



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

# Regulator Performance Framework

Self-Assessment Report

Submitted by: The Anti-Dumping Commission

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[www.adcommission.gov.au](http://www.adcommission.gov.au)

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## 1 Certification by the Accountable Authority

*“The regulator’s Accountable Authority under the PGPA Act, if applicable, **must certify the self-assessment report and provide it to the MAC or other stakeholder consultation mechanism approved by the responsible Minister**”.*

The Secretary of the Department of Industry, Innovation and Science is the Accountable Authority for the Anti-Dumping Commission.

The stakeholder consultation mechanism is the International Trade Remedies Forum.

## 2 One page snapshot

### Summary of achievement

During 2015-16, the Anti-Dumping Commission's performance as a regulator was self-assessed against the six key performance indicators (KPI) of the Australian Government Regulator Performance Framework (RPF). The Anti-Dumping Commission (Commission) had its strongest performance in the areas of communication and transparency. As an example of the effort on these fronts, the Commissioner of the Anti-Dumping Commission met with Australian industry representatives on 27 separate occasions to discuss operational, policy and practice matters, as well as developing an understanding of the nature of their business.

Specifically, the Commission:

- worked to minimise the potential for unintended negative impacts of regulatory activities by completing seven pre-lodgement checks as requested by Australian industry
- performed well in a stakeholder survey
- resolved over 1,600 enquiries and since 1 December 2015, 94.6% of these enquiries were resolved in two business days
- considered 328 submissions from Australian industry, exporters, importers, foreign governments and others
- published 139 Anti-Dumping Notices and 158 reports explaining our decisions and reasoning<sup>1</sup>
- published a case status report every month
- completed an external operational efficiency review aimed at addressing risk and improving the consistency, timeliness and quality of investigations
- conducted on-site verification of exporter data for 73% of completed exporter questionnaires
- worked with the Department of Immigration and Border Protection (DIBP) to enhance the whole of government approach to anti-circumvention and compliance, and
- implemented a suite of policy reforms in November 2015.

### 2015-16 focus

For the 2015-16 reporting period, the Commission focussed on effectively utilising data collected for other reporting and business improvement processes for the self-assessment. Effort also went into developing new areas of data collection and analysis, such as on-site verification of exporter information supplied during the course of investigations.

### Continuous improvement

As this is the first RPF self-assessment reporting period, this report will be used to set performance benchmarks. Over subsequent years further measurable detail will be built into applicable metrics to make them stronger indicators of performance over time. The Commission will also work with stakeholders to improve the response rates to surveys

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<sup>1</sup> The reports include Consideration Reports, Verification Reports, Statements of Essential Facts, Preliminary Affirmative Determinations, Day 60 Status Reports and Final Reports.

## 3 Introduction

### 3.1 About the Anti-Dumping Commission

Australia's trade remedies system operates within the framework established by the World Trade Organization (WTO). This framework forms an integral element of a free and open global trading system. Most developed countries and many developing countries also operate trade remedies regimes. The purpose of Australia's trade remedies system is to remedy material injury caused to Australian industries by dumped and subsidised imports and give Australian industries the opportunity to compete with imports on a level playing field.

The Commission administers Australia's anti-dumping system under the *Customs Act 1901* (the Act). The Commission sits within the Department of Industry, Innovation and Science and the Commissioner of the Anti-Dumping Commission is an independent statutory office holder. The Commission investigates the dumping and subsidy claims that are voluntarily lodged by an Australian industry applicant.

An investigation includes examination of the alleged dumping and/or subsidies, the injury suffered by the Australian industry concerned, and the causal link between the dumping or subsidy and the injury found. The Commissioner recommends to the relevant Minister whether the specific duties should be imposed. Where the Minister decides that duties are warranted they are imposed on the importers of the goods and collected by the Department of Immigration and Border Protection.

The Act also contains provisions for importers and exporters to seek reviews of measures, exemptions in particular circumstances, and assessments of duty paid during certain timeframes. This is a significant area of work for the Commission.

During 2015-16, the Commission completed 129 cases (all case types<sup>2</sup>) relating to applications from Australian Industry, importers and exporters. The completed cases are broken down into each case type in Table 1.

The completed cases for 2015-16 represent a 6% increase on cases completed in 2014-15 (122) and a 63% increase compared to 2013-14 (96). During 2015-16 it took on average 327 days to complete the 17 dumping and/or subsidy investigations. The Commission is currently implementing a number of efficiency improvements aimed at reducing investigation timeframes into the future. Aluminium and steel products were the subject of 67% of the cases initiated.

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<sup>2</sup> Australian Industry can lodge applications for investigations into alleged dumping, subsidisation or circumvention of duties. Industry can also lodge an application for a continuation, review or revocation of measures. Exporters are able to lodge applications for exemptions to measures, reviews of measures or revocation of measures. Importers can lodge applications for exemptions to measures and assessments of duty paid.

Table 1

<b>Case type</b>	<b>Number of cases completed in 2015-16</b>
Dumping and/or subsidy investigations	17
Anti-Circumvention Inquiries	7
Continuation Inquiries	3
Accelerated Reviews	26
Reviews of Measures	14
Exemption Inquiries	31
Duty Assessments	16
Reinvestigations	15
<b>Total</b>	<b>129</b>

### 3. 2 The Australian Government Regulator Performance Framework

As part of the Australian Government's regulation reform agenda, the Regulator Performance Framework (RPF) has been established to measure and assess the efficiency and effectiveness with which regulators undertake their roles and interact with regulated entities. The objective of the RPF is to improve the way regulators operate, reduce the costs incurred by regulated entities, and to increase the public accountability and transparency of regulators.

The RPF consists of six key performance indicators (KPIs), which state the government's expectations of regulator performance.

- KPI 1—Regulators do not unnecessarily impede the efficient operation of regulated entities.
- KPI 2—Communication with regulated entities is clear, targeted and effective.
- KPI 3—Actions undertaken by regulators are proportionate to the risk being managed.
- KPI 4—Compliance and monitoring approaches are streamlined and co-ordinated.
- KPI 5—Regulators are open and transparent in their dealings with regulated entities.
- KPI 6—Regulators actively contribute to the continuous improvement of regulatory frameworks.

The RPF requires regulators to establish their own performance assessment framework and annually self-assess their performance against these KPIs in consultation with stakeholders. The Commission is considered a regulator for the purposes of the RPF because it has a statutory responsibility to administer, monitor, or enforce regulation by undertaking some or all of the following activities:

- licensing and/or approvals processes, including registration/accreditation, that control entry to or participation in a market
- monitoring and compliance activities, including imposing and collecting fees
- enforcement actions for non-compliance and complaints resolution

- providing advice and guidance regarding compliance with regulation, including education around compliance.

These responsibilities were identified by the Productivity Commission as the primary activities undertaken by regulators.

