

## TRADE REMEDIES TASK FORCE REQUEST FOR CLARIFICATION

### 1. GUIDELINES

In Issues Paper “Standard for Initiation/application information requirements” it is stated that it would be difficult to provide detailed guidelines setting out the circumstances in which an application would be initiated. The TRTF would agree that ultimately each case depends on the particular facts of that case.

The position of the TRTF is not to have detailed guidelines on when an application would be initiated, rather we seek guidelines which address the information requirements of the application form but also what legal standard is being used to evaluate any application and what methodologies are used by Customs in making such an evaluation.

It is considered critical to the outcome of the Joint Study that the issue of guidelines not only be considered, but that guidelines are formulated that address these concerns.

It is only through the publication of such guidelines that Australian industry can have confidence that each application is considered in a consistent and transparent manner and that proper standards are applied in evaluating an application.

The purpose of guidelines is to promote transparency and predictability and therefore greater certainty in the consideration of any application. Without this, Australian industry loses confidence in the dumping process.

Those guidelines should

1. set out the obligations which are imposed on an applicant and the obligations imposed on the Trade Measures Branch in evaluating that information
2. set out the methodology used by the Trade Measures Branch to evaluate an application
3. ensure that minor deficiencies do not result in a rejection of an application

#### Minor deficiencies in an application

One issue of particular concern relates to late requests for the supply of additional information during the screening stage which has the effect of stopping the clock. Although legally the question of supplying additional information is one which is legally initiated by the applicant, it almost always follows a request from a Trade Measures Officer that the application is deficient and that it will be rejected if the information is not supplied. These requests can be made very much at the last minute and even after the information is supplied and the clock restarted further requests for additional information continue to be made.

The TRTF supports the option set out in Issue Paper N0.3 “The Screening Process” that Customs adopt a standardised approach to rejections which will avoid the clock stopping and starting and that a complete deficiencies list will be provided.

However whilst supporting this proposal, it is important to clarify that only those deficiencies that would materially impact on a proper consideration of an application should result in a request for additional information. Minor deficiencies that could be resolved during the course of the investigation should not be subject to this process.

This point is addressed in the Trade Measures Initiation/Rejection Template in which it is stated under Compliance that if information is missing from an application that you should consider its significance i.e. whether it is integral to initiation or is something that can be provided at the later stage of the investigation. The TRTF also believes that just because some information is missing, this need not necessarily be grounds for you to determine that the application failed to meet the requirements of s.269TC.

The same point could be made in relation to minor inconsistencies in information which are not integral to the initiation of a case.

As noted below under consideration of what the guidelines should cover, there is no requirement imposed on a dumping administration to resolve all issues at initiation.

These points were made by the Trade Remedies Task Force in its submission and can be summarised as follows:

### Obligations

#### *i. Obligations imposed on an applicant*

An application is required to supply evidence on dumping, material injury and a causal link between the two. This is subject to several qualifications:

- The applicant cannot simply make assertions, unsubstantiated by evidence;
- Secondly, the applicant is only required to supply information that is reasonably available; and
- As the information is only for the purpose of initiation of an investigation, the quality and kind of evidence cannot be such that is required to either make a preliminary or final determination.<sup>1</sup>

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<sup>1</sup> See Panel case of Guatemala Cement from Mexico par 7.64 and Mexico HFCDS par 7.74

The reference to factors listed in Articles 3.2 and 4 do not require that the application address all of these factors, as the list is only illustrative. All an applicant needs to address are those factors relevant to the applicant's own case.

The Panel on Guatemala Cement also found that there was no need for an applicant to provide an analysis of the information provided in the application.

ii. *Obligation imposed on a Dumping Administration*

The guidelines should set out the legal standard that guides the Trade Measures Branch in assessing an application. These principles are well settled, but it is important that they be acknowledged. This is especially important for those industries that are unfamiliar with the dumping process and also will promote consistency in application within the Trade Measures Branch in applying the appropriate standard in all cases.

