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## International Trade Remedies Forum

### Summary of meeting outcomes and action items

5 December 2019

#### Agenda item 1 – Introduction and welcome

The Commissioner of the Anti-Dumping Commission (Commissioner) opened the meeting and thanked members for their attendance. The Commissioner noted that members had been advised regarding their reappointment for 2020.

##### 1.1 Action items from previous meeting

The Commissioner confirmed with members the outcomes of the Forum's meeting on 9 July 2019. These meeting outcomes have now been published on the ADC's website.

##### **Update on WTO A4 copy paper dispute**

The Commissioner provided an update on the WTO dispute with Indonesia in relation to anti-dumping measures on A4 copy paper. The report of the WTO Panel had been published on the WTO website on the morning of 5 December 2019. Australia and Indonesia had come to an agreement to adopt, and not appeal, the Panel report, and Australia would now take the necessary steps to bring the copy paper measure into conformity with the Panel's recommendations. Mr George Mina, First Assistant Secretary from the Department of Foreign Affairs and Trade noted that the dispute related to the specific application of anti-dumping measures in relation to two Indonesian exporters, and that Indonesia had not sought to challenge Australia's anti-dumping legislation.

Several members expressed appreciation for the Government's efforts in defending the measures. In response to a request from members, the Commissioner undertook to circulate a summary of the Panel report from the WTO website to members for their information.

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*Action Item 1: Commission to circulate WTO summary of Panel report*

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#### Agenda item 2 – Sub-committee Chair updates

Mr Matt Condon from Infrabuild provided an update on the work of the sub-committee on compliance and anti-circumvention. The sub-committee welcomed ABF Commissioner Outram's decision to make trade compliance one of the ABF's top priorities and recognised the ABF's Goods Compliance Update as an important product to inform stakeholders. Mr Condon noted that the sub-committee had recommended changes to the anti-circumvention framework relating to avoidance of the intended effect of duty, to enable applications to be made during the duty assessment period, and to address behaviour by exporters. The sub-committee looked forward to an update on those proposals. The sub-committee was also concerned about rates of transshipment and phoenixing behaviour. Members of the sub-committee had discussed the EU's approach to transshipment, by which measures were extended to

an entire country which was a source of transhipped goods, and legitimate operators were granted exemptions from the extended measures. Sub-committee members had requested advice on what would be required for Australia to adopt this approach. Sub-committee discussions had also focused on ways to enable more regular changes to duty rates, noting that increases in duty levels were applied prospectively.

The Commissioner noted he was interested in exploring what more could be done to address transshipment, particularly given the challenges in addressing behaviour by various actors in the supply chain. Mr Bryan Clark from the Australian Chamber of Commerce and Industry queried whether the work of Treasury and AUSTRAC on the black economy could support trade remedies compliance. The ABF advised that it was very closely involved in the government's work on the black economy and had a number of tools to combat non-compliance, including use of AUSTRAC information to address systematic and organised non-compliance. The ABF was adapting its strategies to target new behaviours, and working to identify transhipped goods before they arrive.

Mr Travis Wacey from the Construction, Forestry, Maritime, Mining and Energy Union provided an update on the work of the sub-committee on access to import data. As previously advised to the ITRF, the sub-committee had sought to advance the recommendations on import data from the compliance and anti-circumvention sub-committee, including through a submission to Treasury on the remaking of the Statistics Determination. However, given that the sub-committee recommendations were not incorporated in the new Determination, and that legislative change is outside the Terms of Reference of the sub-committee, the sub-committee considered these recommendations were now a matter for Government. In light of this, the sub-committee was focused on other mechanisms for achieving greater access to import data, informed by an ADC information paper on possible options to improve access to trade data within the current legislative framework. Key priorities for the subcommittee's future work would be:

- Exploration of the possibility of greater disclosure of information to applicants by the ADC prior to the lodgement of applications, possibly in response to specific questions asked by applicants in relation to the standard required to initiate cases. Non-government members had agreed to refine a proposal on this option for consideration by relevant government agencies;
- Continued exploration of ways to access data, such as the possibility of access in a secure "data room";
- Continued engagement with the ADC on the Trade Remedy Index; and
- Continued engagement with the Australian Bureau of Statistics on how it treats requests for confidentiality and associated matters.

### Agenda item 3 – Compliance update

The ABF advised that the next Goods Compliance Update should be published by the end of the year, and information was already being prepared for the subsequent edition. The ABF continued to be committed to enforcing anti-dumping measures, including by ensuring that all aluminium profiles that require further working after importation are classified by their condition and properties at the time of importation rather than their end use. Mr Luke Hawkins from Capral commended the ABF on its recent work on compliance in relation to solar kits, but said non-compliance was still rife, and the consequences for non-compliance needed to be strengthened, including through greater use of fines and prosecutions. The ABF noted that it was pursuing a range of tactics to combat non-compliance with

anti-dumping measures, including by working with international counterparts. While much of this work was not public, it was an active focus for the ABF.

