

2 June 2017

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

Dear Director

**DUMPING INVESTIGATION 377 – COOLING TOWER WATER TREATMENT CONTROLLERS
EXPORTED FROM THE UNITED STATES OF AMERICA**

This submission is made by the Australian Industry in response to the Statement of Essential Facts (SEF) dated 15 May 2017¹.

Aquarius Technologies supports the Anti-Dumping Commission's findings that anti-dumping measures are required to address material injury, and the future threat thereof, from dumped goods.

Aquarius Technologies requests that the Commission:

- recommend that the lesser duty rule is unsuitable for this specific case and goods - however, if the recommendation is that the lesser duty rule is suitable, that the Commission review the unsuppressed selling prices (USPs) determined for the Australian industry.

Additionally, Aquarius Technologies makes a number of comments regarding the Commission's findings on material injury and causal link.

Lesser duty rule

Aquarius Technologies opposes the application of the lesser duty rule.

Under the Australian Anti-Dumping legislation² where the non-injurious price (NIP) is less than the normal value, the Minister must have **regard to the desirability** of specifying a lesser amount of duty than the full dumping margin, where the imposition of the lesser amount is **adequate to remove injury**.

The legislation³ defines the NIP as the minimum price necessary to **prevent injury, or a recurrence of the injury which arises from the dumping**. Given only a single set of measures is able to be set for goods involving multiple models, the NIP must be set at a level that prevents injury to all models. As such, a NIP that takes an average USP for all models, will not represent a price necessary to prevent injury to the proportion of models that sit above this average price, particularly in this case when the difference in selling prices, in the form they are sold, between the lowest and highest priced models is almost 500 per cent!

¹ EPR 377, Record No. 22, Statement of Essential Facts, Section 7.1

² Customs Tariff (Anti-Dumping) Act 1975, Section 8(5B)

³ Customs Act 1901, Section 269TACA

Aquarius Technologies seeks to draw attention to the fact that the legislation does not say that the Minister **must utilise** the lesser duty rule, only that he **must have regard to the desirability** of using it. It does however state that the NIP is the **minimum price necessary to prevent injury or the recurrence of injury**. Aquarius Technology submits that if the NIP is not able to be set at a level which prevents injury to the **entirety of the goods**, then it should be considered unsuitable for application for the unique circumstances of this case.

Further, Aquarius Technologies notes that the Minister is not required to give consideration to the lesser duty rule where the Australian industry consists of at least two small-medium enterprises (SMEs). Aquarius Technologies asks that the same consideration be extended to an industry comprising a single SME that had almost 50 per cent market share prior to the injury period.

Aquarius Technologies recommends that the Minister apply the full margin of dumping to exports of cooling tower water treatment controllers from the USA.

Non-injurious prices

Aquarius Technologies notes that the Commission's preferred hierarchy for establishing the USP is as follows:

- industry selling prices at a time unaffected by dumping
- constructed industry prices (industry CTMS plus profit), and
- selling prices of un-dumped imports.

As noted above Aquarius Technologies submits that *if* the recommendation is that the lesser duty rule *is suitable (a position that is opposed by the Australian industry)* then Aquarius Technologies recommends that Commission derive the unsuppressed selling price based on selling prices at a time unaffected by dumping, indexed for price increases.

Unsuppressed selling prices

Aquarius Technologies strongly disagrees with the Commission's assessment of a NIP based on 2009/10 selling prices.

If the Commission decides to recommend application of the lesser duty rule, Aquarius Technologies requests that the Commission take into account the following considerations.

Aquarius Technologies notes that the Commission will generally derive the NIP from an unsuppressed selling price (USP), which is a selling price that the Australian industry could reasonably achieve at a time unaffected by dumping. Aquarius Technologies further notes that the Dumping and Subsidy Manual states that:

*Where the USP is older than five years, the Commission will also consider the updating of old prices by indexing or other means where reasonable.*⁴

In its submission dated 2 May 2017⁵ Aquarius Technologies noted the period of time between 2009/10 and present is greater than five years and proposed indexing 2009/10 cooling tower water treatment controller prices with reference to price movements of swimming pool controllers, a similar general category of goods.

