



Australian Government
Department of Industry,
Innovation and Science

Office of the
Chief Economist



Evaluation of Streamlining Australia's Anti-Dumping System

June 2011 Reforms

WWW.INDUSTRY.GOV.AU/OCE



Australian Government
Department of Industry,
Innovation and Science

Office of the Chief Economist

Evaluation of streamlining Australia's anti-dumping system: June 2011 reforms

December 2016

Claire Bramwell and Katherine Barnes



For further information on this report please contact:

Evaluation Unit
Department of Industry, Innovation and Science
Email: Evaluation.Unit@industry.gov.au

Evaluators: [Claire Bramwell](#) and [Katherine Barnes](#)

We would like to thank all the stakeholders, internal and external, for their input through this evaluation.

Disclaimer

The views expressed in this report are those of the author(s) and do not necessarily reflect those of the Australian Government or the Department of Industry, Innovation and Science.

© Commonwealth of Australia 2017.

This work is copyright. Apart from use under Copyright Act 1968, no part may be reproduced or altered by any process without prior written permission from the Australian Government.

Requests and inquiries concerning reproduction and rights should be addressed to chiefeconomist@industry.gov.au. For more information on Office of the Chief Economist research papers please access the Department's website at: www.industry.gov.au/OCE



Creative Commons Licence

With the exception of the Coat of Arms, this publication is licensed under a Creative Commons Attribution 3.0 Australia Licence.

Creative Commons Attribution 3.0 Australia Licence is a standard form license agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work. A summary of the licence terms is available from <http://creativecommons.org/licenses/by/3.0/au/deed.en>. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.

The Commonwealth's preference is that you attribute this publication (and any material sourced from it) using the following wording:

Source: Licensed from the Commonwealth of Australia under a Creative Commons Attribution 3.0 Australia Licence. The Commonwealth of Australia does not necessarily endorse the content of this publication.

Executive Summary

In 2011, the former government released *Streamlining Australia's anti-dumping system (the Streamlining reforms)*.¹ That report noted that changes being introduced should be reviewed in 2016, creating the impetus for this evaluation.

Dumping occurs when goods are exported to Australia at a price lower than their 'normal value'. Normal value is usually the comparable price in the ordinary course of trade in the exporter's domestic market. Where the price in the ordinary course of trade is unsuitable, 'normal value' may also be determined using comparable prices of exports to a third country or the cost of production plus selling, general and administrative expenses and profit.

Anti-dumping duties are imposed by the Australian Government to remedy material injury to Australian manufacturers caused by dumping. According to a 2016 Productivity Commission report, the majority of initiations and measures have related to the steel industry and the most common level of duty was less than 20 per cent.

Similarly, a countervailing action (also known as anti-subsidy action) is the imposition of a measure by the Australian Government, in the form of an additional duty on imports and/or a minimum export price, to remedy material injury to Australian manufacturers caused by foreign subsidies. A subsidy is any financial assistance (or income or price support) by a government that benefits, either directly or indirectly, an exporter of the goods to Australia. If the subsidy causes, or threatens to cause, material injury to an Australian industry, remedial action may be taken.

The Anti-Dumping Commission (ADC) administers Australia's anti-dumping and countervailing system. On 27 March 2014, the ADC transferred from the Australian Customs and Border Protection Service to the Department of Industry, Innovation and Science (DIIS).

This evaluation was conducted by the DIIS Evaluation Unit and focused on implementation and impacts of the reforms. The evaluation scope was the 23 individual *Streamlining reforms* implemented between 2011 and 2013. The main sources of input were: 17 submissions received after approaching almost 50 business and government representatives; face-to-face interviews with ADC staff; and review of documents and website pages.

Findings by theme

The *Streamlining reforms* report grouped the 23 reforms under five themes.²

¹ The 2011 report explains the reforms:

https://pk.awu.net.au/sites/pk.awu.net.au/files/streamlining_australia_s_anti_dumping_system.pdf

² There was not a perfect match between the reforms and the themes under which they were classified. This report identifies general findings for each theme.

- Better access to the anti-dumping system
- Improved timeliness
- Improved decision-making
- Consistency with other countries
- Stronger compliance.

This evaluation assessed that on balance there was improvement in two of these areas (access and consistency), deterioration in one area (timeliness), and insufficient evidence for two areas (decision-making and compliance).

The full evaluation report includes a summary of the findings about impacts and implementation for each of the 23 reforms.

The reforms improved SME access to the anti-dumping system

It is very likely that introducing the International Trade Remedies Advisor role (reform 1.1) specifically aimed at assisting small and medium enterprises (SMEs) brought about an improvement in access levels compared to prior levels. Further improvements to the initial service were made at the end of the two-year pilot phase.

Access to data as a result of these reforms probably did not improve. However, it is uncertain to what extent this remains a problem the government should seek to address. The reform itself (1.2) was quite narrow in scope regarding access to data.

A programme with the intention of improving data access, the Import Data Assistance Programme (IDAP), was part of a suite of reforms announced in conjunction with the acceptance of the Brumby report³ on 4 December 2012. IDAP commenced 1 July 2013 and was discontinued on 15 December 2014 due to limited use.

Impacts on transparency are discussed under the theme of decision-making below.

The reforms did not produce material improvements to the timeliness of the system

There is strong evidence that since the *Streamlining reforms* were introduced, timeliness of investigations has deteriorated. The length and uncertainty in timeframes was reflected in external stakeholders' comments. Reform 3.5, allowed for multiple time extensions. The intention was that this would lead to improved timeliness overall, but this did not occur. Stakeholders commented that extensions were the norm rather than exception. However, factors other than this reform contributed to this situation — such as relocating the ADC to Melbourne which involved some staff turnover and retraining.

³ <http://www.victorianchamber.com.au/policy-and-advocacy/news/radar/2012/12/03/federal-parliament-passes-anti-dumping-bills>

The impact of the reforms on decision-making quality is inconclusive

There is insufficient evidence to judge whether decision-making improved or deteriorated.

Decision-making has improved in some respects as a result of these reforms. The additional forms of duties introduced under this theme improved decision-making from the government's point of view and had a significant impact. Improvements also include greater case-level transparency of the Electronic Public Record (EPR) on the ADC website. However, there has been a loss of transparency at an aggregated level. Presently it is difficult for stakeholders to ascertain trends over time.

Reforms under this theme introduced a new appeals process (reform 3.3). This entailed a large procedural change, but was inadequately resourced. Subsequent changes in June 2013 expanded the appeals role from one person to a panel of reviewers.

Consistency with other countries improved appropriately

It was noted by numerous stakeholders that consistency with the decision-making of other jurisdictions makes sense only up to a point, and the reforms generally aligned with that perspective. They introduced some adjustments for greater consistency with other countries, but these were not considered major reforms.

There is flexibility within World Trade Organization frameworks and individual countries have different domestic legislation. Australia can continue to learn from what other countries are doing, share this information with Australian businesses as seems useful, and utilise ideas and lessons as appropriate.

Compliance strength is unclear

There was insufficient evidence that these reforms improved compliance. This theme contained just two reforms, the first of which had little evidence presented (reform 5.1) and the second of which needs further time before being fully assessed (reform 5.2).

The present roles of agencies with a responsibility for anti-dumping and countervailing (including DIIS, ADC, and the Department of Immigration and Border Protection – DIBP) need to be clarified and communicated. Monitoring of compliance can form part of an overall performance monitoring system to be further considered, aggregated and reported. This could be investigated in a future review.

Overall findings to improve implementation

This evaluation found three main areas to improve implementation in future. Improved implementation should also increase the likelihood of positive impacts and the feasibility of assessing those impacts.

1. Plan for future reviews and share monitoring information
 - a. Design monitoring outputs more effectively, share them more widely, and ensure the monitoring system can address the needs of future reviews.
 - b. Develop and implement high quality evaluation plans, which consider ‘what does success look like?’ and ‘how will we know whether we have reached it?’
2. Reconsider communications in light of stakeholder information needs and preferences
 - a. Consult with a variety of internal and external stakeholders to understand and address their information needs and preferences.
 - b. Design appropriate communications strategies for different stakeholders — including both those who are highly engaged and those who are less well informed or engaged.
 - c. Reinstate aggregate reporting.
3. Future modifications to the system should be adequately resourced and, from a policy design perspective, should take account of differing stakeholder interests.
 - a. Provide sufficient resources to ensure quality implementation.
 - b. Take account of differing interests in the system in designing mechanisms to achieve modifications.

Table of Contents

1. Introduction	8
1.1 What is dumping?	8
1.2 Reviews and reforms	9
1.3 This evaluation	16
2. Findings to improve implementation	17
2.1 Plan for future reviews and share monitoring information	17
2.2 Reconsider communications in light of stakeholder information needs and preferences	19
2.3 Adequately resource modifications and take account of differing stakeholder interests	20
3. Themed and reform-level analyses	22
3.1 Better access to the anti-dumping system	23
3.2 Improved timeliness	29
3.3 Improved decision-making	35
3.4 Consistency with other countries	46
3.5 Stronger compliance	52
4. Summary	55
Appendix A Terms of reference	56
Appendix B Sources for assessments	57
Appendix C Consultation details	61
Appendix D Glossary	62
Appendix E Streamlining reforms	66

1. Introduction

In 2011, the former government released the *Streamlining Australia's anti-dumping system* report (the *Streamlining reforms*). That report noted that the changes being introduced should be reviewed in 2016, creating the impetus for this evaluation.

The *Streamlining reforms* were introduced within an already complex anti-dumping system. Subsequently, other tranches of reforms were introduced, adding further complexity to this evaluation.

1.1 What is dumping?

Dumping occurs when goods are exported to Australia at a price lower than their 'normal value'. Normal value is usually the comparable price in the ordinary course of trade in the exporter's domestic market. Where the price in the ordinary course of trade is unsuitable, 'normal value' may also be determined using comparable prices of exports to a third country or the cost of production plus selling, general and administrative expenses and profit.

Dumping is not a prohibited practice under the World Trade Organization (WTO) agreements. However, the WTO Agreements permit anti-dumping duties to be imposed when dumping causes, or threatens to cause, material injury to an Australian industry.

Anti-dumping action is the imposition of a measure by the Australian Government, in the form of an additional duty on imports and/or a minimum export price, to remedy material injury to Australian manufacturers caused by dumping. In addition to its anti-dumping system, Australia also has a countervailing system which is administered in parallel with the anti-dumping framework.

Countervailing action, also known as anti-subsidy action, is the imposition of a measure by the Australian Government, in the form of an additional duty on imports and/or a minimum export price, to remedy material injury to Australian manufacturers caused by foreign subsidies. A subsidy is defined as any financial assistance (or income or price support) by a government that benefits, either directly or indirectly, an exporter of the goods to Australia. If the subsidy causes, or threatens to cause, material injury to an Australian industry, remedial action may be taken.

Australia's anti-dumping legislation is based on the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures.

The Anti-Dumping Commission (ADC) administers Australia's anti-dumping system under the following legislation:

- *Customs Act 1901* (the Customs Act), particularly Parts XVB and XVC
- *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act)
- *Customs Administration Act 1985*
- *Customs (International Obligations) Regulations 2015*
- *Customs Tariff (Anti-Dumping) Regulation 2013*.

The Anti-Dumping Commission

The ADC administers Australia's anti-dumping and countervailing system. Upon application by the Australian industry setting out *prima facie* evidence of the dumping or subsidy and the injury, the ADC commences an investigation and reports to the relevant Minister whether anti-dumping or countervailing duties should be imposed on goods from the countries named in the application.

On 27 March 2014, the ADC transferred from the Australian Customs and Border Protection Service (the ACBPS) to the Department of Industry, Innovation, and Science (DIIS) to give effect to Machinery of Government changes announced following the Federal election in September 2013.

The ADC is headed by a statutorily appointed Anti-Dumping Commissioner. The current Commissioner, Mr. Dale Seymour, was appointed in August 2013 by the then Minister for Home Affairs.

1.2 Reviews and reforms

Over the past two decades, Australia's anti-dumping system has undergone significant review and reform. Of particular note are the following reviews:

- 2006 — Joint Study by Customs and the Department of Industry on the Administration of Australia's Anti-Dumping System
- 2009 — Productivity Commission Inquiry into Australia's Anti-Dumping and Countervailing System
- 2012 — Brumby Report: Review Into Anti-Dumping Arrangements
- 2014 — House of Representatives Standing Committee on Agriculture and Industry Inquiry into Australia's Anti-Circumvention Framework in relation to Anti-Dumping Measures
- 2015 — Ernst & Young review of anti-dumping operations
- 2016 — Productivity Commission Research Report: Developments in Anti-Dumping Arrangements.

A number of reviews are still ongoing or planned, including the Australian National Audit Office's review of the ADC's management of dumping and subsidy complaints.

2011 Streamlining reforms

On 22 June 2011, the former government published a statement entitled *Streamlining Australia's anti-dumping system*, announcing changes to improve access, timeliness, compliance, decision-making and consistency with other jurisdictions.⁴

The *Streamlining reforms* formed the governmental response to the 2009 Productivity Commission inquiry into Australia's anti-dumping and countervailing system. The reforms also took account of extensive additional stakeholder consultation and the lapsed private Senator's bill, the Customs Amendment (Anti-Dumping) Bill 2011.

Key *Streamlining reforms* include:

- establishing the Anti-Dumping Review Panel (ADRP), the International Trade Remedies Forum (ITRF) and the International Trade Remedies Advisor (ITRA)
- establishing an anti-circumvention framework⁵
- creating a time limit for decisions of the Minister
- increasing resources to address escalating demand for anti-dumping duties
- allowing multiple extensions for investigations.

The reforms were implemented progressively between 2011 and 2013. Those that required legislative amendment were implemented through four tranches of legislation. The first tranche, the Customs Amendment (Anti-dumping Improvements) Bill, was passed by Parliament on 13 October 2011. The remaining tranches were passed by Parliament on 27 November 2012.

The *Streamlining reforms* announcement also confirmed the government's policy on several topics, including the moratorium on the use of 'zeroing'⁶ in anti-dumping investigations and a greater consideration of downstream impacts⁷ in reporting to the Minister.

⁴ The *Streamlining Australia's anti-dumping system* report (June 2011) is available here: https://pk.awu.net.au/sites/pk.awu.net.au/files/streamlining_australia_s_anti_dumping_system.pdf

⁵ The anti-circumvention framework allows the ADC to investigate and action certain activities that exploit different aspects of the anti-dumping and countervailing system to avoid or reduce dumping or countervailing duties.

⁶ "Zeroing" is a methodology used to calculate the rate of anti-dumping duties payable. Zeroing disregards or puts a value of zero on instances when the export price is higher than the normal value of the goods in question.

⁷ Downstream impacts are effects of the price change on other Australian businesses or consumers.

2012 *Strengthening reforms*

On 4 December 2012, the previous government announced the *Strengthening reforms* to further improve the responsiveness, efficiency and effectiveness of the anti-dumping system and reduce its cost and complexity for industry. The *Strengthening reforms* formed part of the then government's Industry and Innovation Statement, which was a response to the 2012 Prime Minister's Manufacturing Taskforce. The *Strengthening reforms* also responded to the recommendations of the 2012 Brumby review.

Main components of the *Strengthening reforms* package were:

- establishing the ADC
- removing the mandatory consideration whether to apply a lesser duty in certain circumstances
- clarifying the application of retroactive duties
- enhancing the anti-circumvention framework
- increasing penalties for evasion of dumping duties
- enhancing support for small and medium businesses accessing the system
- increasing investigative resources.

