

# Manufacturers' Trade Alliance\*

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Dear Secretary,

**PUBLIC FILE**

## **Submission to the “*Proposal to remake the Statistics Determination 1983*”**

Please find a submission by the Manufacturers' Trade Alliance (“MTA”) to the Consultation paper for the Proposal to remake the Statistics Determination 1983.

The MTA includes the following member companies (with contact details):

*[Membership details]*

On behalf of the Manufacturers' Trade Alliance

\*The Manufacturers' Trade Alliance (MTA) is an informal group of Australian manufacturers and producers that have applied experience with the Australian Anti- Dumping system.

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The Manufacturers Trade Alliance (“MTA”) is an informal forum composed of Australian manufacturers and producers that have applied experience with the Australian Anti-Dumping system.

The purpose of the MTA is to provide strategic advice and feedback to government on the effectiveness of the Anti-Dumping system in delivering a level playing field for Australian manufacturers and producers. This includes seeking out opportunities for improvement within the broader Anti-Dumping system (policy, procedure, application and execution).

The MTA supports an anti-dumping and countervailing system that provides effective, proportionate and timely remedies to address dumping and subsidisation. We also note that WTO trade rules do not consider anti-dumping actions to be an exception to these rules, nor a form of protectionism. We firmly believe that Australian manufacturers and producers have a right to expect that the conditions of competition will be those that result from natural competitive advantages and that they will not be exposed – unilaterally – to injurious dumping and subsidisation.

It is in the context of ensuring that appropriate data is available (within the current legislative framework) to inform interested parties in applying for and making submissions in Anti-Dumping Commission cases, and to assist stakeholders to assess the market impacts of anti-dumping and countervailing measures imposed by the Anti-Dumping Commission, that the MTA provide this submission.

Based on MTA members’ practical experience over many years within Australia’s Anti-dumping system we welcome the opportunity to contribute to the current Proposal to remake the Statistics Determination 1983.

## Background

The *Census and Statistics Act 1905* (the Act) provides the Australian Statistician with the authority to collect, compile and publish statistical information. Section 13 of the Act provides for the Minister to make determinations allowing for the release, with the approval in writing of the Statistician, of certain information<sup>1</sup> collected under the Act. Section 13 contains a provision that information of a personal or domestic nature cannot be released or otherwise disclosed in accordance with a determination in a way that is likely to enable the identification of a person.

*The Determination* is made under Section 13 and complements the Act by setting out additional circumstances under which the ABS may release statistical information collected under that Act. The Determination sets out:

- what information can be released;
- whether the information can be released publicly, or released to select recipients only; and
- any conditions that apply to how recipients may use that information.

The Determination sunsets on 1 October 2018.

The Determination enables the ABS to release detailed statistical information to a wide range of users for analysis and to input into the decision-making processes of governments, businesses and individuals.

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<sup>1</sup> Under Section 13 of the Act, determinations may provide for ‘...the disclosure, with the approval in writing of the Statistician, of information included in a specified class of information furnished in pursuance of this Act.’

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In specific circumstances, the Determination allows for the public<sup>2</sup> or limited<sup>3</sup> release of statistical information that may identify a business or organisation, but this is done within a set of controls that will not be changing as a part of the remake. For example, the current Determination enables the ABS to release, to certain government entities only, lists containing certain business characteristics, such as names and addresses, if those entities use that information for statistical purposes only and do not on-disclose this information.

The Determination is a necessary and useful part of the ABS' legislative framework and needs to be remade in a new instrument prior to its sunset on 1 October 2018.

The consultation paper sets out proposed changes to the Determination to ensure it remains fit-for-purpose and is aligned with the Government's Public Data Policy Statement to:

*"...optimise the use and reuse of public data; to release non sensitive data as open by default; and to collaborate with the private and research sectors to extend the value of public data for the benefits of the Australian public."*<sup>4</sup>

The proposed changes to the Determination do not substantially alter the intent or design of the current Determination or the strict controls that govern the specific circumstances under which information may be released on a public or limited basis. The proposed changes provide further enabling authority for the ABS to increase the value of statistical outputs pertaining to businesses and organisations.

