



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

# Regulator Performance Framework

Self-Assessment Report

Submitted by: The Anti-Dumping Commission

1 October 2017

[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 2016-17, 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) again had its strongest performance in the areas of communication and transparency.

Specifically, during 2016-17, the Commission:

- improved transparency by developing a set of performance indicators for its cases, with reports published on the Commission's website each quarter
- convened three meetings of the International Trade Remedies Forum (ITRF)
- established three sub-committees of the ITRF to facilitate more regular dialogue with stakeholders on potential improvements to the anti-dumping system and convened 17 meetings of those subcommittees
- continued to address risk and improved the consistency, timeliness and quality of investigations through implementation of the new investigations model, which by the end of 2016-17 covers 81.5% of cases
- conducted on-site verification of exporter data for 62% of completed exporter questionnaires while improving the timeliness of publishing exporter verification reports from 92 days to 59 days over a two year period
- worked with the Department of Immigration and Border Protection (DIBP) to enhance the whole of government approach to anti-circumvention and compliance
- worked to minimise the potential for unintended negative impacts of regulatory activities by improving knowledge about the Commission's processes by introducing website alerts and updating the Dumping and Subsidy Manual and by offering pre-lodgement checks for Australian industry applicants
- considered 568 submissions from Australian industry, exporters, importers, foreign governments and others
- published 154 Anti-Dumping Notices and 255 reports explaining decisions<sup>1</sup>
- published a case status report every month to provide stakeholders with a holistic picture of the Commission's overall case load and the commodities involved
- resolved 1,546 enquiries, with 98.7% of these enquiries resolved within two business days.

### Continuous improvement

The first RPF self-assessment report was used to set performance benchmarks and identify suitable metrics. This report is used to further self-assess against those benchmarks. For the 2016-17 period, the Commission continued to focus on effectively utilising data collected for other reporting and business improvement processes for self-assessment. For future reporting periods, The Commission will continue to work on ensuring the metrics are good indicators of performance.

The Commission has worked with stakeholders to improve the response rate to its survey for the report, which increased from four responses in 2016 to 13 responses this year.

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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 2016-17, the Commission completed 105 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 2016-17 represent an 18% decrease on overall cases completed in 2015-16 (129) and a 14% decrease compared to 2014-15 (122). While overall cases have decreased the number of more complex cases have increased with a further ten investigations, 11 continuations and 11 reviews than in 2015-16.

During 2016-17 it took on average 248 days to complete the 27 dumping and/or subsidy investigations, compared to 327 days for the 17 dumping/subsidy investigations in 2015-16. The Commission has implemented a number of efficiency improvements aimed at reducing investigation timeframes which will continue into the future. Steel and aluminium products were the subject of 69% 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 2016-17</b>
Dumping and/or subsidy investigations	27
Resumed Investigations	1
Continuation Inquiries	14
Accelerated Reviews	10
Reviews of Measures	25
Exemption Inquiries	4
Duty Assessments	17
Reinvestigations	7
<b>Total</b>	<b>105</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 implementing the RPF

For 2016-17, the Commission has used the same self-assessment methodology as previously designed in consultation with the Department of Industry, Innovation and Science Regulation Reform Unit and material drawn 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 methodology, the Commission made use of existing reporting streams, where possible, to ensure no additional burden was 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 this data is a meaningful indicator of performance against the KPIs, and will consult with stakeholders to refine them. 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, customs brokers, unions and government.

This 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 provided 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 2016-17, the Commission:

- received generally positive responses on its operations in a survey of ITRF members
- established three ITRF sub-committees to increase opportunities for dialogue with stakeholders
- reviewed the Commission's decision-making processes and investigation practices, using findings from merits and judicial reviews, to identify opportunities for improvement
- facilitated engagement in the system by completing pre-lodgement checks as requested by Australian Industry and improved information on the system
- continued to engage with other anti-dumping agencies to learn from international practices and ensure consistency with Australia's international obligations.

#### 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.

#### Our approach for KPI 1

To measure stakeholder satisfaction with the Commission's administration of the anti-dumping system, the Commission undertook a survey of ITRF members. Of the 24 members of the ITRF (other than the Commissioner), 13 members responded to the survey (up from four responses for the 2015-16 report). Of the 13 respondents, 30% were manufacturer or producers, 30% from peak bodies, 23% were from Australian Government agencies, 7% were importers and 10% were other types of respondents. In respect of industry sector, 38% of respondents participated in the steel or aluminium manufacturing sector and 7% in the food processing sector.

In 2016-17, the survey included new questions on the Commission's actions to enhance whole-of-government collaboration to strengthen the anti-circumvention and compliance

<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>.



framework (KPI 4) and the Commission's commitment to continuous improvement (KPI 6). Results that relate to other KPIs are reported in in the relevant section of this report.

