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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

FINAL REPORT NO. 377

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

27 June 2017

Report 377 Cooling tower water treatment controllers - USA

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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 Report 377 (this Report) 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 makes 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)¹ and sets out the findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) bases those recommendations. The Parliamentary Secretary exercises the functions and powers of the Minister under Part XVB of the *Customs Act 1901* (the Act).²

1.2 Recommendation to the Parliamentary Secretary

Based on the findings in this Report, the Commissioner recommends 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 Act 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.

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.

¹ 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.

² Unless otherwise specified all legislative references are to the *Customs Act 1901*.

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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.

1.3.3 Day 60 Status Report and Preliminary Affirmative Determination

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 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 statement of essential facts (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)³, place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary in relation to the application.⁴

The Commissioner placed SEF 377⁵ on the public record on 15 May 2017.

³ 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.

⁴ Subsection 269TDAA(1).

⁵ Available at www.adcommission.gov.au

1.3.5 Final report

This Report and the recommendations in relation to this investigation must be provided to the Parliamentary Secretary on or before 27 June 2017 unless the investigation is terminated earlier or an extension of time to provide the final report is granted.

In making the recommendations in this Report the Commissioner had regard to:⁶

- the application;
- all submissions concerning and subsequent to the publication of ADN 2017/05 to which the Commissioner had regard for the purpose of formulating SEF 377;
- a submission made by the importer, Tanvenamore Holdings Pty Ltd trading as Waterdos Instruments Australasia (Waterdos), on 11 May 2017 that was not considered for the purposes of SEF 377;
- a submission made by the importer, Ecolab Pty Ltd (Ecolab), on 12 May 2017 that was not considered for the purposes of SEF 377;
- SEF 377;
- all submissions made in response to SEF 377 received by the Commissioner on or before 5 June 2017;
- a submission by the importer, Waterdos, in response to the SEF received by the Commission on 7 June 2017; and
- a submission by Aquarius in response to submissions to the SEF received by the Commission on 9 June 2017.

This Report includes a statement of the Commissioner's reasons for the recommendations in this Report.⁷ The statement of the Commissioner's reasons:

- sets out the material findings of fact on which the recommendations are based; and
- provides particulars of the evidence relied on to support those findings.

1.4 Findings and conclusions

A summary of the Commissioner's findings and conclusions 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.

⁶ In accordance with subsection 269TEA(3).

⁷ In accordance with subsection 269TEA(5).

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

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 foregone 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 the period between 1 July 2009 and 30 June 2010.

For all exports from the USA, the NIP is below the normal value. As such the Commission has applied the lesser duty rule in subsection 8(5B) of the *Customs Tariff (Anti-Dumping*

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Act) 1975 (Dumping Duty Act) and calculated the percentage difference between the weighted average NIP and the weighted average export price. This percentage difference is 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: Margins with the application of the lesser duty rule as compared to the dumping margins

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.

1.4.9 Proposed form of measures (Chapter 11)

The Commissioner recommends 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).

1.4.10 Recommendations to the Parliamentary Secretary (Chapter 12)

The Commissioner makes the recommendations contained in chapter 12 of this Report to the Parliamentary Secretary.

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 period⁸ 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.

⁸ 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 SEF 377

SEF 377 set out the facts on which the Commissioner proposed to base the recommendations in this Report to the Parliamentary Secretary. SEF 377 informed interested parties of the facts established to the date SEF 377 was placed on the public record and allowed them to make submissions in response. SEF 377 was placed on the public record on 15 May 2017.

Under subsection 269TDAA(3), 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.

The Commissioner's opinion was that the consideration of the submissions made by Waterdos on 11 May 2017 and by Ecolab on 12 May 2017 would have prevented the timely placement of the SEF on the public record on 15 May 2017. These submissions were not taken into account for the purposes of SEF 377. These submissions were considered along with submissions received in response to SEF 377 in making this Report and recommendations to the Parliamentary Secretary.

2.5 Submissions received from interested parties

The Commission received submissions from interested parties during the course of the investigation.

The Commissioner considered submissions as outlined at 1.3.5 in making this Report and recommendations to the Parliamentary Secretary. The submissions received are listed in **Appendix 1**.

2.6 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. The public record is available for inspection in hard copy by request in Melbourne or online at www.adcommission.gov.au. Documents on the public record should be read in conjunction with this Report.

3 THE GOODS AND LIKE GOODS

3.1 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 PCB or PCBs, 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 did not receive 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 indicates 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 that the products would be produced in similar ways – through the production and/or assembling of electronic

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	components into a case with terminals, control panel and keyboard. Information on production process provided in one exporter questionnaire response supported the similarity of production process between locally produced and imported goods. Accordingly, the Commission is satisfied that locally produced and imported goods would be produced using similar production processes.
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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.

4.4 Submission in response to the SEF

4.4.1 Waterdos

Waterdos stated that it had reviewed the information on the public record several times but could not establish a clear reason as to why Aquarius is considered to be the Australian industry producing like goods.

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Waterdos questioned the Commission's consideration of Aquarius' role in designing the controller components and software and suggested these elements fell outside the common understanding of the meaning of 'manufacture'. It stated that including design in a process of manufacture would allow goods designed in Australia and fully manufactured overseas to be considered to be produced in Australia for the purposes of ant-dumping investigations.

Waterdos went on to say that the time taken and skills and experience required to construct a controller were also processes undertaken by Waterdos and other importers. It reasoned that, therefore, Waterdos and other importers must form part of the Australian industry.

The Commission found that Waterdos imported cooling tower water treatment controllers in a completed state and ready for sale. In some cases, it added accessories to the controllers as required by the customer.

The definition of the goods the subject of Aquarius' application includes controllers 'with or without accessories' in recognition of the form in which controllers are typically sold. The Commission considers that the fundamental component of the goods description is the cooling tower water treatment controller. It is the manufacture of the controller itself that defines the industry producing like goods. The Commission does not consider that the addition of accessories to an already manufactured controller constitutes a process of manufacture of like goods to the goods the subject to the application. For this reason, the Commission is not satisfied that Waterdos or any entity other than Aquarius is part of the Australian industry manufacturing like goods.

The Commission is satisfied that, even if the component design processes undertaken by Aquarius were not considered part of the manufacturing process, the component and controller construction undertaken by Aquarius is, of itself, a substantial process of manufacture.

4.5 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 producer of the goods and does not accept submissions by the importer, Waterdos, that it and other Australian importers of controllers are also Australian producers of cooling tower water treatment controllers.

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

The Commissioner is satisfied that Aquarius carries out in Australia at least one substantial process in the manufacture of the goods and that, therefore, in accordance with subsection 269T(3), the goods are partly manufactured in Australia. In accordance with subsection 269T(2), the goods partly manufactured in Australia may be taken to have been produced in Australia. Pursuant to subsection 269T(4), 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 etc.

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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- 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.

