

25 October 2016

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Dear Dr Weier,

Regulator Performance Framework Self-Assessment Report

The International Trade and Business Committee (ITBLC) of the International Law Section of the Law Council of Australia is pleased to make this brief submission in response to the Antidumping Commission (ADC)'s Regulator Performance Framework Self-Assessment Report ('the Report').

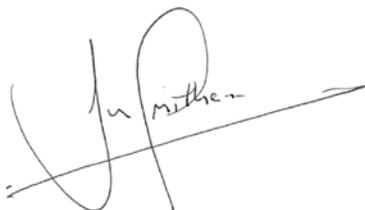
The ITBLC addresses the report in two Parts:

Part 1: Comments regarding the Framework, specifically the selection of performance benchmarks for the report and the assessment in future years.

Part 2: Comments on the performance of the ADC against the KPIs and performance benchmarks.

If you have any questions regarding this submissions, please contact the Administrator of the International Law Section of the Law Council of Australia, Ms Catherine Brims. via email: ils@lawcouncil.asn.au or via phone: (02) 6246 3758.

Yours sincerely



Jonathan Smithers
Chief Executive Officer

Part 1: Comments on the Framework

1.1 The selection of performance benchmarks and key performance indicators: specified measures and specified metrics

The Report indicates that one its key functions is to set the performance benchmarks for future reporting. The Commission has chosen six KPIs:

KPI No 1 Regulators do not unnecessarily impede the efficient operation of regulated entities

KPI No 2 Communication with regulated entities is clear, targeted and effective

KPI No 3 Actions undertaken by regulators are proportionate to the regulatory risk being managed

KPI No 4 Compliance and monitoring approaches are streamlined and co-ordinated

KPI No 5 Regulators are open and transparent in their dealings with regulated entities

KPI No 6 Regulators actively contribute to the continuous improvement of regulatory frameworks

This section will consider additional KPIs to address these performance benchmarks.

The Purpose of the Regulatory Performance Framework: the 'least burdensome way to achieve regulatory objectives'

The supplementary material provided to the ITBLC includes a statement from the Regulatory Report Team, Portfolio Strategy Policy Division, Australian Department of Industry Innovation and Science on *External Validation of RPF Self-Assessment Reports - Guidance to the Stakeholder Consultation Mechanisms*. This refers to the focus of "how regulators are administering their regulations in a **least burdensome way** while achieving their regulatory objectives and deliverables". (emphasis added)

The Australian Antidumping Commission carries out functions under Part XVB of the *Customs Act 1901* (Cth) and the *Customs Tariff (Anti-Dumping) Act 1975* (Cth). These contain provisions on antidumping measures and provisions on countervailing measures.

Anti-Dumping provisions

The regulatory objective of the anti-dumping duty provisions described above is to:

- Identify situations in which price discrimination by foreign sellers between its domestic sales and export sales is causing material injury to an Australian industry producing like goods to those being exported to Australia by the foreign sellers;
- Recommend the imposition of interim dumping measures in a way that avoids unnecessarily imposing any higher prices on any Australian consumers through the imposition of interim dumping duties in situations where it is not established that a foreign seller is engaging in price discrimination between its domestic and

export sales and/or has not caused material injury to an Australian industry producing like goods;

- Ensure that, to the extent that interim dumping measures are imposed, they are imposed only to the extent necessary to remove the material injury caused to the Australian industry by the price discrimination and not further; and
- Carry out its duties in conformity with the *General Agreement on Tariffs and Trade* ('GATT'), and the World Trade Organisation (WTO) *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ('Antidumping Agreement').

The Commission would be administering the antidumping regulations in a way that is *more burdensome than necessary to achieve their regulatory objectives* if interim duties were imposed in situations in which it is not established that foreign sellers are price discriminating between their local market and the Australian market or it is not established that the price discrimination is causing injury to the relevant Australian industry.

Countervailing Duty Provisions

The regulatory objective of the countervailing duty provisions described above is to

- Identify situations in which a foreign seller's exports are subsidised by the government in the country of export and such subsidisation is and this causes material injury to an Australian industry producing 'like goods' to those being exported to Australia by the foreign sellers;
- Recommend the imposition of interim countervailing duties in a way that avoids unnecessarily imposing higher prices on any Australian consumers through the imposition of interim countervailing duties in situations where the foreign seller's exports have not received government subsidies and/or have not caused material injury to an Australian industry producing like goods;
- Ensure that, to the extent that interim countervailing measures are imposed, they are imposed only to the extent necessary to remove the material injury caused to the Australian industry by the subsidisation and not further; and
- Carry out its duties in conformity with the GATT, and the WTO *Agreement on Subsidies and Countervailing Measures* ('Subsidies Agreement').

