



## International Trade Remedies Forum

### Summary of meeting outcomes and action items

30 October 2020

#### 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 welcomed the Hon Karen Andrews MP, Minister for Industry, Science and Technology and her staff, as well as the new Department of Industry, Science, Energy and Resources (DISER) Deputy Secretary Luise McCulloch to the meeting. The Commissioner invited Minister Andrews to provide opening remarks.

Minister Andrews advised members that the meeting was an important opportunity to set the forward direction of the International Trade Remedies Forum. Minister Andrews stated her commitment to Australia's anti-dumping system, noting that it is robust in comparison to other jurisdictions. Minister Andrews wanted to gauge member's feedback on two particular areas:

- the impact of COVID-19 on business and industry across Australia; and
- potential reform of the merits review process.

Matt Condon, Infrabuild, stated that from an industry perspective, the merits review process is time consuming, onerous and expensive. He suggested that consideration be given to the previous model of a Trade Measures Review Officer (TRMO), which was independent and would refer matters back to the Commission to reassess, which he considered more efficient and effective.

Travis Wacey, CFMMEU, stated that while COVID-19 had prevented most travel in 2020, he encouraged the Minister to consider visiting businesses that are users of the anti-dumping system when it became possible again. He noted that reforms to prevent spurious appeals, including through a possible application fee to apply for merits review, had been considered previously. Mr Wacey stated that while the idea was worthwhile, the design had caused concern that it disadvantaged Australian industry as opposed to others. Mr Wacey suggested that the TMRO model did not result in discrepancies between cases because it was a single officer rather than a panel. Mr Wacey also noted that it is common for parties to apply to the Anti-Dumping Review Panel (ADRP) as a matter of course.

Andrew Hudson, representing the Food and Beverage Importers Association and the International Forwarders & Customs Brokers Association of Australia, stated that the ADRP was established for a good reason and there remains a need for a strong process of review conducted separately from the organisation that made the original decision. Mr Hudson suggested that caseload and timeframes may be improved if there were more ADRP Members. In a complex international system, consideration would have to be given to whether a change was WTO consistent and any message it may send to trading partners. Mr Hudson noted that while dumping decisions were not reviewable by the Administrative Appeals Tribunal (AAT), certain Australian Border Force (ABF) refund decisions were subject to review internally and by the AAT. He noted a recent AAT decision has potential effect on other review applications, and further noted that dumping notices records could be confusing to importers regarding review rights. Ben Nicholls, A/g Assistant Secretary, Trusted Trader

and Trade Compliance Branch, noted that the review rights listed on notices would be reviewed to ensure that they are clear.

Russell Weise, representing the Freight and Trade Alliance, considered that it is important that the review body be separate from the Anti-Dumping Commission, but suggested that statistics may demonstrate a problem with the decision making process rather than the review process.

Bryan Clark, Australian Chamber of Commerce and Industry, agreed that it may appear the problem stems from the original decision.

Alan Gibbs, BlueScope Steel, advised that merits review had been a concern for BlueScope for some time. Mr Gibbs agreed that merits review had become a standard process following an investigation because the hurdle to have a review initiated is too low. Mr Gibbs suggested that the grounds for a review should be more precise.

Tony Mahar, National Farmers' Federation, noted the NFF's strong support for a robust process that supports the rules based trading system, advising that it was important the merits review process remain independent and strikes a balance between an automatic appeal or being too onerous to access.

Minister Andrews thanked members for their feedback, and noted that it is clear there is an opportunity to look at the merits review process and consider what options may be available.

### Agenda Item 2 – DISER Update

Martin Squire, General Manager, Trade and International Branch advised that DISER has been consulting with ITRF members and other stakeholders on a package of potential reforms for the Minister to take forward for consideration by the government. Mr Squire thanked ITRF members for their survey responses, which re-tested support for seven potential reform proposals and confirmed stakeholders' interest in seeing them progress. Mr Squire advised that the seven potential reform proposals covered differential duties, form of duties, opportunities for collapsing, updating the definition of a subsidy to more closely align with WTO obligations, binding rulings, expanding the scope of the International Trade Remedies Advisory Service to assist SMEs with review processes and streamlining Tariff Concession Order exemptions.

