



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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XV B*

**STATEMENT OF ESSENTIAL FACTS  
NO. 377**

**ALLEGED DUMPING OF COOLING TOWER WATER  
TREATMENT CONTROLLERS  
EXPORTED FROM THE UNITED STATES OF AMERICA**

**15 May 2017**

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**ABBREVIATIONS**

ABF	Australian Border Force
ADN	Anti-Dumping Notice
The Act	<i>Customs Act 1901</i>
Advantage Controls LLC	Advantage Controls
The applicant	Aquarius Technologies Pty Ltd
Chemical Pumps Australia Trust trading as Iwaki Pumps Australia	Iwaki Pumps Australia
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make & sell
CWC	Convergent Water Controls Pty Ltd
Ecolab Pty Ltd	Ecolab
FOB	Free On Board
GFC	Global Financial Crisis
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
IDD	Interim dumping duty
ICD	Interim countervailing duty
Iwaki America Inc	Iwaki America
NIP	Non-injurious Price
ORP	Oxidation Reduction Potential
PAD	Preliminary Affirmative Determination
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
PCB	Printed circuit board
pH	power of Hydrogen
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative
Tanvenamore Holdings Pty Ltd trading as Waterdos Instruments Australasia	Waterdos
USA	The United States of America
USP	Unsuppressed Selling Price

# 1 Summary and Recommendations

## 1.1 Introduction

This Statement of Essential Facts (SEF) Number 377 has been prepared in response to an application by Aquarius Technologies Pty Ltd (Aquarius) seeking the publication of a dumping duty notice in respect of cooling tower water treatment controllers (the goods) exported to Australia from the United States of America (USA).

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

This report sets out the findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)<sup>1</sup> regarding this investigation, subject to any submissions received in response to this SEF.

## 1.2 Proposed recommendation to the Parliamentary Secretary

Based on the findings in this SEF, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend to the Parliamentary Secretary that a dumping duty notice be published in respect of cooling tower water treatment controllers exported to Australia from the USA.

## 1.3 Application of law to facts

### 1.3.1 Authority to make decision

Division 2 of Part XVB of the Act describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under subsection 269TB(1) of the *Customs Act 1901* (the Act)<sup>2</sup> for the purpose of making a report to the Parliamentary Secretary.

### 1.3.2 Application

Aquarius alleges that the Australian industry producing cooling tower water treatment controllers has suffered material injury caused by cooling tower water treatment controllers exported to Australia from the USA.

The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from the USA.

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<sup>1</sup> 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.

<sup>2</sup> Unless otherwise specified all legislative references are to the *Customs Act 1901*.

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Having considered the application, the Commissioner decided not to reject the application and, on 23 January 2017, initiated an investigation. Public notification of initiation of the investigation was also made on 23 January 2017.

*Consideration Report No. 377 (CON 377)* and *Anti-Dumping Notice (ADN) No. 2017/05* provide further details relating to the initiation of the investigation and are available on the Anti-Dumping Commission's (the Commission) website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 1.3.3 Day 60 Status Report and Preliminary Affirmative Determinations

In accordance with subsection 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or it appears that there will be sufficient grounds for the publication of a dumping duty notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, 24 March 2017) and the Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

In accordance with section 6 of the *Customs (Preliminary Affirmative Determinations) Direction 2015* (the PAD Direction), the Commissioner published a Day 60 Status Report on 24 March 2017, being 60 days after the initiation of the investigation, providing reasons why a PAD was not made.

Section 9 of the PAD Direction requires the Commissioner to reconsider making a PAD after the publication of a Day 60 Status Report at least once prior to the publication of the SEF. On 18 April 2017, the Commissioner was satisfied that there appeared to be sufficient grounds for the publication of dumping duty notice in relation to exports of the goods from the USA and made a PAD to that effect. Following the making of the PAD, and to prevent material injury to the Australian industry occurring while the investigation continued, securities were taken in respect of any interim dumping duty that may become payable in respect of the goods exported from the USA and entered for home consumption in Australia on or after 18 April 2017.

ADN No.2017/54 contains more information on the Commissioner's reasons for making a PAD.

### 1.3.4 Statement of Essential Facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as allowed under subsection 269ZHI(3)<sup>3</sup>, place on the public record a SEF

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<sup>3</sup> On 14 January 2017, the Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI of the Act to the Commissioner of the Anti-Dumping Commission. Refer to ADN No. 2017/10 for further information.

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on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary in relation to the application.<sup>4</sup>

The Commissioner is required to place the SEF on the public record by 15 May 2017.

### 1.3.5 Final report

The Commissioner's final report and recommendations in relation to this investigation must be provided to the Parliamentary Secretary on or before 27 June 2017,<sup>5</sup> unless the investigation is terminated earlier or an extension of time to provide the final report is granted.

## 1.4 Findings and conclusions

The Commissioner's assessments and conclusions in this SEF are based on available information at this stage of the investigation. A summary is provided below.

### 1.4.1 The goods and like goods (Chapter 3)

The Commissioner considers that locally produced cooling tower water treatment controllers are 'like' to the goods that are the subject of the application.

### 1.4.2 Australian industry (Chapter 4)

The Commissioner has found that there is an Australian industry producing like goods and that the goods are manufactured in Australia. The Commissioner has also found that the Australian industry producing the goods consists of Aquarius.

### 1.4.3 Australian market (Chapter 5)

The Australian cooling tower water treatment controller market is supplied from local production by Aquarius and by imports from two countries, with an estimated 29 per cent of the Australian market being supplied by imports from the USA.

### 1.4.4 Dumping assessment (Chapter 6)

The Commissioner's assessment of dumping margins are set out below, in Table 1.

Exporter	Dumping Margin
Advantage Controls LLC	109.5%
Uncooperative and all other exporters	130.7%

**Table 1: Dumping Margin Summary**

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<sup>4</sup> Subsection 269TDAA(1).

<sup>5</sup> Under section 269TEA.

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### 1.4.5 Economic condition of the Australian industry (Chapter 7)

The Commissioner considers that the Australian industry has experienced injury in the forms of:

- loss of sales volume;
- lost market share;
- price depression;
- price suppression;
- profits foregone;
- reduced assets;
- reduced revenue;
- reduced capacity;
- reduced capacity utilisation; and
- reduced employment.

### 1.4.6 Causation assessment (Chapter 8)

The Commissioner considers that the Australian industry has suffered material injury in the forms of price depression, price suppression and profits forgone as a result of cooling tower water treatment controllers exported to Australia from the USA at dumped prices.

### 1.4.7 Non-injurious price (Chapter 9)

The Commission has calculated a non-injurious price (NIP) for exports of cooling tower water treatment controllers from the USA that is considered to be the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumped goods.

The Commission has assessed the NIP from an unsuppressed selling price (USP) based on Aquarius' selling prices of certain models in period between 1 July 2009 and 30 June 2010.

For all exports from the USA, the NIP is below the normal value, resulting in the percentage difference between the weighted average NIP and the weighted average export price being below the dumping margins as shown in Table 2 below:

Exporter	% difference between weighted average export price and weighted average NIP	Dumping margins
Advantage Controls LLC	20.9%	109.5%
Uncooperative and all other exporters	20.9%	130.7%

**Table 2: Application of the lesser duty rule**

### 1.4.8 Will dumping and material injury continue? (Chapter 10)

The Commissioner is of the view that exports of cooling tower water treatment controllers from the USA in the future may be at dumped prices, and that continued dumping may continue to cause material injury to the Australian industry.



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### **1.4.9 Proposed form of measures (Chapter 11)**

The Commissioner proposes to recommend to the Parliamentary Secretary that measures be imposed using the ad valorem duty method (i.e. as a proportion of the export price of the goods).

## 2 BACKGROUND

### 2.1 Initiation

On 20 September 2016, Aquarius lodged an application under subsection 269TB(1) of the Act. The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from the USA.

Aquarius alleged that the Australian industry had suffered material injury caused by exports of the goods to Australia from the USA at dumped prices. Aquarius alleged that the industry had been injured through:

- loss of sales volume;
- reduced market share;
- price depression;
- price suppression;
- profits foregone;
- reduced assets;
- reduced capital investment;
- reduced revenue;
- reduced capacity;
- reduced capacity utilisation;
- reduced employment; and
- reduced cash flow.

Subsequent to receiving further information, the last of which was received on 20 December 2016, and having considered the application, the Commissioner decided not to reject the application. On 23 January 2017, the Commissioner initiated an investigation into the alleged dumping. Public notification of initiation of the investigation was made on 23 January 2017. ADN No. 2017/05 provides further details relating to the initiation of the investigation.

In respect of the investigation:

- the investigation period<sup>6</sup> for the purpose of assessing dumping is 1 July 2015 to 30 June 2016; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods is from 1 July 2009.

