLICATION FOR AN ANTI-CIRCUMVENTION INQUIRY INTO
THE SLIGHT MODIFICATION OF
GOODS EXPORTED TO AUSTRALIA**

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

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant or BBRG	Bekaert Wire Ropes Pty Ltd
the Assistant Minister	the Assistant Minister for Science, Jobs and Innovation
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Customs Tariff	<i>Customs Tariff Act 1995</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the goods	wire rope
original investigation period	1 January 2016 to 31 December 2016
original notice	Anti-Dumping Notice No. 2017/58
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 401	<i>Anti-Dumping Commission Report No. 401</i>
Scaw SA	Scaw South Africa (Proprietary) Limited
South Africa	The Republic of South Africa

1. SUMMARY AND RECOMMENDATION

1.1 Summary

This report provides the results of the consideration by the Commissioner of the Anti-Dumping Commission (the Commissioner) of an application from Bekaert Wire Ropes Pty Ltd, trading as BBRG Australia (BBRG, or the applicant) requesting the conduct of an anti-circumvention inquiry in relation to a dumping duty notice published under subsection 269TG(2) of the *Customs Act 1901* (the Act),¹ the original notice,² applying to wire rope (the goods) exported to Australia from the Republic of South Africa (South Africa).

BBRG alleges that an exporter of the goods, Scaw South Africa (Proprietary) Limited (Scaw SA), has slightly modified its wire rope in order to circumvent the applicable anti-dumping measures.

1.2 Application of law to facts

Division 5A of Part XVB of the Act sets out procedures for considering an application for an anti-circumvention inquiry.

Subsection 269ZDBB(6) provides that circumvention activity, in relation to a dumping and/or countervailing duty notice, occurs in the circumstances prescribed by the *Customs (International Obligations) Regulation 2015* (the Regulation).

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).

1.3 Findings and conclusions

The Commissioner has examined the application in accordance with the requirements of the Act and Regulation, and is satisfied that:

- the application complies with the requirements of section 269ZDBD of the Act (as set out in Chapter 3 of this report); and
- there appears to be reasonable grounds for asserting that the circumstance prescribed by subsection 48(2) of the Regulation regarding the slight modification of goods has occurred in respect of the alleged circumvention goods exported to Australia from South Africa (as set out in Chapter 4 of this report).³

Accordingly, the Commissioner has not rejected the application and will initiate an anti-circumvention inquiry in respect of wire rope exported to Australia from South Africa.

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

² Anti-Dumping Notice (ADN) No. 2017/172 refers. ADNs are available on the Anti-Dumping Commission's (the Commission) website, www.adcommission.gov.au.

³ Subsection 269ZDBE(2)(b).

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To give effect to that decision, the Commissioner must publish a notice indicating that an anti-circumvention inquiry into the slight modification of goods exported to Australia from South Africa will be conducted.⁴

For the purposes of the inquiry, the inquiry period to determine whether a circumvention activity has occurred will be from 1 January 2016.⁵

⁴ Subsection 269ZDBE(4).

⁵ The inquiry period has been set to take into account exportations which occurred in the period before and after the time when the slight modifications are alleged to have occurred.

2. BACKGROUND

2.1 Application

On 7 June 2018, BBRG, a member of the Australian industry who manufactures wire rope, lodged an application requesting the conduct of an anti-circumvention inquiry into the circumvention of the original notice applying to wire rope exported to Australia from South Africa.

In its application, BBRG considers that it may be appropriate to alter the original notice because an exporter of the goods from South Africa, Scaw SA, has slightly modified those goods in such a way that the importation of those goods into Australia does not attract anti-dumping duty.

The original notice applies to wire rope consisting of up to and including eight strands. BBRG's application alleges that Scaw SA commenced exporting nine-strand wire rope (the circumvention goods) for the purposes of avoiding the anti-dumping measures.

2.2 Original notice

Anti-dumping measures in the form of a dumping duty notice apply to wire rope from South Africa and were first imposed on 19 December 2017 following consideration of *Anti-Dumping Commission Report No. 401* by the then Assistant Minister for Industry, Innovation, and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science.

