



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

# Regulator Performance Framework

Self-Assessment Report

Submitted by: The Anti-Dumping Commission

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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 2018-19, 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 2018-19, the Commission:

- established and published the Trade Remedy Index, which tracks the trade flows of certain goods subject to anti-dumping measures on a monthly basis to provide better information earlier so those interacting with the anti-dumping system can make more-informed decisions.
- published performance indicators for its cases, with reports published on the Commission's website each quarter
- convened a meeting of the International Trade Remedies Forum (ITRF) to discuss operational issues and potential improvements to the anti-dumping system
- convened six meetings of ITRF subcommittees to facilitate ongoing dialogue with stakeholders on specific issues of interest
- conducted 28 on-site verifications of exporter data in 2018-19.
- worked with the Department of Home Affairs, including the Australian Border Force (ABF) to enhance the whole of government approach to anti-circumvention and compliance
- responded to international developments by publishing analysis of likely impacts.
- published an update of the Dumping and Subsidy Manual, to assist stakeholders understand the practices used by the Commission
- worked to minimise the potential for unintended negative impacts of regulatory activities by improving the electronic public record and dumping commodity register to make it easier to find documents, improving knowledge about the Commission's processes with website alerts, 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.
- launching new enhanced web pages and consolidated its website with Department of Industry, Innovation and Science, by re-designed its online content and public record system making many improvements based on user feedback and experience of both internal and external stakeholders.
- considered 449 submissions from Australian industry, exporters, importers, foreign governments and others (30% increase on the previous year).
- published 171 Anti-Dumping Notices and 182 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 2,184 enquiries (19% increase on the previous year), with 99% of these enquiries resolved within two business days.
- effectively managed a heavy workload finalising 129 cases in 2018-19 (5% increase on 2017-18 and 23% increase on cases finalised in 2016-17). The number of complex matters completed in 2018-19 increased 82% compared to 2017-18.

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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.

## 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 2018-19 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.

## 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 2018-19, the Commission completed 129 cases (all case types<sup>2</sup>) relating to applications from Australian Industry, importers and exporters. The completed cases are broken down into each case type in Table 1.

The completed cases for 2018-19 represent a 5% increase on overall cases completed in 2017-18 (123) and a 19% increase on 2016-17 (105). In 2018-19 there was an 82% increase in complex cases completed by the Commission.

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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

Case type	Number of cases completed in 2018-19
Dumping and/or subsidy investigations	17
Resumed Investigations	1
Anti – Circumvention Inquiries	3
Continuation Inquiries	10
Accelerated Reviews	20
Reviews of Measures	25
Exemption Inquiries	3
Duty Assessments	38
Reinvestigations	12
<b>Total</b>	<b>129</b>

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

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

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

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

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

- licensing and/or approvals processes, including registration/accreditation, that control entry to or participation in a market
- monitoring and compliance activities, including imposing and collecting fees
- enforcement actions for non-compliance and complaints resolution
- providing advice and guidance regarding compliance with regulation, including education around compliance.

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

### 3.3 Our approach to implementing the RPF

For 2018-19, 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. 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 2018-19, the Commission:

- received generally positive responses on its operations in a survey of ITRF members
- held a meeting of the ITRF to facilitate consultation with members, and six meetings of the ITRF sub-committees
- facilitated engagement in the system by completing pre-lodgement checks as requested by Australian Industry
- improved information on the system through a new guidance document on exemptions and improvements to the electronic public register and dumping commodity register
- 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 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), 8 members responded to the survey. Of the 8 respondents, 37.5% were manufacturer or producers, 37.5% from peak bodies and unions, and 25% were from Australian Government agencies.

