



INSTRUCTIONS AND GUIDELINES

ANTI-DUMPING COMMISSION
INSTRUCTIONS AND GUIDELINES FOR APPLICANTS
on the
Examination of a formally lodged application

December 2015

Published date:	December 2015
Availability:	Internal and external
Subject:	Guidelines on the examination of a formally lodged application
Purpose:	To provide guidance to applicants completing a formally lodged application for dumping and/or countervailing duty notices and to inform interested parties about how the Anti-Dumping Commission will examine an application.
Owner:	Commissioner of the Anti-Dumping Commission
Contact:	<p>Post to:</p> <p>The Commissioner of the Anti-Dumping Commission GPO BOX 2013 Canberra ACT 2601 AUSTRALIA</p> <p>Phone: 13 28 46 or +61 2 6213 6000 (outside Australia) Email: clientsupport@adcommission.gov.au</p>

Introduction

The Guidelines for the examination of a formally lodged application are publicly available to inform interested parties about how the Commission (the Commission) will examine an application for the publication of dumping and/or countervailing duty notices. Applicants should read these Guidelines in conjunction with other publicly available documents available on the Commission's website. These Guidelines have a twofold purpose:

1. To ensure that applicants understand the role of, and obligations of the Commission in relation to evaluating an application, the methodology used an interpretation of the evidentiary test applied by the Commission in assessing an application and the obligations of the applicant;
2. To ensure that Commission's officers involved in the examination of applications formally lodged understand the role of, and obligations of the Commission in relation to evaluating an application, the methodology used an interpretation of the evidentiary test applied by the Commission in assessing an application and the obligations of the applicant.

Instructions and Guidelines

The Guidelines are divided into the following sections:

- Procedural guidelines;
- Consideration guidelines; and
- Additional information (communication with an applicant and attachments).

Related Policies and References

Other Instructions and Guidelines:

- Dumping and Subsidy Manual.

Key Roles and Responsibilities

- The Commissioner of the Anti-Dumping Commission has responsibility for ensuring the implementation and maintenance of this Instruction and Guideline.
- This Instruction and Guideline applies to all staff in the Anti-Dumping Commission.

Approval and version history

Version	Change	Date	Approver
1.0	Original version	December 2015	Paul Sexton - General Manager Anti-Dumping Commission
1.1	Contact details updated	October 2024	Isolde Lueckenhausen – Acting Commissioner of the Anti-Dumping Commission

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1. PURPOSE OF GUIDELINES

The purpose of these guidelines is to ensure that applicants for anti-dumping/countervailing measures and Commission officers involved in the examination of applications formally lodged in accordance with s. 269TB(1) of the *Customs Act 1901* (the Act) understand:

- the role of, and obligations of the Commission in relation to evaluating an application;
- the methodology used and interpretation of the evidentiary test applied by the Commission in assessing an application; and
- the obligations of the applicant.

The guidelines are also intended to promote consistency in the examination of applications.

The guidelines are divided into three parts:

- Procedural guidelines which outline the procedures used to examine an application.
- Consideration guidelines which relate to the consideration of the evidence submitted in an application.
- Additional information which outlines the reference material useful to understanding or applying the procedural and consideration guidelines.

The guidelines are publicly available to inform interested parties about how the Commission will examine an application.

2. STREAMLINING AMENDMENTS

These instructions and guidelines have not been updated to incorporate legislative amendments to the anti-dumping provisions in the *Customs Act 1901* (the Act) and the *Customs Tariff (Anti-Dumping) Act 1975*.

Amendments resulting from tranches 2 to 4 of legislative measures from the Australian Government's '*Streamlining Australia's anti-dumping system – An effective anti-dumping and countervailing system for Australia*' June 2011 Policy commenced on 10 June 2013 (for tranche 2) and 11 June 2013 (for tranches 3 to 4).

3. PROCEDURAL GUIDELINES

According to section 269TC of the Act, the Anti-Dumping Commissioner (the Commissioner) is required to examine the application and decide within 20 days whether to reject the application. The Commissioner has delegated this function to certain officers within the Commission. (Note that all further references to the “delegate” or “Commissioner” in this document are to the delegated function under 269TC(1)).

The delegate is assisted by a team made up of officers who have particular skills, including anti-dumping and countervailing operations experience.

3.1 Skills

At a minimum, the team will:

- understand and apply relevant legislation;
- understand and apply the policy set out in PS2013/019621 : Administration of Australia’s Anti-Dumping and Countervailing System (Practice Statement);
- understand and apply the procedures set out in the Instructions and Guidelines - Dumping and Subsidy Manual (the Manual), located on the Commission’s website;
- understand and act consistently with the guidelines for making an application for dumping and/or countervailing duties; and
- understand and apply the procedural and evidentiary guidelines as set out in this paper.