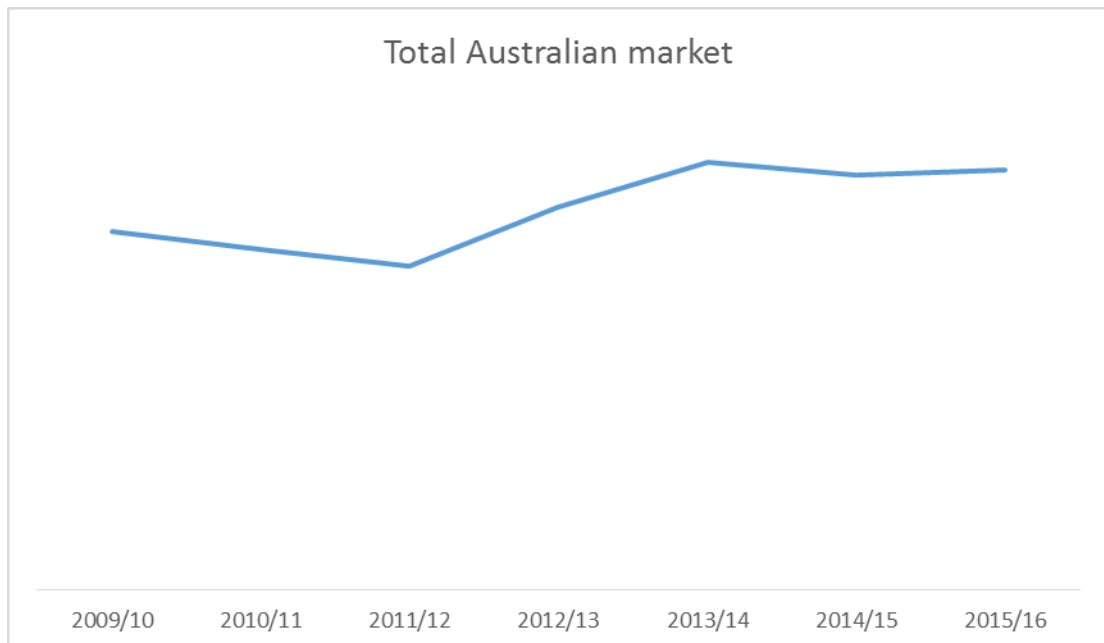


Figure 1: Estimated Australian market for cooling tower water treatment controllers

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).

Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections (other than subsection (5D)) of section 269TAC, the normal value of those goods is such amount as is determined by the Minister under subsection 269TAC(6) having regard to all relevant information.

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 attempted to contact 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

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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).

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.

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. This information was provided outside the legislated period.

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 did not provide 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 were arms length transactions.

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	Deduct domestic selling expenses
Packaging	Deduct additional packaging costs on domestic sales
Credit cost - domestic	Deduct the cost of domestic credit

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Selling expenses - export	Add export selling expenses
Credit cost - export	Add the cost of export credit

Table 5: Summary of adjustments

6.5.6 Submissions

The Commission did not receive any submissions in relation to its calculation of a dumping margin for Advantage Controls.

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 2**.

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

Ecolab submission of 12 May 2017

Cooperation

Ecolab, an Australian importer of cooling tower water treatment controllers, claimed that the finding that it and its supplier of cooling tower water treatment controllers were uncooperative was, in the circumstances, unfair and unreasonable. It claimed that the Commission had failed to confirm whether Part B of Ecolab's importer questionnaire needed to be completed.

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Ecolab provided what it claimed to be a chronology of its dealings with the Commission and stated that it was apparent that Ecolab had been prejudiced by the Commission's conduct and been significantly delayed in providing the information and documents contained in its submission. The company considered that an extension of time should be granted and was more than reasonable given that much of the public material for the investigation accepted that Ecolab was neither the target of the investigation and operates in a different market segment to other industry participants.

During the investigation, the Commission attempted to identify and contact Ecolab's supplier of cooling tower water treatment controllers, both directly and through Ecolab. The most recent advice received from Ecolab on this issue was when, on 13 March 2017, it advised the Commission that it was still following up the matter with its supplier. The Commission was unable to confirm the identity of the exporter of controllers to Ecolab and did not receive any information from the exporter.

The Commission's attempts to obtain importer information from Ecolab within a reasonable timeframe were similarly unsuccessful. On 13 February 2017, the Commission requested that Ecolab supply a list of its imports of cooling tower water treatment controllers as these could not be reliably identified from Australian Border Force import records. On the same day, the Commission emailed the exporter questionnaire to Ecolab, encouraging it to make sure its supplier was aware of the investigation and the need to complete the questionnaire.

On 21 February 2017, the Commission emailed Ecolab asking about the list of imports and reminding it of the legislative timeframes. No response was received until 13 March 2017, when Ecolab provided its import listing, a preliminary step in obtaining the information required by the Commission from an importer. At this point, the Commission advised Ecolab that it had not provided information in a reasonably timely fashion and that the Commission would need to complete the investigation using the best information available. The next contact between the Commission and Ecolab was on 2 May 2017, when Ecolab asked if it was too late to provide information to the Commission.

In preparing this report and recommendations, the Commission has taken into account Ecolab's detailed submission of 12 May 2017. In respect to the issue of dumping, the Commission reiterates that Ecolab's supplier of cooling tower water treatment controllers did not cooperate with the investigation.

Imported from China, not the USA

Ecolab provided a list of componentry it claims were used within cooling tower water treatment controller models it imports. Some components are said to be supplied by sources in China and some in the USA. Ecolab claimed that its entity in China buys componentry from the USA but fabricates the products in China together with Chinese sourced material, before selling the finished proprietary package to Ecolab in Australia.

By virtue of the lack of cooperation outlined above, the Commission has limited knowledge of the logistics of Ecolab's imports of cooling tower water treatment controllers. This investigation relates only to exports of cooling tower water treatment controllers from the USA. The Commission does not have adequate information upon which to form a view on whether Ecolab's imports are goods exported from the USA or

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elsewhere. If measures are imposed, this will be a matter to be resolved in relation to the implementation of the measures.

No dumping

Ecolab claimed that certain confidential information provided in its submission established that the goods it imported were not at dumped prices.

The Commission does not consider that the information provided by Ecolab in its submission of 12 May 2017 establishes that its imports of cooling tower water treatment controllers during the investigation period were at undumped prices. The Commission's analysis of the information provided by Ecolab is at **confidential appendix 3**.

Iwaki America in response to the SEF

Cooperation

Iwaki America submitted that it was unfair and unreasonable to classify it as an uncooperative exporter. The exporter claimed that it had, within the time required, provided extensive responses to the exporter questionnaire. Iwaki America submitted that the PAD notice, issued on 18 April 2017, was the first time it learned about the Commission's uncertainty over model matching, and that it had, in a submission on 17 April 2017, provided further information on its product codes and how models exported to Australia could be compared to models sold on the domestic market of the USA.

Iwaki America's account of its dealing with the Commission omits certain aspects. On 3 April 2017, the Commission responded to Iwaki America's attempt to address the list of deficiencies the Commission had identified with its exporter questionnaire response. The Commission advised the exporter that its response remained deficient as no costs by model had been provided and this information was critical to establishing whether domestic sales were made in the ordinary course of trade and therefore whether they could be used to establish normal values.

The Commission advised Iwaki America that it would not visit the company to verify information provided and would proceed to assess dumping margins according to the best available information. The Commission stated that, in case regard could be had to sales information provided by Iwaki America (ultimately it was decided that this was not possible) it would be useful for Iwaki America to explain its system of product codes.

On 17 April 2017, Iwaki America provided more detail on its product codes but no further information on the cost of production that the Commission had made clear was a critical and ongoing deficiency.

The PAD notice issued on 18 April 2017 stated that a preliminary dumping margin could not be calculated for Iwaki America using Iwaki America's own information due to uncertainty over appropriate model matching (Iwaki America's submission of 17 April 2017 had not been considered at this stage due to its timing) and because the exporter had not provided costs by model that would allow the Commission to determine which sales were in the ordinary course of trade to establish normal values.