The *Strengthening reforms* were implemented throughout 2013.⁸

2013-14 *Levelling the Playing Field reforms*

Following the 2013 election, the government introduced a broad package of anti-dumping reforms which included several 2013 election commitments. The reforms were implemented over 2014-15, and included:

⁸ For more information about the *Strengthening reforms*, see <http://www.industry.gov.au/industry/IndustryInitiatives/TradePolicies/Pages/StrengtheningAustraliaAntiDumpingSystem.aspx>

- transferring the ADC to the Industry portfolio
- improving support for Australian businesses engaging with the system
- cracking down on uncooperative exporters
- improving the merits review process
- introducing measures to address anti-circumvention of duties
- improving the operational effectiveness of the ADC.⁹

2016 Developments in Anti-dumping Arrangements report

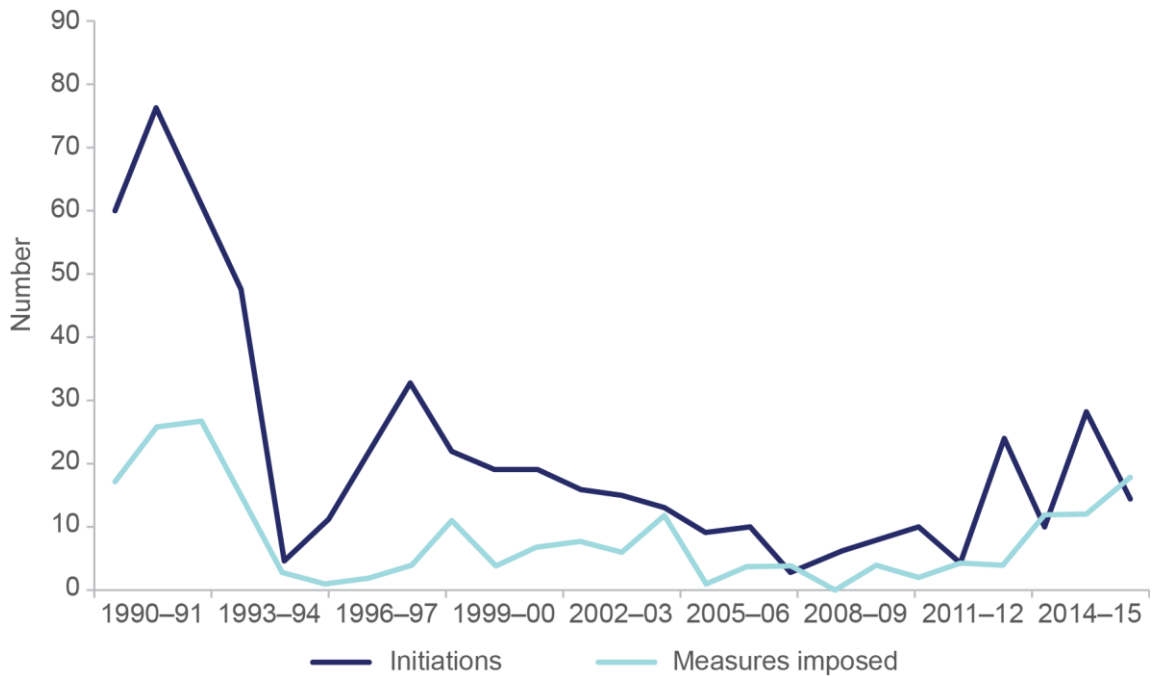
The charts below, taken from the 2016 Productivity Commission report *Developments in Anti-dumping Arrangements*, provide further insights into the Australian anti-dumping and countervailing system.¹⁰ They do not, however, demonstrate any specific effects of the *Streamlining reforms*, as a proportional assessment of their impact would require a comprehensive review of other key factors affecting the anti-dumping system and economy over the years in question.

Figure 1.1 shows that, since the *Streamlining reforms* were introduced in mid-2011, there has been an upward trend in the number of anti-dumping and countervailing measures.

⁹ For more information about the *Levelling the Playing Field reforms*, see <http://www.industry.gov.au/industry/IndustryInitiatives/TradePolicies/Pages/Levelling-the-playing-field-changes-to-Australias-Anti-dumping-laws.aspx>

¹⁰ For more information about the Productivity Commission's report and its findings, see <http://www.pc.gov.au/research/completed/antidumping-developments>

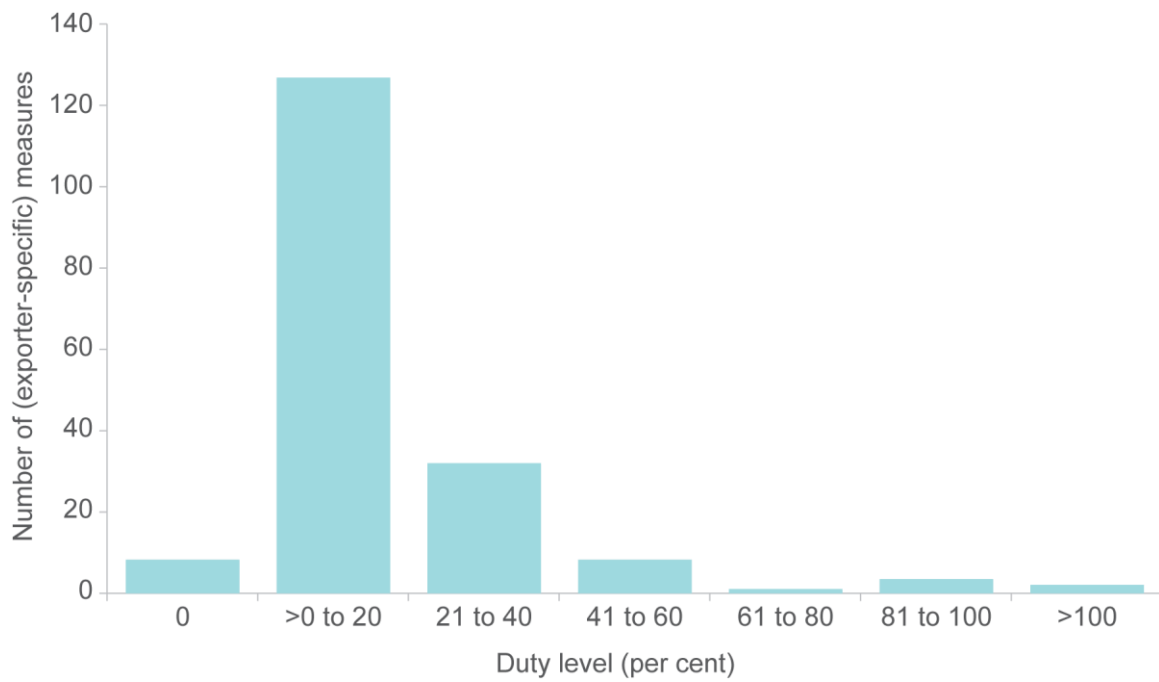
Figure 1.1: Australian anti-dumping and countervailing activity over time



Source: Figure 3.2 in Productivity Commission (2016) *Developments in Anti-dumping Arrangements*

Figure 1.2 shows the level of anti-dumping duties imposed across the years 2009 to 2015. The most common level of duty imposed was more than 0 per cent to 20 per cent.

Figure 1.2: Levels of anti-dumping duties imposed, Australia 2009 to 2015



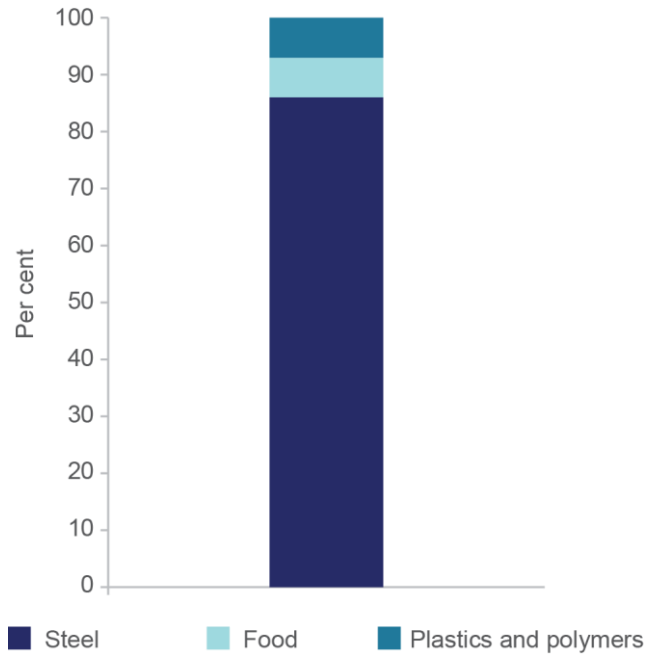
Source: Productivity Commission (2016) *Developments in Anti-dumping Arrangements*

Notes: Refer to the Productivity Commission's report Figure 3.4 for more detail.

<http://www.pc.gov.au/research/completed/antidumping-developments>

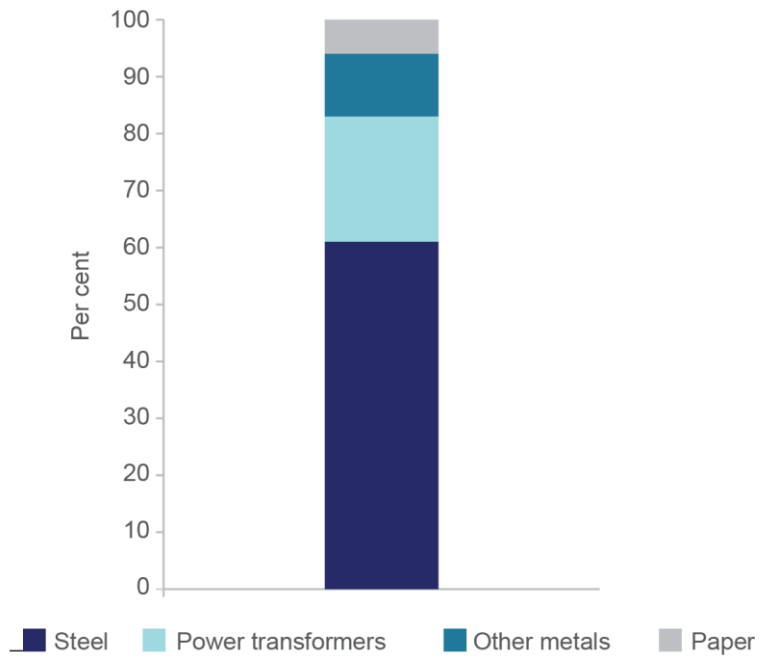
Figures 1.3 and 1.4 show that the majority of initiations and measures have related to the steel industry.

Figure 1.3: Anti-dumping and countervailing cases initiated in 2014-15, by industry sector



Source: Figure 3.3 in Productivity Commission (2016) *Developments in Anti-dumping Arrangements*

Figure 1.4: Anti-dumping and countervailing cases measures imposed in 2014-15, by industry sector



Source: Figure 3.3 in Productivity Commission (2016) *Developments in Anti-dumping Arrangements*

1.3 This evaluation

This evaluation was conducted by the DIIS Evaluation Unit, commencing in December 2015. Its scope was limited to the 23 individual *Streamlining reforms*. The terms of reference consisted of five evaluation questions grouped into two domains:

- Assessment of the implementation of the reforms
- Assessment of the reform's impacts on the anti-dumping system and its outcomes.

The terms of reference for this evaluation are at **Appendix A**.

Methodology

The main sources of input for this evaluation were:

- Submissions received
 - A consultation paper was sent and submissions invited from almost fifty business and government representatives. Sixteen submissions were received.
- Face-to-face interviews with ADC staff
- Document review
 - This included documents received in support of the ADC's submission, and aspects of relevant websites
 - Each reform-level analysis specifies documentary sources used.

The input was synthesised and analysed with reference to an assessment matrix.

Report structure

The remainder of this report outlines:

- main findings to inform future implementation
- a summary of implementation and impact for the reforms
- analysis of impacts by theme with reform-level findings.

The sources for the reform-level assessments are at **Appendix B**, a list of business and government representatives invited to submit submissions is at **Appendix C**, a glossary is at **Appendix D**, and a list of the *Streamlining reforms* is at **Appendix E**.

2. Findings to improve implementation

The main findings of this evaluation relate to implementation but should influence the impacts identified through future evaluations. Evidence was lacking about impact for this evaluation, either because it was not collected or was inadequately communicated. Improved evaluation planning, and better communications, should assist this situation for the future.

Accurately assessing impact depends on what strength of impact was anticipated and desired for each reform and the overall package of reforms. This style of preparatory work can form part of robust evaluation planning which was lacking for evaluation of these reforms'. There were also very few aspects of impact which had sufficient evidence to draw strong conclusions. The reforms are each assessed against quality of implementation and extent of impact in section 3, below. This section draws some overall findings about implementation. The information can inform activities of agencies involved in implementing the anti-dumping and countervailing system.

Three main areas for improvement have been identified:

- Plan for future reviews and share monitoring information
- Reconsider communications in light of stakeholder information needs and preferences
- Future modifications to the system should be adequately resourced and, from a policy design perspective, should take account of differing stakeholder interests.

This section outlines findings regarding these areas and makes specific recommendations.

2.1 Plan for future reviews and share monitoring information

In many cases, the evaluators did not have access to adequate monitoring information during the evaluation analysis to make robust assessments. Evaluations are strengthened by drawing on a mix of evidence. Monitoring information is typically an important part of that evidence, providing trend information for selected performance indicators.

Monitoring and evaluation can generate information which supports learning and accountability. However, as the policy area, like the evaluators, were unaware that monitoring information was being collected, evidence was lacking to make such adjustments.

Different areas of the department were separately attempting to create a database of statistics from which to graph trends over time, by laboriously extracting case-level information from the ADC website. This makes for a highly inefficient process.

While monitoring information is not a panacea for all ills, it can help to bring underlying issues into starker relief. It should provide a good picture of 'What is going on and why', so that consideration of related questions such as the following can be more informed:

- What would be reasonable to expect?
- What are the main causes for the current situation?
- What are the main levers that could be employed to improve the situation?

Consideration should be given to the question ‘what does success look like?’ and ‘how will we know whether we have got there?’ This is useful not only for more formal periodic reviews (evaluations), but also for the engagement of stakeholders in improvement and learning. It can assist decision-making and tracking implementation against expectations.

As previously noted, an independent review was clearly stipulated in the *Streamlining reforms* report and was also a recommendation of the December 2012 Audit Assessment:

Internal Audit has ... recommended ITRB commence preparations for a review of the implementation of the reforms planned for approximately 2016-17. This will allow for a meaningful evaluation to take place.

Lack of knowledge of that monitoring work was occurring, and its results, is reflected in comments received about the reduced transparency of the anti-dumping system at an aggregated level.

After the creation and transfer of the Anti-Dumping Commission to the Department of Industry, there is no longer any annual reporting of anti-dumping performance statistics.

There is not an effective case management system, meaning it is difficult for both internal and external parties to find information. There was a good system, but this did not come across from Customs with the MOG [Machinery of Government change]. Historical data from Customs is accessible by a few people in ADC. The internal statistics are managed by one staff member (a single point of contact), who produces ‘dashboard reports’ (not very sophisticated). The reports go to the Assistant Manager and external monthly report. There are no end of year statistics/reports produced (don’t have an annual report).

In contrast to the reduction in transparency about trends over time at an aggregated level, transparency at the individual investigation (case) level has improved markedly since the ADC established the Electronic Public Record. This development received generally strong positive stakeholder feedback in this evaluation.

The enhancement of the electronic public file system has improved transparency of representations by interested parties.

The operation of the electronic public file system has improved the timely provision of information.

This finding is an opportunity to increase the level of transparency and usefulness of the aggregated trends information so that it is closer to meeting stakeholders’ expectations and matching the transparency and usefulness of current individual (case) level information.

