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THE NEW AUSTRALIAN ANTI-DUMPING COMMISSION

From 1 July 2013, the anti-dumping and countervailing functions of Australian Customs and Border Protection have been moved to a stand alone body known as the Australian Anti-Dumping Commission. This new commission is headed by a commissioner, Mr Dale Seymour. The Commissioner is responsible for the same types of matters that the CEO of Customs used to have carriage of for trade remedies and he reports directly to the responsible Federal Minister.

The creation of a stand alone trade remedies body in Australia is not completely new with the old anti-dumping authority having been abolished in the 1990s. The latest incarnation is the result of the Brumby Report handed down in November 2012. Former Victorian Premier, John Brumby, was commissioned with the task of reviewing the administrative structures associated with trade remedies. He recommended that there be a stand alone body and that it be based in a major capital city. The anti-dumping commission based in Melbourne and Canberra. Significant reasons cited by Mr Brumby for this institutional change is that it would give international trade remedies a justifiably higher profile. The imposition of anti-dumping and countervailing measures can have a huge impact on businesses and industries as a whole. The rigorous Investigation process and the real consequences of the imposition of measures do justify the allocation of more resources and a higher profile.

The appeal mechanism introduced as part of the suite of changes is the creation of the anti-dumping review panel, which replaces the previous Trade Measures Review Officer. The panel is composed of three individuals. The head of the panel is former Federal Court Judge, Michael Moore. The other panellists are Joan Fitzhenry and Graham McDonald. Mr McDonald is a former head of the Commonwealth Administrative Appeals Tribunal. It remains to be seen as to how appeals are administered by the review panel, but it is noted

that the senior member has a certain amount of discretion on how the review panel will be constituted in particular cases. Further, the review panel has the power to remit matters to the ADCA for reinvestigation.

In addition to these administrative changes, the new ADC has the responsibility of implementing a significant number of legislative changes to do with international trade remedies. For example, one major change is the introduction of an anti circumvention enquiry. This is not a traditional anti-dumping complaint, but rather a complaint that can be initiated where an exporter is taking steps to circumvent existing dumping or countervailing notices. Following types of activities may amount to circumvention:

- where parts of goods that would have been subject to a dumping and/or countervailing notice are exported to Australia and assembled into final goods;
- the exporting of goods through one or more third countries so that the country of origin is not the country subject to the dumping and/or countervailing notice;
- the minor modification of goods so that they do not strictly fall within the ambit of the dumping and/or countervailing notice.

It is imperative that international trading community be relatively up to date with these reforms, particularly in an environment where there are a number of investigations underway at present involving a diverse range of products.

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