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Evaluation Unit

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Abbreviations and acronyms

Abbreviation or acronym	Full name
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ADC	Anti-Dumping Commission
ADPS	Anti-Dumping Policy Section, DISER
DFAT	Department of Foreign Affairs and Trade
DISER	Department of Industry, Science, Energy and Resources
EPR	Electronic Public Register
ITRA Service	International Trade Remedies Advisory Service
ITRF	International Trade Remedies Forum
the Act	The <i>Customs Act 1901</i>
TRINDEX	Trade Remedies Index
WTO	World Trade Organization

Executive Summary

The International Trade Remedies Forum (Forum; ITRF) was established as part of the then Labor Government's *Streamlining Australia's Anti-Dumping System* reform package announced in 2011. The Forum's advice to the Minister informed the 2013 reforms to the anti-dumping provisions of the *Customs Act 1901* (the Act) and the *Customs Tariff (Anti-Dumping Act) 1975*.

The Forum was established as a legislated body on 10 June 2013 with the purpose of advising the Minister on the operation of Australia's anti-dumping legislation and on improvements that could be made to this legislation. The Forum is convened by the Commissioner of the Anti-Dumping Commission (ADC) and consists of: industry members representing the interests of Australian producers, manufacturers, importers and industry bodies; trade unions; and Commonwealth government members; and may include other members such as the Minister thinks fit.

Given that the Forum has been operational as a legislated body since 2013 without review, the department, in consultation with the (then) Minister for Industry, Science and Technology, decided it was appropriate to evaluate the Forum to ensure it is meeting its legislative intent and that the legislation itself is still relevant. The evaluation was undertaken by the Department's Evaluation Unit between March and August 2020, with consultations planned to commence in late March postponed to May due to the COVID-19 pandemic. The report was initially provided to the Minister in November 2020, who requested additional information be incorporated.

The evaluators found that the Forum is moderately effective in meeting its legislative purpose of advising the Minister on the operation of the anti-dumping system, and on potential improvements to the anti-dumping system. The Forum's effectiveness could be improved by: clarifying the Minister's expectations for the Forum's work; increasing transparency to Forum members on Forum advice that goes to the Minister; providing the Forum with regular policy updates; and having a terms of reference that expands on the legislative requirements.

The legislated purpose of the Forum enables the provision of advice to the Minister on current and emerging priorities in anti-dumping¹ and countervailing² and remains appropriate.

¹ Dumping generally occurs when a company exports a product into Australia at a price that is lower than the price charged in the country of manufacture. An anti-dumping measure is an additional duty on dumped imports that have injured Australian industry. <https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system>

² Subsidisation is a financial benefit an exporter receives from a government, which may allow the exporter to sell their goods to Australia at a lower price. A countervailing measure is an additional duty on subsidised imports that have injured Australian industry. <https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system>

The membership of the Forum is largely appropriate. Past and current membership of the Forum has met the legislative requirements at all times, noting that the requirement for industry members is for the representation of the identified industry sub-groups rather than the sub-groups themselves necessarily being members.

Current and legislated membership aligns well with those stakeholders most involved in the anti-dumping system and moderately well with those most affected by the system. The inclusion of a broader range of stakeholder views, including those of small business and consumers, would improve alignment with affected stakeholders. This could be achieved by broadening the membership of the Forum or through other stakeholder engagement mechanisms.

The ADC is managing the Forum efficiently and effectively, generally balances different stakeholder interests well, and formal information mostly flows well between the ADC and the Forum. Members were very positive about the performance of both the Commissioner and the ADC. The evaluation identified only a few improvements to the ADC's management of the Forum. These include introducing a standard process of calling for agenda items before meetings, increasing the visibility of proposals made by members between meetings, and earlier finalisation of minutes.

The legislated status of the Forum is highly valued by non-government members who see it as giving it a level of authority and ensuring its continuity, which provides an incentive to contribute. Government members see value in the continuity provided by the legislated status, although noted that it creates some inflexibility and administrative burden.

Summary of Findings and Recommendations

Finding	Recommendation
Focus area: Effectiveness	
<p>Finding 1. The International Trade Remedies Forum (the Forum) is moderately effective in advising the Minister on the operation of and improvements to the anti-dumping system. However, changes could be made to improve its effectiveness.</p>	<p>Recommendation 1: The Minister consider setting out their expectations of the Forum's work through a Statement of Expectations to the Commissioner of the Anti-Dumping Commission (ADC).</p> <p>Recommendation 2: The ADC and ADPS provide the Forum members with greater transparency on the Forum advice that goes to the Minister; and the ADPS provide regular policy updates to the Forum.</p> <p>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 by:</p> <ul style="list-style-type: none"> • articulating the requirement for advice to be consistent with World Trade Organization rules and with domestic legislation (except where a change to legislation is proposed) • clarifying the ways in which the Forum advises on each of: (a) operation of the anti-dumping system, and (b) improvements to the anti-dumping system.
Focus area: Purpose	
<p>Finding 2. The legislated purpose enables the Forum to advise the Minister on current and emerging priorities.</p>	
Focus area: Membership	
<p>Finding 3. Current and past membership of the Forum meets the legislated requirement.</p>	
<p>Finding 4. The current and legislated membership of the Forum aligns well with those stakeholders involved in the anti-dumping system, and moderately well with those affected by the anti-dumping system. However, the ADC could better engage a broader range of stakeholder views, including from small business and consumers, whether via Forum membership or other mechanisms.</p>	<p>Recommendation 4: The ADC further explore how best to engage a broader range of stakeholder views, including from small business and consumers.</p>
<p>Finding 5. While the sub-committees are generally viewed as functioning well, membership numbers and the numbers representing different interest groups can vary, which may affect effectiveness.</p>	
Focus area: Operations	
<p>Finding 6. The ADC is generally seen as balancing different stakeholder interests well. However, the ADC could better balance diverse interests by calling for agenda items and increasing visibility of topics and papers proposed by members between meetings.</p>	<p>Recommendation 5: The ADC review processes for calling for agenda items and increase visibility of member papers between formal meetings.</p>

Finding 7. Virtual meetings have the potential to supplement face-to-face meetings, and may facilitate participation from smaller, less well-resourced stakeholders, but they do have some limitations.

Finding 8. The ADC is efficiently and effectively managing the Forum and generally meeting standards of transparency, effective collaboration, timeliness and proportionality in terms of cost and time requirements for stakeholders. Some areas of improvement were highlighted in stakeholder survey responses and interviews.

Finding 9. Formal information flows within the Forum function well and are generally timely. However, the minutes of Forum meetings could be circulated, finalised and endorsed more promptly.

Recommendation 6: The ADC circulate draft meeting minutes out-of-session soon after a meeting to facilitate their earlier finalisation, endorsement and publication.

Finding 10. Information flow within and outside of member organisations varies. Some members are unclear as to what information is and is not restricted.

Recommendation 7: The ADC clarify for members what information can and cannot be disseminated within and outside of their organisations.

Focus area: Legislative status

Finding 11. The Forum's legislated status is considered by non-government members to be an asset that supports the Forum's authority and continuity. For government members, the Forum being legislated provides an established consultation mechanism with a diverse group, but also creates some administrative burden and inflexibility.

Management Response

Table 1: Overall comments on report

Anti-Dumping Commission	Anti-Dumping Policy Section
The Anti-Dumping Commission (ADC) welcomes the Evaluation as a valuable source of information and feedback on the operation and management of the International Trade Remedies Forum. The ADC supports the recommendations of the Evaluation, and if they are accepted, will work with members to implement those recommendations to further improve the effectiveness of the Forum.	The Anti-Dumping Policy Section (ADPS) notes the findings and recommendations of the International Trade Remedies Forum Evaluation. ADPS considers that the Evaluation has explored the operation and management of the ITRF since its inception and provided clear analysis and evidence-based recommendations. Following the Minister for Industry, Science and Technology's consideration, ADPS will work with and support the ADC to implement the recommendations accepted by the Minister.

Table 2: Responses to individual recommendations

Recommendation	Response
Recommendation 1: The Minister consider setting out their expectations of the Forum's work through a Statement of Expectations to the Commissioner of the Anti-Dumping Commission (ADC).	Supported <ul style="list-style-type: none"> The ADC and ADPS support the recommendation for the Minister to set out their expectations for the Forum's work through a Statement of Expectations.
Recommendation 2: The ADC and ADPS provide the Forum members with greater transparency on the Forum advice that goes to the Minister; and the ADPS provide regular policy updates to the Forum.	Supported <ul style="list-style-type: none"> The ADC and ADPS support the recommendation to provide Forum members with greater transparency on the Forum advice that goes to the Minister. If the recommendation is accepted the ADC and ADPS propose to provide updates at Forum meetings 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 by: <ul style="list-style-type: none"> articulating the requirement for advice to be consistent with World Trade Organization rules and with domestic legislation (except where a change to legislation is proposed) clarifying the ways in which the Forum advises on each of: (a) operation of the anti-dumping system, and (b) improvements to the anti-dumping system. 	Supported <ul style="list-style-type: none"> The ADC and ADPS support the recommendation to develop terms of reference for the Forum. If the recommendation is accepted, the ADC and ADPS will provide a draft for the Minister's consideration.

Recommendation 4: The ADC further explore how best to engage a broader range of stakeholder views, including from small business and consumers, whether via Forum membership or other mechanisms.