3.2 Other expertise

Subject to confidentiality considerations, the team may call on other staff members in the Commission, Customs and Border Protection or another entity, to provide specialist support if considered necessary to progress the consideration of the application. It will be the role of these entities to provide, if called upon, additional knowledge, experience or skills to assist the consideration of the application.

Entities providing additional specialist support will not participate in the decision whether to reject an application or initiate an investigation. However, the substance of any matter of fact or assistance in considering evidence provided by an external specialist will be made known to interested parties as follows:

- If an application is rejected, the substance of the fact or assistance will be made available to the applicant.
- If an investigation is initiated, the substance of the fact or assistance will be made available to all interested parties through the public record.

Certain advice (for example legal advice on interpretation of the legislation) may be subject to legal professional privilege. Such advice will not be referenced in the Commission’s reports.

3.3 Decision maker

The examination of the application for rejection or initiation purposes only applies to applications formally lodged in accordance with s. 269TB(1) of the Act and is

conducted in accordance with s. 269TC of the Act. In making the decision the Commissioner is required to form his/her own opinion and, after looking at the available evidence, make a judgement about whether he/she is satisfied that the requirements of s.269TC(1) have been met. These guidelines have been prepared to assist the delegate come to this decision.

3.4 Guiding principles

Procedure and Transparency

The delegate's examination of the application will be conducted using a structured procedure as set out in these guidelines and consistent with the law. The reasons for decisions will be recorded in a report.

All substantive actions will be recorded, together with the evidence that supports the delegate's decision:

- If an application is rejected, a copy of the report will be provided to the applicant.
- If an application is accepted, a 'non-confidential'¹ version of the report will be included on the public record.
- If an application is withdrawn, a report will not be prepared.

Adherence to law

The examination will follow the requirements of applicable law. The principal focus will be on whether:

- a) the application complies with s. 269TB(4) of the Act;
- 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 and/or countervailing duty notice, within the terms set out in s. 269TC(1)(c).

Good administrative decision-making

Decisions will be consistent with administrative law.

- Decisions and reasons will be recorded.
- Persons adversely affected by decisions will have access to the reasons for decisions.
- The Practice Statement sets out the policies used by the Commission;
- The Manual sets out the practices used by the Commission in administering Australia's anti-dumping and countervailing system and will guide decision-making in the Anti-Dumping Commission.
 - The Manual is designed as a practitioner's guide to set out the considerations and approaches that the Commission may adopt to achieve consistency in the interpretation of the legislation.
 - The Manual is publicly available. It enhances the transparency of the administration of the system by providing parties with a document describing the Commission's practices.

¹ Not an Australian Government security classification. In the screening context 'confidential' borrows from WTO terminology and generally refers to commercially sensitive material.

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- The Manual does not at any time take precedence over the requirements of the law.
- The Commission will examine each application on its own merit and acknowledges that the Manual cannot take account of every situation or factual circumstance. The merits of a particular application may justify a departure from the procedure set out in the Manual.
- When interpreting anti-dumping and countervailing legislation, the Commission will have regard to the desirability of consistency with agreements, papers, decisions, jurisprudence or other material produced by the World Trade Organisation (WTO).
- The delegate will prepare his/her report consistent with templates to assist structured and consistent decision-making. The template will be publicly available.

Ethics

It is essential that a culture of ethical and fair dealing prevails throughout an investigation process, including for any contact prior to the lodgement of an application. There is an overarching responsibility to treat all parties to an investigation equally.

Applicants (and other interested parties, should an investigation be initiated) are entitled to have their submissions assessed ethically and fairly and for this to be seen to be done. The following are critical:

- recognising and dealing with any conflict of interest;
- dealing with interested parties 'even handedly';
- seeking advice where probity issues arise; and
- complying with Commissioner instructions and the Public Service Code of Conduct as set out in the *Public Service Act 1999*.

3.5 Gifts, benefits and probity

Any request by an applicant to have the application allocated to a particular operations group (or not to a particular operations group) for examination will not be accepted. Consistent with record keeping principles, if a request is received it will be documented and the response recorded.

All employees in the Anti-Dumping Commission, including those involved in examining an application, must comply with the Commission's policy for the acceptance of gifts and/or benefits. Employees must not take advantage of their position to obtain gifts and/or benefits. Probity must be maintained. In particular, employees of the Commission must refuse any benefit that is intended to influence their judgement, or that may give rise to a conflict of interest.

3.6 Confidentiality and security

The legal basis for disclosure of information relevant to an application is covered by, among other things:

- Section 16 of the Customs Administration Act 1985;
- the Privacy Act 1988;
- the Freedom of Information Act 1982;
- various provisions of the Act; and
- the WTO agreements.

The Commission will protect information supplied in confidence. The Commission will also maintain a public record according to the provisions of the Act, and act consistently with WTO agreements.

- The Commission will not publicly comment on the consideration of a specific application. However following the receipt of an application and prior to initiation of an investigation:
 - the Commission will advise the government of the exporting country concerned; and/or
 - if the application is for a countervailing measure, the Commission will invite consultations with the foreign government concerned.
- Any decision to initiate an investigation will be declared by public notice.
- Among other things, the public notice will draw attention to the public record.

