



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

Regulator Performance Framework

Self-Assessment Report

Submitted by: The Anti-Dumping Commission

26 November 2018

www.adcommission.gov.au

Contents

1	Certification by the Accountable Authority	3
2	One page snapshot.....	4
3	Introduction	5
3.1	About the Anti-Dumping Commission	5
3.2	The Australian Government Regulator Performance Framework.....	5
3.3	Our approach to implementation of the Framework.....	6
4	Assessment	8
4.1	KPI1.....	8
4.2	KPI2.....	17
4.3	KPI3.....	17
4.4	KPI4.....	20
4.5	KPI5.....	21
4.6	KPI6.....	22

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 2017-18, 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 2017-18, the Commission:

- published performance indicators for its cases, with reports published on the Commission's website each quarter
- convened two meetings of the International Trade Remedies Forum (ITRF)
- convened eight meetings of ITRF subcommittees to facilitate ongoing dialogue with stakeholders on potential improvements to the anti-dumping system
- continued to address risk and improved the consistency, timeliness and quality of investigations through the new investigations model, which covered all cases in 2017-18.
- conducted on-site verification of exporter data for 69% of cooperating exporters through undertaking 51 exporter visits in 2017-18. There was a 6% increase in exporter visits conducted in 2016-17 and 75% increase on 2015-16.
- worked with the Department of Home Affairs, Australian Border Force (ABF) to enhance the whole of government approach to anti-circumvention and compliance
- responded to international developments by commissioning and publishing analysis of likely impacts and expanding its trade flow tracking activity
- worked to minimise the potential for unintended negative impacts of regulatory activities by improving knowledge about the Commission's processes by introducing website alerts, developing a new duty assessment application form and improving the spreadsheet attachment and by offering pre-lodgement checks for Australian industry applicants. These achievements assist businesses, in particular small-medium enterprises, to access the Australian anti-dumping system.
- considered 313 submissions from Australian industry, exporters, importers, foreign governments and others
- published 197 Anti-Dumping Notices and 203 reports explaining decisions¹
- 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 1,842 enquiries, with 97% 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 2017-18 period, the Commission continued to focus on effectively utilising data collected for other reporting and business improvement processes for self-assessment. The Commission will continue to work on ensuring the metrics are good indicators of performance.

¹ 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 alleged dumping and/or subsidies, any injury suffered by the Australian industry concerned, and any 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 Home Affairs.

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 2017-18, the Commission completed 123 cases (all case types²) 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 2017-18 represent a 17% increase on overall cases completed in 2016-17 (105) and a 5% decrease compared to 2015-16 (129). The number of anti-circumvention, reviews of measures, accelerated reviews, duty assessments, reinvestigations and exemptions all increased compared to 2016-17. The number of dumping and/or subsidy investigations completed decreased from 27 in 2016-17 to 17 in 2017-18.

During 2017-18, the median time taken to complete the 17 dumping and/or subsidy investigations was 243 days, compared to 253 days for the 27 dumping/subsidy investigations in 2016-17 and 357 days to complete 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.

² 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

Case type	Number of cases completed in 2017-18
Dumping and/or subsidy investigations	17
Resumed Investigations	2
Continuation Inquiries	5
Accelerated Reviews	22
Reviews of Measures	22
Exemption Inquiries	20
Duty Assessments	21
Reinvestigations	13
Total	123

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 2017-18, 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 evaluation³
- the Department of Finance Resource Management Guidance on Performance⁴
- the Department of the Prime Minister and Cabinet RPF and guidance material on reviewing performance⁵
- the Productivity Commission Regulator Audit Framework⁶.

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. The full set of performance measures for each of the KPIs is provided at **Attachment A**.

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

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

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

⁶ 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 2017-18, the Commission:

- received generally positive responses on its operations in a survey of ITRF members
- held two meetings of the ITRF to facilitate consultation with members, and established a new import data sub-committee
- 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 Framework⁷, 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 the 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), 11 members responded to the survey. Of the 11 respondents, approximately 45% were manufacturer or producers, 45% from peak bodies, and 9% were from Australian Government agencies. In respect of industry sector, approximately 45% of respondents participated in the steel or aluminium manufacturing sector and 18% in the food processing sector.