As at mid 2016, relevant areas of the department are working to strengthen the monitoring information available for future reference. This information may include:

- proportion of applications by industry resulting in an investigation
- total number of measures in place
- what products are covered by measures
- the origin of the products covered by the measures
- the rates of duty of measures in place
- average level of duties applied across all measures
- average length of time that duties are applied
- number of measures extended beyond the initial 5 year period.

It is anticipated that this work will continue to be progressed and resolved over the coming months. For internal purposes, including informing future policy proposals, a set of broader economic metrics are also being determined.

In the future it would be useful to:

- a. Design monitoring outputs more effectively, share them more widely, and ensure the monitoring system can address the needs of future reviews.
- b. Develop and implement high quality evaluation plans, which consider 'what does success look like?' and 'how will we know whether we have reached it?'

Through increasing transparency, this should assist policy makers in their decision-making and allow other stakeholders to obtain a picture of the operation of the system at an aggregated level over time. Any future tranches of reforms should be incorporated into the performance monitoring system as they arise, with appropriate measures and data strategies.

2.2 Reconsider communications in light of stakeholder information needs and preferences

Presently, there seems quite high reliance on the ADC website (and perhaps the ITRF) to communicate changes to the anti-dumping system. These means of communication tend to reach stakeholders who are already moderately to heavily involved rather than potential stakeholders who are presently unaware or only marginally engaged.¹¹

As an example, in relation to reform 4.2, an Anti-Dumping Notice (ADN) was placed on the ADC website about categories of exporters. However not all external stakeholders were aware that this advice existed:

There exists a lack of transparency associated with what the ADC categorizes as 'cooperative' and 'non-cooperative' exporter. There exist no

¹¹ There were reforms where responses from ITRF members show a higher level of awareness about changes than non-ITRF members, indicating that they are better informed. See the reform level analyses of reforms 4.2 and 4.4.

published guidelines on this issue, with decisions made on a case-by-case basis.

As far as [we are] aware any changes to the guidelines on treatment of non-cooperative parties have not been published.

This raises further questions:

- How frequently are interested stakeholders unaware that pertinent information exists or are unable to find it? How easy is it for them to navigate their way through the ADC website to information that is useful to them?
- Which stakeholder groups are well-served by current communication strategies and which may not be? What potential alternatives are there?
- What are the strengths and the weaknesses of the current approaches? Might a mini-review of communication strategies and their effectiveness be warranted?

Another opportunity for improvement relates to reform 5.1, where the roles of the various agencies should be communicated more clearly and consistently to external stakeholders, with the mutual agreement of all agencies involved.

As discussed above, some stakeholders expressed their preferences for aggregate level reporting and monitoring of trends, and identified some gaps and areas for improvement, even though this information was not directly sought for this evaluation. A specific query could be made to a variety of stakeholders to ascertain what information and formats would be of most value for them. This could cover what now exists, has existed previously, and new ideas.

Shortcomings could be improved if relevant areas:

- a. Consult with a variety of internal and external stakeholders to understand and address their information needs and preferences.
- b. Design appropriate communications strategies for different stakeholders — including both those who are highly engaged and those who are less well informed or engaged.
- c. Reinstate aggregate reporting.

2.3 Adequately resource modifications and take account of differing stakeholder interests

The anti-dumping system involves a range of stakeholders with different interests which are often “at odds” with each other. There are winners and losers in any individual case determination, and indeed from most changes to the system.

An example for the *Streamlining reforms* is in the decision to use the International Trade Remedies Forum (ITRF) as an important step in the implementation of many of the reforms. This meant that the mix of interests in the membership of the forum was quite significant.

For reform 4.3, for example, the ITRF recommended that the reform not be implemented. Among other comments on this reform, the evaluators received this:

The ITRF decided not to explore this topic further. In hindsight this was not a good idea because they have vested interests at odds with the intent of this reform.

While this interpretation can be contested, the implementation and outcome from that reform invite questions such as:

- What stakeholders reached that decision and what views (on balance) does it represent?
- Is it reflective of Australian businesses' views as a whole? If not, what is the rationale for it reflecting a particular viewpoint, and is that reasonable?
- What may be the best ways to reach and convey the 'on balance perspectives' of Australian businesses about changes to the anti-dumping and countervailing system?
- What may be the best ways to communicate potential and actual changes to different stakeholders with a variety of interests and in a variety of circumstances?

Another example of considering differing interests in designing implementation strategies relates to reform 1.1 (see section 2.4 of this report for further information). After the 2014 ITRA evaluation report, changes were made to this service.

These questions relate to ongoing policy issues and positions. This evaluation does not aim to advance a particular viewpoint, but instead notes that choices affect parties differently, so the need to reach an on-balance perspective is an important consideration. This is a necessarily contested space. In cases where interests are differently served, we invite and encourage readers to be critical of positions advanced and any conclusions drawn.

Policy intent can be implemented in a variety of ways. It should be noted however, that the implementers of the reforms to a large extent reflected the reforms' designs, as represented in the 2011 *Streamlining reforms* document. This recommendation is therefore not a criticism of the implementers. It is worth highlighting, however, because this factor influenced the implementation and impact of some reforms.

Another aspect where design influenced implementation quality was where reforms were insufficiently resourced. Examples of this are found in reform 1.1 and 3.3 — what later became the ITRA service and Anti-Dumping Review Panel (ADRP). Both of these changes were re-introduced later in formats that had greater levels of resourcing, to align with their roles and service demand.

For future reforms or changes:

- a. Provide sufficient resources to ensure quality implementation.
- b. Take account of differing interests in the system in designing mechanisms to achieve modifications.

3. Themed and reform-level analyses

The *Streamlining reforms* report grouped the reforms into five themes:

- Better access to the anti-dumping system
- Improved timeliness
- Improved decision-making
- Consistency with other countries
- Stronger compliance.

The following analysis draws overall findings for each of these broad themes about implementation and impact, and then provides reform level analyses. Where appropriate, summary comments are provided at the end of each section. The impact of some reforms was more apparent in relation to other themes than those they were grouped with. There is also some overlap between the themes. For example, transparency of the system arguably influences people's access to it, while also influencing the quality and efficiency of decision-making.¹²

The reform which has had the strongest implementation is 2.4. The reforms which have had the poorest implementation are 3.5 and 5.1. All other reforms had moderately satisfactory implementation based on the available evidence, which in some cases was not particularly robust.

The reforms which appear to have had the strongest positive impact were 1.1, 3.3 and 4.5.¹³ The reform which had the strongest negative impact was 3.5. Some other reforms had low impacts; however in many cases these were appropriate to the design of the reform.

To achieve *best practice*, a statement of expected outcomes against each reform (including its anticipated extent) should be developed. This provides clear direction for criteria and standards against which the reform is later assessed. Such a statement should form part of the development of monitoring and evaluation plans. This did not occur for any of the reforms. However many of the reforms were implemented satisfactorily.

¹² That example has been explored under the theme of improved decision-making.

¹³ The reforms that were predicted by a policy representative to have the strongest impact at the time of their formation included: 1.1, 1.4, 2.1, 3.1, 3.3, 3.4, 4.1, 4.2, and 5.2.

3.1 Better access to the anti-dumping system

Access of SMEs to the anti-dumping system improved as a result of these reforms. Access to data as a result of these reforms probably did not improve. However, it is uncertain to what extent this remains a problem the government should seek to address.

Supporting access to the anti-dumping system (reform 1.1)

Small and medium enterprises and downstream industry will be provided support to actively participate in anti-dumping investigations.

The *Streamlining reforms* report stated that “The Government will fund a position within a major industry association”, emphasising supporting better access related to SMEs and downstream industry. According to the report:¹⁴

The SME Support Officer (SSO) will work with businesses to enable them to prepare applications and satisfy initial evidentiary requirements and assist other SMEs interested in a particular case to provide submissions to the Branch during an investigation.

Initially the resource was a single role, SME Support Officer (SSO), which was renamed the International Trade Remedies Adviser (ITRA), hosted by the Ai Group.¹⁵

Implementation and impacts

The ITRA took effect on 2 July 2012, and was initially scheduled to end 31 December 2013. However, the pilot was extended to 30 June 2014, and a research assistant employed to support the ITRA from 1 July 2013 to 30 June 2014.

Over the two years of the ITRA pilot, 63 SMEs were assisted for a cost of approximately \$2m.¹⁶ Although there was no count of the number of SMEs receiving assistance by the ITR Branch prior to the ITRA, it is understood by those involved that this was a significant increase in assistance. Additional input conveyed the number of anti-dumping investigations heavily involving SMEs increased from zero between 2007 and 2011, to four investigations between 2011 and 2016.

Regarding the need for the initiative, the ITRA evaluation report of 2014 stated that: “There are widely recognised information and search costs for SMEs engaging with the system”.

The 2014 ITRA evaluation report indicated the following positive findings:

¹⁴ Note: all references to the Branch were the International Trade Remedies (ITR) Branch.

Source: *Streamlining Australia's anti-dumping system* (2011):

https://pk.awu.net.au/sites/pk.awu.net.au/files/streamlining_australia_s_anti_dumping_system.pdf

¹⁵ Later the role was transferred to the department and as a result of subsequent reforms was expanded to three positions (the International Trade Remedies Advisory Service).

¹⁶ The exact number depends on how an ‘SME’ is classified. The source for this information was the ITRA service and the internal ITRA evaluation of 2014.

- Anecdotally it appears the fee-free service provided by the ITRA is providing a level of access to the anti-dumping system to SMEs that may not have occurred if these services had to be obtained at commercial rates.
- Feedback from a survey of clients ($n=27$) suggested contact with the ITRA increased their knowledge of AD arrangements and enabled them to make better judgments about whether or not there is, potential gain from pursuing an application for anti-dumping or countervailing measures or other forms of action.

The same evaluation report also contained the following negative findings:

- Noting the context of unforeseen levels of demand, timeliness of service provision was identified as a significant issue by both clients of the ITRA service and the ADC.
- There appeared to be legitimate concerns about the quality of the anti-dumping/countervailing applications lodged by the ITRA service on behalf of the SMEs.
- The content of the ITRA's reporting did not fully satisfy the contractual record-keeping reporting requirements.

Significantly the 2014 ITRA evaluation report also included the following information:

Delivery of ITRA service via an industry association has potentially created a degree of tension between the role of the ITRA as an impartial provider of information and assistance, and the kind of role an industry association might see for an officer representing its interests. The ITRA service is accessible to all SMEs. The availability of the service to different groups of SMEs (manufacturers, importers, and downstream users), their diversity and differing interests gives rise to difficulties for the ITRA in prioritizing clients and avoiding potential conflicts of interest.

The evaluation raised questions about the ITRA's activities in relation to the contractual requirement to be apolitical. Locating the ITRA function within an industry association carries with it the potential risk of 'blurring' of the ITRA's purely administrative role and the legitimate advocacy function performed by the industry association.

The justification for not having targets in the performance contract was that it is a demand-driven service. However, the 2014 ITRA evaluation report also stated that: "Benchmarking and development of performance indicators in relation to the ITRA pilot project and any future initiative could be developed to assist the five-year review of the *Streamlining reforms*." This was not fully developed and implemented at the time of the five-year review (this evaluation); however the applicable area conveyed that this is now being progressed.

An internal stakeholder stated that the ITRA role took a long time (12 months) to be finalised and filled, was arguably under-resourced and there were measurement issues while the ITRA was hosted with the Ai Group, but was well received with high demand.

Other stakeholders noted there are significant impediments to the large-scale involvement of SMEs in the anti-dumping system, and; that the amount and style of outreach work undertaken and skill levels of the advisors are influential.

In summary, this reform had a moderately high impact; however there were some issues in its implementation — as identified by the internal ITRA evaluation of 2014.

Access to import and subsidies data (reform 1.2)

The Branch will work with the Australian Bureau of Statistics and a new International Trade Remedies Forum to examine options to access import data. In addition, the data requirements for initiating an investigation will be clarified, and information about countervailable subsidies in other countries will be made available to businesses that are considering applying for measures.

The *Streamlining reforms* report stated that “The Branch will work with the ABS and the ITRF to examine options for providing ... the alternative presentation of statistics that may be more useful to applicants”. The reform did not state specifically what should happen after options were examined.

The reform comprises three components:

- a subsidies register
- data requirements for initiating investigations
- access to import data.

Implementation and impacts

One component of the *Streamlining reforms* was that “to assist applicants seeking the imposition of countervailing measures, the ITR Branch will develop and maintain a subsidies register”. The subsidies register and data publishing components for initiating investigations did not seem controversial. Their relevance was picked up in the input of at least one external stakeholder:

[We are] aware of the data requirements for initiation of an inquiry — the application form is specific. [We are] not aware of the publication of countervailable subsidies in other jurisdictions, other than the subsidies identified in the Subsidies Register on the ADC website.

On 6 October 2011, a subsidies register to provide a summary of subsidy programmes that had previously been investigated by the ITR Branch went live. The register sets out information on investigations by reference to country and includes links to case reports. This register is now maintained by the ADC. Requirements for import data were clarified.

As recommended by an external stakeholder, adding subsidy programmes that have been identified by other international administrations such as Canada and the European Union (in addition to the United States subsidy register) could be valuable.

There was no strong evidence that access to import data has improved. Although the components of this reform were implemented, a programme

which was instigated afterwards was unsuccessful. This programme, which commenced in July 2013, was the Import Data Assistance Programme (IDAP), under which businesses could apply for Australian Bureau of Statistics (ABS) import data, with the full cost potentially subsidised by the ADC. The IDAP was supposed to assist data availability but had very little take up.¹⁷

The majority of feedback from stakeholders related to continued importance of the data. External stakeholders commented that it is not obvious that progress has been made.

Access to import data is hampered by confidentiality restrictions on import statistics. Also importers are increasingly redacting significant sections of reports to hide their claims from scrutiny and industry challenge.

Continued improvements in import data collection, including improving the coarseness, transparency and availability of relevant import data, are also needed to assist with mounting and sustaining dumping cases.

There exists commercial sensitivity associated with providing industry access to import data. It is not clear that progress has been made on this issue.

Import data is available already from the Australian Bureau of Statistics on payment of a fee.

[We are] unaware if this has been implemented. [We] support this reform as it is an important source of information for applications.

Although the majority of stakeholders' feedback about this reform focused on the importance of access to data, the question was separately raised whether looking at import data was required. This was based on what was known about the legal issues of data sharing, and there being no particular evidence that a lack of import data had hindered an anti-dumping application.

This reform had a moderate impact on the anti-dumping system. The International Trade Remedies Forum (ITRF) established a Working Group that considered reform options which was appreciated by stakeholders. No changes were made to improve access to import data. Data requirements for initiating investigations were published, and a subsidies register was created and maintained (albeit intermittently).

¹⁷ Input suggested that the issue with the programme design was that potential clients were dissatisfied with the offering. The main reason for this was stipulated to be that the information the businesses sought was "confidential data that was never going to be released".

In summary, given the scope of the reform outlined in the *Streamlining* report, each of the three components of this reform were implemented successfully. As noted above, the IDAP had almost no impact, but this was established subsequent to this reform's implementation.

Investigation and injury periods (reform 1.3)

The circumstances in which shorter than normal investigation and injury periods may apply will be clarified

The *Streamlining reforms* report stated that "The Branch will advise the Government, after consultation with the Forum, how to clarify the circumstances in which, consistent with our international trade obligations, it may be appropriate for Customs and Border Protection to deviate from its normal practice. The manual will be revised accordingly."

