



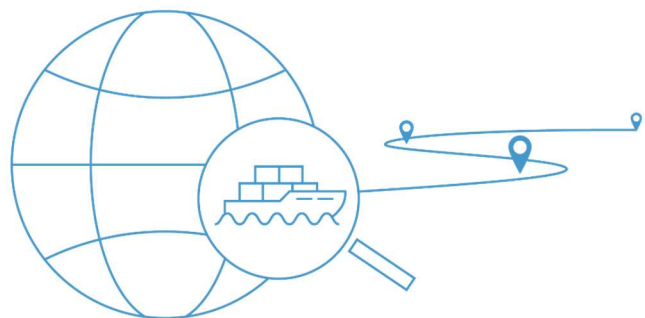
Australian Government
Department of Industry,
Science and Resources

**Anti-Dumping
Commission**

International Trade Remedies Forum Meeting Minutes

Wednesday 9 October 2024

Anti-Dumping Commission website:
adcommission.gov.au



Agenda Item 1 – Introduction and Welcome

Meeting commenced 9.05am.

The Chair thanked ITRF members for joining the meeting and welcomed the new representative for Orica. The Chair also asked for microphones to be muted and for the hand raised function to be used if members had comments or questions.

Agenda Item 2 – Terms of Reference Update

The Chair provided an update of the approval process for the Terms of Reference. The aim is to have Terms of Reference approved before the ITRF meeting on 28 November 2024.

The Chair said the Minister had requested a public consultation process and that ITRF members are welcome to engage in this process, but there is no need to resubmit comments made during the earlier consultation. Submissions can be made via the Department of Industry, Science and Resources' Consult Hub web page until 18 October 2024.

Agenda Item 3 – Sub-committee: Co-chairs' Proposed Report

The Chair said the consultation on the co-chair report of proposed reforms developed by the sub-committee on Strengthening the Anti-Dumping System will run from 23 September to 22 October 2024. Today's meeting falls halfway through the consultation period and provides an opportunity for the co-chairs to explain to ITRF members the report in greater depth and for members to raise questions and provide comments.

After the consultation finishes, the sub-committee will have a week to incorporate ITRF member comments into the report. The ITRF Secretariat will send the final report to all ITRF members by 30 October, with the intention of voting on it at the November ITRF meeting.

The Chair thanked the sub-committee members and co-chairs for their work on the proposed reforms, and invited the co-chairs to present the proposals to ITRF members.

A co-chair thanked the members of the sub-committee and her fellow co-chair for their efforts to develop the report. She proposed working through each of the ten proposed reforms sequentially and invited ITRF members to provide their feedback and comments. The co-chair said that the reforms would be considered as a package.

Please refer to the Co Chairs' summary presentation at Attachment B (page 9).

A co-chair summarised the sub-committee's work since September 2022 and the goals of the reform package, which include improving the efficiency, transparency, and responsiveness of Australia's trade remedies system. He said that some recommendations are complex and may require legislative change.

An ITRF member said that some of the proposed reforms have been discussed for years by government and industry, so it was important to note that they had been consulted on before.

Proposed reform #1 - Implement a system of Annual Reviews

A sub-committee co-chair said a revised version of this proposed reform had been circulated to ITRF members but that not all ITRF members will have read it.

ITRF member comments on this proposed reform included:

- Some members were concerned that annual reviews would overlap given the complexity and time required for reviews of duties, potentially leading to confusion in the industry.

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- Members discussed the practicality and equity of retrospective duty collection. Members also discussed the context of the retrospective duty refund where an importer has overpaid.
- A member questioned how the proposal would balance streamlining the system versus compliance with WTO rules, given that introducing a sampling system for the purpose of streamlining does not allow for individual duty assessments.
- Members discussed whether the Anti-Dumping Commission was sufficiently resourced to take responsibility for annual reviews.
- A member said that retrospective notices for interim dumping duties would give rise to the carrying of a potential liability for up to 12 months which would create uncertainty.
- A member said that moving to an annual review system had the potential to create further uncertainty and complexity for importers by forcing them to engage with the system, rather than paying a duty and moving on. This may result in the anti-dumping system itself acting as the form of protection or remedy, instead of the payable duty itself.
- The proposed change to annual reviews would require legislative changes, including to the *Customs Act 1901* which would involve considerable legal and parliamentary processes.
- A member asked whether the co-chairs considered preventing dumped products from entering the country, rather than just applying a duty, as happened in some other countries. A co-chair said they had not, given that this would contradict WTO rules.

