

Opening Statement

Thank you for the opportunity to address the Committee and provide evidence in support of the department's submission to the inquiry.

I would like to provide a summary of the Government's reform measures.

On 15 December 2014, the Government announced a range of measures to deliver on its election commitments and introduce further improvements to Australia's anti-dumping and countervailing system.

The reform package will place a greater focus on overseas businesses cooperating with anti-dumping investigations, improve access to the system for Australian businesses, provide greater certainty of review decisions, and strengthen the anti-circumvention framework.

Several of the reforms do not require legislation and are not included in the legislation package currently being considered by the Committee. This includes the commitments to cracking down on uncooperative exporters, enforcing more stringent deadlines for submissions and placing a greater onus on exporters to cooperate with anti-dumping investigations. The Minister for Industry and Science will shortly be making a Direction to the Anti-Dumping Commissioner to give effect to these commitments.

The department and the Anti-Dumping Commission are also currently implementing arrangements to better improve access to the system for Australian businesses. The International Trade Remedies Advisory Service is now being delivered by AusIndustry through the Single Business Service initiative, the Government's streamlined gateway for businesses to access Government services through business.gov.au. Feedback from small and medium sized businesses being serviced by the programme has so far been very positive. The Commission is also in the process of ramping up the Anti-Dumping Information Service. The Information Service will provide improved guidance material which will be available to all businesses or interested parties accessing the anti-dumping system, as well as enhancing the capability of the Commission's investigations by providing better data and research on key markets.

Another element of the reform package is the enhancement of the anti-circumvention framework. Earlier this year the Government introduced a regulation to specify a new anti-circumvention activity. From April 2015, businesses have been able to make anti-circumvention applications under this new anti-circumvention activity. This covers the practice where slight modifications are made to goods to avoid the effect of dumping measures. These practices undermine the integrity of the anti-dumping system and directly injure Australian industries that have gone to significant effort to have duties imposed. The tougher stance taken by the Government on circumvention activities will assist Australian industries who are being injured by these practices.

The remaining elements of the Government's reform package are included in the Customs Amendment and Dumping Duty Amendment Bills being considered by the Committee.

The anti-dumping reform legislation is intended to: reduce the timeframes for making submissions to investigations; ensure only the most serious matters are reviewed by the Anti-Dumping Review Panel; allow the Government to adopt more appropriate consultation methods; and implement a number of technical changes to Australia's anti-dumping legislation designed to improve legal certainty and consistency with our international trade obligations.

These Bills will reduce the period that the Anti-Dumping Commissioner can set for the lodgement of submissions. This will complement the direction being given to the Commissioner regarding stricter deadlines for submissions. The Bills will reduce the period allowed to make submissions at the initiation of investigations, reviews of measures, continuation inquiries or anti-circumvention inquiries, from 40 days to 37 days. This reflects the minimum amount of time required under the relevant WTO Agreement.

The Customs Amendment Bill is intended to make four improvements to the **merits review** process: introducing a fee for review; including the Commissioner as a party eligible to make submissions to a review; introducing a conference mechanism; and raising the procedural and legal threshold for review. These improvements address specific concerns about the current operation of the merits review of anti-dumping decisions.

Merits review is not explicitly required under the relevant WTO agreements. The current merits review arrangements have become problematic for stakeholders and administrators because they are free to access and may consequently be 'gamed'. Indeed, the high frequency of appeals against decisions by the Minister to impose anti-dumping or countervailing duties suggests the fee-free nature of the Review Panel has encouraged dissatisfied parties to apply for review regardless of the relative merit of their complaints.

The high number of applications for review erodes confidence in the decisions of the Government and the Commission, and increases timeframes and uncertainty in the marketplace.

The Government recognises that it is important for genuinely aggrieved parties to have access to review mechanisms, but access should be reasonable. That is why a fee is being introduced. The aim of the fee is to ensure that businesses seriously consider the merits of their appeal before applying for review and help to offset the cost of administering the merits review function. Fees for merits review are a standard feature in other government systems.

Another reason for the high frequency of both appeals and acceptance of applications for reviews is that the procedural and legal threshold for accepting an application is relatively low.

In addition, the Review Panel considers that the current legislation requires that if any ground is accepted for review then the Review Panel must address all grounds in its review, regardless of whether some of the grounds were invalid or insufficiently supported. As a result, interested parties may spend additional, unnecessary effort refuting invalid grounds when making their own submissions to a review.