Documentary and physical security of information will be maintained in accordance with the Commonwealth Protective Security Manual².

The Commission employees undertaking examination of the application will have appropriate personal security clearances and be trained in security awareness. If expertise is sought by the Commission from another entity during the screening of an application, those other persons will be subject to written confidentiality agreements.

3.7 Receipt and registration

An application may be lodged with the Commission only by:

- giving it to an officer doing duty in relation to the receipt of dumping and/or countervailing applications;
- posting it by pre-paid post to the address specified on the application form.
- sending it by facsimile number specified on the application form.

For determining statutory time periods, an application is received when an officer doing duty in relation to the receipt of dumping and/or countervailing applications first receives the application by any of these methods. The Commission will date stamp and record the receipt of an application.

² The Commission will often use the terms 'confidential' and 'non-confidential' to classify information that is subject to public domain considerations in anti-dumping investigations. These terms are drawn from WTO agreements, not the Protective Security Manual. In an anti-dumping investigation a reference to 'confidential' will usually be consistent with a classification of 'in-confidence'.

4. CONSIDERATION GUIDELINES

4.1 Mandatory requirements

An application must meet minimum legal requirements which are set out in s.269TB(4) of the Act. On formal lodgement the application is examined to ensure it:

- is in writing;
- is in an approved form:
 - for the application to be in an approved form it must answer all relevant questions and contain complete attachments and
 - a sufficient non-confidential version of the application must be supplied.
- contains such information as the form requires;
- is signed in the manner indicated on the form; and
- is in the case of an application under subsection 269TB(1) is supported by a sufficient part of the Australian industry.

Having regard to the matters contained in the application and to any other relevant information, an application must be rejected unless the Commissioner is satisfied that:

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

The Commissioner needs to be satisfied that there is sufficient evidence to enable the initiation of an investigation. During the investigation phase the veracity of that evidence supporting the claims made in the application is tested.

Although there is an obligation to answer all the required questions, the delegate will not necessarily reject an application if the applicant fails to supply all the information sought. An acceptable answer may explain why the question does not apply to the particular applicant or why the information has not been provided, and what steps will be taken to obtain it.

The delegate will make a decision whether to reject an application within 20 days from when the application is received, or from when any additional information is received from the applicant without having been requested to do so.

4.2 Applicants' obligations

An applicant must ensure that an application complies with s. 269TB(4), that is the application must:

- be in writing;
- be in an approved form:

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- for the application to be in an approved form it must answer all relevant questions and contain complete attachments and
- a sufficient non-confidential version of the application must be supplied.
- contain such information as the form requires;
- be signed in the manner indicated on the form; and
- in the case of an application under subsection 269TB(1) be supported by a sufficient part of the Australian industry.

It is also the responsibility of an applicant to gather and submit sufficient evidence to demonstrate that:

- there is, or is likely to be established, an Australian Industry in respect of the goods;
- there appear to be reasonable grounds for the publication of a dumping and/or countervailing duty notice, within the terms set out in s. 269TC(1)(c).

However, an applicant does not need to prove its entire case when making an application. It is not necessary that an applicant supplies all information available to it – the purpose of the application form is to provide an evidentiary basis for the initiation of an investigative process. An applicant need only supply sufficient information that is reasonably available and necessary to substantiate its claims of dumping/subsidisation, injury and causality.

4.3 The Commission's obligations

Section 269TC of the Act requires the Commissioner to be satisfied that:

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

To do this the Commissioner must be satisfied that the evidence supplied is adequate and accurate, that it supports the application being made and is sufficient to justify the initiation of an investigation. While the evidence is not verified during the examination process, the delegate will not accept the information in the application at face value. Examples where information could not be accepted would be where:

- the information is not internally consistent;
- the information is not accurate;
- to accept the information would not allow a fair comparison between export price and normal value.

In the examination, the Commission may use its own data to test the reliability of information supplied by an applicant, particularly where import data has been suppressed or aggregated on confidentiality grounds. If used, this data will remain confidential to the Commission.

- The Commission's capability to use other data in the examination process does not remove the onus from an applicant to satisfy the requirements of initiation through the provision of a properly documented and evidenced application.
- The Commission cannot supplement an application with information.

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- The Commission will not substitute its data for the information supplied by an applicant.

At the examination stage the Commission is not required to have before it evidence of the quality and kind necessary to support a preliminary or final determination. Similarly, there is no obligation imposed on the Commission to resolve all underlying issues prior to a case being initiated.

4.4 Evidence

Before initiating an investigation, the Commission will not visit a company premises to verify data submitted in an application. The examination is based on the information provided in the application and other information considered relevant. Verification will only be undertaken during an investigation.