### 3.3 Our approach to implementation of the RPF

To design the self-assessment methodology, the Commission consulted with the Department of Industry, Innovation and Science Regulation Reform Unit and has drawn on material from:

- the OECD guidance on developing frameworks for regulatory policy evaluation<sup>3</sup>
- the Department of Finance Resource Management Guidance on Performance<sup>4</sup>
- the Department of the Prime Minister and Cabinet RPF and guidance material on reviewing performance<sup>5</sup>
- the Productivity Commission Regulator Audit Framework<sup>6</sup>.

Consistent with this guidance, the Commission made use of existing reporting streams, where possible, to ensure no additional burden is created for industry. The Commission's evidence for performance against a number of the RPF measures is drawn from existing internal reporting and data collection processes because this is also a cost effective approach. The Commission considers that this data is a meaningful indicator of performance against the KPIs, but will consult with stakeholders to refine them over each reporting period. Quantitative data will be complemented with relevant output or activity-based evidence specific to the Commission's circumstances. This methodology and the relevant measures and examples of evidence were tested with the Commission's key stakeholder body, the International Trade Remedies Forum (ITRF). The ITRF membership includes representatives from Australian manufacturers and producers, peak bodies, importers and government.

This first annual self-assessment report provides an assessment of the Commission's performance against each of the six RPF KPIs and sets the performance benchmarks to measure future performance improvement. In future years, the self-assessment report will provide feedback on the Commission's progress against various continuous improvement activities associated with this report. The full set of performance measures for each of the KPIs is located at **Attachment A**.

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<sup>3</sup> OECD (2014), *OECD Framework for Regulatory Policy Evaluation*, OECD publishing, <http://dx.doi.org/10.1787/9789264214453-en>

<sup>4</sup> Australian Government Department of Finance (2015), *Resource Management Guide no. 131: Developing good performance information*, <http://www.finance.gov.au/resource-management/performance/>

<sup>5</sup> Australian Government Department of the Prime Minister and Cabinet (2014), *Cutting Red Tape*, <http://www.cuttingredtape.gov.au/resources/rpf>

<sup>6</sup> Australian Government Productivity Commission (2014), *Regulator Audit Framework*, <http://www.pc.gov.au/research/supporting/regulator-audit-framework>

## 4 Assessment

### 4.1 KPI 1 - Regulators do not unnecessarily impede the efficient operation of regulated entities

#### Summary of achievement

During 2015-16, the Commission:

- performed strongly in a survey of the ITRF
- worked to minimise the potential for unintended negative impacts of regulatory activities by completing seven pre-lodgement checks as requested by Australian Industry.

#### Expectations for KPI 1

As articulated in the Regulator Performance Framework<sup>7</sup>, the government's expectation for this KPI is for regulators to be striving towards better regulatory practice by implementing regulation in a manner does not unnecessarily impede the efficient operations of regulated entities. They seek to achieve a balance between the responsibility to deliver protection to the community and the burden imposed by external intervention.

The objectives against this KPI are to show that Commission meets government's expectations by demonstrating that we:

- understand the relevant industry sectors involved in anti-dumping and the current and emerging issues that affect them
- take action to minimise the potential for unintended negative impacts of regulatory activities on applicants
- take action to learn from experiences and better practices from equivalent international organisations and other anti-dumping administrations to improve administrative efficiencies.

As this is the first performance report for the Commission in relation to regulatory activities, this report will be used to benchmark data and activities of this nature, to allow for measurement of our progress over future years. The information gathered will also contribute to the Commission's continuous improvement activities and practices.

#### Our approach for KPI 1

To measure stakeholder satisfaction with the Commission's administration of the anti-dumping system, the Commission surveyed the ITRF with a focus on KPIs 1, 2 and 5. Of the 27 members of the ITRF (other than the Commissioner), four members responded to the survey. Of these respondents, 50% were from the Australian steel or aluminium manufacturing sector, 25% were from the food processing sector and 25% were from other sectors. The steel, aluminium and food processing sectors represent 79% of the Commission's case load in 2015-16.

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<sup>7</sup> The government's expectations for each KPI are explained in full in the Regulator Performance Framework. Australian Government Department of the Prime Minister and Cabinet (2014), Cutting Red Tape, <http://www.cuttingredtape.gov.au/resources/rpf>.



## Results KPI 1

### **Measure: understand the relevant industry sectors involved in anti-dumping and the current and emerging issues that affect them**

- *Metric: Evidence of appropriate feedback channels to measure stakeholder satisfaction of the anti-dumping system and documenting responsiveness to feedback from regulated entities on internal improvements*

The survey found:

- All respondents were satisfied or somewhat satisfied with the information and support available to access Australia's anti-dumping system.
- Three respondents felt that the Commission had a sound understanding of the relevant industry sectors and the current and emerging issues that affect them.
- Three were satisfied or somewhat satisfied that communication from the Commission during the course of an investigation is targeted and appropriate.
- All were satisfied or somewhat satisfied that the Commission effectively communicates the evidence base and approach used in investigations.
- All agreed or strongly agreed that Commission staff regularly made themselves available to discuss both the anti-dumping system and specific case matters.
- In the free text component of the survey, respondents were generally supportive of the Commission's performance as a regulator and noted that the organisation continues to evolve and improve.
- To make improvements, respondents suggested that the ITRF meet on a more regular basis and that Commission investigators strengthen their understanding of business and the competitive forces at work.

In association with, and following the survey, the Commission contacted all members of the ITRF from the industry, peak body and union sectors. In each case the members were briefed on up-coming ITRF meetings and asked about any issues they wished to raise with regard to the ITRF and the Commission. In all cases the members expressed appreciation with the contact being made and the Commission's interest in their issues.

- *Metric: Publication of the number of appealed findings not overturned by external review bodies*

Certain decisions of the Minister and the Commissioner may be reviewed by the Anti-Dumping Review Panel (ADRP) and the Federal Court of Australia. These include decisions to impose anti-dumping measures or terminate investigations, outcomes of continuation inquiries and reviews of measures, and outcomes of duty assessments. During 2015-16 there were 12 decisions appealed (10 to the ADRP and two to the Federal Court). Of the 10 ADRP reviews, four were completely affirmed, four were partially affirmed and two were completely revoked. Of the two Federal Court cases, one was completely affirmed and the other was completely revoked.

### **Measure: Take action to minimise the potential for unintended negative impacts of regulatory activities on applicants**

- *Metric: Examples of actions taken to minimise any unnecessary impacts of the Commission's activities on applicants*

The Commission takes action to minimise unnecessary regulatory impacts on applicants during the anti-dumping and countervailing application process by offering a series of services and a level of flexibility on how information is provided and presented. The Act requires that applications must be made in writing and in an approved form, but where possible the Commission will work with applicants to support them to make an application.

The Commission acknowledges that the information required to submit an application can be onerous to produce. To alleviate this, there is a comprehensive set of guidelines on our website with instructions on how to complete an application.

