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5 June 2017

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BY EMAIL operations5@adcommission.gov.au

The Director
Operations 5
Anti-Dumping Commission
Industry House
10 Binara Street
Canberra ACT 2600

Dear Director

IWAKI AMERICA INC
ALLEGED DUMPING OF COOLING TOWER WATER TREATMENT CONTROLLERS

As you know, we act for Iwaki America, Inc.

In this letter we set out Iwaki America's submissions in response to the Statement of Essential Facts dated 15 May 2017 (**SEF**).

References to sections are to the *Customs Act 1901* (Cth).

Not an uncooperative exporter

1. Iwaki America is not an uncooperative exporter within the meaning of that term as provided in section 269T(1).

2. Iwaki America has provided extensive responses to the Exporter Questionnaire, within the time required, and all requests for further data have been answered within the time stipulated by the Commission.

3. In the PAD the Commissioner stated:

> *The Commission was unable to work out a preliminary dumping margin for Iwaki America using information in its exporter questionnaire response due to uncertainty over appropriate model matching.*

4. Although the Commission had issued a request for clarification/more information to Iwaki America on 7 March 2017, this did not make any reference to there being any uncertainty

over model matching. It was unfair and unreasonable to disregard information on this basis without giving Iwaki America any opportunity to address this issue.

5. Having received an indication for the first time in the Preliminary Affirmative Determination dated 18 April 2017 (**PAD**) that there was uncertainty over model matching, Iwaki America provided two further submissions with information addressing this issue. Uncertainty may have arisen because cooling tower water treatment controllers are not generic products sold in one or two standard configurations. They are highly customisable products which are sold with many different optional components to the customer's requirements. Model codes in Iwaki America's sales data reflect the numerous variations in the fully configured state of the final product as sold. Iwaki America's submission of 17 April 2017 provided a detailed explanation of the manner in which model and component codes, as set out in the price list (confidential attachment B2.2) are combined to provide a unique item code for each configured product. The same codes are used for domestic and international sales. This enables sales data, provided by sale by sale, to be matched when comparing domestic with Australian export sales.

6. A further submission was provided on 10 May 2017 which undertook a sale by sale matching exercise, colour coding matching sales, line by line in respect of domestic sales and Australian export sales. In respect of this submission, the SEF states:

   The Commissioner has considered that:

   - *the submission was received five days before the date for 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 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.*

7. The covering email dated 10 May 2017 did give reasons. A key component of the data provided was cost to make data for each sale, taking into account the full component configuration of the product the subject of each sale. The covering email explained that Iwaki America's systems do not keep records which allow reports for this data to be produced and that Iwaki America had engaged IT specialists to reprogram its software to enable this data to be produced.

8. The data was not extensive, and was provided in a manner which was easily understood and analysed, and was readily verifiable. It was, in essence, a reproduction of sales data provided with the Exporter Questionnaire in confidential attachments B4 and D4 submitted earlier. As noted above, it provided new unit cost to make data. It also matched comparable sales by colour coding lines of data. It comprised a spreadsheet with two worksheets. The first contained sales data for Australian exports, with 15 lines of data. The second contained sales data for US domestic sales. The line items for comparable sales were colour coded. There

were 120 lines of colour coded comparable sales data. The remainder of the spreadsheet was included to maintain the integrity of the data set with that provided in confidential attachment D4, but was not immediately relevant for the sale by sale comparison which was the purpose for providing the data. Iwaki America does not accept that 135 lines of data would the Commission burden.

9. Iwaki America has repeatedly provided additional data to address concerns indicated by the Commission. Iwaki America has repeatedly stated its willingness to provide additional information and assist the Commission. Iwaki America has repeatedly invited the Commission to indicate what further data it could provide to assist the Commission.

10. For all these reasons it is unfair and unreasonable to classify Iwaki America as an uncooperative exporter.

Dumping margin for Iwaki America is nil

11. The SEF states that the Commission has assessed a dumping margin for Iwaki America (on the basis that it is an Uncooperative Exporter) at 130.7%. The steps taken to reach this assessment are described in the PAD.

