

## FOR THE PUBLIC RECORD

Mr Mick Kenna  
Assistant Director  
Anti-Dumping Commission  
Level 35  
55 Collins Street  
Melbourne VIC 3000

Dear Mr Kenna,

### **RE - Application for a dumping duty notice in relation to cooling tower water treatment controllers exported to Australia from the United States of America ("Investigation")**

- 1.1 We refer to the above Anti-Dumping Commission's (ADC) Investigation.
- 1.2 Ecolab Pty Ltd (**Ecolab**) (also referred to as Nalco), provides the enclosed material and information by way of submission.

## **2. Summary of Position**

- 2.1 Ecolab provides this information and documents at this time in the Investigation due to the ADC's failure to confirm whether Ecolab's importer questionnaire needed to be completed and, in those circumstances, the unfair and unreasonable finding of Ecolab as "uncooperative" in the Preliminary Affirmative Determination (**PAD**).
- 2.2 As is clear from the confidential documents and information supplied under this letter:
  - (a) Ecolab does not import like-goods with those under investigation: its goods are proprietary package of the cooling tower water treatment controllers together with additional chemicals (**Units**);
  - (b) Ecolab rents rather than sells the Units, which is accepted by others industry participants as indicating Ecolab does not operate in the same market as the Applicant or other industry participants, as show in public record documents for the Investigation;
  - (c) the [**CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION**] shows that the goods are [**CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION**], not at dumped prices;
  - (d) Ecolab imports its Units from China, not directly from the United States. The Units are assembled in China; and
  - (e) the Units were imported at low volumes, comprising less than [**CONFIDENTIAL INFORMATION DELETED – NUMBER**], during in the relevant period.
- 2.3 Ecolab invites the ADC to visit and verify the information provided under this letter, and will assist the ADC to expedite any verification process.

## **3. Background**

- 3.1 We refer to our confidential discussions and emails with you in February and March 2017.

- 3.2 As you know, on 9 February 2017 we requested confirmation as to whether or not the ADC would require provision of Part B of the Questionnaire.
- 3.3 On 10 February 2017, you wrote to us stating you would consider and confirm the position.
- 3.4 On 13 March 2017, we provided a detailed spreadsheet concerning Ecolab's import data. In the correspondence with you at that time, the ADC provided no confirmation concerning the need to complete Part B of the Questionnaire.
- 3.5 No ADC confirmation was ever received by Ecolab - one way or the other. Accordingly, we did nothing further on the expectation you would have confirmed it was required.
- 3.6 On 18 April 2017, the ADC issued a PAD, in which it labelled Ecolab as uncooperative, notwithstanding its expression of willingness to assist and express request for confirmation from the ADC to confirm if it still required certain information.
- 3.7 In light of the above, Ecolab had a reasonable expectation that the ADC would be consistent with its word and confirm if further material was required. In never receiving that confirmation, Ecolab was led to believe that it had sufficiently cooperated with the ADC's requirements.
- 3.8 It is apparent that Ecolab has been prejudiced by the ADC's conduct and been significantly delayed in providing the **enclosed** information and documents to the ADC. In the circumstances, Ecolab considers an extension of time for the submission of this information should be granted and is more than reasonable given that much of the public material openly accepts that Ecolab is neither the target of the investigation and operates in a different market segment to other industry participants.
- 3.9 The information and documents provided under this letter are highly relevant to the Investigation. In the above circumstances, it would be extremely unfair and inappropriate to impose significant dumping duties on Ecolab's imports, as the PAD indicates that will happen, without this relevant information being taken into consideration.

#### **4. Information and documents provided**

- 4.1 The confidential documents which accompany this letter are listed in the Schedule to this letter.

#### **5. Detailed comments**

##### **The investigation - documents on the public record**

- 5.1 In relation to the Consideration report number 377 (Public Document 003), in general, Ecolab agrees with the assessment in the documents which shows Ecolab as an organisation that does not operate in direct competition with the Applicant and has limited market share of water treatment controllers.
- 5.2 Ecolab elaborates on these issues as follows:
- (a) In the document "Application for the publication of dumping and/or countervailing duty notices Cooling tower water treatment controller units exported from the United States of America" (Public Document 002), the following sections are relevant:
    - (i) Section 3, at page 8, is relevant as it focusses on product features and make a direct comparison to products of other industry participants. Ecolab's Units are different to that of other industry participants, including the Applicant's goods. We explain those differences in further detail below.
    - (ii) At page 18 Major Suppliers, a description at (b) is given in respect of Ecolab's business. We agree with the comments as stated. Furthermore, Ecolab's technology is its own intellectual property and is generally rented to chemical customers as part

of a bundled chemical offering. Ecolab's units are not sold to other water treatment companies. It operates in a completely different market segment to the Applicant and other industry participants.