A co-chair said that the report attempts to capture the sub-committee's diverse views including the benefits and desired outcomes of implementing an annual review system, and on the other hand, some of the points that had been raised today. The co-chair requested members to review the points raised under the 'challenges and misgivings' section of the report and reflect on whether they adequately capture members' concerns.

The Chair said there was no intention for the report to be released publicly.

A member said the report could more clearly identify the problem to be addressed and the rationale for the change, to make the report more compelling for the Minister.

Proposed reform #2 - Introduce Duty Assessment transparency

A co-chair described this reform as complementary to the first reform and provided a brief overview of its purpose.

No comments or questions were raised by ITRF members.

Proposed reform #3 - Develop a process for the update of the Dumping and Subsidy Manual to ensure it constantly reflects contemporary policy and practice

ITRF member comments on this proposed reform included:

- It is important to define what 'regular updates' means and ensure that the Anti-Dumping Commission has the resources to implement these updates.
- Updating the manual was important for procedural fairness and legal compliance. There have been federal court cases where compliance with the manual was an important part of the process.
- There was a lack of transparency on changes to practice by the Commission during a duty assessment process which had caused confusion among stakeholders.

Proposed reform #4 - Increase transparency around model matching

A co-chair said that the sub-committee considers this is an important reform to ensure that an appropriate duty is in place.

An ITRF member requested clarification on what this reform is addressing.

A co-chair said that its purpose is for decision-making relating to appropriate model matching to be transparent, subject to any confidentiality considerations.

Proposed reform #5 - Develop a mechanism for the provision of advice on whether goods are subject to dumping or countervailing duties

A member described this reform as complementary to proposed reform No.1 as it would create certainty for both importers and exporters.

A member said this reform would benefit transparency and clarity and provided background on scope rulings overseas. The process would need to be quick and not delayed by a long-term consultation. A member questioned whether a third party should be involved in a question about tax between an importer and the government. A member said transparency was important and rulings should be contestable particularly given that the definition of goods could be changing. A member asked whether rulings on scope applied to an individual importer or more broadly.

A co-chair said they would consider rephrasing this reform to provide clarity if scope ruling is included.

Proposed reform #6 - Develop a mechanism for automatic exemption from anti-dumping /countervailing measures for goods covered by a Tariff Concession Order

A co-chair said that the purpose of this proposed reform is an automatic exemption process, with appropriate safeguards for local industry, noting that the safeguard is that if the Tariff Concession Order is later revoked, then the duty will also be revoked.

A member said that in some cases there had been exemption processes where there had been Tariff Concession Orders in place and the Australian industry supported the exemption, but the exemption had still taken 13 months.

Proposed reform #7 - Transfer the responsibility for Safeguard investigations from the Productivity Commission to the Anti-Dumping Commission

ITRF members discussed this proposed reform's implications for the resourcing of the Anti-Dumping Commission and the difference between the tests for dumping safeguards.

A co-chair said that the sub-committee doesn't want any loss of intellectual capital in the proposed transfer of responsibilities under this reform.

A member asked if the Anti-Dumping Commission supported this proposed reform. The Chair said the report was an industry report, and that the commission is not a policy generating body, it is an implementation body. A member said there was substantial capability in the commission to manage the transfer of responsibility under this reform.

Proposed reform #8 - Align the definition of a 'subsidy' to better reflect the WTO SCM Agreement

A co-chair said this proposed reform was a change to the *Customs Act 1901* to better align the definition of subsidy with the definition in the WTO subsidies and countervailing measures agreement.

No comments or questions were raised by ITRF members.

Proposed reform #9 - Amend the legislation to better align extensions to the final report for accelerated reviews with other investigations

Member comments on this proposed reform included:

- Accelerated reviews are needed and if extensions were allowed then time periods could blow out and they would not be accelerated.
- Industry had said that accelerated reviews had affected the timeliness of other types of reviews.
- There was a link between commission resources and the length of cases, and this reform would help the commission balance its resource load.
- There was a question on how much of an effect accelerated reviews were having on the timelines for processing other cases.
- The sub-committee should look at the reasoning behind the prescribed timeframe in the *Customs Act 1901*.