ADN No. 2017/172, in notifying the findings of REP 401, specified a rate of interim dumping duty for all exporters of 28.9% using the combination method.⁶

2.3 The goods the subject of the application

2.3.1 Description

The goods the subject of the original notice 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:

- (i) *Stranded steel wire rope is rope and strand made of high carbon wire (whether or not containing alloys);*

⁶ Certain findings of REP 401 are, at the time of this report, being reviewed by the Anti-Dumping Review Panel.

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- (ii) *The strand or rope can also be sheathed or impregnated and sheathed respectively in plastic or composites;*
- (iii) *The wires can be layered-up in various configurations in order to give the strand or rope the desired physical properties;*
- (iv) *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).*
- (v) *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.*

2.3.2 Tariff classification

The goods are currently classified to the tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* (Customs Tariff) specified below.

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

2.4 Consideration of the application

If an application under section 269ZDBE for the conduct of an anti-circumvention inquiry in relation to an original notice is lodged, under subsection 269ZDBE(1) the Commissioner must within 20 days of lodgement, examine the application and decide whether or not to reject the application.

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In relation to this application, this decision must be made no later than **27 June 2018**.

Subsection 269ZDBE(1) of the Act specifies that the Commissioner shall reject the application if he is not satisfied that:

- the application complies with subsection 269ZDBD; or
- there appear to be reasonable grounds for asserting that one or more circumvention activities in relation to the original notice have occurred.

The above matters are examined in the following sections of this report.

3. DOES THE APPLICATION COMPLY WITH SECTION 269ZDBD?

3.1 Legislative framework

Subsection 269ZDBD(1) requires that the application must:

- be in writing; and
- be in a form approved by the Commissioner for the purposes of this section; and
- contain such information as the form requires; and
- be signed in the manner indicated by the form; and
- be lodged in a manner approved under section 269SMS.

Subsection 269ZDBD(2) of the Act requires that the application must include:

- a description of the kind of goods that are the subject of the original notice; and
- a description of the original notice the subject of the application; and
- a description of the circumvention activities in relation to the original notice that the applicant considers have occurred; and
- a description of the alterations to the original notice that the applicant considers should be made.

3.2 The application

The application is in writing, is in the form approved by the Commissioner (B1236), contains such information as the form requires and is signed in the manner indicated in the form. The form was lodged in a manner approved by section 269SMS of the Act being by email to the Commission's nominated email address.

The application includes:

- a description of the kind of goods that are the subject of the original notice;
- a description of the original notice the subject of the application which was published in accordance with subsection 269TG(2) on 19 December 2017;
- a description and supporting evidence of the circumvention activity in relation to the original notice that the applicant considers has occurred; and
- a description of the alterations to the original notice that should be made.

Confidential and public record versions of the application were submitted. The Commissioner considers that the public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information within the confidential application.

3.3 The Commissioner's assessment

Based on the information submitted by the applicant, the Commissioner considers that the application complies with section 269ZDBD.

4. REASONABLE GROUNDS – HAS CIRCUMVENTION OCCURRED?

4.1 Legislative framework

Subsection 269ZDBD(2) requires an application to include a description of the circumvention activity that the applicant considers has occurred. The approved application form further requires the applicant to provide evidence to support the applicant’s view that there are reasonable grounds for asserting that the circumvention activity has occurred.

For the purpose of subsection 269ZDBB(6), a circumvention activity involving the slight modification of goods requires a circumstance in which all of the following, as set out in subsection 48(2) of the Regulation shall apply:

- a) goods (the *circumvention goods*) are exported to Australia from a country in respect of which the notice applies;
- b) before that export, the circumvention goods are slightly modified;
- c) the use or purpose of those goods is the same before, and after, they are so slightly modified;
- d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice; and,
- e) section 8 or 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), as the case requires, does not apply to the export of the circumvention goods to Australia.

