

PUBLIC RECORD



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

Consideration report number 377

**Application for a dumping duty notice in
relation to cooling tower water treatment
controllers exported to Australia from the
United States of America**

Submitted by: Aquarius Technologies Pty Ltd

January 2017

Contents

1	Findings and recommendations	2
1.1	Findings	2
1.2	Recommendations	2
2	The application and the Australian industry	3
2.1	Lodgement of the application	3
2.2	Compliance with subsection 269TB(4)	4
2.3	The goods the subject of the application	6
2.4	Like goods and the Australian industry	7
2.5	Australian industry information	9
2.6	The Australian market	10
2.7	The Commission’s assessment	11
3	Reasonable Grounds – dumping	14
3.1	Findings	14
3.2	Legislative framework	14
3.3	Export price	14
3.4	Normal value	16
3.5	Dumping margins	17
3.6	Volumes	18
4	Reasonable grounds – injury and causation factors	19
4.1	Findings	19
4.2	Legislative framework	19
4.3	The Applicant’s claims	19
4.4	Approach to injury and causation analysis	20
4.5	Volume effects	21
4.6	Price effects	22
4.7	Profit and profitability effects	23
4.8	Other injury factors	24
4.9	The Commission’s assessment of causation	26
4.10	Conclusion – material injury caused by dumping	26
5	Appendices and attachments	28

Abbreviations

Abbreviations/short form	Full reference
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
the Act	<i>Customs Act 1901</i>
Aquarius Technologies	Aquarius Technologies Pty Ltd, the applicant
BMCS	Building Monitoring and Control System
BMS	Building Management System
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
the goods	the goods the subject of the application
Parliamentary Secretary	Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
PCB	printed circuit board
USA	United States of America

1 Findings and recommendations

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application under subsection 269TB(1)¹ of the *Customs Act 1901* (the Act) by Aquarius Technologies Pty Ltd (Aquarius Technologies) for the publication of a dumping duty notice in respect of cooling tower water treatment controllers exported to Australia from the United States of America (USA).

Aquarius Technologies alleges that the Australian industry for cooling tower controllers has suffered material injury caused by cooling tower water treatment controllers exported to Australia from the USA at dumped prices.

The legislative framework that underpins the making of an application and the Commission's consideration of an application is contained in Divisions 1 and 2 of Part XVB of the Act.

1.1 Findings

In accordance with subsection 269TC(1), the Commission has examined the application and is satisfied that:

- the application complies with the requirements of subsection 269TB(4) (as set out in section 2.2 of this report);
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report); and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (as set out in sections 3 and 4 of this report).

1.2 Recommendations

Based on the above findings, the Commission recommends that the Commissioner of the Anti-Dumping Commission (Commissioner) decide not to reject the application and initiate an investigation to determine whether a dumping duty notice should be published.

The Commission further recommends that:

- exports to Australia during the investigation period 1 July 2015 to 30 June 2016 be examined for dumping; and
- details of the Australian market from 1 July 2009 to 30 June 2016 be examined for injury analysis purposes.²

If the Commissioner agrees with these recommendations, the Commissioner must give public notice of the decision (**Non-Confidential Attachment 1**) in accordance with the requirements set out in subsection 269TC(4).

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

² The purpose of the injury analysis period is to allow the Commission to identify and examine trends in the Australian market, which in turn assists the Commission in its examination of whether material injury has been caused by dumping over the investigation period. The period of July 2009 has been selected as the start of the injury analysis period due to the significant increase in import volumes from the USA in 2010.

2 The application and the Australian industry

2.1 Lodgement of the application

2.1.1 Legislative framework

The procedures for lodging an application are set out in section 269TB.

The procedures and timeframes for the Commissioner's consideration of the application are set out in section 269TC.

2.1.2 The Application timeframe

Event	Date	Details
Application lodged and received by the Commissioner under subsections 269TB(1) and (5)	20 September 2016	The Commission received an application from Aquarius Technologies alleging that the Australian industry has suffered material injury caused by cooling tower water treatment controllers that have been imported into Australia from the USA at dumped prices.
	6 October 2016	The Commission notified Aquarius Technologies that the application contained critical and important deficiencies which, if left unaddressed, created doubt about the reasonableness of the grounds for the publication of a dumping duty notice.
Applicant provided further information in support of the application under subsection 269TC(2A)	7 October 2016, 18 October 2016, 21 October 2016, 8 November 2016, 10 November 2016, 28 November 2016, 30 November 2016, 20 December 2016	The applicant provided further information and data in support of its application without having been requested to do so (as provided for in subsection 269TC(2A)). The application is taken to include that further information and data, and to have been lodged and received on 20 December 2016, when the latest additional information was lodged and received. Accordingly, the 20 day period for consideration of the application was restarted on each occasion that additional information was lodged and received, most recently on 20 December 2016.
Consideration decision due under section 269TC(1)	9 January 2017	The Commissioner shall decide whether to reject or not reject the application within 20 days after the applicant provided the last of its additional information.

Table 1 – Application timeframe

2.2 Compliance with subsection 269TB(4)

2.2.1 Finding

Based on the information submitted by the applicant, the Commission considers that the application complies with subsection 269TB(4).

2.2.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that the application complies with subsection 269TB(4).

2.2.3 The Commission's assessment

The table below summarises the Commission's assessment of compliance with subsection 269TB(4).

Requirement for the application	Details
Lodged in writing under subsection 269TB(4)(a)	The applicant lodged, in writing, confidential and non-confidential versions of the application. The non-confidential version of the application can be found on the electronic public record on the Commission's website at www.adcommission.gov.au .
Lodged in an approved form under subsection 269TB(4)(b)	The application is in the approved form (B108) for the purpose of making an application under subsection 269TB(1).
Contains such information as the form requires under subsection 269TB(4)(c)	The applicant provided: <ul style="list-style-type: none"> • a completed declaration; • answers to all questions that were required to be answered by the applicant; • all completed appendices; and • sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence.
Signed in the manner indicated in the form under subsection 269TB(4)(d)	The application was signed in the manner indicated in Form B108 by a representative of the applicant.