## 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 with the anti-dumping system and documenting responsiveness to feedback from regulated entities on internal improvements*

The survey of ITRF members found:

- All respondents were satisfied or somewhat satisfied with the information and support available to access Australia's anti-dumping system.
- Eleven of the 13 respondents considered the Commission's understanding of the relevant industry sectors and the current and emerging issues that affect them was very strong, strong or sound.
- Twelve respondents 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.
- Eleven respondents were very satisfied, satisfied or somewhat satisfied with the Commission's commitment to continuous improvement.
- Twelve respondents were very satisfied, satisfied or somewhat satisfied that the Commission was taking action to enhance whole-of-government collaboration to strengthen the anti-circumvention and compliance framework. Stakeholders have consistently raised compliance and circumvention as important issues.
- In the free text component of the survey, some respondents suggested that the Commission continue to strengthen its consultation with, and outreach to, stakeholders, and the transparency of its decision making. One respondent noted the importance of ensuring the ITRF allows for all relevant stakeholder viewpoints to be represented.

Respondents to the 2015-16 survey suggested that the ITRF meet on a more regular basis. In 2016-17, the Commission convened three ITRF meetings, held in September 2016 in Sydney, December 2016 in Adelaide and May 2017 in Melbourne. As discussed further in regard to KPI 6, the Commission provided updates and sought feedback from stakeholders at these meetings on operational improvements being implemented by the Commission, including the New Investigations Model, Injury and Causation Framework and verification training program. In addition, the Commission presented to ITRF members on its analysis of industry sectors, including the Steel and Aluminium Report released in September 2016 and the Commission's analysis of the steel fabrication industry.

In addition, to provide more opportunities for ITRF members to advise on issues for the anti-dumping system and develop policy options for consideration by Government, the Commissioner of the Anti-Dumping Commission established three ITRF sub-committees – on SME access, subsidies, and compliance and anti-circumvention. These sub-committees provided a forum for more regular and detailed discussion of issues of interest to stakeholders in between ITRF meetings. The three sub-committees each met at least five times (17 meetings in total) between November 2016 and March 2017, when each sub-committee produced an options paper with recommendations for consideration by Government. Each sub-committee was chaired by an industry member of the ITRF. The sub-committee on SME access also provided an opportunity for a number of SMEs that were not ITRF members to present on their experiences with the anti-dumping system.

- *Metric: 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. ADRP decisions provide the Commission with valuable opportunities to identify areas where operational improvements can be made. In addition, the outcomes of merits review can provide guidance on the correct or preferable approach where there is ambiguity or uncertainty (for example, in how to interpret complex legislative provisions).

To make best use of these opportunities, the Commission carefully considers the outcomes from merits and judicial reviews to identify where it can improve its decision-making processes and investigation practices.

Between July 2013 and end June 2017, the ADRP issued 51 reports on its merits review decisions. Of these, 29 reports were affirmed or recommended to be affirmed, 15 reports were revoked or were recommended to be revoked, and the remaining 7 reports of decisions were affirmed in relation to some applicants and revoked for others.

#### **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 some flexibility in how information is provided and presented.

The Act requires that applications must be made in writing and in an approved form. The Commission acknowledges that the information required to submit an application can be onerous to obtain. However, this information is an important element of ensuring that the Commissioner's decisions and recommendations to the Minister are evidence based, objective and factual in order to meet legislative requirements and to be consistent with international obligations. To ensure the information requirements are clear, there is a comprehensive set of guidelines on the Commission's website with instructions on how to complete an application. In addition, the Commission recently reviewed and reissued certain application forms to ensure they are clear and up-to-date. The Commission has also developed a new form to assist applicants for accelerated reviews to understand the requirements for submitting an application.

The Commission offers a pre-lodgement check of applications prior to lodgement. Working with the applicant, the Commission will provide detailed advice 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 2016-17, the Commission commenced a pilot program with DIBP to assist applicants prior to lodging an application, particularly applicants with less knowledge of Australia's anti-dumping system, including SMEs and first time applicants. Under this pilot program, applicants for measures can agree to their draft application being shared with DIBP so that they can receive advice on whether the goods description is clear, appropriate in scope, and likely to be effective should measures be applied following an investigation.

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

The Commission recognises how important it is to learn from the experiences and better practices of other comparable jurisdictions. As a key component of the International Engagement Plan, the Commission met Australia's international trade obligations by attending the 2016-17 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 (DFAT). These meetings help to ensure that the Commission is aware of trends and issues in trade remedies practices internationally. It also ensures Australia's anti-dumping system is consistent with the WTO Anti-Dumping Agreement as well as the WTO Agreement on Subsidies and Countervailing Measures.

The Commissioner and senior Commission staff members also attended a number of international trade forums in 2016-17 with a focus on trade remedies matters, including the International Trade Remedy Symposium in Georgetown, the Seoul International Forum on Trade Remedies, the Bangkok International Symposium on Trade Remedies and the Delhi Regional Anti-Dumping Workshop.

In conjunction with the WTO committee meetings and in other international forums, the Commission participated in a number of bilateral meetings with other jurisdictions to exchange information on best practice. During 2016-17, the Commissioner and Commission staff members met with officials from more than 10 jurisdictions.

The Commission has continued to engage in international technical exchanges and knowledge sharing activities to strengthen understanding. In 2016-17, the Commission continued to engage closely with the Canadian International Trade Tribunal (CITT), with a particular focus in the areas of injury and causation analysis. This engagement included preparations for a series of exchanges which took place in 2017, including a visit to the Commission by a CITT representative in July-August and a visit by Commission staff to the CITT in September-October. The Commission and the CITT are currently finalising arrangements for an exchange of staff during 2018.