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

## Results KPI 1

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

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

The survey of ITRF members found:

- All 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.
- All respondents were very satisfied, satisfied or somewhat satisfied with the information and support available to access Australia's anti-dumping system.
- Six of the eight respondents considered the Commission's understanding of the relevant industry sectors and the current and emerging issues that affect them was strong or sound.
- Seven respondents were very satisfied, satisfied or somewhat satisfied that the Commission effectively communicates the evidence base and approach used in investigations.
- Seven respondents were very satisfied, satisfied or somewhat satisfied with the Commission's commitment to continuous improvement.
- Seven 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.

Respondents to the 2015-16 survey suggested that the ITRF meet on a more regular basis. In 2018-19, the ITRF sub-committees on compliance and anti-circumvention and access to import data each met three times to enable in-depth discussions on matters of particular interest to members. An ITRF meeting was convened in December 2018 in Canberra, where the Commission provided updates and sought feedback from stakeholders on operational matters of the Commission, the Commission's work on trade flow tracking, and policy reform proposals to improve the system. A further ITRF meeting was held on 9 July 2019, where the Commission provided stakeholders with further information on its new publication, the Trade Remedy Index.

- *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 the 2018/19 financial year the ADRP issued 23 reports. Of these decisions 52% affirmed the original decision, 31% affirmed the original decision in part and 17% revoked the decision in full.

This was consistent with the 2017/18 period where 26 reports were issued. Of these, 62% affirmed the original decision, 23% affirmed in part and 15% revoked in full.

There were also five Federal Court cases on foot during the 2018/19 period. Of these, two were withdrawn by the applicant, two were determined in favour of the Commission's original decision and one was determined against.

**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, in 2018-19, the Commission published a new guidance document for applicants seeking an exemption, and improved its electronic public record and dumping commodity register to make it easier for applicants and other interested parties to find relevant case documents.

In 2018-19, the Commission conducted five pre-lodgement checks. A pre-lodgement check of applications is offered to all applicants 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 ten days to complete depending on the complexity of the application.

**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 2018-19 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 2018-19, including the International Trade Update in Washington, the Seoul International Forum on Trade Remedies, and the Seminar on Trade Remedies Investigations in Tokyo.

In addition to these events, the Commission participated in bilateral exchanges with eight other anti-dumping jurisdictions to share information on best practice. 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 its understanding of relevant industry sectors, and effectively explain the evidence base and approach used in investigations in addition to improving collaboration across government agencies on anti-circumvention and compliance.

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. Following consultation with stakeholders, the Commission published an update of the Manual in November 2018 to clarify the Commission's current practices. 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, the two current sub-committees are continuing to provide a valuable forum for detailed discussions with stakeholders.

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 August 2019 and the results are reported above.

A draft of this report was circulated to ITRF members for their consideration and comment in October 2019.

## 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 generally indicate satisfaction with the Commission's communications with regulated entities, with some areas for further improvement. In 2018-19, the Commission:

- responded to 2184 enquiries (19% increase on the previous year), 99% of which were resolved in two business days
- considered 449 submissions from Australian industry, exporters, importers, foreign governments and others.
- published an update to the Dumping and Subsidy Manual following consultation with stakeholders.
- established and published the Trade Remedy Index, which tracks the trade flows of certain goods subject to anti-dumping measures on a monthly basis.

### 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.

During 2018-19, the Commission engaged PwC to conduct a functional review of the client support function. The review identified several recommendations to improve guidance to external queries from stakeholders. An implementation plan was developed that will be implemented from 2019-20.