The Commission would be administering the regulations in a way that is *more burdensome than necessary to achieve their regulatory objectives* if interim countervailing duties were imposed where it has not been established that a foreign government is subsidising products which are exported, or it has not been established that the subsidised imports are causing injury to the relevant Australian industry.

Additional KPIs on 'the least burdensome way'

Burden on Consumers

The ITBLC recommends that, given that the purpose of a Regulatory Performance Framework is to assess whether objectives are being achieved in a least burdensome way,

the Report should include an assessment of whether the burden imposed on Australian consumers through the imposition of antidumping or countervailing measures is the least burdensome that could be imposed by measures which do impose duties on dumped (through price discrimination) or subsidised imports which are causing material injury to a relevant Australian industry. This should take account of the possibility that measures may have been imposed on imports which were not dumped (through price discrimination) or subsidised or which did not cause material injury to an Australian industry. This should also take account of whether the way in which the regulation is administered minimizes the extent to which the imposition of duties on dumped or subsidised imports deters exporters from selling and importers from buying goods that are not dumped or subsidised and the extent to which this has an impact on the availability and price of goods on the market in Australia. In the absence of this kind of analysis, it is not possible to determine whether the Commission is carrying out its functions in a way that achieves its objectives in a least burdensome way.

In summary, **the ITBLC recommends** that the following KPIs should be included:

KPI No 1A: Has the Regulator exercised reasonable diligence to avoid unnecessary burdens on Australian consumers by ensuring that dumping duties are not imposed in situations where foreign sellers are not price discriminating between its domestic and export sales and/or has not caused material injury to an Australian industry producing like goods?

KPI No 1B: Has the Regulator exercised reasonable diligence to avoid unnecessary burdens on Australian consumers by ensuring that countervailing measures are not imposed in situations where the foreign seller's exports have not received government subsidies and/or have not caused material injury to an Australian industry producing like goods?

The Public Interest

When the Minister receives recommendations from the ADC, there are no limits preventing the Minister from taking into account any matter beyond the technical determinations - such as dumping, subsidies, injury and causation - in deciding whether a measure should be imposed. In the Australian Federal Government's report, *Streamlining Australia's anti-dumping system: An effective anti-dumping and countervailing system for Australia*, the Government determined that it was within the Minister's power to take into account the 'public interest' in deciding whether or not to impose antidumping measures. Matters that the Minister may take into account include the effect that measures may have on the Australian market, including any significant impact on the market, as well as on market concentration, domestic prices and the effect on downstream industries.

Given that the Act gives the Minister a broad discretion to decide whether to accept the recommendation of the ADC, then the regulatory objective of the Act must be regarded as being the imposition of measures to deal with price discrimination or with subsidisation except where the Minister exercises a discretion not to apply such measures even through the technical requirements for their imposition have been met. Such a circumstance could arise if the Minister formed the view that the benefit of the imposition of duties to the Australian industry was outweighed by the detriment to the wider Australian public and economy through increased costs resulting from the imposition of such duties.

If the Minister is not able to exercise that discretion in an informed way, then that would likely result in imposition of measures in situations in which the Minister may have otherwise exercised a discretion not to impose the measures. This would impose a burden on Australian consumers where no burden would have been imposed but for the absence of relevant information being supplied to the Minister. Therefore, the Commission does not achieve the objectives of the regulation in a least burdensome way if it failing to pass on to the Minister all information available that might inform the Minister in the exercise of the discretion whether to impose measures.

Therefore, **the ITBLC recommends** the inclusion of the following KPI:

KPI No 1C: Has the Regulator exercised reasonable diligence in ensuring that the recommendations to the Minister are accompanied by comprehensive explanations of any submissions made by interested parties on any matters that could be taken into account by the Minister in exercising a discretion whether to impose measures, including the impact on the market, domestic prices and the effect on downstream industries or any other matter relevant to assessing whether the imposition of dumping or countervailing measures would be in the public interest?