In 2017-18, the survey included an amendment to an existing question on the Commission's actions to regularly seek views from stakeholders (KPI 6). Results that relate to other KPIs are reported in in the relevant section of this report.

⁷ 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 with the anti-dumping system and documenting responsiveness to feedback from regulated entities on internal improvements*

The survey of ITRF members found:

- Ten respondents were very satisfied, satisfied or somewhat satisfied with the information and support available to access Australia's anti-dumping system.
- Nine of the 11 respondents considered the Commission's understanding of the relevant industry sectors and the current and emerging issues that affect them was strong or sound.
- Eight respondents were satisfied or somewhat satisfied that the Commission effectively communicates the evidence base and approach used in investigations.
- Ten respondents agreed or strongly agreed that Commission staff regularly sought views from stakeholders and made themselves available to discuss both the anti-dumping system and specific case matters.
- Nine respondents were satisfied with the Commission's commitment to continuous improvement.
- Ten respondents were very satisfied or 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 indicated the Commission worked well within the scope of its intended operation and was increasingly customer focused. One respondent noted that the Commission, the Australian Border Force and the Department of Home Affairs needed to increase collaboration.
- Respondents to the 2015-16 survey suggested that the ITRF meet on a more regular basis. In 2017-18, the Commission convened two ITRF meetings, held in September 2017 in Canberra, and April 2018 in Sydney. As discussed further in regard to KPI 6, the Commission provided updates and sought feedback from stakeholders at these meetings on operational matters of the Commission, modelling relating to the possible impacts of displaced steel and aluminium on Australia, and policy reform proposals to improve the system, including in relation to small-medium enterprise access and merits review arrangements.

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 an ITRF sub-committee – on access to import data. This sub-committee, in addition to the existing sub-committee on compliance and anti-circumvention, provided a forum for more regular and detailed discussion of issues of interest to stakeholders in between ITRF meetings. The two sub-committees each met four times between August 2017 and June 2018. Each sub-committee is chaired by an industry member of the ITRF.

- *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.

In 2017-18, the ADRP issued 26 reports on its merits review decisions. Of these, 16 reports (61.5%) affirmed the original decision and 10 reports revoked or revoked in part the original. This is compared to between July 2013 and end June 2017, where the ADRP issued 51 reports, of which, 29 reports were affirmed (56.9%).

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 published new forms to assist applicants for accelerated reviews and duty assessments 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 the former Department of Immigration and Border Protection (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 participating in the 2017-18 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 relevant WTO Agreements.

The Commissioner and Commission staff also attended a number of international trade remedies forums in 2017-18, including the International Trade Update in Washington, the Seoul International Forum on Trade Remedies, the Seminar on Trade Remedies Investigations in Tokyo and the Delhi Regional Anti-Dumping Workshop.

In addition to these events, the Commission participated in a number of bilateral technical exchanges with other anti-dumping jurisdictions to share information on best practice. During 2017-18, the Commissioner and Commission staff members met with officials from more than 10 jurisdictions. The Commission also continued to engage closely with the Canadian International Trade Tribunal (CITT), including through the secondment of a Commission staff member to the CITT to enhance understanding of its practices.

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 the information and support available to access the anti-dumping system and to effectively explain the evidence base and approach used in investigations in addition to improving collaboration across government agencies.

The Commission seeks to explain the approach used in investigations in a number of ways. It maintains a comprehensive policy and practice guide, the Dumping and Subsidy Manual (Manual), to explain the practices of the Commission. The Commission completed an update of the Manual in 2016-17 and is currently undertaking a targeted update in consultation with stakeholders. The Commission also publishes detailed reports on the Electronic Public Record in relation to investigations that explain the approach used in developing recommendations. The Commission will continue to work on enhancing its communication of the approach used in investigations.

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 2018 and the results are reported above.

A draft of this report was circulated to ITRF members for their consideration and comment in October 2018

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 2017-18, the Commission:

- responded to 1,842 enquiries, 97% of which were resolved in two business days
- considered 313 submissions from Australian industry, exporters, importers, foreign governments and others
- updated the subsidies register which is 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 Home Affairs), 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.