⁴ Dumping and Subsidy Manual, Page 134

⁵ EPR 377, Record No. 18, Australian Industry Submission

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In the SEF the Commission stated that Aquarius had not provided persuasive evidence that selling prices in 2015/16 unaffected by dumping would be higher than those achieved in 2009/10. The Commission further stated that *“the Commission has no knowledge of the conditions present in that market or other factors that could be influencing prices”*⁶. This reasoning fails to recognise the lapse of time, and changes in purchasing power.

To establish the reasonableness of the Aquarius Technologies’ estimate of price increases achievable in a market unaffected by dumping Aquarius Technologies considers it is rational to compare its estimates with the Consumer Price Index (CPI)⁷ which measures the change in purchasing power of an amount of money between two chosen dates.

As can be seen in the table below swimming pool controllers price increases for the period July 2009 to June 2014 the CPI change was not dissimilar to price increases *achieved* by Aquarius Technologies for its swimming pool controllers.

Period	Swimming pool controllers price increases %	CPI increases %
September Quarter 2009 to June Quarter 2014	XXXX*	12.89
September Quarter 2009 to June Quarter 2016	XXXX**	15.77

* Actual price increases for SL100

** SL100 discontinued. Estimated price increases for 2014/15 and 2015/16 based on changes in previous years

In terms of nominating swimming pool controllers as a same general category of goods, Aquarius Technologies notes that this concept of *“same general category of goods”* is adopted by the Commission when it is determining amounts of profit or general selling expenses for normal values based on constructed costs when like goods are not sold on the domestic market of the exporting country.

Aquarius Technologies considers that the Commission’s approach for categorising *“same general category of goods”* for determining normal values should be consistently applied to categorising *“same general category of goods”* for assessing price increases in the domestic market unaffected by dumping. In particular Aquarius Technologies notes the term *“same general category of goods”* is referred to in in regulations 44 and 45 of the *Customs (International Obligations) Regulation 2015*.

In summary, *if* the Minister makes a decision to apply a lesser duty the Australian industry proposes, in order of preference, that the USP be calculated as follows:

1. Based on the Ultima selling prices whereby:
 - 2014/15 Ultima prices are indexed for price increases achieved by a similar category of goods to take into account the fact that the Ultima’s release price was for a market affected by dumping (refer Australian industry submission dated 2 May 2017)
2. Based on the weighted average selling prices of the CT1, CO1 and Ultima series whereby:
 - CT1 and CO1 2009/10 prices are indexed as per price increases achieved by a similar category of goods (refer Australian industry submission dated 2 May 2017),

⁶ EPR 377, Record No. 22, Statement of Essential Facts, Section 10.4

⁷ <http://www.abs.gov.au/websitedbs/d3310114.nsf/home/Consumer+Price+Index+Inflation+Calculator>

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- Ultima prices are indexed to take into account the fact that the Ultima's release price was for a market affected by dumping (refer Australian industry submission dated 2 May 2017), and
- quantities for the weighting are based on the Australian industry's sales in 2016/17 to take into account the fact that since 2014/15 sales there has been a significant shift in consumer preference from simple timer controllers (CT1 series) to automatic controllers (CO1 and Ultima series).

At Confidential attachment 1 is a summary of sales trends from the injury period until present, in particular that the Ultima sales as a proportion of total sales have grown from XXX per cent in 2014/15 to XXX per cent in 2016/17. *Constructed prices*

Aquarius Technologies submits that the Commission found limitations with the Appendix A6 CTMS data due to the *"large number of add-on "options" which have the effect of many models of controller."*⁸

Should the Commission consider constructed prices an appropriate methodology, Aquarius Technologies contends that a reasonable rate of profit would be the profit rate achieved prior to the injury period, at a time when the market was unaffected by dumped imports.