The Duration of Decision Making Processes

From the time that an investigation begins until the completion of the process, many parties are affected. Those suffering injury from dumped or subsidised imports are affected. In addition, those wishing to purchase imported goods are affected in several ways: they incur costs responding to investigations, they incur costs paying duties or lodging securities, and their business decision making is hampered by the uncertainty of not knowing the price at which they can import goods. All of the adverse impacts are prolonged if the decision making process extends beyond the intended timelines. The process accommodates the impact on the petitioning firms with a system of interim measures, so that they are not disadvantaged if the timelines are exceeded. However, the system has no features to minimize the disadvantage to importers arising from timelines not being met. Therefore, the failure to meet timelines for investigations increases the burden on affected importers. To the extent that the extensions of time could have been avoided, then the extensions of the duration of investigations indicates that the regulatory objectives are not being achieved in a least burdensome way.

Therefore, **the ITBLC recommends** the inclusion of the following KPI:

KPI No 1D: Has the regulator met the timelines for investigations set out in the Act, and if not, whether any extensions to the timelines were appropriate for achieving the objectives of the regulation taking into account both the objective of providing a diligent response to the application and the objective of minimising the burden on other affected parties?

1.2 Comments on the KPIs, Measures and Final Metrics included in the Draft Regulator Performance Framework Self-Assessment Report

This section provides comments on the KPIs, Measures and Final Metrics that have been included in the Draft Regulator Performance Framework (RPF) Self-Assessment Report.

KPI No 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

One of the specified metrics is:

Implementation of the Commission's International Engagement Strategy to reflect conformance with the WTO Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures.

The ITBLC recommends that this KPI is not sufficient to provide a useful indication of whether the Regulator is acting in a way that is the least burdensome way to achieve its objectives.

The KPI should be modified so as to assess whether there has been any impact on prices to consumers in the Australian market which is more than necessary to achieve the objectives. This factor would supplement the additional KPIs suggested above: KPI No 1A, KPI No 1B, KPI No 1C and KPI No 1D as described above.

The ITBLC recommends that the Commission should have a more active role in compliance and enforcement to monitor whether the actions being taken by the Department of Immigration and Border Protection (DIBP) serve the outcomes intended by the imposition of the measures to protect Australian industry from material injury rather than being imposed on unintended goods and serving merely to raise revenue and create uncertainty on the application of the measures. That could be adopted by reviews at each 6 and 12 month periods from the imposition of measures. Ultimately, the Commission should not accept that its obligations end at the decision whether to impose measures and in what manner. The results of its work need to be addressed by the Commission

KPI No 2: Communication with regulated entities is clear, targeted and effective

One of the specified measures is:

No 3. Decisions, reasons for decisions and advice provided by the Commission to affected entities are readable and understandable.

One of the specified metrics is:

Information provided to entities, including decisions, reports and notices will be readable and consistent with Anti-Dumping legislation, policies and guidelines, and/or decisions made by the Commission, via merits or judicial reviews.

The ITBLC recommends that this KPI should also assess whether the Commission provides decisions, reasons for decisions and advice in way that enable the readers to determine the way in which decisions on questions of fact were made and to determine the approach taken by the Commission to questions of law in such a way as to enable

affected entities to assess whether the Commission has acted in accordance with Australian law and with Australia's obligations under international law.

The ITBLC recommends that this KPI should also indicate whether the Regulator has circulated any proposed legislative and practice changes among all interested parties before moving to implementing them. This could be facilitated both by notice of the proposed change on the Commission website but also by direct communication to members of the Commission's International Trade Remedies Forum (ITRF) and direct engagement on those proposed changes.

The ITBLC recommends that the ITRF should meet more regularly at least once every 4 months and that its membership should be expanded to include associations representing freight forwarders and licensed customs brokers who are involved in the carriage and border clearance of goods which could be subject to anti-dumping or countervailing measures and who directly engage with exporters and importers of those goods. We also recommend that a representative be appointed to represent SMEs.

KPI No 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

One of the specified measures is:

No 2. The Commission adopts a risk-based approach to its investigations, evidence gathering and decision-making based on the regulatory risks being managed.

One of the specified metrics is:

Evidence of data being collected during investigations being based on risks and risk-profiles.

