

**Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Industry, Innovation and Science Portfolio  
2017 - 2018 Budget Estimates  
31 May – 1 June 2017

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**AGENCY/DEPARTMENT:** DEPARTMENT OF INDUSTRY, INNOVATION AND SCIENCE

**TOPIC:** Number of preliminary affirmative determinations that have been made

**REFERENCE:** Question on Notice (Hansard, 31 May 2017, page 97-98)

**QUESTION No.:** BI-4

Senator CHISHOLM: How long do investigations normally last?

Mr Sexton: The legislation provides for 155 calendar days for dumping or a subsidy investigation. There are other categories of reviews that we also do but they are the main ones. I think I am on the record as saying that it is very difficult to conclude a complex investigation in 155 calendar days. We are currently running at an average of around 250 calendar days, which is a 20-odd per cent performance increase on what it was in the previous financial year. So we have improved our performance outcomes by about 20 per cent. I would like to think that our new investigation model will bring that down closer to the 155 days, but I am also on the record as saying that I doubt that we will ever deliver a complex case in 155 days, which is silly because the number of players involved. If we took the Australian paper application on A4 copy paper as an example, there were over 150 submissions from interested parties—four countries, many exporters—and it makes for a very complicated investigation. To get all of that wrapped up, concluded and recommended to Assistant Minister Laundy on calendar day 156—we are counting weekends in that, as I always point out—is a significant challenge for any investigating authority.

Senator CHISHOLM: My understanding is that some other jurisdictions like the USA have the ability to impose interim duties. Is that something the commission has looked at?

Mr Seymour: We have absolutely the same ability and on day 60 I am able to impose, through a preliminary affirmative determination or PAD, securities against those products and that then provides a financial obligation against those exporters who are named in the case and are subject to the final conclusion of the investigation. If the dumping recommendation from me that the minister requires a margin to be set, then that obligation taken as the security is therefore payable. It sends a very effective price signal into the market—not before day 60 of an investigation—to the players that if we think there is dumping we have taken early steps to send that signal back to the players.

Senator CHISHOLM: How often do you do that? Do you have any figures on how likely that would be?

Mr Seymour: If you like, I can take on notice the actual number of PADs that have been made. There was a significant push by the government 18 months ago to require that I either make a decision to impose a PAD security on day 60 or publish through an antidumping notice my reason for not making that decision on day 60. That means I am very focused from day zero to day 60 on ensuring that my commission investigators are gathering data sufficient to enable me to make that determination. If I cannot I say why I cannot, which is normally because I have not been able to get the data. I might make it on day 75 or day 80 in some cases, but the onus is on me to act on day 60 unless there is a good reason not to. It is quite an effective measure.

## **ANSWER**

In accordance with the Customs (Preliminary Affirmative Determinations) Direction 2015 (the Ministerial Direction) made on 2 November 2015, 60 days after initiation of an investigation the Commissioner must make a preliminary affirmative determination (PAD) or publish a status report providing reasons why a PAD was not made.

Since the Ministerial Direction was made, 13 dumping/countervailing cases have been initiated where the Commissioner has been required to publish a PAD or a status report on day 60 (as at 31 May 2017). Of those 13 cases, PADs were published at day 60 for 2 cases (hollow structural sections exported from India and the United Arab Emirates and aluminium extrusions exported from Malaysia and Vietnam). For the remaining 11 cases a status report was published on day 60. The Commissioner did not make a PAD on day 60 in those 11 instances because he was not satisfied, at that time, that there appeared to be sufficient grounds for the publication of a dumping/countervailing duty notice. Of those 11 cases where the Commissioner published a status report, a PAD was subsequently made at a later date in 6 cases.