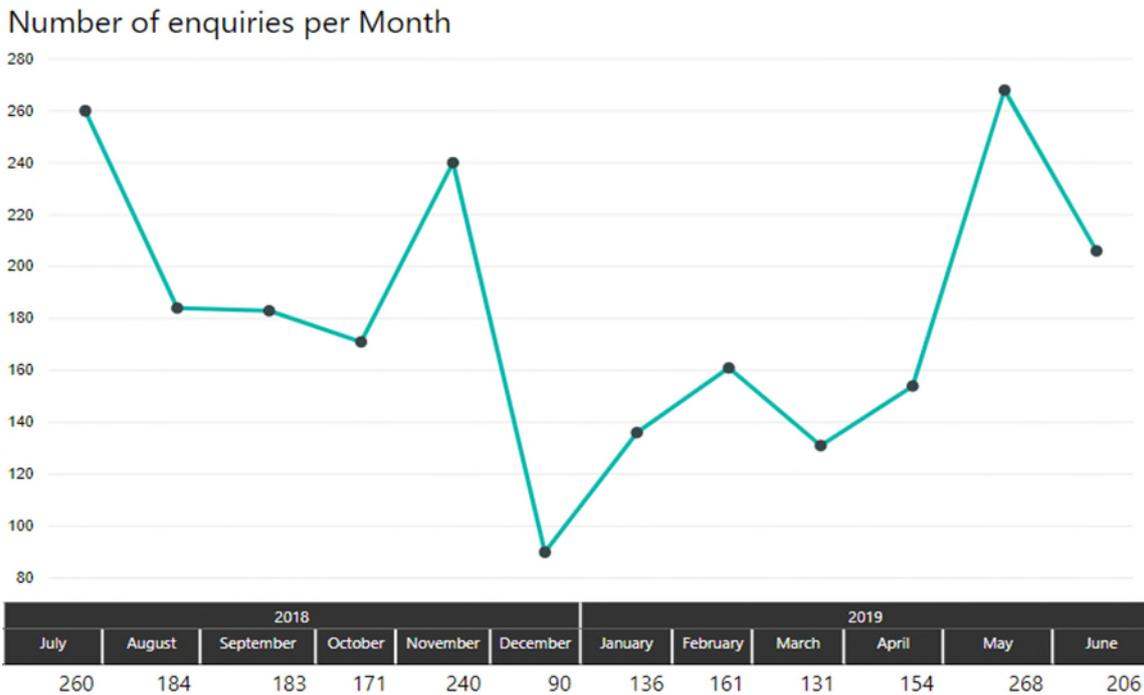
**Results KPI 2**

**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.*

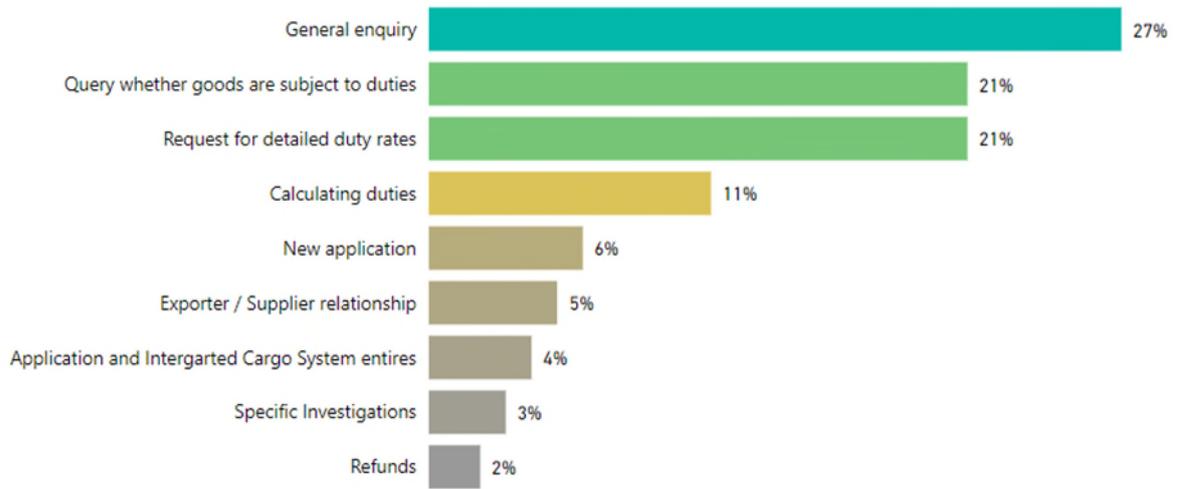
During 2018-19 the Commission received 2184 enquiries via the website, email or by phone referral from the business.gov.au hotline (16% increase on 2017-18). The monthly trends are located in Figure 1.