Although Iwaki America provided further model matching information in its correspondence of 17 April 2017, it made no attempt to address the deficiency on

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providing costs by model until a submission lodged on 10 May 2017 (noting that the SEF was to be published by 15 May 2017 and exporter questionnaire responses had been due on 1 March 2017). The submission included a transaction by transaction sales listing including a column with the heading 'Item Cost' and an amount against each sale.

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Subsection 7(a) of the Non-cooperation Direction provides that if a response has been received by the Commissioner outside the legislated period, the Commissioner must, when determining whether to have regard to that response, consider if taking the response into account would delay a key aspect of the case. In the Commissioner's opinion, taking the response into account would have delayed a key aspect of the case, the SEF. Subsection 7(b) of the Non-cooperation Direction sets out matters the Commissioner must consider if taking the response into account would delay a key aspect of the case.

The Commissioner therefore considered the following matters:

- 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 was considerable and it was not entirely clear how the data conformed with the Commission's standard data requirements – considerable resources would be required to adequately consider the data, including undertaking processes to verify the data's reliability;
- the party did not provide reasons as to why the submission was late.

After considering the above, the Commissioner did not take into account the information provided by Iwaki America on 10 May 2017 for the purposes of the SEF.

In its response to the SEF, Iwaki America submitted that it had explained that its systems do not keep records which allowed reports for the required data to be produced and it had engaged IT specialists to reprogram its software to enable this data to be produced. It is not clear to the Commission why this process could not have been undertaken at an earlier stage in the investigation.

Noting the above, 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.

No dumping

As required under subsection 269TACAB(1), the Commission calculated export prices and normal values for uncooperative exporters (including Iwaki America) under subsection 269TAB(3) and subsection 269TAC(6) respectively. In such circumstances the export price and normal value are such amounts as are determined by the Minister having regard to all relevant information.

Iwaki America submitted that the Commission and the Minister are obliged to have regard to the substantial, relevant, available information that it believed established Advantage

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Controls' data should not be adopted for Iwaki America and that showed the exporter's own position.

Iwaki America claimed that relevant information established that there were material differences between itself and Advantage Controls that meant Advantage Controls' data was unlikely to provide an accurate or fair approximation of Iwaki America's position: This information was said to include:

- Iwaki America and Advantage Controls' products being likely to be used in different market sectors;
- Iwaki America and Advantage Controls' products having different sales channels in Australia; and
- Iwaki America being a subsidiary of a publicly listed company in Japan, while Advantage Controls was a small family owned and operated business.

Iwaki America further submitted that the relevant information established that:

- it 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;
- the comparison of comparable sales establishes that goods are sold at the same prices, not at dumped prices;
- cost information (provided on 10 May 2017) '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'.

Iwaki America stated that it appeared the Commissioner had taken the approach that all of Iwaki America's sales in the USA should be regarded as not being in the ordinary course of trade unless proven with sale by sale cost data that each sale is not loss-making. It submitted that this was not a reasonable and logical approach in the light of the data on sales, costs and profitability that Iwaki America had provided. It claimed that the information provided was 'strongly indicative of profitable sales'.

Iwaki America stated that section 269TAAD of the Act required the Minister to form a positive belief that goods are being sold below cost. It claimed that the Commission had fallen short of this requirement by disregarding the exporter's domestic sales data and assuming that the sales were sold below cost without any information on which to form this belief.

The Commission has made no finding in respect of whether Iwaki America's domestic sales in the investigation period were in the ordinary course of trade. The Commission did not have sufficient information to apply the ordinary course of trade test in section 269TAAD.

Iwaki America claimed that the data provided on 10 May 2017 was not extensive, was provided in a manner which could be easily understood and analysed, and was readily verifiable.

The Commission is of the view that there was insufficient time to consider and verify the reliability of the information provided by Iwaki America on 10 May 2017 without delaying a key aspect of the case, the making of recommendations to the Parliamentary Secretary.

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In addition, the Commission considers that Iwaki America had sufficient opportunity for its circumstances to be taken into account for the purposes of the investigation and was aware from early April 2017 that the Commission considered that it had not rectified the identified deficiencies. For these reasons, notwithstanding that Iwaki America has been found to be an uncooperative exporter, the Commission considers that the information provided by Iwaki America should be disregarded as unreliable in accordance with subsections 269TAB(4) and 269TAC(7) for the purposes of determining Iwaki America's export price and normal value.

The Commission considers that, having regard to all relevant information, the information provided by a cooperating exporter, Advantage Controls, is the best available information on which to establish export prices and normal values. The Advantage Controls information has allowed the Commission to establish export prices using the price paid or payable for the goods by the importer from the exporter in arms' length transactions. The Commission has been able to establish normal values for Advantage Controls using the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms' length transactions. The Commission considers that this information is the best available information upon which to establish export prices and normal values for the uncooperative exporters.

6.6.5 Dumping Margin

The Commission calculated the dumping margin for uncooperative and all other exporters 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 4**.

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 chapter 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 chapter of this Report considers whether the dumping has caused or is causing material injury to an Australian industry producing like goods.

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 from the USA entered the Australian market in significant volumes in 2010/11.

The Commission is unable to make any determination that dumping has occurred by reference to goods exported to Australia before the start of the investigation period⁹ (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 2016¹⁰.

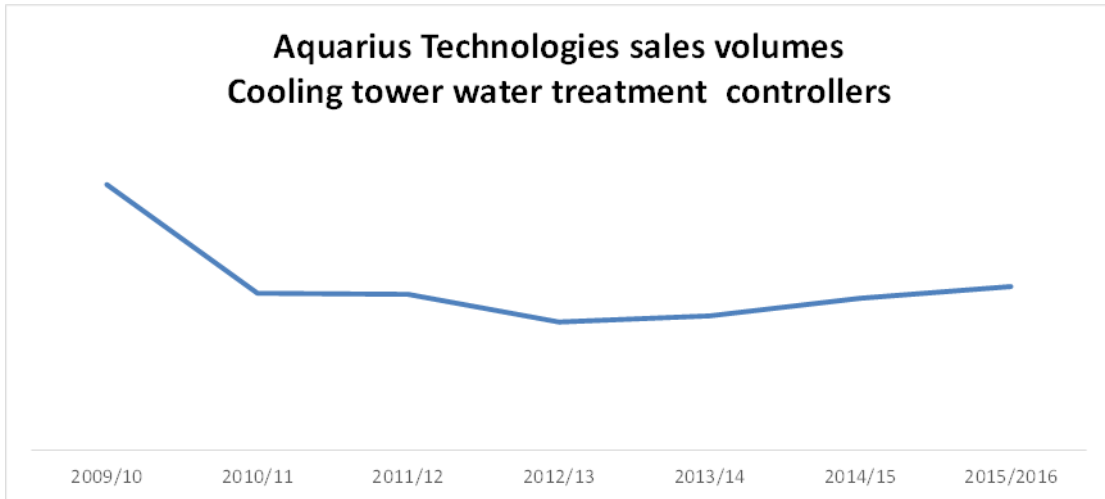


Figure 1 – Aquarius' sales volumes

Figure 1 shows that Aquarius' domestic sales fell significantly in the period 2009/10¹¹ 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, being 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.

⁹ Subsection 269T(2AE) refers

¹⁰ Aquarius provided information from 1 July 2009 as it claims imports from the USA entered the Australian market in significant volumes in 2010/11.

¹¹ All references to financial years are to years ending 30 June.

