

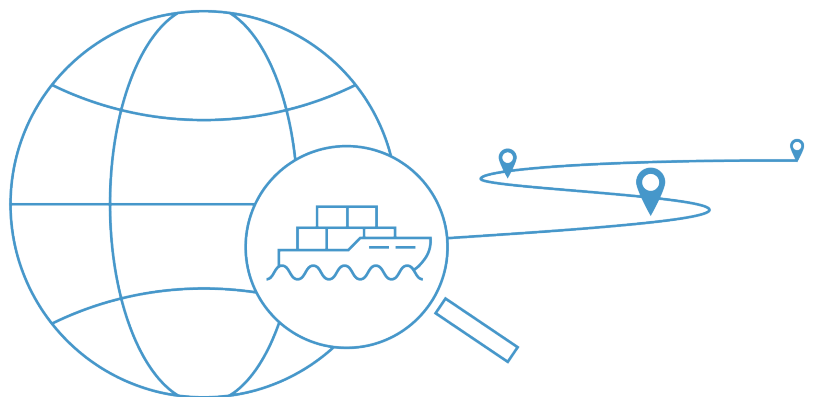


Australian Government
Department of Industry, Science,
Energy and Resources

Anti-Dumping
Commission

International Trade Remedies Forum Meeting Minutes

9 December 2021



Anti-Dumping Commission website:
www.adcommission.gov.au

Agenda Item 1 – Introduction and Welcome

Dr Bradley Armstrong PSM, Commissioner of the Anti-Dumping Commission (the commission), opened the meeting and thanked members for attending.

Agenda Item 2 – Anti-Dumping Commission update

Dr Armstrong announced recent staffing changes including the appointment of Isolde Lueckenhausen as the new General Manager Investigations and Jessica Casben as the new General Manager Strategic, Legal and Advisory Services.

Dr Armstrong highlighted:

- The commission's efforts to closely consider its legislative responsibilities.
- The efforts by the commission to produce high quality work resulting in better outcomes in overturns by the Anti-Dumping Review Panel (ADRP).
- The support the commission has received from the Department of Industry, Science, Energy and Resources including increased funding, which has enabled the commission to improve its functions.
- The close collaboration between the commission, the Australia Border Force (ABF) and the Department of Foreign Affairs and Trade (DFAT) and thanked them for their support.
- The department's mandate that staff return to office for at least 3 days per week by 1 February 2022.

Operational Update: Isolde Lueckenhausen, General Manager, Investigations, advised that the commission has 45 cases on hand. Of those cases, 6 were with the Minister and 3 are duty assessments where a preliminary decision had been made.

There are currently 8 investigations, 5 continuation inquiries, 1 review, 1 reinvestigation, 20 duty assessments and 10 exemption inquiries on hand.

In the current financial year the commission has finalised 24 cases and initiated 15 cases. Of the investigations finalised this year, 50% resulted in the imposition of measures. There are currently 81 measures in force across 22 countries.

Resumption of onsite verification: Ms Lueckenhausen advised members that the commission is committed to returning to onsite verification when it is safe to do so. She advised of the challenges that still remain with international travel especially in relation to entry requirements and quarantine.

The commission is working with the department in reviewing the Occupational Health and Safety risk assessment process to ensure that when travel resumes, the department can conduct necessary risk assessments prior to sending staff overseas.

Ms Lueckenhausen advised members of the significant investment the commission has made in building its verification capabilities in the last 12 months. These improvements include:

- The establishment of a dedicated exporter verification team and enhanced competency-based training.
- Fit out of a dedicated virtual verification suite to allow real time, virtual verifications from the commission's Melbourne office.
- Engagement with peer administrations internationally to share learnings on virtual verifications.

- Luke Hawkins, representing Capral, asked about the commission's plan to resume onsite domestic verifications.

Matt Condon, representing InfraBuild, also echoed Mr Hawkins's interest in the resumption of onsite verifications, emphasising the potential efficiency of being in person.