Supported

- The ADC supports the recommendation. If the recommendation is accepted, the ADC will seek to identify and approach relevant organisations to gauge their interest in membership or engagement via other mechanisms.
- ADPS notes the recommendation

Recommendation 5: The ADC review processes for calling for agenda items and increasing visibility of member papers between formal meetings.

Supported

- The ADC supports the recommendation. The ADC has instituted new processes to call for agenda items and increase visibility of member papers between formal meetings.
- ADPS notes the recommendation

Recommendation 6: The ADC circulate draft meeting minutes out-of-session soon after a meeting to facilitate their earlier finalisation, endorsement and publication.

Supported

- The ADC supports the recommendation. The ADC will circulate draft meeting minutes for endorsement out of session soon after each meeting.
- ADPS notes the recommendation

Recommendation 7:

The ADC clarify for members what information can and cannot be disseminated within and outside of their organisations.

Supported

- The ADC supports the recommendation. If the recommendation is accepted, the ADC will seek to clarify with members what information can and cannot be disseminated within and outside of their organisation.
- ADPS notes the recommendation

1. Introduction

1.1 The International Trade Remedies Forum

The International Trade Remedies Forum (the Forum; ITRF) was established as part of the *Streamlining Australia's Anti-Dumping System* (Streamlining) reform package announced by the then Labor Government in 2011. The Forum was legislated on 10 June 2013 under Part XVC of the *Customs Act 1901* (the Act; Appendix A).

Purpose

The initial purpose of the Forum was to provide advice to the relevant Minister on the operation and improvements that could be made to the anti-dumping provisions of the *Customs Act 1901* and the *Customs Tariff (Anti-Dumping Act) 1975*. This advice informed the legislative reforms passed in 2013.

The legislated purpose (function) of the Forum is to: advise the Minister on the operation of the anti-dumping legislation; and on improvements that could be made to the anti-dumping legislation.

Membership

The legislated membership of the Forum consists of:

- the Commissioner (presiding member)
- 11 members representing Australian producers, manufacturers, industry bodies and importers, with each of these 4 groups represented by at least one member.
- 4 members representing trade unions
- such number of Commonwealth government representatives as the Minister decides
- such other members (if any) as the Minister decides.

Members are appointed by the Minister.

Operations

Prior to being legislated, the Forum was administered by the Australian Customs and Border Protection Service (ACBPS) and chaired by the Chief Executive Officer of the ACBPS. The Anti-Dumping Commission (ADC) within the ACBPS, the role of the Commissioner of the ADC, and the role of the Commissioner as the Forum's presiding member were established under legislation on 1 July 2013 (Parts XVB and XVC of the Act). Responsibility for the ADC was transferred to the Department of Industry on 27 February 2014.

The Forum is required to meet at least twice each calendar year, however the Commissioner may convene a meeting at any time. The ADC provides secretariat support for the Forum. The Commissioner periodically establishes sub-committees to progress specific pieces of work.

1.2 Authority for the evaluation

The Forum has been operational as a legislated body since 2013 without review. In early 2020, a decision was made by the department in consultation with the (then) Minister for Industry, Science and Technology that it was appropriate to evaluate the Forum at this time to ensure it is meeting its legislative intent and that the legislation itself is still relevant. The evaluation is also timely to ensure that the Forum remains fit for purpose in the economic recovery phase of COVID-19 given the Forum's role in advising government on the operation and improvements to Australia's anti-dumping legislation.

1.3 Evaluation scope and questions

The evaluation assessed the Forum in terms of its purpose, membership, operation and legislative framework from the time it was established in 2011 up until the end of 2019.

The evaluation sought to answer the following questions:

- How effectively is the ITRF meeting its legislated purpose?
- How appropriate is the legislated purpose of the ITRF?
- How appropriate is the membership of the ITRF?
- How well is the ITRF operating?
- What (if any) changes are needed to ensure the ITRF's purpose and membership remain appropriate and the ITRF is effective and operates well?

A list of the evaluation questions and sub-questions is at Appendix B.

1.4 Governance of this evaluation

The evaluation was governed by a Reference Group, which provided guidance and oversight throughout the evaluation, including endorsing the Terms of Reference and providing feedback on the draft report. The Chair of the Reference Group signed off on the final report.

The Reference Group comprised the following members:

- General Manager, Evaluation and Research Branch, Analysis and Insights Division (Chair)
- General Manager, Trade and International Branch, Strategic Policy Division
- General Manager, Economic and Strategic Services Branch, Anti-Dumping Commission.

1.5 Evaluation methodology

This evaluation used a primarily qualitative approach, drawing on a range of sources to answer the evaluation questions. The evaluators:

- Engaged with the (then) Minister for Industry, Science and Technology.
- Conducted a survey of Forum members and sub-committee participants.
 - The survey was sent to 25 current members, 7 past members, and 2 sub-committee participants. The 18 responses received, all from current members and sub-committee participants, represented 17 Forum members and sub-committee participants.
- Conducted 17 semi-structured interviews, including with a total of 33 stakeholders representing 13 organisations.
 - 7 internal interviews involving 12 stakeholders representing the ADC, DISER, and the International Trade Remedies Advisory (ITRA) Service.
 - 10 external interviews involving 11 stakeholders representing 10 Forum members. To expand depth and reach, the external interviews targeted 6 members who had responded to the survey and 4 who had not.
- Reviewed and analysed documentation associated with the establishment, management and operation of the Forum.
- Reviewed and analysed background literature.

For the purposes of this evaluation, each Forum member was categorised into one of five groups:

- 'Producers/ manufacturers' consists of producers, manufacturers, and industry associations that primarily represent these groups.
- 'Importers/ downstream users' consists of importers, downstream users, and industry associations that primarily represent these groups.
- 'Industry associations' consists of industry associations that may represent both producers and manufacturers as well as importers and downstream users.
- 'Unions' consists of trade unions.
- 'Government' consists of Commonwealth government agencies.

As there is no perfect categorisation of members, the approach taken tried to best align with the legislated requirements for industry members, which refers to representation of named groups' interests, rather than members of the groups themselves. Appendix C identifies Forum members by group.

While the (then) Minister's views have been included, a limitation of this evaluation is that it relies heavily on the views of current Forum members and sub-committee participants who may have a positive bias. Attempts to engage past members and one non-member were not successful. The evaluation has therefore emphasised exploring the views of the different interest groups represented.

Further detail on the consultation methodology is at Appendix E.

1.6 Structure of this report

This report discusses the evaluation findings and recommendations for the key focus areas as follows:

1. Purpose
2. Membership
3. Operations
4. Legislative status

2. Purpose of the Forum

2.1 Effectiveness in meeting its legislated purpose

In assessing the effectiveness of the Forum in meeting its legislated purpose, the evaluation considered documented advice provided by the Forum to the Minister (and Government), changes informed by this advice, responses from Forum members, and feedback from the (then) Minister. The Forum is moderately effective in advising the Minister on the operation of and improvements to the anti-dumping system.

Advice on operation of the legislation

Advice from the Forum has led to changes to the operation of the anti-dumping system, with operational improvements including: the presentation of the Trade Remedies Index (TRINDEX), the subsidies register, application forms, the Electronic Public Record (EPR), updates to the Dumping and Subsidy Manual, ADC's Quarterly Performance Indicators, on site verification, and the weekly email alert.³

Most (15) survey respondents considered the Forum to be at least moderately effective in advising the Minister on the operation of the anti-dumping legislation, while one thought it was only somewhat effective, one thought it was not effective and one was unsure.

Government survey respondents and interviewees generally considered the Forum to be effective.

The ITRF provides a valuable forum for members to raise concerns and suggestions about the operation of the anti-dumping system, to inform the Minister and the Commission's ongoing continuous improvement efforts. The Commission has implemented a range of improvements based on feedback from ITRF members. (Government representative)

³ ADC ITRF records and consultation

Of the non-government participants, producers/ manufacturers and unions generally considered the Forum to be more effective than did industry associations and importers/ downstream users.

The ITRF provides an essential opportunity for industry to give feedback and make pragmatic suggestions on how the Anti-Dumping system can be improved, made more efficient and better support Australians. (Producer/ manufacturer representative)

The system is geared for representatives to seek to encourage greater use of the [anti-dumping system] rather than less. (Industry association representative)

Advice on improvements to the legislation

The Forum's advice informed the 2013 legislative reforms to the *Customs Act 1901*. The Forum also contributed comments, as a group or as individual members, to 2 review processes and policy consultation papers that were facilitated by the department to inform the Minister's consideration of potential future system changes. Overall, two-thirds (12) of survey respondents considered the Forum to be at least moderately effective in advising the Minister on improvements to the anti-dumping legislation, while 2 thought it was only somewhat effective, one thought it was not effective, and 3 were unsure of its effectiveness.

Looking at government views, most government respondents and interviewees considered the Forum to be effective in providing advice on improvements to the legislation, although to a somewhat lesser extent than in providing advice on operation of the legislation. The polarised views of Forum members were seen as limiting the Forum's use for providing unified advice to the Minister on improvements to the legislation, but it was considered to be useful as a sounding board for policy ideas and changes. Other government respondents and interviewees thought the Forum provided a useful mechanism for orderly discussion and reaching a degree of consensus.