### **Discussion KPI 1**

The Commission notes the generally positive feedback from ITRF members in the survey responses. Based on the survey feedback, the Commission will focus on continuing to strengthen communication with, and outreach to, stakeholders to better understand their industries and concerns.

The Commission builds its understanding of industry sectors and emerging issues in a number of ways. These include undertaking industry, importer and exporter visits to not only verify data, but to also gain a comprehensive understanding of the industry that is being investigated. The Commission also undertakes research and analysis and meets with industry participants to gather market intelligence and information on current market developments. The Commission will continue to work on enhancing its understanding of markets and industries relevant to the anti-dumping system.

The ITRF plays an important role as the primary forum advising on the operation of, and reforms to, Australia's anti-dumping legislation. The establishment of ITRF sub-committees

created a valuable forum for more regular and detailed discussion of issues of interest to stakeholders in between ITRF meetings. While two of the sub-committees established in 2016 have completed their work, one is continuing and a new sub-committee was formed in 2017, based on industry feedback at the May 2017 ITRF meeting.

In a highly contested system that is open to legal interpretation, a robust review process is a positive attribute of the system. Quality investigative learnings come from analysis of the review findings and the Commission will continue to carefully consider the outcomes of merits and judicial reviews to identify ways to improve its decision making and investigative processes.

The Commission considers that its engagement with international organisations and other jurisdictions is supporting continuous improvement of its practices.

### **Stakeholder Validation**

ITRF members were surveyed in September 2017. Stakeholder feedback in 2015-16 suggested that a survey of the ITRF is a good approach for measuring performance but the Commission should work with stakeholders to improve the response rate. In this year's survey the response rate increased from four to 13 members.

A draft of this report was circulated to ITRF members for their consideration and comment in October 2017.

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

### **Summary of achievement**

As noted in the discussion under KPI 1, the survey results indicate satisfaction with the Commission's communications with regulated entities, with some areas for further improvement. In 2016-17, the Commission:

- responded to 1,546 enquiries, 98.7% of which were resolved in two business days
- considered 568 submissions from Australian industry, exporters, importers, foreign governments and others
- regularly engaged with stakeholders, including through three meetings of the ITRF and 17 ITRF subcommittee meetings, on operational policies and practice
- updated the Dumping and Subsidy Manual and the subsidies register, both of which are published on the Commission's website.

### **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
- Industry groups and representatives of affected stakeholders are adequately consulted 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 has assessed its communication practices and outcomes by using quantitative information collected for other reporting and continual improvement processes. The survey supplemented this approach with questions on communication. Results will be used to identify opportunities for strengthening performance further.

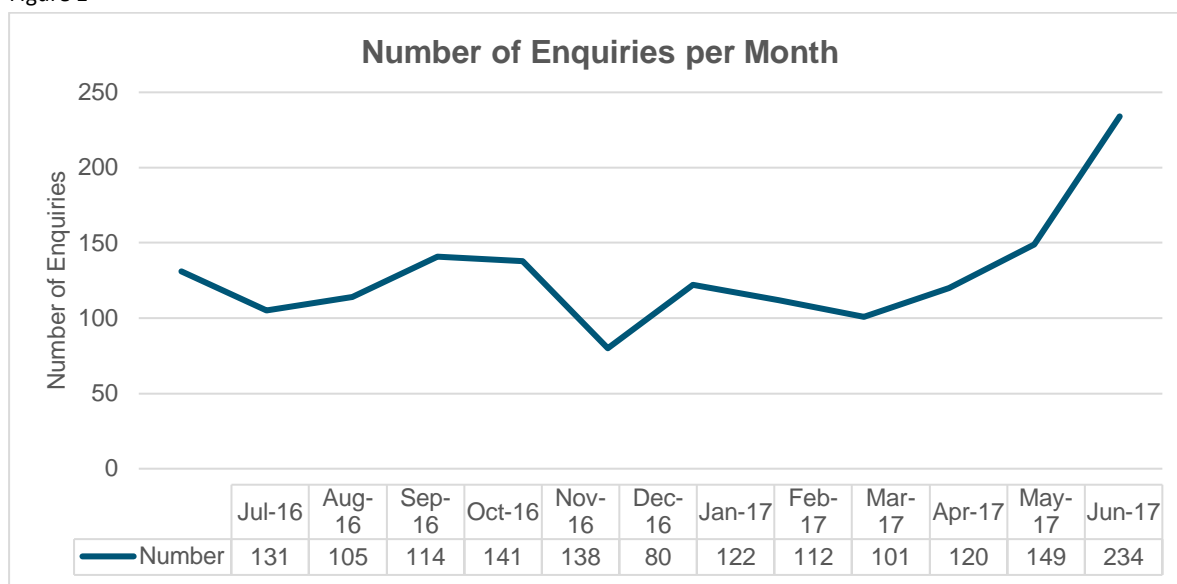
### Results KPI 2

**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 2016-17 the Commission received 1,546 enquiries via the website, email or by phone referral from the business.gov.au hotline. The monthly trends are located in Figure 1.