The Commission also offers a pre-lodgement check to review applications prior to them being lodged. Working with the applicant, the Commission will provide a deficiency list that includes detailed feedback on what is required to best support the application. A pre-lodgement check can take anywhere between two and 10 days to complete depending on the complexity of the application. In 2015-16 seven pre-lodgement checks were made on behalf of Australian Industry.

**Measure: Demonstrated efforts to learn from experiences and better practices from equivalent international organisations and other Anti-Dumping administrations to improve administrative efficiencies.**

➤ *Metric: Implementation of the Commission's International Engagement Plan*

As a key component of our International Engagement Plan, the Commission meets Australia's international trade obligations by attending bi-annual meetings of the WTO Anti-Dumping Practices Committee and the Subsidies and Countervailing Measures Committee with the Department of Foreign Affairs and Trade. These meetings help to ensure that Australia's anti-dumping system is consistent with the WTO Anti-Dumping Agreement as well as the WTO Agreement on Subsidies and Countervailing Measures.

As importantly, the Commission also participates, together with the Department of Foreign Affairs and Trade (DFAT), in a number of bilateral meetings with other jurisdictions during these WTO bi-annual meetings. During 2015-16, the Commissioner and Commission staff members met with over 20 officials from eight jurisdictions (Mexico, India, Canada, Brazil, Japan, South Korea, the EU and the US) during the WTO meetings.

➤ *Metric: Use of technical exchanges and knowledge sharing with comparable jurisdictions*

The Commission, along with our stakeholders, recognises how important it is to learn from the experiences and better practices of comparable jurisdictions such as the US, Canada and the European Union. Consequently, the Commission has engaged in a number of international technical exchanges and knowledge sharing activities during 2015-16 to strengthen our understanding, particularly in the areas of injury and causation analysis. Specifically:

- a. The Commissioner and senior Commission staff members attended a number of international trade forums with a focus on trade remedies matters, including the Seminar on Trade Remedies Investigations in Tokyo, the International Trade Remedy Symposium in Georgetown and the Seoul International Forum on Trade Remedies.
- b. In February 2016 a Commission investigator conducted a four week research tour of the US and Canadian anti-dumping administrations as part of a departmental research scholarship. The investigator met with key senior personnel and fellow investigators and presented an extensive report of his findings to the Commissioner and Commission staff.
- c. On 17 December 2015 a representative from the Canadian International Trade Tribunal commenced a 12 month secondment to the Commission working as a member of the Commission's legal team.
- d. During 2015-16, Commission investigators were able to observe a verification conducted by another comparable jurisdiction. This experience will strengthen our own verification practice.

## Discussion KPI 1

The areas for improvement that the Commission will focus on from the survey are strengthening our knowledge of industry sectors and understanding business and the competitive pressures at play. The Commission currently builds its understanding of industry sectors and emerging issues by undertaking industry, importer and exporter visits to not only verify data, but to also gain a comprehensive understanding of the industry that we are investigating. One way the Commission will address this is by enhancing our internal market intelligence and analysis capability.

The Commission suggests that feedback channels are healthy. Aside from the day to day feedback on specific case matters, the ITRF plays a role as a ministerial and policy advisory body. The Commission has consulted with the ITRF on a series of reforms implemented in 2015.

In a highly contested system that is open to legal interpretation, the Commission agrees with stakeholders that a robust review process is a positive attribute of the system and that it can reduce conservatism in decision making. Quality investigative learnings come from analysis of the review findings and the Commission has in place a continuous improvement process that incorporates learnings from reviews.

The Commission is satisfied with its performance against the other measures for KPI 1, but it is important to note that this report is establishing baseline performance reporting and the Commission is aiming to consistently make improvements on these results.

## Stakeholder Validation

The methodology and performance measures for this self-assessment were tested with ITRF members in February and March 2016. The report itself was circulated to members for their consideration and comment in October 2016. Feedback was sought via email and phone interview and eight members responded.

Member suggestions have been incorporated into this report. For example, additional data on case types has been added, along with more case statistics. A number of suggestions sought additional performance data to enable a measureable result year on year. These will be addressed in the Stakeholder Validation section for each KPI. Several policy proposals were received and they have been forwarded to the department's area considering reform.

Regarding KPI 1, stakeholder feedback suggested that a survey of the ITRF is a good approach for measuring performance but the Commission should work with stakeholders to improve response rate.

The second metric for KPI 1 regarding the number of appealed findings also received a number of comments and the Commission will consider the best way to report these findings in the future.

## 4.2 KPI 2 - Communication with regulated entities is clear, targeted and effective

### Summary of achievement

During 2015-16, the Commissioner met with Australian industry representatives on 27 separate occasions. As per the survey results in KPI 1, the Commission performed well when communicating with regulated entities. The Commission also:

- resolved over 1,600 enquiries and since 1 December 2015 94.6% of these enquiries were resolved in two business days
- considered 328 submissions from Australian industry, exporters, importers, foreign governments and others.

### Expectations for KPI 2

Effective communication is vital for the efficient delivery of regulatory services and the achievement of positive regulatory outcomes. Better practice regulators communicate in such a way that regulated entities clearly understand what they need to do in order to comply with regulation. The reasons for regulatory decisions are clearly communicated and communication with regulated entities is consistent.

The objectives against this KPI are to show that Commission meets government's expectations by demonstrating that:

- guidance and information is up to date, clear, accessible and concise
- we adequately consult with industry groups and representatives of affected stakeholders before changing policies, practices or service standards
- decisions, reasons for decisions and advice provided by the Commission to affected entities are readable and understandable
- information requests are tailored, coordinated with other regulators (such as the Department of Immigration and Border Protection), only made when necessary, and in a way that minimises impact.

### Our approach for KPI 2

For this KPI, the Commission demonstrated our communication practices and outcomes by using quantitative information collected for other reporting and continual improvement processes. The Survey conducted for KPI 1 also supplemented this KPI with questions on communication. We will use the results to identify opportunities for strengthening our performance further.