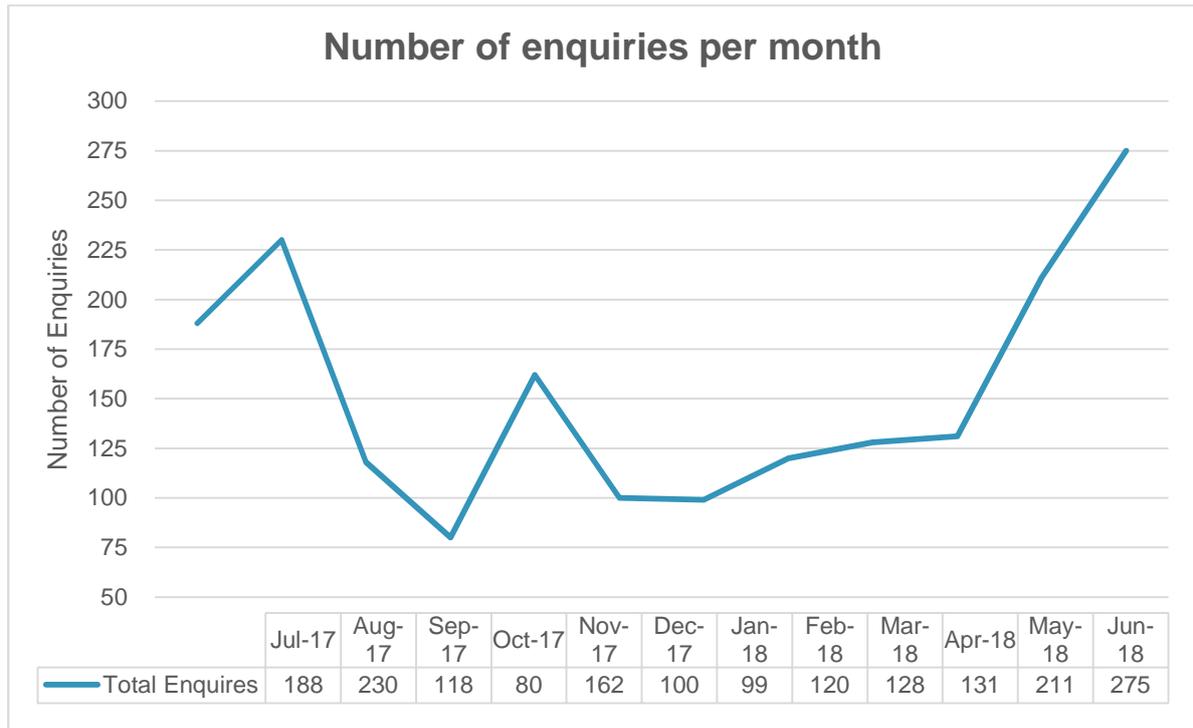
Results KPI 2

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 2017-18 the Commission received 1,842 enquiries via the website, email or by phone referral from the business.gov.au hotline (19% increase on 2016-17). The monthly trends are located in Figure 1.

Figure 1



From 1 July 2017 to 30 June 2018, 97% of enquiries were resolved within in two business days (Figure 2). Enquiries resolved in 2017-18 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 general queries about the anti-dumping system. The third highest enquiry type (16%) were questions about whether particular goods were subject to measures.

During 2017-18, steel and aluminium enquiries dominated with 76% of all enquires relating to steel or aluminium. The next largest commodity type was for food at 13% of enquiries (Figure 4).