12. The Commission has established preliminary export prices under section 269TAB(3) and normal values under section 269TAC(6). These provisions require the Minister to determine the export prices and normal values respectively having regard to ***all relevant information***.

13. Iwaki America has provided extensive relevant information in the following:

    (a) Response dated 28 February 2017 to Exporter Questionnaire;

    (b) Response dated 17 March 2017 to Deficiency List;

    (c) Response dated 17 April 2017 to email request for domestic and exporter controller model and codes information; and

    (d) Email submission dated 10 May 2017 (**10 May Sales Data**).

14. For the purpose of assessment of preliminary export prices and preliminary normal values described in the PAD, relevant information was not taken into account. This relevant information ought now to be taken into account by the Commissioner and the Minister for the purpose of determining export prices under section 269TAB(3) and normal values under section 269TAC(6).

Export price where sufficient information not furnished 269TAB(3)

15. Section 269TAB(3) provides:

> *Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.*

16. The SEF states that the Commission found dumping margins to be 130.7% for Uncooperative exporters (SEF [6.1]) and states the Commissioner considers Iwaki America to be an Uncooperative exporter (SEF [6.4]). The PAD sets out a preliminary dumping margin for Iwaki America of 131% (PAD [7.3.3]) and sets out in section 7.3.2 the method adopted for calculating this margin:

> *For the purposes of this PAD, the Commission has established preliminary export prices for Iwaki America under subsection 269TAB(3) of the Act and normal values under subsection 269TAC(6) of the Act, having regard to all relevant information. The Commission has established preliminary export prices and normal values for Iwaki America using export prices and normal values calculated for Advantage Controls, without favourable adjustments to the normal values.*

17. As explained below, it is not appropriate to adopt export prices calculated for Advantage Controls and normal values calculated for Advantage as applicable to Iwaki America. There is substantial relevant information available which establishes that Advantage Controls' data should not be adopted for Iwaki America and indeed which shows Iwaki America's own position. The Commission and the Minister are obliged to have regard to this relevant information in determining export prices and normal values.

Export prices and normal values for Advantage Controls should not be applied to Iwaki America

18. Relevant information establishes that there are material differences between Iwaki America and Advantage Controls which indicate that Advantage Controls data is unlikely to provide an accurate or fair approximation of Iwaki America's position. This relevant information includes:

    (a) Iwaki America and Advantage Controls export products which are more likely to be used in different market sectors. Iwaki America products are most likely used in the industrial sector and Advantage Controls products are most likely used in the commercial sector (SEF [5.5]) Tanvenamore Holdings Pty Ltd selling Advantage Controls's products under the name Waterdos competes in the low margin commercial sector with Convergent Water Controls Pty Ltd and the Australian industry (Verification Report Tanvenamore Holdings Pty Ltd March 2017 section 3.1; Visit Report Convergent Water Controls Pty Ltd 8-10 February 2017 page 2). Iwaki America's sales are in the industrial sector.

    (b) The domestic sales channels for Iwaki America and Advantage Controls are different. Iwaki America sells in its domestic market and in Australia through third party distributors while Advantage Controls sells in its domestic market through its directly employed sales staff (Exporter questionnaires B-3).

    (c) Iwaki America is an American resident subsidiary of Iwaki Pump, Japan a public listed company in Japan. Advantage Controls is a small family owned and operated business in Oklahoma (Exporter Questionnaires A-3).

Iwaki America not dumping

19. Relevant information establishes that Iwaki America sells from the same price list and uses the same distributor discount structure for Australian export sales as it does for domestic market sales in the USA. Iwaki America's price list is provided at confidential attachment B2.2. The 10 May Sales Data provides enables comparison of individual comparable sales in Australia and the domestic US market for the whole of the period of investigation (POI). The comparison of comparable sales establishes that goods are sold at the same prices, and are not sold at dumped prices.

20. Confidential attachment B4 provides the export price for every export sale to Australia in the POI. Confidential attachment D4 provides the price for all sales in the USA domestic market.