Implementation and impacts

Customs and Border Protection provided a discussion paper on investigation and injury periods to the ITRF. The ITRF agreed, in line with WTO procedural practices, to retain the practice of generally using a minimum 12 month investigation period and to generally use a 3+ year injury analysis period.

Customs and Border Protection provided a discussion paper on investigation and injury periods to the ITRF membership in December 2011 for comment. A final report was presented to the ITRF on 1 May 2012. There has been no significant operational change as this reform only operates in exceptional circumstances.

There was little input from external stakeholders about this reform. Shorter than normal investigation and injury periods only apply in special cases, and there may not have been any of these instances as yet. Input suggested there had been no significant operational changes.

This reform has a low impact on the anti-dumping system as shorter than normal investigation and injury periods only apply in special cases. [We are] not aware of any such instances since the reform was implemented.

In summary, there did not appear to be any issues with implementing this reform. It has not had much utilisation and therefore not much impact.

Review of measures (reform 1.4)

Parties will more easily be able to update measures as a result of changes that will allow a partial review of measures that are in place

The *Streamlining reforms* report stated that "The Government will enable businesses to apply for a partial review of measures" and "The new review procedures will require legislative amendment and will be consistent with Australia's international trade obligations."

Implementation and impacts

Reviews recalculate the 'normal value', the export price, and the 'non injurious' price. (These three items are referred to as the variable factors.) The purpose of reviews is to set a more contemporary rate of duty (or revoke the duty), based on more recent information. Prior to this review all reviews looked at all three of the variable factors, and this reform allowed review of just one of the variable factors.

The 2012 Audit Assessment found this reform did not need legislative changes as partial reviews were already allowed. On paper, and as the ADC's perspective:

This legislative amendment came into effect on the commencement date of the Customs Improvements Act No. 1 on 11 June 2013. Continuation inquiries are conducted in line with this amended legislative requirements.

The ADC's conduct reflects the change. Twelve months later cases can be reviewed and the AD measures have an expiry date.

However, another internal stakeholder said that:

This reform was not implemented. However, it formed the basis of a later reform — the avoidance of the effect of duties anti-circumvention behaviour.

There was little pertinent input from external stakeholders about this reform and for this reason it is hard to state a definitive conclusion.

Close processed agricultural goods (reform 1.5)

A working group of the International Trade Remedies Forum will be established to determine the best way to resolve the problems faced by primary producers in accessing the anti-dumping system

The *Streamlining reforms* report stated that "The Branch will convene an agricultural products working group comprising industry representatives and agencies to examine the provisions and report to Government."

Implementation and impacts

An ITRF working group was established in August 2011 to consider the Close Processed Agricultural Goods provision of the Customs Act, and recommendations in the working group's report were accepted by government. Input indicated there have been no substantial operational changes as a result of this reform. External stakeholders focused their feedback on the ITRF generally, rather than specifically in relation to this reform.

This reform had a low impact on the anti-dumping system. The Close Processed Agricultural Goods working group was established and concluded after it reported to Government ... Agricultural goods are rarely the subject of dumping investigations.

In summary, there were no substantial changes implemented as a result of this reform, however the close processed agricultural goods working group was convened — as per the scope of the reform.

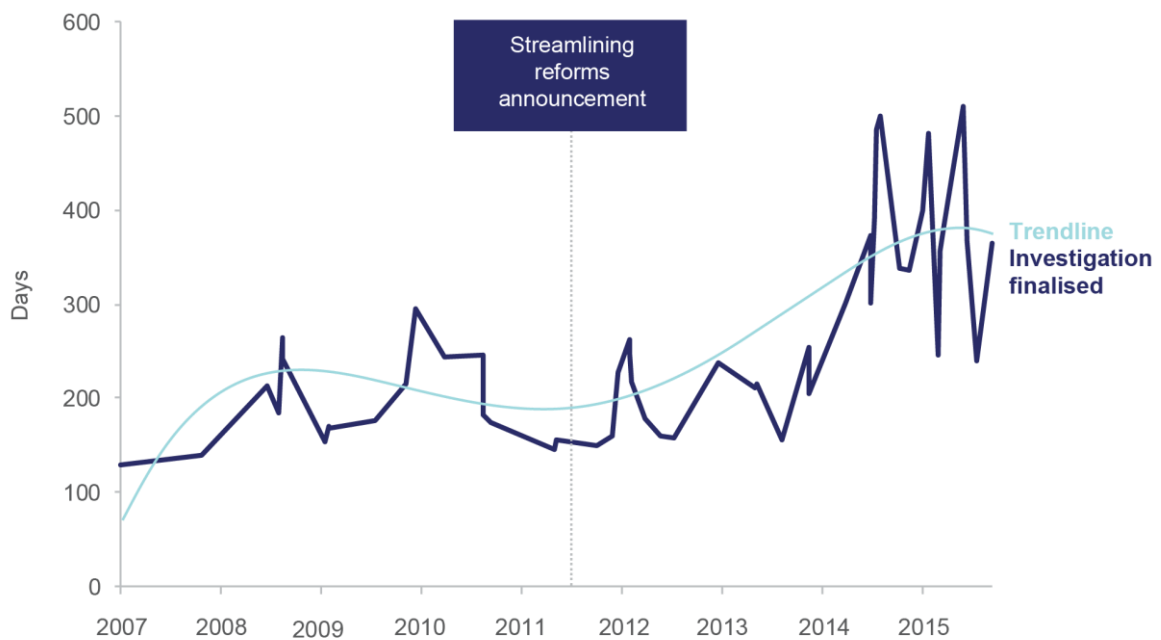
3.2 Improved timeliness

There is strong evidence that since the *Streamlining reforms* were introduced, timeliness of investigations had deteriorated. However, other later changes to the anti-dumping system contributed to this outcome. Deteriorating timeliness is reflected in Figures 3.1 and 3.2 showing the duration of investigations by year, and in stakeholders' feedback:

The Commission has far too much capacity now for extensions of time and this results in uncertainty in the market and material injury to innocent exporters caught up in investigations.

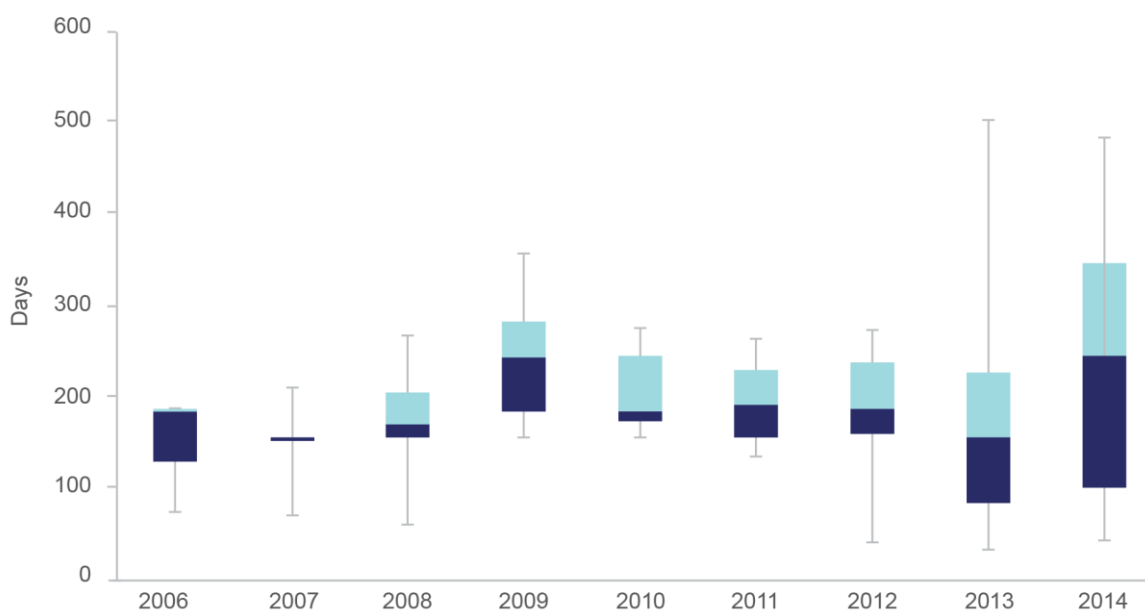
The reform introducing a time limit for Ministerial decisions was well implemented. However, the time with the Minister's office is a small fraction of the overall investigation timeline.

Figure 3.1: Timeframe for main case types – from initiation to finalisation (1)



Notes: Includes terminations. Source: Portfolio Strategic Policy (PSP) division (internal). Information current at 29 February 2016.

Figure 3.2: Timeframe for main case types – from initiation to finalisation (2)



Notes: This graph includes terminations. The year 2015 has not been included because there are presently many unconcluded cases, so it is not yet comparable to other years. The light-blue is the upper quartile, the dark-blue is the lower quartile, and their meeting point is the median. The width of the grey lines conveys the maximum and minimum values. Guidance about interpreting box-and-whisker plots is available from the following website (accessed 16 December 2016): <http://flowingdata.com/2008/02/15/how-to-read-and-use-a-box-and-whisker-plot/>

Source: PSP division (internal). Information current at 29 February 2016.

Arguably reform 3.5 (grouped with ‘improved decision-making’) had unintended consequences, contributing to deteriorating timeliness by allowing multiple extensions. According to stakeholders, the intention of this reform was that extension requests would be for shorter durations overall, but in practice there was a different outcome:

This reform has not operated as initially anticipated. The ADC routinely requests multiple, long extensions (arguably in routine, as opposed to complex or unusual, circumstances) which results in protracted timeframes for cases and a delay in remedy to industry.

Early monitoring and evaluation planning work should identify which aspects of timeliness are most important to track and report.¹⁸ For example, a stakeholder identified that:

ADC staff levels and case delays could be monitored more effectively through annual reporting which currently does not occur.

In response to this evaluation’s finding about timeliness, the ADC noted:

¹⁸ In the time between this evaluation beginning and ending, the Anti-Dumping policy section within the Portfolio Strategic Policy (PSP) Division has been improving their internal systems which

Australia has legislated timelines which are the shortest in the world, and in complex investigations while it is true that Australia does not meet the 155 day timeline, neither does any other jurisdiction.

An external stakeholder had also contributed this perspective:

... [T]imelines which are too short in the first place create a rod for the government's own back.

More resources (reform 2.1)

Staff in the Branch will be increased by 45 per cent, from 31 to 45 staff, over the next 12 months to ensure cases are not delayed by a lack of resources

The *Streamlining reforms* report stated that “Presently, there are 31 Customs and Border Protection staff involved in administering the ADS. This will be increased to 45 over the next 12 months”.

Implementation and impacts

There was difficulty in recruiting the entire number of new staff in 2011, which was reflected in the following internal input. However, the target was almost met and it is difficult to recruit to such a specialist area so it was satisfactory.

Initial recruitment occurred in 2011; however, this did not meet the target of a 45% increase. Further recruiting occurred in parallel with other reforms introduced in 2012-2013. Recruitment of the Streamlining investigators was noted as complete at the ITRF meeting held in August 2012.

Additional resources were generally welcomed through stakeholder feedback. All else being equal and up to a point, more resources should tend to improve timeliness. However there were multiple other compounding factors, so it is difficult to specifically assess the impact of this reform. For example, the following stakeholder identified a relevant external factor:

The planned expansion of the Anti-Dumping Commission was hampered by the logistics challenges caused by the move to Melbourne

The ADC has experienced a significant increase in the demand for its services. After the creation of the ADC and the move of its primary base to Melbourne, the ADC has had significant staff turnover. Further reforms provided additional resources for recruitment. Currently, ADC cases are regularly delayed by lack of resources ... The ITRF acted as the accountability mechanism for the reform. Monitoring of ADC staff levels and case delays could be monitored more effectively through annual reporting which currently does not occur.

track aspects such as the duration of investigations. The continuation of this work is encouraged, including identifying what of this information will be made publicly available, how and when. As was identified in April 2016, the ADC also monitors this information. There should be better sharing between areas within the department (and with external stakeholders).

In summary, input indicated that this reform had a moderate impact on the anti-dumping system. This seems a fair assessment of a reform which is difficult to assess because of subsequent changes and other external factors.

Process for providing evidence (reform 2.2)

Guidelines will be developed to improve the timely provision of information and to ensure adequate opportunities for industry to respond to matters raised by other parties. Further consideration will be given to a new, ordered, evidence gathering process.

The *Streamlining reforms* report stated that “The Branch will work with the Forum to develop guidelines based upon the existing legislative process, and consistent with Australia’s international trade obligations, to ensure all interested parties have adequate time to respond to submissions and the Branch reports at the earliest opportunity” and “The Branch will also consult with the Forum and make recommendations to Government about further improving the process for providing evidence. Further changes would be likely to require legislative amendment.”

Implementation and impacts

An internal stakeholder made the following comment:

The issue goes to publishing of Industry visit reports, importer visit reports, exporter visit reports, actual applications and submissions in a timely manner to allow others to consider and comment. With a target of 60 day PADs, 110 day SEFs and 155 day Final reports – all complain and there is never enough time to consider and comment, especially if the publication of any of these reports occurs close to the next report publication date.

There was a mix of feedback and suggestions received from external stakeholders about this reform.

The enhancement of the electronic public file system has improved transparency of representations by interested parties. There continue to be difficulties associated with the timely placement of submissions on the public file, often many days following the date of receipt of the commercial-in-confidence submission provided to ADC.

The operation of the electronic public file system has improved the timely provision of information. [We note] however, that delays in publishing exporter visit reports well in advance of the publication of SEFs continues.

[We] believe the anti-dumping system should be more transparent and provide adequate opportunities for industry to respond to matters raised by other parties, such as in the context of reviews conducted by the Anti-Dumping Review Panel.

It has been [our] experience that case delays are not the result of delays in providing information but rather the ADC's capacity to process that information ... Rather than imposing greater inequality between demands for complex transactional data, the volume demand needs to be moderated ... [I]n any discussion about timeliness and adequate opportunity the government needs to consider the interests of all parties and not just those of Australian dumping complainants.

Our experience is that timeliness has improved as has the clarity and depth of the Commission's statements and reports.

Options for amending the Customs Act to improve the process for providing evidence in anti-dumping investigations were considered by the ITRF in December 2011. They agreed to a range of administrative changes, which were implemented and monitored by traffic light reporting until April 2012.

Guidelines for timely provision of information were published, but opportunities to respond to matters raised by other parties were not increased. It was considered that the current system provided adequate opportunities for industry to respond to matters raised by other parties. The guidelines developed made it impossible for people to submit information up until the final hour of investigations, and allowed other people to have adequate time to respond to submissions.

Earlier consideration of provisional measures (reform 2.3)

Provisional measures will be considered at the earliest opportunity — as soon as the Branch has sufficient information, without necessarily waiting to verify all data.

The *Streamlining reforms* report stated that the ITR Branch will “consider making a PAD when it has adequate information, without necessarily waiting to verify all data. By day 60 (the earliest WTO consistent date a PAD can be considered)” and “This proposal can be implemented through changes to the Manual.”

Implementation and impacts

Among stakeholder responses for this reform were: uncertainty whether anything had been implemented; identification that there was no impact; and advocating that further improvements should be developed.

A risk acknowledged by some internal and external stakeholders is that a high degree of rigour is needed before potential punitive measures are announced through an early PAD.

In the [identifier] case, a PAD was issued far too early with a consequent disruption to the market that proved to be quite inconsistent with the ultimate findings. This resulted in a major cost and loss of business to the innocent parties caught up in this investigation. [Our] view is that there needs to be far more rigour applied before jumping to punitive measures.

Some lack of clarity was conveyed by an external stakeholder about the practice of issuing PADs, as follows:

[We] remain unclear as to whether the ADC's practice, in publishing a PAD as closely to Day 60, has altered.