A co-chair said that the sub-committee had looked for changes that led to efficiency in the system rather than ask for more resources for the commission.

Proposed reform #10 - Develop a process to streamline the exemption of goods from interim duty and dumping and/or countervailing duty in instances where Australian Industry does not oppose the Minister making an exemption

A co-chair said imports should not be inhibited by dumping duties if there is no local industry to protect and that there should be safeguards in the process for local industry.

A member said it was important to make sure industry and/or the applicant is appropriately consulted regarding the duties.

Overall reform report feedback

A member said when developing a compelling argument for the reforms it would be important to define the problem and the solution clearly. This would help the report be better understood. There was also a suggestion to identify which reforms would require legislative changes versus those requiring practice change, as well as including an executive summary.

Agenda Item 4 – Next steps

The Chair provided a summary of next steps to progress the co-chairs' report. The Chair noted that members have until 22 October 2024 to provide comment on the draft report. Written comments were welcomed.

The final report will be shared with members by 30 October, with the intention of voting on the reforms at the ITRF Meeting on 28 November 2024.

A member said this is an issue that needed to be discussed by the sub-committee. The current draft report is a co-chairs' report and had not been endorsed by the sub-committee. It was the first time this member had heard that the report would be voted on as a package, rather than voting on individual reforms and he would need to consult with his organisation's members about this.

The Chair said that the current report was a co-chairs' report and the finalised report that goes to the November 2024 ITRF meeting could be a sub-committee report or a co-chairs' report. The Terms

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of Reference voting procedure for the sub-committee could be changed if necessary to facilitate the final report going to the ITRF meeting.

A co-chair said that any member could put a recommendation or report for decision to the ITRF 20 days before of the meeting.

The Chair said that all members could provide a voting statement to accompany their vote. ITRF members that cannot attend the meeting can vote via proxy.

The Chair thanked all ITRF members for the discussion before closing the meeting.

Meeting closed at 10.58am

Attachment A – meeting attendance summary

Anti-Dumping Commission *(virtual attendance)*

- Jason Fitts, Acting Deputy Commissioner, Strategy and Operations (Chair)
- Justin Wickes, Acting Deputy Commissioner, Investigations
- Tom Keary, Assistant Director, Outreach and Engagement
- Cameron Just, Assistant Director, Outreach and Engagement
- Sarah Salter, Senior Engagement Officer, Outreach and Engagement
- Isabel Leaver, Engagement Officer, Outreach and Engagement

Industry Members *(virtual attendance)*

- Andrew Hudson, Lawyer, Rigby Cooke Lawyers (on behalf of the Food and Beverage Importers Association)
- Bernard Lee, Director, Net Zero Transition and Policy, Chemistry Australia
- Brad Leonard, Manager Border and Biosecurity, International Forwarders and Customs Brokers Association of Australia
- Corné Kritzing, CEO, Oceania Glass
- Chad Uphill, Director, Chad Uphill Trade Advisory (on behalf of Capral)
- Chris Barnes, Head of Business Development and International Affairs, Australian Chamber of Commerce and Industry
- Marc Cousins, Manager, International Trade Affairs, BlueScope Steel
- David Buchanan, Chief Executive Officer, Australian Steel Association
- Faisal Main, Senior Manager Commercial, Orica (observer capacity)
- Luke Hawkins, Divisional General Manager, Capral Limited
- Louise McGrath, Head of Industry Development and Policy, Australian Industry Group
- Marghanita Johnson, CEO, Australian Aluminium Council
- Matt Condon, Manager Trade Development, InfraBuild Australia
- Mel Chessman, Head, Government and Regulation, Orica (*new representative*)
- Richard Hyett, Director of Policy, Australian Forest Products Association
- Russell Weise, Director CGT Law (on behalf of the Freight Trade Alliance)
- Steven Murphy, National Secretary, Australian Manufacturing Workers' Union
- Thomas Mortimer, Policy Director, Australian Workers' Union
- Travis Wacey, National Policy Research Officer, Construction, Forestry, and Maritime Employees Union

Department of Industry, Science and Resources *(virtual attendance)*

- Louise Talbot, General Manager
- Sanjay Sharma, Assistant Manager, International Trade Remedies Advisory Service
- Karl Brennan, Manager, Anti-Dumping Policy Section
- Julian Stockwell, Assistant Manager, Anti-Dumping Policy Section
- Lachlan Kelley, Assistant Manager, Anti-Dumping Policy Section

