

## 4 May 2015 Hearing of the Senate Economics Committee

### Department of Industry and Science

#### Responses to questions taken on notice

##### Question

**Senator KIM CARR:** Thank you. On page 11 of the submission you state that, from 2011 to 2013, the forum appears to have exhaustively discussed the streamlining of reforms and related issues. Can you give me the minutes of those meetings?

**Mr Trotman:** I do not have them with me, but I can arrange for those to be provided to the committee.

##### Answer

Minutes of the following meetings of the International Trade Remedies Forum are attached:

- ITRF 1: 29 August 2011
- ITRF 2: 15 December 2011
- ITRF 3: 1 May 2012
- ITRF 4: 31 August 2012
- ITRF 5: 4 December 2012
- ITRF 6: 25 March 2013

##### Question

**Senator KIM CARR:** In the department's view, is the government breaching the law by not meeting and not establishing that body as it is currently legislated?

**Mr Trotman:** Again, I am probably not equipped to answer that; I am not a lawyer. But I would expect that the government is able to hold various forums and meet with various individuals as it sees fit.

**Senator KIM CARR:** Yes, that is true. They can meet with anyone they like. But they are not following the law as it is currently legislated by doing it in that manner. Is that correct, or not?

**Mr Trotman:** That is right. The forum has not met since March 2013, and there is a requirement in the current legislation for it to meet twice per year.

**Senator KIM CARR:** What is the remedy for breaches of the law here?

**Mr Trotman:** I do not know the answer to that, Senator.

**Senator KIM CARR:** Do you want to take that on notice?

**Mr Trotman:** I can do.

##### Answer

The International Trade Remedies Forum held its last plenary meeting on 25 March 2013. Part XVC of the *Customs Act 1901* requires that the Forum meets twice per calendar year. The Forum had one meeting in 2013, no meetings in 2014 and no meetings to date in 2015. There are no remedies or penalties prescribed by the *Customs Act 1901* for not holding meetings of the Forum as prescribed by Part XVC.

## Question

**Senator KIM CARR:** It is just that both the MTA and the unions have raised concerns that the amendment proposed here changes the definition of a subsidy. That will impose an additional burden on industry and the Anti-Dumping Commission. So can you please tell me: what is the purpose of that amendment?

**Mr Stockwell:** The definition of subsidy is being aligned closer to the WTO agreements, on which the antidumping countervailing system is based. It will bring the definition into alignment with the agreement on subsidies and countervailing measures and international jurisprudence from the WTO.

**Senator KIM CARR:** So it is because of the WTO; that is the rationale is it?

**Mr Stockwell:** That is correct.

**Senator KIM CARR:** Can you—on notice—tell us precisely what it is in the WTO that would prevent the old definition from applying?

**Mr Stockwell:** Yes, we can take that on notice.

## Answer

The current definition of subsidy in the *Customs Act 1901* deems certain direct financial payments by governments and certain bodies, on its own, to confer a benefit and therefore meet the legal definition of a subsidy. The World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement) requires more consideration than merely if a direct financial payment has been made and what type of body made the payment. Rather the SCM Agreement requires that such a payment has in fact conferred a benefit – that is, the payment must be examined to see if the recipient obtained a benefit as a result.

The Bills will amend the definition of subsidy in the *Customs Act 1901* so that the receipt of a financial contribution by a government or certain bodies does not, of itself, confer a benefit. The amendment proposed in the Bills will remove the automatic deeming of a benefit in these circumstances and replace it with a test to determine if a benefit has been conferred. The test will establish that a financial contribution is taken to confer a benefit if it is provided on terms that are more advantageous than those that would have been available on the market. This test is consistent with WTO dispute panel jurisprudence that has considered the application of the SCM Agreement. This aligns the *Customs Act 1901* with the WTO SCM agreement – in particular, Article 1 and Article 14.

## Question

**Senator XENOPHON:** My final question is: in terms of the assistance that can be given through the International Trade Remedies Advisory Service, can you put on notice the level of resources you have? On notice, can you also confirm: where does the assistance stop? If there was going to be a full-blown review or case, you do not have the resources to provide that assistance to a company like Tindo Solar, do you?

**Mr Trotman:** I think the resources that we have in play at the moment are actually assisting Tindo Solar to the fullest extent. There is a point—

**Senator XENOPHON:** No, do not say 'fullest extent'. What does that mean? It does not mean that you can have people turning up and arguing the case if it goes all the way.

**Mr Trotman:** The International Trade Remedies Advisor who is in the role at the moment has represented Tindo Solar in discussions with the—

**Senator XENOPHON:** That is not my question. I am sure that it is appreciated—

**Mr Trotman:** I am happy to take it further.

**Senator XENOPHON:** As I understand it, Tindo were given a quote a few years ago that if they were going to go to a private law firm to fight this all the way it would cost \$1 million, which is just

ridiculous for a company with 20 or so employees. I appreciate the work the service is doing—I think people, generally, appreciate it—but can you spell out at what point does the service stop being able to give advice because of its resource constraints.

**Mr Trotman:** I am very happy to provide that on notice, and we will get back to you before COB tomorrow.

## Answer

The new ITRA Service is designed to facilitate appropriate access to the anti-dumping and countervailing system for Australian small and medium sized businesses (SMEs).

As part of the reforms package the number of advisors under the service has been tripled from one to three. As the advisors will be required to visit stakeholders, funding for travel is also provided.

Amongst other tasks, the three advisors will:

- (a) Provide potential SMEs seeking to access the anti-dumping system with advice, either in person or via phone and e-mail, regarding dumping and subsidisation, possible remedies, investigations and related processes, application requirements, duty assessment processes, appeals processes, etc;
- (b) Work with businesses to assist them to prepare applications, including applications for dumping and/or countervailing investigations, reviews and continuation inquiries;
- (c) Assist interested parties to participate in investigations, for example, by providing assistance with making submissions to an investigation, inquiry or review etc;
- (d) Facilitate cooperation between SMEs to ensure their applications reach the “25 per cent of domestic producers of like goods” and “more support than opposition” thresholds for applications; and
- (e) Raise awareness of Australia’s anti-dumping system among SMEs.

The advisors will prioritise any work involved with the development of anti-dumping investigation applications. The advisers are capable of servicing multiple SMEs simultaneously, although the number of SMEs that the advisers can assist at any one time will be dependent on the circumstances and complexities of each individual matter.

It is outside the scope of the ITRA service to provide assistance with merits review and judicial review, although the ITRAs are able to assist SMEs to understand what avenues of review are available.