Figure 1



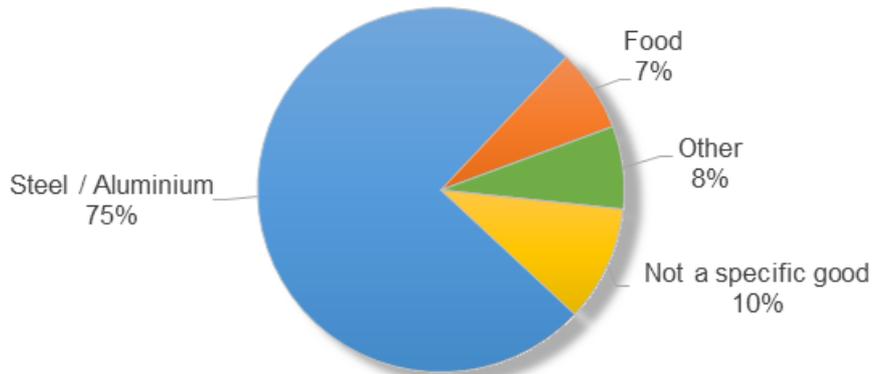
From 1 July 2018 to 30 June 2019, 98% of enquiries were resolved within in two business days. Enquiries resolved in 2018-19 are categorised by enquiry type in Figure 2 with the most frequent enquiries being general questions about the anti-dumping system (27%). The second and third highest enquires were requests for detailed duty rates (21%) and questioning if specific goods were subject to measures (21%).

Figure 2  
Type of enquiry



During 2018-19, steel and aluminium enquiries dominated, representing 75% of all enquires. Food represented 7% with other goods comprising of chemicals, glass, electrical and paper making up a combined 8%. (Figure 3).

Figure 3  
Enquiries by commodity type



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 2019, more than 700 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.

In May 2019, the Commission launched new enhanced web pages and consolidated its website with Department of Industry, Innovation and Science. The Commission re-designed its online content and public record system making many improvements based on user feedback and experience of both internal and external stakeholders. Key considerations for the re-design were accessibility and ease of use for stakeholders to ensure information was easy to find and understand. The re-design was aided by a review of page hits and

stakeholder consultation, to determine the relevance of all information. Some key improvements to the system included:

- Enhanced design of the case pages and its documents such as:
  - going from two pages to a single page of reference;
  - consolidating the information into a more visually pleasing layout to allow information to be easier to find/see; and
  - using a consistent naming convention for documents including adding a descriptor so it is easier to know what each document is about.
- an improved search and sort function on all case pages, the notices page and the measures page that allows for easier navigation of cases and finding specific documents more quickly; and
- consolidating the information provided on the wider website to be more succinct and useful for external stakeholders requiring direction.

**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 2018-19 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, enhanced approaches to trade flow tracking, and on updates to the Manual.

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 three stakeholder events in 2018-19.

The Commission conducted a review of its model matching methodology with a proposal to introduce Model Control Code (MCC) structures. This review was initiated after requests from industry stakeholders seeking a system that was similar to those used by other anti-dumping administrations. The proposed change aimed to facilitate a consistent approach to the collection of financial data in responses to exporter questionnaires and calculating dumping margins.