PUBLIC RECORD

Requirement for the application	Details
<p>Supported by a sufficient part of the Australian industry under subsection 269TB(4)(e) and determined in accordance with subsection 269TB(6)</p>	<p>As set out in section 2.4.4 of this report, the Commission is satisfied that there is an Australian industry producing like goods.</p> <p>Aquarius Technologies claims to be the sole manufacturer of cooling tower water treatment controllers in Australia. The Commission's research has not found anything to displace this claim.</p> <p>The Commission is satisfied that the level of support for the application complies with the requirements of:</p> <ul style="list-style-type: none"> • subsection 269TB(6)(a) – as Aquarius Technologies appears to be the sole manufacturer of cooling tower water treatment controllers in Australia, it accounts for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and • subsection 269TB(6)(b) – as Aquarius Technologies appears to be the sole manufacturer of cooling tower water treatment controllers in Australia, it accounts for not less than 25% of the total production or manufacture of like goods in Australia.
<p>Lodged in the manner approved under section 269SMS for the purposes subsection 269TB(4)(f)</p>	<p>The application was lodged in a manner approved in the Commissioner's instrument made under section 269SMS, being by email to the Commission's nominated email address provided in that instrument. The application was therefore lodged in a manner approved under subsection 269SMS(2).</p>

Table 2 – Compliance with subsection 269TB(4)

2.3 The goods the subject of the application

The table below outlines the goods as described in the application and their corresponding tariff classification.

Full description of the goods, as subject of the application				
Industrial water treatment controllers, programmed to monitor and/or treat water in a cooling tower, with or without accessories including sensors, pumps, solenoids and modem (cooling tower water treatment controllers).				
Further information				
<p>A cooling tower is a heat rejection device that rejects waste heat to the atmosphere through the cooling of a water stream. Common applications of cooling towers include air conditioning for buildings and the cooling of circulating water in industrial processes.</p> <p>Cooling tower water treatment controllers are units programmed to monitor water conditions (such as conductivity, Oxidation Reduction Potential (ORP) and power of hydrogen (pH) levels) in the cooling tower water and/or initiate actions required to bring the water to within the user's desired parameters (for example, through the addition of disinfecting chemicals). A controller typically comprises a printed circuit board (PCB) or boards, connection terminals, a display screen and control panel with keypad.</p> <p>The control functions of cooling tower water treatment controllers are based on inputs from probes measuring the properties of the water.</p> <p>Depending on the reading from the probes, the unit signals ancillary devices such as a bleed solenoid, a feeder and/or pump/s (which are connected to the water treatment system separately as an additional system component) to drain a controlled amount of water or dose the water with the required amount of chemical(s) (for example oxidising biocide, acid).</p> <p>In addition, the goods are often equipped with internal timers which are programmed by users to send signals to ancillary devices to dose water with other chemicals when required (for example inhibitor secondary biocide (non-oxidising), dispersant).</p> <p>Depending on the customer's final requirements, cooling tower water treatment controllers may have the following features as well:</p> <ul style="list-style-type: none"> • Data logging feature to log the measurements on the controller to be downloaded on USB or a laptop when required; and/or • Remote access through web by adding Modems, Wi-Fi Adapter or Ethernet Adapter; and/or • Building management system (BMS) boards: PCBs for communication with Building Monitoring and Control System (BMCS). <p>BMS boards transfer the controller data to the BMCS using two main protocols: Analogue: 4-20mA outputs, and Digital: Modbus.</p>				
Tariff classification (<i>Schedule 3 of the Customs Tariff Act 1995</i>)				
<i>Tariff code</i>	<i>Statistical code</i>	<i>Unit</i>	<i>Description</i>	<i>Duty rate</i>
9032.89.80	90	number	Automatic regulating or controlling instruments and apparatus -- Other - -- Other	Duty free
As part of the investigation, the Commission will seek submissions and make further enquiries into whether any other tariff classifications are relevant to these goods.				

Previous investigations
There have been no previous investigations of cooling tower water treatment controllers.
Other administrations
The Commission is not aware of any investigations by other administrations into cooling tower water treatment controllers.

2.4 Like goods and the Australian industry

2.4.1 Finding

Based on the information before it, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application on the basis that:

- Aquarius Technologies produces goods that have characteristics that closely resemble the goods the subject of the application, and
- at least one substantial process in the manufacture of those goods is carried out in Australia.

2.4.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

Like goods are defined under subsection 269T(1). Subsections 269T(2), 269T(3), 269T(4) and 269T(4A) are used to determine whether the like goods are produced in Australia and whether there is an Australian industry.

2.4.3 Locally produced like goods

The table below summarises the Commission’s assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

Factor	The Applicant’s claims	The Commission’s assessment
Physical likeness	<ul style="list-style-type: none"> • The Australian-made goods are similar to the imported goods in terms of their general design and components. • Both the Australian and imported goods typically include a circuit board, connection terminals/outlet sockets, a display screen and a control panel with key pad. 	The Commission has examined the evidence presented in the application and is satisfied that the Australian industry produces goods that are physically alike to the goods the subject of the application.

PUBLIC RECORD

Factor	The Applicant's claims	The Commission's assessment
Commercial likeness	<ul style="list-style-type: none"> Both the imported and applicant's goods are directly competitive in the Australian cooling tower services and maintenance market and are sold to the same customers. 	<p>The Commission is satisfied that there is commercial likeness between goods produced by Aquarius Technologies and the imported goods the subject of the application.</p> <p>The imported goods and domestically produced goods are directly competitive. Preliminary information suggests that buyers are willing to switch from locally produced goods to imported goods.</p>
Functional likeness	<ul style="list-style-type: none"> The locally produced and imported goods have the same end-use – to monitor and/or control the water in a cooling tower. 	<p>Based on the information provided in the application, the Commission is satisfied that the goods produced by the applicant and the imported goods are functionally substitutable and have the same end use.</p>
Production likeness	<ul style="list-style-type: none"> The applicant explained its production process for the goods the subject of the application. 	<p>Noting the particular nature of the goods, the Commission understands that cooling tower water treatment controllers are generally produced in similar ways. The Commission understands this to be the case because there aren't alternative ways to manufacture the goods. Accordingly, the Commission is satisfied that locally produced and imported goods would be produced using similar production processes.</p>
Commission's assessment		
<p>The Commission has examined the evidence presented in the application and is satisfied that the Australian industry produces like goods (as defined in subsection 269T(1)) to the goods the subject of the application.</p>		

2.4.4 Manufacture in Australia

The table below summarises the Commission's assessment of whether at least one substantial process of manufacture is carried out in Australia and whether the like goods are therefore considered to have been manufactured in Australia.