21. The 10 May Sales Data has been presented an a manner which enables comparison of goods of the same model, configured with comparable componentry so that fair comparisons of cost of manufacture and sales price can be made. There is only a limited volume of comparable sales in the POI. Analysis and verification of this data is not burdensome. There are 15 sales in the Australian export market in the POI and in the US domestic market 120 comparable sales have been identified. The product codes, which are listed in the price list (confidential attachment B.2.2) are explained in the 17 April 2017 response. These product codes detail not just the model but the complete configuration of componentry. Iwaki America's identification of comparable sales is easily verifiable.

22. The relevant information also allows the Commissioner to be satisfied that none of Iwaki America's sales in the US domestic market are loss-making. The sales data provides item by item manufacturing cost data, and [CONFIDENTIAL INFORMATION DELETED - FINANCIAL INFORMATION]. Data for additional costs (in addition to unit cost to make) namely, selling costs, administration costs and controller engineering expenses has been provided in aggregate form. Iwaki America does not record these costs at a model by model level. Given the numerous variations in fully configured products, it would be extraordinarily difficult and artificial to apportion costs at the level of fully configured products. The aggregate data for additional costs, when compared with margins on individual sales data for fully component configured goods, provides a reasonable basis to be comfortably satisfied that most if not all goods sold are not loss making. The relevant information provides no basis on which to conclude that any of Iwaki America's sales are not in the ordinary course of trade.

23. The Commissioner appears to have taken the approach (SEF [6.4]) that all of Iwaki America's sales in the US domestic market should be regarded as not in the ordinary course of trade, unless it is proven with sale by sale cost data that each sale is not loss-making. It is submitted that this is not a reasonable and logical approach in light of the data on sales, costs and profitability that Iwaki America has provided. Information provided by Iwaki America is strongly indicative of profitable sales. In the face of such information, it is not reasonable to start with an assumption that every sale is not in the ordinary course of trade unless proved to not to be loss-making.

24. Further, section 269TAAD requires the Minister to take a different approach. This section directs the Minister to regard prices paid for goods as not in the ordinary course of trade if satisfied among other things that that like goods are sold at a price that is less than the cost of such goods. This requires the Minister to form a positive belief that goods are being sold below cost. As explained above, the Commission's approach to Iwaki America is to assume, without any information on which to form a positive belief, that goods are sold below cost, unless it is proved that that costs are less than the sale price. Iwaki America submits that the Commission should not disregard Iwaki America's domestic sales data on this reasoning.

25. Iwaki America contends that it has provided sales data which enables a comparison of the export price and normal value that shows no dumping.

No material injury

26. The Commissioner's preliminary assessment that there has been material injury to the Australian industry is based substantially upon an observation that the Australian industry's market share was considerably lower in 2010/2011 than it was in 2009/2010 (PAD [8.3]).

27. The Commissioner's analysis of the period 2010/2011 to 2015/16 as represented in Figures 1 and 2 in the PAD show no material overall deterioration in market share over this period. The assessment rests heavily on the assumption that 2009/2010 represents an appropriate starting point. There is no data referred to which could be used to establish whether 2009/2010 is representative of the Australian industry's longer term position, or an unusually good year.

28. The appropriate primary focus is the POI. The Commissioner's analysis notes that in 2015/2016 there was been a slight increase in the Australian industry's market share. Figure 2 in the PAD indicates that the market share of exports from the USA in 2015/2016 is constant or slightly less than in 2014/2015. The Commissioner also notes that profitability of the Australian industry improved in 2015/16 compared with 2014/2015, and Figure 5 in the PAD shows that for the whole period 2009/2010 to 2015/2016 (although there is substantial year to year fluctuations) a straight line analysis indicates a small upward trend in profitability across the whole period. Even if there is dumping in the POI, it is difficult to see how a comparison of the Australian industry in the POI with its immediate past provides a reasonable basis to conclude that there has been material injury.

29. Iwaki America also wishes to emphasise that in the POI its total sales of cooling tower water treatment controllers amounted to [CONFIDENTIAL INFORMATION DELETED - NUMBER]. Its sales are mostly in the industrial market sector. Iwaki America's small share of the market is not in direct competition with the Australian industry, which sells mostly in the commercial sector.

Conclusion - No dumping

30. Iwaki America submits that the Commissioner should recommend that the Minister find that Iwaki America has not sold any goods at dumped prices.

Yours sincerely

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