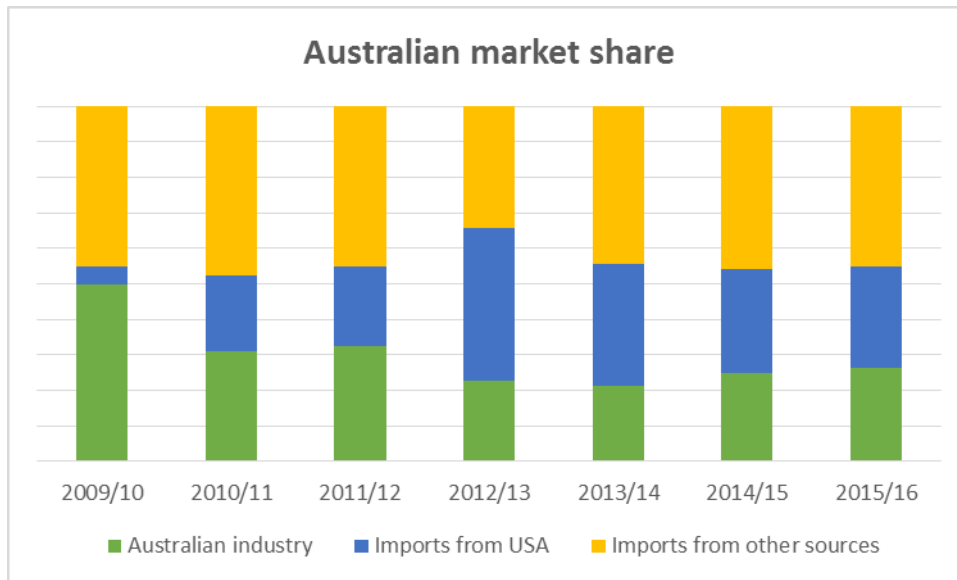


Figure 2 – Australian market shares – cooling tower water treatment controllers

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 5**.

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 annual 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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Beyond the broad categories, 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 its new ‘Ultima’ brand controller.

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

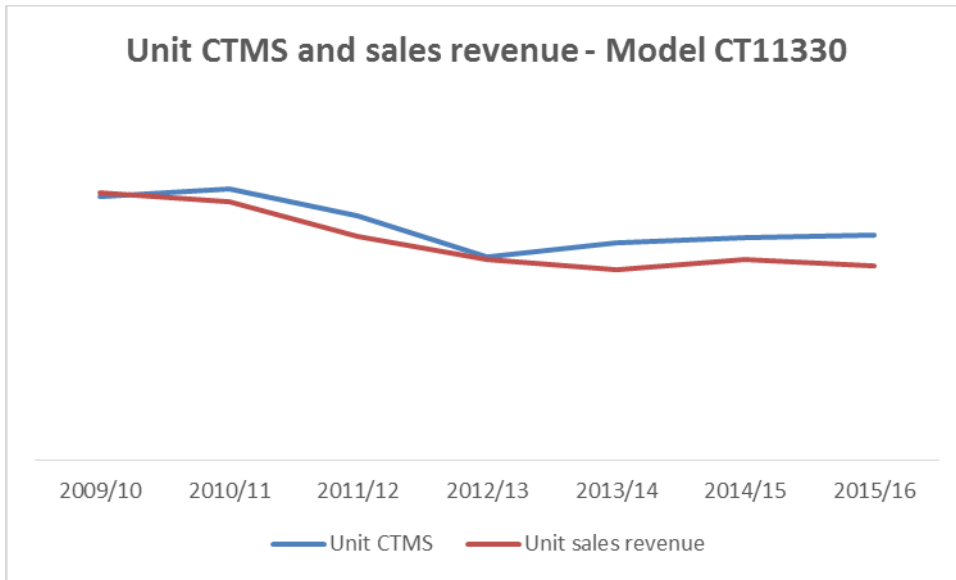


Figure 3: Unit CTMS and sales revenue – Model CT11330

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.

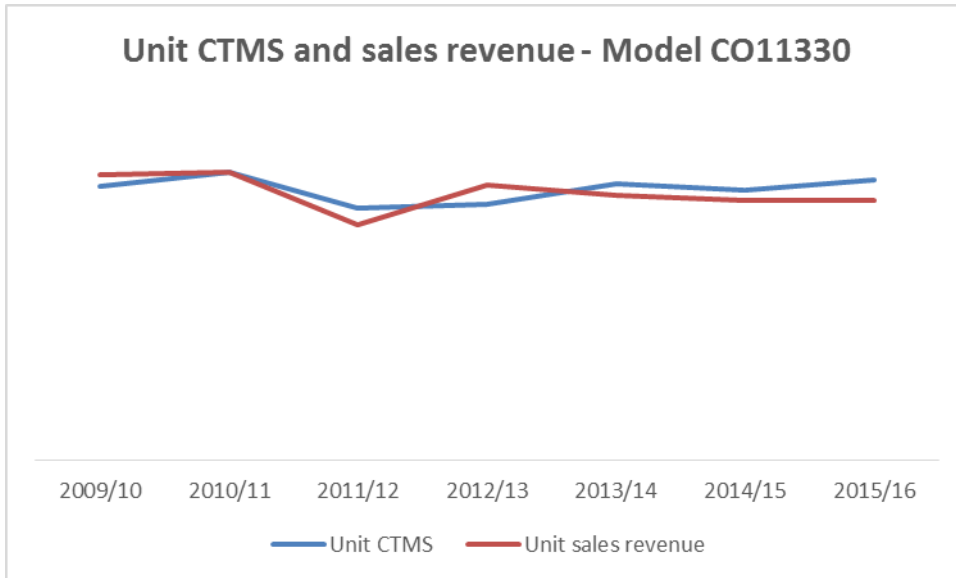


Figure 4: Unit CTMS and sales revenue – Model CO11330

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.

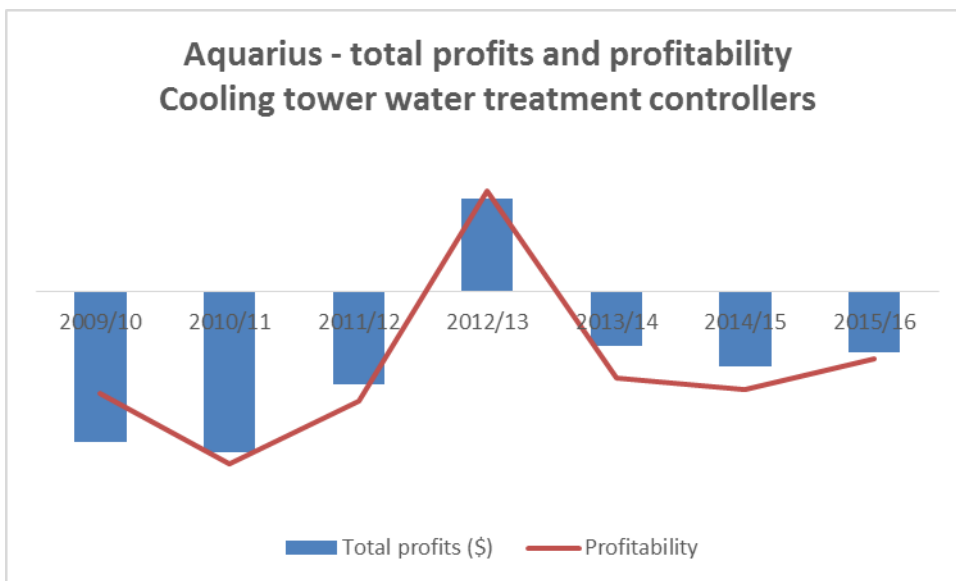


Figure 5: Aquarius total profits and profitability

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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 controllers¹²) 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 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 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 depressed and 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.