For the purpose of whether a circumvention goods is slightly modified, the Commission has also compared the circumvention goods and the goods the subject of the notice having regard to any factor considered relevant and the factors described in subsection 48(3) of the Regulation as addressed in more detail at **Non-Confidential Appendix A**.

4.2 Are circumvention goods exported to Australia from South Africa?

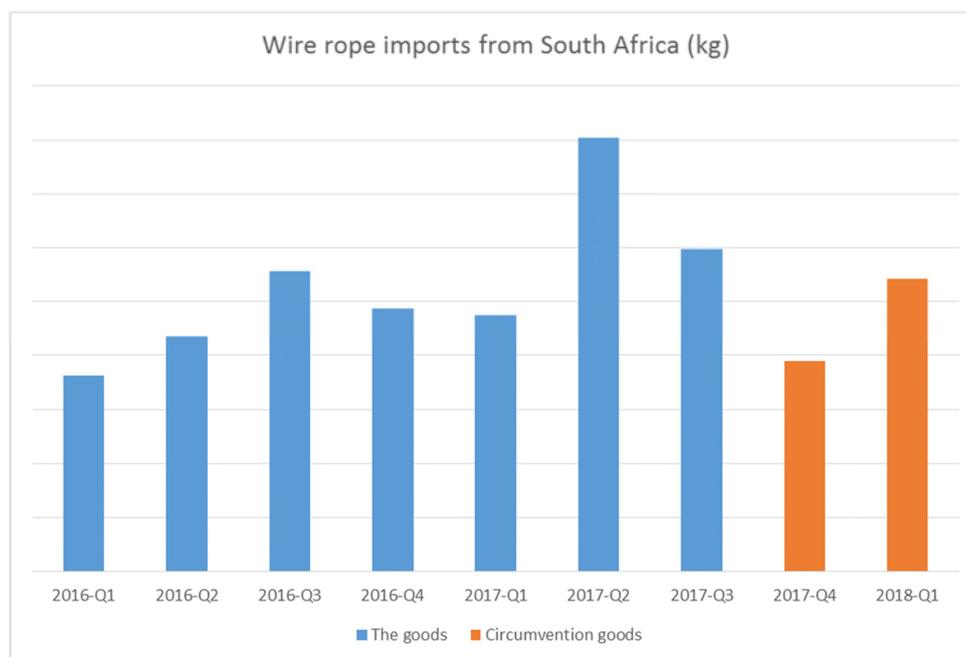
The applicant claims that subsequent to the measures being imposed, an importer, Haggie Reid Pty Ltd, has begun to import and promote wire rope consisting of nine strands (the circumvention goods) from South African exporter Scaw SA. The original dumping duty notice applies only to wire rope consisting of no more than eight strands.

The applicant claims that the circumvention foods are imported under the same tariff classifications as the goods subject to the original notice, however the Commission understands than wire rope with more than eight strands is classified to the following under the Customs Tariff.

Tariff classification			
Tariff subheading	Statistical code	Unit	Description
7312.10.00	93	Kilograms (kg)	Ropes and cables containing more than eight strands, of alloy or non-alloy steel: <i>Of a diameter exceeding 50 mm but not exceeding 100 mm</i>

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Analysis of import data from the Australian Border Force (ABF) database shows that South Africa did not export any goods under the above tariff classification prior to the fourth quarter of 2017, which is after provisional anti-dumping measures (in the form of dumping securities) were imposed in August 2017. Exports to Australia of the goods subject to the measures ceased shortly after imposition of dumping securities.



Based on the information in the application and other relevant information, pursuant to subsection 48(2)(a) of the Regulation, the Commissioner is satisfied that the alleged circumvention goods are exported to Australia from South Africa, a country in respect of which the original notice applies.

4.3 Before that export, are the circumvention goods slightly modified?

The applicant alleges that the goods have been modified in South Africa by the exporter producing wire rope containing nine strands instead of wire rope with six or eight strands, which it did prior to the imposition of anti-dumping measures.