Figure 2

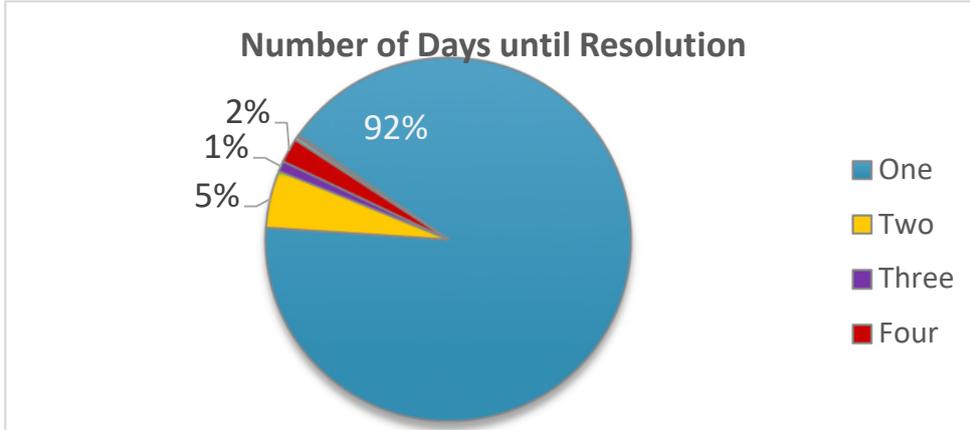


Figure 3

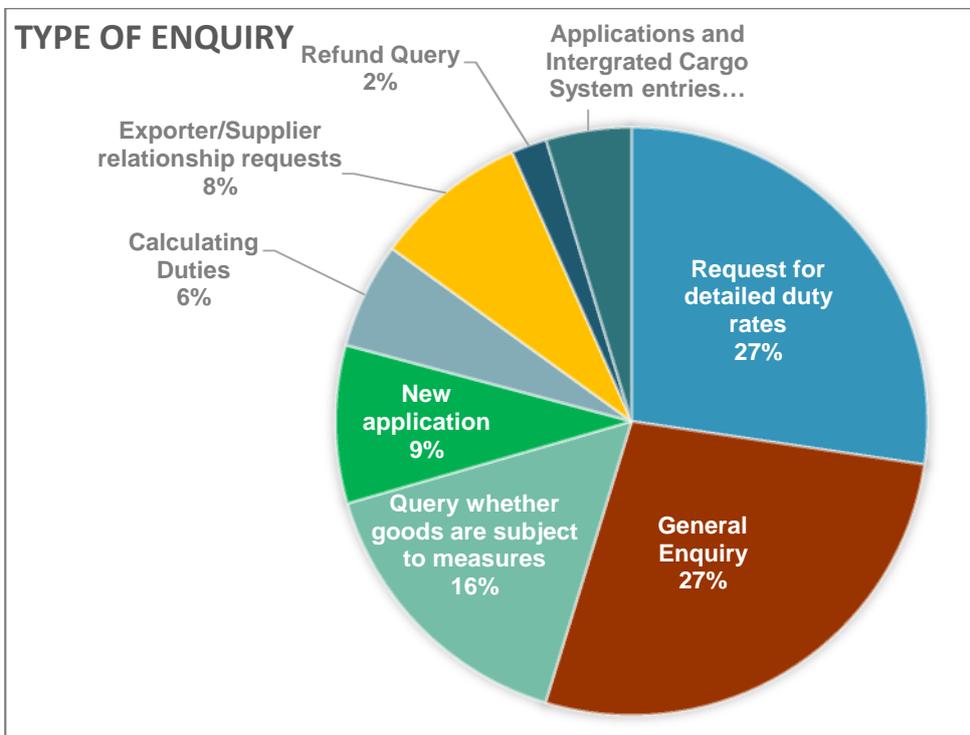
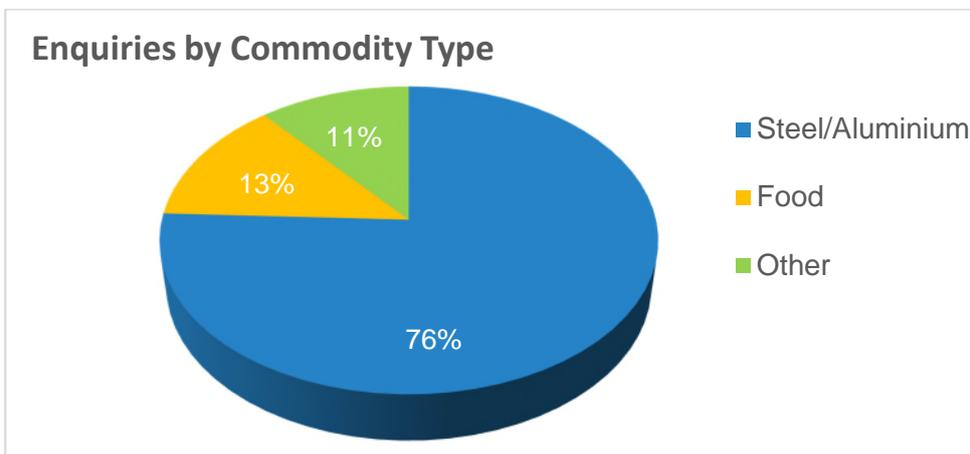