Dr Armstrong advised members that the commission will be looking to resume onsite verifications when it is safe to do so and when border restrictions and local health regulations permit. In the meantime the commission's dedicated verification team is working to continually improve the virtual verification process. Virtual exporter verifications now take about 10 weeks to complete, down from 22 at the beginning of the pandemic.

Manual update: Jessica Casben, General Manager, Strategic, Legal and Advisory Services, advised members that on 8 December 2021 the commission published an update to the Dumping and Subsidy Manual and thanked members for their contributions. The latest version of the Manual provides up-to-date information on the commission's policy and practice and some amendments to improve clarity. Other amendments reflect changes to the commission's policy and practice to ensure consistency with the legislation including the calculation of normal value for exporters with a low volume of domestic sales and calculation of normal value using the surrogate price of other countries. Also included in the update is new information on how the commission may assess the standing of an application.

- Mr Condon asked of the commission's plans to further update the manual, following the implementation of current reforms. Dr Armstrong said that the commission will update as needed.

Application form update: Ms Casben provided an update on the application form used to apply for anti-dumping or countervailing duties, aimed to streamline how the commission gathers information. Ms Casben thanked members for reviewing the form and the constructive feedback provided which will be taken into consideration as the commission works towards finalising a second draft of the form. A draft will be available on the commission's website in the new year. Ms Casben informed members that they will be given sufficient time to review and provide feedback on the form and welcomed any additional suggestions they may have.

- Mr Hawkins asked whether the commission is tracking the timeframe of current investigations and how this compares to previous timeframes.

The commission undertook to provide details which is at **Attachment A**. Dr Armstrong said that he is confident that building the commission's verification specialisation and applying a risk analysis approach to certain types of work will result in reduced case timeframes.

- Ross Becroft, representing the Law Council of Australia, asked how the commission is prioritising exemption applications and duty assessments. Andrew Hudson, representing the Food & Beverage Importers Association, echoed Mr Becroft's interest in how the commission prioritises its work, noting the financial implications on importers when outcomes are delayed.

Dr Armstrong and Gilon Smith (Director, Market Intelligence) advised that the commission has adopted a new prioritisation model of work and a risk-based approach to duty assessments.

Agenda Item 3 – Department of Industry, Science, Energy and Resources (DISER) Update

Current package of legislative reforms update: Alison Drury, General Manager, Trade and International Branch (DISER) advised that the department was working closely with the commission, the Office of Parliamentary Counsel (OPC) and other government departments to implement the reforms. Ms Drury advised that drafting has been delayed due to a number of factors including complexities that had arisen in drafting the legislation for some of the reforms.

Should approval for an Exposure Draft be obtained, the department would be seeking feedback from stakeholders, including ITRF members in January 2022. It was expected that members would be given 2 weeks to review the proposed legislation before it was introduced in the Autumn seating of parliament. The target implementation date was still 1 July 2022.

- Mr Hawkins asked which reforms posed the most complexity. The department advised complexities arose because of:
 - the requirement to ensure Australia’s anti-dumping legislation is consistent with international law and WTO requirements; and
 - the introduction of a new function for the commission relating to goods ruling advises.
- Mr Hudson raised concerns about the timing of implementation of the reforms because of the forthcoming federal election. He also noted that the goods ruling advises reform was vital to import businesses and suggested the department look into the ABF’s tariff advice process when designing and drafting this particular reform.
- Travis Wacey, representing the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU), raised that it was very important that members are given sufficient time to review the proposed legislation before it was introduced in parliament.

Ms Drury emphasised her team’s investment and commitment in implementing these reforms.

Dr Armstrong stated that the commission, the department and other government partners were working closely together to ensure the reforms were workable and could be implemented.

He added the commission was working closely with the ABF, holding regular meetings to identify opportunities for ongoing engagement, learnings and improvements that would benefit stakeholders. Dr Armstrong advised members that the commission was planning to participate in the Australian Trusted Traders Symposium in Sydney in 2022. In response to Mr Hudson’s comment that some businesses do not have the capacity to attend forums such as the Trusted Traders Symposium, Dr Armstrong advised members that the commission engages with a variety of stakeholders through various forums.