The guidelines should state the following

- There is an obligation imposed on a dumping administration to determine if there is sufficient evidence to justify the initiation of an application. However as stated by the WTO Panel in *Guatemala Cement II*: "It is however the sufficiency of the evidence, and not its adequacy and accuracy *per se*, which represents the legal standard to be applied in the case of a determination whether to initiate an investigation."<sup>2</sup>
- The quality and kind of evidence required for initiation is not the same level as that required to make a preliminary or final determination. Evidence which would be insufficient to justify a preliminary or final determination may well be sufficient to justify the initiation of an investigation.
- The guidelines should reference the principles set out in *Marine Power Australia Pty Ltd v Comptroller General of Customs*<sup>3</sup>, where the court finds that (a) the language is such that Customs is not required to be positively satisfied in relation to the matters set out in paragraphs (a) (b) and (c) of Section 260TC(1), rather Customs has to reject the application if not satisfied. If Customs does not form an opinion on non satisfaction, Customs is obliged to publish a notice initiating a dumping investigation and
  - that was required to make a determination under Section 269TC was a *prima facie* view.

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<sup>2</sup> Panel in Guatemala Cement 11 par 8.31

<sup>3</sup> Marine Power Australia Pty Ltd v Comptroller General of Customs 1989 FCA

- The test of what information that an applicant can provide, is that which is reasonably available, but this does not mean that all information that is reasonably available has to be supplied.
- There is no obligation imposed on a dumping administration to resolve all underlying issues prior to a case being initiated, or to explain in a public document how underlying issues were resolved.<sup>4</sup>
- Although it is the role of any dumping administration to conduct a proper evaluation of an application, this evaluation is not meant to be that which applies when an investigation is initiated and information is verified. To put it simply, an investigation is not to be carried out as part of a screening process, prior to the investigation being carried out.
- That Customs is not obliged to simply accept the evidence contained in an application at face value where there is a clear indication that the information is not accurate or where if the evidence was accepted would not lead to a fair comparison or that there are inconsistencies in the information provided.
- This does not mean that authorities are expected to determine all possible differences that might effect price comparability and perform complete adjustments, or to verify evidence that has been submitted.

#### Assessment of an Application

Customs has produced the document, "Initiation/Rejection Template", which sets out those matters that Customs must consider in screening an application. That document provides a good comprehensive basis for preparing guidelines that would assist applicants to develop a proper appreciation of the information and evidential requirements to be considered by Customs.

Guidelines should assist in having a consistent approach to evaluating an application. At present, the perception is that there can be differences in having an application accepted at the screening stage because of differences in the evaluation techniques used by different sections within the Trade Measures Branch.

It is especially important that there be consistency between the information being presented in the application form and any evaluation of that information using criteria that use a different basis for evaluating the application.

So that you have a clear view of the TRTF position, those parts of the template that are considered relevant are attached to this document

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<sup>4</sup> Mexico-HFCS par 7.94

## **2. PRELIMINARY AFFIRMATIVE DETERMINATIONS**

Customs in Issue Paper 11 has stated a preference to not publish a Preliminary Affirmative Determination before verification and documentation of injury and causal link assessment.

There is an acknowledgement that this practice could be reviewed and that there has been a recent case where a PAD has been imposed at day 85. In that case, the unverified exporter questionnaire response showed high levels of dumping and Customs analysis showed that the link to material injury was strong and that in other cases the existence of dumping injury and causal link are not as evident.

The TRTF would argue that a PAD should also be imposed in the case where an exporter chooses not to cooperate and there is sufficient evidence to establish that material injury is being caused to the Australian industry from those dumped imports.

The submission of the TRTF is that the present preference of Customs is in effect to only make a PAD at a final finding stage whereas the whole purpose of a PAD is to make a preliminary finding. Further, there is no in principle reason why a PAD cannot be issued without an exporter questionnaire being verified. The fact that a PAD can be issued at day 60 clearly contemplates that verification is not a necessary precondition.

Customs has raised that issue of seeking clarification of what is required to issue a PAD by seeking legal advice and consulting with DFAT. Customs has also queried what form the PAD should take.

The TRTF believes the question of what form a PAD should take is already known to Customs as it has issued them at both the SEF stage and prior to SEF. A PAD could not have been issued by Customs unless it was satisfied as to those matters which needed to be included. The same comment could be made in relation to the legal standard to be met. The TRTF would seek clarification also as to Customs position requiring clarification on the issue of content of a PAD and evidential standard?

### Sales route exercise

The TRTF requested that guidelines be provided on the question of how Customs goes about doing a sales route analysis. This request has not been taken up in the Customs response to date and needs to be addressed as it is a source of concern to industry. Those guidelines should address the need to conduct a proper verification of an importers costs and price paid.