## MTA Commentary on the proposed changes to the Determination.

Access to Australian Bureau of Statistics ("ABS") trade data is vitally important for interested parties seeking to apply for anti-dumping and/or subsidy measures and to make submissions in Anti-Dumping Commission cases. Transparency of trade data also assists stakeholders to assess the impact and effectiveness of anti-dumping and countervailing measures, including the identification of non-compliance and circumvention of measures.

The ABS is a critical source of trade data for interested parties. The ABS' approach to the release of data is subject to legal constraints under the *Census and Statistics Act 1905* and the *Statistics Determination 1983*.

The MTA members firmly contend that the unduly restrictive suppression of import trade data by the ABS on confidentiality grounds imposes critical time constraints, additional costs and increased difficulty for Australian manufacturers and producers in:-

- The assessment and preparation for lodging a potential anti-dumping application;
- The investigation phase of an anti-dumping inquiry; and
- Following the imposition of measures, the assessment of the effectiveness or otherwise of any imposed measures, including the detection of circumvention activities

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<sup>2</sup> A public release of information is done without restriction and can be used, re-used and on-disclosed for any purpose. Public releases include ABS publications, info graphics and supporting commentary.

<sup>3</sup> A limited release of information comprises any release of statistical information that is to select recipients only and may include restrictions on how that information may be accessed, used, re-used or on disclosed to additional parties. Limited releases may be for a finite time only and depending on the circumstances, recipients may be specified individuals or entities, or may be any person who satisfies an assessment or suitability check. Limited releases include lists of business characteristics and confidentialised unit record files.

<sup>4</sup> Australian Government Public Data Policy Statement, 7 December 2015, ([www.pmc.gov.au](http://www.pmc.gov.au)).

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The MTA notes that in many other countries all trade statistics are widely published without suppression, leading to a situation where Australian exporters are forced to openly compete, whilst Australia seems to be inordinately protecting import competitors to our local industry.

The MTA is also concerned with the current process for the requesting and granting of the suppression of import statistics. Respectfully, the process lacks both transparency and procedural fairness for the impacted domestic manufacturing industry, as it is not afforded the opportunity to provide input into whether or not the data may already be accessible or in the public domain, a key consideration in the granting of import data suppression orders. Consequently, the current suppression application process allows for and even encourages the gaming of the system by parties keen to disguise or hide unfair trade practises from scrutiny.

MTA members also contest the ABS's interpretation of the legislation that import statistics at the tariff commodity level by country would enable the identification of a particular person or organisation. Whilst an importer or exporter may be able to demonstrate to the ABS that in one particular month, all the export statistic data exactly matched the details of their imports, nobody else, apart from the company and Border Force knows this.

To the MTA member's knowledge, no single trader, importer or exporter has or will likely have exclusive rights to export or import all the possible goods that are encompassed within a tariff code for any particular country.

As such, the MTA believe that the current ABS operating policy is facilitating unfair trade that exacerbates injury to Australian manufacturers and producers. MTA strongly contends that the publication of such import data should be included in circumstances where broadly equivalent data is (publicly) available from other sources.

The MTA recommends to this review that the proposed changes include an increased range of de-identified import data statistics be made available to interested parties in the following manner:-

- (i) The ABS not grant confidentiality restrictions to import trade statistics at a country level by tariff code unless an importer or exporter can demonstrate over a 12 month period that they are the sole importer or exporter of all the products within that tariff code from a particular country.
- (ii) The ABS not make import trade statistics confidential unless Australian industry members have been afforded the opportunity to demonstrate that similar information has been published by, or is available to the public, from a business, organisation or any official or government body.
- (iii) For SME manufacturers of capital goods, (where access to detailed information from the ABS is critical to the future of the enterprise), the ABS not grant confidentiality restriction to import trade statistics at a country level by tariff code."
- (iv) Where the ABS is satisfied that the circumstances in (i) and (ii) are met, it is recommended that the ABS publish the following aggregated statistics for each good subject to antidumping measures:
  - Volume of goods imported in the previous quarter (subject to interim duties and/or undertakings);

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- Value of goods imported in the previous quarter (subject to interim duties and/or undertakings);
- Value of duties collected in the previous quarter; and
- Value of interim duties repaid following the completion of final duty assessments in the previous quarter.

The MTA welcomes the opportunity to further discuss these proposed recommendations with the ABS before a final decision on the remaking of the *Statistics Determination*.

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