Reasonable availability of evidence

The WTO agreements provide guidance on the evidence needed in an application³. The agreements require applications to contain 'such information as is reasonably available' to an applicant. In turn, the investigating authority must determine whether this information is sufficiently accurate and adequate to justify the initiation of an investigation. (To clarify, an applicant might demonstrate that it is unreasonable for it to obtain certain information necessary for an application such as information about a normal value in the country of export. Even though the applicant has acted to the best of its ability, this circumstance would still be insufficient to satisfy the minimum legal obligations to initiate an investigation.)

Part A of the application form requests information about the applicant itself, such as its sales data and costs of production. In most situations comprehensive and accurate sales and cost data should be within an applicant's control and reasonably available for inclusion in the application. Part B of the application form requests information about other commercial entities, often in other countries. It is not expected that the detail of responses to questions in Part B will be in the same detail as those in Part A.

Clarification of evidence

The Commission may seek clarification of information supplied in an application. Clarifications will be sought from any of the persons nominated in section A-1 of the application form. If the Commission requests clarification, the time period permitted to consider an application is unaffected.

Standard of evidence

During examination the Commissioner is required to be satisfied that the mandatory requirements to initiate an investigation have been met.

The Commission will take a structured approach to considering the evidence in an application. The Commissioner cannot consider whether an application has established 'reasonable grounds' unless there is sufficient information to do so. The Commission will first consider if the information responding to the questions in the

³ Article 5 of the Anti-dumping Agreement, and Article 11 of the Subsidies and Countervailing Measures Agreement.

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application is complete, clear and consistent. The Commission's confidence in the application is improved where the information is:

- Complete
 - i) all required questions have been answered, or where unanswered an explanation has been given;
 - ii) reasonably available evidence has been submitted that supports the allegations being made;
- Clear
 - i) clarity will reduce the need to make follow up enquiries;
 - ii) make claims more compelling;
 - iii) improve the standard of information on the public record; and
- Consistent
 - i) inconsistency creates doubt about accuracy.

The source of information may contribute to its credibility. An application should be based on information that the Commission can consider at a minimum to be fairly reliable. Fairly reliable information may be along the lines of the following:

- facts are internally consistent;
- although unchecked, the data is capable of verification (such as extracts from company accounts);
- data is from reputable sources, but may come with limitations (such as by aggregation);
- claims are supported by reputable secondary source data (such as some trade journals or published industry information);
- commissioned expert submissions that rely on reputable source data.

Assertion is a low standard of evidence with little probative value (although it may identify issues for further investigation). Examples of assertion are:

- ambit claims made by interested parties in their self-interest;
- unsupported claims made by one interested party about another party; and
- any oral information, unless subsequently reproduced in writing.

The Commission will check that the evidence supports each allegation being made. For example, if dumping is alleged there should be reasonable evidence of a difference between an export price and normal value. Evidence of the introduction of low priced imports alone on to the Australian market is insufficient to establish dumping.

Attachment 1 provides further elaboration on standards of evidence applicable to an investigation.

4.5 Consistent decision-making

The content of applications may vary considerably depending on industry composition, the nature of the product under consideration, how the goods compete or by other factors. To ensure a consistent approach to different circumstances, the Commission will prepare its reports using templates. The format of the template will be along the lines of a series of generic 'questions' that the delegate will address in a

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structured report. The template will ensure the same considerations are applied to each application.

An example of a template used for the consideration of an application is at **Attachment 3**.

4.6 Facilitation of consideration

Administrative reviews of the anti-dumping and countervailing system have recognised the desirability of an expedited system for all interested parties. Along with reducing examination times to a maximum period of 20 days, the reviews acknowledged a need for a commensurate improvement in the quality of applications so that the Commission can meet its legal obligations prior to the initiation of an investigation.

The client support section of the Commission has responsibility for services and guidance to clients regarding anti-dumping and countervailing matters. Prior to formal lodgement of an application, applicants are encouraged to contact the client support section for advice. Wherever possible, applicants will have been advised about the availability of an informal pre-lodgement documentation check of a draft application. All teams performing a pre-lodgement documentation check will include an officer with operational experience.

If a draft application has been informally checked:

- a team will have regard to the Pre-lodgement Documentation Check Response and other advice already provided to the applicant, so far as it is relevant; and
- the Commission will minimise requests for new information.

The application form requests that industry financial data must, wherever possible, be submitted in an electronic format. Electronic data facilitates a more efficient and quicker analysis by the Commission. However,

- electronic data is not mandatory; and
- an application will not be rejected on the basis of non-submission of electronic data.

The application form provides a framework for an applicant to make its case. Often, the case for imposition of measures needs to be supported by a large amount of data. A well-presented application will assist the Commission to understand the basis of the claims being made. The formats used in the application have been designed to assist an applicant present a large amount of data (for example by using index tables) in a way that demonstrates the existence of 'reasonable grounds'. However the formats are not prescriptive. An applicant may present their application in another way, as long as 'reasonable grounds' are demonstrated.