Somewhat effective as, due to the polarised views represented there is limited cohesive messaging to the Minister. Members tend to bypass the ITRF and seek to raise these with the [Minister or Minister's Office] or other Ministers in the Government directly. (Government representative)

The ITRF has been highly effective in capturing a range of views from stakeholders with differing perspectives, and enabling discussions to reach a degree of consensus in order to make recommendations to the Minister on improvements to the system. (Government representative)

While, generally, non-government participants also considered the Forum to be effective in providing advice on improvements to the legislation, unions and most producers/ manufacturers considered the Forum to be more effective than did industry associations and importers/ downstream users. Unions and producers/ manufacturers commented on the value of including industry members with practical experience in using the anti-dumping system.

I would say very effective. ITRF membership includes industry members that have practical experience in using the system and as such offer real world advice on how the total system can be improved from this viewpoint. (Producer/ manufacturer representative)

The Minister needs to hear directly from industry on ways to improve the system and what is happening on the ground'. (Trade Union representative)

Views on the Forum's level of effectiveness

Survey respondents and interviewees across a range of non-government groups, and one government respondent, commented that it was difficult to assess the level of effectiveness of the Forum because they lack visibility of what goes from the Forum to the Minister, and of feedback from the Minister.

We're often not aware of what actually goes from the ITRF to the Minister so there's no transparency in what matters get raised and how they get raised with the Minister. (Importer/ downstream user representative)

I can only assume that whatever is decided and discussed at, say, an ITRF meeting, is then communicated back to the Minister and that's done faithfully and the Minister then takes that on board. So if I can assume that, I think it's working fairly effectively. (Industry association representative)

The (then) Minister considered the Forum to be partly effective in meeting its purpose, and emphasised the importance of regular communication about the Forum's work programs, key issues that the Forum was dealing with, areas of operational challenge, and improvements that could be made.

Sub-committees are an effective mechanism for progressing Forum work

As part of the 2011 *Streamlining* policy reforms, the then Government established 3 government-led (chaired) ITRF working groups⁴ – the Particular Market Situation, Import Data, and Close Processed Agricultural Goods working groups, with 2 more – on Electronic Public Record and Compliance – established in 2012. Some working groups reported to the Minister (via the Forum) and informed the 2013 legislative reforms to the anti-dumping system. Others reported to the Forum and influenced operational changes before being discontinued.

In September 2016, in response to a suggestion by some Forum members, the Commissioner established 3 sub-committees – Compliance and anti-circumvention, Subsidies, and SME access – to advise the government on options for potential improvements to the anti-dumping system. These sub-committees reported to the Forum and the Minister in April 2017, informing the Minister's consideration of future system changes. In May 2017, the Subsidies

⁴ Forum Sub-committees were initially referred to as 'Working Groups'

and SME access committees were concluded, having completed their work, while the Forum decided to continue the Compliance sub-committee and establish a new Import Data sub-committee.⁵

The sub-committees have been industry-led (and chaired) with membership driven by self-nomination and a goal of ensuring diversity. The sub-committees have been active, with each meeting between 2 and 5 times per year while operational.⁶

Many interviewees and some survey respondents⁷, representing all five stakeholder groups, commented positively about the effectiveness of the Forum sub-committees as they were seen as opportunities for deeper discussion on specific and technical issues while progressing a set piece of work.

I think [sub-committees have] been very, very productive and I definitely commend the ADC Commissioner for setting those up.
(Industry association representative)

I think the formation of the sub-committees is a positive thing. It sort of allows some of those more sort of technical areas to be developed, and it's got people sitting on both sides of the fence, so to speak.
(Producer/ manufacturer representative)

There's a fairly active work plan ran through the sub-committees.
(Importer/ downstream user representative)

While it appears that the sub-committees have been operating effectively, the (then) Minister indicated that she would have liked to better understand how topics were selected as a focus area for a sub-committee.

Most members are satisfied with the Forum as a mechanism for advising the Minister

Two-thirds (12) of survey respondents, and most interviewees, were at least moderately satisfied with the Forum as a mechanism for providing stakeholder advice to the Minister on the anti-dumping system, while 2 were only somewhat satisfied, one was not satisfied and 3 were unsure. Unions and producers/ manufacturers were more satisfied than other groups, while Industry associations were less satisfied. Government respondent views were mixed, although most were at least moderately satisfied. Importers/ downstream users were more likely to be unsure about their level of satisfaction.

⁵ ADC ITRF meeting minutes.

⁶ ADC ITRF records.

⁷ The survey did not include a question about sub-committees so any reference to them was initiated by members, whereas many interviewees were asked for their views on the sub-committees.

A range of factors were identified as helping and hindering the effectiveness of the Forum

Survey respondents and interviewees identified a range of factors that they thought helped or hindered the effectiveness with which the Forum advises the Minister.

A number of survey respondents and interviewees mentioned that Ministerial attendance and engagement helped effectiveness, and/or that a lack of Ministerial attendance and engagement hindered the Forum's effectiveness. A review of attendance records found that almost all meetings have been attended by a representative of Government⁸ with the Minister attending 3 of the 4 meetings held over 2018-2019. The frequency with which this was raised as an issue by survey respondents may be due to the recency of the December 2019 meeting, at which there was no representation, and/or because the Minister only attended part of the meetings. However, direct engagement with the Minister is clearly valued by Forum members.

Other factors that respondents thought helped the Forum's effectiveness included: the inclusion of a broad range of stakeholders, including users of the anti-dumping system and government, the use of sub-committees for deeper investigation of issues, active participation by members, and being legislated.

Other factors that the consulted stakeholders identified as hindering the Forum's effectiveness included: the potential constraint of the contested nature of anti-dumping system on open discussion, the lack of representation of consumer views, and the lack of transparency on progress with policy reform.

Changes can be made to improve the effectiveness of the Forum

Two-thirds (12) of survey respondents and some interviewees thought changes could be made to increase the effectiveness with which the Forum advises the Minister, while the remaining one-third (6) were unsure. Producers/manufacturers, unions and importers/ downstream users were more likely than other groups to think that changes could be made.

Changes suggested by members included: increased transparency about the advice that goes from the Forum to the Minister, feedback on progress with policy reforms, and increased engagement with the Minister.

A few interviewees also commented on the need for the Forum's advice to be consistent with WTO rules, with one government member noting that the Forum's advice to the Minister was not always consistent with Australia's international obligations. Two members, representing producers/manufacturers and government, thought that the Forum would benefit from greater guidance, with one suggesting that the articulation of a strategic policy narrative for Australia's anti-dumping system could help frame the Forum's discussions. While another thought it needed to be clarified that the Forum was a stakeholder consultation mechanism rather than an expert advisory body.

⁸ Parliamentary Secretary, Minister or Assistant Minister

The (then) Minister indicated that she was open to more regularised discussions about the Forum with the ADC, along with a policy official from the Department. This could be formalised through a Statement of Expectations to the Commissioner. She also expressed an interest in improved communication and flow of information in both directions.

The Forum has not had terms of reference beyond the legislative requirements since being legislated. A terms of reference could expand on the legislative requirements to articulate the scope and processes of the Forum and roles of key parties. A terms of reference could also help clarify Ministerial expectations of the Forum by expanding on its legislative requirements, including to articulate the requirement that the Forum's advice to the Minister is consistent with WTO rules and also with domestic legislation, except where a change to the legislation is being proposed. The terms of reference could also clarify the ways in which the Forum advises the Minister on the operation of the anti-dumping system and on improvements to system.

FINDING 1: The Forum is moderately effective in advising the Minister on the operation of and improvements to the anti-dumping system. However, changes could be made to improve its effectiveness.

Box 2.1: Recommendation 1

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.

Box 2.2: Recommendation 2

Recommendation 2: The ADC and ADPS provide the Forum members with greater transparency on the Forum advice that goes to the Minister; and the ADPS provide regular policy updates to the Forum.

Box 2.3: Recommendation 3

Recommendation 3: The ADC, with the Anti-Dumping Policy Section, and in consultation with the Minister, develop terms of reference for the Forum that expand on the legislated requirements by:

- articulating the requirement for advice to be consistent with WTO rules and with domestic legislation (except where a change to legislation is proposed)
- clarifying the ways in which the Forum advises on each of: (a) operation of the anti-dumping system, and (b) improvements to the anti-dumping system.

2.2 Appropriateness of the legislated purpose

In assessing the appropriateness of the Forum's legislated purpose, the evaluation considered members' views on the current and emerging priorities in anti-dumping and countervailing, and whether they thought the legislated purpose enabled the Forum to provide advice to the Minister on these priorities.

Current and emerging priorities in anti-dumping and countervailing

In relation to current priorities, survey respondents and interviewees identified a range of issues, including: ensuring a level playing field for Australian industry; maintaining the effectiveness of the system and streamlining investigation timeframes; improving SME understanding of and access to the system; progressing the proposed legislated reforms; and understanding how Australia's system compared to others jurisdictions' systems.

Survey respondents and interviewees identified a broad range of issues they considered to be emerging priorities in anti-dumping and countervailing. Union representatives, some producer/ manufacturer representatives and one government representative referred to possible changes in trade flows as a result of COVID-19 or other international trade developments. Unions and some producers/ manufacturers noted the potential for a surge in dumping post-COVID-19, although one industry association representative and one government representative said they had not seen evidence of a surge. Other issues identified included: ensuring compliance with WTO rules; improved access to import data; preventing circumvention; and the Government's post-COVID-19 recovery goals.