An internal stakeholder said that the Anti-Dumping and Subsidy Manual (the ADC's operating procedures) was updated, but resulted in no change in practice. No operational change occurred and this reform had to be implemented a second time in a stronger form. They also said:

This reform had no impact on the system and was ineffective. ... No further performance measurement systems were established to monitor the effect of outcomes (e.g. timeliness of provisional measures). As this is an enduring complaint, monitoring may be appropriate.

However, another internal stakeholder said that:

The issue is not assisted by monitoring. The issue is about when the Commissioner has enough information to allow him/her to publish a PAD. If go too early, the risk is it is wrong. Figures are available about when PADs are imposed.

The evaluators found that this reform was an example where the sharing of systematised monitoring information with applicable internal areas (including the policy area) is recommended.

In summary, there was a lack of clarity about this reform and whether a change had been made. The ADC's Manual was updated but there has been little impact.

Time limits for Ministerial decisions (reform 2.4)

A 30 day time limit for Ministerial decision-making will be introduced

The *Streamlining reforms* report stated that "subject to extenuating circumstances, the Minister will make a decision within 30 days of receiving the report" and "This will require legislative change."

Implementation and impacts

In October 2011 the Customs Act was amended to stipulate that the Minister make a decision within 30 days of receiving a recommendation (for example, through an investigation or review report). Previously there was no time limit. Where there are extenuating circumstances, the Minister is required to give public notice.

Based on input received, this reform seems well implemented, adhered to, and with a high level of awareness from stakeholders. Thus far, the Minister has sought one additional 30 day extension with a public notification made.

This reform received positive feedback, although the impact level was moderated by the proportion of time investigations sit with the Minister.

The 30 day limit for Ministerial decision-making assists. However, this part of the process cycle is quite inconsequential compared to the investigation itself.

This reform has had a moderate impact on the system. The timeframe for Ministerial decision-making has been met in most cases, contributing to the efficiency of Australia's anti-dumping framework ... Ministerial decisions are generally made within 30 days. Extensions of time have occasionally occurred and the extension publicly notified. The average timeframe for ministerial decisions prior to the implementation of the reform is not known ... There is no clear reporting on whether 30 day timeframes are met, monitoring may be appropriate.

The 30 day time limit appears to be working as intended.

[We] recognise this legislative change as an improvement to streamline the approval process. The changes removed the uncertainty associated with long delays in securing Ministerial approval to recommendations from the administering agency, although we do note that this 30 day timeframe has also been extended in some investigations.

The 30 day time limit provides (assuming no extensions) certainty to the timing of the decision.

[We] note that this reform has been successfully implemented. Where the 30 day timeframe has not been met, the Parliamentary Secretary has notified reasons for the delay.

In summary, this reform seems well implemented, adhered to and with a high level of awareness from stakeholders. It has had a moderate impact because this time with the Minister is quite a small proportion of the total investigation. There was strong evidence to support this finding.

3.3 Improved decision-making

A new appeals process was a large procedural change, although the resourcing for the initial changes was inadequate. Subsequent changes under another reform package expanded the appeals role from one person to a panel of reviewers. The impact that can be attributed to these particular reforms is lessened in view of subsequent reforms.

Introducing additional forms of duties (reform 4.5, grouped with the 'consistency with other countries' theme) arguably improved decision-making from the government's point of view and had a significant impact. In other respects, there is insufficient evidence to judge whether decision-making has improved or deteriorated in the time since the *Streamlining reforms* were introduced.

Arguably there have been improvements, such as the case-level transparency of the Electronic Public Record (EPR) on the ADC website. However, there has been a loss of transparency at an aggregated level. In its present form it is very difficult and labour intensive for stakeholders to ascertain trends over time, making decision-making difficult.

Greater use of experts (reform 3.1)

The Branch will make greater use of experts including forensic accountants, industry specialists and others, in accordance with protocols to be determined after consultation with the International Trade Remedies Forum.

The *Streamlining reforms* report stated that “The Branch will access expertise in accordance with a protocol, to be determined by the government in consultation with the Forum and the Branch. The protocol will require experts to declare all potential conflicts of interest, and it will address the need to comply with due process, evidentiary requirements and other relevant WTO obligations.”

Implementation and impacts

A protocol was developed outlining a standard approach in procuring experts and maintaining transparency, but there was uncertainty whether and how the protocol was utilised. A protocol received ITRF endorsement in late 2011 and Ministerial approval two months later.

Input from one stakeholder suggested this reform was not implemented as intended due to significant troubles over a number of years in implementation. The substantial difficulties related to procurement, availability of experts and conflict of interest issues. Another stakeholder outlined examples of engaging experts.

Attempts were made across a number of years to implement this reform however significant difficulties prevented this from occurring. An Experts Protocol was approved by the Minister of Home Affairs on 6 February 2012 and consideration of an expert panel commenced in 2012. However, substantial difficulties relating to procurement, availability of experts and conflict of interest issues prevented the reform from being implemented as intended.

Recent examples of engagements include economic analysis of the market situations to do with tomatoes and solar panels by the Law & Economics Consultancy Associates Ltd; Ernst & Young to provide training in accounting expertise to Commission staff; and University of Wollongong analysis of boron additive to steel as part of anti-circumvention inquiry. The protocol is implemented within the resources available to the commission and actual expenditure on independent experts will be dependent on the number and complexity of anti-dumping applications received.

An internal stakeholder stated that:

The reality is very few independent experts are engaged because of the difficulty identifying those without a conflict of interest and the cost.

There was a mix of input from external stakeholders including identifying some examples where experts had been employed to assist with investigations. One stakeholder pointed out that it had contributed to the ADC being better equipped to explore investigations in greater depth. Another stakeholder thought that controls were warranted in relation to experts in order to avoid conflict of interests in future.

No 'before and after' picture was provided as part of this evaluation, with only examples provided rather than trend numbers, so the evidence on which to make a calibrated assessment was not strong. Having a protocol does not necessarily mean there was a change in practice. While it is clear that experts have been engaged at times, there was insufficient evidence to show the extent of change over time.

Particular market situation (reform 3.2)

A working group of the International Trade Remedies Forum will be established to make recommendations to Government about how to improve the effectiveness of Australia's "particular market situation" provisions, consistent with World Trade Organization obligations

The *Streamlining reforms* report stated the Manual could provide improved guidance and "A working group of the Forum will be established to make recommendations to Government by the end of 2011 about how to improve the effectiveness of the market situation provisions".

Implementation and impacts

Although the government accepted the recommendations of the ITRF's Market Situation Working Group, the recommendations were limited in their attempt to impact the system, with a substantial focus on the development of questionnaires for assessing whether a market situation existed. Comments from stakeholders included:

This reform has had minimal impact on the anti-dumping system. Though a working group of the ITRF was established to make recommendations on Australia's "particular market situation" provisions, no substantial impacts have occurred following that report. Stakeholders did indicate satisfaction with the report at the time of its release ... There has been no significant operational change. Despite the ITRF working group report and several papers covering this issue, it does not appear that this reform gained any real traction.

This reform was fully implemented before the establishment of the Commission. This reform, being the provision of a report to Government, did not entail any direct operational changes.

Concrete adoption of one recommendation was taken up by the Government after they received the report.

A small number of external stakeholders had mixed feedback, with one providing positive feedback and another two noting it required further developmental/policy work.

The Commission certainly appears better equipped to detect, decide and defend a market situation finding.

[We] consider that an issue for further policy development by the ITRF or its successor(s) involves the market situation guidelines and compliance capability.

[We] understand the ADC is seeking to advance discussions with the ITRF to establish a working group on this issue. This matter is central to [our] interests to ensure that all relevant factors are considered in a market situation finding.

[We] understand that the ITRF has discussed (on a preliminary basis) further enhancing the particular market situation provisions.

In summary, it seems this reform was satisfactorily implemented and the government accepted the ITRF's Market Situation Working Group recommendations. These were limited in their attempt to impact the system.

New appeals process (reform 3.3)

A more rigorous appeals process will be introduced, with more resources, and with the Review Officer rather than the Branch making recommendations to the Minister

The *Streamlining reforms* report stated "The Government will establish a new process for administrative appeals" and outlined its elements. It also stated that "The changes to the appeals process will require legislative amendment" and "A number of decisions that are not presently able to be appealed will become appealable. ... However, decisions of the Minister on the advice of the Review Officer will only be able to be appealed to the Federal Court."

Implementation and impacts

The new appeals process was a large procedural change introduced through the *Streamlining reforms*. Prior to this, completed cases where a review was requested went back to the department. The intention was to provide greater independence between the initial investigation and its review, rather than staff reviewing their own area's work.

However the design under the *Streamlining reforms* provided just one Review Officer, an insufficient resource to fulfil the role. Subsequent changes under another reform package expanded the role to a panel of reviewers called the Anti-Dumping Review Panel (ADRP). Full implementation of this reform happened two years after the reforms were announced.

The role is now undertaken by the ADRP with three people and one full time support person. The initial idea was that the ADRP (or its equivalent) would be requested to review cases the ADC had conducted independently, but in practice they need to draw further on the ADC's greater resources to undertake reviews.

Input indicated that monitoring and reporting of the ADRP's work could be improved. This evaluation recommends collecting and sharing the number of review cases over time and their durations.

The ADRP does not produce formal aggregate reporting, although a public record is kept for the documents produced in each case (applications, decisions, etc.). Reporting may be appropriate in order to comprehensively assess the impact of the reforms on the anti-dumping system.

Since the ADRP was established, many reviews have been conducted. According to input from an internal stakeholder, the ADRP does not produce formal aggregate reporting, although a public record is kept for the documents produced in each case.

This reform has had a significant impact on the system as it has increased quality of decision making in anti-dumping and countervailable subsidies decisions

As one stakeholder noted, reporting may be appropriate in order to comprehensively assess the impact of the reforms on the anti-dumping system. Communicating the performance metrics to a range of stakeholders (about inputs, outputs and outcomes if possible) may help assuage views such as this from an external stakeholder:

It is not evident to [us] that the appeals process has been better resourced.

In summary, the new appeals process was a large procedural change introduced through the *Streamlining reforms*. Implementation was arguably hampered by an inadequate design and additional monitoring was recommended.

Material injury (reform 3.4)

The definition of what constitutes material injury caused by dumping will be amended to allow a more inclusive consideration of the impact of dumping on employment and investment, and to take account of profits foregone and other injury caused in new or expanding markets. The Branch will also clarify how it determines whether injury is caused by dumping or other factors.

This reform consisted of a number of sub-changes as follows. The *Streamlining reforms* report stated:

- “The Government will amend the Customs Act to reflect that the Minister can consider any impact on jobs in the domestic industry producing like goods, not just the effects currently specified.”
- “The Government will amend the Customs Act so that the Minister can examine any impact on investment in the industry. The Government will revise the current Ministerial Direction on Material Injury to confirm that profits foregone and loss of market share in an expanding market are relevant injury considerations.”
- “The Branch will amend the Manual to make clear that the mere existence of injury caused by other factors does not preclude a finding that the dumping or subsidization has caused material injury.”
- The Branch will also amend the Manual to explain further its approaches to determining whether particular injury is caused by dumping or subsidization, or other factors.”

Implementation and impacts

The material injury provisions of the Customs Act were changed and a Ministerial Direction introduced to provide ADC with clarity in establishing whether material injury has occurred. It is worth noting that whether people consider the application of this reform as a positive impact relates to their role in the system.

In October 2011, there was a change to the material injury provisions of the Customs Act. A Ministerial Direction was introduced in April 2012 to provide the ADC with clarity in establishing whether material injury has occurred.

Input from one internal stakeholder questioned whether this reform was fully implemented. However input from another internal stakeholder said it has been.

It is arguable that the ADC has not implemented this reform to full effect. An increase in case load, complexity of cases and general lack of awareness about the Ministerial direction (which gave effect to the reform) appear to be contributing to this. ... [A] Ministerial Direction was introduced on 27 April 2012 (and became effective on 28 April 2012) to guide the ADC's decision making what constitutes material injury...Decision makers should now have regard to the Ministerial Direction on Material Injury which came in to effect on 28 April 2012. The Ministerial Direction should provide clarity in establishing whether material injury has occurred to Australian industry for the purposes of establishing anti-dumping or countervailing actions.

The reform was about extending variable by which material injury can be judged. A reading of material injury in investigation reports will show that these variables are considered.

Four external stakeholders provided the following positive input:

[We] acknowledge that the ADC has implemented this reform.

[We] welcome the broadening of the material injury consideration.

[We] applaud the broader definition of what constitutes material injury.

[We] acknowledge the Commission's use of the broader definition of material injury in a number of investigations that relate to goods that it produces as a positive outcome.

One of the submissions indicated this reform is not referenced in recent ADC decisions.

In most investigations, injury is examined in the context of volume and price injury. The amendments provide clarification that 'other injury indicators' including employment levels, the level of wages, capital investment in the industry, return on investment and the ability to raise capital are also important considerations in an injury context. These clarifications are supported by [us]; however these expanded material injury considerations have not generally been referenced in recent ADC decisions.

However, in reference to this comment an internal stakeholder noted that:

In many cases applicants do not raise these additional factors because they have no evidence. Where they do, the ADC assesses.

One external stakeholder's submission contained the following criticism:

The current interpretation and acceptance of material injury is without rigour and there is a very low burden of proof on the local industry when initiating a case.

A balance needs to be struck. There needs to be due consideration given to downstream processors and costs. Goods that are alleged to be dumped are invariably inputs to other industries.

This was supported by input from an internal stakeholder who noted:

This statement goes to the issue of those who complain material injury arguments go too far, given available evidence.

There was some inconsistent internal feedback, but numerous external stakeholders acknowledged this reform was implemented. If this reform were evidently the ADC's normal practice, it may have a moderate to strong impact. However, evidence was lacking regarding how often and to what extent it is being applied.

It is worth keeping in mind that whether people consider the application of this reform as a net positive impact relates to their role in the system, for example as an industry advocate.

Extensions of time (reform 3.5)

The Branch will have flexibility in seeking extensions of time to accommodate complex cases, and consider critical new information that could not reasonably have been provided earlier

The *Streamlining reforms* report stated "the Government will amend the Act to allow the Branch to seek more than one extension to the timeframe at any point during an investigation, review of measures, continuation inquiry or duty assessment. The Minister will still have to approve all extensions of time. The Government will monitor the implementation of this proposal carefully to

ensure it does not result in a blow out of investigation periods, and that the Branch is seeking extensions only in complex cases not routinely.”

This reform allowed for seeking one or more extensions of the timeframe at any stage during an investigation, review of anti-dumping measures, continuation inquiry or duty assessment. It also permitted the seeking of time extensions at any time during the 155 day period for an investigation. To gain an extension, the ADC has to provide reasons for the extension of the timeframe and the Minister may approve the request. Before this reform, only one extension was allowed.

One internal stakeholder reported a positive influence of this reform on decision-making. However the strong negative impact on timeliness, conveyed by a wide range of other stakeholders, was viewed as an unintended consequence overwhelming the smaller positive assessment.¹⁹

It was fully implemented and utilised. It enhances decision making. Timeliness is important, but a correct and defensible outcome is better than a quick outcome that's wrong. Before the reform, on or by day 100 (the Statement of Essential Facts), we'd judge if more time was needed and how much. We were only allowed one extension, so that was an incentive to ask for the maximum amount of time that could be needed.

This reform has had an unintended effect on the anti-dumping system. Rather than leading to more, but smaller extensions (and shorter extended timeframes overall) it has resulted in more and longer extensions. This has coincided with a significant increase in demand for the ADC's services. There has also been a reduction in the general technical capability of the ADC due to attrition of staff and recruitment of new employees with little to no experience in anti-dumping investigations.