- (iii) At page 20, "Rented products". As appropriately noted by the Applicant, Ecolab is not considered to be a direct competitor of the Applicant and the diagram at A-4.2 supports this.
  - (iv) At page 23, the Applicant correctly notes that when Ecolab participates in tenders it is for the entire water treatment project, not just for the controllers. In this regard, it has a different service offering to other industry participants.
- (b) In the document "Consideration report number 377" (document 003):
- (i) At section 2.6.1 (page 11), the report highlights the market structure which shows Ecolab operating separately and apart from the other industry participants noted.
  - (ii) At section 2.7 (page 11), the report highlights that estimated that the annual market of units was 1,000 units in the 2015/2016 financial year. Using import data for the past 12 months ended 30 June 2016, Ecolab's volume of Units imported **[CONFIDENTIAL INFORMATION DELETED – NUMBER]**,<sup>1</sup> **[CONFIDENTIAL INFORMATION DELETED – NUMBER]** in circumstances where it is openly acknowledged by the Applicant and the ADC in its consideration report, that Ecolab is not in direct competition with the other industry participants.

### **Ecolab's imported goods**

- 5.3 As noted above, Ecolab imports its Units, comprised of proprietary technology and chemicals, as part of a rental package into the Australian market. In this regard, its business model and approach to the Australian is distinct from other industry participants.
- 5.4 Ecolab's Engineering Manager for Water Controllers has provided the following explanation as to the key differences in enclosure titled **[CONFIDENTIAL INFORMATION DELETED – BUSINESS OPERATIONS]**.
- 5.5 In summary, those key differences are as follows:
- (a) Ecolab delivers complete water treatment management package with 3D (Detect, Determine, Deliver) TRASAR patented technology.
  - (b) The TRASAR controller is monitored 24 hours a day, 7 days a week through by a dedicated group of skilled personnel and engineers (system assurance team) to ensure all the system abnormalities are addressed.
  - (c) The chemistry used is unique to enable improved interaction with the water controller. This technology includes **[CONFIDENTIAL INFORMATION DELETED – MODEL]**.
  - (d) The systems are rented as part of an overall total solution offering and are regularly maintained by qualified Nalco engineers.
  - (e) Cooling tower water controllers supplied from local and overseas companies do not provide most of the capabilities above which Ecolab's Units offer, such as **[CONFIDENTIAL INFORMATION DELETED – MODEL]**.

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<sup>1</sup> **[CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION]**.

- 5.6 The componentry used within the models imported by Ecolab have the following US and Chinese inputs as follows:

3DT Family	Country of Supply
[CONFIDENTIAL INFORMATION DELETED – MODEL]	Taicang, China
[CONFIDENTIAL INFORMATION DELETED – MODEL]	[CONFIDENTIAL INFORMATION DELETED – BUSINESS OPERATIONS] Greentree (USA) [CONFIDENTIAL INFORMATION DELETED – BUSINESS OPERATIONS]
[CONFIDENTIAL INFORMATION DELETED – MODEL]	Green Tree (USA)
[CONFIDENTIAL INFORMATION DELETED – MODEL]	Green Tree (USA)
[CONFIDENTIAL INFORMATION DELETED – MODEL]	Green Tree (USA)
[CONFIDENTIAL INFORMATION DELETED – MODEL]	Taicang, China
[CONFIDENTIAL INFORMATION DELETED – MODEL]	Taicang, China
[CONFIDENTIAL INFORMATION DELETED – MODEL]	Green Tree (USA)
[CONFIDENTIAL INFORMATION DELETED – MODEL]	Green Tree (USA)

- 5.7 In this regard, it is can be clearly seen that it is not a pure importation of goods exported from the United States, the relevant country of export under investigation.
- 5.8 The entity in China buys componentry from the United States, but fabricates the products in China together with Chinese sourced material, before selling the finished proprietary package to Ecolab in Australia. Ecolab may therefore be viewed as importing its Units from China, not the United States.