Department of Foreign Affairs and Trade *(virtual attendance)*

- Andrew Jacenko, Assistant Secretary, Goods and Market Access Branch
- Natalie Daalder, Director, Subsidies and Trade Remedies Law Section
- Alan McGuinness, Director, Market Access and Trade Remedies Section
- Ilona Krolikowska, Assistant Director, Market Access and Trade Remedies Section
- Tara Leaney, Policy Officer, Market Access and Trade Remedies Section

Australian Border Force *(virtual attendance)*

- Mark Lang, Inspector, Trusted Trader and Compliance Branch

Apologies

- Ross Becroft, Principal, Law Council of Australia
- Mark Cain, Chief Executive, Australian Steel Institute
- Samantha Read, CEO, Chemistry Australia
- Chris Young, General Manager, Trade and Economics, National Farmers Federation

ITRF Sub-committee 'Early Harvest' Reforms: Subcommittee Chairs Report

International Trade Remedies Forum
Subcommittee on Strengthening the Anti-dumping System

Wednesday 9 October 2024

1

Background

September 2022: Establishment of the International Trade Remedies Forum Sub-committee on Strengthening the Anti-dumping System.

Reform Package Goals: Improve the efficiency, transparency, and responsiveness of the antidumping system to benefit industries and stakeholders.

Origins: The reforms were discussed over 24 months, building on the 2021-22 Budget proposals which themselves went through extensive consultation with stakeholders.

Proposals: A total of ten reforms are proposed.

Implementation: Some reforms are simple to implement administratively, while others may require legislative changes and further government action.

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Key approach of the Sub-committee

a) When an imported product is dumped or is countervailable and causes material injury to local industry the system should allow that on application it attracts a contemporaneous, accurate, WTO compliant antidumping duty and/ or countervailing duty which has the effect of alleviating material injury to local industry caused by the dumped or subsidies import.

b) When a product is not dumped or countervailable or does not cause material injury it should not attract a duty.

- 26 July 2023 (Melbourne) - In person subcommittee meeting

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1. Implement a system of Annual Reviews

- **Consolidation of Processes:** Duty Assessments and Reviews of Measures to be merged into a single annual review, improving efficiency and enabling the Anti-Dumping Commission to manage resources better.
- **Reviewable Transactions:** All relevant transactions from the previous year will be reviewed, making measures more contemporary and ensuring accuracy in duty collection.
- **Increased Transparency:** Regular, scheduled annual reviews will provide stakeholders with clear timelines, enhancing predictability and understanding of the review process.
- **Implementation Challenges:** Transitioning to an annual review system may pose difficulties, such as increased costs, administrative burden, and potential disruptions to trade certainty.

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2. Introduce Duty Assessment transparency

- **Improved Transparency:** Duty Assessment transparency to be enhanced by publishing non-confidential versions of reports, increasing openness and trust in decision-making.
- **Accountability & Stakeholder Engagement:** The Anti-Dumping Commission and Review Panel to be transparent, allowing stakeholders to access information key milestones and better understand the process.
- **Compliance & Efficiency:** Greater transparency to encourage compliance and help streamline the process by providing clear guidelines for all parties.
- **Challenges:** Protection of commercial confidentiality and assurance of seamless integration of these changes are key challenges that must be addressed for successful implementation.

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3. Develop a process for the update of the Anti-Dumping and Countervailing Manuals to ensure they reflect contemporary policy and practice

- **Regular Updates & Stakeholder Engagement:** The Anti-Dumping and Countervailing Manuals to undergo regular updates, ensuring that contemporary policy and practices are captured. Stakeholder involvement will ensure their needs and concerns are addressed.
- **Enhanced Transparency & Efficiency:** Up-to-date manuals will improve system transparency, making guidelines clearer and boost system efficiency by aligning the manual with current practices.
- **Increased Compliance & Collaboration:** Clear and current guidelines will promote better understanding of approaches and therefore better inputs from stakeholders.
- **Challenges:** Updating manuals on an ad-hoc basis could be resource-intensive.