PUBLIC RECORD

The Applicant's claims
<p>In its application, Aquarius Technologies claims that it manufactures cooling tower water treatment controllers in Australia, using a range of components that are either designed and manufactured by Aquarius Technologies or procured from Australian suppliers – some of these items being designed by Aquarius Technologies. Specifically, Aquarius Technologies:</p> <ul style="list-style-type: none"> • designs and manufactures the PR_FCT combination probes; • designs the PR_PHRG combination probe and sends the designs to an Australian company for manufacturing; • designs the circuit boards for the controllers and arranges manufacture; • designs the controller and modem software; • assembles and programmes the controller; and • tests the controller.
The Commission's assessment
<p>Based on the Commission's understanding of Aquarius Technologies' manufacturing processes, the Commission has accepted the applicant's above claims and considers that all of the above processes in their entirety demonstrate that there is at least one substantial process of manufacture performed in Australia and that the goods are therefore taken to have been produced in Australia.</p>

2.5 Australian industry information

The table below summarises the Commission's assessment of whether Aquarius Technologies has provided sufficient information in the application to analyse the performance of the Australian industry.

Have the relevant appendices to the application been completed?		
A1	Australian production	Yes
A2	Australian market	Yes
A3	Sales turnover	Yes
A4	Domestic sales	Yes
A5	Sales of other production	Yes
A6.1	Cost to make and sell (& profit) – Domestic sales	Yes
A6.2	Cost to make and sell (& profit) – Export sales	Yes
A7	Other injury factors	Yes
General administration and accounting information – Aquarius Technologies		
History	Aquarius Technologies is a limited liability company established in 1989 to develop and manufacture water treatment controllers.	
Ownership	Aquarius Technologies is a privately owned company.	
Operations	Aquarius Technologies specialises in developing and manufacturing water treatment controllers for water treatment industries, including cooling water treatment, wastewater treatment, swimming pool disinfection and potable water treatment.	
Financial year	1 July to 30 June.	

PUBLIC RECORD

Audited accounts	The company is classified as a small proprietary company and is not required to prepare audited accounts. The company provided financial reports, including a Director's Declaration, for the financial years 2010/11 to 2014/15 inclusive, and an income statement and balance sheet for the 2015/16 financial year.	
Annual reports	As a private company, Aquarius Technologies does not prepare annual reports.	
Production and sales information	Cost to make and sell information	Other injury factors
Aquarius Technologies provided annual production and sales information for the financial years 2009/10 to 2015/16. It also provided a detailed like goods sales listing for the 2015/16 financial year (Appendix A4).	The applicant provided annual cost to make and sell (CTMS) data for domestic and export sales for the period 2009/10 to 2015/16 (Appendix A6).	The applicant provided data on other injury factors covering the period 2009/10 to 2015/16 (Appendix A7)
The Commission's assessment		
Based on the information in the application, the Commission is satisfied that there is sufficient data on which to analyse the performance of the Australian industry between 1 July 2009 and 30 June 2016.		

2.6 The Australian market

Aquarius Technologies estimates that the Australian market for cooling tower water treatment controllers is approximately 1,000 units in the 2015/16 financial year. The Commission has used the applicant's sales data, along with import data from the Australian Border Force (ABF) import database to gain an estimate of imports of cooling tower controllers into Australia.

2.6.1 The applicant's claims

Aquarius Technologies claims that demand for cooling tower water treatment controllers comes from two sources:

1. replacing non-compliant or outdated existing products which are already installed on industrial or commercial cooling towers; and
2. installation of control systems on new industrial or commercial cooling towers.

The applicant considers the following factors impact on the demand for the goods in Australia:

- activity in the building and construction sector;
- government infrastructure spending on hospitals and other public buildings; and
- health and safety regulation that might prompt the upgrading of non-compliant controllers.

Aquarius Technologies claims that the Australian market is supplied by itself, un-dumped imports and dumped imports from the USA. It used information from its own sales and market intelligence to estimate the size of the Australian market since 1 July 2009.

2.6.1 Market structure

The major customers for the cooling tower water treatment controllers are water treatment service companies that provide water treatment systems, services and replacement controllers to the final users of the cooling tower water treatment controllers. These companies provide replacement controllers for outdated models (already installed) as well as providing controllers for new installations.

Figure 1 below shows the channels to market for the imported and locally manufactured cooling tower water treatment controllers.

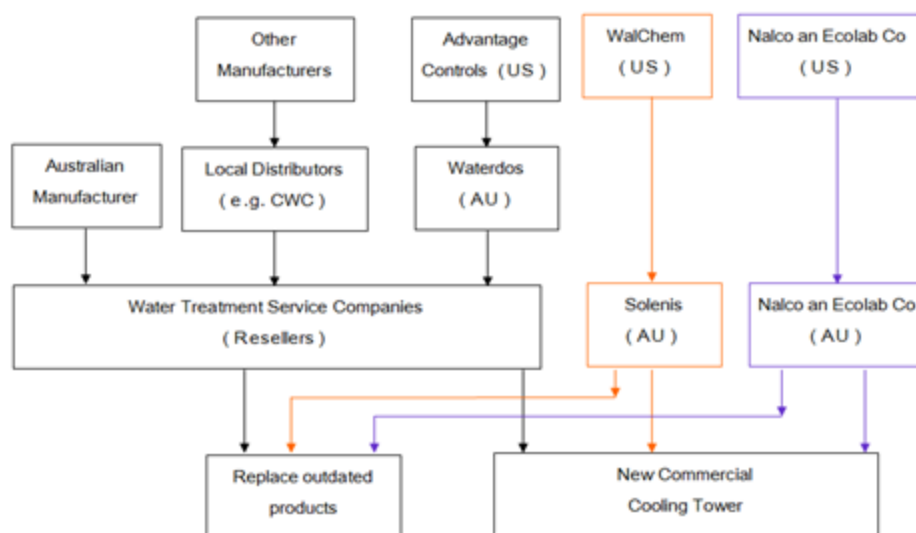


Figure 1 – Channels to market

Water treatment service companies commonly take part in tenders to provide water treatment equipment (including controllers), chemicals and services to end users, for new installations of cooling towers.

In a small percentage of cases controllers are purchased directly by the final users, from Aquarius and importers, rather than through water treatment service companies.

2.7 The Commission’s assessment

As noted above, Aquarius Technologies estimates that the Australian market for cooling tower water treatment controllers is approximately 1,000 units in the 2015/16 financial year. The Commission has used the applicant’s sales data, along with import data from the ABF import database to gain an estimate of imports of cooling tower water treatment controllers into Australia.

The tariff classification that cooling tower water treatment controllers sits within covers a very broad range of goods, making it difficult to distinguish imports of cooling tower water treatment controllers from other imports. The Commission used the list of known major suppliers to the Australian market (Australian importers and USA suppliers) listed in the application, in conjunction with its own research, to identify likely imports of cooling tower water treatment controllers within the ABF import data. The Commission then further refined this data set using the specific goods description wording linked to these imports to develop its final estimate of imports of cooling tower water treatment controllers into Australia.