### 2.2 Previous cases

There have been no previous Australian anti-dumping or subsidisation investigations involving cooling tower water treatment controllers.

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<sup>6</sup> Subsection 269T(1)

## **2.3 Preliminary affirmative determination**

On 18 April 2017, the Commissioner made a PAD that there appears to be sufficient grounds for the publication of a dumping duty notice. The Commissioner was also satisfied that it was necessary to require and take securities in relation to exports of cooling tower water treatment controllers from the USA to prevent material injury to the Australian industry occurring while the investigation continued. Securities were imposed using the ad valorem duty method at a rate of 20.9 percent, being the difference between the preliminary weighted average export price and preliminary weighted average NIP.

## **2.4 Responding to this SEF**

This SEF sets out the essential facts on which the Commissioner proposes to base his recommendations to the Parliamentary Secretary. It represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. It is important to note that the SEF may not represent the final views of the Commissioner.

In making recommendations in the final report to the Parliamentary Secretary, the Commissioner must have regard to submissions received in response to the SEF within 20 days of the SEF being placed on the public record<sup>7</sup>. The report will recommend whether or not a dumping duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than 5 June 2017. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary. The Commissioner must report to the Parliamentary Secretary by 27 June 2017.

Submissions should preferably be emailed to [operations5@adcommission.gov.au](mailto:operations5@adcommission.gov.au). Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

Director Operations 5  
Anti-Dumping Commission  
GPO Box 2013  
CANBERRA ACT 2601  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

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

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<sup>7</sup> Subsection 269TEA(3)(a)(iv)

## **PUBLIC RECORD**

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available online at [www.adcommission.gov.au](http://www.adcommission.gov.au).

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

## 3 THE GOODS AND LIKE GOODS

### 3.1 Preliminary finding

The Commissioner considers that the Australian industry, comprised of Aquarius, manufactured cooling tower water treatment controllers that are 'like' to the goods under consideration.

### 3.2 Legislative framework

In his report to the Parliamentary Secretary under subsection 269TEA(1), the Commissioner must recommend whether the Parliamentary Secretary ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Parliamentary Secretary must be satisfied of is that there is an Australian industry producing like goods to the goods the subject of the application.

Subsection 269T(1) defines like goods as:

*goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

An Australian industry can apply for relief from material injury caused by dumped imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are 'like' to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- physical likeness;
- commercial likeness;
- functional likeness; and
- production likeness.

### 3.3 The goods

The goods the subject of the application (the goods) are:

*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 on the goods:

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.

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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 or boards (PCBs), connection terminals, a display screen, and control panel with keypad.

The control functions of cooling tower water treatment controllers are based on inputs from probes measuring the properties of the water.

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).

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).

Further information regarding the goods the subject of the investigation can be found in the Australian industry verification report, Consideration Report No. 377 and ADN No. 2017/05.

### **3.4 Tariff classification**

The goods are classified to tariff subheadings including 9032.89.80, statistical code 90 in Schedule 3 to the *Customs Tariff Act 1995*. Depending on the form the goods are imported in, other tariff subheadings may apply.

### **3.5 Like goods**

#### **3.5.1 Information provided by Aquarius**

In its application, Aquarius provided information on the physical, commercial, functional and production likenesses between imported cooling tower water treatment controllers and controllers manufactured by Australian industry. This is detailed below.

##### Physical likeness

The applicant submitted that 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.

##### Commercial likeness

Aquarius claimed that both the imported goods and its goods compete directly in the Australian cooling tower services and maintenance market and are sold to customers competing in the same market.

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### Functional likeness

The applicant claimed that the locally produced and imported goods have the same end-use – to monitor and/or control the water in a cooling tower.

### Production likeness

The applicant explained its production process for the goods the subject of the application.

### **3.5.2 Submissions from interested parties on like goods**

The Commission has not, to date, received any submissions from interested parties addressing whether the Australian industry manufactures like goods to the goods the subject of the application.

### **3.5.3 Commission's assessment of like goods**

The Commission's assessment is that, whilst the locally produced goods are not identical to the goods that are the subject of the application, the Commission is satisfied that the locally produced goods closely resemble the goods that are the subject of the application and are like goods given that:

The primary physical characteristics of imported and locally produced goods are similar	The Australian industry produces goods that are physically alike to the goods the subject of the application – both have common features such as cases, lids, PCBs and screens.
The imported and locally produced goods are commercially alike as they are sold to common end users	The imported goods and domestically produced goods are directly competitive. Sales information obtained by the Commission suggests that buyers are willing to switch from locally produced goods to imported goods and vice versa.
The imported and locally produced goods are functionally alike as they have the same end uses	The goods produced by the applicant and the imported goods are functionally substitutable and have the same end use – that is to monitor and/or treat water in a cooling tower.
The imported and locally produced goods are manufactured in a similar manner.	The Commission did not have the opportunity to view the production processes of imported cooling tower water treatment controllers. However, the physical similarity between the locally produced and imported products suggests

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	that the products would be produced in similar ways – through the production and/or assembling of electronic components into a case with terminals, control panel and keyboard. Accordingly, the Commission is satisfied that locally produced and imported goods would be produced using similar production processes. Information on production process provided in one exporter questionnaire response supported the similarity of production process between locally produced and imported goods
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**Table 3: Like goods assessment**

Having regard to the above, the Commissioner is satisfied that the Australian industry produces 'like' goods to the goods that are the subject of the application, as defined in subsection 269T(1).



## 4 THE AUSTRALIAN INDUSTRY

### 4.1 Finding

The Commissioner has found that there is an Australian industry producing like goods and that the goods are manufactured in Australia. The Commissioner has also found that the Australian industry producing the goods consists of one manufacturer, Aquarius.

### 4.2 Legislative framework

The Commissioner must be satisfied that the 'like' goods are in fact produced in Australia. Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Subsection 269T(3) provides that, in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### 4.3 Production process

The Commission conducted an inspection of Aquarius' production facilities at Coopers Plains in Brisbane and viewed the production processes undertaken.

Aquarius designs components for its range of controllers, such as the PCBs, boxes and lids. It sources these components from overseas and local suppliers for use in the manufacture of its controllers. Aquarius has developed the software it loads onto the controllers as one of the last steps before they are tested and ready for sale.

Having examined the available evidence, the Commission considers that Aquarius carried out, in Australia, at least one substantial process in the manufacture of the goods. In coming to this conclusion, the Commission has considered:

- Aquarius' role in the design of the controller components and software;
- the process undertaken by Aquarius to assemble the components sourced from various suppliers, and in particular:
  - the time taken to construct a controller ready for sale; and
  - the skills and experience required to assemble the controllers.

The Commission considers that the process undertaken by Aquarius is more than simple assembly, packaging or labelling.

The Commission concludes that the goods can be taken to have been partly manufactured in Australia and that they are, therefore, produced in Australia.

### 4.4 Preliminary conclusion

In its application, Aquarius claimed to be the sole Australian producer of cooling tower water treatment controllers. The Commission is not aware of any other Australian

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producer of the goods and no submissions or other information has been received to indicate that there are any other producers in Australia.

Following the Commission's verification of Aquarius' manufacturing processes in Australia, the Commission is satisfied that cooling tower water treatment controllers are manufactured in Australia by Aquarius.

Accordingly, the Commissioner is satisfied, in accordance with subsections 269T(2) and 269T(4), that there is an Australian industry producing cooling tower water treatment controllers in Australia and that this industry consists of Aquarius.

## **5 AUSTRALIAN MARKET**

### **5.1 Finding**

The Commissioner has found that the Australian market for cooling tower water treatment controllers is supplied by Aquarius and imports from two countries, including the USA. The Commission estimates that the size of the Australian market during the investigation period was approximately 1,200 units.

### **5.2 Cooling towers**

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. The health of water in a cooling tower is important to avoid damage to equipment from corrosion and to ensure the cooling towers do not become a health risk. Cooling tower operators are generally required to register an operating cooling tower with health authorities. The tower is then subject to regulation and inspection.

### **5.3 Cooling tower water treatment**

The Commission understands that there are about 20 water treatment service companies in Australia that provide services to maintain and service cooling towers. The companies supply cooling tower water treatment hardware, including controllers, and chemicals required to treat the water. Aquarius advised that more than 95 percent of its sales were to these water treatment service companies, with the remainder of sales being to end-users.

Contracts to service new cooling towers are often decided by tender. The water treatment service companies bid to supply a range of water treatment products and services, including controllers. The companies typically purchase a controller and associated accessories for ease of installation at the cooling tower site.