### Commercial terms and performance

- 5.9 We have **enclosed** examples of Ecolab's rental agreements pursuant to which it provides its imported proprietary technology to our customers. The rental agreements show the monthly rental paid. Ecolab has prepared a spreadsheet titled [CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION] which plainly demonstrates that Ecolab is [CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION], which would not be the case if it were dumping the Units.

- 5.10 As noted above, Ecolab has already provided its import data to the ADC.
- 5.11 There are difficulties in providing corresponding rental/sales data with the import data because **[CONFIDENTIAL INFORMATION DELETED – BUSINESS OPERATIONS]**. Furthermore, as noted above, **[CONFIDENTIAL INFORMATION DELETED – BUSINESS OPERATIONS]**. The **enclosed** sampled rental agreements are examples of transactions for the relevant Investigation period.
- 5.12 Ecolab has also **enclosed** a **[CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION]**, which is inclusive of the water treatment chemicals. This shows quite clearly the financial performance of the business. As you can see from the report **[CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION AND BUSINESS OPERATIONS]**.
- 5.13 Ecolab has also **enclosed** a list of **[CONFIDENTIAL INFORMATION DELETED – BUSINESS OPERATIONS AND FINANCIAL INFORMATION]**. This provides sufficient detail of forward orders for the period requested.

### Conclusions

- 5.14 In summary, Ecolab is not dumping nor contributing to dumping because:
- (a) Ecolab does not import like-goods with those under investigation: the Units are a proprietary package;
  - (b) Ecolab rents rather than sells the Units, which is accepted by others industry participants as indicating Ecolab does not operate in the same market as the Applicant or other industry participants, as show in public record documents for the Investigation;
  - (c) the **[CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION]** shows that the Units are **[CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION]**, not at dumped prices;
  - (d) Ecolab imports its Units from China, not directly from the United States. The Units are assembled in China; and
  - (e) the Units were imported at low volumes, comprising less than **[CONFIDENTIAL INFORMATION DELETED – NUMBER]** during in the relevant period.
- 5.15 In light of the above, Ecolab's products are incapable of causing material injury to the Australian industry.
- 5.16 Ecolab invites the ADC to visit and verify the information provided under this letter, and will assist the ADC to expedite any verification process.

**Schedule of Documents**

<b>Document Number</b>	<b>Confidential Document Descriptions</b>
1.	[CONFIDENTIAL INFORMATION DELETED – CONFIDENTIAL COMMUNICATIONS]
2.	[CONFIDENTIAL INFORMATION DELETED – CONFIDENTIAL COMMUNICATIONS]
3.	[CONFIDENTIAL INFORMATION DELETED – CONFIDENTIAL COMMUNICATIONS]
4.	Provision of [CONFIDENTIAL INFORMATION DELETED – CONFIDENTIAL COMMUNICATIONS]
5.	Completed [CONFIDENTIAL INFORMATION DELETED – CONFIDENTIAL COMMUNICATIONS]
6.	Excel spreadsheet [CONFIDENTIAL INFORMATION DELETED – IMPORTATION INFORMATION]
7.	Copies of invoices [CONFIDENTIAL INFORMATION DELETED – FINANCIAL AND IMPORTATION INFORMATION]
8.	Forward order - [CONFIDENTIAL INFORMATION DELETED – BUSINESS OPERATIONS AND FINANCIAL INFORMATION]
9.	Forward order - [CONFIDENTIAL INFORMATION DELETED – BUSINESS OPERATIONS AND FINANCIAL INFORMATION]
10.	[CONFIDENTIAL INFORMATION DELETED – BUSINESS OPERATIONS]
11.	[CONFIDENTIAL INFORMATION DELETED – FINANCIAL INFORMATION]
12.	Client information - [CONFIDENTIAL INFORMATION DELETED – CLIENT INFORMATION] Rental Agreement Schedule
13.	Client information - [CONFIDENTIAL INFORMATION DELETED – CLIENT INFORMATION] Rental Agreement
14.	Client information - [CONFIDENTIAL INFORMATION DELETED – CLIENT INFORMATION] Rental Agreement
15.	Client information - [CONFIDENTIAL INFORMATION DELETED – CLIENT INFORMATION] Rental Agreement