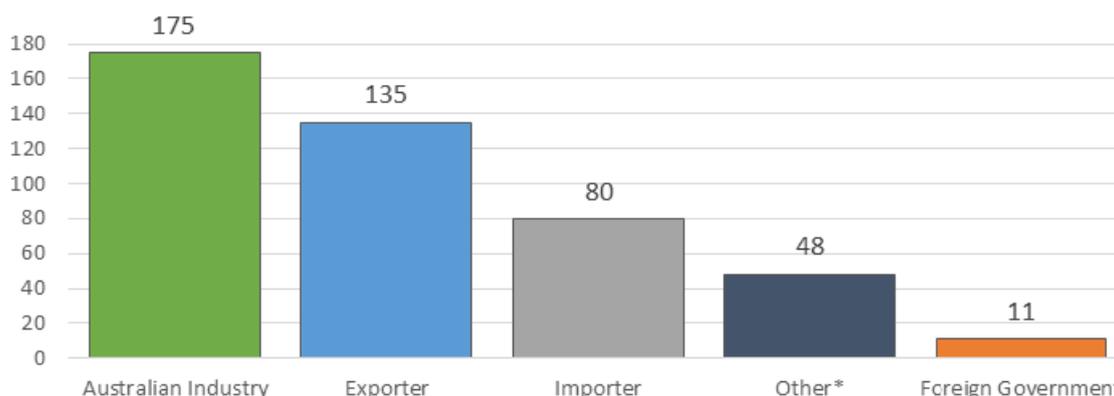
This review obtained input from four major Australian Industry manufacturers that access the Anti-Dumping System. The MCC adopted by the Commission considered industry feedback and made amendments to the Commission's proposed policy and practice guidelines. The MCC implemented imposes a discipline on the selection of characteristics that will be used to identify the most closely matching models of the goods sold for export to Australia and like goods sold domestically in the country of export.

In November 2018 the Commission completed a targeted update of the Dumping and Subsidy Manual explaining and clarifying key areas of practice including how the Commission undertakes model matching, duty assessment applications, due allowance and determining an export price.

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 2018-19, 449 submissions were received (an increase of 30% from the previous year) on 76 separate cases. Public versions of these submissions were published on the Commission's website and included submissions from Australian manufacturers and producers, exporters, importers, foreign governments and others. (See Figure 4 for a breakdown of submissions.)

Figure 4

### Submissions



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

In July 2018, the Commission published an analysis that outlined the Commissioner's views on the likely impacts of additional tariffs imposed in March 2018 by the United States on certain steel and aluminium products. This analysis was done in consultation with ITRF members and resulted in a commitment to additional tracking of trade flows of imported steel and aluminium products.

The Commission has since established the Trade Remedy Index which tracks on a monthly basis the volume and pricing movements of products subject to anti-dumping measures. Following consultation with stakeholders on the nature of a public version, within government and through the ITRF, the first edition of the public Trade Remedy Index was published in June 2019. The Trade Remedy Index makes better information available earlier to external stakeholders and for use internally. It provides information to industry members on developments affecting their industries and helps the Commission assess how anti-dumping measures may be impacting on the volumes, pricing and source of imports.

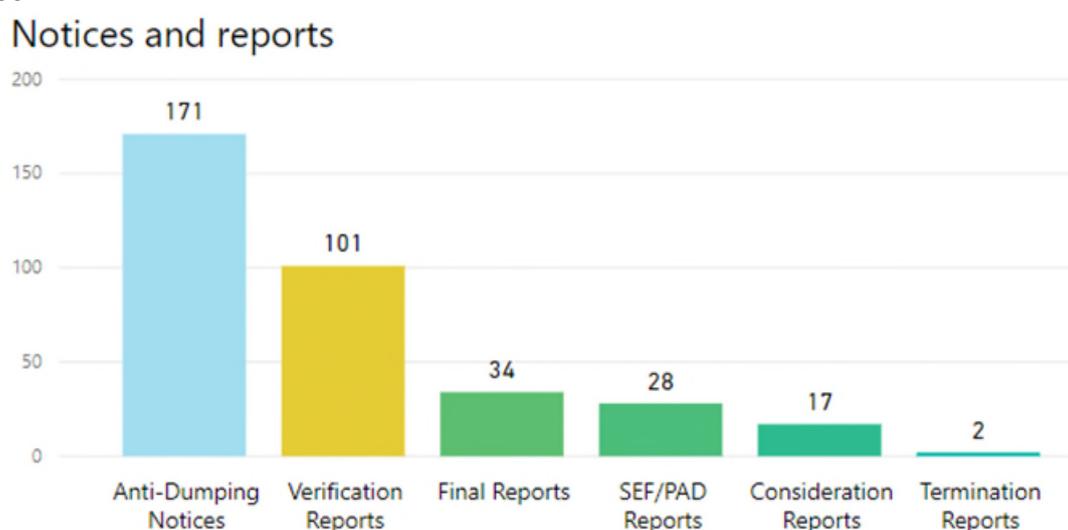
### **Measure: Decisions, reasons for decisions and advice provided by the Commission to affected entities are readable and understandable**