Another external factor influencing timelines was identified by a stakeholder as follows:

The planned expansion of the Anti-Dumping Commission was hampered by the logistics challenges caused by the move to Melbourne.

This reform had an unintended effect on the anti-dumping system. Rather than leading to more, but smaller extensions (and shorter extended timeframes overall) it enabled more and longer extensions.

This reform has not operated as initially anticipated. The ADC routinely requests multiple, long extensions (arguably in routine, as opposed to complex or unusual, circumstances) which results in protracted timeframes for cases and a delay in remedy to industry. ... The ITRF acted as the accountability mechanism for the reform. No further performance measurement systems were established to monitor the effect of outcomes. As this is an enduring complaint, monitoring may be appropriate.

This reform received strong negative feedback from a wide variety of stakeholders, including stating that time extensions in investigations have become the operative norm rather than the exception. For example,

¹⁹ For more information, see above under improved timeliness, and the 3.5 reform level analysis.

stakeholders provided examples of six cases with at least three time extensions. Others provided a list of instances when extensions were granted, and described this situation of regular extensions as disappointing.

The Commission has far too much capacity now for extensions of time and this results in uncertainty in the market and material injury to innocent exporters caught up in investigations.

[We] suggest that the average time for completed investigations involving [our] members [...] should be reduced substantially.

[Our] case [identifier] has seen multiple requests for extension.

Limit timeframe extensions (we are aware of two previous investigations where four extensions were approved by the Minister).

[We are] concerned about the frequency of extension granted in anti-dumping inquiries. It is expected that the duration of timeframe extensions will diminish as new staff become familiarised with the antidumping investigative process.

[We have] noted an increased prevalence by the ADC to seek timeframe extensions in investigations. In some inquiries, two extensions prior to the publication of a SEF (Statement of Essential Facts) have occurred, with an additional two timeframe extensions granted prior to the publication of a final report. Increased delays in concluding investigations contribute to uncertainty in the affected industry. Timeframe extensions must be kept to a minimum in all investigations.

Following the introduction of the Tranche 2 legislative changes, extensions of time in investigations has become the operative 'norm' rather than the exception.

Although timeframes have been impacted by multiple factors (including decisions taken outside of this reform), and therefore ascertaining the effect of the reform is somewhat difficult, the flexibility for multiple extensions arguably has led to a situation where the ADC (with the Ministers' Office) was able to increase the average length of time of an investigation, which in turn led to increased uncertainty for businesses participating in investigations.

Figure 3.1 (introduced above) showed the ADC's average timeframes (2006-2016 calendar years) for primary types of investigations (anti-dumping and countervailing), for final report and terminated investigations—as of 8 March 2016. It showed that the spread of time has increased and that on average the duration has also increased since the *Streamlining reforms* were introduced in mid-2011.

Figure 3.2 (introduced above) showed the number of days it took from the initiated case date until the final (or termination) report to be produced by the ADC. It showed the spread of time by quartile, as well as the average time, demonstrating that the spread of time has increased, which could be seen to support feedback about greater uncertainty.

Previously, the ITR Branch had published an annual report which reported extensions. There is presently no annual reporting from the ADC, and instead

this is intended to be captured in the monthly notices. However these have been unclear regarding extension durations. Overall there has been a reduction in transparency about this issue over time.

In summary, this reform was arguably implemented poorly as it had a negative impact on timeliness. Extensions became the norm rather than the exception and the overall timeframes lengthened after this reform was implemented (although in part due to other factors).

We note that, although grouped under improved decision-making (theme 3), this reform arguably had a stronger (negative) impact on timeliness (theme 2).

Reporting on applications (reform 3.6)

There will be greater transparency through publishing the Branch's approach to evaluation of applications, and by reporting of measures and applications.

The *Streamlining reforms* report stated that:

- “the Customs Act set[s] out the requirements for making an application for publishing a dumping or countervailing duty notice. The Guidelines for Applicants provide further detail ... In addition the Branch has developed internal guidance for staff”
- “The Branch will amend the Manual to incorporate the criteria and methodologies that the Branch uses to evaluate applications.”
- “The Branch will report on the number of applications for measures that do not proceed to investigation. This information will appear in the Customs and Border Protection Annual Report.”
- “The Branch will also report publicly on the outcomes of duty assessments and accelerated exporter reviews.”

Implementation and impacts

The changes to the Electronic Public Record (part of the ADC website) that were instigated as a result of this reform were extensive, as highlighted by several comments from external stakeholders.

It is [our] experience that the Commission's electronic public record continues to be the most complete, open and access friendly of any jurisdiction.

Decisions of the ADC are reflected in Consideration, PAD, SEF and Final Reports.

Input from an internal stakeholder explained that the ADC's approach to evaluation of applications is done through the practice manual, while the reporting of measures and applications is done through the Electronic Public Record (EPR). However, input from another internal stakeholder stated that there has been little impact.

Few applications for measures are rejected — this may be indicative that improved understanding of the Commission's approach to evaluating applications has assisted applicants to prepare more robust applications. Reporting of measures and applications has improved transparency but has had minimal impacts.

The December 2012 Audit found a satisfactory assessment regarding reporting, by noting that information went into an annual report and monthly notices. Input from an internal stakeholder indicated that there is no longer any annual reporting of anti-dumping performance statistics. While monthly notices do include the information it is not aggregated up — rather is case-by-case.

After the creation and transfer of the Anti-Dumping Commission to the Department of Industry, there is no longer any annual reporting of anti-dumping performance statistics. ... For administrative purposes, a return to comprehensive reporting may be appropriate.

There has evidently been a loss of comprehensive reporting at the same time as transparency at the individual-case level has clearly improved. Calibrated ratings depend on the weighting given to improving transparency at the individual-case level, and the weighting given to improving transparency at a level above that.

The Streamlining reforms (2011, page 18) states that: “One of the consistent themes in consultation was the need for greater transparency in the Branch processes and decision-making”, while on the following page it states that:

The Branch will report on the number of applications for measures that do not proceed to investigation. This information will appear in the Customs and Border Protection Annual Report. This will provide greater transparency about the Branch workload, and incorporates an important aspect of the approach recommended by the Productivity Commission (recommendation 7.7).²⁰

It is probably timely that the specific forms and content of the information shared with different stakeholder groups is reconsidered. The aggregated information should include the ability to easily identify trends and overall performance far more easily and systematically. That variety of functionality is likely to be useful to both internal and external stakeholders.

It is a recommendation of this evaluation that aggregate level reporting be reinitiated in a way that meets various external stakeholder as well as internal stakeholder needs. Considering what information and formats are most appropriate to these stakeholders (getting their input and/or feedback) would be part of a best practice process.

²⁰ This 2010 Productivity Commission report stated as recommendation 7.7 that: *Through its 'Anti-Dumping and Countervailing Actions — Status Reports', the Australian Customs and Border Protection Service should report annually on the number of applications for anti-dumping measures that do not proceed to initiation, and the products and countries that were the subject of those applications.*

In summary, this reform resulted in large improvements to individual investigations reporting through the Electronic Public Record (ERP) on the ADC website. However, there was a loss of transparency at the aggregated level.

3.4 Consistency with other countries

There is flexibility within the World Trade Organization (WTO) frameworks and individual countries have different domestic legislation. Therefore, consistency with other countries makes sense only up to a point. Australia can continue to learn from what other countries are doing, share this information with Australian businesses as seems useful, and utilise ideas and lessons as appropriate.

The evaluation identified examples of opportunities to share and investigate the applicability of practice in other jurisdictions. For example:

- In developing Australian performance measurement and reporting systems, the project could gather ideas from other jurisdictions and assess which, if any, make sense for Australia to incorporate.
- The subsidies register on the ADC website links to the United States of America (USA) subsidies register. A stakeholder suggested exploring expanding this to include other countries.

The reforms grouped with this theme were not particularly well-matched to address 'consistency with other countries' (other than reform 4.6).

Amending subsidies provisions (reform 4.1)

The current list of countervailable subsidies will be expanded to make them consistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures and Agreement on Agriculture

The *Streamlining reforms* report stated that: "Provisions in the WTO ASCM specify the types of government subsidies that can be actioned by another country" and "The Government will amend the Customs Act to reflect all countervailable subsidies including certain assistance"

Implementation and impacts

An amendment was made to the definition of a subsidy to reflect that two WTO agreements on non-actionable subsidies had expired, so more types of subsidies could be actioned. There was some variance in input received, with one external stakeholder stating the new laws did not reflect the "changes becoming actionable in 1999 and 2004".

The December 2012 Audit assessment rated this reform as satisfactory. This reform seems fully implemented but perhaps not well publicised. For example, based on the Minutes there was no mention of this topic at the ITRF.

Tranches 3 and 4 of the legislative provisions were introduced to 'better reflect definitions and operative provisions of the World Trade Organization Agreement on Subsidies and Countervailing Measures (ASCM).

Implementation changed the definition of a subsidy. We needed to check inconsistency with WTO, deal with any WTO inconsistencies, and ensure better backing up with legislation.

[We are] aware that the ADC maintains the subsidies register on its website, however, [we are] not familiar that any expansion consistent with the WTO Agreement on Subsidies and Countervailing Measures and Agreement on Agriculture has occurred.

[It] is unknown if any of the investigations since implementation have relied upon the legislative changes that were made ... [M]inor further amendments were made/attempted in subsequent reforms.

Overall it may have been that implementation offered internal assurance, but was not sufficiently visible to other stakeholders to notice an impact.

Uncooperative parties (reform 4.2)

The approach to determining whether parties are non-cooperative will be strengthened and clarified

The *Streamlining reforms* report stated that:

- “The Branch will revise the Manual to clarify the circumstances in which a finding of non-cooperation may apply, and the consequences that may follow”
- “The Branch will also examine the approach that the European Union (EU) applies to determine dumping margins”
- “The Branch will consult with the Forum and recommend to Government whether a similar approach should apply in Australia.”

Implementation and impacts

An amendment to the Customs Act introduced three categories of exporters: ‘cooperative’, ‘residual’ and ‘uncooperative’. The reform applies to investigations and inquiries on or after 11 June 2013.

Refer ADN No. 2015/129 citing a Ministerial Direction that establishes non-cooperative exporters.

Input received for this reform did not focus on comparing the practice of dealing with uncooperative parties in other countries. An internal stakeholder noted that:

It was implemented. Individual reports identify who is determined as cooperative, residual, or uncooperative – and why.

However, some external stakeholders pointed to a lack of published information and low transparency surrounding changes. Therefore it seems more closely linked to decision-making and access themes.

There exists a lack of transparency associated with what the ADC categorizes as ‘cooperative’ and ‘non-cooperative’ exporter. There exist no published guidelines on this issue, with decisions made on a case-by-case basis.

As far as [we are] aware any changes to the guidelines on treatment of non-cooperative parties have not been published.

Although there is guidance publicly available, it does not seem to be easily known by interested stakeholders. This may be due to the website design and/or other communication strategies which could be reconsidered.

Monitoring and communication strategies are recommended about exporter categories and their application in cases. If there is already a communication strategy, it would be worth reconsidering its effectiveness.

Another internal stakeholder conveyed that the approach to non-cooperation was discussed at the ITRF and actions agreed — however in practice little changed and further reform was enacted through a Ministerial Direction in 2015.

Non-injurious price and the lesser duty rule (reform 4.3)

The method of determining the non-injurious price will be revised recognising that injury to industry can take different forms, and that more flexible consideration of relevant factors will provide a more effective remedy that is tailored to the injury caused in a particular case

The *Streamlining reforms* report stated that:

- “The Manual outlines a hierarchy of options ... for determining the non-injurious price” and “If there are sound reasons for not taking this approach, the Branch will construct a price...”
- “Before finalizing the details of an approach to calculating non-injurious prices the Branch will consult with the Forum and advise Government of factors” and “Revised guidelines will be developed for assessment of such prices and appropriate amendments will be made to the Manual.”
- “To improve transparency, the Branch will also report annually on the number of cases where the lesser duty rule has resulted in imposition of duties less than the full dumping or subsidy margin.”
- “The Branch will examine the practices of other jurisdictions and Australia’s international trade obligations, and consult with the Forum in determining whether Australia should adopt a similar approach. Such a change would require legislative amendment.”

Implementation and impacts

The ITRF acted as the accountability mechanism for ensuring this reform was implemented. Although the initial consultation phase of this reform was completed by March 2013, no subsequent changes were implemented as the consultations found that no change to the non-injurious price was required.

Customs held consultations with interested stakeholders who agreed that no change to the NIP calculation was required. ... This reform has had no effect on the anti-dumping system as it was not fully implemented ... The ITRF acted as the accountability mechanism for ensuring this reform was implemented.

This seemed reflected in the following comment from an external stakeholder:

It is unclear whether any progress has been made resulting in a change to past practice.

There were changes introduced after the *Streamlining reforms* such that if a 'particular market situation' is found, the ADC does not have to consider applying the lesser duty rule. It was not clear from reading the supplied documents that the government had formally been informed of a decision by the ITRF or department.

Parties to proceedings (reform 4.4)

The parties permitted to participate in investigations, including by making submissions, will be clarified to include relevant industry associations, unions and downstream industry

The *Streamlining reforms* report stated that "The Government will amend the current definition" to add clarity and "The Government will consider further amendments to allow these parties to participate in reviews as part of the reforms of the appeals process."

Implementation and impacts

The definition of 'interested party' within the Customs Act was amended to include an expanded list of participants: industry associations, trade unions and downstream industry. This reform seems to relate better to the theme of 'access to the anti-dumping system' rather than 'consistency with other countries'.

A stakeholder said that this reform did not result in significant changes. For example, they said unions rarely participated anyway — before or after this reform was implemented.

Since the amendment of the definition of an "interested party" for the purposes of anti-dumping and countervailing investigations, there has been greater involvement in investigations by industry associations, unions and downstream industry. It is unclear whether this extra participation has actually effected any investigations in a substantial way ... The expanded number of parties participating in the system increases the individual submissions the ADC may receive in a case.

It is possible that the ITRF membership was better informed than the non-ITRF members about the change (see the following two quotes); however there is not very much information to support a strong finding.

[We] welcome the extension of the definition of interested parties to include the identified parties. [ITRF member]

This does not appear to be implemented, or if so there does not seem to be a discernible level of engagement. [Not an ITRF member]

In summary, the definition of 'interested party' within the Customs Act was amended to include an expanded list of participants. The impact of these changes was unclear and potentially small.

Setting the form of duty (reform 4.5)

A more flexible approach will be taken to determining the appropriate form of a dumping or countervailing duty, including ad valorem duty, fixed duty, combination duty, or a floor price.

The *Streamlining reforms* report stated that there would be a “more flexible approach to the form a duty can take” and “This will reflect the range of options available under WTO Agreements.” The report also stated that “The Branch will also re-calculate the level of measures when conducting a continuation inquiry. This will remove the need for a separate review and continuation inquiries occurring in close proximity. The above changes will require legislative amendment.”

Implementation and impacts

Additional forms of interim dumping duty were introduced via legislation, providing the Minister with greater flexibility regarding the form of duty imposed. Guidelines on the form of dumping and countervailing duty were posted on the ADC’s website in November 2013. Previously the only method for calculating dumping duty was the combination duty method. The forms of duty now available to the Minister include the combination, fixed, floor price and *ad valorem* duty methods.