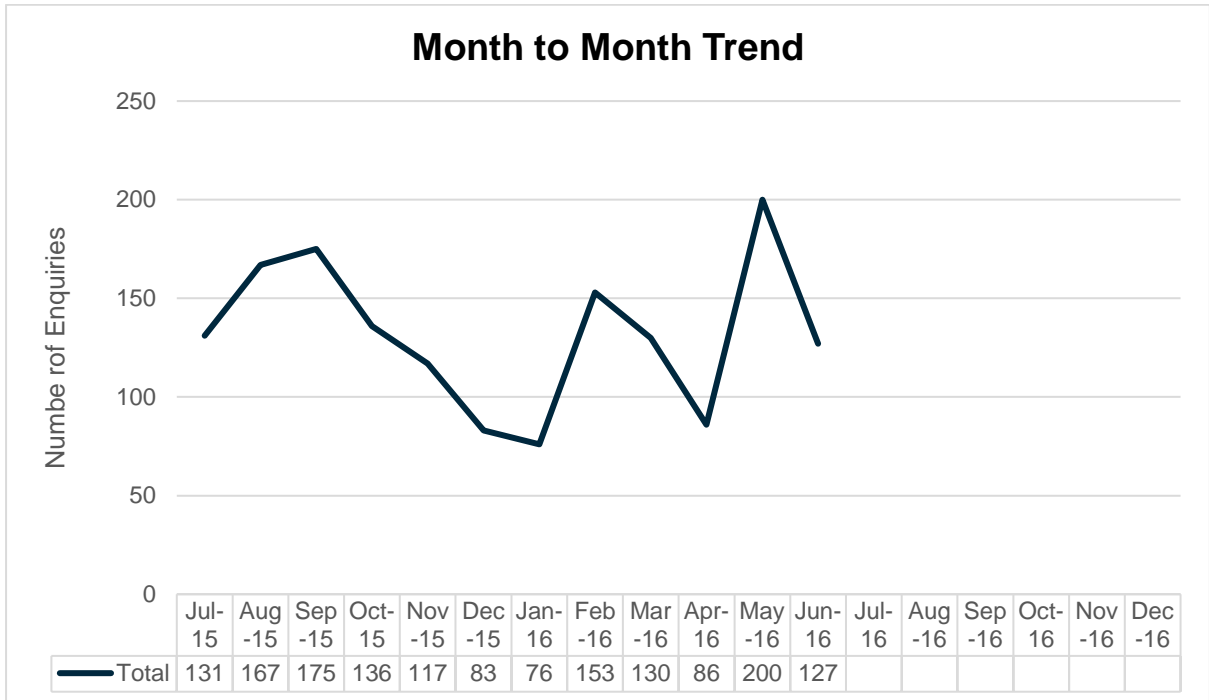
### Results KPI 2

**Measure: Demonstrated provision of guidance and information that is up to date, clear, accessible and concise.**

- *Metric: The Commission's response rates to stakeholder enquiries/complaints including: the number of queries, type of query and response/resolution times for stakeholder to acknowledge matter resolved.*

During 2015-16 the Commission received nearly 1,600 enquiries via our website, email or by phone referral from the business.gov.au hotline. The monthly trends are indicated in Table 2.

Table 2



During 2015, the Commission implemented a new system for collecting enquiry data. From 1 December 2015 (when this new system came into effect) to 30 June 2016, 94.6% of enquiries were resolved within in two business days as acknowledged by stakeholders (Table 3). Enquiries resolved from 1 December 2015 to 30 June 2016 are categorised by enquiry type in Table 4.

During that same period, steel and aluminium enquiries dominated with 69.7% of all enquires relating to steel or aluminium. The next largest commodity was prepared and preserved tomatoes at 14% of enquiries (Table 5 provides the breakdown for 1 December 2015 – 30 June 2016).