The legislated purpose enables advice on current and emerging priorities

Most (12) survey respondents and interviewees thought that the legislated purpose was sufficiently broad to enable the Forum to advise the Minister on both current and emerging priorities in anti-dumping and countervailing. Only 2 thought that it did not and 4 were unsure.

Producers/ manufacturers, unions and most industry association respondents were more likely to think that the legislated purpose enabled the Forum to provide advice on current and emerging priorities. Some of these respondents indicated that the broad scope of the legislated purpose enabled advice on all issues relating to the anti-dumping system. One industry association respondent thought that the legislated purpose did not enable the Forum to provide advice on these priorities because it precluded a national economic interest test and did not consider consumer interests. A small number of government, importer/ downstream user and Industry association respondents were unsure whether or not the legislated purpose enabled the Forum to provide advice on current and emerging priorities.

More broadly, survey respondents were evenly split (7 to 7) on whether or not changes were needed to the legislated purpose. Both union respondents, most producer/ manufacturers, and one importer/ downstream user thought changes were needed. While the majority of government respondents, some producer/ manufacturers, one importer and one industry association thought changes

were not needed. The remaining 4 respondents, who represented a range of groups, were unsure whether or not changes were needed.

Most of the changes survey respondents suggested were to address factors raised as hindering the Forum's effectiveness. In addition, some producers/manufacturers and unions thought the Forum should have some role in relation to safeguard actions⁹, although not all members agree.

FINDING 2: The legislated purpose enables the Forum to advise the Minister on current and emerging priorities.

3. Membership

In assessing the membership of the Forum, the evaluation compared past and current membership of the Forum against the legislated requirements, and sought member views on the balance of representation.

3.1 Alignment with legislated requirements

Current and past membership meets the legislated requirements

The Forum has met the legislated membership requirements (section 1.1 and Appendix A) at all times. Since being legislated, the Forum has consisted of: the Commissioner (presiding member); from 15 to 17 members representing Australian producers, manufacturers, importers and industry bodies; 4 members representing trade unions; and from 3 to 7 members representing Commonwealth government agencies.

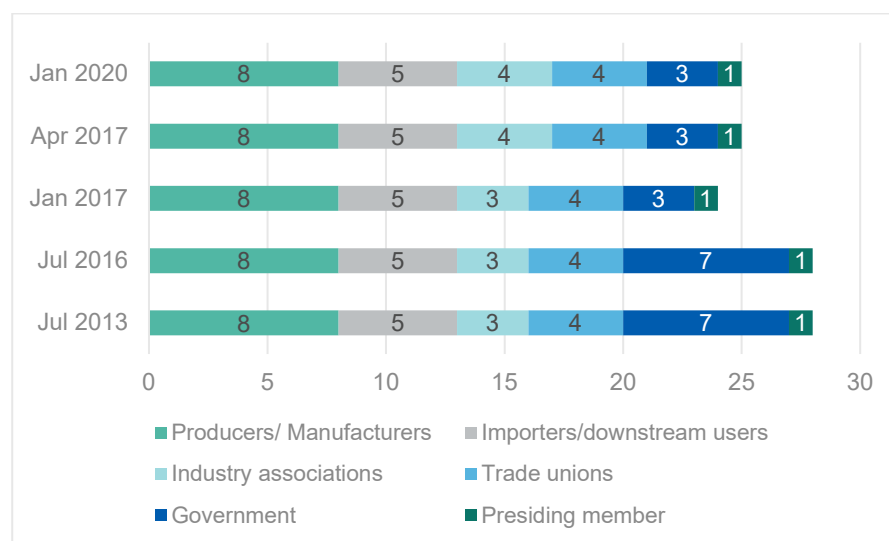
Of the members representing the four industry groups, there have been: 8 members that primarily represent the interests of producers and/or manufacturers, with both of these groups' interests represented; 5 members that primarily represent the interests of importers/ downstream users; and from 2 to 4 members that are industry bodies that may represent the interests of both producers/ manufacturers and importers/ downstream users.

The total number of members has varied between 24 and 28 members since the Forum was legislated, and there are currently 25 members. However, the number of members representing some groups has changed (See Figure 3.1). Notably, the number of industry association members has increased while the number of government members has decreased. Four government members were not reappointed after 2016 due to their more limited interest and their ability to be engaged as needed.

Current and past members of the Forum, and the interests they represent, are listed at Appendix C.

⁹ Safeguard action is "emergency action" which may be taken where a surge of imports causes or threatens to cause, serious material injury to a domestic industry. It allows a country to respond to unexpected and unforeseen increased imports which have caused serious material injury.
<https://www.dfat.gov.au/trade/organisations/wto/Pages/trade-remedies>

Figure 3.1: Forum membership by group since being legislated



Notes: Dates given are when membership appointments took effect.

Source: ADC ITRF records

FINDING 3: Current and past membership of the Forum meets the legislated requirement.

3.2 Alignment with affected and involved stakeholders

Membership aligns moderately well with the affected stakeholders

Stakeholders with interests in the anti-dumping system generally fall into the following three categories: Australian manufacturers seeking to have duties imposed; importers and downstream users (including consumers) impacted by duties; and peak industry bodies and trade unions whose members belong to either or both of the previous categories.

Of the affected stakeholders, Australian manufacturers are the most active users of the anti-dumping system, particularly those from trade-exposed industries such as steel, aluminium, glass and paper. Importers and downstream users are smaller and more fragmented. They have less capacity to engage systematically in the anti-dumping system and usually engage on a case by case basis.

The legislated and current membership includes representatives of most of the stakeholders affected by the anti-dumping system. The main gaps in the legislated membership are representation of downstream users and consumers. However, while these groups are not specified in the Forum's legislated membership requirements, the Minister can appointment them as 'other'.

The main gaps in the current membership are small business (whether seeking or impacted by measures), and consumers. However, the size and fragmented nature of these groups create some barriers to their inclusion. While some

Forum members count SMEs amongst their membership, past efforts by the ADC to include organisations that specifically represent small business have had less success. The International Trade Remedies Advisory (ITRA) Service, which attends the Forum as an observer and participated in the SME Access Sub-committee, provides some consideration of SMEs, but it is not independent of government.

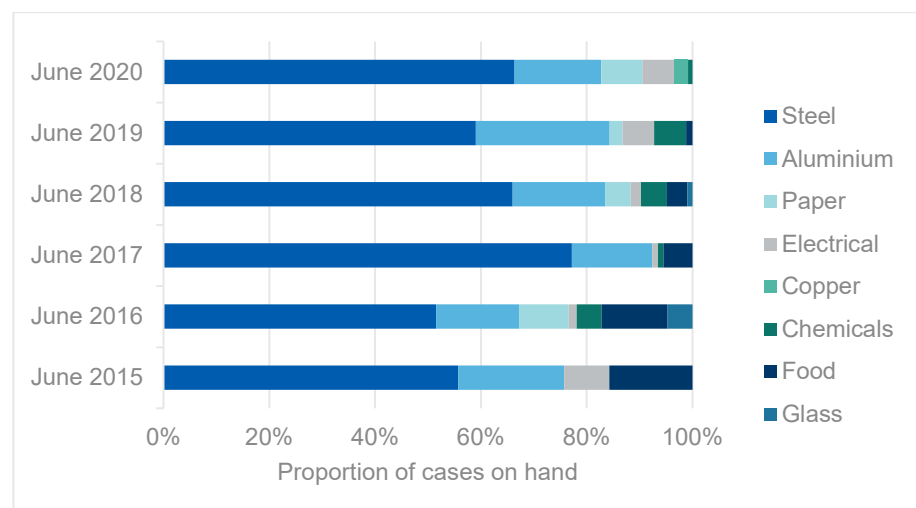
Membership aligns well with involved stakeholders

The legislated and current membership aligns well with the stakeholders most involved in the anti-dumping system. Most of the active users (as applicants) of the anti-dumping system are represented, including those involved in the manufacture of steel, aluminium, glass, paper and chemicals products, and food. While the Forum does not have any members that are manufacturers of electrical equipment or copper products, their interests are broadly represented by industry association members.

More than half of the anti-dumping and countervailing cases on hand and measures in place relate to steel products, while approximately a fifth of cases and measures relate to aluminium products.

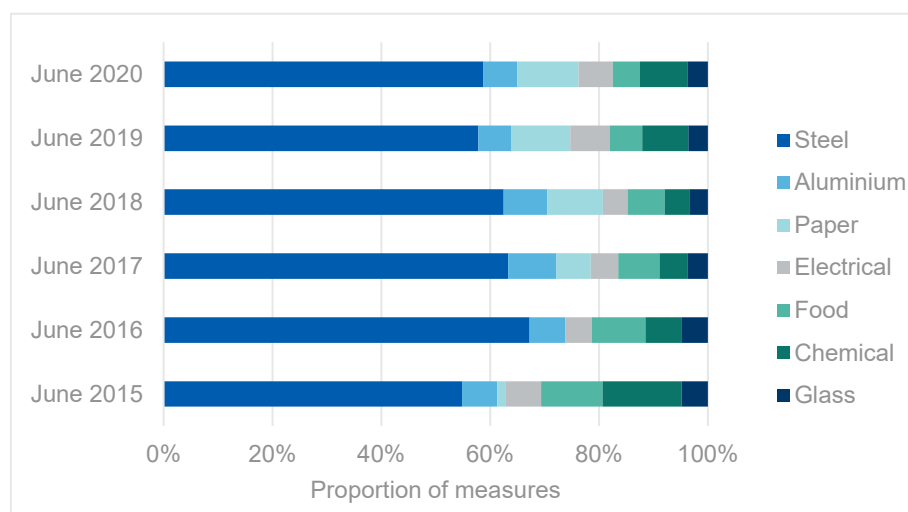
Figure 3.2 and 3.3, respectively, show the proportion of cases on hand and measures in place by industry sector at 30 June for the period 2015 to 2020.