ITRF evaluation report update: Ms Drury advised members that the evaluation of the ITRF requested by former Minister Andrews in 2020 was now complete and that the then Minister Porter had accepted the recommendations of the report.

On 22 November 2021, the ITRF Secretariat had circulated an advance copy of the report to members.

Ms Casben advised members that the commission and the department were working towards publishing the report shortly.

The department and the commission provided members with an overview of the recommendations and an update of their implementation status:

- **Recommendation 1:** the Minister consider setting out their expectations of the Forum's work through a Statement of Expectations to the Commissioner of the ADC.
 - **Implementation status:** Former Minister Porter issued a Statement of Expectations for the commission, which included expectations of the commission's management of the ITRF. The Commissioner has drafted a Statement of Intent in response, in consultation with department.
- **Recommendation 2:** the ADC and the Anti-Dumping Policy Service (ADPS) provide members with greater transparency on the Forum advice that goes to the Minister; and the ADPS provide regular policy updates to the Forum.
 - **Implementation status:** the commission the ADPS are providing regular policy update at every ITRF meetings and sub-committees as appropriate.
- **Recommendation 3:** the ADC, with the ADPS, and in consultation with the Minister, develop terms of reference for the Forum that expand on the legislated requirements.
 - **Implementation status:** the commission and the ADPS are working towards developing terms of reference for the Forum for consultation by the first ITRF meeting in 2022.
- **Recommendation 4:** the ADC further explore how best to engage a broader range of stakeholder views.
 - **Implementation status:** In early 2022, the commission will undertake consultation with stakeholders to explore engagement of small business and consumers.
- **Recommendation 5:** the ADC review processes for calling for agenda items and increasing visibility of member papers between formal meetings:
 - **Implementation status:** the commission has implemented this recommendation.
- **Recommendation 6:** the ADC circulate draft meeting minutes out-of-session soon after a meeting.
 - **Implementation status:** the commission has implemented this recommendation.
- **Recommendation 7:** the ADC clarify for members what information can and cannot be disseminated within and outside of their organisations.
 - **Implementation status:** the commission will continue to work with ITRF members to inform them about confidential information that cannot be shared, as appropriate.

- Mr Wacey supported the recommendations of the report and thanked all members for their work. He highlighted the importance of Recommendation 2, noting that members put a considerable amount of work in developing recommendations for policy and they would appreciate knowing that the Minister considers them. Mr Wacey raised, by way of an example, a submission made by Trade Union members to the Commission's 2018 report on trade diversion in the steel and aluminium sectors. The submission raised a number of issues including access to import data, the administration of safeguards, funding for the ADC and reforms to the anti-dumping system. These issues were passed on to other relevant agencies for consideration.

Ms Drury advised that she will follow these issues up.

Future reforms update: the department advised that it will focus its attention on the drafting and implementation of the current reform package before considering any new reforms. Ms Drury invited members to approach the department if there were any additional issues they would like to raise. She also noted that the department was open to presenting at stakeholder forums on the anti-dumping system to support visibility and understanding of the system.

Agenda Item 4 – Australian Border Force (ABF) Compliance update

Trade compliance: Rishpal Saraw, Acting Superintendent Trusted Trader and Trade Compliance Branch ABF, advised that Trade Compliance currently have 19 active profiles and alerts targeting commodities subject to measures investigated by the Anti-Dumping Commission.

- In financial year 2020-21, the ABF assessed 242 profile and alert matches with an outcome of 34 positive examination outcomes.
- In financial year 2021-22, the ABF assessed 244 commodities provided by the Anti-Dumping Commission (ADC) with 27 positive examination outcomes. At the current rate, the Trade Compliance group is expecting to double the amount of the examinations undertaken, when compared to the previous financial year. Mr Saraw anticipated this would potentially lead to a larger amount of positive outcomes at the border.
 - Over \$1.3 million has been recovered including in short paid interim dumping duty, countervailing duty and GST across a number of products.