The ITBLC recommends that this needs to specifically mention the Regulators approach to questions of interpretation of law. The report should assess whether the Regulator has taken interpretations of law that are consistent with Australia's obligations under international law. Further the report should assess whether the Regulator has taken interpretations of law that are conducive to achieving the objectives of the regulation while minimizing the detrimental impact on the Australian community through higher prices.

KPI No 4: Compliance and monitoring approaches are streamlined and co-ordinated

The specified measure is:

The Commission does not have a compliance role once duties are applied on imports of certain goods. The Department of Immigration and Border Protection monitors compliance; however, the Commission will adopt a whole of government approach.

The specified 'final metric' is:

The Commission will put in place enhanced arrangements to continually promote robust whole of government collaboration to strengthen the anti-circumvention and compliance framework.

The ITBLC recommends that one of the metrics for this KPI should be that the ADC operates an effective system for giving binding rulings on whether goods would be subject to dumping or countervailing measures. The ITBLC recommends that the Commission and the DIBP should develop a rulings system whereby parties can receive binding advice as to whether goods to be imported into Australia are subject to anti-dumping and countervailing duties and on what basis. Those rulings should be made public but with confidential information de-identified. This has been recommended by the Law Council of Australia ('Law Council') on a number of occasions and would then form a clear basis for importers and their service providers.

The ITBLC recommends that the Commission should have a more active role in compliance and enforcement to monitor whether the actions being taken by the DIBP serve the outcomes intended by the imposition of the measures to protect Australian industry from material injury rather than being imposed on unintended goods and serving merely to raise revenue and create uncertainty on the application of the measures. That could be adopted by reviews at each 6 and 12 month periods from the imposition of measures and could also be facilitated by the Commission being a member of the Compliance Advisory Committee convened by the DIBP under the auspices of the National Committee on Trade Facilitation (NCTF)

KPI No 5: Regulators are open and transparent in their dealings with regulated entities

The first of the two specified measures is:

The Commission communicates the evidence-base and approach used in the regulatory decision-making processes to regulated entities.

One of the specified 'final metrics' is:

Publication of all decisions and reasoning.

The ITBLC recommends this KPI should also assess whether the Commission provides decisions, reasons for decisions and advice in a way that enable the readers to determine the way in which decisions on questions of fact were made and to determine the approach taken by the Commission to questions of law in such a way as to enable affected entities to assess whether the Commission has acted in accordance with Australian law and with Australia's obligations under international law.

The ITBLC recommends that one of the metrics for this KPI should be whether the publication of dumping margins and countervailable subsidies is done in a sufficiently detailed manner to enable interested parties to understand all of the Commission's steps in making those calculations. Publishing final dumping margins without accompanying details of how they are arrived at would not achieve the standard required by this metric or KPI.

Ministerial decisions and Commission ADC reasoning does not adequately provide details of the "national interest" and "downstream effects" consequences of proposed measures in the manner contemplated by the "Streamlining the Australian anti-dumping system" publication from then (then) Australian Customs and Border Protection Service in 2011.

Therefore, **the ITBLC recommends** one of the final metrics for this KPI should be whether the Commission's reports to the Minister have included a clear and complete description

of any submissions made by the interested parties on "national interest" and "downstream effects" consequences of proposed measures.

The ITBLC recommends that the Commission should provide a system for provision of "confidential information" to legal practitioners for the parties subject to enforceable undertakings.

The ITBLC recommends the point made under KPI No 2 is also relevant to KPI No 5: that this KPI also should involve an assessment of whether the Commission provides decisions, reasons for decisions and advice in way that enable the readers to determine the way in which decisions on questions of fact were made and to determine the approach taken by the Commission to questions of law in such a way as to enable affected entities to assess whether the Commission has acted in accordance with Australian law and with Australia's obligations under international law.

KPI No 6: Regulators actively contribute to the continuous improvement of regulatory frameworks

The 2 specified measures are:

Establish and maintain cooperative and collaborative relationships with stakeholders to promote trust and improve the efficacy and effectiveness of the regulatory framework.

The Commission regularly shares feedback from stakeholders and performance information with policy areas to improve operation of the regulatory framework.

One of the specified 'final metrics' is:

Procedures are in place to facilitate the regular flow of information between policy areas and the Commission regarding stakeholder feedback and performance through joint Ministerial briefings, policy development and reforms.

The ITBLC recommends that one of the final metrics should be that procedures are in place to ensure that any considerations of improvement of the regulatory framework take into account the full range of interests affected by the regulatory framework including those who benefit from the dumping or countervailing measures and those who are harmed by the actual or threatened dumping or countervailing measures.