Figure 4



In July 2017, the Commission introduced website alerts, following stakeholder feedback, including responses to a survey of website users conducted in 2016-17. As at 30 June 2018, more than 450 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.

The Commission has changed the layout of the website to combine the case and electronic public record pages to create one single page that makes it clearer and easier for stakeholders to find case details and documents. We have received positive feedback from stakeholders in relation to these changes.

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

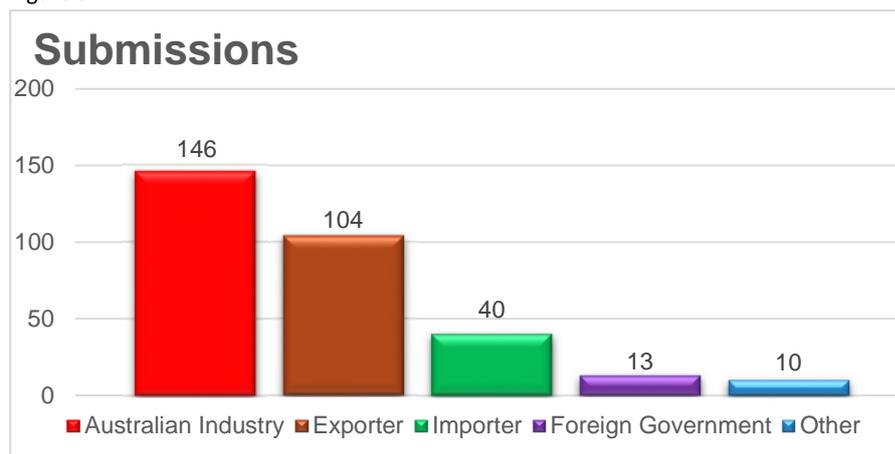
- *Metric: Number and type of consultation opportunities given to regulated entities and industry group representatives.*

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 2017-18 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 operational matters of the Commission, modelling relating to the possible impacts of displaced steel and aluminium on Australia, a new model matching policy known as the Model Control Code (MCC) and on updates to the 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 and Commission staff 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 four stakeholder events in 2017-18.

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 2017-18, 313 submissions were received on 81 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.

In response to additional tariffs imposed by the United States on certain steel and aluminium products, the Commissioner brought forward a meeting of the ITRF in April to discuss likely impacts on Australian manufacturers. The Commission engaged an economic consultant to provide advice to inform a Commissioner’s Note outlining the Commissioner’s views on the likely impacts. This process was done in consultation with ITRF members and resulted in calls for additional tracking of trade flows of imported steel and aluminium products.

The Commission now tracks trade flows of several products subject to anti-dumping measures. This is in the form of the Trade Remedy Index provided to the Commissioner on a monthly basis, which examines volume and pricing movements of nine products. Trade flow tracking helps the Commission assess the effectiveness of Australia’s trade remedies system. Specifically, whether anti-dumping measures may be impacting on the volumes, pricing and source of imports.