Revenue understatements – trade remedy measures: Mr Saraw advised members that during the period 1 April to 30 June 2021, ABF officers completed 13 post verification activities to ensure a level playing field in relation to the enforcement of trade remedy measures. These activities primarily focused on:

- Aluminium extrusions
- Hollow Structural Sections (HSS)
- Steel pallet racking
- A4 copy paper

In financial year 2020-21, the ABF completed 69 post verification activities, compared to 54 during financial year 2019-2020.

In financial year 2019-2020, the ABF recovered \$6.9 million in dumping duty understatements compared to \$2.3 million in financial year 2020-21. Mr Saraw advised members that this apparent reduction in outcomes can be attributed to a number of factors, particularly the success of ABF operations conducted in the previous financial years, which targeted deliberate evasion of dumping measures on aluminium extrusions. He further advised that many entities circumventing anti-dumping measures that were subjected to ABF compliance activity have now left the industry.

ABF / ADC Officer Exchange program: Mr Saraw advised members that the ABF and the ADC were working closely together and were in the process of settling the details of a staff exchange program.

- Mr Hawkins asked if the ABF could provide an update on the number of infringements regarding circumvention on dumping and countervailing duties.

The ABF took the question on notice. The response is provided in **Attachment B**.

Agenda Item 5 – Department of Foreign Affairs and Trade (DFAT) update

David Brightling, Assistant Secretary, Office of Trade and Investment Law, DFAT, provided an update on the three WTO disputes with China relating to anti-dumping and countervailing measures.

DS602 – China – wine update: A dispute settlement panel was established on 26 October 2021 at Australia's request and the next phase in the process is the appointment of WTO panellists to adjudicate the dispute. Australia raised its concerns with China bilaterally and through the relevant WTO Committees prior to commencing dispute settlement proceedings. Eighteen WTO members have joined the wine dispute as a third party.

DS598 – China – barley update: A WTO dispute settlement panel was established on 28 May 2021 at Australia's request. Mr Brightling advised that this dispute is in a more advanced stage than the wine dispute. Thirteen WTO members have joined as a third party. On 3 September 2021, the WTO Director-General selected the panel members that will adjudicate the dispute. On 1 November 2021, Australia lodged its first written submission, which is available on the DFAT website. Mr Brightling provided an overview of the key arguments and issues raised by Australia, including:

- The applications were not made by or on behalf of domestic industry.
- China's Ministry of Commerce (MOFCOM) initiated the investigations without sufficient evidence of dumping, subsidisation or injury and causation.
- Failure to demonstrate the applicant was acting on behalf of domestic industry.
- Lack of due process during the investigation and a lack of transparency over the final decisions. In particular, MOFCOM made no contact with relevant cooperating exporters or the Australian Government after the original questionnaire was issued.
- No evidence that verification of information was undertaken.
- Failure to include all relevant information in published notices.

DS603 – Australia – AD/CVD on Certain Products: On 24 June 2021, China initiated WTO dispute settlement proceedings in relation to anti-dumping and countervailing measures imposed by Australia on certain Chinese products. Australia and China held confidential consultations on 11 August 2021. If China considers the matter unresolved it may lodge a panel request, however to date it has not done so.

- Mr Becroft thanked Mr Brightling and enquired about the format of the WTO consultations.

Mr Brightling advised that consultations are ordinarily conducted in person but due to COVID-19 restrictions they have taken place virtually. He added that consultations are the first formal step in the dispute settlement process but do not commonly lead to a resolution of the dispute.

- Mr Wacey asked whether it was unusual for a country to lodge 3 disputes in the WTO concurrently.

Mr Brightling advised that it is up to a WTO Member as to how they structure their disputes, and that a panel request will reflect the legal claims and the trade remedy measures in question.