The Commission’s estimates of imports from the USA was similar to the applicant’s estimate, but in relation to estimates of imports from other sources, the Commission’s estimate was significantly lower, and considered more reliable. For the purposes of this Consideration Report, the Commission has relied upon its estimates of the market, based on the applicant’s own sales and on data from the ABF import database (cleansed as described above).

During the course of the investigation, the Commission will seek additional information to inform its understanding of the size of the Australian cooling tower water treatment controller market, and market shares held by the various participants in the market.

Figure 2, below, shows the estimate of movements in the Australian market for controllers since 2009/10.

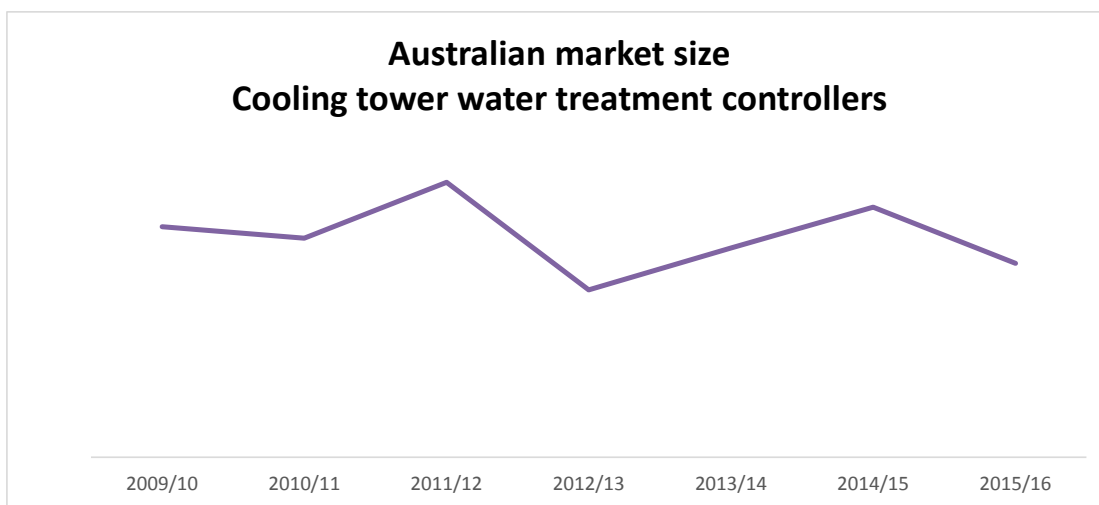


Figure 2 – Estimate of Australian market size for cooling tower water treatment controllers

The Australian market for cooling tower water treatment controllers fluctuated over the injury analysis period, expanding in 2011/12, before contracting the following year. The market expanded again in 2013/14 and 2014/15 before contracting in 2015/16.

Figure 3, below, shows the estimate of the Australian market for cooling tower water treatment controllers for financial years 2009/10 to 2015/16.

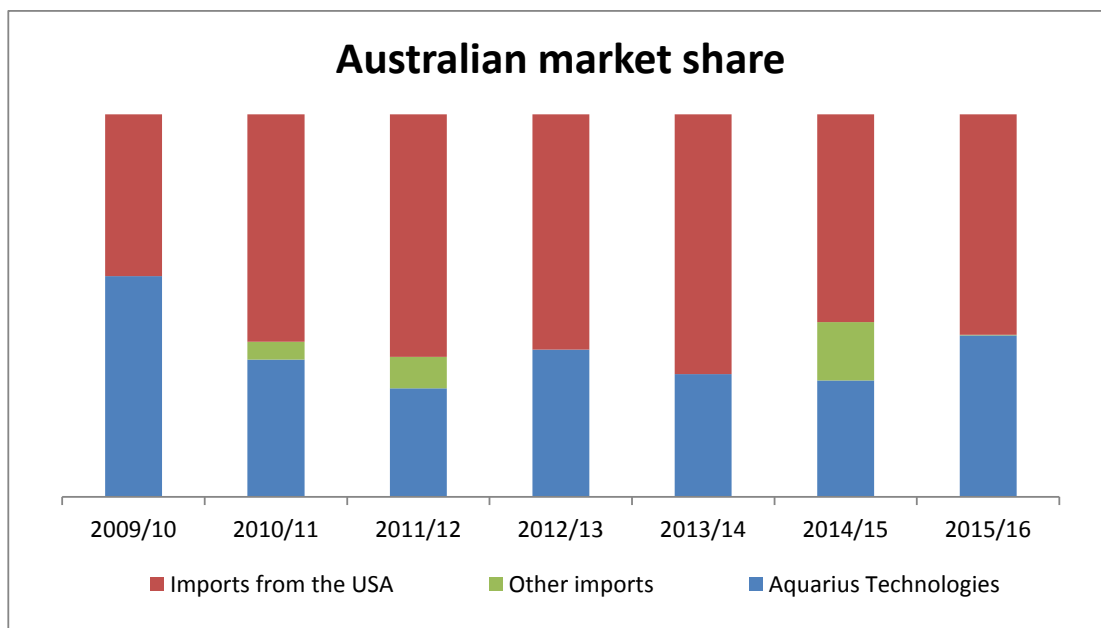


Figure 3 – Estimate of Australian market share for cooling tower water treatment controllers

The applicant claims that dumped imports entered the Australian market in significant volumes in 2010/11, taking significant market share from the sole Australian manufacturer. The allegedly dumped import volumes continued to grow until 2014/15 when they decreased marginally as a percentage of the estimated Australian market.

The Commission's examination of import data for known imports of cooling tower water treatment controllers³ indicates that imports of controllers from the USA commenced in significant volumes in the latter part of 2009/10 and have continued in significant volumes since.

³ The Commission identified imports of cooling tower water treatment controllers by known importers and exporters based on market intelligence identified in the application and the Commission's own research.

3 Reasonable Grounds – dumping

3.1 Findings

Pursuant to subsection 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods have been exported to Australia from the USA at dumped prices;
- the estimated dumping margin for exports from the USA is greater than 2 per cent and therefore is not negligible; and
- the estimated volume of goods exported to Australia from the USA that appear to have been dumped is greater than 3 per cent of the total Australian import volume of goods and therefore is not negligible.

3.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG, one of the matters that the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)⁴ must be satisfied of in order to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods, i.e. that dumping has taken place (to an extent that is not negligible). This issue is considered in the following sections.