The ITBLC recommends that meetings of the ITRF and its sub - committees should be on a more regular basis as stated above and that communication to those parties should also be on a more regular basis by communication of developments on a monthly basis including details of the progress of investigations.

The ITBLC recommends that the Commission should amend the regulation of investigations so that legal representatives of parties should be able to secure access to confidential versions of submissions and other documents subject to a confidentiality undertaking in the same manner as happens in Administrative Appeals Tribunal (AAT) cases relating to the classification and Tariff Concession Order provisions of the Customs Act. That would enhance transparency and ease of engaging in investigations. This would

be consistent with United States practice and the submissions of the Law Council to the Productivity Commission in 2009 and raised subsequently in other forums.¹

The ITBLC recommends that the Commission should engage with the NCTF as the imposition of measures, in the absence of a ruling system, can cause an impediment to facilitation. The Commission should report on revenues collected and prosecutions by the DIBP based on anti-dumping and countervailing measures in its own reports.

The ITBLC recommends that the Commission should review its approach to considering applications for measures so that it has clearer ideas on goods, markets and industries affected by the investigation before investigations commence and before measures are imposed in a general way which does not reflect the position of specific exporters. Many investigations are delayed due to ambiguities in the description of the goods affected and many measures are imposed on goods which were not intended to be affected by measures. Many exporters receive anti-dumping and countervailing measures which only reflect "averaging" not their specific costings. This leads to many applications for exemptions for measures and requests for final determination of measures which consume much of the Commission's time

¹ Joint submission dated 1 July 2009 of the Law Council of Australia and the Law Institute of Victoria to the Productivity Commission Inquiry into Australia's Antidumping and Countervailing Duty System (Available at <http://www.pc.gov.au/inquiries/completed/antidumping/submissions/sub029.pdf> ,Submission No 29) at page 8-9; And Joint Submission dated 9 November 2009 of the Law Council of Australia and the Law Institute of Victoria responding to the draft report of the Productivity Commission on Australia's Antidumping and Countervailing Duty System. (available at <http://www.pc.gov.au/inquiries/completed/antidumping/submissions/subdr056.pdf> ,submission 56).

Part 2 – Comments on the Regulator Performance Framework Self-Assessment Report for the Year 1 July 2015 to 30 June 2016

KPI No 1 Regulators do not unnecessarily impede the efficient operation of regulated entities

One of the specified metrics is:

Implementation of the Commission's International Engagement Strategy to reflect conformance with the WTO Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures.

The ITBLC recommends that the report ought to also mention, in relation to this KPI, the following:

The Commission took a particular approach to Regulation 43 which enables the Commission to depart from using the records of the exporter in determining the cost of inputs.²

During the period, a WTO panel report was released which indicated that the presence of government intervention was not a sufficient reason to depart from using the records in the books of the exporter as the basis for constructed cost.³

Despite the release of the WTO panel report, the Commission did not change its approach to applying regulation 43. If proved to be the wrong approach, this will have resulted in increases in prices to Australian consumers which are more burdensome than was necessary for the achievement of the objectives of the regulation.

The ITBLC recommends further that in relation to the achievement of this KPI:

The report should record that in cases where interested parties, before importing goods, have sought a ruling on whether the goods would be subject to an existing AD or CV order, neither the Department of Immigration and Border Protection (DIBP) nor the Commission will issue rulings on whether the goods would be subject to ADD or CVD. This contrasts with the situation in which interested parties can seek advance rulings on customs classification, valuation or origin from the DIBP. The ITBLC believes that it would be consistent to the relevant KPIs for such a ruling system to be available.

The report should provide a review of the cases in which interim securities were imposed to determine the period that those interim securities were left in place until the decision of the Minister is made on whether interim measures are to be imposed. The ITBLC is concerned that when an investigation period is extended for whatever reason, the interim securities remain in place for an unreasonably long period. That review should compare those periods to those prescribed by the article 7.4 of the Anti - Dumping Agreement. In any event, whether the periods do exceed the period in article 7.4 or not, the lengthy

² Regulation 43(2) of the *Customs (International Obligations) Regulations 2015*.