Figure 1



From 1 July 2016 to 30 June 2017, 98.7% of enquiries were resolved within in two business days (Figure 2). Enquiries resolved in 2016-17 are categorised by enquiry type in Figure 3. Around one third of queries were requests for detailed duty rates while around a further third were either general queries about the anti-dumping system or questions about whether particular goods were subject to measures.

During that same period, steel and aluminium enquiries dominated with 69% of all enquires relating to steel or aluminium. The next largest commodity type was for food at 19% of enquiries (Figure 4).

Figure 2

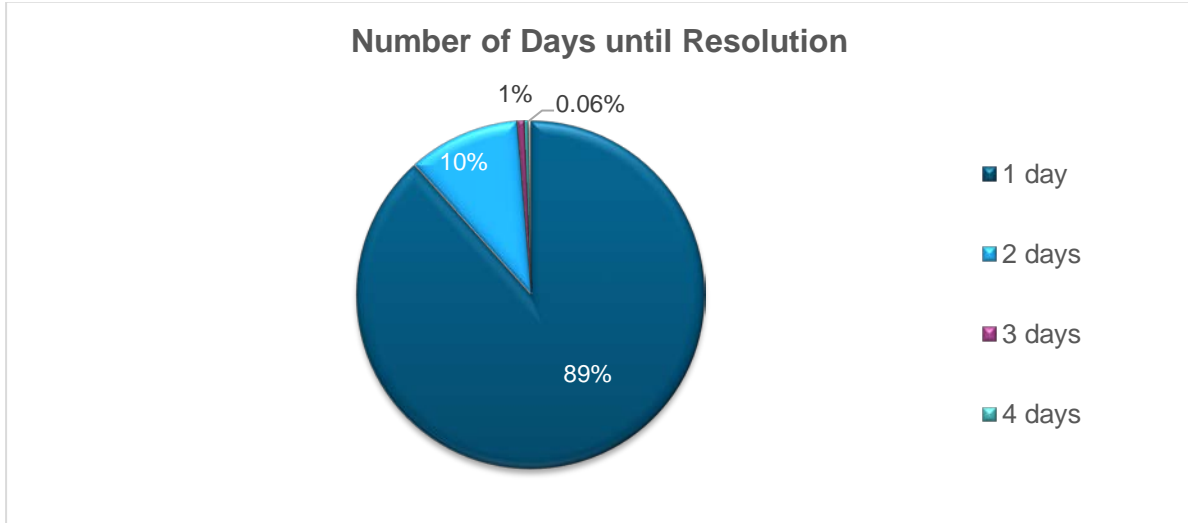


Figure 3

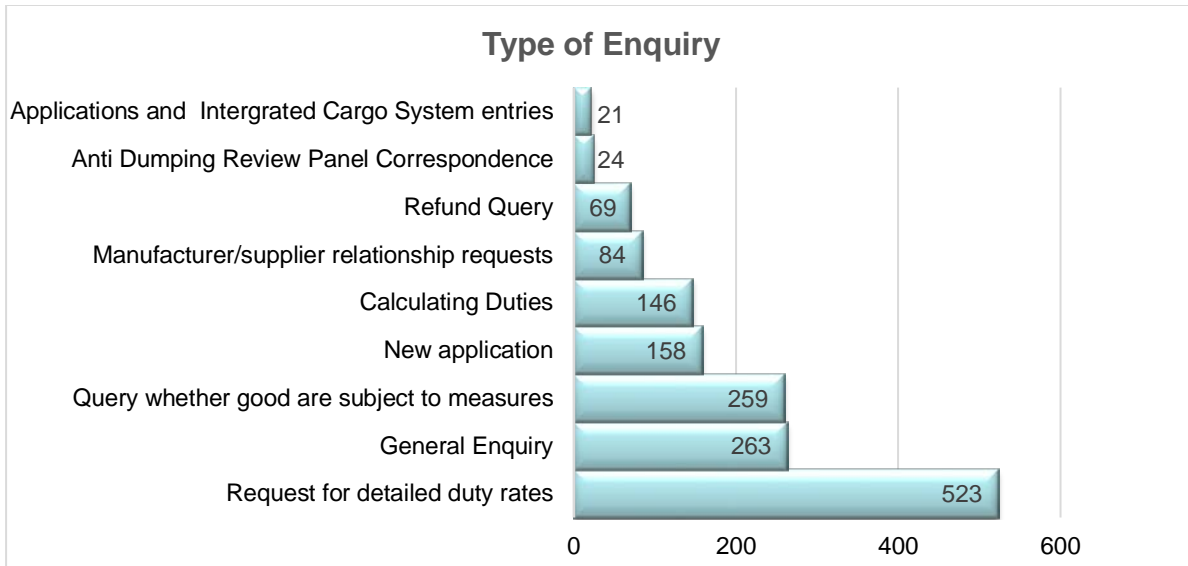
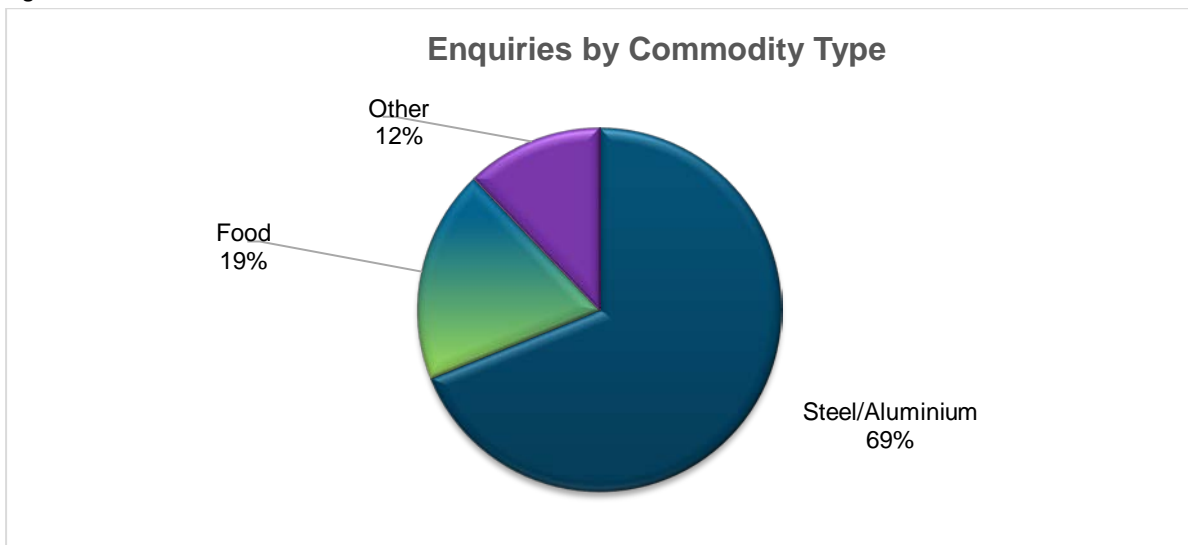