In addition, concerns have been expressed that there is inadequate feedback when a sales route exercise is carried out and that sufficient resources are not devoted to monitoring of measures.

## Attachment 1

### *Making an assessment*

Applications are assessed under s.269TC(1) of the *Customs Act 190*. This section requires the delegate of the CEO, before an application can be accepted or rejected, to consider whether:

- (a) the application complies with subsection 269TB(4)
- (b) there is, or is likely to be established, an Australian industry in respect of like goods, and
- (c) there appear to be reasonable grounds for the publication of a dumping duty notice, within the terms set out in s.269TC(1)(c).

It is important delegates understand that when deciding if they are satisfied about each of these three matters, they are required to form their own opinions. There may not be a clear answer in any given case (particularly when considering the issue of whether there appear to be reasonable grounds for the publication of a dumping duty notice). The delegate has to look at the available evidence and make a judgement about whether they are satisfied that the requirements of s.269TC (1) are made out. If not so satisfied, the application must be rejected.

Remember that this is a preliminary step. It would not be expected that the applicant would be able to prove conclusively that there is dumping, material injury and a causal link. However, it would equally not be sufficient for an applicant to merely assert these matters without providing some relevant evidence to back up those assertions.

This template lists various questions and issues for delegates to consider when assessing an application. These questions and issues are designed to assist delegates to make fair and consistent decisions about whether an application should be accepted or rejected under s.269TC.

### *Compliance*

If information is missing from the application you should assess its significance, i.e. whether that information is integral to initiation or is it something that can be included at a later stage of the investigation. Applicants should provide a reasonable explanation of why the information is not available at this time and, where they are in a position to provide information, they should give some assurance that it will be available in a timely manner when required. You must consider that just because some information is missing, this may not necessarily be sufficient for you to be satisfied that the application fails to meet the requirements of s.269TC.

Australian industry applicants should be able to provide the industry accounts and company information requirements in their application. Even so, risk assessment principles should be used.

### *Advice to the applicant*

The applicant will receive a letter accepting/rejecting the application, and a non-confidential initiation/rejection report. However, in the case of a rejection this might not be enough – you should consider offering the applicant an opportunity to meet to discuss the deficiencies and to provide advice on ways to improve the application.

<b>Checklist</b>	<b>Section of Act or form requirement/reasonable grounds or facts assessment</b>
<p>In assessing whether the applicant has complied with the legislation, you will need to show that the application:</p> <ul style="list-style-type: none"><li>• Is in writing</li><li>• Is in an approved form</li><li>• <u>contains such information as the form requires;</u></li><li>• is signed in the manner indicated (the declaration); and</li><li>• is supported by a sufficient part of the Australian industry (this question is further analysed below).</li></ul> <p>Additionally, please state whether the applicant provided the required confidential versions and non-confidential versions of the application.</p>	<p>Section 269TB(4) of the Customs Act.</p>

## Australian Industry Support

Support	<p>In this section you are making an assessment about industry support in accordance with the legislation. If the industry appears to be structured along complicated lines, you might need to set out the details in table or chart form.</p> <p>Does the applicant account for more than 50% of production of the domestic like product?</p> <p style="padding-left: 40px;"><input type="checkbox"/> Yes (insert %)</p> <p style="padding-left: 40px;"><input type="checkbox"/> No (insert %)</p> <p>If No, do those expressing support for the application account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry which has expressed either support or opposition to the application AND, do those supporting the application account for not less than 25% of the total production or manufacture of like goods in Australia?</p> <p style="padding-left: 40px;"><input type="checkbox"/> Yes</p> <p style="padding-left: 40px;"><input type="checkbox"/> No - do not initiate</p> <p>Describe how Australian industry support was established - specifically, describe the nature of any examination to determine the level of domestic industry support.</p> <p>What steps have you taken to substantiate the production figures given? For example, is there a need to approach other industry members to substantiate information?</p> <p>Was there opposition to the application?</p> <p style="padding-left: 40px;"><input type="checkbox"/> Yes (identify each party expressing opposition)</p> <p style="padding-left: 40px;"><input type="checkbox"/> No</p>	Section 269TB(6).
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## Is there, or is there likely to be established, an Australian industry in respect of like goods?

In order to reach a conclusion about whether there is an Australian industry producing like goods, you will first have to consider the next two sections on Goods and Like Goods.