5. COMMUNICATION WITH AN APPLICANT

5.1 Notification

On receipt of an application, the applicant will be advised the name of the contact officer in the Commission and of the date by which the delegate is required to make a decision whether to reject or initiate.

5.2 Where an application is not rejected

Where an application is not rejected, the initiation of an investigation will be communicated by public notice prepared as per the provisions of the Act.

The reasons for the Commissioner's decision not to reject the application will be included in a report to be placed on the public record, along with a non-confidential version of the application.

5.3 Where an application is to be rejected

Draft report

Where a decision to reject an application is likely, the delegate will prepare a draft report.

Deficiency List

The delegate will also prepare a Deficiency List recording the matters supporting his/her considerations.

Each deficiency on the list will be rated as either *critical* or *important*. Critical means that the deficiency relates to the inaccuracy or insufficiency of the evidence supplied and, unless resolved, the application must be rejected.

Important means that while the deficiency on its own might not result in the application being rejected it is still an issue of substance that creates doubt and will need, at some stage, to be resolved. Further, resolution of a deficiency marked as important would strengthen the overall application.

However, a number of 'important' matters may accumulate to an overall rating of 'critical' as they cumulatively raise doubt to a level that impacts upon the Commissioner's satisfaction that there are reasonable grounds to initiate an investigation. Therefore, a number of important deficiencies may result in an application being rejected.

The Deficiency List will be along the lines of **Attachment 2**.

Debriefing

Prior to the expiration of the period of time permitted for the consideration of an application, the delegate will make the Deficiency List available to the applicant. The applicant will be advised the list is not a request for further information, but is an opportunity to consider and address the matters identified.

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The applicant will be given the opportunity for a verbal debriefing. Depending on administrative convenience, the debriefing may be undertaken on the Commission's premises or the premises of the applicant. Information at the debriefing will be confined to the details in the Deficiency List.

Report

Where an applicant does not remedy its application in accordance with the Deficiency List, the application will be rejected. The applicant will be advised of the reasons for the rejection, and provided with details of the avenues available for a review of the decision.

The decision to reject a particular application will not be publicly notified.

6. ATTACHMENT 1 - EVIDENTIARY STANDARDS

6.1 CONTEXT

The Commission collects a large volume of information when investigating anti-dumping and countervailing matters. Information can have different levels of support. When information is substantiated, we call it evidence. After we are satisfied about the accuracy of evidence, we can infer facts from it. Evidence and facts are used in the Commission's reports to support administrative decisions and make recommendations.

For anti-dumping investigations, it is not necessary that all facts be absolutely proven, but a decision maker needs to establish a requisite level of satisfaction before accepting them as sufficiently accurate.

- Being able to differentiate between standards of evidence will aid a decision maker to conclude whether they are satisfied or not.
- Recognising different standards of evidence will assist in comparing their probative value.
- For transparency, it is useful to identify how information has been assessed.

6.2 POLICY

There are three standards of evidence. The standards reflect a continuum of reliability.

1. **Principal** (highly reliable);
2. **Intermediate** (ranging from fairly reliable, to probably reliable or reliable); and
3. **Assertion** (unreliable).

Principal evidence

Principal evidence is highly reliable. It is the best available substantiation of the existence of something, and has the highest probative value. This standard of evidence is often from an original or first-hand source, has been checked for accuracy, and is specific to the decision being made.

For anti-dumping and countervailing administration, examples of evidence that we would consider to be highly reliable could be any of the following:

- Verified financial or commercial information.
- Verified import or export records.
- Other information where the accuracy has been satisfied (for example it may be from a highly dependable source).

Intermediate evidence

Intermediate evidence has reasonable probative value. It may be accurate, but has a higher error rate (or potential error rate) than principal evidence. The status of intermediate evidence is transitory. For our purposes, the reliability of intermediate evidence may increase as an inquiry continues and it is checked or corroborated by other sources.

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Any document from a source that is not original or first hand would usually be considered intermediate, as would unchecked primary source data. Intermediate evidence may propose inferences from aggregated data, such as the conclusions of study papers or reports. Examples of Intermediate evidence could be any of the following:

- Applications or submissions apparently supported by data or the willingness of a company to undergo verification.
- ABS data.
- Commissioned expert reports.

Assertion

Assertion has little evidentiary value⁴, although it may identify issues for further investigation.

Examples of what we would consider assertion are:

- Ambit claims made by interested parties in their self-interest.
- Unsupported claims made by one interested party about another party
- Any oral information, unless subsequently reproduced in writing⁵.

6.3 PROCEDURE

During the consideration of anti-dumping and countervailing matters, we are required to satisfy ourselves about the accuracy of information supplied⁶.

The probative value of information (whether principal, intermediate or assertion) is determined by how reliable it is, or the degree of confidence we can have in it.

Due process can change intermediate evidence to principal evidence by establishing more confidence in its accuracy. Information from reliable sources, or which is corroborated or verified imparts higher confidence and reliability.