### **5.4 Market sectors**

All interested parties spoken to by the Commission described the Australian cooling tower water treatment controller market as being divided into the following two cooling tower sectors:

- a commercial sector – where cooling towers are used for air conditioning in buildings such as shopping centres, office buildings and hospitals;
- an industrial sector – cooling towers in mineral refineries, processing plants, breweries.

### **5.5 Suppliers of controllers in the Australian market**

The Commission found that the Australian market for cooling tower water treatment controllers is supplied by the following entities:

- Aquarius - applicant and Australian manufacturer;

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- Tanvenamore Holdings Pty Ltd trading as Waterdos Instruments Australasia (Waterdos) - importer of controllers from the USA;
- Chemical Pumps Australia Trust trading as Iwaki Pumps Australia (Iwaki Pumps Australia) - importer of controllers from the USA;
- Ecolab Pty Ltd (Ecolab) - importer of controllers from the USA;
- Convergent Water Controls Pty Ltd (CWC) - importer of controllers from another source.

The Commission understands that Aquarius, Waterdos and CWC compete mainly in the commercial sector with similar ranges of controllers. Waterdos was established in Australia in 2010 by a former employee of a USA cooling tower water treatment manufacturer. CWC has operated in the Australian market since 1996, while the Australian manufacturer, Aquarius, has manufactured controllers in Australia since 1981.

Controllers imported by Iwaki Pumps Australia and Ecolab appear more likely to be used in the industrial sector.

In addition to cooling tower water treatment controllers, Aquarius manufactures and sells controllers and accessories for other water treatment industries, including wastewater treatment, swimming pools and potable water treatment. Aquarius also supplies controller parts and consumables for its range of controllers.

### 5.6 Types of controllers available in the Australian market

Broadly speaking, there are two main types of controllers for cooling towers. One is a basic model that monitors and controls conductivity and uses timers to activate pumps to deliver disinfectant chemicals. A more sophisticated model monitors conductivity, ORP and pH and treats the water accordingly. The high end model typically offers the option of remote monitoring and control. The suppliers typically offer a basic and more sophisticated controller model.

The Australian manufacturer, Aquarius, has for many years offered a basic (CT1) and a more sophisticated model (CO1) of cooling tower water treatment controller in the Australian market.

In 2015/16, Aquarius released its new 'Ultima' brand of controller, an updated version of its more sophisticated CO1 controller. Aquarius continues to offer its old generation CO1 controller to the market as part of its range. The Ultima has been well received in the market due to its touch screen display, ease of operation and safety features.

Cooling tower water treatment controllers are sold to the water service treatment service companies in a range of forms. As a minimum, a controller is sold with the required sensors. More commonly, the controller is sold as part of a package with some or all of the following components: backboard, manifold, pumps, sensors, solenoid/s.

### 5.7 Demand drivers

Demand for cooling tower water treatment controllers is driven by the need to replace worn out controllers in existing cooling towers and, to a lesser extent, by the supply of controllers for newly installed cooling towers. The latter segment of the market is driven largely by commercial building activity.

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Events such as a Legionnaires' disease outbreak can impact on demand as building owners tend to become more vigilant about cooling tower maintenance and may be prompted to replace or update the controller and associated equipment.

Having a controller installed on a cooling tower typically leads to a stream of sales of replacement parts and accessories such as sensors that need to be replaced at regular intervals.

### 5.8 Market size

The Commission estimated the size of the Australian market using a combination of estimates based on the best information available and verified information provided by some of the entities selling cooling tower water treatment controllers in Australia.

The level of verified information across the injury analysis period is, however, limited and the market represents the Commission's best estimate using the information available, being information collected during verification of the Australian industry and importers and unverified information provided by CWC.

Due to the broad tariff classifications relevant to the importation of cooling tower water treatment controllers and the number of model variations, the Commission was unable to obtain reliable import information from the Australian Border Force database to assist in estimating the Australian market.

Changes in the estimated size of the Australian market for cooling tower water treatment controllers are shown in Figure 1 below.

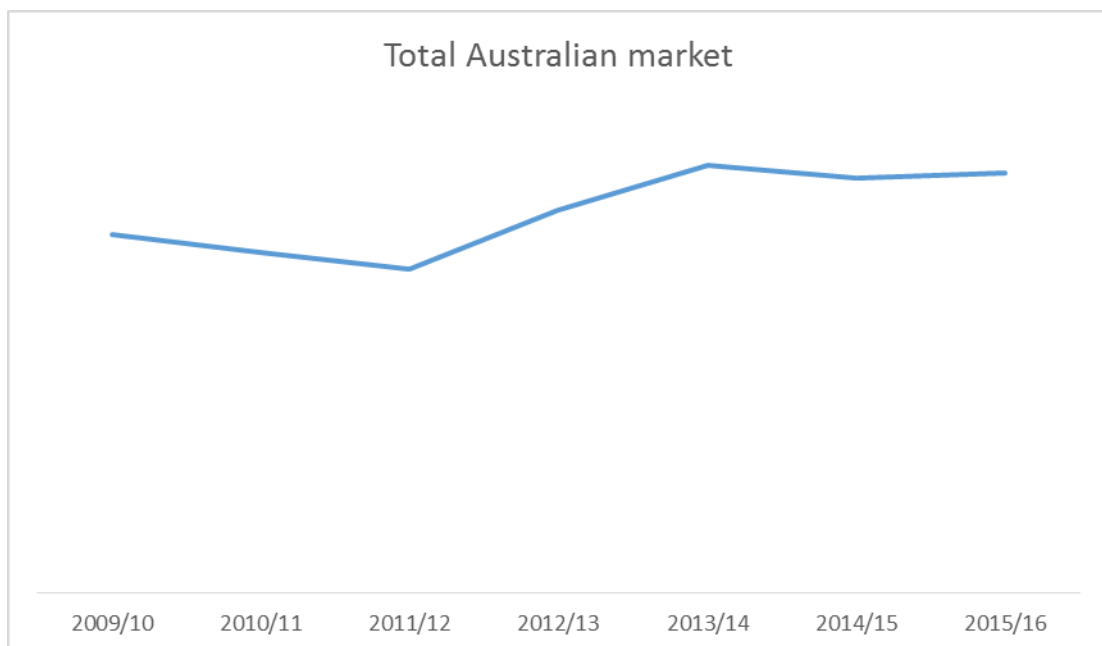


Figure 1: Estimated Australian market for cooling tower water treatment controllers

## 6 DUMPING INVESTIGATION

### 6.1 Findings

The Commissioner found that exports of cooling tower water treatment controllers from the USA have been dumped and the volume of dumped goods from the USA is not negligible.

The dumping margins are shown in the following table.

Exporter	Dumping Margin
Advantage Controls LLC	109.5%
Uncooperative and all other exporters	130.7%

Table 4: Dumping margins

### 6.2 Introduction and legislative framework

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

Subsection 269TAC(1) provides that, subject to certain conditions, the normal value of the goods is the price at which like goods are sold in the domestic market of the country of export. However, subsection 269TAC(1) cannot be used to calculate the normal value of the goods if one of the circumstances in subsections 269TAC(2)(a) or (b) is present. Where one or more of these circumstances are present, the normal value of the goods is to be calculated under either subsection 269TAC(2)(c) or (d).

Dumping margins are determined under section 269TACB.

### 6.3 Cooperation by exporters to Australia

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'.

At the commencement of the investigation, the Commission contacted all known USA exporters of the goods to Australia and invited them to complete an exporter questionnaire. The exporter questionnaire and associated spreadsheets was also placed on the Case Page for investigation 377 on the Commission's website.

The exporter questionnaire sought information regarding the exporters' commercial operations, the goods exported to Australia, like goods sold on the domestic market and to third countries, economic and financial details, and relevant costing information. The Commission received exporter questionnaire responses from the following exporters:

- Advantage Controls LLC (Advantage Controls); and
- Iwaki America Inc (Iwaki America).

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Both exporters provided questionnaire responses that the Commission considered were deficient and that it considered could be quickly and easily rectified in a further response. Accordingly, both exporters were given an opportunity to rectify the deficiencies in accordance with subsection 6(a) of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Non-cooperation Direction). After each exporter lodged a further response, the Commission considered that the responses remained deficient in that they did not provide model specific information on the costs of making and selling the goods on the domestic and export markets.

On 5 April 2017, Advantage Controls provided further information that allowed the Commission to make a preliminary assessment of dumping based on the information provided. Noting the preliminary findings made in the Commissioner's PAD (ADN No. 2017/54 refers) that the NIP was less than the normal value, for the purposes of the PAD the Commission applied the lesser duty rule set out in subsection 8(5B) of the Dumping Duty Act to calculate the rate of duty based on the difference between the export price and the NIP. As the preliminary dumping margin significantly exceeded this rate of duty, the Commission did not seek to undertake a verification visit to Advantage Controls following the publication of the PAD. The Commission considers Advantage Controls to be a cooperative exporter.