3.3 Export price

3.3.1 Legislative framework

Export price is determined by applying the requirements in section 269TAB taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

3.3.2 The Applicant's estimate

The table below summarises the approach taken by the applicant to estimate export prices and the evidence relied upon.

⁴ On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this investigation the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

PUBLIC RECORD

Basis of estimate	Details
Deductive export price	<p>Without the ability to distinguish between imports of the goods and other items in the Australian Bureau of Statistics (ABS) import data, Aquarius Technologies estimated a 'deductive' export price using the methodology set out in subsection 269TAB(1)(b) of the Act (although there is no allegation that the exports are not arms length transactions).</p> <p>Aquarius Technologies obtained a quote from 2015 from an Australian equipment supplier to an Australian water treatment service company for the supply of an allegedly dumped controller imported from the USA.</p> <p>The applicant used the quote to determine selling prices in Australia for two imported models of controller. The models produced by the applicant and sold in the Australian market are considered like to these models.</p> <p>From the offered selling prices in Australia for the two imported models, Aquarius Technologies deducted amounts for the following:</p> <ul style="list-style-type: none"> • Importer's profit; • Importer's selling, general and administrative expenses; • warehousing; • minor accessories included with the controller; and • ocean freight. <p>Amounts deducted are equal to or lower than the applicant's levels of profit and expenses for similar activities or items.</p>

3.3.3 The Commission's assessment

The Commission accepts the inability of the applicant to use ABS data to estimate export prices. Even with its access to line by line detailed import data, the Commission found it difficult to reliably identify the allegedly dumped goods and declared export prices. The range of models incorporating different options and accessories added to the complexity of this task.

Given the information available to it, and the fact that the export price invoice relied upon by the applicant is for cooling tower water treatment controllers from the USA, the Commission considers that the deductive export prices calculated by the applicant are reasonable. Although somewhat dated and based on a single quote, the export price information obtained by Aquarius Technologies appears reliable and relevant to the allegedly dumped goods. The Commission is also mindful that the applicant is only required to provide information that is reasonably available to it.

For this Consideration Report, the Commission has determined an export price under subsection 269TAB(3), using the export price information and deductions provided in the application.

The deductions from the quoted selling prices in Australia appear to be reasonable and conservative compared to the levels of profit and expenses incurred by the applicant for similar activities and items.

3.4 Normal value

3.4.1 Legislative framework

Normal value is determined by applying the requirements in section 269TAC taking into account whether:

- the purchase or sale of the goods was an arms length transaction under section 269TAA;
- the goods were sold in the ordinary course of trade under section 269TAAD;
- there has been an absence or low volume of sales of like goods in the country of export; and
- whether the situation in the market of the country of export is such that sales in that country are not suitable for determining normal value under subsection 269TAC(1).

3.4.2 The Applicant's estimate

The table below summarises the approach taken by the applicant to estimate normal values and the evidence relied upon.

Basis of estimate	Details
<p>The normal value was calculated under subsection 269TAC(1) using online price lists</p>	<p>Aquarius Technologies used online price lists from two sources and published price lists from a controller manufacturer itself, to calculate a price at which controllers can be purchased in the USA. The manufacturer's price lists were provided covering the years 2014 and 2015. The online prices from the remaining two sources were accessed during the 2015/16 financial year, and again in late 2016.⁵ The prices were sought for the same models, and the prices from the three sources were very similar. The price lists were used to add various options to the base controller price to estimate the selling prices of two controllers with the same features as the two models used to estimate export prices.</p> <p>The applicant adjusted the quoted selling prices by a factor to adjust the prices from the level of trade reflected in the online offer (to an end user) to pricing to a major water treatment system supplier (in line with the export price estimates). The factor used is in line with the upper end of the price difference Aquarius Technologies would apply to sales to the two levels of trade.</p> <p>Aquarius Technologies claims that it has no information on which to base any other adjustments to the USA selling prices.⁶</p>

⁵ The applicant recorded the price breakdown, web address and month and year that the online price list was accessed. Screen shots for the price lists accessed in late 2016 were provided, and when compared to the respective price lists recorded during the 2015/2016 financial year, only minor price movements were observed. The Commission considers the estimates a reasonable basis on which the applicant has calculated a normal value.

⁶ The applicant's normal value and dumping margin estimates are included at **Confidential Appendix 1**.

3.4.3 The Commission's assessment

The Commission considers that Aquarius Technologies has included in its application, information on normal values that is reasonably available to it. The information appears to provide a reasonably reliable estimate of domestic selling prices of like goods in the USA.

The Commission used the price lists identified by the applicant to confirm the selling prices offered for like goods in the USA. It also confirmed that the optional features of the controllers for which prices were established matched the features of the controllers for which Aquarius Technologies estimated export prices.

The level of trade adjustment applied by the applicant to the internet offer prices for the like goods is at the high end of what Aquarius Technologies would offer and is considered reasonable for the purposes of the application.

The level of trade adjustment applied by the applicant appears to adjust list prices to an end user to a price to a water treatment system supplier. However, the estimated export price also deducts the profit, warehousing and selling, general and administrative expenses of the entity that sells the controller to the water treatment system company. Therefore, it appears that the estimated export prices and estimated normal values appear to be at different levels of trade.

To correct this, the Commission has deducted Aquarius Technologies' estimates of expenses incurred by a controller equipment supplier from the normal values.

The Commission has calculated normal value under subsection 269TAC(1), with adjustments under subsection 269TAC(8)(c) to allow for the difference in levels of trade between the domestic and export sale.

The Commission's normal value and dumping margin calculations are at **Confidential Appendix 2**.

3.5 Dumping margins

3.5.1 Legislative framework

Dumping margins are determined in accordance with the requirements of section 269TACB.

Dumping margins and dumping volumes cannot be negligible, otherwise the investigation is terminated. Whether the dumping margins and dumping volumes are negligible is assessed under section 269TDA.

3.5.2 The Commission's assessment

The table below summarises the dumping margins estimated by the applicant and those calculated by the Commission. Dumping margins are expressed as a percentage of the export price.

Applicant's estimate	Commission's estimate
131%	69%

3.6 Volumes

Based on the applicant's estimates and the Commission's best estimates (using the ABF import database), imports of cooling tower water treatment controllers from the USA represent more than 3 per cent of the total import volume of cooling tower controllers for the period 1 July 2015 to 30 June 2016, and are therefore not negligible as defined in subsection 269TDA(4).