The amount of evidence required depends on the seriousness of the consequences. In anti-dumping and countervailing practice, conclusions are often based on a mix of information of different standards. More serious conclusions will require more information of a higher standard. The evidentiary standards form a continuum. Depending on the confidence we have in evidence, evidence may be categorised according to different degrees of reliability (refer to Figure 1 - Evidentiary standards continuum on page 19)

In instances where the gravity of a conclusion is high, the standard of evidence is expected to be more exacting. Therefore:

- evidence with higher reliability has greater probative value.
- principal evidence is used in preference to intermediate evidence.
- principal evidence should form the foundation of final reports, recommendations and significant decisions.

⁴ Article 5.2 of the WTO Anti-dumping Agreement. Article 12.2 of the WTO Subsidies and Countervailing Measures Agreement.

⁵ Before inferring any fact from assertion, investigators should at least give opposing parties the opportunity to present contrary evidence, e.g. via the public record.

⁶ Article 6.6 of the WTO Anti-dumping Agreement. Article 12.5 of the WTO Subsidies and Countervailing Measures Agreement.

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- intermediate evidence may be used for initiation of investigations, in Statements of Essential Facts (SEF), or to support Preliminary Affirmative Determinations (PAD).
 - as an SEF and PAD serve intermediate purposes, neither requires all facts to be highly reliable. However:
 - a SEF would have a high proportion of reliable facts.
 - a PAD would have a high proportion of facts that are both probably reliable and reliable.
- assertion cannot be used other than to identify issues for further investigation.


The Commission may make determinations on the basis of information available, including information of a lower standard, but only where procedural fairness has been offered to the affected interested party⁷.

⁷Article 6.8 and Annex II WTO anti-dumping agreement. Article 12.7 of the Subsidies and Countervailing Measures Agreement.

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Figure 1 - Evidentiary standards continuum

Evidence Continuum



Status	Principal	Intermediate			Assertion
Dependability	Highly Reliable	Reliable	Probably reliable	Fairly reliable	Unreliable
Uses	Final reports Recommendations Decisions	Conclusions about facts SEFs	Decisions relying on sufficient grounds Preliminary Determinations	Decisions relying on reasonable grounds Initiation	Pointer to further inquiry
Confidence Indicators	Dependable – verification complete Consistent Transparent	Most facts verified Confirmed by several sources Exposed for comment	Some facts verified Substantially consistent Factually complete	Facts reasonable but not verified Incomplete but internally consistent Appears reasonable	Requires circumspection Inconsistent with other data Reliability difficult to establish
Source	Reputable source information Outcomes of public inquiry The Commission's data, reports, statements	Evidence obtained via open process Evidence is specific to decision being made Usually primary source data	Independent submissions Commissioned expert opinion	Reputable source data, but aggregated Unchecked primary source data Secondary source data	Biased source Uncorroborated statements Media reports

7. ATTACHMENT 2 - DEFICIENCY LIST EXAMPLE

Application for dumping duty/countervailing duty notice

Examples of Deficiencies with an application:

Section ⁸	Issue	Comment ⁹
Appendices A2 and A-6.1	Appendix A-6.1 data cannot be reconciled with Appendix A-2 data. Specifically, as the data relates to the same product sold in the same market and during the same period, for each period A6.1 row G, sales quantity (Australia) should equal A2 row A, "your company's Australian sales of own production" (volume). The large inconsistencies between these figures prevents proper analysis.	Critical
Appendix 4	Rebate and discount information is missing from appendix A4. If this is not applicable this must be specified in the application form. All rebates and discounts need to be shown and explained so the Commission can establish net selling prices to be used in injury analysis.	Critical
Appendix A7	Incomplete. The data will be needed to conclude an investigation. No explanation given as to when or by what means the data will be provided	Important

⁸ Insert reference to the part of the application affected

⁹ Critical means that unless this issue is resolved, the application cannot be initiated. Important means that this is an issue of substance for the application. The issue creates doubt that will need, at some stage, to be resolved. Where sufficient doubt exists, The Commission may not be satisfied that there are reasonable grounds. Therefore a number of 'important' matters may accumulate to 'critical'.

8. ATTACHMENT 3 – EXAMPLE CONSIDERATION REPORT

The reasons for the Commissioner's decision to reject or not to reject an application will be included in a Consideration Report.

Where the Commissioner decides not to reject the application, the Consideration Report will be placed on the public record, along with a non-confidential version of the application.

Where an applicant does not remedy its application in accordance with the Deficiency List, the application will be rejected. The applicant will be advised of the reasons for the rejection, and provided with details of the avenues available for a review of the decision. The decision to reject a particular application will not be publicly notified.

The following boxes describe how the Commission will prepare the Consideration Report for your application.