The Anti-Dumping Commission was established on 1 July 2013. This reform was fully implemented before the establishment of the Commission and this legislation has been routinely considered in Commission operations. In addition, Guidelines on the form of dumping and countervailing duty were posted on the Commission’s website in November 2013. These provide guidance on how the Anti-Dumping Commission has implemented the reforms operationally

Ad valorem duty measures are a straight forward percentage method; whereas a floor price is something where if they sell below that then the additional duty kicks in. Therefore it stays set like that over time, instead of shifting around as the price does.

This reform had one of the stronger impacts, perhaps the strongest impact, of the reforms in the *Streamlining reforms* package. The extent to which it resulted in a net positive impact depends on one’s perspective. As anticipated, stakeholders will tend to represent their interests in responding.

[T]here has been greater use of different forms of duty by the Commission. Some stakeholders have not been in favour of this reform in practice ... Circumvention has become a prevalent issue in recent years, and stakeholders are complaining that the combination duty form is best suited to preventing circumvention.

Additional forms of interim dumping duty were introduced, providing the Minister with greater flexibility regarding the form of duty imposed.

Input received related more to the theme of 'improved decision making' rather than 'consistency with other countries'. Input also suggested that some businesses dislike the *ad valorem* method because they have had falling commodity prices. Some input from external stakeholders indicated criticism of *ad valorem* measures.

An alternative perspective offered was that, without the *ad valorem* method, businesses could be unduly overcompensated leading to anti-competitive practice. Having a range of measures arguably assists to strike a balance, which is not always simple to calibrate exactly given changing market conditions over time.

Greater clarity of the ADC's reasoning for applying one type of measure rather than another was requested. General guidelines were available on the ADC website, but the particular reasons for applying a measure (in making a decision at the individual case-level) could be communicated more clearly.

A key issue [we] would appreciate addressed is the Commission's treatment in determining the recommended form of measures to be applied following the extension of the methodologies to include ad valorem, fixed rates and floor price options.

An internal stakeholder subsequently advised that this type of guidance is now being developed and implemented.

In summary, this reform added forms of duty providing greater flexibility in decision making. This reform was implemented satisfactorily and had a high impact.

Consideration of cases and practices in other jurisdictions (reform 4.6)

The Branch will take into account relevant cases and practices in other jurisdictions

The *Streamlining reforms* report stated that information from other relevant jurisdictions would be considered, and "While this has generally been the practice for the Branch to some degree, it will in future specifically consider details of relevant cases in comparable jurisdictions, and include this information in investigation reports to the Minister." The report also stated that "The Branch will undertake regular reviews of anti-dumping practices in comparable jurisdictions to inform future policy and practice changes, including through technical exchanges with dumping administrations overseas."

Implementation and impacts

The ADC considers findings from other jurisdictions for applicable investigations. However, foreign cases and practices often have little applicability to Australian cases as the ADC must follow Australian legislation. The ADC maintains a subsidies register and includes a link to the USA subsidy register. One business suggested it would be valuable to add more information from other jurisdictions. This could also improve upon the part of the reform which stated that "regular reviews of anti-dumping practices in comparable jurisdictions [will] inform future policy and practice changes".

Following consideration at the December 2011 ITRF meeting, administrative changes were progressively implemented by mid-2012. The ITR Branch established and the ADC maintains a subsidies register and includes a link to the United States' subsidy register. The December 2012 Audit assessment found this reform had been satisfactorily implemented.

Input from an internal stakeholder indicated this reform had a moderate impact. They noted that foreign cases and practices often have little applicability to Australian cases as the ADC must still follow Australian legislation. However foreign cases and practices have had significant effects on certain cases.

Where relevant, during screening of applications or where a party presents a particular finding of another administration, or the Commission identifies such a finding, the Commission refers to these in its reports to the Minister.

A submission from an external stakeholder simply noted that the ADC considers findings from other jurisdictions.

[We] acknowledge that the ADC currently does consider findings in other jurisdictions.

In summary, the ADC considers findings from other jurisdictions and this reform was implemented satisfactorily. There may be opportunity for further impact in the results and communications of “regular reviews of anti-dumping practices in comparable jurisdictions to inform future policy and practice changes”.

3.5 Stronger compliance

This could form the topic for a future review. The present roles of agencies including DIIS, ADC, and the Department of Immigration and Border Protection (DIBP) in relation to anti-dumping and countervailing need greater clarification and communication. Monitoring of compliance can form part of an overall performance monitoring system to be further considered, aggregated and shared/reported.

Compliance monitoring (reform 5.1)

There will be increased monitoring of compliance with anti-dumping measures

The *Streamlining reforms* report stated that: “A dedicated position will be created within the Branch to develop and implement an improved program of monitoring compliance”. The report also stated that “The program will strengthen the existing compliance function” and include “monitoring key indicators”.

Implementation and impacts

An ITRF compliance working group commenced and the previous Customs and Border Protection Service launched *Operation Bluenet* to target compliance with trade measures. According to internal stakeholders, there was a gap in meetings of the ITRF working group between 2013 and December

2015, during which time there was some loss of transparency of anti-dumping compliance activity.²¹

An internal stakeholder indicated this reform has had minimal impact. Some submissions from external stakeholders noted they had not been made aware of evidence of increased monitoring and considered it an important issue.

[We] have not seen any evidence of increased monitoring.

[We] consider that an issue for further policy development by the ITRF or its successor(s) involves the market situation guidelines and compliance capability.

[We] think that further improvement in ensuring the intended outcomes of measures are delivered and think compliance and monitoring of circumvention activity is key to this.

The following external stakeholders thought the DIBP should have a more prominent role in this area.

Border Protection is disengaged from the dumping compliance framework ... [We] advocate that there be a whole of government approach including a restatement of Border Protection's responsibilities in Australia's anti-dumping system together with initiatives designed to facilitate collection, compliance and enforcement of measures.

[We are] concerned by the apparent disconnect between the imposition of measures (as recommended by the ADC and accepted by the Parliamentary Secretary) and the monitoring and compliance of measures by the Department of Immigration and Border Protection. It is critical that once measures are imposed, the effectiveness of the measures are closely monitored.

At the time of this evaluation, there was a lack of clarity about roles for DIIS, ADC and DIBP. Submissions from external stakeholders noted they had not been made aware of evidence of increased monitoring and considered it an important issue.

As part of future iterations of the monitoring system, it is suggested that the roles of these three parties in relation to anti-dumping compliance are clarified and then communicated to stakeholders.

In summary, although there was initial implementation, it does not seem to have been maintained or effectively communicated via internal and external

²¹ An internal stakeholder subsequently provided an update. This stated: Industry stakeholders had remained unsatisfied with the transparency in compliance. In response, the International Trade Remedies Forum (ITRF) established a sub-committee on compliance and circumvention following its September 2016 meeting which will report back to Assistant Minister Laundy in the first half of 2017 with suggestions on how compliance can be improved. The Department of Immigration and Border Protection/Border Force and the DIIS (both the Anti-Dumping Commission and the Anti-Dumping Policy Section) are Government members of the subcommittee.

stakeholders. It is recommended this topic be revisited and communications strengthened to improve intended impact and clarity.

Anti-circumvention framework (reform 5.2)

A framework will be introduced to prevent the unfair circumvention of measures by the modification of products, sending products through third countries or exporters with a lower duty rate, or assembling parts in Australia

The *Streamlining reforms* report stated that: “The Government will introduce a framework to specifically prevent the circumvention of duties, which could include measures to address the circumstances described above. This framework will be developed by the Government in consultation with the Forum and informed by a consideration of the anti-circumvention regulations of comparable overseas administrations Implementation will most likely require legislative amendment”.

Implementation and impacts

On 11 June 2013, new legislative provisions for conducting an anti-circumvention inquiry commenced. The provisions addressed circumvention involving assembly of parts in Australia, assembly of parts in a third country, export of goods through one or more third countries and arrangements between exporters.

Following the introduction of the reforms, Australian industry was able to apply to the Commission to conduct an inquiry to investigate alleged circumvention of anti-dumping and countervailing measures. The anti-circumvention provisions provided a stronger compliance framework for circumvention activities to be identified and remedied. The avoidance of the intended effect of duty and the slight modification of goods were prescribed circumvention activities on 1 January 2014 and on 1 April 2015 respectively. While no official performance measurement system is in place, the Commission is increasingly focusing on anti-circumvention activities and monitoring the outcomes of anti-circumvention inquiries.

The legislative reform was introduced. It initially prescribed four types of anti-circumvention. There are now six types of anti-circumvention, as two extras were added, in the Act.

Input from another internal stakeholder noted there have been:

Only 2 cases to date: a) avoidance of intended effect; b) slightly modified goods. Details well covered in individual investigation reports.

Particularly as the volumes of anti-circumvention cases increase, tracking use over time (where possible by type, applicable characteristics and outcomes) can form a component of the overall monitoring plan to develop and communicate results.

Input from an internal stakeholder indicated that this reform has had no impact because the particular circumvention types added as part of the *Streamlining reforms* have not been utilised. Subsequent (post-*Streamlining reforms*) additions have been utilised. The post-*Streamlining reforms* changes

included prescribing the ‘avoidance of the intended effect of duty’ and the ‘slight modification of goods’ as circumvention activities (in January 2014 and April 2015 respectively). Two internal stakeholders made the following observations:

The particular circumvention types implemented in this tranche of reforms have never been utilised (modification circumvention was introduced in later reforms in 2015). Different types of circumvention activity have been observed — particularly avoidance of the effect of duties and slight modification (both of which were legislated in subsequent reforms). Some instances of transshipment have been addressed through Customs powers without the need for Commission involvement.

This is part of normal processes. Its applicant driven, in other words depends on what types of applications come through to ADC. That determines the extent to which (and precisely which) anti-circumvention types are utilised. They have conducted four anti-circumvention cases thus far. So give some more time before assessing the impact ... because we have only had four cases so far, we haven't had cases for all six types.

Most of the input from external stakeholders was of a general nature. Some noted their desire for strong regulations to deal with circumvention activities. However, another noted this topic moves into the realm of being ‘anti-competitive’ and potentially stifling innovation.

In summary, new legislative provisions for conducting an anti-circumvention inquiry were introduced; however there has been low utilisation of the circumvention types added as part of this reform. Implementation was satisfactory but impact low at this stage. The topic of anti-circumvention could be valuable to review in future.

4. Summary

In conclusion, five years after the introduction of the *Streamlining reforms*, this evaluation found a mixed picture of success. Of the five themes identified, there was improvement for two themes (access and consistency), deterioration in one area (timeliness), and insufficient evidence for two areas (decision-making and compliance).

The majority of the 23 individual reforms were satisfactorily implemented, but there remains significant room for improvement to attain best practice. As the report has highlighted, opportunities for improvement exist in:

- Planning for future reviews and sharing monitoring information
- Reconsidering communications in light of stakeholder information needs and preferences
- Ensuring future modifications to the system are adequately resourced and take account of differing stakeholder interests.

It would be appropriate to conduct an independent review of the anti-dumping system in future to check progress — particularly regarding compliance strength as it was not possible to assess this through this evaluation.

Appendix A Terms of reference

Department of Industry, Innovation and Science

Evaluation of the Streamlining Australia's anti-dumping system reform package

December 2015

Terms of Reference

Assessment of the implementation of the reforms

Were the reforms introduced as intended? (as they are written)

Over what time period were the reforms implemented?

What has changed operationally in the time since the reforms were introduced?

Were adequate performance measurement systems in place to observe the impact of the reforms?

Assessment of the reform's impacts on the anti-dumping system and its outcomes

What impacts have resulted from the implementation of the reforms?

NOTE: At every opportunity, the department seeks to measure the impacts of its activities. For some reforms this will not be possible due to a lack of data or factors external to the *Streamlining reforms* (e.g. the impact of subsequent tranches).

Appendix B Sources for assessments

Input relating to each of the reforms

Evidence sources for reform 1.1

- 3 external stakeholders' submissions
- 3 internal stakeholders' input (including data received from ITRA service)
- 2012 Audit Assessment

Evidence sources for reform 1.2

- 8 external stakeholders' submissions
- 3 internal stakeholders' input
- 2012 Audit Assessment
- 2 Anti-Dumping Notices (ADNs)
- Import Data Assistance Programme (IDAP) application form with programme eligibility checklist
- International Trade Remedies Forum (ITRF) draft Minutes
- ITRF Import data report
- Confidentiality of import data — comparison with other jurisdictions
- ITRF Implementation status report
- *Levelling the playing field reforms* fact sheet

Evidence sources for reform 1.3

- 4 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- Investigation and injury periods discussion paper
- International Trade Remedies Forum (ITRF) Minutes

Evidence sources for reform 1.4

- 4 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- Tranche 3 legislation

Evidence sources for reform 1.5

- 5 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- International Trade Remedies Forum (ITRF) Agendas and Minutes
- ITRF Close Processed Agricultural Group (CPAG) Provisions draft report to government
- ITRF Chair's briefing for agenda item — Government response to CPAG report
- Ministerial note — approval of ITRF reports

Evidence sources for reform 2.1

- 8 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment

Evidence sources for reform 2.2

- 6 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- International Trade Remedies Forum (ITRF) Agenda item – Administrative implementation
- ITRF Agenda item — Electronic Public Record (EPR)
- *Timely provision of information* report
- Guidelines: Visit report timeframes
- *Implementation of administrative improvements to the process for providing evidence*, Discussion paper, circulated 30 September 2011

Evidence sources for reform 2.3

- 6 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- Senior Executive Service (SES) Brief on Preliminary Affirmative Decisions (PADs), from February 2016

Evidence sources for reform 2.4

- 6 external stakeholders' submissions
- 3 internal stakeholders' input
- 2012 Audit Assessment
- Tranche 1 legislation

Evidence sources for reform 3.1

- 7 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- Minister's approval for International Trade Remedies engaging experts
- File note for market situation report
- Submission from a science expert

Evidence sources for reform 3.2

- 8 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- Market Situation Working Group (MSWG) Report to Government
- International Trade Remedies Forum (ITRF) Minutes

Evidence sources for reform 3.3

- 5 external stakeholders' submissions
- 3 internal stakeholders' input

Evidence sources for reform 2.1

- 2012 Audit Assessment
- Australian Customs Dumping Notice (ACDN)
- Anti-Dumping Review Panel (ADRP) Note for the Commissioner of January 2014

Evidence sources for reform 3.4

- 7 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- 2 Australian Customs Dumping Notices (ACDNs)

Evidence sources for reform 3.5

- 8 external stakeholders' submissions
- 3 internal stakeholders' input
- 2012 Audit Assessment
- Australian Customs Dumping Notice (ACDN)

Evidence sources for reform 3.6

- 9 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- Australian Customs Dumping Notice (ACDN)
- Transparency of System report
- Monthly notices
- Electronic Public Record (EPR) from ADC website

Evidence sources for reform 4.1

- 6 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- Australian Customs Dumping Notice (ACDN)

Evidence sources for reform 4.2

- 4 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- 2 Australian Customs Dumping Notices (ACDNs)

Evidence sources for reform 4.3

- 5 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- International Trade Remedies Forum (ITRF) Minutes

Evidence sources for reform 4.4

- 4 external stakeholders' submissions
- 2 internal stakeholders' input

Evidence sources for reform 2.1

- 2012 Audit Assessment
- Australian Customs Dumping Notice (ACDN)
- Implementation Status Traffic Light Report from an International Trade Remedies Forum (ITRF) Agenda

Evidence sources for reform 4.5

- 6 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- Australian Customs Dumping Notice (ACDN)
- Guidelines on the application of forms of dumping duty
- Productivity Commission's 2009 report

Evidence sources for reform 4.6

- 4 external stakeholders' submissions
- 2 internal stakeholders' input
- 2012 Audit Assessment
- International Trade Remedies Forum (ITRF) Minutes