Table 3

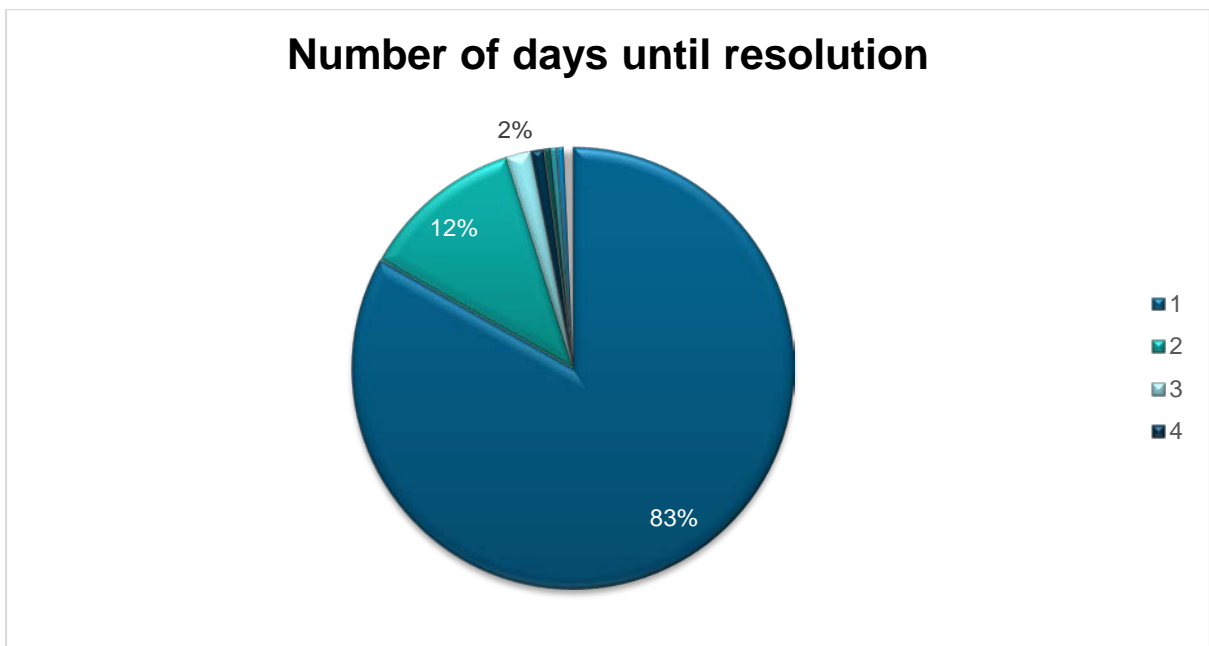


Table 4

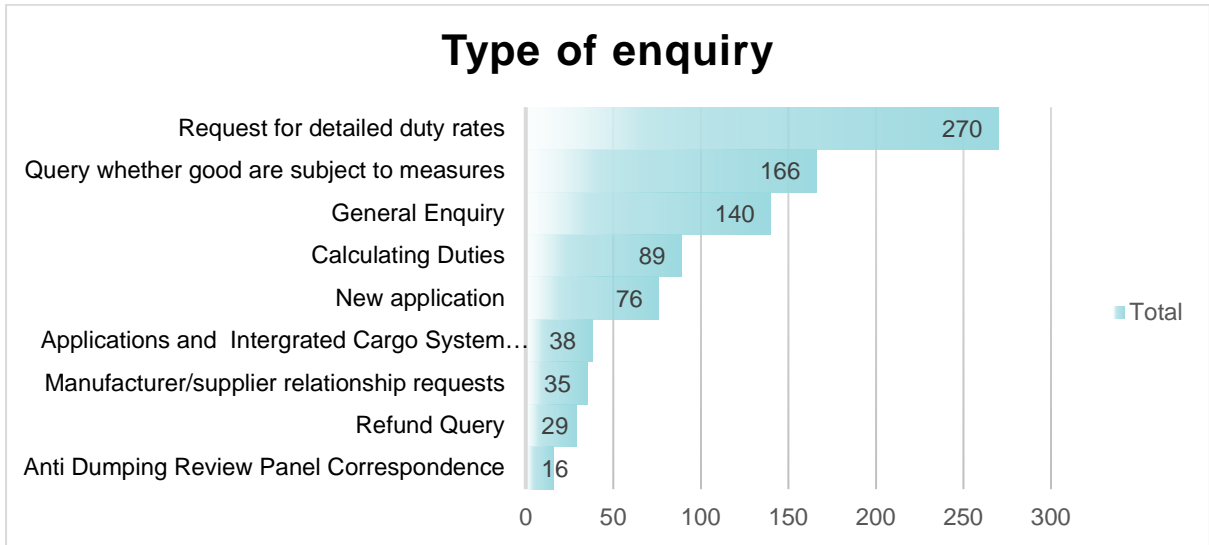
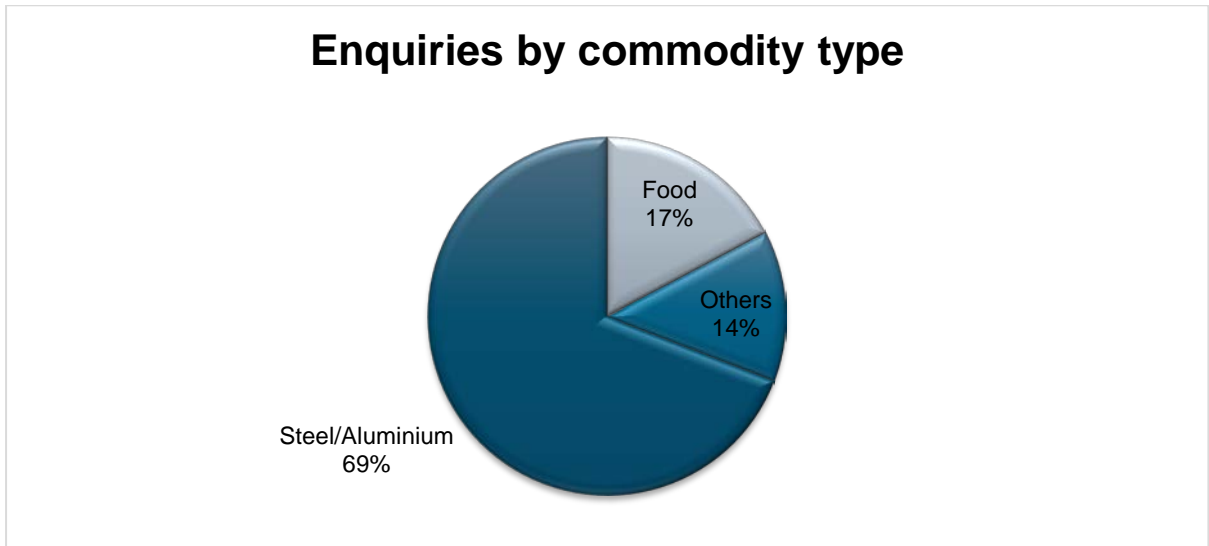


Table 5



**Measure: The Commission adequately consults with industry groups’ representatives of affected stakeholders before changing policies, practices or service standards.**

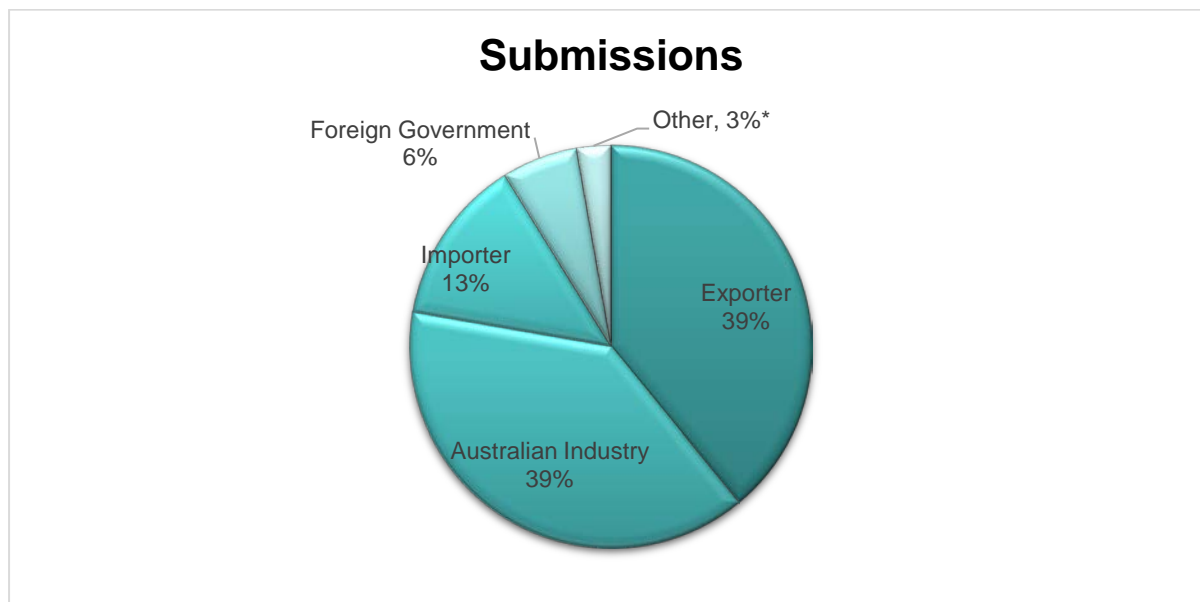
- *Metric: Evidence of the number and type of consultation opportunities given to regulated entities and industry group representatives.*

Australia’s anti-dumping system offers formal and informal opportunities for consultation on policy and practice development. In addition to consultation through the ITRF, which meets twice a year, interested parties have regular meetings with the Commissioner and Commission staff. The Commissioner engages and consults with key parties across all sectors to discuss policy and practice matters. As an example of this effort, the Commissioner met with Australian industry representatives on 27 separate occasions during 2015-16, including visits to business facilities to develop a greater understanding of the business. Further, the anti-dumping system is regularly the subject of Reviews and Parliamentary Inquiries and interested parties have opportunities to contribute to the process with submissions and appearances at hearings. As per the ITRF survey results for KPI 1, stakeholders are satisfied with the opportunities they have for consultation and

engagement, although this is always something the Commission is looking to build on. In 2016-17 the Commission will increase the opportunities for consultation with ITRF members through new targeted ITRF sub-committees and Dumping and Subsidy Manual consultations.