Non-confidential exporter questionnaire responses for Advantage Controls and Iwaki America are available at the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 6.4 Uncooperative exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is an 'uncooperative exporter', where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

In relation to making determinations that an exporter is an uncooperative exporter, the Commissioner has regard to both subsection 269T(1) and the Non-cooperation Direction.

Iwaki America provided a response to the exporter questionnaire and further information in response to the deficiency notice. Iwaki America did not provide costs by model that would allow the Commission to determine which sales were in the ordinary course of trade to establish normal values under subsection 269TAC(1) or construct normal values under subsection 269TAC(2)(c).

On 10 May 2017, Iwaki America provided further information to the Commission. Section 7 of the Non-cooperation Direction sets out matters to which the Commissioner must consider if a response is received outside the legislative period and taking the response into account would delay a key aspect of the case. In the Commissioner's opinion, taking the response into account would delay a key aspect of the case, the SEF.

The Commissioner has considered that:

- the submission was received five days before the date for the publication of the SEF;
- data was provided in the submission – the quantity of the data is considerable and it is not entirely clear how the data conforms with the Commission's standard data

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requirements – considerable resources would be required to adequately consider the data, including a process to verify the data's reliability;

- the party has not provided reasons as to why the submission is late.

After considering the above, the Commissioner has not taken into account the information provided by Iwaki America on 10 May 2017. The Commission considers that Iwaki America did not give the Commissioner information the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable and therefore is an uncooperative exporter in accordance with section 269T of the Act.

Under subsection 8(b) of the Non-cooperation Direction, the Commissioner has determined all exporters who did not provide a response to the exporter questionnaire or request a longer period to provide a response within the legislated period to be uncooperative exporters pursuant to subsection 269T(1).

### **6.5 Dumping assessment – Advantage Controls**

#### **6.5.1 Verification of information**

For the reasons discussed above, the Commission did not seek to undertake a verification visit to Advantage Controls. The Commission forwarded draft dumping margin calculations to Advantage Controls on 12 April 2017 and requested comments on the calculations by 19 April 2017. The exporter has not provided comments on the calculations.

#### **6.5.2 Model matching**

Where possible, the Commission compared Advantage Controls' domestic selling prices and export prices to Australia using identical models. For the one exported model not sold on the USA domestic market, the Commission used selling prices of a similar model, with specification adjustments to take account of the physical differences between the models.

#### **6.5.3 Export prices**

Export prices for sales of cooling tower water treatment controllers to Australia by Advantage Controls were established under subsection 269TAB(1)(a) of the Act using the invoiced price from the exporter to the importer less, as applicable, transport and other charges arising after exportation.

The Commission is satisfied that, in relation to sales to Australia by Advantage Controls:

- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
- the purchase of the goods by the importer was an arms' length transaction.

#### **6.5.4 Normal Values**

Normal values were determined under subsection 269TAC(1) based on the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the USA in sales that are arms' length transactions.



### 6.5.5 Adjustments

To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to subsection 269TAC(8) as follows:

Adjustment type	Application
Selling expenses - domestic	<b>Deduct</b> domestic selling expenses
Packaging	<b>Deduct</b> additional packaging costs on domestic sales
Credit cost - domestic	<b>Deduct</b> the cost of domestic credit
Selling expenses - export	<b>Add</b> export selling expenses
Credit cost - export	<b>Add</b> the cost of export credit

**Table 5: Summary of adjustments**

### 6.5.6 Submissions

As noted above, Advantage Controls has not commented on the Commission's calculations of its dumping margin.

### 6.5.7 Dumping Margin

The Commission has calculated the dumping margin in accordance with subsection 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin has been calculated as **109.5 per cent**.

Export price, normal value and dumping margin calculations for Advantage Controls are at **confidential appendix 1**.

## 6.6 Dumping assessment – Uncooperative and all other exporters

### 6.6.1 Introduction

Subsection 269TACAB(1) provides that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

### 6.6.2 Export prices

Export prices for sales of cooling tower water treatment controllers to Australia by uncooperative and all other exporters were established under subsection 269TAB(3) of the Act by having regard to all relevant information, being Advantage Controls' weighted average export price.

### 6.6.3 Normal Values

Normal values for uncooperative and all other exporters were determined under subsection 269TAC(6) by having regard to all relevant information being the normal values established for Advantage Controls, less favourable adjustments.

#### **6.6.4 Submissions**

The Commission has not received any submissions on its assessment of dumping margins for uncooperative and all other exporters.

#### **6.6.5 Dumping Margin**

The Commission calculated the dumping margin in accordance with subsection 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin has been calculated as **130.7 per cent**.

Export price, normal value and dumping margin calculations for uncooperative and all other exporters are at **confidential appendix 1**.

### **6.7 Volume of dumped imports**

Pursuant to subsection 269TDA(3) of the Act, the Commissioner must terminate an investigation if satisfied that the total volume of goods that have been, or may be, dumped is negligible. Subsection 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period.

The Commission has based its estimate of the total volume of goods imported into Australia over the investigation period on verified information provided by two importers, unverified information provided by CWC and estimates provided by the applicant. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of allegedly dumped goods from the USA was greater than three per cent of the total import volume and is therefore not negligible.

## **7 ECONOMIC CONDITION OF THE INDUSTRY**

### **7.1 Finding**

Based on the Commission's verification of the information provided by the Australian industry, the Commissioner considers that the Australian industry has suffered injury in the form of:

- loss of sales volume;
- lost market share;
- price depression;
- price suppression;
- profits foregone;
- reduced assets;
- reduced revenue;
- reduced capacity;
- reduced capacity utilisation; and
- reduced employment.

### **7.2 Introduction**

Under section 269TG of the Act, one of the matters the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.

This section outlines the Commission's analysis of the economic condition of the Australian industry and includes an assessment of whether the industry has suffered injury in the period since 1 July 2009 (the injury analysis period). The next section of this SEF considers whether a material amount of any injury was caused by the dumping.

### **7.3 Approach to injury analysis**

The Commission relied on Aquarius' verified data in performing its analysis of the economic condition of the Australian industry over the injury analysis period. The verified data includes production, cost and sales data for cooling tower water treatment controllers on an annual basis for the injury analysis period. The Commission's analysis of Aquarius' data relates only to domestic sales of cooling tower water treatment controllers. Aquarius exported a negligible volume of controllers in the injury analysis period.

### **7.4 Commencement of Injury**

In its application, Aquarius claimed that injury commenced when imports of cooling tower water treatment controllers entered the Australian market in significant volumes in 2010/11. The Commission is unable to draw any conclusions on allegations of dumping prior to the investigation period (1 July 2015 to 30 June 2016).

## 7.5 Volume effects

Aquarius claims that it has experienced injury in the form of reduced sales volumes. Figure 1 below shows Aquarius' domestic sales volumes of cooling tower water treatment controllers in the period 1 July 2009 to 30 June 2016<sup>8</sup>.

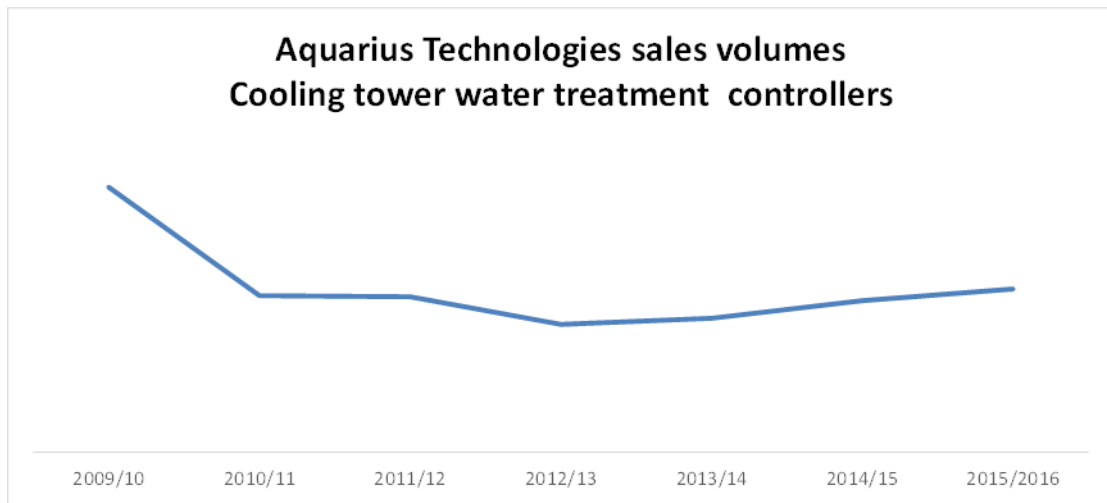


Figure 1 – Aquarius' sales volumes

Figure 1 shows that Aquarius' domestic sales fell significantly in the period 2009/10<sup>9</sup> to 2012/13. Sales volumes marginally increased from 2012/13 to 2015/16.