The applicant identifies the goods the subject of the application (the goods) as classified to subheading tariff classification and statistical code of the *Customs Tariff Act 1995*. The rate of duty is general rate and developing country rate.

The applicant describes the goods as full description including technical specifications, grades/models, any further processing and any examples of end-use. Importers, exporters and other interested parties must be left in no doubt as to the goods.

(Note: while an example of the end-use of a product may be useful for making assessments about what constitutes a like good, end-uses should normally not be used to identify the goods in an investigation).

<p>Goods</p>	<p>This section of the application should be assessed in association with "Source of Exports".</p> <p>This section is pivotal to the question of the goods the subject of the application.</p> <p>Has the applicant sufficiently identified the dumped goods and provided evidence that they are being imported?</p> <p>Are they fully described including:</p> <ul style="list-style-type: none"> <li>• physical, technical and other properties?</li> <li>• for a range of products, is the information given for each make and model in the range?</li> <li>• technical documentation provided?</li> <li>• tariff classification and statistical code?</li> </ul> <p>Is the information in the application able to be cross checked for accuracy using information from Customs commercial data base?</p>	<p>269TB(1) provides that an application may be lodged, if <u>there is a consignment of goods imported into Australia being like goods to the goods produced by Australian industry</u>, and that a person believes there are <u>reasonable grounds</u> for the publication of a dumping duty notice.</p>
<p>Like Goods</p>	<p>The delegate must consider whether there is evidence that there is a domestic industry producing like goods. The determination of what is a like good is potentially a difficult exercise but it has very important ramifications for any dumping investigation that might be initiated. It is therefore important to consider this issue carefully.</p> <p>Have the goods Australian industry is making (or is planning to make) been fully described including their physical, technical or other properties? If like goods might cover a range, is information given for each make and model? If some have been omitted, has an explanation been provided?</p> <p>Tests for determining like goods are set out in the manual. If like goods are identical there is no need to do the test for "characteristics closely resembling". However, if like goods are not identical (except for small variations such as colour), the similarities (ie. characteristics closely resembling) and differences should be set out in the report.</p> <p>Have you examined any other sources to assess claims about the composition of Australian industry <b>and</b> production of like goods - such as the internet or trade journals (use the library system on desktop for this purposes)?</p> <p>When considering whether a product is a 'like good' think about the following considerations:</p> <ul style="list-style-type: none"> <li>- what is the essential physical and technical characteristic of the like goods? Differences in shape, material or levels of impurities between the goods and the alleged like goods may not be important in all cases. However, in some cases these differences could potentially affect the end use of the different products or the markets for the different products.</li> <li>- what is the customs classification for the like goods? Is it the same as the goods. Remember that the customs classification is not definitive. One classification may cover, for example,</li> </ul>	<p>A.3(1),(2), (4) of the form.</p> <p>269T defines like goods (bear in mind that like goods is also an issue in determining normal value).</p>

	<p>both a processed and unprocessed product even though the products are not substitutable or in other ways alike.</p> <ul style="list-style-type: none"> <li>- what are the chemical compositions or other specifications that might differentiate the products? Are these differences important or unimportant?</li> <li>- to what extent do the goods share the same basic technology, even though they may not be identical in physical shape or other characteristics?</li> <li>- are the products marketed as being for the same use?</li> <li>- to what extent do consumers perceive each of the products are being alike and substitutable?</li> <li>- The ways in which the like goods do or do not have characteristics closely resembling those of the goods under consideration should be documented.</li> </ul>	
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### Domestic Industry

Australian industry	<p>Does the application contain evidence that there is an Australian industry producing or manufacturing like goods? Or that an Australian industry in respect of like goods is likely to be established.</p> <p>Is the applicant the sole industry member?</p> <p>What steps have you taken to substantiate the production figures given? For example, is there a need to approach other industry members to substantiate information?</p> <p>Is the application made on behalf of multiple industry members? If so, are they all represented?</p> <p>Has the applicant provided a picture of the whole of the industry?</p> <p>Depending on the answer, does appendix A.1 data substantiate claims made?</p> <p>Does the application contain sufficient information on the volume and value of the domestic like product produced by the applicant(s) and each domestic producer identified for the most recently completed 12-month period for which data is available?</p> <p>Are like goods wholly manufactured in Australia?</p> <p>If not, what percentage of the finished good is partly manufactured in Australia?</p> <p>If the goods are only partly manufactured in Australia, what are the substantial processes carried out in Australia in manufacturing?</p> <p>Is at least one of those processes “substantial”?</p> <p>The text will be improved if you can use charts and graphs to better explain Australian industry production. substantial</p>	<p>269TB(1)(b) &amp; TB(4)(e). A.3(3), (5), (6), (7), (8), (9) together with A.4, A.5 &amp; A.7 of the form. 269T(2) &amp; (3)</p>
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## Australian Market