³ European Communities - Antidumping Duties on Biodiesel from Argentina, WT/DS473/R, circulated 29 May 2016 (since then, on 6 October an Appellate Body report was circulated, which confirmed this particular finding.)

imposition of interim securities creates significant uncertainty for exporters and Australian importers which places them at a significant commercial disadvantage and is an unnecessary imposition on their operations.

The report should provide a review of cases to display the number of parties who have sought exemptions from particular measures or a final determinations of duty in relation to particular measures recorded against those measures. In both cases, the review should identify the reasons for the applications for exemption or final determinations of duty. The Commission has already reported that a significant portion of resources are taken up with these assessments. The ITBLC is concerned that these types of applications reflect that measures have been imposed on a category of goods which is too broad meaning that measures are imposed on goods not the true cause of the material injury alleged by the Australian industry. That problem is exacerbated by the inability of the Commission to change the description of goods during an investigation. The ITBLC is also concerned that the use of "averaging" or "major exporters" as the basis for calculating values and dumping margins means that many exporters are subjected to measures which are not indicative of their own prices requiring them to wait for the opportunity to seek a Final Determination of duty.

KPI No 2 Communication with regulated entities is clear, targeted and effective

One of the specified measures is:

No 3. Decisions, reasons for decisions and advice provided by the Commission to affected entities are readable and understandable.

One of the specified metrics is:

Information provided to entities, including decisions, reports and notices will be readable and consistent with Anti-Dumping legislation, policies and guidelines, and/or decisions made by the Commission, via merits or judicial reviews.

The ITBLC recommends that the report ought to also mention, in relation to this KPI, the following:

The Report should record that the system for confidential information and publication of non-confidential versions often results in the non-confidential versions being provided in a way that other interested parties cannot review actual information (including calculations of normal value, export price and dumping margins) which affects their interests. The Law Council has had a long-standing concern that the anti-dumping and countervailing system allowing for the "confidential" provision of documents and submissions should also allow for those confidential versions to be released to legal practitioners for other parties on the basis of "undertakings to retain confidentiality".⁴ This would be consistent with the process used in the AAT in "customs" cases. Such a practice would consistent to the KPIs and allow for transparency in investigations and the imposition of measures

The report should record that the two meetings of the ITRF took place in August and December 2015 and while this met the aim of meeting twice a year, no further meetings took place in the 2015/2016 year even though there were important developments during that period. None took place until September 2016. The ITBLC believes that a gap of 6

⁴ See above Fn referring to the submissions to the Productivity Commission in 2009.

months from December 2015 to June 2016 is too long and that meetings should be scheduled better to assist in the aims of the ITRF with the option for additional meetings.

KPI No 4 Compliance and monitoring approaches are streamlined and co-ordinated

The specified measure is:

The Commission does not have a compliance role once duties are applied on imports of certain goods. The Department of Immigration and Border Protection monitors compliance; however, the Commission will adopt a whole of government approach.

The specified 'final metric' is:

The Commission will put in place enhanced arrangements to continually promote robust whole of government collaboration to strengthen the anti-circumvention and compliance framework.

The ITBLC recommends that the report ought to also mention, in relation to this KPI, the following:

The absence of the availability of rulings constitutes a significant impediment to exporters, importers and their service providers as they are all exposed not only to claims for underpaid duty but also to penalties if they are in error in declaring and paying AD or CV duties (even if that error is inadvertent). Those errors could also expose licensed customs brokers to action by the DIBP against their licences. As mentioned above, the ITBLC urges the Commission to work with the DIBP on a collaborative system to provide such rulings or advices.

As stated above, the ITBLC believes that the report should set out the impact of measures it imposes on specific exporters and whether the measures have had the effect of redressing alleged material injury claimed by the Australian industry. This is not assessed by the DIBP and the Commission should report the effect of measures it imposes.

KPI No 5 Regulators are open and transparent in their dealings with regulated entities

The first of 2 specified measures is:

The Commission communicates the evidence-base and approach used in the regulatory decision-making processes to regulated entities.

One of the specified 'final metrics' is:

Publication of all decisions and reasoning.

The ITBLC recommends that the report ought to also mention, in relation to this KPI, the following:

As stated above, the ITBLC believes that the report should include reference to the comments made by the ITBLC and others regarding making confidential documents available to legal practitioners subject to undertakings

As also stated above, the ITBLC believes that Commission decisions should openly disclose calculations of export price and normal value as well as dumping measures. The failure to do so creates uncertainty.