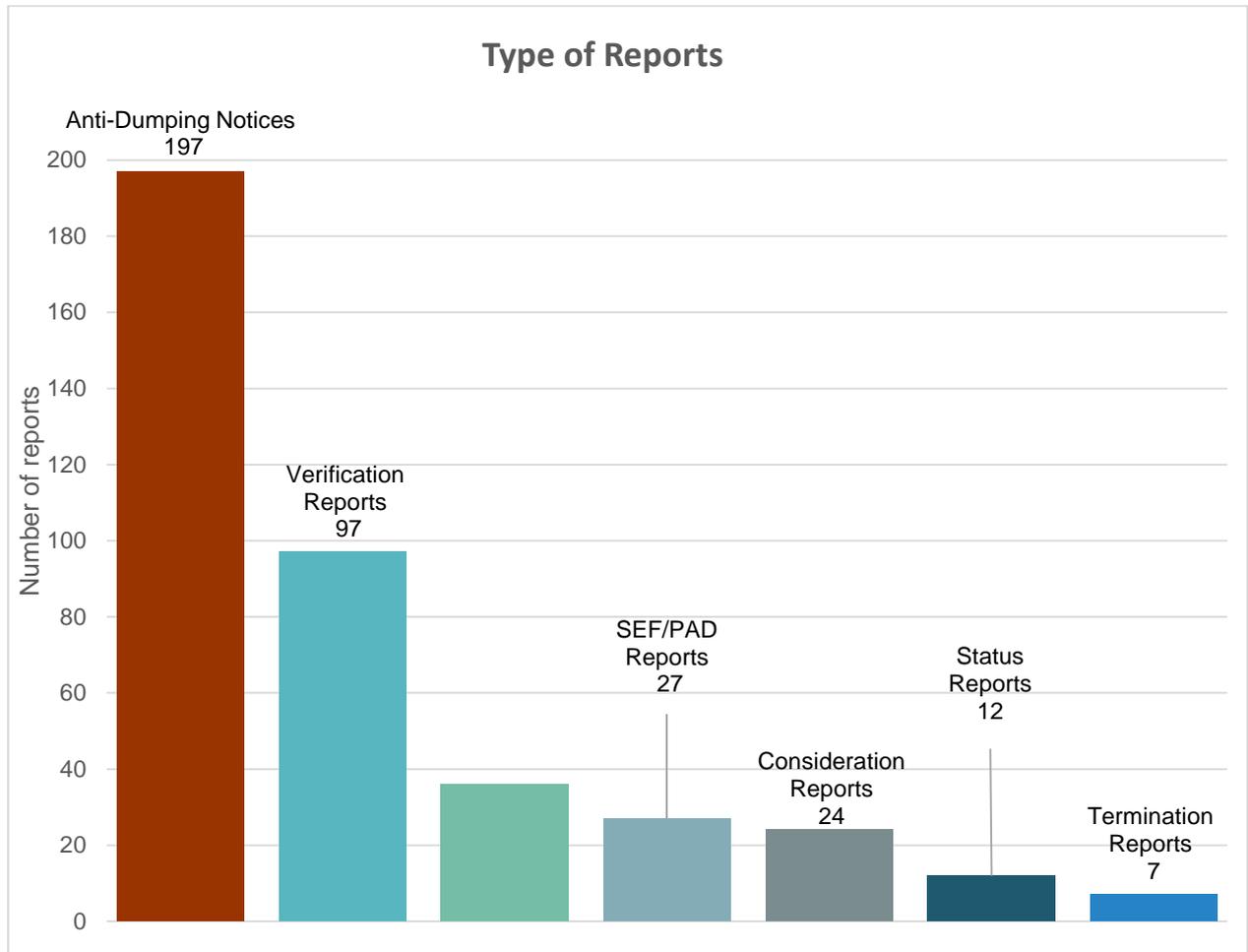
Measure: Decisions, reasons for decisions and advice provided by the Commission to affected entities are readable and understandable

- *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 2017-18, 197 Anti-Dumping Notices were published on the Commission’s website notifying decisions and 203 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, 8 of the 11 respondents were satisfied or somewhat 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. The Commission recently consulted interested parties on proposed amendments to the Manual to explain and clarify the Commission's current policy and practice. The Commission received five submissions from interested parties.

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 is reviewed and updated, as required, at the conclusion of each countervailing investigation.

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.

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 Home Affairs (Home Affairs) 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 Home Affairs 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 Home Affairs 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 2017-18 the Commission:

- implemented a new Verification and Data Assurance (VADA) team to further improve the verification outcomes by providing an additional layer of specialised assurance and oversight.
- continued to refine its 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 88% 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 2017-18, the Commission introduced a dedicated team to provide expert quality assurance over all exporter verification activities to reduce the risk of incorrect outcomes from the verification process. This team is responsible for providing advice regarding the application of Commission policy and practice at a highly detailed level, while improving the quality and presentation of the dumping margin calculations.