Figure 4



In July 2017, just outside the reporting period, the Commission introduced website alerts, following stakeholder feedback, including responses to a survey of website users conducted in 2016-17. At the time of writing this report, more than 200 subscribers had signed up to receive alerts. These assist stakeholders in keeping up-to-date with developments in the Commission's cases, initiation of new investigations and reviews, and publication of general information on the anti-dumping system.

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

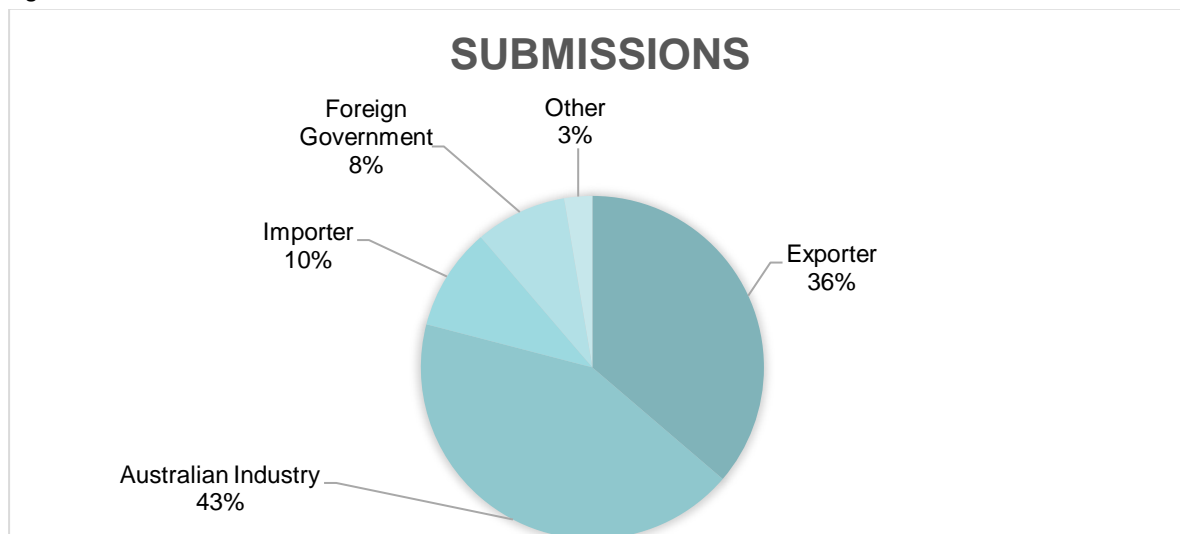
- *Metric: Number and type of consultation opportunities given to regulated entities and industry group representatives.*

Australia's anti-dumping system offers many formal and informal opportunities for consultation on policy and practice development. As noted in relation to KPI 1, the ITRF and ITRF sub-committees met regularly throughout 2016-17 and provided numerous opportunities for consultation with stakeholders on specific policy and practice issues. For example (and as discussed further below in relation to KPI 6), the Commission consulted ITRF members on the implementation of its New Investigations Model, and on the development of a robust, evidence based approach to assessing injury and causation. In 2016-17, the Commission also consulted with ITRF members on principles to guide the Commissioner in granting an extension of time, and on updates to the Dumping and Subsidy Manual as discussed below.

In addition, the Commissioner and Commission staff continued to meet regularly with stakeholders across a range of sectors to discuss operational policy and practice matters. The Commissioner continued to undertake speaking engagements at industry events and other stakeholder forums to provide updates on the Commission's operations and seek feedback and answer questions from stakeholders, presenting at six stakeholder events in 2016-17.