¹² 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 chapter of this report considers whether the dumping has caused or is causing material injury to an Australian industry producing like 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, however, 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*¹³.

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, which purchase cooling tower water treatment controllers. Integra Water Pty Ltd (Integra) agreed to a meeting with the Commission 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.

¹³ *Ministerial Direction on Material Injury 2012*, 27 April 2012, available on the Commission's website.

8.3 Assessment of causal link

8.3.1 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 chapter 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.

8.3.2 Volume effects

Aquarius lost sales volumes in the years immediately following 2009/10 when imports of cooling tower water treatment controllers from the USA 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 in the investigation period.

8.3.3 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 during 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 make a determination that imports prior to the investigation period were at dumped prices.

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As discussed in chapter 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 undertook 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 being limited to one model in the investigation period, it had, prior to the investigation period, reduced prices on some models to regain market share.

The Commission considers the proportion of sales of the undercutting model and the level of undercutting are significant. Although the price undercutting identified was limited to one model, the Commission considers this has the capacity to cause injury as customers are attracted to a low priced product, influencing their decision when selecting a supplier of cooling tower water treatment controllers.

The Commission's price undercutting analysis is at **confidential appendix 6**.

Aquarius provided the Commission with correspondence from a major customer, received by Aquarius in 2016¹⁴, where the customer seeks reduced pricing on certain accessories to compete with low priced cooling tower water treatment controllers from the USA.

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

¹⁴ Aquarius application – confidential attachment A-9-4

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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 positive evidence to link the price depression, price suppression and profits foregone experienced by the industry in the investigation period with the dumping of cooling tower water treatment controllers from the USA, which held almost a third of the Australian market in the investigation period.

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. The Ultima brand controller are like goods to the dumped imports and included in the Commission's assessment of injury. However, the greater degree of product differentiation has allowed the industry to achieve greater returns than on the Australian made models more closely aligned to the dumped imports.

8.4 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.

8.4.1 Global Financial Crisis

Aquarius stated that the global financial crisis (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.

8.4.2 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.

8.4.3 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

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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 and making the recommendations set out in this Report.

8.4.4 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 this 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.

8.4.5 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 refuted this claim stating that, over the injury analysis period, its increasing quality and services had reduced warranty expenses to negligible levels at the same time as warranty periods have increased.

8.4.6 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.

8.5 Submissions¹⁵

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 section 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. The Commissioner's opinion was that the consideration of the submissions made by Waterdos on 11 May 2017 and Ecolab on 12 May 2017 would have prevented the timely placement of the SEF on the public record by 15 May 2017 and the submissions were not taken into account for the purposes of the SEF. These submissions have been taken into account, along with submissions in response to the SEF, in formulating this Report and recommendations for the Parliamentary Secretary.

8.5.1 Waterdos submission of 11 May 2017¹⁶

Waterdos submitted that there was no direct contestability of sales of cooling tower water treatment controllers in the form they are imported. It stated that the importer incorporates imported controllers into cooling tower water treatment systems before sale and that the controller represents only a proportion of the system sold.

The Commission does not agree that, because Waterdos might in some cases supply controllers in Australia with accessories sourced separately, it does not compete with the Australian cooling tower water treatment controller industry and is incapable of causing injury to the industry with dumped goods. The legislation clearly contemplates that imported goods the subject of an anti-dumping investigation might be modified or further processed before sale in Australia. For example, section 269TAA allows the Minister a discretion to treat imported goods as not being sold at arms' length where he or she is satisfied that the importer sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss. Such a provision is inconsistent with Waterdos' view that the dumped goods cannot cause injury because they are not, in some cases, sold in the form in which they are imported.

Waterdos also stated that it did not believe there had been any undercutting and that 'there must be some flaws in the product-matching adopted by the Commission in undertaking its undercutting analysis'.

¹⁵ Includes submissions by Waterdos and Ecolab not taken into account for the purposes of the SEF

¹⁶ Submissions made by Waterdos relevant to the PAD that are not relevant to the SEF are not addressed in this Report.

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The Commission considers that its undercutting analysis accurately compares appropriate models of cooling tower water treatment controllers sold by the Waterdos and the Australian industry.

Waterdos claimed that Aquarius' introduction of its new generation of Ultima brand controllers in 2015/16 would have unfavourably impacted on the price achieved for the older models.

The Ultima brand controller introduced by Aquarius in 2015/16 has features that would appeal to some customers. However, sales of CT1 and CO1 controllers dominated Aquarius' sales in the investigation period and the Commission is not aware of any evidence upon which to conclude that the price effects observed on these models were attributable to Aquarius introduction of the Ultima brand of controllers.

Waterdos also claimed that imports of controllers from a source other than the USA were the lowest priced in the Australian market and would therefore be the major cause of any price injury that might have been found to have occurred.

The importer provided information it claimed demonstrated that imports of cooling tower water treatment controllers from a source other than the USA were sold in Australia at prices lower than its own controllers. The Commission's analysis of the information provided in confidence is at **Confidential Appendix 7**. In summary, the Commission does not consider that the information supports a conclusion that any injury suffered by the Australian industry was caused by imports of cooling tower water treatment controllers from a source other than the USA.

8.5.2 Ecolab submission of 12 May 2017

Ecolab submitted that it did not import 'like-goods with those under investigation'. It said that Ecolab imports its units, comprised of proprietary technology and chemicals, as part of a rental package into the Australian market. Ecolab said that, in this regard, its business model and approach to the Australian market was distinct from other industry participants.

Ecolab stated that the key differences between its imports and other cooling tower water treatment controllers offered for sale in the Australian market were:

- Ecolab delivers a complete water treatment management package with patented technology;
- Ecolab's controllers are monitored full time by dedicated staff to ensure any system abnormalities are addressed;
- the chemistry used with the system is unique to improve interaction with the water controller;
- the systems are rented as part of an overall package and maintained by Ecolab staff;
- other cooling tower water treatment controllers available in the Australian market do not provide most of the capabilities that Ecolab's units offer.

Ecolab submitted that it did not operate in direct competition with Aquarius and had a limited share of the Australian market for cooling tower water treatment controllers.

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On the information available, the Commission considers that the goods imported by Ecolab are cooling tower water treatment controllers and are goods the subject of the application for anti-dumping measures. As explained in chapter 3 of this report, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application.

Ecolab claims that it has not caused injury to the Australian industry due to its small market share and different business model. The Commission has addressed the question of whether dumped goods as a whole have caused material injury to the Australian industry. The Commission does not address this question in relation to each importer or exporter.

8.5.3 Aquarius' submission in response to Waterdos' submission of 11 May 2017

In a submission dated 2 June 2017, Aquarius claimed that locally-produced and imported cooling tower water treatment controllers are homogenous products that compete directly on price. It claimed that the homogenous nature of the goods meant that their demand was relatively price elastic and the dumping had the effect of making the prices of controllers imported from the USA cheaper than would otherwise be the case. Aquarius claimed that, in a price elastic market, the demand for cooling tower water treatment controllers imported from the USA at dumped prices is higher than would be the case in the absence of the dumping.

Aquarius took issue with Waterdos' claim that the purpose of the injury period was not to establish the impact of imports on the Australian industry over that period. Aquarius stated that just as the Commission was not able to say that all imports since 2010/11 were dumped, it was also unable to say that they were not dumped. It claimed that it defied 'logic and economics that imports from the USA would increase in market share prior to the investigation period, at undumped prices, and then demand (and market share) remain stable in the investigation period at lower, massively dumped prices'.