Australian market	<p>Consider constructing a market from the Australian industry data and from import data to compare with the market share information in the application. Does the import data differ significantly from that contained in the application?</p> <p>What do the graphs of market share and volume, import volume, and market share trends of subject countries examined show?</p> <p>In a growing market, does the application assess whether capacity constraints have hindered the ability to maintain market share?</p> <p>Has each question in this section been satisfactorily answered and appendix A.2 completed?</p> <p>Have you used other sources to verify the claims about the size and shape of the Australian market?</p> <p>You should consider claims of lost market share and sales.</p> <p>Have you inserted charts and or graphs that demonstrate the size and shape of the Australian market?</p>	A.4 of the form.
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## Applicants sales

Australian market	<p>Consider constructing a market from the Australian industry data and from import data to compare with the market share information in the application. Does the import data differ significantly from that contained in the application?</p> <p>What do the graphs of market share and volume, import volume, and market share trends of subject countries examined show?</p> <p>In a growing market, does the application assess whether capacity constraints have hindered the ability to maintain market share?</p> <p>Has each question in this section been satisfactorily answered and appendix A.2 completed?</p> <p>Have you used other sources to verify the claims about the size and shape of the Australian market?</p> <p>You should consider claims of lost market share and sales.</p> <p>Have you inserted charts and or graphs that demonstrate the size and shape of the Australian market?</p>	A.4 of the form.
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## General Accounting /administration information

General	Describe the ways in which enough information was provided to establish an extensive picture of their business arrangements?
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The applicant provided evidence to demonstrate that the goods produced by Australian industry are like goods to the goods under consideration and that they are wholly/partially manufactured by Australian producer(s)

## Does there appear to be reasonable grounds for the publication of a dumping duty notice?

<p>Injury</p>	<p>Does the application contain data that supports volume effects, such as:</p> <ul style="list-style-type: none"> <li>• Sales data</li> <li>• Market volumes &amp; shares</li> <li>• Import volumes by country and fluctuations</li> <li>• capacity utilisation &amp; productivity</li> <li>• is market share maintained in a growing or shrinking market?</li> </ul> <p>Does the application contain data that supports price effects such as:</p> <ul style="list-style-type: none"> <li>• Price undercutting (is it customer to customer at the same point in time for the same model or something else)</li> <li>• Price depression (e.g. the relationship between raw material costs and selling prices)</li> <li>• Price suppression, profit and profitability (e.g. the relationship between cost to make and sell and selling prices or selling price with the cost of raw materials)</li> <li>• the percentage change in selling prices and whether profitability fluctuations are within the bounds of normal market environments</li> <li>• actual and potential declines in sales, profits, output, return on investments</li> <li>• other factors affecting domestic prices</li> <li>• actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.</li> </ul> <p>Analysis of Appendix 6 data might assist in identifying whether injury claims are sound, such as</p> <ul style="list-style-type: none"> <li>• comparing new data with old data if the good has been previously investigated</li> <li>• considering whether the period for which data has been provided is sufficient</li> <li>• comparing the sales data in appendix 6 to the sales data in appendix 4 (the detailed domestic sales listing)</li> <li>• examining whether any rebates/discounts have been properly accounted for in the data</li> <li>• examining whether the data relates to domestic sales/export sales separately</li> <li>• examining whether there are internal inconsistencies in the data</li> <li>• considering the allocation method</li> <li>• considering whether to include raw materials and overheads in the unit cost to make, unit cost to sell, unit cost to make and sell, unit sales revenue, and unit gain or loss (the per unit price, cost, and raw materials data may be graphed in a 2 axis combination chart which also shows the production and sales quantities from that appendix. Trendlines may be included.</li> </ul> <p>Are there any coincident changes in prices with other events in the market? What other possible causes of injury have been identified? Insert charts and graphs into your assessment of the applicant's claims using the information given in appendix 6? Does it tally with the claims made?</p>	<p>You are required to make an assessment on whether "reasonable grounds" exist.</p> <p>A.8 of the form requires the applicant to establish an injury case using the data in the appendices.</p> <p>There is no definition of material injury and 269TAE only sets out what the Minister must regard after the investigation process.</p> <p>The screening process requires that you make an assessment about whether it appears that there are reasonable grounds for the publication of a dumping duty notice.</p> <p>Therefore the delegate must be satisfied that the available evidence supports the claim that the applicant is suffering injury through dumping.</p> <p>The 1991 Ministerial Direction on the "materiality" of injury might also provide useful indicators.</p>
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## A-9 Link between injury and dumped imports