Figure 3.2: Proportion of anti-dumping and countervailing cases on hand by industry sector



Source: ADC Performance data

Figure 3.3: Proportion of Anti-dumping and countervailing measures in place by industry sector



Source: ADC Performance data

Views vary as to the appropriate balance of representation

Members were asked about the level of representation of different groups.¹⁰ Most groups thought that their own group was under-represented and other groups were over-represented. The area of greatest agreement between groups were that government agencies, unions and industry associations were appropriately represented. Producers/ manufacturers, unions and one government respondent also thought that producers were under-represented.

The areas of greatest disagreement between groups related to the level of representation of importers. Producers/ manufacturers, unions and some industry associations thought importers were over-represented. In contrast, importers/ downstream users, government agencies and some other industry associations thought importers were under-represented.

In general, unions and most producers/ manufacturers thought that Forum membership should be weighted towards users and their representatives. The other groups, however, were more likely to think that the Forum should balance the interests of all those affected by the anti-dumping system.

The balance of industry members is a matter for the Minister to determine. The legislation requires that at least 11 members represent one or more of the following groups: Australian producers, manufacturers, importers and industry associations. It further requires that each of those 4 groups must be

¹⁰ Survey respondents and interviewees were provided with a non-categorised list of current Forum members. As such, they may have categorised all industry bodies together, irrespective of whose interests those bodies represent.

represented by at least one of the 11 members, but it does not specify how the remaining 7 (or more) members should be distributed.

There appears to be a, perhaps understandable, expectation from some that producers and manufacturers are themselves members of the Forum. However, the legislation only requires that someone represent the interests of each of these groups.

Some interests are under-represented or missing

Half (9) of the survey respondents, and many interviewees, thought that some stakeholder interests were missing from the Forum, while 6 respondents thought that no groups were missing, and 3 were unsure. Views within each stakeholder group varied. Respondents from multiple stakeholder groups considered small business and consumer voices to be missing. Other groups mentioned as missing included: the Productivity Commission, the Australian Competition and Consumer Commission (ACCC), the horticultural industry, and the peak body for building industry products.

The Council of Small Businesses of Australia (COSBOA) was previously approached about Forum membership, but declined. Such groups might be better engaged on specific issues using other engagement mechanisms. Additional government agencies, such as the ACCC, could be engaged on an 'as needed' basis.

FINDING 4: The current and legislated membership of the Forum aligns well with those stakeholders involved in the anti-dumping system, and moderately well with those affected by the anti-dumping system. However, the ADC could better engage broader stakeholder views, including from small business and consumers, whether via Forum membership or through other mechanisms.

Box 3.1: Recommendation 4

Recommendation 4: The ADC further explore how best to engage a broader range of stakeholder views, including from small business and consumers.

Sub-committees may benefit from being smaller and more balanced

As Forum members self-nominate to sub-committees, the number of members and balance of interests represented has varied. Post-2013, the largest sub-committee has been on compliance (16 members), while the smallest has been on SME Access (6 members plus ITRA as observer). See Figure 3.4, and Appendix C for further details on sub-committee membership.

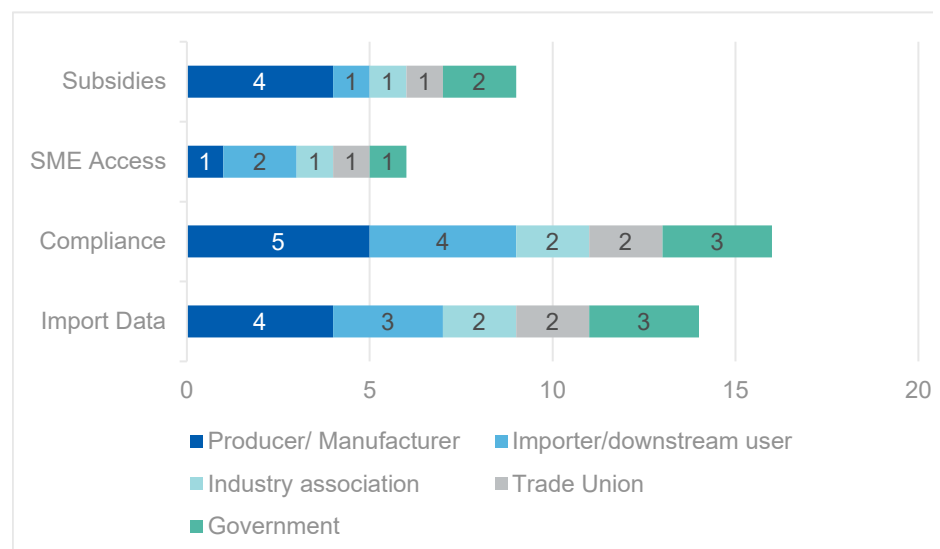
A recent review of research on effective and efficient committee work found that committees of 6 to 12 members tend to perform better than those with either fewer or more members, especially when relying on virtual

communication.¹¹ While some members consider the full Forum to have too many members, a counter view is that it creates a larger pool of stakeholders from which to draw on for sub-committee membership. It might be useful to consider the research findings on effective and efficient committee work for the operation of the sub-committees where the deeper discussions occur.

Further, while the goal of ensuring a diversity of interests has been achieved for each sub-committee, the numbers representing each interest have varied and some survey respondents and interviewees commented on the dominance of certain groups.

While recognising that participation is by self-nomination and some issues will be of more interest to some groups than others, more balanced representation and/or ensuring that all views are able to be presented may benefit some sub-committee discussions.

Figure 3.4: Sub-committee membership by group (July 2013 to December 2019)



Notes: The Compliance Sub-committee includes the ABS as a guest. The SME Access sub-committee included ITRA as an observer.

Source: ADC ITRF records

FINDING 5: While the sub-committees are generally viewed as functioning well, membership numbers and the numbers representing different interest groups can vary, which may affect effectiveness.

¹¹ Oliver et al (2018). Effective and efficient committee work: A systematic overview of multidisciplinary literatures. Evidence Base 2 (2018). Pp. 1-21.

4. Operations

The ADC's management of the Forum was evaluated with reference to guidance provided by the ANAO¹² in relation to public sector governance and the OECD in relation to stakeholder engagement in regulatory policy.¹³ The ANAO guidance establishes a framework for the public sector to implement better practice in governance around the themes of: performance orientation, openness, transparency and integrity, and effective collaboration. The OECD guidance is relevant to processes such as open and balanced engagement, proportionality in terms of cost and time, and predictability of consultation processes.

4.1 Management of the Forum by the ADC

The Forum has met twice in most, but not all, calendar years

The legislation requires that the Forum meet at least twice per calendar year. The Forum was not convened in the second half of 2013 and was not convened at all in 2014. However, since then, the Forum has been convened twice each calendar year. Prior to being legislated, the Forum met twice in 2011, three times in 2012 and once in the first half of 2013.

The ADC is managing the Forum efficiently and effectively¹⁴

The Commissioner convenes full Forum meetings, and the ADC provides the secretariat function for both full meetings of the Forum and for sub-committee meetings. The ADC coordinates the meeting logistics and prepares and circulates meeting documents prior to and following full meetings.

Almost all survey respondents and interviewees rated the ADC's support highly against usefulness and responsiveness, and to a slightly lesser degree against timeliness. Almost all questioned were moderately, very, or extremely satisfied overall with the ADC's management of the Forum, while a newer Forum member was unsure.

Producers/ manufacturers, unions and other government members, in particular, commended the ADC for its professionalism, knowledge and expertise, and stakeholder engagement.

¹² See [ANAO Public Sector Governance: Strengthening Performance Through Good Governance](#)

¹³ See [OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy](#).