It stated that the significant increase in sales volume and market share of USA imports over the injury analysis period was only logically explained by the fact that these imports have been dumped over the entire injury analysis period.

Aquarius claimed that the impact on its business of the merger of Nalco and Ecolab in 2011/12 was smaller than estimated by Waterdos and that it had taken this factor into account in estimating changes in the Australian market.

Aquarius disputed Waterdos' claim that it, Waterdos and other market participants in Australia did not sell cooling tower water treatment controllers in competition with each other. It stated that supplying cooling tower water treatment controllers with associated components such as a manifold, pumps etc was not something new and was done by almost all controller suppliers into the Australian market.

As noted above, the Commission is unable to make a determination that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.

8.5.4 Waterdos submission in response to the SEF

Waterdos repeated the claim made in its earlier submission that there is 'no direct contestability with regard to cooling tower water treatment controllers as imported'. It stated that the goods upon which the Commission's price injury analysis had been undertaken included additional components and represented goods subject to 'completely different cost and pricing considerations than are the goods under consideration'.

It stated that the nexus between price effects observed in relation to the goods including additional components is weak at best. Waterdos claimed that this analysis did not go to answering the question of whether the Australian industry producing like goods has been caused or has even suffered material injury.

As stated at 8.9.1 above, the Commission does not accept that there is no direct contestability between the Australian industry and cooling tower water treatment controllers from the USA.

Waterdos claimed that the Commission's price suppression/depression analysis based on two of Aquarius' highest selling models was inadequate and the law required an analysis of all the sales of the Australian industry.

In the Commission's view, its approach to testing the applicant's claims that it has suffered material injury caused by the dumped imports is reasonable and appropriate, taking into account the circumstances of the case, where many variations of like goods are sold by the Australian industry.

Waterdos noted that Aquarius profits and profitability improved in the investigation period compared to the previous year and claimed this demonstrated Aquarius had not suffered material injury caused by dumping. It claimed this improvement in overall profits and profitability necessarily meant that Aquarius' prices could not be suppressed or depressed.

Waterdos claimed that the charts included in the SEF were not consistent with the associated commentary and that the prices of both selected models had increased in 2015/16 over 2014/15. The Commission has confirmed that the charts and commentary are correct and consistent and that prices did not increase.

Waterdos claimed that it was gravely concerned about undercutting analysis in the SEF. It claimed that it did not actively seek to undercut Aquarius' prices and considered any finding to the contrary to be factually flawed.

The company submitted that the undercutting analysis compared the price of systems including the goods, and provided no positive evidence that the goods under consideration have undercut the prices of Australian like goods. It contested the Commission's view that such an analysis was informative as the imported controller represented a significant proportion of the value the goods in the form they are sold in Australia. Waterdos queried whether controllers represented a significant proportion of the value and said that the price of the system would be dependent to a significant degree on factors beyond the price of the controller. It said, therefore, the price undercutting analysis was of little evidentiary value for determining the effect of the goods under consideration on the sales of like goods sold by Aquarius.

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The Commission maintains that the price undercutting analysis is relevant and meaningful, notwithstanding that some comparisons include goods to which Waterdos has added other components. The cooling tower water treatment controller represents a significant proportion of the value of such goods, and the Commission notes that, at undumped prices, the proportion of the value would be significantly higher.

Waterdos submitted that its sales to Integra should be excluded from any undercutting analysis as Integra had informed the Commission that it had no confidence in Aquarius due to factors other than price.

The Commission considers that Waterdos' sales to Integra should not be excluded from the price undercutting analysis. Regardless of whether Integra itself would purchase cooling water tower controllers from the Australian industry, Integra competes with customers of the Australian industry and, therefore, the undercutting analysis provides an insight into the capacity of the dumped goods to exert downward pressure on like goods sold by the Australian industry.

Waterdos claimed that the finding of undercutting by Waterdos on one model must be incorrect and provided evidence to support its claim that it had not undercut selling prices of Aquarius' CT11330 and CO11330 models. Waterdos reasoned that the undercutting must be one of these models as these were the sample models used by the Commission in its assessment of price effects. Waterdos provided its own analysis to show that it had not undercut the prices with models equivalent to Aquarius' CT11330 and CO11330 models.

For commercial confidentiality reasons, the Commission has not disclosed the Waterdos model assessed as undercutting the prices of the Australian industry.

8.5.5 Aquarius' submission in response to the SEF

Aquarius submitted that it was quite obvious that the Australian industry's market share had dropped significantly between 2009/10 and 2015/16, while imports from the USA increased significantly and imports from a source other than the USA had remained fairly constant.

Aquarius stated that it was at a loss to understand how the Commission could be reasonably confident that the Australian industry's significant drop in market share in the injury analysis period could not be attributed to the dumped exports from the USA. It believed that, without the significant cost advantage the large dumping margin provided to the major importer of the goods from the USA, the Australian industry's sales volume and market share would be significantly higher.

The company stated that although the Commission was not examining and determining dumping in the period prior to the investigation period, given there had been strong volumes of imports from the USA since 2010/11 and there was dumping in the investigation period, exports prior to the investigation period were 'not un-dumped' and affected selling prices throughout the injury analysis period.

Aquarius said that it defied logic and economics that imports from the USA would increase in market share prior to the investigation period at undumped prices, and then demand and market share remain stable in the investigation period at lower, dumped

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prices. It stated that the increase in sales volume and market share of the imports from the USA over the injury analysis period was 'only logically explained by the fact that the imports have been dumped over the entire injury analysis period, of which the investigation period is only anticipated to be a snapshot of'.

Aquarius submitted that, in terms of whether the goods were dumped during the entire injury analysis period, comments made by the exporter, Advantage Controls, showed that the exporter was aware it was dumping cooling tower water treatment controllers on the Australian market.

Aquarius repeated its submission about the homogenous nature of the goods and the elasticity of demand included in its submission in response to Waterdos' representations of 11 May 2017.

Aquarius referred to the Ministerial Direction on Material Injury 2012 (Ministerial Direction) and its clarification that dumping need not be the sole cause of injury to the Australian industry and how it was important to consider the greater impact of injury during periods of economic downturn and reduced rates of growth as an element of injury.

The company also noted 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.

Aquarius submitted that the size of the market share of USA imports and the magnitude of the dumping margins of the USA imports should be at the forefront of the Commission's consideration of a causal link between injury suffered by Aquarius and the dumped imports. The Commission agrees that these are important relevant factors to be considered in determining if dumping has caused material injury to the Australian industry, however noting that the Commission is unable to make a determination in respect of dumping prior to the investigation period.

8.5.6 Iwaki America

Iwaki America stated that the Commissioner's preliminary assessment of material injury for the purposes of the PAD was based substantially upon an observation that the Australian industry's market share was lower in 2010/11 than it was in 2009/10, and that no further loss of market share occurred between 2010/11 and 2015/16. The Commission notes that, in the SEF and in this report, it made no finding of loss of market share caused by the dumped imports.

Iwaki America noted that there had been a slight increase in the Australian industry's market share in 2015/16 and that the share of imports from the USA was constant or slightly less. It also noted that there was a small upward trend in the Australian industry's profitability across the injury analysis period. It claimed that it was difficult to see how a comparison of the Australian industry in the investigation period with its immediate past provided a reasonable basis to conclude that there had been material injury.

The exporter sought to emphasise that its small share of the Australian market was mostly in the industrial sector and not in direct competition with the Australian industry, the sales of which were mostly in the commercial sector.