Evidence sources for reform 5.1

- 7 external stakeholders' submissions
- 1 government area's input
- 2012 Audit Assessment
- International Trade Remedies Forum (ITRF) Minutes

Evidence sources for reform 5.2

- 5 external stakeholders' submissions
- 2 government area's input
- 2012 Audit Assessment
- Australian Customs Dumping Notice (ACDN)
- 2 Anti-Dumping Notices (ADNs)
- International Trade Remedies Forum (ITRF) Minutes

Appendix C Consultation details

<i>External Stakeholders</i>	<i>Submission Sought</i>	<i>Submission Received</i>
ABB (Asea Brown Boveri)	15 January 2016	29 January 2016
Australian Forest Products Association	14 January 2016	4 February 2016
Australian Industry Group	14 January 2016	4 February 2016
Australian Paper	14 January 2016	11 February 2016
BlueScope Steel	14 January 2016	11 February 2016
Bureau of Steel Manufacturers Australia	14 January 2016	19 February 2016
Capral Ltd	14 January 2016	11 February 2016
Cement Industry Federation	15 March 2016	23 March 2016
Construction, Forestry, Mining and Energy Union	14 January 2016	21 February 2016
Manufacturers Trade Alliance	14 January 2016	11 February 2016
SPC Ardmona	14 January 2016	11 February 2016
<i>Government Stakeholders</i>	<i>Submission</i>	
Australian Bureau of Statistics	Yes	
Department of Agriculture and Water Resource	'Nil' response	
Department of Immigration and Border Protection	'Nil' response	
Department of Prime Minister and Cabinet	'Nil' response	
Office of the Hon Karen Andrews MP, Assistant Minister for Science	Yes	
Department of Industry, Innovation and Science:		
Portfolio Strategic Policy Division	Yes	
Anti-Dumping Commission	Yes	
Anti-Dumping Review Panel	Yes	
International Trade Remedies and Advisory Services	Yes	

Appendix D Glossary

Term	Definition	Source note
ACDN	Australian Customs Dumping Notice (ACDN) was the public notice provided by the then CEO of Customs or the Minister prior to the use of Anti-Dumping Notices (ADN — see below). These notices were often required under anti-dumping legislation.	Department of Industry, Innovation and Science
<i>Ad valorem</i>	<i>Ad valorem</i> is a type of duty method where the duty is expressed as a proportion of the export price of goods.	Customs Tariff (Anti-Dumping) Regulation 2013
ADC	The Anti-Dumping Commission (ADC) investigates alleged dumping and subsidisation of goods imported into Australia and imposes duties to address material injury to the Australian industry that manufactures similar or the same goods.	Customs Act 1901, Division 1A
ADIS	The Anti-Dumping Information Service (ADIS) enhances the capability of anti-dumping investigators by providing target economic analysis of trends and trading behaviours across markets to provide better information earlier in the investigation process. The ADIS is delivered by the ADC.	Department of Industry, Innovation and Science,
ADN	An Anti-Dumping Notice (ADN) is a public notice announcement given by the Anti-Dumping Commissioner or the Minister. ADNs fulfil legislated obligations to provide public notice of certain actions.	Department of Industry, Innovation and Science
ADRP	The Anti-Dumping Review Panel (ADRP) conducts independent merits reviews, upon application, of certain decisions made by the Minister or by the Commissioner of the Anti-Dumping Commission in relation to anti-dumping and countervailing investigations.	Customs Act 1901, Division 8
Ai Group	The Australian Industry Group (Ai Group) is an industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors.	Ai Group
All facts available	The facts available to the Anti-Dumping Commissioner at the time.	Department of Industry, Innovation and Science
Anti-circumvention inquiries	Anti-circumvention inquiries investigate behaviours of exporters of goods that are subject to dumping and / or countervailing duty notices, which circumvent these notices.	Customs Act 1901, Division 5A
ASCM	The Agreement on Subsidies and Countervailing Measures (ASCM) is the World Trade Organization Agreement disciplining the use of subsidies, and it regulating the actions countries can take to counter the effects of subsidies.	World Trade Organization
Brumby review	The 2012 Review into Anti-Dumping Arrangements examined the arrangements for assessing and investigating anti-dumping matters and considered the feasibility of a Commonwealth Anti-Dumping Agency.	Department of Industry, Innovation and Science
Close processed agricultural goods (CPAG)	The CPAG (Closed processed agricultural goods) provisions of the Customs Act extend the definition of 'industry' to include producers of the raw agricultural goods from which the processed goods, subject to injury from dumping, are derived.	Customs Act 1901, Section 269T

<i>Term</i>	<i>Definition</i>	<i>Source note</i>
Circumvention	Circumvention is defined as practices used by exporters and importers of certain products to avoid the full payment of dumping and countervailing duties. The outcome of these activities is that they ensure that the relevant goods do not attract the intended dumping or countervailing duty. Prescribed circumvention activities are defined under section 269ZDBB of the Customs Act.	Department of Industry, Innovation and Science
Combination duty	Combination duty is a type of duty method where the duty is expressed as a proportion and fixed export price.	Customs Tariff (Anti-Dumping) Regulation 2013
Countervailable subsidies	Countervailable subsidies are the provision of financial assistance to benefit the production, manufacture, or processing of goods. The amount of subsidies the foreign producer receives from the government is the basis for the subsidy rate by which the subsidy is offset, or "countervailed," through higher import duties.	Customs Act 1901 - Section 269TAAC
Downstream industry	Downstream industry categorises the industry members, manufacturers or producers that use the goods subject to dumping duties (or potentially subject) as inputs to the further production or manufacture of 'downstream' products.	Department of Industry, Innovation and Science
Electronic Public Record (EPR)	The ADC publishes non-confidential submissions to its inquiries on its Electronic Public Record (EPR), in order to comply with the publication requirements of section 269ZJ of the Customs Act. Submissions published on the EPR marked non-confidential will remain on the EPR indefinitely as public documents.	Department of Industry, Innovation and Science
Fixed duty	Fixed duty method is a fixed unit amount imposed to the quantity of the particular goods to be payable on the exporter's goods.	Customs Tariff (Anti-Dumping) Regulation 2013
Floor price	The floor price duty is a duty that is set at a fixed value to the exporter's goods.	Customs Tariff (Anti-Dumping) Regulation 2013
Full cost surrogacy	Calculation of costs in a constructed normal value based on costs in surrogate third countries.	Department of Industry, Innovation and Science
Import Data Assistance Program	The Import Data Financial Assistance Program was created to facilitate better access to import data which Australian producers and manufactures may require to effectively utilize Australia's anti-dumping system. The Import Data Financial Assistance Program was discontinued on 15 December 2014.	Department of Industry, Innovation and Science
Dumping duty	The duty imposed to remedy injurious dumping and subsidisation.	
Injury period	The period over which injury to the domestic industry is examined an anti-dumping or countervailing investigation.	
Interim dumping duty	Where dumping or countervailing duty has been imposed on goods exported to Australia, the importer is liable to pay an amount known as the interim dumping duty or interim dumping duty at the time of importation. The interim duty is based on prices verified during the original dumping investigation or subsequent review of the duty.	Department of Industry, Innovation and Science
Investigation period	Investigation period in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Commissioner in a notice under subsection 269TC(4) to be the investigation period in relation to the application.	Customs Act 1901 - Section 269T

<i>Term</i>	<i>Definition</i>	<i>Source note</i>
ITRA	The International Trade Remedies Advisory (ITRA) service provides small and medium Australian businesses seeking to access Australia's anti-dumping and countervailing system with detailed advice and assistance.	Department of Industry, Innovation and Science
ITRB	Prior to the ADC, anti-dumping and subsidy investigations were undertaken by the International Trade Remedies Branch (ITRB) in the Australian Customs and Border Protection Service (Customs).	Department of Industry, Innovation and Science
ITRF	The International Trade Remedies Forum (ITRF) brings together representatives from Australian manufacturers and producers, importers, unions and Government agencies. The ITRF provides an opportunity for key users of the anti-dumping system to advise the Government on the operation and improvements to Australia's anti-dumping legislation.	Department of Industry, Innovation and Science
Lesser duty rule	Requires the Minister to consider the desirability of fixing a lesser amount of duty than the dumping (or subsidy) margin where the imposition of that lesser amount is adequate to remove injury. There are certain circumstances in which the Minister is not mandatorily required to consider a lesser duty.	Department of Industry, Innovation and Science
Like goods	Goods that are identical in all respects under consideration or that have characteristics closely resembling those of the goods under consideration.	Customs Act 1901 - Section 269T
Margin of dumping	The margin of dumping is the amount by which the normal value exceeds the 'export price' of the goods under investigation.	Department of Industry, Innovation and Science
Merit review of decision	Merits review considers the evidence about the merits of a decision and decides whether or not a correct and preferable decision was made. Certain decisions of the Anti-Dumping Commissioner or the Minister are subject to merits review by the ADRP.	Department of Industry, Innovation and Science
Non-injurious pricing	The minimum price necessary to prevent the injury or recurrence of the injury cause by dumping or subsidisation.	Customs Act 1901, Section 269TACA
Normal value	Normal value of any goods exported to Australia is the price paid for like goods sold in the ordinary course of trade in the exporter's domestic market. Normal value may also be determined using comparable prices of exports to a third country or the cost of production plus selling general and administrative expenses and profit.	Customs Act 1901, Section 269TAC
Particular market situation	Particular market situation occurs when the situation in the market of the country of export is such that sales in that market are not suitable for use in determining the normal value.	Customs Act 1901, Section 269TAC
Preliminary Affirmative Determination	At any time not earlier than 60 days after the date of initiation of an investigation, a preliminary determination may be made as to whether there are sufficient grounds for the publication of a dumping or countervailing duty notice.	Customs Act 1901 – Section 269TD
Provisional measures	Provisional measures may take the form a security taken in respect of interim dumping duty following the making of a PAD.	Customs Act 1901, Section 269TD
Remote verification	Off-site verification of information.	Department of Industry, Innovation and Science
Residual exporter	A residual exporter is an exporter of goods that are the subject of an investigation, a review or continuation inquiry, where: the exporter's exports were not examined as part of the investigation, review or inquiry; and the exporter was not an uncooperative exporter in relation to the investigation review or inquiry.	Customs Act 1901, Section 269T

<i>Term</i>	<i>Definition</i>	<i>Source note</i>
SSO	The SME Support Officer (SSO) was the initial name of the program created to assist small and medium Australian businesses seeking to access Australia's anti-dumping and countervailing system. The SSO was renamed to ITRA before it commenced.	Department of Industry, Innovation and Science
Statement of Essential Facts	The Statement of Essential Facts (SEF) is the report published by the Commissioner, within 110 days after the initiation of an investigation, noting the essential facts on which the Commissioner proposes to base their recommendation to the Minister.	Customs Act 1901, Section 269TDAA, 269ZD, 269ZDBF
The Manual	The Dumping and Subsidy Manual (Manual) explains the practices used by the ADC in administering the anti-dumping and countervailing system. It aims to promote a consistent approach in work undertaken by the ADC.	Department of Industry, Innovation and Science
TMRO	The Trade Measures Review Officer (TMRO) conducted merits review of anti-dumping decisions prior to the establishment of the ADRP in 2013.	Department of Industry, Innovation and Science
Total cost of ownership (TCO)	Total cost of ownership (TCO) is the purchase price of an asset plus the costs of operation.	Department of Industry, Innovation and Science
Uncooperative parties	Uncooperative party means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where: the Commissioner was satisfied that the exporter did not give the Commissioner information the Commissioner considered to be relevant to the investigation, review or inquiry within a period the Commissioner considered to be reasonable; or the Commissioner was satisfied that the exporter significantly impeded the investigation, review or inquiry.	Customs Act 1901, Section 269T
Unsuppressed selling price	The unsuppressed selling price is the price at which a good could be sold in a market unaffected by dumped imports.	Department of Industry, Innovation and Science
Variable component of duty	The variable duty component stems from a feature of a combination duty whereby, having 'ascertained' the export price for the purpose of imposing the dumping duty, if the actual export price of the shipment is lower than the 'ascertained' export price, the variable works to collect an additional duty amount (i.e. the difference between the ascertained export price and the actual export price).	Department of Industry, Innovation and Science
Variable factor reviews	The variable factor review considers changes to the normal value, export price, non-injurious price, or the amount of the countervailable duty.	Department of Industry, Innovation and Science
WTO	The World Trade Organization (WTO) is the global international organisation dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business.	World Trade Organization

Appendix E Streamlining reforms

Number	Reform
Theme 1	
1.1	Small and medium enterprises will be provided with support to actively participate in anti-dumping investigations.
1.2	The Branch will work with the Australian Bureau of Statistics and a new International Trade Remedies Forum to examine options to access import data. In addition, the data requirements for initiating an investigation will be clarified, and information about countervailable subsidies in other countries will be made available to businesses that are considering applying for
1.3	The circumstances in which shorter than normal investigation and injury periods may apply will be clarified.
1.4	Parties will more easily be able to update measures as a result of changes that will allow partial review of measures.
1.5	A working group of the ITRF will be established to determine the best way to resolve the problems faced by primary producers in accessing the anti-dumping system.
Theme 2	
2.1	Staff in the Branch will be increased by 45 per cent, from 31 to 45 staff, over the next 12 months to ensure cases are not delayed by a lack of resources.
2.2	Guidelines will be developed to improve the timely provision of information and to ensure adequate opportunities for industry to respond to matters raised by other parties. Further consideration will be given to a new, ordered, evidence gathering process.
2.3	Provisional measures will be considered at the earliest opportunity – as soon as the Branch has sufficient information, without necessarily waiting to verify all data.
2.4	A 30 day time limit for Ministerial decision-making will be introduced.
Theme 3	
3.1	The Branch will make greater use of experts including forensic accountants, industry specialists and others, in accordance with protocols to be determined after consultation with the ITRF.
3.2	A working group of the ITRF will be established to make recommendations to Government about how to improve the effectiveness of Australia's "particular market situation" provisions, consistent with World Trade Organization obligations.

Number	Reform
3.3	A more rigorous appeals process will be introduced, with more resources, and with the Review Officer rather than the Commission making recommendations to the Minister.
3.4	The definition of what constitutes material injury caused by dumping will be amended to allow a more inclusive consideration of the impact of dumping on employment and investment, and to take account of profits foregone and other injury caused in new or expanding markets. The Branch will also clarify how it determines whether injury is caused by dumping or by other factors.
3.5	The Branch will have flexibility in seeking extensions of time to accommodate complex cases, and consider critical new information that could not reasonably have been provided earlier.
3.6	There will be greater transparency through publishing the Branch's approach to evaluation of applications, and by reporting of measures and applications.
Theme 4	
4.1	The current list of countervailable subsidies will be expanded to make them consistent with the WTO Agreement on Subsidies and Countervailing Measures and Agreement on Agriculture.
4.2	The approach to determining whether parties are non-cooperative will be strengthened and clarified.
4.3	The method of determining the non-injurious price will be revised recognising that injury to industry can take different forms, and that more flexible consideration of relevant factors will provide a more effective remedy that is tailored to the injury caused in a particular case.
4.4	The parties permitted to participate in investigations, including by making submissions, will be clarified to include relevant industry associations, unions and downstream industry.
4.5	A more flexible approach will be taken to determining the appropriate form of a dumping or countervailing duty, including <i>ad valorem</i> duty, fixed duty, combination duty, or a floor price.
4.6	The Branch will take into account relevant cases and practices in other jurisdictions.
Theme 5	
5.1	There will be increased monitoring of compliance with anti-dumping measures.
5.2	A framework will be introduced to prevent the unfair circumvention of measures by the modification of products, sending products through third countries or exporters with a lower duty rate. or assembling parts in Australia.