4 Reasonable grounds – injury and causation factors

4.1 Findings

Pursuant to subsection 269TC(1)(c), having regard to the matters contained in the application and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury caused by dumping, and that the injury is material. Specifically the Commission, for the purposes of assessing this application has found that Aquarius Technologies has experienced injury in the form of:

- loss of sales volume;
- reduced market share;
- price suppression;
- profits foregone;
- reduced assets;
- reduced capital investment; and
- reduced revenue.

4.2 Legislative framework

Under section 269TG of the Act, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that the Australian industry has experienced material injury, and that material injury was caused by the dumped goods. This issue is considered in the following sections.

Matters that may be considered in determining whether the Australian industry has suffered material injury caused by dumped goods are set out in section 269TAE.

The Commission has also had regard to the *Ministerial Direction on Material Injury 2012*.⁷

4.3 The Applicant's claims

Aquarius Technologies has claimed that it has experienced substantial losses of sales volumes and market share since the allegedly dumped controllers entered the Australian market in significant volumes in 2010/11. Aquarius Technologies attributes this injury to sales lost to cooling tower water treatment controllers imported from the USA at substantial dumping margins.

Aquarius Technologies has claimed that it has reduced prices in an effort to compete with the allegedly dumped controllers and to regain and maintain its market share.

In summary Aquarius Technologies has claimed that the Australian industry has been injured through:

- loss of sales volume;
- reduced market share;
- price depression;

⁷ *Ministerial Direction on Material Injury 2012*, 27 April 2012, available at www.adcommission.gov.au.

- price suppression;
- profits foregone;
- reduced assets;
- reduced capital investment;
- reduced revenue;
- reduced capacity;
- reduced capacity utilisation;
- reduced employment; and
- reduced cash flow.

Aquarius Technologies provided examples of occasions where it claims its customers have reduced purchases of the Australian made controllers, in favour of purchasing the allegedly dumped controllers from the USA. Aquarius Technologies claims that on one of these occasions, the customer returned to buying controllers from Aquarius Technologies after it had reduced its prices.

The applicant also provided:

- a schedule of prices offered to certain customers, showing how these prices decreased between 2010 and 2013;
- recent correspondence from a customer referring to the pricing of the allegedly dumped controllers and seeking a lower price from Aquarius Technologies. The applicant claimed that, in 2011 and 2012, it was required to reduce prices and increase discount rates in an attempt to compete with the allegedly dumped controllers; and
- an offer to a customer for the sale of controllers and a response from the customer stating that it had made a commitment to another supplier. Aquarius Technologies understands the alternative supplier to be an importer of allegedly dumped controllers from the USA.

Aquarius Technologies noted that improvements in its unit profit and profitability have been driven by cost reductions made necessary by competition from allegedly dumped controllers, rather than increasing unit revenue. The applicant claims that its reductions in selling prices, market share and sales volumes has resulted in the company suffering a substantial loss of profit since 2009/10. It claims that the decline in sales volume, revenue, market share, unit price and company profits are significant and greater than that which would occur in the normal ebb and flow of business.

4.4 Approach to injury and causation analysis

4.4.1 Legislative framework

The matters that may be considered in determining whether the industry has suffered material injury are set out in section 269TAE.

4.4.2 The Commission's approach

This section analyses the economic condition of the Australian industry, evidence provided by Aquarius Technologies and provides an assessment as to whether there is reasonable evidence that the Australian industry has experienced material injury caused by the alleged dumped goods.

For the purpose of this injury analysis, the Commission has relied on data provided by Aquarius Technologies for the injury analysis period 1 July 2009 to 30 June 2016.

The purpose of the injury analysis period is to allow the Commission to identify and examine trends in the Australian market, which in turn assists the Commission in its examination of whether material injury has been caused by dumping over the investigation period. The period from July 2009 has been selected as the start of the injury analysis period due to the significant increase in import volumes from the USA in 2010.

4.5 Volume effects

4.5.1 Sales volume

Aquarius Technologies claims that it has experienced injury in the form of reduced sales volumes. Figure 4 below shows Aquarius Technologies' domestic sales volumes of cooling tower water treatment controllers in the period 1 July 2009 to 30 June 2016.

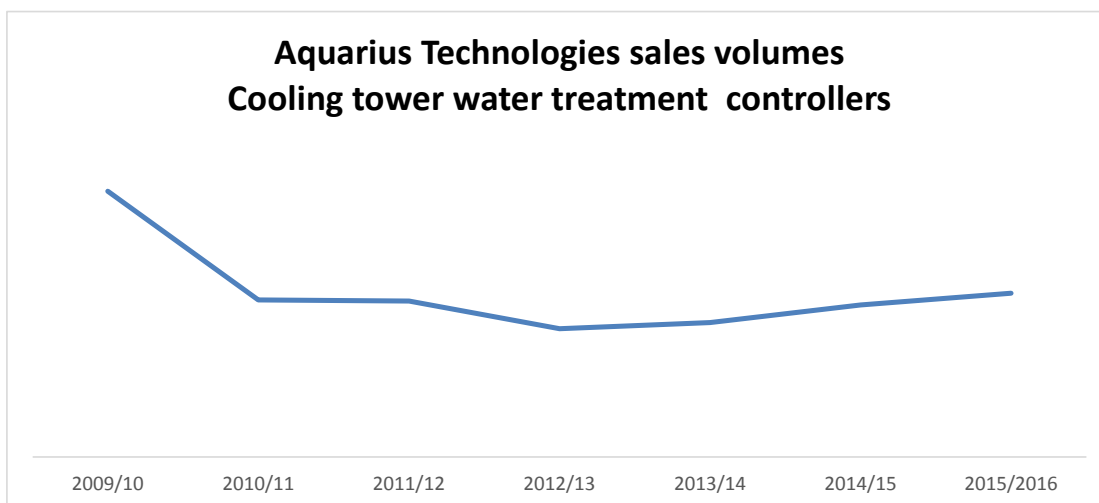


Figure 4 – Aquarius Technologies' domestic sales volumes of cooling tower water treatment controllers

Figure 4 shows that Aquarius Technologies' domestic sales fell significantly in the period 2009/10 to 2012/13. Sales volumes marginally increased from 2013/14 to 2015/16.

4.5.2 Market share

Figure 5 below shows movements in Australian market share for Aquarius Technologies, imports from the USA and imports from other countries.