The Customs Amendment Bill would increase the procedural and legal thresholds for applying for review by introducing requirements that an application must set out the grounds for review, set out the decision the applicant considered should have been made, and set out how the grounds support the making of the applicant's proposed decision. The applicant must also set out how their proposed (or 'preferred') decision is materially different from the decision under review.

Where the Review Panel is not satisfied that the application has not met these standards, the Review Panel may reject the application. The Bill will also give the Review Panel the ability to accept and reject specific grounds of an application.

These amendments would improve the quality of information provided at the application stage of a review, ensure the Review Panel is only considering serious and meritorious reviews, and ensure that interested parties are not wasting time addressing invalid grounds in their submissions to the review.

In addition to addressing concerns about the frequency of reviews, the Customs Amendment Bill includes amendments to address concerns that the Review Panel may not have access to all relevant information to finalise their decisions. This concern partly reflects the complex and technical nature of the anti-dumping system. The Customs Act does not permit the Commissioner to formally make submissions to the Review Panel during a review. This does not enable all necessary information, from the appellant, interested parties and the Commissioner, to be made available to the Review Panel during the course of a review.

Amending the Customs Act to include the Commissioner as a party eligible to make submissions to the Review Panel would allow the Review Panel to access the expertise of the Commissioner in a transparent manner. This will assist the Review Panel's consideration of an application, and should lead to better informed recommendations and outcomes from the review process.

To build on this and further improve the information available to the Review Panel, the Bill will also empower the Review Panel to hold a conference for the purpose of obtaining further information. This would include the ability to hold a conference prior to commencing a review in order to obtain further information from the applicant and the Commissioner.

This will provide an opportunity for the aggrieved parties to discuss particular aspects of the reviewable decision and better understand the decision-making involved. This may avoid the need for review altogether, if the applicant decides to withdraw its application. It may also reduce the scope of the review if the applicant decides to withdraw a number of grounds for review after gaining further insight at the conference, subsequently reducing the workload on the Review Panel and interested parties making submissions. In addition, a conference will allow the Review Panel to have all the necessary information available to assess whether to accept an application.

Consistent with the purpose of increasing information available to the Review Panel, should an applicant be invited to a conference prior to the commencement of a review and then fail to attend, the Review Panel may reject the application.

The Customs Amendment Bill also seeks to replace the **International Trade Remedies Forum**.

The Forum was established in 2011 under the then government's reform package: *Streamlining Australia's Anti-Dumping System*. A number of working groups were also established, administratively, to support the Forum. The Forum met a total of six times between August 2011 and March 2013. Working groups also met during this period; and produced two reports. The Forum's last plenary meeting was in March 2013.

The Government believes that the central role of the Forum has been fulfilled. A significant number of the Streamlining reforms were 'high-level', and the Forum's main function was to provide advice on the practical implementation of those reforms. From 2011-2013, the Forum exhaustively discussed the Streamlining reforms and related issues including: access to import data; provisions to assist agricultural producers; Australia's 'market situation' provisions; use of experts in investigations; and circumvention. Given the Streamlining reforms have been implemented, the Government believes that there is no longer a need for a large regulated body such as the Forum

While the Forum proved to be a useful avenue for raising and ventilating issues, the legislated requirements of the Forum tended to work against tangible outcomes; the large number of members, coupled with differing capacities to participate and a wide range of diverging interests, made it difficult to achieve agreed outcomes. Additionally, the plenary meeting, mandated by legislation, tended to work against open or detailed discussions, with smaller working groups proving to be a more effective way of exploring and resolving issues. The meetings also required significant resources from both members and the secretariat, which can be better used elsewhere in the anti-dumping system.

The Government believes that more flexible, targeted consultative arrangements are a better fit for the emerging challenges faced by today's anti-dumping system.

The Government intends to replace the Forum with a smaller standing body. The Government is currently considering the establishment of an 'anti-dumping consultative group'. This consultative group could be established administratively and comprise a small number of members which will represent a spectrum of industry interests. The consultative group would be the Government's first port of call for feedback on anti-dumping issues, but not an exclusive source of advice.

Finally the Bills seek to make a series of **technical amendments** to Australia's anti-dumping legislation in order to address provisions which have caused, or have the potential to cause, uncertainty for Australian businesses or risk Australia breaching its WTO obligations.

Again, Chair, I thank the Committee for the opportunity to provide evidence and clarify aspects of the department's submission.

I am joined today with colleagues from the department's Anti-Dumping Policy section who will assist me in taking questions.