At the operational level, interested parties are able to make submissions throughout an investigation and there are certain periods of time open to make formal submissions in response to specific investigation reports such as the Statement of Essential Facts. This is an integral part of the inquiry process and the Statement of Essential Facts in particular, is an opportunity for regulated entities to have access to, and comment on, the facts on which the Commissioner will base his recommendations to the Minister. In 2015-16, 328 submissions were received on 46 separate cases. All of these submissions were placed on the public record on the Commission's website and included submissions from exporters, importers, Australian manufacturers and producers, foreign governments and others (Table 6 presents the proportions).

Table 6



\*The "other" category relates to submissions from associations, unions, state and territory governments, universities and unaffiliated interested parties.

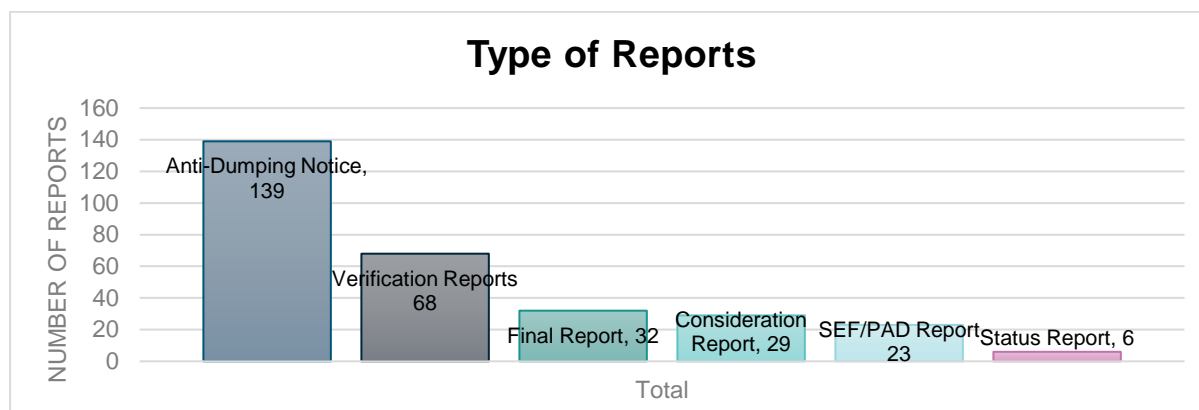
**Measure: Decisions, reasons for decisions and advice provided by the Commission to affected entities are readable and understandable**

- *Metric: Information provided to entities will be readable and consistent with Anti-Dumping legislation, policies and guidelines, and/or decisions made by the Commission, via merits or judicial reviews*

Australia's anti-dumping legislation requires a certain level of transparency throughout an investigation and the Commission works to ensure that information provided to entities including decisions and reasoning are readable and consistent with legislation, policies and guidelines. In 2015-16, 139 Anti-Dumping Notices were published on the Commission's website notifying decisions and 158 investigation reports were published explaining the evidence, analysis and decisions.



Table 7



- *Metric: The Dumping and Subsidy Manual and subsidy register will be readable and be regularly updated to assist stakeholders understand the legislative, policy and guidelines*

The Commission maintains a Dumping and Subsidy Manual and a subsidies register to assist stakeholders' understanding of the practices used by the Commission in administering the anti-dumping and countervailing system. The Manual is a public document outlining the Commission's established policies and practices. The Manual provides guidance to regulated entities on the Commission's approach to investigations and its interpretation of legislative provisions and aims to promote a consistent approach in investigations undertaken by the Commission. Work has commenced on the next round of amendments to the Manual. The amendments will focus on explaining and clarifying the Commission's current policy and practice. The Commission will consult with interested stakeholders and seek submissions on the proposed amendments, including their readability.

The subsidies register is a resource for stakeholders that provides a summary of the subsidy programs that have been investigated by the Commission by country and includes references to relevant Commission reports. Details include: title of the program, specificity, nature of financial contribution and benefit conferred, and the basis for the Commission's determination of whether each subsidy was actionable. The register was last updated in May 2016 and is now reviewed and updated, as required, at the conclusion of each countervailing investigation.

**Measure: Information requests are tailored, coordinated with other regulators (such as Immigration and Border Protection), only made when necessary, and in a way that minimises impact**

In conducting investigations and other operational matters, the Commission makes every attempt to ensure that information requests are tailored, coordinated with other regulators, only made when necessary, and in a way that minimises impact. This can prove to be challenging because the Commission's assessments of dumping, subsidies, injury and causation must be objective and evidence-based. For example, verifying exporter financial data is a significant impost on exporters' time and resources, but onsite exporter verification is a core investigative tool and Australian industry expects exporter data to be thoroughly examined and verified onsite. The Commission's preference is to conduct as much onsite verification as possible, but to balance this with effective alternatives when possible.

A recent example of this approach is the investigation in relation to dumping of prepared or preserved tomatoes exported to Australia from Italy by two exporters (Feger di Gerardo



Ferraioli S.p.A and La Doria S.p.A). As this investigation was initiated within 12 months of having completed a similar investigation involving the same products and similar interested parties, the Commission decided not to conduct on-site verification of the financial data supplied by the Australian manufacturer - SPC Ardmona Operations Limited. In terms of waiving its right to seek on-site verification of exporter and importer data, the Commission will sometimes do this and revert to secondary verification methodologies. This might be appropriate, for example – in duty assessments, where the entities involved were subject to satisfactory verification by the Commission in a recently completed matter. The Commission takes a risk based approach to making these decisions.

The Department of Immigration and Border Protection (DIBP) is responsible for collecting dumping and countervailing duties. This means that extra effort is required to ensure that regulated entities are receiving consistent and seamless advice, and streamlined information requests from the Commission and DIBP. Operationally, the process of applying provisional measures to certain imports during an investigation and then cancelling or converting them to interim measures at the end of an investigation is an exercise that the Commission is working with DIBP as a model for other similar processes. The Commission and the relevant area of DIBP work together to ensure that Customs brokers have a single point of contact during the conversion or cancellation period. Both organisations work together on any complex enquiries and provide a single source of advice back to the broker.

## Discussion KPI 2

The opportunities for regulated entities to participate in the anti-dumping system on an investigation level or at a broader system level are extensive. The Commission is satisfied that the opportunities for communication are sufficient and this is confirmed by the survey conducted for KPI 1. The metrics are an effective measure of the Commission's performance. Minimising information requests will always be an area that the Commission will find challenging due to the evidence-based nature of the inquiry process.

## Stakeholder Validation

For KPI 2 stakeholders suggested that the timeliness of exporter verification reports could be an area for improvement. In 2016-17 the Commission has achieved a number of improvements in this space and will report on them in the next cycle.

Stakeholders also proposed that the ITRF meet more regularly as the key advisory body. The Commission has substantially improved the opportunities for engagement with ITRF members with the establishment of three new sub-committees, and this work will be discussed in the 2016-17 self- assessment report.

## 4.3 KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

### Summary of achievement

During 2015-16 the Commission:

- Completed an external operational efficiency review aimed at addressing risk and improving the consistency, timeliness and quality of investigations
- Conducted on-site verification of exporter data for 73% of completed exporter questionnaires.