Mr Hudson queried whether the reform package could be pushed forward, noting that these matters have been under consideration for a number of years and they are viewed as urgent and important. Mr Squire noted that due to prioritisation of the health and economic consequences in response to the COVID-19 pandemic, the timeline had been impacted. Mr Squire advised that Minister Andrews is keen to re-engage with her colleagues across government to see reforms progress. Minister Andrews had asked DISER to confirm whether the potential reforms were still relevant and to advise whether there were any other areas for potential reform that emerged as a result of the pandemic.

### Agenda Item 3 – ADC Update

Paul Sexton, General Manager Investigations, provided an update on the Commission's caseload. There had been a spike in applications following the previous ITRF meeting, including for products the Commission had not previously examined. The Commission's caseload has dropped since that peak but remains high, with 54 cases on hand as well as 2 reinvestigations at the request of the ADRP. Duty assessments continued to account for around half of the Commission's cases.

All verification is being conducted remotely, and while remote verification is sufficiently robust, it is much more time consuming than on-site verification. To assist with the current caseload, the Commission had recently employed additional contractors to augment the Commission's investigative and legal capacities.

David Buchanan, representing the Australian Steel Association, and Mr Gibbs welcomed the Commission's efforts to progress cases in a timely manner though additional staffing resources.

Mr Wacey asked if the Commission expected an increase in applications for measures as a result of the economic contraction caused by COVID-19. The Commissioner advised that the ADC continued to expand its data and market intelligence capacity to ensure it was well prepared for applications that may be received from industry. The Trade Remedy Index reflected the Commissioner's commitment to provide better, and earlier, information to participants in the anti-dumping system.

Mr Condon queried if the Commissioner may be in a position to recommend the Minister initiate cases based on the data available to him. The Commissioner noted that, while not common, it was open to him to make such a recommendation if a prima facie case existed.

#### *Outcomes from previous meeting*

The Commissioner confirmed with members the outcomes of the Forum's meeting on 26 May 2020. These meeting outcomes have now been published on the ADC's website.

#### *Agenda Item 4 – Compliance Update*

Mr Nicholls noted that trade enforcement, including of anti-dumping measures, continues to be an ABF priority. A Joint Agency Task Force had been established to harden the border to organised and opportunistic crime and non-compliance. A number of ABF officers had been appointed as Australian Federal Police officers with powers to investigate trade offences. The ABF was enhancing engagement with Industry through the Industry and Border Systems Group, and the deployment of Assistant Commissioners to state offices. The ABF was also working with border agencies in other jurisdictions to prevent non-compliant goods reaching Australia.

Mr Nicholls advised that the ABF was now conducting a portion of anti-dumping compliance activities as part of its pre-clearance processes. This provided an opportunity to examine the goods in their "wharf side" or imported state. The ABF was continuing to refine its targeting in light of changing patterns of trade and to detect new types of non-compliance. The Goods Compliance Update for October 2020 included the latest data in relation to anti-dumping compliance activity.

Mr Hudson commented the UK had established its own trade remedy system, separate to the EU, which may have an impact on trading businesses.

Mr Wacey noted that the Goods Compliance Update showed revenue understatements for goods subject to anti-dumping measures were lower for 2019-20 than in 2018-19. He also queried the percentage of these understatements that were successfully recovered. Mr Nicholls advised that the decline in detected understatements, despite a consistent level of ABF compliance activity, was due to the effectiveness of previous compliance efforts in changing the behaviour of certain importers. Previously identified understated revenue was subject to ongoing legal challenge through the AAT, which must be resolved before final payment is required. Payment rates will depend on factors, including the outcome of these cases. The detection volume is increasing again, however, as new compliance methods revealed further non-compliant behaviour. While the majority of understatements from the previous year were subject to review, there was almost 100

per cent recovery from the identified goods pre-clearance in 2020-21 due to the ABF's additional refined methodologies.