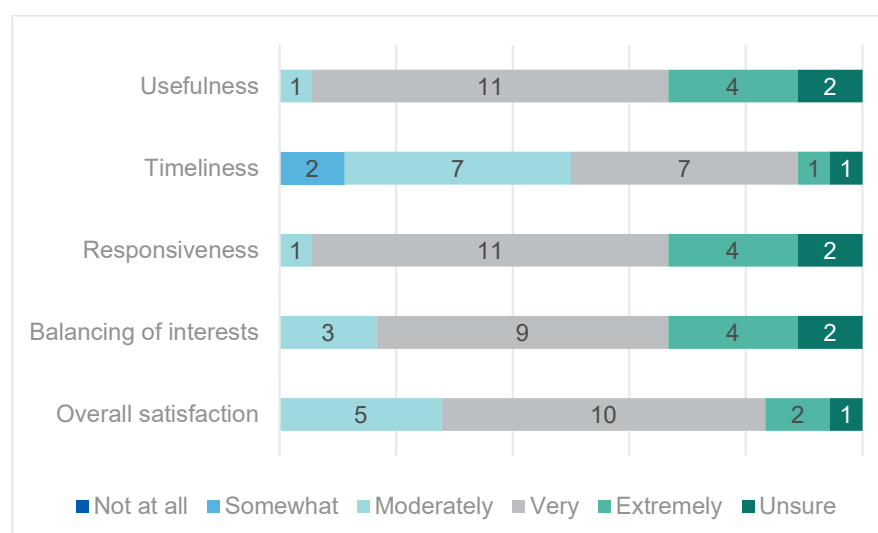
¹⁴ *Efficiency* is defined as 'the best use of resources to further the aims of the entity, with a commitment to evidence-based strategies for improvement'. *Effectiveness* is defined as 'the extent to which the entity's activities and deliverables make positive contributions to specified government outcomes' [ANAO Public Sector Governance: Strengthening Performance Through Good Governance](#) p. 17.

The meeting, the papers and everything are always, it always seems very efficient and coordinated. (Producer/ manufacturer representative)

General professionalism and passion for a well configured and responsive trade remedies system. As an independent statutory authority the ADC is well equipped to manage the ITRF. (Trade Union representative)

I don't think [the Forum] could be better run. (Government representative external to the ADC)

Figure 4.1: Survey respondents' rating of ADC's management and support of the Forum



Notes: Response option descriptors varied slightly for some criteria.

Source: ITRF evaluation survey data

There may be merit in clarifying ADC's support for sub-committees

The terms of reference for the Forum's currently active, industry-led sub-committees articulate the role of the ADC as coordinating papers and other secretariat and administrative functions. However a government member thought the ADC took on too much responsibility for preparing sub-committee papers, rather than other members taking greater responsibility for this work. Apart from being a resource burden, this was seen as potentially inappropriate in some instances.

A producer/ manufacturer interviewee characterised the division of work as being related to whether it involved the interpretation of legislation or a proposed reform to legislation. While the former was considered a role for the ADC, the latter was considered a role for sub-committee members.

While it is not clear from this evaluation the extent to which this is an issue, there may be merit in clarifying the roles of the ADC secretariat and members in sub-committees' terms of reference.

The ADC is generally balancing stakeholder interests well, but could call for agenda items and increase visibility of members' proposals

Over two-thirds (13) of survey respondents rated the ADC as balancing stakeholder interests very or extremely well, while 3 rated them as doing this moderately well and 2 were unsure (see Figure 4.1). Both non-government and government survey respondents and interviewees commented positively on how the Commissioner manages Forum meetings, and similar views were expressed by interviewees.

For the people in the room, the Commissioner does a good job in making sure everybody's heard or has an opportunity to speak.
(Industry association representative)

Members from multiple groups also commented on the Commissioner's investment in building relationships with members and the generally 'collegiate approach' of discussions despite the contested nature of the anti-dumping space. Such comments reflect 'soft' governance attributes, such as investment in relationships, expected behaviours and culture.¹⁵

Some members, however, commented on the dominance of some active users and thought this limited the scope of discussions, and prevented non-applicant views from being heard.

There is a lack of transparency there where there are views that are counter to the predominate view...if there is a differing view it is very difficult to get to have a different view discussed. (Government representative)

A few producer/ manufacturer, union and industry association representatives said, in survey responses and/or interviews, they wanted the opportunity to contribute to the setting of meeting agendas, with one mentioning this in the context of the challenge of raising minority views. The ADC indicated that members are reminded at each meeting to contact the ADC if they wish to suggest future agenda items, however there has not been a formal process of calling for agenda items from members in advance of a meeting.

A producer/ manufacturer and a government interviewee commented on the condensed durations of meetings and tight agendas. They noted that meetings used to be longer and cover a wider range of issues. A review of past agendas confirmed that the duration of full Forum meetings has generally reduced since 2018. This potentially reduces the opportunity to for members to raise and discuss topics.

¹⁵ The ANAO differentiates between 'soft' governance attributes such as relationships, behaviours and culture and 'hard' governance attributes such as board composition, appointment processes and independence.
<https://www.anao.gov.au/work/audit-insights/board-governance>

The agenda is sometimes quite tight. Therefore I think if there are meetings and they actually don't have enough sessions with breaks to allow discussion between stakeholders, I think that hinders it.
(Producer/ manufacturer representative)

A government stakeholder questioned the transparency around responses to topics proposed and papers put forward by members between the formal meetings.

When someone submits a paper to the ITRF [between meetings] I think there needs to be a more transparent and a better consultation mechanism. (Government representative)

To ensure inclusion of different perspectives, some members would appreciate the opportunity to provide input into meeting agendas and greater visibility on topics and papers raised between formal meetings. There would be benefit of ADC reviewing processes relating to these issues.

FINDING 6: The ADC is generally seen as balancing different stakeholder interests well. However, the ADC could better balance the diversity of interests by calling for agenda items and increasing visibility of topics and papers proposed by members between meetings.

Box 4.1: Recommendation 5

Recommendation 5: The ADC review processes for calling for agenda items and increase visibility of member papers between formal meetings.

All members consider the amount of time they contribute to be reasonable, however, some would like to reduce their travel costs

Almost all (17) survey respondents were members in 2019, the year used to assess members' time and travel cost contributions to Forum work. In the 2019 calendar year, members contributed from 1 to more than 15 days to Forum work, with the median contribution range being 6 -10 days. All respondents considered the amount of time they contributed to be reasonable, with just over half (9) of these members willing to consider committing more time to Forum work.

The financial amount that members contributed to travel costs to attend Forum meetings varied from \$0 to more than \$4,000 and the median contribution range being \$1,001-\$2,000. While the majority (15) of respondents considered these costs reasonable, and 4 of them indicating that they could consider contributing more, 2 respondents considered these costs unreasonable.

Membership and participation in the Forum is not remunerated and travel costs are not reimbursed. Expectedly, members vary in their capacity to cover travel costs, and regionally-located meetings may incur a heavier cost burden where it requires an overnight stay. While many respondents thought the cost was reasonable given the benefits of being involved and their ability to combine travel for Forum meetings with other non-Forum business, some respondents

suggested that virtual meetings could replace the need to travel for some meetings.

Virtual meetings have the potential to supplement face-to-face meetings and may facilitate some members' participation

The May 2020 meeting of the Forum was convened virtually due to the COVID-19 pandemic. This provided an opportunity for the evaluators to seek members' views of that meeting, and on the future potential of virtual Forum meetings. While interviewees described the May 2020 meeting as well-managed and efficiently run, the general consensus was that virtual meetings were more 'clunky' and 'clinical' and involved less interaction and active participation (particularly for new members) than did traditional face-to-face meetings. Those questioned thought this format could be useful to facilitate more regular and/or at-short-notice interactions between members, and may facilitate the attendance of less well-resourced members, but they were not keen for virtual meetings to become the default approach.

Face-to-face meetings build '*rapport and understanding of people's issues.*' (Producer/ manufacturer representative)

FINDING 7: Virtual meetings have the potential to supplement face-to-face meetings, and may facilitate participation from smaller, less well- resourced stakeholders, but they do have some limitations.

FINDING 8: The ADC is efficiently and effectively managing the Forum and generally meeting standards of transparency, effective collaboration, timeliness and proportionality in terms of cost and time requirements for stakeholders. Some areas of improvement were highlighted in stakeholder survey responses and interviews.

4.2 Information flow from the ADC to the Forum

Formal information from the ADC generally flows well, but improvements could be made

The ADC circulates agendas, papers and minutes to members and guests/observers before, between, and after meetings, as appropriate. Minutes of full Forum meetings are published on the department's website once they have been endorsed, usually at the subsequent meeting.¹⁶ The ADC also circulates information and seeks members' feedback between meetings on other ADC initiatives.

The majority of survey respondents, including all producer/ manufacturer and union respondents and most government respondents, were very satisfied with the flow of information from the ADC to Forum members. They thought that

¹⁶ See <https://www.industry.gov.au/about-us/our-structure/anti-dumping-commission>

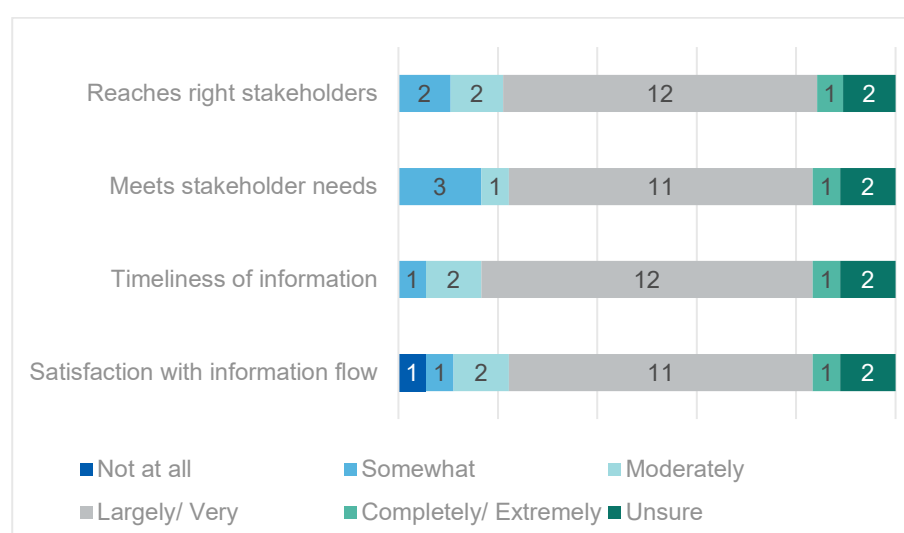
information flows largely to the right stakeholders, largely meets stakeholders' needs, and is largely timely. However, industry association respondents and importers/ downstream users were slightly less satisfied and one industry association respondent unsure.