### Expectations for KPI 3

Comprehensive risk assessment processes are essential to ensuring that resources are targeted to the areas requiring the most attention. A risk-based approach promotes the most efficient use of resources and improves the effectiveness of the regulatory framework through minimising burden on those who are voluntarily compliant and ensuring that enforcement action is proportionate and undertaken only when necessary.

Efficient regulatory risk assessment takes account of the regulated activity, the nature of the regulated cohort, including its compliance history, and other external factors affecting risk. Risk assessments are balanced and implemented uniformly and impartially, while also being dynamic and open to scrutiny. They are based on the recognition that not all risk can be eliminated and not all risk can be effectively mitigated by government.

The objectives against this KPI are to show that Commission meets government's expectations by demonstrating that the:

- preferred approach to regulatory risk is regularly assessed
- Commission adopts a risk-based approach to its investigations, evidence gathering and decision-making based on the regulatory risks being managed.

### Our approach for KPI 3

For this KPI, the Commission took the opportunity to enhance the data we collect around on-site verification activity and the percentages of export volumes involved. Following on from the 2015 external operational efficiency review, we have begun implementing the recommendations.

### Results KPI 3

#### **Measure: The Commission's preferred approach to regulatory risk is regularly assessed**

- *Metric: Development and implementation of guidelines to inform all of the Commission's investigations.*

In 2015, the Commission underwent an external operational efficiency review. As part of the implementation of the recommendations of this review, the Commission is finalising a suite of frameworks and guidelines to address risk, and improve the consistency, timeliness and overall quality of investigative outcomes.

A Quality Assurance (QA) Framework has been developed and is being implemented to ensure responsiveness to the Commission's quality needs and quality performance reporting. The QA Framework will define standardised approaches. Quality assurance will be embedded into the case planning and investigations process to ensure risks are identified and managed as early as possible in an investigation. To complement the QA Framework, a Risk Management Framework provides guidance to manage our core operations capability in relation to risk.

Rounding out the suite of frameworks is the Capability Framework, which was finalised in May 2016. A core component of the Capability Framework is the Learning & Development strategy, which will equip staff with the knowledge and skills necessary to meet their responsibilities within the Commission and will strengthen consistency in the investigations work undertaken. The Commission's eight Standard Operating Procedures (SOPs) are being updated to reflect new legislative requirements, policy and practices. The SOPs are being supported with detailed, technical functional tasks for every investigation type undertaken by the Commission to strengthen knowledge management practices, risk

identification and management. This will develop the operational effectiveness of all Commission staff.

**Measure: The Commission adopts a risk-based approach to its investigations, evidence gathering and decision-making based on the regulatory risks being managed.**

- *Metric: Evidence of data being collected during investigations being based on a risk-based approach.*
- *Metric: Annual statistics of numbers of exporters that are verified in-country, by desktop audit, or other method.*

As discussed in KPI 2 and KPI 3, a key area of managing regulatory risk for the Commission and the regulated entities is the verification of financial data, and in particular, exporters' data. During an investigation the Commission is required to establish that data provided by an exporter is complete, relevant and accurate and therefore suitable for evidence-based calculations of dumping and subsidy margins and injury assessments. Onsite verification is one means to establish information provided is suitable and is an important part of the Commission's strategy in conducting investigations.

It is not possible for the Commission to undertake onsite verification exercises in relation to all parties in all types of investigations, reviews and other inquiries. Therefore, the Commission applies a risk management approach to its investigations when selecting the method of verification for a particular investigation. The Commission can only verify an exporter's data if they have completed an exporter questionnaire. For the 13 dumping and subsidisation investigations (including continuation inquiries) initiated in 2015-16, 47 completed exporter questionnaires were received. For the 47 questionnaires, 35 were verified onsite, which is 74% of the total. This represents 90% of the total export volume from subject countries and 83% of the total export value from subject countries during the relevant investigation periods.

### Discussion KPI 3

KPI 3 has been a focus of the Commission over the last 12 months. The completion of an external review of the Commission's investigation and decision making processes has led to the development of strategies to create investigative efficiencies and better assess and manage risks in these processes. The implementation of the suite of operational frameworks discussed above will strengthen the Commission's performance against this KPI in the next reporting period. As this first report sets the benchmarks we anticipate that in future years as the frameworks mature the Commission will be able to provide quantitative data for these metrics.

### Stakeholder Validation

For this KPI stakeholders noted that the Commission's efforts to strengthen capability were positive outcomes. The Commission will add more quantitative data to this KPI in future reports.

## 4. 4 KPI 4 - Compliance and monitoring approaches are streamlined and co-ordinated

### Summary of achievement

During this reporting period the Commission worked with the Department of Immigration and Border Protection (DIBP) to enhance the whole of government approach to anti-circumvention and compliance.

### Expectations for KPI 4

Compliance and monitoring are an essential part of regulatory frameworks. These processes allow regulators to determine the level of compliance with regulation. Effective regulators do not seek information from regulated entities unless the information is required to achieve the regulatory outcome sought. Regulators minimise duplicative information requests, including between regulators where possible, and consider whether the information sought is available from alternative means.

The Commission does not have a compliance role once duties are applied to imports of certain goods. However, the Commission is working with DIBP, which has responsibility for compliance, to adopt a whole of government approach to strengthen the anti-circumvention and compliance framework.

### Our approach for KPI 4

The methodology for this KPI is to demonstrate the effort by describing examples of collaboration.

### Results KPI 4

**Measure: The Commission does not have a compliance role once duties are applied on imports of certain goods. The DIBP monitors compliance; however, the Commission will adopt a whole of government approach.**

- *Metric: The Commission will put in place enhanced arrangements to continually promote robust whole of government collaboration to strengthen the anti-circumvention and compliance framework.*

The Commission maintains regular, ongoing engagement with DIBP regarding non-compliance with anti-dumping measures, including collaboration on joint minister briefings regarding compliance and circumvention matters.

The Commission and DIBP have entered into a Services Schedule (until 30 June 2017) for the provision of trade analysis services. During 2015-16 DIBP provided the Commission with two market intelligence reports and three compliance monitoring reports. Due to the protected nature of the information in these reports, they are internal documents which provide the Commission with a better understanding of trade flows and assist in monitoring the effectiveness of measures

DIBP has been integral to a number of anti-dumping investigations through the provision of targeted import data early in the investigations process. The Commission and DIBP are committed to working towards making these interactions as seamless as possible.

## Discussion KPI 4

Given that the Commission is not directly responsible for compliance once duties are applied, the role that the Commission has in relation to this KPI, is enhancing collaboration opportunities with DIBP and strengthening our monitoring and trade analysis capability. The Commission is satisfied that we have made a positive start on this collaborative effort during this reporting period.