## Agenda item 4 – Anti-Dumping Commission update

### 4.1 Operational matters (standing item)

Mr Paul Sexton, Investigations General Manager in the ADC, provided an overview of the Commission's caseload. The ADC had around 50 cases on hand, with the largest categories of cases being reviews of measures (nine), and duty assessments (22). The majority of the Commission's workload related to steel products and aluminium extrusions, with a smaller number of cases relating to electrical and chemical products. The mean timeframe for complex cases had increased slightly from 2016-17, however the ADC had finalised a much higher number of complex cases in 2018-2019 than the previous year, reflecting the efficiency gains from the New Investigations Model. The timeframes achieved by the ADC compared favourably to those of other jurisdictions, and WTO rules which allowed up to a year and a half for an investigation.

Mr Hawkins asked for further information about complex case types, and if guidance could be provided to interested parties about the likely duration of a case closer to initiation. Mr Sexton noted that complexity often stemmed from the number of countries and exporters involved, and whether both dumping and subsidies were being considered. However, other factors, such as a linkage to another case process, verification requirements, or the number of submissions received could also necessitate extensions. The Commissioner advised that he required case managers to develop case plans following initiation to determine the level of complexity in the case and assess the likely need for extensions. This was intended to provide interested parties with greater transparency about case timeframes earlier in the process. However, the anti-dumping system was a highly contested space, with merits, judicial and international review avenues available to interested parties. As a result, it was important the ADC took the necessary time to make the right decisions. The ADC had a comparatively high workload among international trade remedies authorities and operated in a resource-constrained environment, in which many efficiency improvements had already been made.

In response to a query from Mr David Birrell of the Australian Steel Association, Mr Sexton noted that steel and aluminium made up a significant part of the work of other trade remedies authorities as well as Australia's. In response to a questions from Mr Clark about whether the 155 day timeframe for investigations should be reconsidered, the Commissioner noted that the timeframe was legislated, but that the legislation also provided for extensions when required. This enabled him to meet his legislative requirements as Commissioner within existing resources. In response to a question from Mr Wacey, the Commissioner noted that a Ministerial Direction required him to make a Preliminary Affirmative Determination 60 days after initiation, or publish a status report explaining why that is not possible.

## Agenda item 5 – Verification update

The ADC provided a presentation to members on its recent verification and quality assurance activities, which were critical to ensuring the reliability of data that informed the ADC's recommendations. In 2019, the ADC conducted approximately 75 verification activities, including 51 exporter, 16 importer, and eight other verifications (including end users and Australian Industry). The ADC continued to improve its verification tools and processes including through updates to its verification guidelines and work programs to ensure consistency and effectiveness of verification. The ADC's verification training and development included tailored training in accounting, mock verification exercises, and competency

based assessments of verification leaders. The Verification and Data Assurance (VADA) unit undertakes specific assurance and compliance checks on verification work and dumping/subsidy margin calculations, and developed procedural or training improvements to address any recurring issues. In response to feedback from stakeholders on the exception based verification reports introduced in 2017, the ADC was continuing to refine their content to ensure a balance of efficiency, timeliness, confidentiality of relevant data, and transparency for interested parties to make submissions. In response to a question from Mr Wacey, the ADC advised that on-site verifications had been conducted for approximately 80 per cent of exporter volumes in 2019.

### [Agenda item 6 – Review of application form and associated materials](#)

The ADC provided a presentation to members on the commencement of its review of the application form and associated materials. The review relates specifically to the form used to apply for anti-dumping and/or countervailing measures and the available guidance relating to it. While the form has had several minor updates, it has not been comprehensively reviewed for years. Members were informed that the Commissioner as statutory office holder has the authority to approve a form. Accordingly, this review is an operational practice matter and legislative changes will not be considered during the review. The Commission has established a working group which has now commenced an initial scoping of the relevant documents. To guide their consideration, the group identified a number of key priority areas as follows: purposive content that is not duplicative; clear and targeted questions, limiting the need for excessive guidance materials; ensuring consistency among documents and compliance with existing legislative requirements; and fit for purpose subsidy questions.

The engagement strategy and consultation process was outlined to members. The ADC expects to engage closely internally, with departmental resources, Government agencies, ITRF members, and users of the form. Members were informed that this presentation was the initial consultation and it sought to garner initial views from members on the priority areas and approach. Further, the ADC expects to commence targeted consultation to ITRF members and interested parties around mid-2020. Public consultation would then occur through the publication of draft products on the ADC website. It is then expected that final products would be published by the end of next year – noting that should issues arise, this timeline may be delayed to enable proper consideration of feedback.

Mr Wacey noted that the sub-committee on access to import data would be very interested in the review.

### [Agenda item 7 – Other business \(standing item\)](#)

Nil

### [Agenda item 8 – Next meeting and closing remarks](#)

The Commissioner thanked members for their participation and advised that a date for the next meeting would be provided in the new year.