A concern raised by a range of groups was the delay in circulating draft minutes for review and endorsement at the subsequent meeting which was thought to reduce their utility.

There's small room for improvement, it would be useful to get the minutes closer to when the meetings were, just it's more likely to be fresh in people's minds. (Producer/ manufacturer representative)

Earlier circulation of draft minutes for finalisation and endorsement would improve the timeliness of information flow, including enabling members to share the minutes with their boards and constituent members. While such an approach carries some risk of extended e-mail traffic, this is considered to be minor. This would enable more timely publishing of the minutes on the ADC's website.

Figure 4.2: Survey respondents' ratings of formal information flow from the ADC



Notes: Response option descriptors varied slightly for some criteria.

Source: ITRF evaluation survey responses

FINDING 9: Formal information flows within the Forum function well and are generally timely. However, the minutes of Forum meetings could be circulated, finalised and endorsed more promptly.

Box 4.2: Recommendation 6

Recommendation 6: The ADC circulate draft meeting minutes out-of-session soon after a meeting to facilitate their earlier finalisation, endorsement and publication.

Information flow varies between members' representatives and others within and outside of member organisations

The ADC has limited visibility of how information flows between members' representatives and others within and outside of the member organisations, including to constituent members where applicable. Non-government survey respondents and interviewees varied in the extent to which they interacted with and shared information with others. While some received information from and provided information to their management, constituent members and/or affiliates, others shared information to a very limited extent, even with their own management.

One government respondent said that members needed to engage more actively with their membership prior to and following Forum meetings. However several non-government respondents, including unions and importer/downstream users, commented on the need for greater clarity about what information is restricted and what can be disseminated, and the need to avoid restrictions where appropriate.

It would be beneficial to review and clarify restrictions on Forum information, and to raise awareness of handling obligations for both new and longer-standing members. This would be expected to enable greater dissemination of information from Forum members where appropriate.¹⁷

FINDING 10: Information flow within and outside of member organisations varies. Some members are unclear as to what information is and is not restricted.

Box 4.3: Recommendation 7

Recommendation 7: The ADC clarify for members what information can and cannot be disseminated within and outside of their organisations.

5. Legislative status

In assessing the legislative status of the Forum, the evaluation reviewed relevant documents and sought the views of Forum members.

Being legislated gives the Forum status and supports its continuity, although it creates some administrative burden and inflexibility

The *Customs Amendment (Anti-dumping Measures Bill (No. 1) 2015* proposed to abolish the Forum and replace it with an administrative consultation mechanism. In their submissions to a Senate Inquiry, 8 Forum members either opposed the Forum being abolished or submitted that some form of industry

¹⁷ The ANAO's Audio Insights into Board Governance highlighted the principle of providing appropriate induction to assist board members' understanding of their obligations. See [ANAO Audit Insights Board Governance](#)

forum was required. One non-Forum member also supported retaining the Forum or the establishment of another appropriate body. While noting the concerns raised, the Senate Committee supported the proposal to abolish the Forum, with dissenting views.¹⁸ However the proposal was defeated in the Senate.

Most survey respondents and interviewees, particularly unions, producers/manufacturers and some government respondents thought that the Forum's legislative status helped it to perform its function and did not hinder its work. However, some respondents, mainly industry associations, importers and some government respondents were unsure whether it helped and/or hindered the Forum. Two respondents thought that it being legislated either didn't help or did hinder.

Non-government members were overwhelmingly supportive of the Forum being legislated. They thought it provided some guarantee of continuity as a mechanism to advise the Minister on anti-dumping issues, and acted as an incentive for members to contribute their time and knowledge to the Forum.

"It [being legislated] establishes and preserves its status and the importance of the ITRF." (Importer/ downstream user representative)

Government members noted both advantages and disadvantages of the Forum being legislated. A key advantage is that it formally establishes an ongoing consultative mechanism on anti-dumping matters, as opposed to having to rely on ad hoc mechanisms.

"The legislative status gives it a level of formality that creates this diverse group, encourages this regular set of meetings that creates a clear regular routine process for this consultation." (Government representative)

Disadvantages mentioned by some highlighted that legislating the Forum reduced flexibility for the government of the day and created some administrative burden.

"An ITRF not in legislation would allow greater flexibility for the Minister as to how they wished to be advised by stakeholders and by whom." (Government representative)

However, and notably, no-one recommended that the Forum be removed from legislation.

FINDING 11: The Forum's legislated status is considered by non-government members to be an asset that supports the Forum's authority and continuity. For government members, the Forum being legislated provides an established consultation mechanism with a diverse group, but also creates some administrative burden and inflexibility.

18

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Customs_Amendment_2015/Report

6. Conclusion

This evaluation was undertaken to assess whether the Forum is meeting its legislative intent and whether the legislation itself is still relevant. It considered the Forum's effectiveness, purpose, membership, operations and legislative status.

The evaluation found that the Forum is moderately effective in meeting its legislative purpose of advising the Minister on the operation of the anti-dumping system and on potential improvements to the system. The Forum's effectiveness could be improved by: clarifying the Minister's expectations for the Forum's work; increasing transparency to Forum members on Forum advice that goes to the Minister; providing the Forum with regular policy updates; and having a terms of reference that expands on the legislative requirements.

The legislated purpose was found to enable the Forum to advise the Minister on current and emerging priorities in anti-dumping and countervailing. As such, it is still considered appropriate.

The evaluation found that the membership of the Forum is largely appropriate. However, to improve alignment with stakeholders affected by the anti-dumping system, this evaluation recommends that the ADC further explore ways to engage a broader range of stakeholder views, including from small business and consumers.

The ADC is managing the Forum efficiently and effectively. It generally balances different stakeholder interests well and formal information between the ADC and the Forum mostly flows well. As such, the evaluation has made only a few recommended improvements to the way the ADC manages the Forum.

The Forum's legislated status is highly valued by non-government members, while government members see both advantages and disadvantages to it being legislated. The evaluation did not find any strong support for it being removed from legislation.

The evaluation did not find that any changes were required to be made to the current legislation, however, the membership requirements could be amended to include downstream users and consumer voices if so determined by the Minister.

Appendix A ITRF Legislation

Part XVC—International Trade Remedies Forum

269ZZYA Simplified outline

The following is a simplified outline of this Part:

- This Part establishes the International Trade Remedies Forum.
- The Forum is to advise the Minister on the anti dumping provisions in Part XVB and in the Customs Tariff (Anti Dumping) Act 1975.

269ZZYB Establishment of International Trade Remedies Forum

The International Trade Remedies Forum is established by this section.

269ZZYC Functions of the Forum

The Forum has the following functions:

- a) to advise the Minister on the operation of Part XVB and of the Customs Tariff (Anti Dumping) Act 1975;
- b) to advise the Minister on improvements that could be made to that Part or Act.

269ZZYD Membership of the Forum

- (1) The Forum consists of the following members:
 - a) the Commissioner (within the meaning of Part XVB);
 - b) 11 members, each of whom represents one or more of the following groups:
 - i) Australian producers;
 - ii) Australian manufacturers;
 - iii) Australian industry bodies;
 - iv) Australian importers;
 - c) 4 members who represent Australian trade unions;
 - d) such number of members to represent the Commonwealth as the Minister thinks fit;
 - e) such other members (if any) as the Minister thinks fit.
- (2) Each of the groups mentioned in paragraph (1)(b) must be represented by at least one of the 11 members referred to in that paragraph.

269ZZYE Appointment of Forum members

- (1) Each member of the Forum (except the Commissioner (within the meaning of Part XVB)) is to be appointed by the Minister by written instrument.
- (2) Each member of the Forum (except the Commissioner (within the meaning of Part XVB)) holds office on a part time basis.
- (3) Each member of the Forum (except the Commissioner (within the meaning of Part XVB)) holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: For reappointment, see section 33AA of the Acts Interpretation Act 1901.

- (4) An appointment under this section is not a public office for the purposes of Part II of the Remuneration Tribunal Act 1973.

269ZZYF Resignation

- (1) A member of the Forum (except the Commissioner (within the meaning of Part XVB)) may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

269ZZYG Forum meetings

Number of meetings

- (1) The Forum must meet at least twice each calendar year.

Commissioner to convene meetings

- (2) The Commissioner (within the meaning of Part XVB) may convene a meeting at any time.

Presiding member

- (3) The Commissioner (within the meaning of Part XVB) presides at all meetings at which he or she is present. The Commissioner may nominate a person to attend a meeting in his or her place and, if the Commissioner does so, that person presides.

Conduct of meetings

- (4) The Minister may, by writing, determine the procedures to be followed at meetings of the Forum, including the number of members who are to constitute a quorum.
- (5) A determination made under subsection (4) is not a legislative instrument.