Aquarius claims to have lost significant market share over the injury analysis period. The Commission estimated the changes in market share over the injury analysis period using the best information available, using the information available collected during verification of the Australian industry, importers, unverified information provided by CWC and estimates provided in the application.

Figure 2 shows the Commission's estimate of changes in market share held by Aquarius, imports from the USA (assessed as being dumped during the investigation period), and imports by CWC from a country other than the USA.

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<sup>8</sup> Aquarius provided information from 1 July 2009 as it claims imports from the USA entered the Australian market in significant volumes in 2010/11.

<sup>9</sup> All references to financial years are to years ending 30 June.

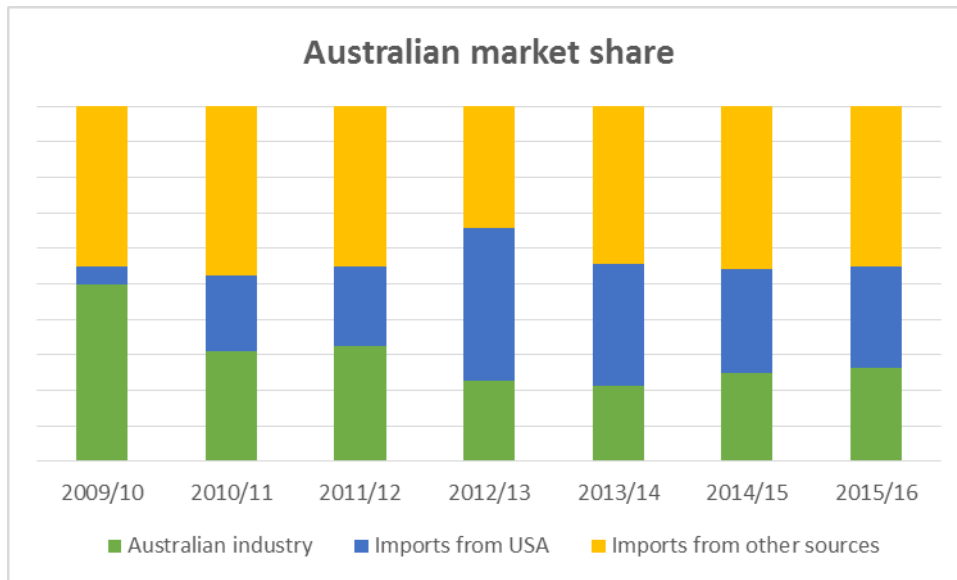


Figure 2 – Australian market shares – cooling tower water treatment controllers

Figure 2 shows that the market share of cooling tower water treatment controllers from the USA increased significantly from 2009/10 to 2012/13. Their share of the Australian market is estimated to have fallen each year from 2012/13 to 2015/16, although the Commission estimates that the dumped imports held 29 per cent of the Australian market in 2015/16.

On the information available, sales of imports from a source other than the USA have held a significant share of the Australian market throughout the injury analysis period.

Aquarius' estimated share of the Australian market fell significantly in 2010/11 compared to the previous year. Its market share fell again in 2012/13 and 2013/14, before rising slightly in 2014/15 and 2015/16.

The Commission's estimates of the Australian cooling tower water treatment controller market are at **confidential appendix 2**.

## 7.6 Price suppression and depression

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 claims that it reduced prices in an effort to recover some of the market share lost to imports from the USA. In its application, Aquarius provided cost to make and sell (CTMS) data and sales revenue data from 2009/10 to 2015/16.

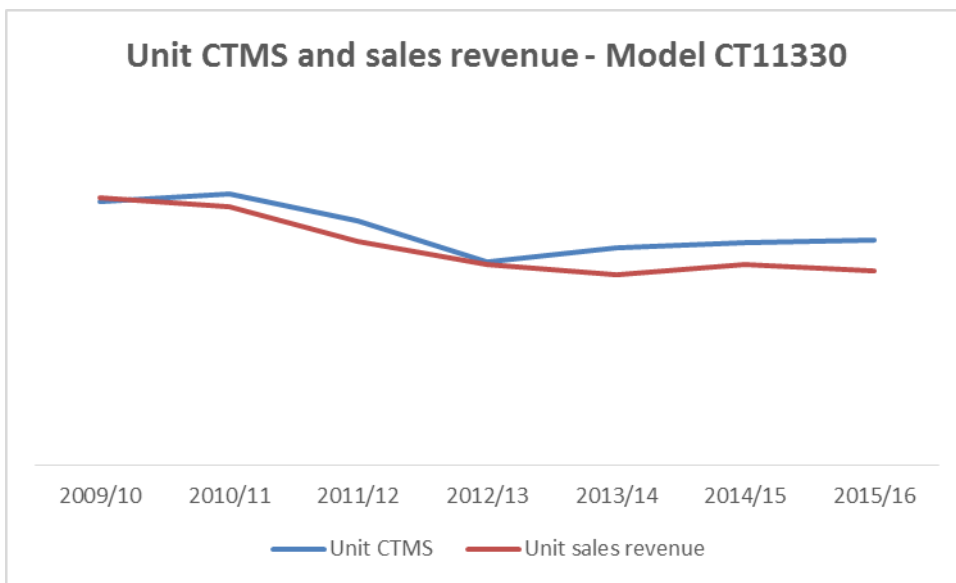
The Commission notes that there are several limitations with analysing sales and CTMS data provided in Aquarius' application. Within each of the five categories of controller sold by Aquarius, there are a large number of add-on 'options', meaning that, in effect, there are many models of controller, with significant price differences between the models.

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The CTMS and sales data provided by Aquarius in its application does not differentiate between these models. As such, the aggregate price and CTMS information provided is of limited use in assessing price suppression and depression.

The Commission asked Aquarius to provide CTMS and selling price information over the injury analysis period for two of its more popular controller models, one basic model and one more sophisticated model, both supplied with various accessories including backboards, manifolds and pumps. This information was requested to provide an insight into the company’s cost and pricing trends by removing any distortions that could be caused by the mix of products. The two models represent a significant proportion of Aquarius’ cooling tower water treatment controller sales in each year of the injury analysis period, although declining marginally in 2015/16 when Aquarius introduced it’s new ‘Ultima’ brand controller.

Figures 3 and 4 below show the movements in average CTMS and selling prices for the two selected models.



**Figure 3: Unit CTMS and sales revenue – Model CT11330**

Figure 3 shows that Aquarius’ average selling price of the CT11330 controller fell in each year since 2009/10, other than in 2014/15 when a small increase occurred. Unit CTMS declined until 2012/13 and has risen in each year since.

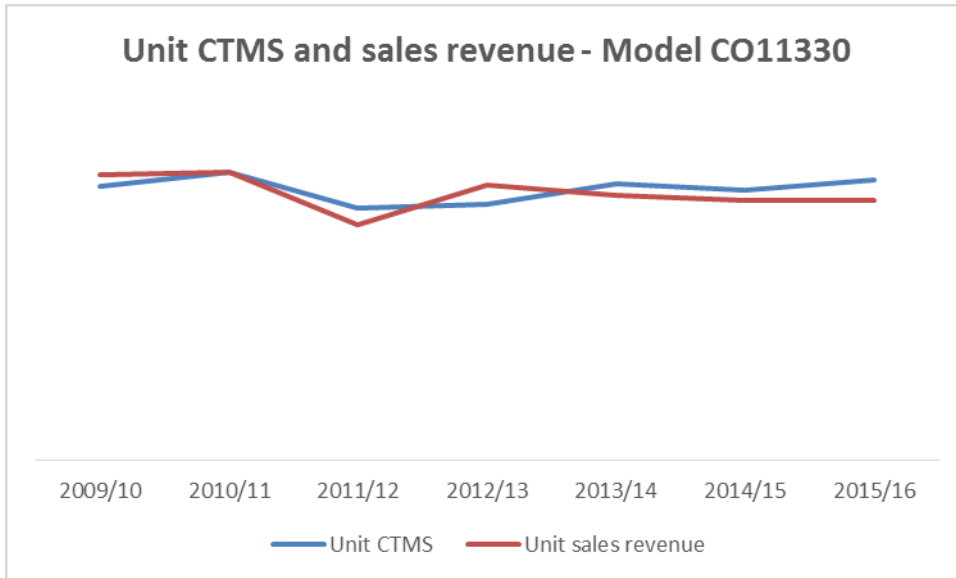


Figure 4: Unit CTMS and sales revenue – Model CO11330

Figure 4 shows that average unit sales revenue for model CO11330 declined in 2011/12 before rising in 2012/13. Unit sales revenue then decreased marginally each year. Unit CTMS for the model also declined significantly in 2011/12 but has risen each year since, with the exception of a small decline in 2014/15.