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The Commission has addressed the question of whether dumped goods as a whole have caused material injury to the Australian industry. The Commission does not address this question in relation to each exporter of dumped goods.

8.5.7 United States Department of Commerce

The United States Department of Commerce submitted that 'an affirmative determination in this investigation would suffer from numerous logical and factual deficiencies, which would appear to render such a determination inconsistent with Australia's obligations under the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994'.

The United States Department of Commerce submitted that the Commission would need to:

- identify how the dumped imports can be the cause of any material injury to the domestic industry when lost sales volume and market share could not be attributed to imports of cooling tower water treatment controllers from the USA at dumped prices, noting the market share of imports from the USA only increased in the initial three years of the injury analysis period;
- determine if there have been significant price effects caused by the subject goods and explain why the findings for the undercutting analysis were based on only one model when there was no undercutting for other models; and why prices for the subject goods and not (what it claimed to be) lower prices of controllers imported from another source have had significant effects on domestic prices;
- demonstrate a causal relationship between the subject imports and any injury to the domestic industry in the challenging environment of a lack of correlation between imports from the USA and Aquarius' market share, sales volumes, total profits and profitability;
- ensure that the Commission is not attributing any injury from other known factors (such as increases in imports from a non-subject country or a statement by a large customer that it had no confidence in the ability of the Australian industry to provide support and after sales service for its controllers).

The Commission understands that a determination that dumping is causing or has caused material injury to a domestic industry must be based on positive evidence. However, the Commission also notes that an examination of the impact of dumped imports on the domestic industry must include an evaluation of all relevant economic factors and that no single factor is dispositive. The Commission does not consider that the lack of a finding of a causal link between dumping in the investigation period and sales volume and market share lost some years earlier precludes a positive finding.

In the Commission's view, the Australian industry has suffered significant price effects caused by the dumped goods. The Commission considers the proportion of sales of the undercutting model and the level of undercutting are significant. Although the price undercutting identified was restricted to one model, the Commission considers this has the capacity to cause injury as customers are attracted to a low priced product, influencing their decision when selecting a supplier of cooling tower water treatment controllers.

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The Commission has not found, on the facts available, that the prices of imports from a source other than the USA are lower than the prices of imports from the USA and/or prices of the Australian industry. The Commission found positive evidence of price undercutting by the dumped goods from the USA and positive evidence of these goods being used to depress and suppress prices of the Australian industry.

As discussed at 8.8 of this Report, the Commission has not attributed injury from other factors to the dumped goods.

8.5.8 Further submission by Aquarius dated 9 June 2017

Aquarius submitted that 2009/10 was an appropriate starting point for the injury analysis period as, up until that time, the Australian market for cooling tower water treatment controllers was relatively stable and, in 2010/11, the Australian industry experienced a sudden and substantial decline in sales volume coinciding with Waterdos substantially increasing its imports of controllers from the USA. Aquarius stated that controller purchase information provided by Integra in its email of 30 May 2017 evidenced the substantial increase in Waterdos' sales volumes between 2008/09 and 2010/11.

Aquarius provided information on its sales volumes of cooling tower water treatment controllers in 2008/09 to show that it was not less than in 2009/10 and that 2009/10 was not an unusually strong year.

The company disputed Waterdos' claim that its controllers do not compete in the same market as its own. Aquarius pointed to information provided by Integra showing a shift in purchases by its NSW office from Aquarius to CWC and then from CWC to Waterdos. Aquarius claimed that it was unaware of any price cuts by CWC that had induced Integra to purchase from CWC and suggested that the move was more to do with CWC being locally based rather than the quality of service.

Aquarius provided information showing that in 2007/08 and 2008/09, Integra's Victoria and Queensland offices had continued to purchase from Aquarius. It claimed that these sales had quickly dropped away after Waterdos started importing from Advantage Controls.

Aquarius noted that some interested parties had made claims about its slight increase in market share between 2013/14 and 2015/16. It stated that characterising this slight increase as a lack of injury ignored the 'significant and deeply unprofitable price reductions' made by Aquarius to achieve these slight gains after the significant losses in market share experienced from the start to the end of the injury analysis period.

Aquarius submitted that Waterdos' criticism of the Commission's price undercutting analysis extending to cooling tower water treatment controllers with accessories ignored the definition of the goods which refers to controllers with or without accessories. It described as 'grasping at straws' Waterdos' assertion that the Commission had not analysed the controller proportion of the packages in which they are sometimes sold. Aquarius criticised Waterdos for, on the one hand, claiming that the Commission's undercutting analysis was flawed due to incorrect comparisons but not revealing on the public record the models it proposed be compared.

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Aquarius stated that the claim by Integra that it had no confidence in the ability of the Australian industry to provide support and after sales service for its controllers was unsupported and should be rejected outright. It claimed that after Integra's NSW operations switched its purchases from Aquarius to CWC, Integra's Victoria and Queensland office continued to purchase from Aquarius, refuting claims that Integra had no confidence in the Australian industry's support and aftersales service. In support of its claim, Aquarius provided sales information to Integra's various offices for the period 2007/08 to 2010/11.

Aquarius noted the lack of comment by interested parties on the magnitude of the dumping margins and the relevance of these margins to the Minister determining whether the dumping has caused material injury to the Australian industry. Aquarius submitted that the magnitude of the dumping margins provided the importer with a significant cost advantage that had resulted in dumped imports supplying more than 25 per cent of the Australian market in the investigation period.

As noted elsewhere in this Report, the Commission has focussed on injury to the Australian industry that can be linked to dumped imports in the investigation period. The Commission has not been able to establish a causal link between volume and price injury suffered by the industry in the early part of the injury analysis period and the dumped imports in 2015/16. The Commission agrees with Aquarius' submissions that there is no evidence to support Waterdos' claims that any price injury suffered by the Australian industry was caused by imports from a source other than the USA or dissatisfaction with the Australian industry's service.

8.6 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 not been persuaded by submissions by the major importer that the dumped imports do not compete with sales by the Australian industry. Even if accessories are sometimes added before sale, the imports compete directly with like goods sold by the Australian industry.

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

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responsible for depressing or suppressing prices in the Australian market. The Commission notes that the Ministerial Direction provides 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 finds 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 subsection 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 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 Assessment of the 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 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 Dumping Duty Act requires, other than in certain circumstances, 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 subsection 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.

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Having calculated the USP, the Commission then calculates a NIP at the free on board (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(5BAAA) 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 before the SEF

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.

10.3.3 Submission in response to the SEF

Aquarius

Aquarius stated that it opposed the application of the lesser duty rule, noting that there was no legal requirement for the Minister to apply the lesser duty rule. Aquarius submitted that as only a single set of anti-dumping measures can be set for the goods, a NIP based on an average USP for all models would not represent a price necessary to prevent injury to models whose price sits above the average price.

Aquarius referred to the fact that the Minister is not required to have regard to the lesser duty rule where the Australian industry consists of two small-medium enterprises. Aquarius asked that the same approach be extended to an industry consisting of a single small-medium enterprise.

Aquarius repeated its previous submission that, if the lesser duty rule was to be applied, the USP should be based on prices at a time unaffected by dumping, indexed for price increases. Aquarius referred to the Dumping and Subsidy Manual, which states that

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'[W]here the USP is older than five years, the Commission will also consider the updating of old prices by indexing or other means where reasonable'¹⁷.

Aquarius proposed that its 2009/10 prices be indexed by reference to price movements in its sales of swimming pool controllers, claiming these represented a similar general category of goods. Aquarius noted that swimming pool controller price increases between September 2009 and June 2014 and between September 2009 and June 2016 were not dissimilar to Consumer Price Index (CPI) increases over the same periods. Aquarius claimed the change in purchasing power over the period as reflected in the CPI movements supported its claim for the selling prices to be indexed.