8.1 Introduction

The Introduction section should contain the following details:

- Identity of the applicant
- Countries (+ if CV is involved, the countries receiving subsidy)
- Basis for complaint
- Summary of injury factors

8.2 Part A – Injury to Australian Industry

Does the application comply with subsection 269TB(4) of the Act?

	Consideration Criteria	Section of Act or form requirement/ reasonable grounds or facts assessment
General	<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"> • Is in writing • Is in an approved form • contains such information as the form requires; • is signed in the manner indicated (the declaration); and • is supported by a sufficient part of the Australian industry (this question is further analysed below). <p>Additionally, please state whether the applicant provided the required confidential versions and non-confidential versions of the application.</p>	Section 269TB(4) of the Customs Act.
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> <input type="checkbox"/> Yes (insert %) <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> <input type="checkbox"/> Yes <input type="checkbox"/> No - do not initiate </p>	Section 269TB(6)

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	<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) <input type="checkbox"/> No </p>	
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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.

A-3 The imported and locally produced goods

Goods	<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"> physical, technical and other properties? for a range of products, is the information given for each make and model in the range? technical documentation provided? tariff classification and statistical code? <p>Is the information in the application able to be cross checked for accuracy using information</p>	<p>269TB(1) provides that an application may be lodged, if <u>there is a consignment</u> of goods imported into Australia being <u>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>
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	from Customs and Border Protection import database?	
Like Goods	<p>The delegate must consider whether there is evidence that there is a domestic industry producing like goods. That is whether the goods produced by the Australian industry are identical to the imported goods the subject of the dumping application and, if not identical, whether the goods produced by the Australian industry have characteristics that closely resemble those of the imported goods the subject of the dumping application.</p> <p>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. 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 – refer to like goods framework. If like goods are identical there is no need to do the test for “characteristics closely resembling”.</p> <p>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 and 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"> - what are the essential physical and technical characteristic of the like goods? Differences in shape, material or 	<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>You must refer to the analytical framework in assessing whether the goods made by Australian industry are like goods to the imported goods.</p>

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

You must reach a conclusion about whether Australian industry produces like goods to the imported goods.

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. 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</p>	<p>269TB(1)(b) & TB(4)(e). A.3(3), (5), (6), (7), (8), (9) together with A.4, A.5 & A.7 of the form. 269T(2) & (3)</p>
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	<p>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.</p>	
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A-4 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>A.4 of the form.</p>
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	<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>	
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A-5 Applicant's sales

Part of Australian market	<p>Has each question in this section been satisfactorily answered and each appendix completed?</p> <p>Does the information supplied in A.6 match sales data shown at other appendices (e.g. A.2, 3 and 4)?</p> <p>In assessing the claims made in the application, will it assist to chart and graph sales turnover, sales of other production; & domestic sales of like goods.</p> <p>Where the form requires copies of documents to be included as part of the response, has this been done and is the information relevant?</p>	<p>A.5 of the form. Note that the form requires Appendices A.3, A.4 and A.5 to be completed.</p>
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A-6 General accounting/administration information

General	<p>Describe the ways in which enough information was provided to establish an extensive picture of their business arrangements?</p>	
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A-7 Cost information

Domestic & export cost to make and sell	<p>Does the information on the cost to make and sell the domestic (and exported where applicable) goods cover all makes, models, ranges etc.</p> <p>Is the information adequate and sufficient? Can other sources be used to verify cost information (e.g. if there is more than one industry member are the costs provided by each within the same range? Do trade journals provide an insight into this particular industry?)</p> <p>In your assessment of the applicant's claims, will it assist to chart or graph the cost information expressed as a per unit basis (see appendices A6.1 & 2)?</p>	Note that the form requires Appendices A6.1 and 6.2 to be completed.
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Does there appear to be reasonable grounds for the publication of a dumping duty notice?

A-8 Material injury

Injury	<p>The delegate must consider whether the Australian Industry producing like goods has suffered injury.</p> <p>Does the application contain data that supports volume effects, such as:</p> <ul style="list-style-type: none"> • Sales data • Market volumes & shares • Import volumes by country and fluctuations • capacity utilisation & productivity • is market share maintained in a growing or shrinking market? <p>Does the application contain data that supports price effects such as:</p> <ul style="list-style-type: none"> • Price undercutting (is it customer to customer at the same point in time for the same model or something else) • Price depression (e.g. the relationship between raw material costs and selling prices) • 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) 	<p>You are required to make an assessment on whether “reasonable grounds” exist. 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</p>
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	<ul style="list-style-type: none"> the percentage change in selling prices and whether profitability fluctuations are within the bounds of normal market environments actual and potential declines in sales, profits, output, return on investments other factors affecting domestic prices actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. <p>• Analysis of Appendix 6 data might assist in identifying whether injury claims are sound, such as</p> <ul style="list-style-type: none"> comparing new data with old data if the good has been previously investigated considering whether the period for which data has been provided is sufficient comparing the sales data in appendix 6 to the sales data in appendix 4 (the detailed domestic sales listing) examining whether any rebates/discounts have been properly accounted for in the data examining whether the data relates to domestic sales/export sales separately examining whether there are internal inconsistencies in the data considering the allocation method 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. <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>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 2013 Ministerial Direction on the “materiality” of injury, located on the Commission’s website, might also provide useful indicators.</p>
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A-9 Link between injury and dumped imports