To further support its claims of price depression, Aquarius provided the Commission with a series of invoices to a number of customers, showing the decline in prices for the same model to each of the customers over the injury analysis period.

### 7.7 Profits and profitability

Figure 5 below shows Aquarius' total profit and profitability on sales of cooling tower water treatment controllers over the injury analysis period.

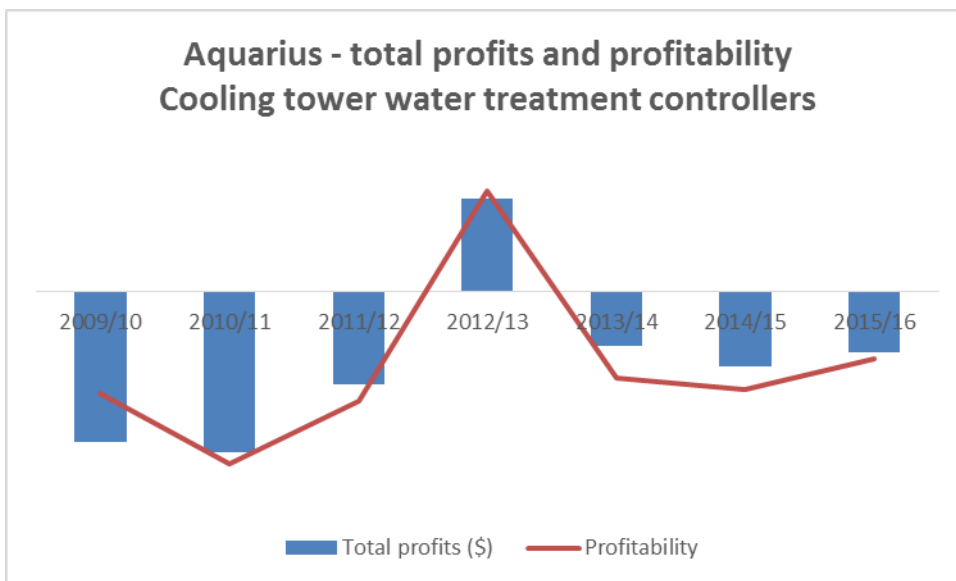


Figure 5: Aquarius total profits and profitability

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Aquarius' total profits and profitability deteriorated in 2010/11 compared to 2009/10. The company's position improved in 2011/12 as a result of efforts to reduce costs, principally by reducing staffing levels and finding alternative sources of component supply. Aquarius' result in 2012/13 was impacted by the company selling a significant quantity of product (unrelated to controllers<sup>10</sup>) obtained from a sister company that had ceased trading. The temporary increase in revenue from these sales meant that overheads were spread over a larger quantity of products, reducing the allocation to cooling tower water treatment controllers. No other year was impacted by this factor.

Aquarius' profits and profitability deteriorated in 2013/14 and 2014/15, before improving in 2015/16 with the introduction of its new Ultima controller models.

The company's profitability deteriorated in 2010/11, 2013/14 and 2014/15.

### 7.8 Other economic factors

The Commission's preliminary assessment is that the Australian industry has suffered injury through the following other economic factors:

- the value of Aquarius' assets declined over the injury analysis period;
- revenue fell significantly between 2009/10 and 2012/13 but then rose between 2013/14 and 2015/16;
- capacity to produce cooling tower water treatment controllers and capacity utilisation fell over the injury analysis period; and
- employment levels fell from 2009/10 to 2011/12. The company abolished positions dedicated to sales, service and repairs and reduced resources applied to research and development. In 2015/16, Aquarius added a staff member to the research and development team.

The Commission found that the evidence did not support Aquarius' claims that it had suffered injury in the form of reduced capital investment or reduced cash flow.

### 7.9 Finding

Aquarius suffered injury over the injury analysis period, as indicated by a decline in sales volumes and market share. The Australian industry's pricing levels in the investigation period were, on average, significantly below those achieved at the commencement of the injury analysis period. Evidence indicates that Aquarius' prices were suppressed in the investigation period.

Despite unit CTMS reductions and the introduction of a new generation of controllers in 2015/16, Aquarius experienced losses on the sale of cooling tower water treatment controllers in each year other than 2012/13, when the temporary sale of an unrelated product caused the company's overheads to be spread more thinly over a greater quantity of total sales.

The company's profitability deteriorated in 2010/11, 2013/14 and 2014/15.

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<sup>10</sup> The increase in total sales revenue for the company in 2011/12 resulted in a smaller allocation of Aquarius' general expenses to cooling tower water treatment controllers than would otherwise be the case. Please note that the profits and profitability analysis relates only to cooling tower water treatment controllers.



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Aquarius also suffered injury over the injury analysis period in the form of reduced assets, reduced revenue, lower production capacity and capacity utilisation and lower employment.

The Commission considers that there are sufficient grounds to support Aquarius' claims that it has experienced injury. The next section of this report considers whether a material amount of this injury was caused by the dumped goods.

## 8 HAS DUMPING CAUSED MATERIAL INJURY?

### 8.1 Assessment

The Commission has found that the dumped exports from the USA have caused material injury to the Australian industry.

### 8.2 Introduction

Under section 269TG of the Act, one of the matters the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods. For measures to be imposed, dumping does not have to be the sole cause of injury to the Australian industry, but the injury caused by dumping must be material.

The investigation period for this investigation is 1 July 2015 to 30 June 2016. Subsection 269T(2AD) states that the fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country. Subsection 269T(2AE) states that subsection 269T(2AD) does not permit any determination that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.

The Commission examined whether, because of the dumping found in the investigation period, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines factors to which the Minister may have regard in determining whether material injury to an Australian industry has been, or is being, caused or threatened.

The Commission has also had regard to the *Ministerial Direction on Material Injury 2012*<sup>11</sup>.

### 8.3 Submissions

On 11 May 2017, the importer Waterdos made a submission relating to whether dumping has caused or was causing material injury to the Australian industry. A version of the submission for the public record was provided to the Commission on 12 May 2017.

On 12 May 2017, Ecolab lodged a submission that its products were incapable of causing material injury to the Australian industry.

Under subsection 269TDAA, the Commissioner is not obliged to have regard to a submission received after day 37 of the investigation if to do so would, in the Commissioner's opinion, prevent the timely placement of the SEF on the public record.

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<sup>11</sup> *Ministerial Direction on Material Injury 2012*, 27 April 2012, available on the Commission's website.

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The Commissioner's opinion is that the consideration of the submissions made by Waterdos on 11 May 2017 and Ecolab on 12 May 2017 would prevent the timely placement of the SEF on the public record and they have not been taken into account. The submissions will be considered with other submissions made in response to the SEF.

### **8.4 Visits to other parties**

The Commission met with CWC, an Australian importer of cooling tower water treatment controllers from a source other than the USA. CWC declined to provide sales information but provided some background information on the Australian market and unverified information on its total sales volumes over the last three financial years. A visit report is available on the public record.

The Commission also approached two of the major Australian water treatment service companies. Integra Water Pty Ltd (Integra) agreed to a visit and a visit report was placed on the public record. The other water treatment service company declined to meet with the Commission or provide its views.

### **8.5 Size of the dumping margin**

Subsection 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia.

The dumping margins set out in section 6 above are 109.5 percent for Advantage Controls and 130.7 percent for uncooperative and all other exporters. The magnitude of the dumping has provided the importers of the dumped goods with the ability to offer the goods to customers in Australia at prices significantly lower than would otherwise have been the case.

### **8.6 Volume effects**

Aquarius lost sales volumes in the years immediately following 2009/10 when imports of cooling tower water treatment controllers entered the Australian market in significant volumes. Aquarius provided a list of companies that had been significant customers of Aquarius in 2009/10 and had reduced or ceased their purchases from Aquarius in 2010/11. The Commission has established that some of these customers, in the investigation period, purchased cooling tower water treatment controllers that the Commission has assessed as having been imported from the USA at dumped prices.

As was shown by Figure 2, Aquarius' market share declined significantly in the years following the commencement of the importation of the goods from the USA, falling from approximately 50 per cent in 2009/10 to 21 per cent in 2013/14.

The Commission estimates that the market share of imports from the USA rose from approximately 5 per cent of the market in 2009/10 to 43 per cent in 2012/13, before falling to 29 per cent in 2015/16.

In the two years leading up to the investigation period, Aquarius' sales volumes and market share had shown small, consistent increases. This trend continued in the investigation period.