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. Consultation 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 2016-17, 568 submissions were received on 53 separate cases. Public versions of these submissions were published on the Commission's website and included submissions from exporters, importers, Australian manufacturers and producers, foreign governments and others. (See Figure 5 for a breakdown of submissions.)

Figure 5



\*The "other" category relates to submissions from associations, unions, traders and unaffiliated interested parties.

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

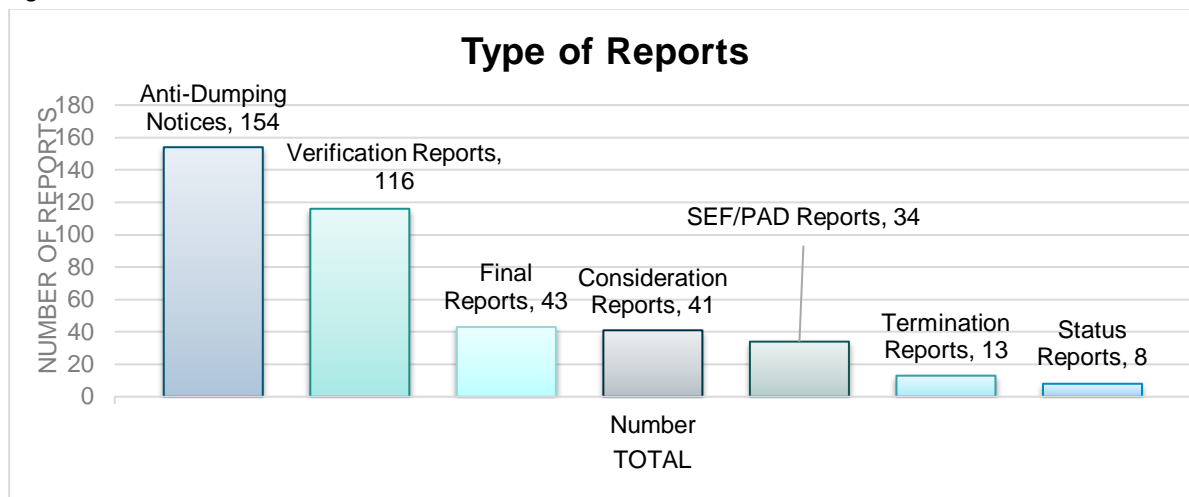
- *Metric: Information provided to entities will be readable and consistent with Anti-Dumping legislation, policies and guidelines, and/or decisions made by the Commission, via merits or judicial reviews*

Australia's anti-dumping legislation requires a certain level of transparency throughout an investigation. In 2016-17, 154 Anti-Dumping Notices were published on the Commission's website notifying decisions and 255 investigation reports were published explaining the evidence, analysis and decisions (Figure 6). Some of these investigation reports are not required by legislation but are published by the Commission to improve transparency and facilitate stakeholder engagement in investigations.

The Commission works to ensure that information provided to entities including decisions and reasoning are readable, timely and consistent with legislation, policies and guidelines. The Commission has worked to improve the readability of its reports, an example of this is including executive summaries to assist with the understanding of decisions. In the survey conducted for this report, 12 of the 13 respondents were satisfied that the Commission's communication is appropriately targeted and clearly explains the evidence-based approach used in investigations.



Figure 6



- *Metric: The Dumping and Subsidy Manual and subsidy register will be readable and will 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 in understanding 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. In 2016-17 the Commission consulted ITRF members on proposed amendments to the Manual to explain and clarify the Commission's current policy and practice. The updated Manual was published on the Commission's website in April 2017.

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 January 2017 and is now reviewed and updated, as required, at the conclusion of each countervailing investigation. In response to a recommendation by the ITRF sub-committee on subsidies, the Commission has recently added to the subsidies register links to information on subsidies in other jurisdictions.

**Measure: 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**

In conducting investigations, the Commission makes every attempt to ensure that information requests are tailored, coordinated with other regulators, only made when necessary, and made 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 can place a significant impost on exporters' time and resources, but on-site exporter verification is a core investigative tool and Australian industry expects exporter data to be thoroughly examined and verified on-site.

The Commission's preference is to conduct as much on-site 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 the completion of 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.

For verification of exporter and importer data, the Commission will sometimes use alternative verification methodologies to on-site verification, where this is appropriate. An example might be a duty assessment where the entities involved were subject to satisfactory verification by the Commission in a recently completed investigation or review. 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. To ensure that regulated entities are receiving consistent and seamless advice and streamlined information requests, the Commission and DIBP work closely together to promote a coordinated whole-of-government approach. An example is the process of applying provisional measures to certain imports during an investigation and then cancelling them or converting them to interim measures at the end of an investigation. The Commission and DIBP work together to ensure that customs brokers have a single point of contact during the conversion or cancellation period. Both organisations work together to respond to 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 has improved the opportunities for engagement with ITRF members on policy and practice issues by establishing sub-committees.

The survey results confirm that the opportunities for communication are sufficient and the Commission's communications with stakeholders are effective. The Commission will continue to look for ways to improve its communications with stakeholders.