Causation	<p>The delegate must consider whether the dumping from the country of export has caused material injury to the Australian Industry.</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"> • volume and value of imports • Australian market share (i.e., the ratio of imports to consumption) • actual pricing (i.e., evidence of decreased pricing) • relative pricing (i.e. evidence of imports underselling Australian products) <p>For price/profit</p> <ul style="list-style-type: none"> • Undercutting: information presented is examined and a chronology of the undercutting claims is prepared. • Depression: unit prices and costs are graphed including trendlines. Comment on any known influences on prices such as raw material prices. • 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. <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>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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8.3 Part B – Dumping

B-1 Source of exports

Origin	<p>Does the application contain any supporting evidence of:</p> <ul style="list-style-type: none"> the countries of export or origin? Import volumes? <p>Have you used ICS 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 and Border Protection information may be used to examine the export price and import volumes. The Commission 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>	B.1 of the form. 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.
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B-2 Export Price

Export price	<p>Does the application contain the following:</p> <ul style="list-style-type: none"> support documentation for the alleged prices or costs and claimed adjustments. any market research reports etc and their credentials. current and dated price data (should preferably be no more than one year old). <p>Using ICS to 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 and Border Protection 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>	B.2 of the form.
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	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)	
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B-3 & B-4 Normal Value

Normal value	<p>Does the application contain the following:</p> <ul style="list-style-type: none"> • any documentation for the alleged prices (e.g. sales invoices covering the potential investigation period or thereabouts) • any support for claimed adjustments • any recent market research reports etc referring to sources and how information was obtained • current and dated price data (should preferably be no more than one-year old) (e.g. price lists) • price and cost data from contemporaneous time periods • correct currency rates for all conversions to Australian dollars • conversion factors for comparisons of differing units of measure (if relevant)? <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. 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. Alternatively, applicants may estimate a normal value for each country of export based on its own costs.</p>	The Commission would not generally need to become involved in substantial data reconstruction. It is however permissible to benchmark information in rare circumstances (say if we are in possession of information from a recent investigation).
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	<p>In either case the Commission 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

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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B-6 Dumping Margin

Margins	Are the applicant's dumping margins based on credible information?	B.6 of the form. It is worthwhile keeping in mind the tests for ceasing an
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	<p>Has the applicant compared similar time NV & EP? (e.g. if the NV is based on an invoice, is it compared with an EP of around the same time?). If not, then there should be compelling reasons why this is so.</p> <p>What method has been used – e.g. has the applicant compared a weighted average figure with a point in time figure? Is the explanation for using the method sound and reasonable?</p>	<p>investigation (s.269TDA) when considering these issues.</p>
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8.4 PART C – Supplementary Section

NB: It is not mandatory to consider any of Part C unless the applicant specifically includes information in one of those section e.g. if no subsidy, or if no close processed agricultural goods have been claimed, do not address these issues.

The inclusion of “threat” in the main body of the old application form meant that most applicants tried to address an issue that was often not necessary for the purposes of making an assessment. However, if threat or one of the other sections in Part C is completed, the delegate must consider this additional information when making a decision about whether to accept or reject the application.

C-1 Subsidy

Subsidy	<p>Has the applicant supplied sufficient information about the subsidy?</p> <ul style="list-style-type: none"> - Has the applicant explained the nature and title of the subsidy? - Has the applicant provided contemporary evidence provided in support of the claim? - What is the nature of evidence in support of this claim (eg what documents)? - Has the applicant provided the name of the government agency responsible for administering the subsidy? - Has the applicant given enough information to establish who receives the subsidy – in other words, what conditions must be met in order to receive the subsidy? - If the subsidy is not paid in relation to the exported goods does the application show how the benefit from the subsidy flows to the exported goods? - Has the applicant shown the amount of the subsidy? <p>Keep in mind what information is reasonably available to the applicant. While a delegate is not obliged to gather additional information to fill in any gaps, it is possible to do so. Such additional information may or may not provide support for the application. Where additional information is obtained from other sources it must be taken into account if it is relevant.</p>	<p>Keep in mind the grounds for terminating an investigation (s.269TDA) when considering whether or not there appear to be reasonable grounds for the publication of a countervailing duty notice.</p>
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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-3 Close processed agricultural goods

	Unlikely to be an issue – if so, D(Policy) must be consulted.	
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C-4 Exports from a non-market economy

Normal value	Unlikely to be an issue – if so, D(Policy) must be consulted.	
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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</p>	The definition of EiT is in 269T(5C)
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	<p>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>	
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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 ICS 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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