The Commission considers that the Australian industry's lost sales volume and market share over the injury analysis period cannot be attributed to imports of cooling tower water treatment controllers from the USA at dumped prices.

## **8.7 Price and profit effects**

Aquarius claims that its prices were undercut by imports of cooling tower water treatment controllers when they entered the market in significant volumes in 2010/11. Aquarius stated that, after it lost significant sales volumes, it was forced to reduce prices significantly to halt the loss of customers. The company also stated that, since that time, including in the investigation period, it had generally been unable to secure price increases due to the availability of the controllers from the USA in the Australian market.

As noted above, the Commission is unable to assume that imports prior to the investigation period were at dumped prices.

As discussed in Section 7 of this report, the Commission obtained annual CTMS and selling price information for two of Aquarius' highest volume models. The information shows that, for the CT11330 model, Aquarius' unit CTMS rose by 2 per cent from 2014/15 to 2015/16. Aquarius' weighted average selling price for the CT11330 model declined by 3 per cent over the same period.

The CTMS per unit of model CO11330 rose by 3.5 per cent between 2014/15 and 2015/16 while weighted average selling prices per unit remained stable.

The Commission has done an analysis of price undercutting for a major importer, Waterdos. The Commission notes that the models compared in the analysis include controller models incorporating components added by Waterdos in Australia. The Commission considers that, as the imported controller represents a significant proportion of the value of such models, the analysis is relevant to whether the dumped imports have caused, or are causing, injury to the Australian industry.

The analysis shows that one model sold by Waterdos during the investigation period significantly undercut the Australian industry's prices of a comparable model. The model in question represented a significant proportion of Waterdos' sales volumes. The Commission found no undercutting for other models.

In a submission dated 2 May 2017, Aquarius claimed that, in relation to undercutting, it had, prior to the investigation period, reduced prices on some models to regain market share.

The Commission's price undercutting analysis is at **confidential appendix 3**.

Aquarius provided the Commission with correspondence from a major customer, received by Aquarius in 2016<sup>12</sup>, where the customer seeks reduced pricing on certain accessories to compete with low priced cooling tower water treatment controllers from the USA.

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<sup>12</sup> Aquarius application – confidential attachment A-9-4

## **PUBLIC RECORD**

Losses made by Aquarius on sales of cooling tower water treatment controllers in 2015/16 were marginally lower than in 2014/15. Profitability also improved marginally. This was attributable to sales of its Ultima brand controllers introduced to the market in 2015/16. Losses on sales of Aquarius' CT1 controller models increased significantly between 2014/15 and 2015/16 while losses on sales of CO1 brand controller models fell slightly.

With dumping margins of 109.5 per cent and 130.7 per cent, the Commission considers imports of cooling tower water treatment controllers from the USA at undumped prices would be far less competitive in the Australian market, allowing the Australian industry to raise its prices to cover increased costs and improve its profit performance. The Australian industry would still be competing with imports from another source. However, prices achieved by Aquarius in the Australian market prior to imports from the USA entering the market in significant volumes (when largely competing only with imports from another source) provides support for this view.

In combination with evidence of some price undercutting, the Commission considers that there is reasonable evidence to link the price depression, price suppression and profits forgone experienced by the industry in the investigation period with the dumping of cooling tower water treatment controllers from the USA.

In 2015/16, Aquarius released its Ultima brand controller, which has features that distinguishes it in the market from models imported from the USA. The Commission considers that the profitability of the Ultima controllers provides support for the view that the Australian industry's performance would materially improve in the absence of the dumping of goods from the USA.

### **8.8 Other causes of injury**

Subsection 269TAE(2A) of the Act requires the consideration of whether injury to an industry is being caused by a factor other than dumped imports.

#### **8.8.1 Global Financial Crisis**

Aquarius stated that the GFC had resulted in fewer new buildings, which had reduced the demand for cooling tower water treatment controllers. The Commission accepts that the market for cooling tower water treatment controllers is likely to have declined in the years following the GFC. The Commission considers that this factor is unlikely to have impacted on the Australian market in 2015/16.

#### **8.8.2 Company restructure**

In 2010/11, Aquarius' management changed following the change in the company's ownership in 2010. Some parties have suggested that these changes impacted on the market's confidence in Aquarius' ability to supply in the following years. As with the GFC, the Commission notes that this factor is unlikely to have impacted on the market in 2015/16.

### **8.8.3 Imports from a source other than the USA**

The Commission understands that a significant proportion of the Australian market is supplied by imports of cooling tower water treatment controllers from a country other than the USA. The Commission visited the importer of these controllers, CWC. CWC was prepared to discuss its views on the Australian market but was not prepared to supply detailed information on sales volumes or prices.

CWC commented that, in recent years, it has had difficulty in achieving price increases for sales of cooling tower water treatment controllers. It stated that the company was sometimes not successful in winning business where cooling tower water treatment controllers from the USA were also quoted. However, as CWC provided no verified evidence supporting these claims, the Commissioner has not placed any weight on them in reaching his findings in this SEF.

### **8.8.4 Nalco merger with Ecolab**

In late 2011, the American based water treatment entities Ecolab Inc and Nalco Holding Company merged. Interested parties suggested that, following the merger, Ecolab in Australia began sourcing cooling tower water treatment controllers from its affiliated USA supplier. It was suggested that the development injured the Australian industry by removing potential sales.

The Commission found that all imports of cooling tower water treatment controllers from the USA in the investigation period were dumped, including those supplied to Ecolab. The Commission considers that any injury caused by these imports in the investigation period is injury caused by dumping.

### **8.8.5 Factors other than price**

The Commission visited a major water treatment service company, Integra, to obtain its perspective on the cooling tower water treatment controller market. The Commission understands that Integra is one of the largest water treatment service companies in Australia. Integra advised that, while price was one important factor, a range of factors influenced its decision on which cooling tower water treatment controller to purchase. It stated that business relationships, after sales service and support were important considerations.

Integra stated that it had no confidence in the ability of the Australian industry to provide support and after sales service for its controllers. While Integra is a large market participant, the Commission notes that other water treatment service companies have a longstanding relationship with the Australian industry. The Commission received no evidence that factors other than price were the cause of the injury suffered by Aquarius.

In a submission dated 2 May 2017, Aquarius claimed that, over the injury analysis period, the increasing quality and services provided by the company had reduced warranty expenses to negligible levels as warranty periods have increased.

### **8.8.6 Developments in technology**

The Commission found that the Australian industry provides a range of cooling tower water treatment controllers that compete on a similar level to other products on the

market in terms of technology. The Commission does not consider that the available evidence suggests that developments in technology have been a factor causing injury to the Australian industry.

## **8.9 Findings**

The Commission considers that there is evidence that the Australian industry has suffered price depression and price suppression in the investigation period. The Commission considers that, without this price depression and suppression, it is reasonable to expect that the Australian industry's profits would have been higher (or losses lower). The magnitude of the dumping has provided the importers of the dumped goods with the ability to offer the goods to customers in Australia at prices significantly lower than would otherwise have been the case.

The Australian industry's claims of a link between its injury and the dumped goods is supported by evidence it provided of a customer using the dumped goods from the USA to negotiate lower pricing. The Commission also found that a significant volume of the dumped goods were being sold at a price undercutting the Australian industry's selling price.

The Commission has undertaken an assessment of factors other than dumping that might have caused injury to the Australian industry. It considers that the GFC and management changes at Aquarius are not likely to have impacted the Australian cooling tower water treatment controller market in 2015/16.

Imports from a source other than the USA are a significant competitor for the Australian industry but there is no evidence that the prices of the imports from the other source are responsible for depressing or suppressing prices in the Australian market. The Commission notes that dumping need not be the sole cause of injury to the Australian industry. As outlined above, the Commission considers that there is positive evidence linking dumped imports from the USA to price pressures experienced by the Australian industry in the investigation period.

The Commission considers that the impact of the dumped goods on the Australian industry is material, taking into account the small size of the Australian industry and the fact that it has made losses on sales of cooling tower water treatment controllers throughout the injury analysis period.

Factors other than price, such as ongoing support and service, are clearly relevant to the decision on which cooling tower water treatment controller to purchase. The Commission understands that price remains an important factor in a competitive market and no evidence was provided that Aquarius had lost sales due to its service and support.

As such, the Commission considers that cooling tower water treatment controllers have been exported to Australia from the USA at dumped prices and, because of that, material injury to the Australian industry has been caused.



## **9 WILL DUMPING AND MATERIAL INJURY CONTINUE?**

### **9.1 Findings**

The Commissioner is of the view that exports of cooling tower water treatment controllers to Australia from the USA in the future may be at dumped prices, and that continued dumping may continue to cause material injury to the Australian industry.