Selling prices of un-dumped imports

Aquarius Technologies submits that the Australian market for cooling tower water treatment controllers has been affected by dumped exports from the USA since 2010 making selling prices of imports from other countries unsuitable for assessing an un-suppressed selling price.

Conclusion on the lesser duty rule

Should the Commission recommend application of the lesser duty rule, Aquarius Technologies requests that the Commission:

- determine the USP based on the Ultima selling prices on the basis that sales of Ultima are increasing significantly year on year, and
- Index the above for price increases achieved by a similar category of goods to take into account the fact that the Ultima's release price was for a market affected by dumping.

Material injury

In the SEF the Commission assessed that the Australian industry has experienced injury in the form of:

- Loss of sales volume
- Lost market share
- Price depressions
- Price suppression
- Profits forgone
- Reduced assets
- Reduced revenue
- Reduced capacity
- Reduced capacity utilisation, and

⁸ EPR, 377, Record No.11, Australian Industry Visit Report, Section 7.4

- Reduced employment.

The Commission found that the Australian industry has suffered material injury in the following forms as a result of cooling tower water treatment controllers exported to Australia from the USA at dumped prices:

- price depression
- price suppression, and
- profits foregone.

Aquarius Technologies notes that the injury analysis period *for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods*⁹ is **from 1 July 2009**, and submits that during period 1 July 2009 to 30 June 2016, the Australian industry suffered **material injury** in the following forms:

- 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.

Aquarius Technologies refers to the Ministerial Direction on Material Injury 2012¹⁰ and in particular the following points and submits that they are relevant in this case.

- Material injury is injury which is not immaterial, insubstantial or insignificant.
- Identifying material injury will depend on the circumstances of each case.
- There may be circumstances where dumping may still result in injury where it has caused the rate of an industry's growth to slow, without causing it to contract, or where an industry suffers a loss of market share in a growing market, without a decline in profits.

'But for' the **significantly dumped** exports Aquarius Technologies would not have suffered the injury it experienced during the injury period continues to incur to this date.

Loss of market share and sales volumes attributable to dumping

It is Aquarius Technologies position that during the injury period 1 July 2009 to 30 June 2016, it is quite obvious that between 2009/10 to 2015/16 the Australian industry's market share dropped significantly, imports from the USA increased significantly, whereas imports from a source other than the USA were pretty constant, with the exception of 2012/13 which coincided with the largest share from the USA.

⁹ EPR 377, Record No. 22, Statement of Essential Facts, Section 2.1

¹⁰ <http://www.adcommission.gov.au/adsystem/referencematerial/Documents/ACDN2012-24.pdf>

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Aquarius Technologies is at a loss to understand how the Commission can be reasonably confident that the Australian industry's significant drop in market share in the injury period cannot be attributed to dumped exports from the USA.

Aquarius Technologies is extremely concerned at the comment that "*The Commission is unable to draw any conclusions on allegations of dumping prior to the investigation period (1 July 2015 to 30 June 2016)*"¹¹. This statement appears to be at odds with the Commission's stated purpose of the injury period as mentioned above. It is Aquarius Technologies' position that in the investigation period 'but for' the significant cost advantage to Waterdos in sourcing goods from the USA with a dumping margin of 109.5 per cent, the Australian industry sales volume and market share would be significantly higher.

Starting in 2010 when injurious exports from the USA began entering the market in large volumes, Aquarius Technologies experienced ongoing volume and price pressures culminating in substantial losses of both sales volumes and market share of cooling tower water treatment controllers.

Up until FY 2009/10 the Australian market for cooling tower water treatment controllers was relatively stable. Aquarius Technologies considers that the impact of the dumping became significant in FY 2010/11, when significant sales of dumped cooling tower water treatment controllers from the US commenced at heavily **dumped** prices.