Luke Hawkins, representing Capral, commented that the value of infringement notices seemed low, and queried whether other non-financial penalties had been applied. Mr Nicholls advised that the Infringement Notice Scheme contained a range of measures that the ABF could apply, depending on the circumstances. While penalties applied can include a financial penalty, as set out under the Customs Act, Infringements issued under the Scheme have been an effective deterrent to behaviour. Should there be repeat non-compliance identified, this would be managed strenuously by the ABF. He encouraged industry members to contact the ABF with any information about non-compliance.

## Agenda Item 5 – Sub-committee Update

### Compliance and Anti-Circumvention Sub-committee

Mr Condon advised that the compliance and anti-circumvention sub-committee continues to assess the framework and possible options to improve the anti-circumvention provisions, noting that there is a broad recognition among participants that circumvention and non-compliance damages the domestic producing industry and importers that operate by the rules.

Mr Condon noted the ADC has completed nine anti-circumvention inquiries and there is one ongoing inquiry. All but two of the completed inquiries resulted in changes that broadened the notice, and the two that did not were both inquiries relating to avoidance of the intended effect of the duty. Mr Condon advised that the sub-committee had considered two issues relating to this type of inquiry: that an application cannot be made until the final duty payable has been calculated; and that the current test focuses on the activity of an importer and not the exporter. Mr Condon advised that the sub-committee was also discussing issues relating to transshipment through a third country, noting a concern that when measures are extended to individual exporters in a third country, they can shift their exports to a different entity. Mr Condon advised that the sub-committee had discussed the European Union framework, where all exporters from the third country become subject to the measures, but exemptions are granted to bona fide exporters.

Mr Hudson queried whether there was scope for DFAT to engage with other jurisdictions under multilateral free trade agreements (FTAs) about potential circumvention activities. Elizabeth Young, Director, Rules and Remedies Section, DFAT noted that Australia engages on matters of anti-circumvention with other jurisdictions at WTO meetings in Geneva. Due to the COVID-19 pandemic, the April meeting was postponed, and the virtual meetings this week did not include a circumvention meeting. Ms Young agreed it was valuable to discuss circumvention with other jurisdictions, and was hopeful that the next meeting in April 2021 would facilitate such discussions.

### Access to Import Data Sub-committee

Mr Wacey advised that the access to import data sub-committee had met twice since the December 2019 ITRF meeting, where he had tabled a report outlining four key priorities for the sub-committee:

- exploration of the possibility of greater disclosure of information to applicants prior to the lodgement of applications by the ADC;
- continued exploration of ways to access data;
- continued engagement with the ADC on the Trade Remedy Index; and
- continued engagement with the Australian Bureau of Statistics (ABS) on how they treat requests for confidentiality and associated matters.

These priorities had since been reconfirmed by sub-committee members. The sub-committee considered the first priority (greater disclosure of information to applicants prior to lodgement) to be its highest priority. To progress this priority, the non-government members prepared a paper for the ADC and other government members to consider. Following feedback from the ADC on the first version, the non-government members tabled a refined discussion paper at the 19 October 2020 meeting. This discussion paper proposed that interested parties could test their assumptions about import flows with the ADC prior to lodging an application. The paper proposed that advice about application deficiencies currently provided through ADC pre-lodgement checks should be extended to any material discrepancies between data in the draft application and official import data held by the ADC. The paper suggested a range of possible formulations for such advice, noting the ADC would still need to manage the risks of identifying a particular entity through the provision of more generalised advice. The paper also proposed the provision of indexed information for applicants to compare to their own data.

Mr Wacey noted that the ADC had advised the sub-committee that it would examine the proposals internally, and consult with other government agencies, to provide a response to the non-government members.

#### Agenda Item 6 – Other Business

Mr Wacey queried if a High Level Dialogue with China on trade remedies had been held recently. Ms Young advised that there had been agreement both sides to hold this late last year in Canberra but in the event it had not been possible to agree timing for the next dialogue. In light of barriers to travel due to the COVID-19 pandemic, we had also assessed that it was not appropriate to hold such a meeting virtually.

In response to a question from Mr Wacey on the status of the evaluation of the ITRF, Mr Squire advised that the evaluation had been recently finalised, and would be provided to the Minister shortly for consideration.

#### Agenda Item 7 – Next Meeting and Closing Remarks

The Commissioner advised that members would be notified of the date for the next meeting, and thanked them for their participation in the meeting.