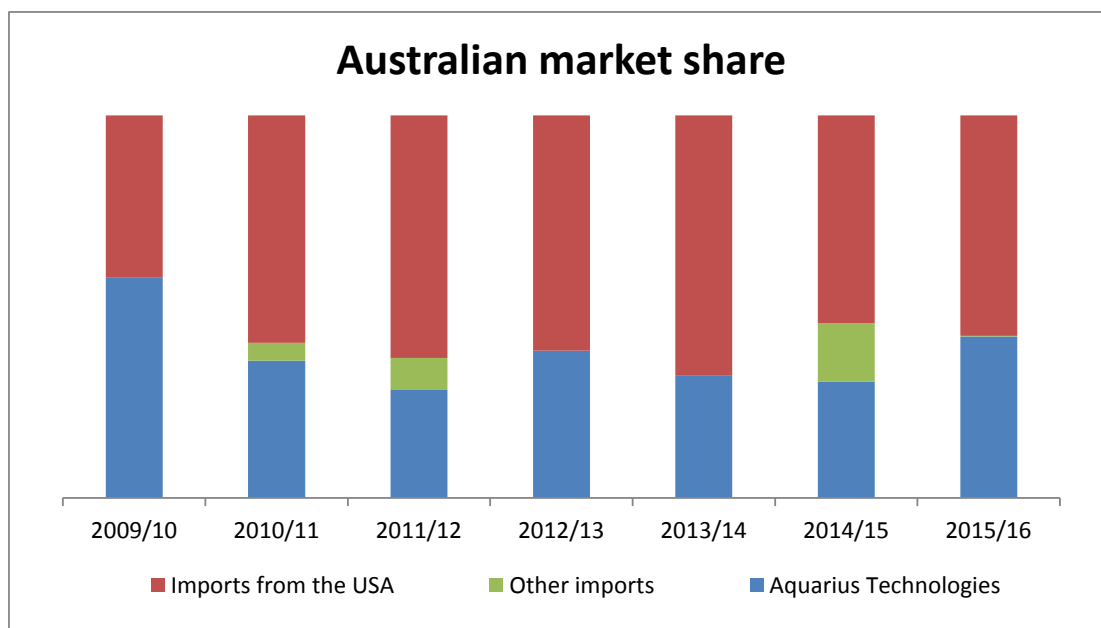


Figure 5 – Australian market share – cooling tower water treatment controllers

Aquarius Technologies’ share of the Australian market fluctuated over the injury analysis period: declining each year between 2009/10 and 2011/12, before increasing slightly in 2012/13, then falling again in 2013/14 and 2014/15. Aquarius Technologies’ market share increased during 2015/16. The share of the market held by imports from the USA increased relatively steadily from 2009/10 to 2013/14, before falling in 2014/15, whilst the share of imports from other sources increased. In 2015/16, the share of imports from the USA increased, whilst imports from other sources dropped away.

4.5.3 Conclusion – volume effects

Based on the available information, the Commission considers that there appear to be reasonable grounds to support Aquarius Technologies’ claim that the Australian industry has experienced injury in the form of lost sales volume and reduced market share as a result of the increased volume of imports of cooling tower water treatment controllers since 2009, notwithstanding its improved performance in the investigation period.

4.6 Price effects

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

Aquarius Technologies claims, and has provided evidence to show, that it reduced prices in an effort to recover some of the market share lost to imports from the USA. In its application Aquarius Technologies has also provided CTMS data and sales revenue data from 2009/10 to 2015/16.

The Commission notes that there are several major limitations of the price analysis using the sales and CTMS data. Within each of the five models of controller sold by Aquarius Technologies, there are a large number of add on ‘options’ which have the effect of creating several hundred models of controller, with significant price variance.

The CTMS and sales data provided by Aquarius Technologies in its application does not differentiate on these hundreds of notional models, made up from the many optional extras. As such, the aggregate price and CTMS information provided is of limited use in assessing price suppression and depression.

In recognition of the difficulties in relying upon Aquarius Technologies aggregated list price in demonstrating price depression/suppression, the Commission has considered the performance of the cooling tower controller industry alongside a comparable industry. The applicant suggested that the industry for swimming pool controllers (which it also manufactures) would be a suitable industry for comparison. Aquarius Technologies claims that the swimming pool controller and cooling tower water treatment controller industries are similar, but the swimming pool controller industry does not compete with dumped imports.

The Commission considered Aquarius Technologies' controller price lists effective from July 2009 to its current price list - effective March 2016. The price lists show that the listed price of its basic controller fell in 2012 while the list price of its more advanced controller fell in 2015. Two new controller models were effectively introduced in 2015/16 and therefore have no year-on-year sales history.

In contrast, the list price of a swimming pool controller increased in 2013 and has remained at that price. The applicant claims that but for the allegedly dumped imports, it would have been able to achieve price increases for its cooling tower water treatment controllers, commensurate with those achieved in its swimming pool controller market.

4.6.1 Conclusion – price effects

Based on the available information, the Commission considers it likely that the Australian industry has experienced price suppression as a result of the increased volume of imports of cooling tower water treatment controllers since 2009. Further information regarding this claim will be collected and examined during the investigation.

The Commission considers that it does not have enough information to make a finding about whether the applicant experienced price depression. Further information will be sought, and the applicant's claims of price depression further considered, in the course of the investigation.

4.7 Profit and profitability effects

Figure 6 below shows Aquarius Technologies' total profit and profitability over the injury analysis period.

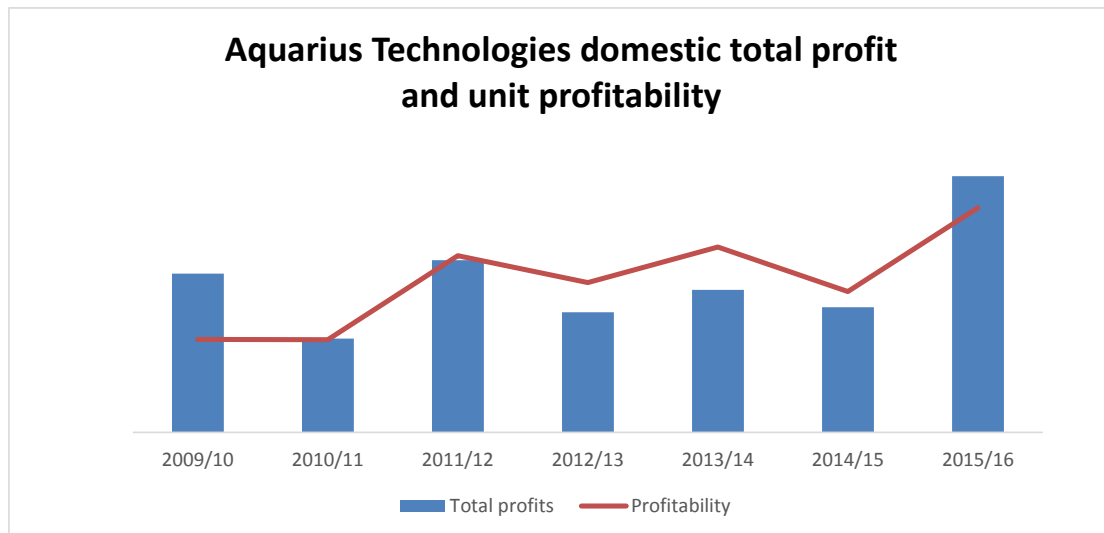


Figure 6 – Aquarius Technologies total profit and unit profitability – cooling tower water treatment controllers

Over the injury analysis period Aquarius Technologies’ total profits fluctuated. In 2015/16, total profit and profitability increased significantly as a result of an increase in unit sales revenue, following the introduction of two new controller models.