Minimising information requests will always be an area that the Commission will find challenging due to the evidence-based nature of investigation, inquiry and review processes, consistent with Australia's international obligations under the World Trade Organization (WTO) agreements.

## **Stakeholder Validation**

As noted above, the survey of ITRF members indicated that members are satisfied with the Commission's performance for KPI 2.

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

#### Summary of achievement

During 2016-17 the Commission:

- implemented a new investigations model aimed at better addressing risk and improving the consistency, timeliness and quality of investigations
- implemented a quality assurance framework to document the policies, attitudes, actions and procedures necessary to ensure that quality is being maintained and enhanced across the range of the Commission's operational activities
- implemented a workforce coordination function for efficient and risk-based allocation of resources to operational activities.
- conducted on-site verification of exporter data in relation to 85% of the total export value for those exporters that 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 verification activity is proportionate and undertaken where assessed as 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
- the 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 has demonstrated its approach to assessing and managing risk. In relation to its verification activities, it has reported data on its on-site verification activity and the percentages of export volumes subject to on-site verification.

#### 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 has designed and implemented a suite of frameworks and guidelines to address risk, and improve the consistency, timeliness and overall quality of investigative outcomes.

In 2016-17, the Commission introduced a dedicated workforce coordination function that manages the efficient allocation and coordination of Investigations staff to all case types undertaken by Commission. It also allocates a Virtual Quality Assurance Team to each case, which comprises staff with specialist legal, operational policy and quality assurance expertise.

The implementation of a comprehensive Quality Assurance (QA) Framework reflects the Commission's commitment to strengthening both the quality and consistency of case findings, reports and recommendations across the full remit of the Commission's functions. It was designed to complement the implementation of the new investigations model. The QA Framework provides for quality assurance processes that are embedded into the case planning and investigations process to ensure risks are identified and managed as early as possible in an investigation. The key enabler in this regard is the series of quality control point (QCP) meetings that are scheduled to take place at key milestones points during each case. Those QCP meetings are an opportunity for the case management team and the virtual quality assurance team to consider risks and risk treatments.

To complement the QA Framework, a Risk Management Framework provides guidance to manage the core operations capability in relation to risk.

The Commission has continued to improve its capability and capacity in verification activities. In particular, it has developed and delivered a Verification Capability Framework, which includes multiple training and development modules aimed at increasing the efficiency and effectiveness of its verification activities. Currently, the Commission has 20 lead verifiers, up from seven in 2015.

**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 under 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. On-site verification is one means to establish the suitability of the information provided and is an important part of the Commission's strategy in conducting investigations.

It is not possible for the Commission to undertake on-site 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 it has completed an exporter questionnaire. For the dumping and subsidy investigations (including continuation inquiries and reviews) initiated in 2016-17, 77 completed exporter questionnaires were received. The Commission undertook on-site verification of the data in relation to 48 (or 62%) of those exporter questionnaires. This represents 85% of the total export value for those exporters that completed exporter questionnaires.

Following the completion of exporter verification visits in 2016-17, the Commission's exporter verification reports were published (on average) within 59 days. This is the same result as that achieved in 2015-16, but represents a 36% more timely response than in 2014-15 (92 days), despite the fact that in 2016-17 the Commission undertook more than double the number of exporter verification visits than in 2014-15.

### Discussion KPI 3

The implementation of the suite of frameworks discussed above has strengthened the Commission's performance against this KPI. By improving its approach to assessing risks and adopting a more efficient and effective approach to workforce coordination, the Commission ensures that it focuses its resources on the areas of highest risk.

Implementing enhanced quality assurance processes and improving its capability and capacity in verification have further supported the Commission in taking a risk-based approach and ensuring that decisions and recommendations are based on reliable evidence and facts. In addition, by maintaining its timely publication of exporter verification reports (as requested by stakeholders in the previous reporting period), the Commission facilitates submissions by interested parties on the evidence.

### Stakeholder Validation

The survey indicated that members are satisfied with the Commission's performance for KPI 3. One response to the ITRF survey noted the continued importance of timely decision-making processes. The Commission's approach to continuous operational improvement will support its focus on the quality, evidence base and timeliness of its investigations.

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

### Summary of achievement

During this reporting period, the Commission continued to work with the Department of Immigration and Border Protection (DIBP) to further enhance, and improve the effectiveness of, the whole-of-government approach to anti-circumvention and compliance.

### Expectations for KPI 4

Compliance and monitoring are an essential part of regulatory frameworks. Monitoring allows 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. The Australian Border Force (ABF), as the operational arm of DIBP, is the regulator responsible for compliance. The Commission uses DIBP trade flow information to monitor the effectiveness of measures and to identify evidence of potential circumvention or non-compliance. The Commission works with DIBP to adopt a whole-of-government approach to strengthening the anti-circumvention and compliance framework, including sharing information and market intelligence as appropriate.

## 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 ABF 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 has continued to work with DIBP/ABF on monitoring compliance with anti-dumping measures, including collaboration on joint minister briefings and Commission referrals regarding potential non-compliance with measures and anti-circumvention matters.