Having regard to the factors listed in subsection 48(3) of the Regulation as outlined in Non-Confidential Appendix A, the Commissioner considers it reasonable for the applicant to assert that the circumvention goods have been slightly modified before exportation.

4.4 Is the use or purpose of the circumvention goods the same before, and after, they are so slightly modified?

In its application BBRG provided information about the import and marketing of the circumvention goods to Australian customers.

BBRG claims that the circumvention goods (nine-strand wire rope) possess the same essential characteristics as six and eight-strand wire rope and is used in the same end-use application as the goods the subject of the original notice.

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BBRG further claims that the circumvention goods have been slightly modified to alter the construct of the wire rope to a nine-strand wire rope, which was not previously used by open cut mining customers in the Australian market, so as to avoid and/or evade the anti-dumping measures that apply to all exports of wire rope with eight or less strands from South Africa to Australia.

Having regard to the factors listed in subsection 48(3) of the Regulation as outlined in Non-Confidential Appendix A, the Commissioner considers it reasonable for the applicant to assert that the circumvention goods have the same use or purpose before and after they are modified.

4.5 Had the circumvention goods not been so slightly modified, would they have been the subject of the notice?

The goods description and tariff classification which appears to be relevant to the imports of the circumvention goods brings about the situation that nine-strand wire rope is specifically excluded from the current measures applying to the goods.

The Commissioner considers it reasonable that the circumvention goods would have been the subject of the notice and the requirement of subsection 48(2)(d) is satisfied for the purpose of assessing the application.

4.6 Do sections 8 and 10 of the Dumping Duty Act apply to the circumvention goods?

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties, respectively. The Commissioner is satisfied that the circumvention goods are not subject to the dumping duty notice under subsection 269TG(2) and it is also satisfied that section 8 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia.

4.7 The Commissioner's assessment

For the purpose of subsection 269ZDBB(6), the Commissioner considers it reasonable to assert that a circumvention activity relating to a circumstance involving the slight modification of goods has occurred.

5. ALTERATION OF THE NOTICE

5.1 Legislative framework

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

Subsection 269ZDBH(1) provides that the Assistant Minister may declare alterations to the original 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 subject to 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) the specification of different variable factors in respect of existing exporters the subject of the original notice; and
- e) the specification of variable factors in respect of exporters that are to be the subject of the original notice.

5.2 Applicant's proposed alterations

BBRG contends that, based on the above claims of circumvention, the goods description of the original notice should be altered in order to include the circumvention goods. Specifically, BBRG propose to amend the goods description as below;

Stranded wire rope, alloy or non-alloy, 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

5.3 The Commissioner's assessment

For the purpose of assessing the application against subsection 269ZDBD(2), the Commissioner is satisfied that the application contains a description of the alterations to the original notice which the applicant considers should be made. The Commission will give further consideration to this issue as the inquiry progresses.

6. CONCLUSION

The Commissioner has examined the application and is satisfied that:

- the application complies with section 269ZBDB; and
- there appear to be reasonable grounds for asserting that the circumstance prescribed by subsection 48(2) of the Regulation regarding the slight modification of goods has occurred in respect of the alleged circumvention goods exported to Australia from South Africa.

Accordingly, the Commission recommends that the Commissioner decide to not reject the application for the conduct of an anti-circumvention inquiry in relation to the original notice under section 269ZDBE in relation to goods exported from South Africa.

7. APPENDICES AND ATTACHMENTS

Non-confidential Appendix A	Assessment of modification factors
Confidential Appendix B	Trade flow analysis



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APPENDIX A ASSESSMENT OF SLIGHT MODIFICATION FACTORS

Subsection 48(3) of the Regulation sets out factors which the Commissioner may have regard to in comparing the alleged circumvention goods (nine-strand wire rope) and the goods the subject of the original notice (six and eight-strand wire rope), for the purpose of determining whether the circumvention goods are slightly modified. The table below provides the Commission's preliminary assessment of the applicant's claims in relation to each factor listed at subsections 48(3)(a) through (m) of the Regulation, and any other factors cited by the applicant which it considered relevant to the comparison. The Commission will examine such factors in more detail as the inquiry progresses.