Agenda Item 6 – Sub-committee update

Compliance and Anti-Circumvention Sub-Committee Update: Referring to the Chair’s report circulated prior to the meeting, Mr Condon made the following recommendations, which would require legislative reform:

- expanding the Minister’s powers to grant an exemption for exporters found not to be circumventing
- preventing exporters from avoiding the intended effect of the duty

Mr Condon also put forward recommendations not requiring legislative changes, including the:

- application of a minimum level of profit of 6% in circumstances where the Non-Injurious Price (NIP) is based on an Unsuppressed Selling Price (USP) calculated by reference to the domestic industry’s full cost of production plus a level of profit
- improvement in the effectiveness of Reviews of Measures
- improvement in the transparency of the Duty Assessment process.

Mr Condon is of the view that the Chair’s report captures the key discussions that have taken place in the sub-committees and wished to be guided by the commission on taking the recommendations to government. He further added that it is not common for the ITRF to reach a uniformed agreement on recommendations, but stressed that the lack of progression of the sub-committee work may raise questions on their value.

Mr Smith noted that the commission has previously provided responses to some of these recommendations.

There was agreement that the commission will continue to work with the sub-committee and the department to identify the best way these recommendations go forward.

Dr Armstrong noted his appreciation of the work of the ITRF and its sub-committees, highlighting that the forum’s work largely drove the recent reform agenda.

- Mr Wacey said that the Chair’s report reflects the multiple views of the members and expressed his support in advancing the issues further.
- Mr Hawkins also supported the recommendations presented by Mr Condon and suggested that they are put forward for consultation as part of the next tranche of legislative reforms.

Mr Karl Brennan, Manager Anti-Dumping Policy, DISER, noted that as a government member of the ITRF, the department has responded to a number of issues raised in the Chair’s report including on the proposals to allow anti-circumvention inquiries to run concurrently with duty assessments and suggestions to improve the transparency of the duty assessment process. He further noted that the department is making efforts to consult and engage with industry. He agreed with Mr Condon and Mr Hawkins that while a uniform agreement may not be possible, a full ITRF consultation process has to be undertaken for some of these recommendations before progressing, including the application of the minimum level of profit of 6%. Mr Brennan stressed the department’s commitment to engage with ITRF members in a transparent manner.

- Mr Hudson thanked Mr Condon for the report and for trying to capture the different views of sub-committee members. He agreed that some of the recommendations would require consultation by the full membership of the ITRF. Ms Casben reflected that discussion indicated there were two issues at play – the recommendations in this report of the Chair and the

question of a pathway for sub-committees to formally propose issues are put to Government for consideration.

Action Item: The commission to examine the Chair’s report and consult with members and government partners as appropriate as to the next steps, and an enduring pathway for sub-committee recommendations. The commission to report back in the next ITRF meeting.

- Mr Alan Gibbs, representing BlueScope, commented that the ITRF was set up as the voice of industry to the government on trade remedies issues and its work needed to be considered appropriately.

Access to import data sub-committee update: Mr Wacey provided an overview of the role and history of the sub-committee and its efforts to address issues to the lack of access to import data. The sub-committee had submitted a paper discussing 3 options:

1. Limited disclosure subject to confidential undertakings/administrative protection orders.
2. Greater disclosure by the ADC in pre-lodgement.
3. Greater disclosure by the Australian Bureau of Statistics (ABS).

Due to the limitations of Options 1 and 3, the sub-committee focused on Option 2. The commission provided its response to the proposals relating to Option 2 in the last sub-committee meeting on 15 September 2021. It advised members that the proposals were not feasible as they would require significant changes to the legislative and procedural frameworks governing a number of relevant government agencies. Following these developments, in the last sub-committee meeting, members discussed the future of the sub-committee and the Chair had sought the views of members on 3 possible next steps:

1. Concluding the sub-committee.
2. Changing the sub-committee’s terms of reference to include legislative change.
3. Continuing with a new Chair.

Dr Armstrong expressed his understanding of the frustrations of the sub-committee and the limitations it faces.