## Stakeholder Validation

Feedback on KPI 4 focussed on the requirement for measurable data. Stakeholders were pleased with the efforts to develop a whole of government approach to compliance matters and made a number of suggestions around performance measures. However, it should be noted that the publication of details of compliance activities could undermine the success of the compliance outcomes.

## 4.5 KPI 5 - Regulators are open and transparent in their dealings with regulated entities

### Summary of achievement

The Commission:

- published 158 reports explaining all decisions and reasoning
- published a monthly status report.

### Expectations for KPI 5

It is important that regulators are open and transparent in the way they regulate to ensure the confidence of those being regulated and the wider community. If regulated entities understand how and why they are being regulated, regulatory outcomes are more likely to be achieved. Transparency also contributes to a greater understanding of the regulators role by both the regulated cohort and the broader community.

Open and transparent dealings with regulated entities increase the accountability of both regulators and government. Increased accountability, to both regulated entities and the wider community, improves the overall performance of regulators. Where possible, better practice regulators clearly communicate the evidence base and approach used in the regulatory decision making process to regulated entities. Results from performance measurement against this framework are also made public in a timely way to ensure an open and transparent relationship with regulated entities.

The objectives against this KPI are to show that Commission meets government's expectations by demonstrating that:

- the evidence-base and approach used in the regulatory decision-making processes is communicated to regulated entities.
- performance measurement results are published in a timely manner to ensure accountability to the public.

### Our approach for KPI 5

For this KPI, the Commission demonstrated the transparency of our dealings with regulated entities with a range of quantitative information that we already collect or produce.

### Results KPI 5

**Measure: The Commission communicates the evidence-base and approach used in the regulatory decision-making processes to regulated entities.**

- *Metric: Publication of all decisions and reasoning*

The Commission communicates the evidence-base and the investigative approach to stakeholders via its investigation reports. As per KPI 2, 158 reports were published in 2015-16 on the Commission's website. These reports created some 61 opportunities for formal responses from interested parties during the investigations. The submissions received from stakeholders in relation to reports such as the Consideration Report or the Statement of Essential Facts open new lines of inquiry, test the evidence-base and challenge the legal reasoning behind a particular decision taken, creating a high level of openness and transparency in Australia's anti-dumping system.

**Measure: The Commission's performance measurement results are published in a timely manner to ensure accountability to the public**

- *Metric: Publication of a regular status report that is accessible and useful to a variety of audiences.*

The Commission publishes a monthly status report on the website to give stakeholders a holistic picture of the Commission's overall case load and the commodities, companies and industries involved. The average time taken from the end of the month to publish a monthly status report was 18.5 days. Complementing this monthly status report is the publication of bi-annual case reporting by the Commission to the WTO. This report is made publically available at: [https://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_e.htm](https://www.wto.org/english/tratop_e/adp_e/adp_e.htm).

#### Discussion KPI 5

The Commission is satisfied with its performance against KPI 5 and the metrics are a good indicator of the transparency of the anti-dumping system. Information on duty assessments has been added to the status report during 2015-16 based on feedback from stakeholders. In the next reporting period, the Commission will focus on the timeliness of the status reports with the aim of having them published within the first two weeks of each month. The Commission will also consider how the information is presented and whether more performance data should be included.

#### Stakeholder Validation

Feedback from stakeholders on this KPI was limited but advocated the development of data and metrics before and after reforms were implemented. The Commission will consider this approach in future reports.

### 4.6 KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

#### Summary of achievement

The Commission implemented a suite of policy reforms in November 2015 and is contributing to the development of further operational improvements through continuous improvement processes.

#### Expectations for KPI 6

Better practice regulators actively contribute to the continuous improvement of regulatory frameworks. No service remains the same over time, and continuous improvement ensures a regulatory framework has the flexibility to adjust to changing circumstances.



Better practice regulators follow the principles identified in KPI 2, building appropriate communication channels to promote a regular feedback cycle with peers and regulated entities. Information collected as part of monitoring and compliance approaches is used by these regulators to inform improvements in the authorising legislation and achieve reductions in compliance costs. Stakeholder feedback informs the development of any proposed change to management activities, to ensure the proposed actions are appropriately targeted. This process maintains the cycle of continuous improvement, and provides the flexibility for regulatory frameworks to adapt to changes in the external environment.

The objectives against this KPI are to show that Commission meets government's expectations by demonstrating that we:

- establish and maintain cooperative and collaborative relationships with stakeholders to promote trust and improve the efficacy and effectiveness of the regulatory framework
- regularly share feedback from stakeholders and performance information with policy areas to improve operation of the regulatory framework.

#### **Our approach for KPI 6**

The Commission has identified reform implementation activity to demonstrate how we collaborate with other departments.

#### **Results KPI 6**

**Measure: Establish and maintain cooperative and collaborative relationships with stakeholders to promote trust and improve the efficacy and effectiveness of the regulatory framework.**

- *Metric: Implementing recent reforms and contributing to the development of new reforms.*

On 2 November 2015, the latest tranche of reforms to the anti-dumping and countervailing system were implemented to ensure that the system remains as robust as possible. The reform package was implemented by several areas of the Department of Industry, Innovation and Science and included:

- better support for Australian businesses engaging with the system
- better addressing the issue of uncooperative exporters
- improving the merits review process
- introducing measures to address circumvention of duties, and
- improving the operational effectiveness of the Commission.

The Commission worked with colleagues in the department to implement the components of the reform package for which it had operational responsibility for.

**Measure: The Commission regularly shares feedback from stakeholders and performance information with policy areas to improve operation of the regulatory framework.**

- *Metric: Regular procedures are in place to facilitate the flow of information between policy areas and the Commission regarding stakeholder feedback and performance through joint Ministerial briefings, policy development and reforms.*

To effectively undertake its responsibilities as a regulator the Commission has in place regular procedures and processes to facilitate the flow of information to departmental policy areas and key Australian Government partners such as DIBP and the DFAT. These procedures involve designating responsibility for managing a relationship to specific team within the Commission. The Commission has specific relationship managers with the International Trade Remedies Advisory Service, the Anti-Dumping Review Panel secretariat, the Anti-Dumping Policy Section and the Deregulation Reform Section, which are all teams within the Department of Industry, Innovation and Science. The aim is to ensure consistent, considered and timely whole-of-department interaction. A similar approach applies to DIBP and DFAT, with whom the Commission works together formally and informally on a daily basis.

#### **Discussion KPI 6**

The results against this KPI demonstrate that the Commission works closely with departmental colleagues to ensure that the administration of the trade remedies system is consistent with the Government's policy on anti-dumping and with its broader industry policy and regulation reform agendas.

#### **Stakeholder Validation**

Feedback on this KPI tended to focus on bolstering the work of the ITRF to maintain cooperative and collaborative relationships with stakeholders. As discussed in KPI 2, the Commission will discuss the ITRF sub-committee work in the next reporting cycle.