### **9.2 Introduction**

Pursuant to subsections 269TG(2), where the Parliamentary Secretary is satisfied that dumping may continue and because of that material injury to an Australian industry producing like goods has been caused or is being caused, anti-dumping measures may be imposed on future exports of like goods.

### **9.3 Will dumping continue?**

The Commission's dumping analysis found dumping margins of between 109.5 per cent and 130.7 per cent.

The exporters from the USA have established channels of distribution in Australia. Imports of cooling tower water treatment controllers from the USA hold a significant share of the Australian market.

### **9.4 Will material injury continue?**

The Commission has reviewed the Australian industry's performance over the injury analysis period and has made a finding that cooling tower water treatment controllers exported at dumped prices from the USA have caused material injury to the Australian industry.

The Commissioner considers that the continuation of price competition from dumped imports from the USA is likely to have a continuing adverse impact on the Australian industry, particularly if volumes were to be maintained or increase.

### **9.5 Commissioner's assessment**

Based on the available evidence, the Commissioner considers that exports of cooling tower water treatment controllers from the USA in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.



## 10 NON-INJURIOUS PRICE

### 10.1 Preliminary assessment of NIP

The Commission has calculated a NIP for exports of cooling tower water treatment controllers exported to Australia from the USA that is considered to be the minimum price necessary to prevent the injury caused by the dumped goods.

The Commission has calculated a NIP from a USP based on the 2009/10 selling prices of two of Aquarius' highest volume cooling tower water treatment controller models. The Commission considers that 2009/10 was a period prior to cooling tower water treatment controllers imported from the USA being present in the Australian market in significant volumes. The Commission's view is that these prices represent selling prices that the Australian industry could reasonably achieve in a market in the absence of dumped imports.

### 10.2 Introduction

Interim dumping duty (IDD) may be applied where it is established that dumped imports have caused material injury to the Australian industry producing like goods. The level of IDD imposed by the Parliamentary Secretary cannot exceed the margin of dumping.

The level of dumping duty imposed cannot exceed the margin of dumping, but a lesser duty may be applied if it is determined that it is sufficient to remove the injury.

The NIP provides the mechanism whereby this lesser duty provision is given effect. Subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* requires consideration of the desirability of fixing a lesser amount of duty if sufficient to remove injury to the Australian industry.

The Commission's *Dumping and Subsidy Manual* specifies that "...The Commission will generally derive the NIP from an unsuppressed selling price (USP). The USP is a selling price that the Australian industry could reasonably achieve in the market in the absence of dumped or subsidised imports....".

### 10.3 Calculation of the NIP

Under subsections 269TACA(a), the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, or to remove the hindrance to the Australian industry caused by the dumping of the goods.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

The Commission's preferred approach to establishing the USP, as outlined in chapter 23 of the *Dumping and Subsidy Manual*, observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry CTMS plus profit; or

- selling prices of un-dumped imports.

Having calculated the USP, the Commission then calculates a NIP at the FOB point (or another point if appropriate) to the relevant level of trade in Australia.

### **10.3.1 Exceptions to the application of the lesser duty rule**

Pursuant to subsection 8(5BAA) of the Dumping Duty Act, the Parliamentary Secretary is not required to, but may still, have regard to the lesser duty rule where one or more of the following circumstances apply:

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises.

Neither of these circumstances apply in relation to the cooling tower water treatment controllers investigation.

### **10.3.2 Submissions received**

On 2 May 2017, Aquarius made a submission on matters including what it considered to be an appropriate USP. Aquarius submitted that, given the significant period of time since 2009/10, the USP should be calculated by adjusting 2009/10 prices according to price increases realised in its sales of swimming pool controllers – a market Aquarius claims is unaffected by dumping.

Aquarius further submitted that, as there is a single NIP to cover all models, a NIP should be based on its premium 'Ultima' model with all accessories to ensure that the anti-dumping measures remove injury for all models.

## **10.4 The Commission's assessment**

The Commission considers that the USP should be established using Aquarius' 2009/10 selling prices of models directly comparable to models sold by the major importer, Waterdos. These selling prices were in a period prior to imports from the USA entering the Australian market in significant volumes and were, therefore, in a period that the Commission can be reasonably confident was unaffected by dumping.

Aquarius has not provided persuasive evidence that selling prices in 2015/16 unaffected by dumping would be higher than those achieved in 2009/10. While the swimming pool controller market in Australia might provide some indication of possible price movements, the Commission has no knowledge of the conditions present in that market or other factors that could be influencing prices. The Australian cooling tower water treatment controller industry is competitive, both at the equipment supplier and the water treatment services levels. On the available evidence, the Commission is unable to conclude that prices in a market unaffected by dumping would be higher in 2015/16 than those present in the market in 2009/10.

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The Commission does not agree with Aquarius’ submission that the USP should be based on the selling prices of its premium ‘Ultima’ model including all accessories. The USP is a price that the imported goods could be sold at in the Australian market without causing injury. The USP must, therefore, take into account the range of imported models within the goods description, as well as any specification differences between the locally produced and imported models. Basing the USP on the selling prices of models comparable to the imported models in the form they are sold in Australia removes the need for any adjustments to account for specification differences. A USP based on a premium locally produced model would result in a NIP that, when applied to all imported models, would on average be above the level necessary to remove injury to the Australian industry.

The Commission calculated the average difference between the USP and Waterdos’ selling prices of corresponding models in the investigation period (weighted according to the volumes of Waterdos’ imports of the relevant controller unit for the models in the investigation period). The Commission found that the difference was equivalent to 20.9% of Advantage Controls’ weighted average export price.

The Commission added the percentage difference between the USP and Waterdos’ weighted average selling prices in the investigation period (20.9%) to Advantage Controls export prices to Australia for the relevant controller units to calculate a NIP.

For all exports from the USA, the NIP is below the normal value. As shown in Table 6 below, the percentage difference between the weighted average NIP and the weighted average export price is less than the dumping margins.

<b>Exporter</b>	<b>Injury Margin</b>	<b>Dumping margin</b>
Advantage Controls	20.9%	109.5%
Uncooperative and all other exporters	20.9%	130.7%

**Table 6: Application of the lesser duty rule**

The Commission’s NIP calculations are at **confidential appendix 4**.

## 11 PROPOSED MEASURES

### 11.1 Finding

The Commissioner proposes to recommend to the Parliamentary Secretary that measures be imposed using the ad valorem duty method (i.e. as a proportion of the export price of the goods).

### 11.2 Form of measures available

In relation to IDD, the methods that the Parliamentary Secretary may utilise to work out the duty are prescribed in the *Customs Tariff (Anti- Dumping) Regulation 2013* and include:

- Combination of fixed and variable duty method (combination duty method);
- Floor price duty method;
- Fixed duty method (\$X per tonne); and
- Ad valorem duty method (i.e. a percentage of the export price).<sup>13</sup>

### 11.3 Form of securities applied following PAD 377

Following PAD 377, the Commonwealth took securities in respect of IDD that may become payable on goods exported from the USA. The securities were worked out in accordance with the ad valorem duty method.

### 11.4 Submissions received

The Commission has, to date, not received any submissions in relation to the proposed form of the measures.

### 11.5 Commissioner's assessment

The Commission, in considering which form of measures to use, has had regard to the Commission's *Guidelines on the Application of the Form of Dumping Duty 2013* (the Guidelines).

The Guidelines set out issues to be considered when determining the form of duties. It is important to note that the various forms of dumping duty available all have the purpose of removing the injurious effects of the dumping. However, in achieving this purpose certain forms of duty will better suit particular circumstances more so than other forms of duty. The Guidelines list the key advantages and disadvantages of each form of duty.

The combination duty method is considered appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the market. Conversely, the combination duty method is less suitable in situations where there are many model types of the goods under consideration which exhibit a large price differential or where a falling market exists.

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<sup>13</sup> Section 5 of the *Customs Tariff (Anti- Dumping) Regulation 2013*

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On the other hand, the ad valorem duty method is one of the simplest and easiest forms to administer when delivering the intended protective effect, is common in other jurisdictions, is similar to other types of Customs duties, is advantageous where there are many models or types and is suitable where the market prices of goods fluctuate over time. The ad valorem duty method may also require fewer duty assessments and reviews than other duty methods. Conversely, the ad valorem duty method has a potential disadvantage in that export prices might be lowered to avoid the effects of the duty.

In this case, as there are many models of the goods that could be exported to Australia with large price differentials, the Commission considers that the ad valorem duty method should be used to calculate the IDD.

**12 APPENDICES**

<b>Confidential Appendix 1</b>	Export price, normal value and dumping margin calculations
<b>Confidential Appendix 2</b>	Assessment of Australian market
<b>Confidential Appendix 3</b>	Price undercutting analysis
<b>Confidential Appendix 4</b>	NIP calculations