Action item: Access to import data sub-committee to prepare a concluding report.

- Mr Matt Decarne, representing the Australian Forest Products Association, commended Mr Wacey on this work as the Chair of the sub-committee noting that many members felt frustrated that the proposals had not progressed further. He supported the possibility of changing the terms of reference for the sub-committee to allow it to propose legislative changes, and stressed that these issues remain a key concern for industry.

Mr Smith advised that any widening of the terms of reference to examine legislative change would need to include legislation relating to ABS (Treasury portfolio), which would be out of the ITRF and the commission’s remit. Dr Armstrong concurred that this is a significant limiting factor and suggested that members should consider the option of making a submission to government in their own capacities and not in their capacity as ITRF members.

Ms Casben further recommended that the sub-committee should expand on the challenges it faces within the current constraints of the legislation and should crystallise the issues in its concluding report.

Agenda Item 7 – Other business

Dr Armstrong proposed that in the future ITRF meetings be longer to allow more time for discussions and for interactions between members. He also invited members to make suggestions on how the forum should allocate time on updates and issues, to make sure that matters of interest to members are covered sufficiently. Members accepted the suggestions made by Dr Armstrong.

Dr Armstrong further suggested that as restrictions ease, it would be his preference to move the meeting around Australia and invited members to put forward their suggestions on locations adding that the option of attending virtually will also remain.

- Mr Gibbs supported the resumption of in-person meetings and for more time to be allocated for the ITRF meetings.

Action Item: Meeting length for future meetings to be extended.

ITRF Membership update: Dr Armstrong advised members that the ITRF Secretariat was in the process of seeking the Minister's agreement on reappointment of ITRF members, in line with the legislative framework of the ITRF. All existing ITRF members were consulted and would like to retain their membership to the forum.

- Mr Wacey queried whether the commission will be making any recommendations regarding the length of the appointments.

Dr Armstrong advised members that a 2 year appointment was an option being considered and sought the views of the ITRF. There was support amongst members for this term duration.

Agenda Item 8 – Next meeting and closing remarks

Dr Armstrong thanked government and non-government members for their contributions and their efforts, highlighting the current legislative reforms as an indicator of the impact of the ITRF in driving policy change.

ADC case lengths for past three years						
Case type	2019		2020		2021	
	Number of cases finalised	Average case length (days)*	Number of cases finalised	Average case length (days)*	Number of cases finalised	Average case length (days)*
Dumping/Subsidy Investigations	6	335	3	340	10	474
Anti-circumvention inquiries	2	291	0	-	1	294
Continuation inquiries	5	232	5	224	9	227
Review of measures	12	253	8	277	7	444
Accelerated reviews	10	85	6	98	3	100
Duty assessments	21	303	15	331	32	388
Exemption inquiries	11	297	1	786	3	267
Total	67	258	38	281	65	365

*From date of initiation to date report sent to Minister

Notes:

- Averages for 2021 not expected to change by 31 December 2021.
- Cases completed in 2021 significantly higher than 2020 (65 compared to 38).
- Cases completed in both 2020 and 2021 were impacted by Covid-19 and the commission has been unable to resume on site verification exercises of domestic or international parties.

There has been a change in the approach that Trade Compliance undertakes monitoring of compliance with trade remedy measures. The change has led to a reduction in the number of infringement notices.

The change recognised that the post transaction verification approach conducting audits on transactions up to four years old and calling up short-paid duties over a prolonged period of time was effective in changing behaviour particularly when coupled with one or more infringement notices to encourage improved voluntary compliance. It also resulted in significant disputes at the AAT.

A more precise and timely approach has been implemented using real-time intervention, detecting and withholding clearance of consignments at the border for examination and other verification activities. This approach detects and corrects non-compliance in a timely manner by providing information to the importer and brokers to enable change in behaviour from non-compliant to compliant through voluntary informed compliance. Under this approach infringement notices are only necessary for continuing non-compliant behaviour.