Factor listed under s.48(3)	Applicant's claim	Commission's assessment
(a) each good's general characteristics	The general characteristics of the circumvention goods are not dissimilar to the goods.	Based on the information provided in the application, the Commission is of the view that the general characteristics of the circumvention goods are similar to the goods, i.e. they are wire rope with just a different number of strands.
(b) each good's end use	Nine-strand wire rope performs the same function as six and eight-strand wire rope. The end-uses are hoist, drag and dump ropes, which have not altered since the publication of the original notice.	Based on the evidence supplied by the applicant, the Commission is of the preliminary view that the end uses for the circumvention goods is the same as for the goods i.e. general use in mining applications.
(c) the interchangeability of each good	The circumvention goods are interchangeable with the goods.	The evidence submitted in the application details the alleged use of the circumvention goods as a direct substitute for the goods.
(d) differences in the processes used to produce each good	The circumvention goods are produced in a similar fashion to the goods.	Based on the evidence submitted by the applicant and the Commission's understanding of wire rope production, the Commission agrees that the circumvention goods and the goods are produced using similar processes.
(e) differences in the cost to produce each good	The difference in cost to produce the circumvention goods is similar to the goods. The cost differential is sufficiently low to enable the exporter to circumvent the measures.	Based on the evidence submitted by the applicant and the Commission's understanding of wire rope production costs, the Commission agrees that the difference in cost to produce circumvention goods and the goods are likely not significantly different.
(f) the cost of modification	The cost of modification is not significant.	The Commission does not have detailed information to assess this claim.

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Factor listed under s.48(3)	Applicant's claim	Commission's assessment
(g) Customer preferences and expectations relating to each good	Customer preferences and expectations for the circumvention goods and the goods are the same.	The Commission does not have detailed information to assess this claim.
(h) The way in which each good is marketed	Both the circumvention goods and the goods are marketed in the same fashion.	Based on the information provided by the applicant, the Commission is of the preliminary view that both goods are marketed in a similar way.
(i) Channels of trade and distribution for each good	The channels of distributions are the same for nine-strand wire rope as for six and eight-strand wire rope, i.e. the same exporter is selling to the same importer as during the original investigation.	Based on the evidence submitted by the applicant, the Commission's understanding of the wire rope industry and analysis of ABF import data, the Commission agrees that the circumvention goods and the goods share the same channels of distribution.
(j) Patterns of trade for each good	The pattern trade will result in the substitution of the goods for the circumvention goods.	Based on the Commission's analysis of ABF import data at Confidential Appendix B , the Commission notes that since the imposition of measures there has been a shift in the pattern of trade relating to wire rope exported from South Africa. Exports nine-strand wire rope only commenced following the imposition of measures and exports of wire rope containing eight or less strands has ceased.
(k) Changes in the pricing of each good	The circumvention goods have only been offered post the publication of the original dumping notice.	The Commission does not have detailed information to assess this claim, however it is noted that the effective rate of dumping duty is significantly large to provide an incentive for parties to attempt to circumvent the measures.
(l) Changes in the export volumes for each good	Exports of the circumvention goods are expected to replace export volumes of the goods from South Africa.	Based on the Commission's analysis of ABF import data, the Commission observes that since the imposition of measures there has been a shift in the pattern of trade relating to wire rope exported from South Africa. Exports nine-strand wire rope only commenced following the imposition of measures and exports of wire rope containing eight or less strands has ceased.
(m) Tariff classifications and statistical codes for each good	The circumvention goods are listed under the same tariff classification sub-heading. These are listed as tariff classification number 7312.10.00 and statistical class codes 91 and 92.	The circumvention goods are listed under the same tariff classification sub-heading (7312.10.00), but are classified to statistical code 93, whereas six and eight-strand wire rope is classified to statistical codes 91 and 92.