During 2016-17, DIBP provided the Commission with access to its trade database and information requested by the Commission on trade flows, to assist the Commission in monitoring the effectiveness of measures. In addition, DIBP/ABF has supported a number of anti-dumping investigations by providing targeted import data and advice (for example, on tariff classifications) early in the investigations process. The Commission and DIBP/ABF continue to develop their working relationship and streamline interactions.

### Discussion KPI 4

Whilst the Commission is not directly responsible for compliance activities once duties are applied, the Commission continues its commitment to work with DIBP towards strengthening compliance monitoring and improving the Commission's trade analysis capability. The Commission considers that effective whole-of-government collaboration has occurred during this reporting period.

### Stakeholder Validation

In the stakeholder survey reported under KPI 1, 12 of the 13 respondents were very satisfied, satisfied or somewhat satisfied that the Commission was taking action to enhance whole-of-government collaboration to strengthen the anti-circumvention and compliance framework.

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

### Summary of achievement

In 2016-17, the Commission published:

- 158 reports setting out its recommendations or decisions and explaining the evidence base and reasoning for those recommendations and decisions
- a monthly status report on its current cases
- new quarterly performance indicators.

### 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 regulator's 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 to regulated entities the evidence base and approach used in the regulatory decision-making process. 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 process 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 has demonstrated the transparency of dealings with regulated entities by describing the range of information that is published.

### Results KPI 5

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

- *Metric: Publication of all decisions and reasoning*

The Commission communicates its investigative approach, the evidence base and its reasoning to stakeholders in its investigation reports. In 2016-17, 255 reports were published on the Commission's website. The submissions received from stakeholders in relation to reports open new lines of inquiry, test the evidence used, 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 its 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 15.25 days in 2016-17, down from 18.5 days in 2015-16. Complementing this monthly status report is the publication of bi-annual case reporting by the Commission to the WTO. This report is publicly 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).

The Anti-Dumping Commission has also developed a set of performance indicators for investigations, reviews and revocations, and continuation and exemption inquiries that allow the Commission to monitor the achievement of objectives, support operational improvements and increase transparency. These performance indicators are published quarterly. The Commission has invited comments on the value of these indicators from ITRF members; responses to date have been positive.

### Discussion KPI 5

The Commission is satisfied with its performance against KPI 5 and that the metrics are a good indicator of the transparency of the anti-dumping system. The Commission has responded to feedback from stakeholders by developing the quarterly performance indicators and publishing the monthly status report more quickly. The Commission will continue to make improvements in 2017-18.

### Stakeholder Validation

Feedback from stakeholders on this KPI was generally positive regarding information available from the Commission.

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

### Summary of achievement

Over 2016-17, the Commission developed and implemented a suite of operational reforms and has continued to implement further operational improvements. The Commission has commitment to continuous improvement and will look for further ways to improve its efficiency and effectiveness. In addition, the Commission contributed to the policy development process led by the Department of Industry, Innovation and Science, including through its role in providing secretariat support for the ITRF.

### 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 the 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 the operation of the regulatory framework.

### Our approach for KPI 6

The Commission has described its activities in developing and implementing operational reforms and its actions in collaborating with stakeholders and policymakers to demonstrate its commitment to continuous improvement of the anti-dumping system.



## 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.*

In October 2016, the Commission commenced implementation of a New Investigations Model to ensure that the anti-dumping system remains effective and efficient and is better able to handle its high caseload. During 2016-17, the Commission also worked to develop a more robust, evidence-based approach to assessing whether Australian industry is being injured by dumping or foreign subsidisation. Feedback from stakeholders has been important to the development and implementation of these reform initiatives.

The Commission provided updates and sought feedback from stakeholders on the New Investigations Model and the Injury and Causation Framework at the three ITRF meetings held in 2016-17. The Commission hosted a workshop on the Injury and Causation Framework before the ITRF meeting in May 2017 to enable in-depth discussion on the Framework developed for the Commission by Frontier Economics. The presentations from these ITRF meetings are available on the Commission's website to enable other interested stakeholders to access information about these reforms.

The Commission has actively contributed to the policy development process being led by the Anti-Dumping Policy Section of the Department of Industry, Innovation and Science. The Commission regularly provided information and feedback on implementation issues in 2016-17 to assist the Anti-Dumping Policy Section in developing policy options for consideration by Government. In addition, the recommendations of the ITRF sub-committees convened by the Commission have been incorporated into the policy development process.

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

- *Metric: 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 procedures and processes to facilitate the regular flow of information to departmental policy areas and key Australian Government partners such as DIBP and 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 within the Department of Industry, Innovation and Science. The aim is to ensure consistent, considered and timely whole-of-department interactions. A similar approach applies to DIBP and DFAT, with whom the Commission works together formally and informally on a daily basis.

The Commission also facilitates the communication of feedback to policy areas through the involvement of relevant government agencies in meetings of the ITRF and ITRF sub-committees. These forums provide an opportunity for policy areas to engage directly and

regularly with the Commission's stakeholders about operational and policy issues relating to the Commission's regulatory framework.

#### **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**

The survey results reported under KPI 1 indicated that 11 of the 13 respondents were very satisfied, satisfied or somewhat satisfied with the Commission's commitment to continuous improvement. Feedback on this KPI largely focussed on continuing to strengthen communication and consultation with interested parties in cases and those affected by measures.