The applicant claimed that in response to competition from dumped imports, it had undertaken a concerted cost-cutting effort in order to remain profitable.

4.7.1 Conclusion – profit and profitability effects

Profit and profitability fluctuated over the injury analysis period, despite significant decreases in unit costs. The applicant’s introduction of new controller models in 2015/16 saw profit and profitability rise that year.

Based on the finding of injury in the form of lost sales volume and price suppression, and the significant market share held by imports from the USA, it appears that the applicant has experienced injury in the form of lost profits, notwithstanding the improved profit result in 2015/16.

Regarding profitability, whilst unit revenue has been impacted by the increased volume of imports from the USA (and the apparent price suppression experienced as a result), the applicant’s unit costs have also decreased, maintaining and somewhat improving unit profitability over the course of the injury analysis period.

Based on the available information, it does not appear that Aquarius Technologies has experienced injury in the form of lost profitability.

4.8 Other injury factors

In its application, Aquarius Technologies claimed that it had experienced injury in the form of other injury factors regarding:

- reduced assets;
- reduced capital investment;
- reduced revenue;
- reduced capacity;
- reduced capacity utilisation;
- reduced employment; and

CON 377 – Cooling tower water treatment controllers exported from the USA

- reduced cash flow.

The Commission analysed Aquarius Technologies' Confidential Appendix A-7 and makes the following observations.

Assets

Aquarius Technologies' assets reduced over the injury analysis period.

Capital investment

Aquarius Technologies' capital investment fell from 2010/11 to 2013/14 before rising in 2014/15 and falling again in 2015/16.

Revenue

The applicant's revenue fell significantly between 2009/10 and 2012/13 but then rose between 2013/14 and 2015/16.

Capacity and capacity utilisation

Information provided by Aquarius Technologies indicates that, although capacity utilisation has been increasing since 2012/13, the company's capacity utilisation in 2015/16 was lower than the company had achieved in the years prior to 2012.

Employment

Staff numbers engaged in producing like goods at Aquarius Technologies fell in 2011/12 and 2012/13 and have remained at those levels through to 2015/16.

Cash flow

The applicant's cash flow fell between 2009/10 and 2012/13. Cash flow improved throughout the remainder of the injury analysis period, but did not reach previous highs.

4.8.1 Conclusion – other injury factors

The Commission has considered the other injury factors outlined above and on the balance of information provided, there appear to be reasonable grounds to support the claim that the Australian industry has experienced injury with respect to:

- reduced assets;
- reduced capital investment; and
- reduced revenue.

These factors will be considered further during the course of the investigation.

The Commission considers that it has insufficient information to make a finding regarding the applicant's claims of:

- reduced capacity and capacity utilisation;
- reduced employment; and
- reduced cash flow

Further information in relation to these claims will be sought, and the applicant's claims further considered, in the course of the investigation.

4.8.2 Injury from factors other than dumping

Aquarius Technologies stated that the global financial crisis (GFC) had produced a decline in new commercial building activity, which had reduced demand for cooling tower water treatment controllers.

The Commission considers the GFC may have had an effect on the size of the cooling tower water treatment controller market in Australia, but it is unclear to what extent this would have also caused the injury experienced by the Australian industry.

The Commission will further consider the effect of the GFC and any other potential injury factors during the investigation.

The Commission's assessment of the economic condition of the Australian industry is in **Confidential Appendix 3**.

4.9 The Commission's assessment of causation

The applicant has provided information that appears to show that cooling tower water treatment controllers have been exported to Australia from the USA at dumped prices. Based on estimates of the Australian market, imports from the USA entered the market in significant numbers and took significant market share from the Australian industry.

The evidence provided indicates that Aquarius Technologies responded to a decline in sales by reducing prices and trying to find cost savings to preserve profitability and profit. Although these cost cutting efforts and the recent introduction of a new controller model has improved the company's position, its sales volumes and market share remain below the levels they would otherwise have been, but for the existence of the allegedly dumped imports in the Australian market.

The applicant has provided information indicating that its customers have switched to purchasing the allegedly dumped controllers and sought price reductions in the Australian-made controllers to match the prices of the allegedly dumped imports.

Taking into account:

- the size of the estimated dumping margin, which at 69 per cent is likely to provide importers with a significant competitive price advantage over the Australian industry;
- evidence of imports from the USA entering the Australian market in significant volumes relative to the size of the Australian market; and
- changes to the Australian industry's performance that coincided with the emergence of imports from the USA in the Australian market;

the Commission is satisfied that it appears from the available information that the allegedly dumped imports have caused material injury to the Australian industry producing like goods.

4.10 Conclusion – material injury caused by dumping

The Commission considers that based on the evidence before it, there appear to be reasonable grounds to support the claim that the Australian industry has suffered material injury caused by cooling tower controllers exported to Australia from the USA at dumped prices.

PUBLIC RECORD

Accordingly, the Commission recommends that the Commissioner decide not to reject the application. If the Commissioner agrees with these recommendations, the Commissioner must give public notice of the decision (**Non-Confidential Attachment 1**) in accordance with the requirements set out in subsection 269TC(4).

The Commission recommends that the Commissioner also examine whether the trade in the dumped goods provides a basis for any dumping duty notice to apply retrospectively, pursuant to section 269TN.

5 Appendices and attachments

Appendices	Title
Confidential appendix 1	Aquarius' normal value and dumping margin estimates
Confidential appendix 2	Commission's assessment of normal value and dumping margin
Confidential appendix 3	Assessment of the economic condition of the Australian industry

Attachments	Confidentiality	Title
Attachment 1	Public	Public notice