Aquarius Technologies claims regarding import volumes from the USA are supported by the Commission's Consideration Report 377 which states that imports of controllers from the USA commenced in significant volumes in the latter part of 2009/10 and have continued in significant volumes since¹².

In the PAD the Commission stated that it has established that some of these customers purchased cooling tower water treatment controllers imported from the USA at dumped prices, in the investigation period¹³.

Evidence to support Aquarius Technologies' claim of lost sales was provided to the Commission following the Australian industry visit whereby Aquarius Technologies provided a list of companies that had been significant customers in 2009/10 but have since reduced or ceased purchasing from Aquarius Technologies in 2010/11 and subsequent years¹⁴.

It is Aquarius Technologies' position that although the Commission is not *examining and determining dumping* in the period prior to the investigation period, given that there have been strong volumes of imports since 2010/11 and there is dumping in the investigation period, that exports prior to the investigation period are not un-dumped and have affected selling prices throughout the injury period.

It defies logic and economics that imports from the US would increase in market share prior to the investigation period, at un-dumped prices, then demand (and market share) would remain stable in the investigation period at lower, dumped prices.

¹¹ EPR 377, Record No. 22, Statement of Essential Facts, Section 7.4

¹² EPR 377, Record No. 3, Consideration Report, Section 2.7, Page 13

¹³ EPR 377, Record No.15, Anti-Dumping Notice No. 2017/54, Section 9.2

¹⁴ EPR 377, Record No. 11, Australian Industry Visit Report, Confidential Attachment 4

The significant increase in sales volume and market demand of US imports over the injury analysis period, is only logically explained by the fact that these imports have been dumped over the entire injury analysis period, of which the investigation period is only anticipated to be a snapshot of.

Exporter dumping

In terms of whether the goods are dumped during the entirety of the injury period it is quite obvious from the Advantage Controls Exporter Questionnaire Summary and Exporter Questionnaire Response (EQR) that exporter is aware that its export prices to Australia are less than domestic selling prices in the USA, a position the exporter seeks to justify.

In particular Aquarius Technologies notes the exporter's following comments:

- *“the net price charged for the two controller models in question is lower than the price like models are sold”¹⁵, and*
- *“our price to Waterdos for these units has not increased in the past few years, even though Advantage Controls has increased prices during that period”¹⁶.*

Additionally the exporter advises that there are no physical differences (apart from the option of Australian style plugs) between the goods sold on the domestic market and those exported¹⁷.

Put simply, the above comments are an admission by Advantage Controls that they are aware they are dumping cooling tower water treatment controllers into the Australian market.

Market demand

Due to the homogeneous nature of the goods and like goods, and the availability of a number of models (including locally produced and imported), demand in the Australian cooling tower water treatment controller market is relatively elastic. This demand elasticity, and willingness for consumers to substitute one model of controller, means as the price decreases the quantity demanded increases.

Waterdos has been provided with a significant cost advantage, afforded through the massive dumping rate determined by the Commission. This significant cost advantage of importing controllers at less than the home market value has provided Waterdos with an unfair competitive advantage and allowed it to undercut the selling prices of the Australian Industry.

Price suppression, price depression and price undercutting

The Commission has already determined that the Australian Industry has suffered price suppression and price depression due to the dumped imports¹⁸. Aquarius Technologies further claims that due to the Australian Industry having its prices suppressed, depressed and undercut by the imports from the USA, the injury the Commission has found that it experienced in terms of loss of sales volume, lost market share, reduced assets, reduced revenue, reduced capacity, reduced capacity utilisation and reduced employment have all been as a result of the dumped imports.