- *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 2018-19, 171 Anti-Dumping Notices were published on the Commission's website notifying decisions and 182 investigation reports were published explaining the evidence, analysis and decisions (Figure 5). 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, seven of the eight respondents were very satisfied, satisfied or somewhat satisfied that the Commission's communication is appropriately targeted and clearly explains the evidence-based approach used in investigations.

Figure 5



- *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. Following consultation with stakeholders, the Commission published an update of the Manual in November 2018 to clarify the Commission's current policy and practice.

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 Home Affairs), 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), including the Australian Border Force, 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 generally 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 2018-19 the Commission:

- 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 new workforce coordination tool within the current Case Management System (CMS) for efficient and risk-based allocation of resources to operational activities.
- conducted on-site verification of exporter data in relation to 82% 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 19 competent lead verifiers. 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.

In 2018-19 the Commission undertook 28 exporter verification visits, a decrease of 23 from the previous FY. In addition to these 28 onsite verifications, a further 22 (up from 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 2017-18 the coverage value was 86% and in 2018-19 this was 82%. 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 2018-19, the Commission's exporter verification reports were published (on average) within 101 days. This is an increase of 12 days from 2017-18.

### 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, 87.5% of respondents were somewhat satisfied, to very 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), including the Australian Border Force (ABF), 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 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, including the 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 2018-19, 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, the 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 the 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.

The Commission has expanded its regular analysis of the trade flow of certain products subject to anti-dumping measures, in the form of the Trade Remedy Index, and now publishes a version on the website.

The Commission and the ABF have also commenced a data analytics exchange arrangement where several Commission staff members are now accessing ABF data extraction and analytics capabilities.

The Commission continues to facilitate discussion with stakeholders and the ABF on compliance and anti-circumvention issues through the ITRF sub-committee, which met three times in 2018-2019.

#### 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 and the ABF 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, 75% of 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 2018-19, the Commission published:

- 182 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 and measures
- 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 2018-19, 182 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 11 days in 2018-19, slightly shorter than the 12 days in 2017-18 and down from 15 days in 2016-17. In addition to complementing this monthly status report the Commission also produced monthly updates to the World Trade Organisation (WTO) along with is the publication of bi-annual case reporting. 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 on the Commission's website. 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 2019-20.

#### 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 2018-19, 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.*

The Commission has continued to actively contribute to the policy development process being led by the Anti-Dumping Policy Section of the Department of Industry, Innovation and Science. The Commission provided information and feedback on implementation issues in 2018-19 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 implemented in late 2016 into its high caseload. Ongoing monitoring and evaluation has been important to the development and implementation of these vital reform initiatives. These reforms are ensuring the Commission completes cases and allocates resources as efficiently as possible. These efficiencies have meant that timeframes have not increased significantly for complex cases, despite the significant increase in the number of these cases.

A collaborative relationship with stakeholders enabled the ongoing publication of the Trade Remedy Index, which provides better information earlier on the trade flow of products subject to anti-dumping measures.

**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. 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 seven of the eight respondents were very satisfied, satisfied or somewhat satisfied with the Commission's commitment to continuous improvement.