Aquarius claimed that using the same general category of goods (swimming pool controllers) to index cooling tower water treatment controllers was supported by the concept of the same general category of goods being an option for determining the administrative, selling and general costs and profit when constructing normal values.

Aquarius stated that using the selling prices in Australia of imports from a source other than the USA was inappropriate as the Australian market had been affected by dumped imports since 2010.

Aquarius submitted that if the lesser duty rule is applied, the USP should be calculated using one of the following methods (in order of preference):

- selling prices of its Ultima brand model in 2014/15, indexed by price increases achieved on its swimming pool controllers;
- the weighted average selling prices of its CT1, CO1 and Ultima series cooling tower water treatment controllers, with its CT1 and CO1 series prices for 2009/10 being indexed by price increases achieved on its swimming pool controllers;
- Ultima brand controller prices indexed to take into account the fact that the Ultima's release price was for a market affected by dumping; and
- weighting prices by the volumes sold by Aquarius in 2016/17 to take into account that since 2014/15 there has been a significant shift in consumer preference from simple timer controllers (CT1 series) to automatic controllers (CO1 and Ultima series).

10.4 The Commission's assessment

Aquarius opposed the application of the lesser duty rule arguing that a NIP based on an average USP for all models would not represent a price necessary to prevent injury to models whose price sits above the average price.

The Commission is recommending that anti-dumping measures be imposed using the ad valorem duty method, calculated according to the percentage difference between the weighted average export price and the weighted average NIP. Based on the pattern of importations observed over the investigation period, the application of this ad valorem rate to all imports is designed to remove injury to the Australian industry. The Commission

¹⁷ Dumping and Subsidy Manual p134

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does not consider that the anti-dumping duties being reduced to a single rate provides any basis on which to apply the full dumping margin, which would also be a single rate.

Aquarius also submitted that as the Minister is not required to have regard to the lesser duty rule where the Australian industry consists of two small-medium enterprises, the same approach should be extended to an industry consisting of a single small-medium enterprise.

The Commission does not consider that there are reasons in the present case to extend the non-application of the lesser duty rule to circumstances outside those specified by the Minister.

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 and the CPI 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. The Commission also notes that Aquarius' average costs of producing and selling cooling tower water treatment controllers are were not significantly different in 2015/16 to those incurred in 2009/10. 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.

The Commission does not agree with Aquarius' submission that the USP should be based, either in whole or in part, 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.

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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.

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 6: Margins with the application of the lesser duty rule as compared to the dumping margins
The Commission's NIP calculations are at **confidential appendix 8**.

11 PROPOSED MEASURES

11.1 Finding

The Commissioner recommends 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).¹⁸

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.

¹⁸ 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 RECOMMENDATIONS

The Commissioner is satisfied that:

- dumping of cooling tower water treatment controllers exported to Australia from the USA have caused material injury to the Australian industry producing like goods.

The Commissioner recommends the Parliamentary Secretary impose:

- dumping duties on cooling tower water treatment controllers exported to Australia from the USA.

The Commissioner recommends the Parliamentary Secretary be satisfied:

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of cooling tower water treatment controllers exported to Australia from the USA by uncooperative and all other exporters to be ascertained under subsection 269TAB(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of cooling tower water treatment controllers exported to Australia from the USA to be ascertained under the preceding provisions of section 269TAC (other than subsection 269TAC(5D)) for uncooperative and all other exporters;
- in accordance with subsection 269TG(1) the amount of the export price of cooling tower water treatment controllers exported to Australia from the USA is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods would have been caused if security under section 42 had not been taken;
- in accordance with subsection 269TG(2) the amount of the export price of cooling tower water treatment controllers that has already been exported to Australia from the USA is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia from the USA in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused;

The Commissioner recommends the Parliamentary Secretary determine:

- in accordance with subsection 269TAB(1)(a), that the export prices of cooling tower water treatment controllers exported to Australia from the USA by Advantage Controls is the price paid or payable for the goods by the importer, other than any other matter arising after exportation, as set out in Confidential Appendix 2;
- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price for the category of 'uncooperative and all other' exporters is as set out in Confidential Appendix 4;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in the USA in sales that are arms length transactions by Advantage Controls, that the normal values for exported models of cooling tower water treatment controllers exported to Australia from the USA by Advantage Controls is the price paid or payable for like goods as set out in Confidential Appendix 2;

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- as adjusted in accordance with subsection 269TAC(8), in order to ensure that the matters set out in subsection 269TAC(8) would not affect the comparison of normal values and export prices, as set out in Confidential Appendix 4;
- in accordance with subsection 269TAC(6), having regard to all relevant information, that the normal values for the category of 'uncooperative and all other' exporters is as set out in Confidential Appendix 4;
- having applied subsection 269TACB(2)(a) and in accordance with subsections 269TACB(1) and (4):
 - that cooling tower water treatment controllers exported to Australia from the USA are taken to have been dumped over the investigation period; and
 - the dumping margins for exporters in respect of those goods and that period is the difference between the weighted average of export prices of those goods over that period and the weighted average of corresponding normal values over that period, as set out in Confidential Appendices 2 and 4;
- in accordance with subsection 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of cooling tower water treatment controllers exported to Australia from the USA is an amount which will be worked out in accordance with the *ad valorem* duty method pursuant to subsection 5(7) of the *Customs Tariff (Anti- Dumping) Regulation 2013*.

The Commissioner recommends the Parliamentary Secretary declare:

- in accordance with subsection 269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to (subject to section 269TN):
 - the goods exported by all exporters from the USA to Australia; and
 - like goods that were exported to Australia by all exporters from the USA after the Commissioner made a PAD under section 269TD on 18 April 2017 but before publication of the notice;
- in accordance with subsection 269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from the USA, after the date of publication of the notice.

The Commissioner recommends that the Parliamentary Secretary have regard to:

- in accordance with subsection 8(5B) of the Dumping Duty Act, in relation to cooling tower water treatment controllers exported to Australia from the USA, the desirability of specifying a method such that the sum of amounts outlined in subsection 8(5B)(c) and (d) of the Dumping Duty Act do not exceed the non-injurious price.

13 APPENDICES

Appendix 1	List of submissions
Confidential Appendix 2	Export price, normal value and dumping margin calculations – Advantage Controls
Confidential Appendix 3	Analysis of Ecolab submission
Confidential Appendix 4	Export price, normal value and dumping margin calculations – Uncooperative and all others
Confidential Appendix 5	Assessment of Australian market
Confidential Appendix 6	Price undercutting analysis
Confidential Appendix 7	Assessment of Waterdos undercutting analysis
Confidential Appendix 8	NIP calculations

Appendix 1: List of submissions

Date Received	Submission from	EPR No.
17 Feb 2017	Advantage Controls - exporter	4
16 Mar 2017	Advantage Controls - exporter	9
10 April 2017	Aquarius - applicant	13
2 May 2017	Aquarius - applicant	18
11 May 2017	Waterdos - importer	21
12 May 2017	Ecolab - importer	23
2 June 2017	CWC - importer	24
5 June 2017	US Department of Commerce	25
30 May 2017	Integra – end user	26
5 June 2017	Iwaki America - exporter	27
5 June 2017	Aquarius - applicant	28
5 June 2017	Aquarius - applicant	29
7 June 2017	Waterdos - importer	30
9 June 2017	Aquarius - applicant	31