In its SEF the Commission notes that *“Price depression occurs when a company, for some reason, lowers its prices”¹⁹*. The Commission have correctly found that Aquarius Technologies' price

¹⁵ EPR 377, Record No. 9, Exporter Questionnaire Summary, Page 1

¹⁶ EPR 377, Record No. 9, Exporter Questionnaire Summary, Page 2

¹⁷ EPR 377, Record No. 12, Exporter Questionnaire, Section C-3

¹⁸ EPR 377, Record No. 22, Statement of Essential Facts, Section 8.7, Page 37

¹⁹ EPR 377, Record No. 22, Statement of Essential Facts, Section 7.6, Page 29

suppression and depression was due to the presence of dumped imports from the USA in the Australian market.

Aquarius Technologies presents that this price suppression and depression is evidence of it competing against the dumped imports from the USA. It submits that were it not for the dumped imports, it would not have had to lower its prices and forgo price increases it would ordinarily have achieved. A company only lowers its prices and forgoes price increases when it is losing, or has already lost sales volume and market share. **The efforts of Aquarius Technologies in lowering its prices and forgoing price increases are evidence of, and directly related to, its lost sales volume and market share to the US imports.**

It can further be argued that the price suppression, depression, lost sales volume, lost market share and other injury factors experienced by Aquarius Technologies are unrelated to normal market competition and have only occurred due to the influence of the dumped imports in the Australian market. The US imports that have been found by the Commission to be heavily dumped, currently hold a substantial market share, and if no remedy is provided to the Australian Industry to counteract this injurious dumping, it is foreseeable that the market share of US imports will continue to increase.

Conclusions on material injury and causal link

Aquarius Technologies is uncertain of the reasons behind the Commission's change of position from the PAD to SEF, specifically regarding Aquarius Technologies' injury in the form of lost sales volume and reduced market share, and the SEF finding that these were not due to the dumped imports. Aquarius Technologies considers the Ministerial Direction on Material Injury 2012²⁰, to provide support for the Commission's earlier finding in the PAD that these forms of injury were due to the dumped imports.

As per the Ministerial Direction on Material Injury 2012²¹, dumping and subsidisation need not be the sole cause of injury to the industry; and it is important to consider the greater impact of injury during periods of economic downturn and reduced rates of growth as an element of injury.

It is also pertinent to note that the Ministerial Direction "*recognises that there may be circumstances where dumping or subsidisation may still result in injury where it has caused the rate of an industry's growth to slow, without causing it to contract, or where an industry suffers a loss of market share in a growing market, without a decline in profits*".

The size of the market share and the magnitude of the dumping margins of US imports should be at the forefront of the Commission's consideration into the causal link between Aquarius Technologies' injury and the dumped imports. Considering the effect that the dumped imports have already had on the Australian market with regards to prices and market share, measures are necessary to prevent further injury to the Australian Industry.

Aquarius Technologies is fearful of the foreseen and imminent future injury that will be caused by dumped imports if anti-dumping relief is not provided in an effective manner.

Recommendations

Aquarius Technologies requests that the Commission recommend to the Minister, that:

²⁰ <http://www.adcommission.gov.au/adsystem/referencematerial/Documents/ACDN2012-24.pdf>

²¹ <http://www.adcommission.gov.au/adsystem/referencematerial/Documents/ACDN2012-24.pdf>

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- the lesser duty rule is unsuitable for this specific case and goods, and
- anti-dumping measures apply based upon ad valorem duty method.

If the Minister seeks to apply the lesser duty rule, Aquarius Technologies requests that the Commission:

- establish an USP for cooling tower water treatment controllers based upon the 2009 selling price of the Ultima model, indexed based on price increases achieved by Aquarius Technologies for its swimming pool controllers; and
- consider the implications on the Australian industry in terms of the effectiveness of the duties in preventing injury for all models, if the lesser duty rule is to be applied and the NIFOB be treated as the operative measure when calculating final duties.

Should the Commission require any further information, particularly with regard to selling prices of the Ultima in 2016/17, please do not hesitate to contact us.

Regards

Aquarius Technologies team