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4. Increase transparency around model matching

- **Context & Transparency:** Model matching details, often kept confidential, to be made transparent to allow stakeholders to verify decisions while maintaining confidentiality where necessary.
- **Enhanced Trust & Accuracy:** Transparency ensures stakeholders can understand decision-making and seek correction of any inconsistencies, leading to more accurate measures.
- **Engagement & Testing of Assumptions:** Access to model details to allow stakeholders to test assumptions, fostering active engagement and collaboration.
- **Challenges:** Balancing transparency with confidentiality is complex, and implementing these measures may be resource-intensive.

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5. Develop a mechanism for the provision of advice on whether goods are subject to dumping or countervailing duties (Binding Rulings on the Scope of the Good)

- **Avoidance of Unnecessary Duties:** The provision of certainty for importers and the prevention of unnecessary duties on goods not subject to AD/CVD measures.
- **Increased Transparency:** The use of public file of applications, stakeholder submissions, and publicly gazette decisions to safeguard trust in the Binding Rulings system.
- **Efficiency and Clarity:** Clear and timely advice reduces the need for costly tribunal or court reviews, benefiting businesses.
- **ADC Expertise:** ADC's in-depth knowledge ensures accurate and informed rulings on goods' eligibility for dumping or countervailing duties.

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6. Develop a mechanism for automatic exemption from AD/CV measures for goods covered by a Tariff Concession Order

- **Streamlined Process:** Automatic exemptions reduce the need for applications, saving time and resources for both industry and the ADC.
- **Reduced Costs:** Exempting goods covered by a TCO from interim duties lowers costs, improving competitiveness of imports with no domestic substitutes.
- **Clarity and Predictability:** Provides businesses certainty that TCO-covered goods are exempt from interim duties, aiding in planning.
- **Support for Local Industry:** Ensures only goods without domestic substitutes are exempt, protecting local producers.

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7. Transfer the responsibility for Safeguard investigations from the Productivity Commission to the Anti-Dumping Commission

- **Expertise and Efficiency:** The ADC's specialized knowledge in trade remedies to ensure more accurate and efficient safeguard investigations.
- **Consistency:** A single body managing both anti-dumping and safeguard investigations to ensure consistent application of trade remedies, aligning with international practices.
- **Streamlined Process:** Reducing agency involvement to simplify the investigation process.
- **Improved Resource Allocation:** ADC can better align staffing and resources to effectively manage safeguard investigations.

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8. Align the definition of a 'subsidy' to better reflect the WTO Subsidies and Countervailing Measures Agreement

- **Alignment with International Standards:** Align definition of a 'subsidy' to the WTO SCM Agreement to demonstrate Australia's commitment to global trade rules.
- **Clarity and Predictability:** Provide businesses with clear criteria for determining subsidies.
- **Reduced Legal Challenges:** Alignment to minimize the risk of legal challenges due to non-alignment with international standards/ WTO Agreement.
- **Consistency in Application:** Standardized definition ensures consistent understanding, aiding stakeholders in navigating provision effectively.

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9. Amend the legislation to better align extensions to the final report for accelerated reviews with other investigations

- **Flexibility in Workflow Management:** Allows extensions for accelerated reviews providing the Anti-Dumping Commission (ADC) with greater flexibility to manage its workload effectively across various case types.
- **Consistency Across Case Types:** Aligns the process for accelerated reviews with other investigations which ensures a more consistent and simplified framework for stakeholders.
- **Reduced Pressure on Timelines:** Extensions can relieve the 100-day limit pressure, allowing for more thorough and accurate reviews by the ADC.
- **Low WTO Risk:** DFAT indicates low risk of non-compliance with WTO obligations, as the relevant article does not specify a strict timeline.

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10. Develop a process to streamline the exemption of goods from interim duties and dumping and/or countervailing duties in instances where Australian Industry does not oppose the Minister making an exemption

- **Efficiency and Simplification:** Develop a streamlined process to simplify the exemption procedure, reducing administrative burden and accelerating the approval of exemptions.
- **Clarity and Predictability:** A regulated process to ensure greater clarity for businesses, allowing them to plan and make informed decisions regarding interim duty and countervailing duty exemptions.
- **Support for Local Industry:** The process to allow local industry to declare if no like or directly competitive goods are offered, ensuring that exemptions do not harm domestic producers.
- **Reduced Costs:** By avoiding unnecessary duties, businesses can lower costs and enhance competitiveness in the market.