<p>Causation</p>	<p>Does the application contain evidence of causation?</p> <p>Specifically, does the application contain information relative to:</p> <ul style="list-style-type: none"> <li>• volume and value of imports</li> <li>• Australian market share (i.e., the ratio of imports to consumption)</li> <li>• actual pricing (i.e., evidence of decreased pricing)</li> <li>• relative pricing (i.e. evidence of imports underselling Australian products)</li> </ul> <p>Graphs (examples below) may help to illustrate causal link.</p> <p>For price/profit</p> <ul style="list-style-type: none"> <li>• Undercutting: information presented is examined and a chronology of the undercutting claims is prepared.</li> <li>• Depression: unit prices and costs are graphed including trendlines. Comment on any known influences on prices such as raw material prices.</li> <li>• Profit (price suppression, profit and profitability): unit price and cost graphs are analysed and movements compared, including effect of input costs. Profit and profitability graphed including trend lines.</li> </ul> <p>What (if any) impact has the applicant shown to illustrate other injury factors on volume and price of the Australian produced goods?</p> <p>At this stage it might be possible to consider the NIP and USP. NIPs may be compared to the export prices – e.g. if known export prices are above the NIP the causation requirement would not exist.</p>	<p>A.9 of the form requires the applicant to establish the link between dumping and injury by an analysis of the data in the appendices.</p>
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## B-1 Source of exports

<p>Origin</p>	<p>Does the application contain any supporting evidence of:</p> <ul style="list-style-type: none"> <li>• the countries of export or origin?</li> <li>• Import volumes?</li> </ul> <p>Have you used TRACE data to check the source of exports? If so, insert your chart/graph/table into the body of the report. Include countries not covered by the application. Earlier screening reports might show how a useful matrix of exporter/importer can be presented.</p> <p>If there are other countries not covered by the application, has the applicant provided a reasonable explanation of their exclusion?</p> <p>Customs information may be used to examine the export price and import volumes. Customs might use such information to allow any deficiencies in the evidence in the application to be filled.</p> <p>Turn to C-6 if volumes need be aggregated.</p>	<p>B.1 of the form.</p> <p>The conditions for termination should be borne in mind in deciding whether dumping margins and volumes meet the test for initiation. The applicant may not be in full possession of the facts but this alone should not be grounds for rejection.</p>
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<p>Export price</p>	<p>Does the application contain the following:</p> <ul style="list-style-type: none"> <li>• support documentation for the alleged prices or costs and claimed adjustments.</li> <li>• any market research reports etc and their credentials.</li> <li>• current and dated price data (should preferably be no more than one year old).</li> </ul> <p>Using TRACE extract data, calculate an export price and compare this with the EP provided by the applicant (in the context of reasonable grounds). Data given in the application may be checked against Customs data in order to determine whether the information in the application is within the range of the actual export price ("range" is considered on a case by case basis). If it is not in the range then you will be seriously considering whether the information is adequate and accurate.</p> <p>It is important that the EP is contemporaneous with the NV details and to a large extent, the injury claims. Data may be inadequate if there is no attempt to align dates (e.g. there may be no point in comparing a NV that is three years old with an EP dated last month)</p>	<p>B.2 of the form.</p>
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### B-3 & B-4 Normal Value