- (6) The Minister may, by signed instrument, delegate to the following the power of the Minister under subsection (4):
 - (a) the Commissioner (within the meaning of Part XVB);
 - (b) a Commission staff member (within the meaning of that Part).

269ZZYH Disclosure of information

- (1) The Commissioner (within the meaning of Part XVB), or a Commission staff member (within the meaning of that Part), may disclose information (including personal information) obtained under this Part to an officer of Customs for the purposes of a Customs Act.

Interaction with the Privacy Act 1988

- (2) For the purposes of the *Privacy Act 1988*, the disclosure of personal information under subsection (1) is taken to be a disclosure that is authorised by this Act.

Definition

- (3) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

Appendix B Evaluation questions and sub-questions

The evaluation questions and sub-questions were derived from the legislated purpose, membership and operations of the Forum. They are also informed by the department's *Evaluation Strategy 2017–2021*.

1. How effectively is the ITRF meeting its legislated purpose?
 - 1.1 How effectively has the ITRF advised the Minister on: (a) the operation of the anti-dumping system, and (b) improvements that could be made to the anti-dumping system?
 - 1.2 To what extent do stakeholders consider the ITRF to be an effective mechanism through which to advise the Minister on the operation of, and improvements to, the anti-dumping system?
2. How appropriate is the legislated purpose of the ITRF?
 - 2.1 To what extent does the legislated purpose of the ITRF reflect current and emerging priorities in anti-dumping?
3. How appropriate is the membership of the ITRF?
 - 3.1 Does the current and past membership of the ITRF meet the legislated requirements?
 - 3.2 To what extent does the current and legislated membership of the ITRF (and sub-committees) reflect the stakeholders currently affected by, and involved in, the anti-dumping system?
4. How well is the ITRF operating?
 - 4.1 How efficiently and effectively is the ITRF being managed by the Anti-Dumping Commission?
 - 4.2 How appropriate and effective is the flow of information between key ITRF stakeholders?
5. What (if any) changes are needed to ensure that the ITRF's purpose and membership remain appropriate and the ITRF is effective and operates well?
 - 5.1 What are the implications for the ITRF legislation of any recommended changes?

Appendix C ITRF and sub-committee membership

Member group and name	Status	Pre-legislation Working Groups					Post-legislation Subcommittees			
		EPR ¹	Compliance	CPAG ²	PMS ³	Import Data	Import Data	Compliance	SME Access	Subsidies
Presiding member										
Commissioner, Anti-Dumping Commission	Current	N/A	N/A	N/A	N/A	N/A	Secretariat	Secretariat	Secretariat	Secretariat
Producers/ manufacturers and industry associations that primarily represent them										
Australian Food and Grocery Council ⁴	Past	Yes	Yes	Yes	Yes	Yes				
Australian Forest Products Association ⁵	Current						Yes	Yes		
Australian Pork Limited	Past and Current ⁶			Yes			Yes ⁶			
Australian Steel Institute	Current								Yes	
Bluescope Steel	Current				Yes	Yes	Yes	Yes		Yes (Chair)
Capral	Current		Yes		Yes	Yes	Yes	Yes		Yes
Dried Fruits Australia	Past			Yes						
Infrabuild ⁷	Current	Yes	Yes	Yes	Yes	Yes	Yes	Yes (Chair)		Yes
Kimberly Clark	Past				Yes	Yes				
National Farmers Federation	Current			Yes						Yes
Oceania Glass ⁸	Current		Yes					Yes		
SPC Ardmona	Past	Yes		Yes						

Importers/downstream users and industry associations that primarily represent them										
Australian Steel Association	Current				Yes	Yes	Yes	Yes	Yes	Yes
Customs Brokers and Forwarders Council of Australia	Current						Yes	Yes		
Food and Beverage Importers Association	Current						Yes	Yes	Yes	
Freight and Trade Alliance	Current ⁹							Yes		
Jeld-Wen	Past				Yes	Yes				
Rio Tinto	Current									
Stoddart Group	Past									
Industry bodies that may represent both producers/ manufacturers and importers/ downstream users										
Australian Chamber of Commerce and Industry	Current						Yes	Yes		
Australian Industry Group	Current								Yes (Chair)	
Law Council of Australia	Current						Yes	Yes		Yes
Chemistry Australia ¹⁰	Current				Yes	Yes				
Trade unions										
Australian Council of Trade Unions	Current									
Australian Manufacturing Workers' Union	Current									
Australian Workers' Union	Current				Yes	Yes	Yes	Yes		
Construction, Forestry, Mining, Maritime and Energy Union	Current	Yes	Yes		Yes	Yes	Yes (Chair)	Yes	Yes	Yes

Commonwealth Government agencies ¹¹										
Attorney-General's Department	Past									
Australian Border Force/ Department of Home Affairs	Current	Yes	Yes		Yes	Yes	Yes	Yes		
Australian Bureau of Statistics	Past				Yes	Yes	Yes (Guest)			
Department of Foreign Affairs and Trade	Current				Yes		Yes	Yes		Yes
Department of Agriculture	Past				Yes					
Department of Industry, Science, Energy and Resources	Current		Yes		Yes	Yes	Yes	Yes	Yes ¹²	Yes
Treasury	Past					Yes				

Notes: ¹ Electronic Public Record; ² Close Processed Agricultural Goods; ³ Particular Market Situation; ⁴ Early ITRF meeting records indicate that the Australian Food and Grocery Council was replaced by the National Farmers Federation in 2012; ⁵ Opal Australian Paper attends both subcommittees on behalf of the AFPA; ⁶ From 2020. ⁷ Formerly Arrium and Liberty OneSteel; ⁸ Formerly Viridian Glass and CSR (Viridian); ⁹ Formerly the Plastics and Chemicals Industry Association. ¹⁰ From 2020. ¹¹ Names of government agencies used are current names for those that are current members, and names when members for past members; ¹² Including ITRA Service as observer.

Source: ADC records

Appendix D List of contributors to the evaluation

The following organisations contributed to this evaluation, either by submitting a survey response, participating in an interview, or both.

- The Hon. Karen Andrews MP, Minister for Industry, Science and Technology (2018 to March 2021)
- Anti-Dumping Commission (ADC)
 - Commissioner
 - ITRF Management and Secretariat
- Australian Border Force (ABF)
- Australian Bureau of Statistics (ABS)
- Australian Chamber of Commerce and Industry (ACCI)
- Australian Council of Trade Unions (ACTU)
- Australian Forest Products Association (AFPA)
- Australian Industry Group (AIG)
- Australian Steel Association (ASA)
- Australian Steel Institute (ASI)
- BlueScope Steel
- Capral Aluminium
- Construction, Forestry, Maritime, Mining, and Energy Union (CFMEU)
- Department of Foreign Affairs and Trade (DFAT)
- Department of Industry, Science, Energy and Resources (DISER)
 - Deputy Secretary
 - Anti-Dumping Policy Section
 - International Trade Remedies Advisory Service
- Food and Beverage Importers Association (FBIA)
- Freight and Trade Alliance (FTA)
- InfraBuild
- Law Council of Australia
- National Farmers' Federation (NFF)
- Oceania Glass
- Opal Australian Paper

Appendix E Consultation methodology

The evaluation consultation process included a discussion with the Minister, and survey and semi-structured interviews of Forum members (past and current) and additional current sub-committee participants and observers.

Survey

The survey was sent to 25 current members, 7 past members, and 2 sub-committee participants.

- The survey was open from 4 to 28 May 2020.
- Responses were received from 18 current members and sub-committee participants, representing 17, and 63% of these groups in total. No responses were received from past members.

Interviews

A total of 17 semi-structured interviews were conducted with 13 organisations, involving a total of 33 stakeholder representatives.

- 7 internal interviews involving a total of 12 representatives from the ADC and DISER (the Anti-Dumping Policy Section and the International Trade Remedies Advisory (ITRA) Service).
- 10 external interviews involving a total of 11 representatives of Forum members. To expand the reach and depth of consultations, interviewees included 6 members that had responded to the survey as well as 4 members that had not.
- The interview questions addressed the same key themes as the survey, but were tailored to the interviewee's role, experience and whether or not they had responded to the survey. For interviewees who had not responded to the survey, interview questions followed similar lines to the survey. For interviewees who had responded to the survey, interviews were targeted at exploring their survey responses in greater depth.

Categorisation of members

For the purposes of this evaluation, each Forum member and sub-committee participant was categorised into one of five groups. While there is no perfect categorisation of members, the approach taken tried to best align with the legislated requirements for industry members, which refers to representation of groups' interests, rather than members of the groups themselves.

Table E1: ITRF Evaluation participants by interest category

Category name	Description of members in this category	Number (and % of this group ¹) that contributed to the evaluation
Producers/ manufacturers	Producers, manufacturers, and industry associations that primarily represent these groups.	6 (67%)
Importers/ downstream users	Importers, downstream users, and industry associations that primarily represent these groups.	3 (75%)
Industry associations	Industry associations that may represent both producers and manufacturers as well as importers and downstream users.	3 (60%)
Unions	Trade Unions	2 (50%)
Government	Commonwealth government agencies	5 (100%)

Notes: ¹ Includes current members of the ITRF and sub-committee guests/observers.