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 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 competent lead verifiers, up from seven in 2015. The Commission is in the process of conducting quality control checks on current leaders to ensure the standard of verification is maintained.

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 is the verification of financial data, 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 and agrees to a verification visit.

The Commission undertook more than double the number of exporter verification visits than in 2014-15, with 51 verifications conducted in 2017-18, an increase of 4 from the previous FY. In addition to these 51 onsite verifications, 8 other exporters had their data verified

using desktop methods. The Commission measures the coverage of onsite verifications as the proportion of Free on Board (FOB) value of cooperating exporters visiting onsite, compared to the total FOB value of cooperating exporters. In 2016-17 the coverage value was 85% and in 2017/18 this was 88%. The Commission notes that this metric can change from year to year depending on the relative value of the goods under investigation each year. The Commission is reviewing how it calculates coverage for future assessments.

Following the completion of exporter verification visits in 2017-18, the Commission's exporter verification reports were published (on average) within 68 days. This is a slightly higher result than that achieved in 2016-17 due to complexity issues encountered in a number of verifications relating to pallet racking and aluminium extrusions investigations. This result is 22 days earlier than the average days taken prior to verification improvements in 2014/15.

Discussion KPI 3

The implementation of the suite of frameworks and the new Verification and Data Assurance (VADA) team 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, while applying more detailed scrutiny to the results of verification activities, 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

In the stakeholder survey, 9 of the 11 respondents were satisfied with the Commission's performance for KPI 3. 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 Home Affairs (Home Affairs) to further enhance, and improve the effectiveness of the whole-of-government approach to anti-circumvention and compliance relating to trade remedies.

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 an operationally independent body within the Home Affairs portfolio, is the regulator responsible for compliance. The Commission uses Home Affairs import data to monitor the effectiveness of measures and to identify evidence of potential circumvention. The Commission works with Home Affairs 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 Home Affairs/ABF on monitoring compliance with anti-dumping measures. This includes through Commission referrals of potential non-compliance with measures to the ABF, conducting joint site visits, and regular communication about potential circumvention matters.

During 2017-18, Home Affairs again provided the Commission with access to its import database and information requested by the Commission on trade flows, to assist the Commission in monitoring the effectiveness of measures. In addition, Home Affairs/ABF has supported a number of anti-dumping investigations by providing targeted import data and advice (for example, on tariff classifications) early in the investigation process.

The Commission and Home Affairs/ABF continue to develop their working relationship and streamline interactions. As part of this, a protocol was developed which sets out the agreed working arrangements between the two agencies for ensuring an effective collaborative approach to monitoring potential non-compliance and circumvention of measures. The protocol has been published on the Commission's website.

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 Home Affairs towards strengthening compliance monitoring and improving the Commission's trade flow 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, 10 of the 11 respondents were very satisfied or 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 2017-18, the Commission published:

- 191 reports setting out its recommendations or decisions and explaining the evidence base and reasoning for those recommendations and decisions
- monthly status reports on its current cases
- 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 2017-18, 203 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 12 days in 2017-18, down from 15.25 days in 2016-17 and 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.

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 2018-19.

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 2017-18, the Commission has continued to implement improvements to its operations. The Commission is committed 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.*

During 2017-18, new legislative provisions relating to low volume exporters were introduced. To improve the effectiveness of this reform the Commission updated the relevant application form and guidance for reviews to assist applicants to navigate the regulatory framework.

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 2017-18 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.

The Commission has continued to strengthen and embed the New Investigations Model into its high caseload. Ongoing monitoring and evaluation has been important to the development and implementation of these vital reform initiatives.

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 Home Affairs 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 Home Affairs 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. At the September 2017 meeting of the ITRF, the Commission facilitated consultation on the policy reform process led by the Anti-Dumping Policy Section of the Department of Industry, Innovation and Science. Forums such as these 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 9 of the 11 respondents were satisfied with the Commission's commitment to continuous improvement.