<p>Normal value</p>	<p>Does the application contain the following:</p> <ul style="list-style-type: none"> <li>• any documentation for the alleged prices (e.g. sales invoices covering the potential investigation period or thereabouts)</li> <li>• any support for claimed adjustments</li> <li>• any recent market research reports etc referring to sources and how information was obtained</li> <li>• current and dated price data (should preferably be no more than one-year old) (e.g. price lists)</li> <li>• price and cost data from contemporaneous time periods</li> <li>• correct currency rates for all conversions to Australian dollars</li> <li>• conversion factors for comparisons of differing units of measure (if relevant)?</li> </ul> <p>Any supporting documentation for the claimed NV should be of recent origin, particularly where the applicant has constructed a price. There may be little point in uplifting 3 year old prices by say x% if there is no way that claim can be verified. Published data should be timely and relevant.</p> <p>Where it is not possible to obtain actual price information, or incomplete price information, the applicant may construct a normal value. The applicant could use reasonably available information on an exporter's costs of production. Such information might be available through commissioned research or other publications.</p> <p>Alternatively, applicants may estimate a normal value for each country of export based on its own costs.</p>	<p>Customs would not generally need to become involved in substantial data reconstruction. It is however permissible to substitute information in unusual circumstances (say if we are in possession of information from a recent investigation).</p>
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	<p>In either case Customs examines whether the assumptions made in the cost build up are reasonable. For example, it might be reasonable to claim that the exporter's costs equate to those of the applicants. Applicants would need to support this method by sound reasoning.</p> <p>Adjustments, to the extent that this information is reasonably available, may be required to account for differences between the two industries - for example in relation to labour, or factors affecting efficiency such as more modern plant, production capacity, utilization rates and production runs. Such calculations should be supported by sound evidence.</p> <p>The constructed normal value requires an estimate of the amount for profit. As in the case of the cost components it is not sufficient for an applicant to provide a profit figure without any explanation of its basis. Data may be available on profitability of the foreign producers. If the applicant's own profit levels are considered to be indicative, an explanation should be provided as to why these are considered representative of the industry in other countries.</p> <p>If the general response is "no" in respect of the above, then you would be seriously considering whether the NV information is adequate.</p>	
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#### **B-4 Estimate using another method**

Most NV given by applicants fall into this category as it is only rarely that actual invoices are available. Documents used as a basis (e.g. sales price lists) should be recent.

#### **B-5 Adjustments**

Normal value	Has the applicant addressed obvious differences between the sales (e.g. a domestic sale may be related to a small quantity but export to bulk goods, or there might be apparent differences in level unaccounted for)?	B.5 of the form
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#### **C-2 Threat**

Material injury	<p>Threat allegations cannot be based on conjecture or rumour – there must be some compelling evidence of a change in circumstances. "Threat" cases have previously been rare.</p> <p>Has the applicant described the change in circumstances, and provided evidence in support of that claim?</p> <p>What projections has the applicant made to demonstrate that the injury is foreseeable and imminent?</p> <p>What evidence has the applicant provided to show that dumping is occurring (see normal value, export, and dumping margin above)?</p> <p>If the answer is in the negative to any of the questions, then it is less likely that a case of threat has been put.</p> <p>This information should be used in conjunction with other information set out above relating to material injury. All of this information is then considered in the context of whether there appear to be reasonable grounds for the publication of a dumping (or countervailing) duty notice.</p>	
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## C-5 Exports from an economy in transition

Normal value	<p>What evidence has the applicant provided to establish that the country of export is an economy in transition?</p> <p>Have you checked the schedule to Regulation 182 that lists the countries to which the description of “economy in transition” <u>does not</u> apply? Note that although the schedule has not been updated since its inception, countries that joined the EU on 1 May 2004 are no longer regarded as transitional. In any case, advice should be sought from Policy.</p> <p>What evidence has the applicant provided that shows that market conditions do not prevail in the country of export?</p> <p>To continue with the assessment, return to “Normal value” above. Note that an estimated normal value is required under this section of the application, supported by some evidence.</p>	The definition of EiT is in 269T(5C)
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## C-6 Aggregation of volumes of dumped goods

Source of exports	<p>Multiple countries must be nominated in the application before this question arises.</p> <p>Complete the assessment of the applicant’s response to B-1.5 first.</p> <p>Has the applicant completed a table that individually lists the imports from each country nominated?</p> <p>Have you checked the data in the application against TRACE data?</p> <p>Note that if the conditions in s.269TDA(5) or (11) appear to be met, there would not appear to be grounds for the publication of a dumping duty notice.</p> <p>A delegate should have regard to this information in conjunction with other information to determine whether there appear to be grounds for the publication of a dumping duty notice.</p>	
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