



BANGLADESH TARIFF COMMISSION

A GUIDE TO THE COMPLETION OF AN ANTI-DUMPING APPLICATION

BANGLADESH TARIFF COMMISSION

Dhaka, Bangladesh

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1. GENERAL INFORMATION:

This Guide has been designed to assist Bangladeshi producers in preparing a properly documented application that can be acted upon by the Bangladesh Tariff Commission (BTC). It is designed to illustrate what information is needed by the BTC for initiating a formal investigation against allegedly dumped imports that are causing injury to the Bangladesh economy. It should be used in conjunction with the Application Questionnaire.

Aspiring applicants are advised to liaise with the BTC throughout the process of compiling the application. This may assist in a proper understanding of the information required by the BTC and assist the BTC in understanding the industry and the product.

Parties should obtain an electronic version of the Application Questionnaire to ensure that information is presented in the format requested, including the questions itself. It will also assist the industry, as some of the tables in the questionnaire are in Excel and will self-calculate many of the required fields if only the indicated data are inserted.

2. THE LEGISLATION:

All investigations are undertaken under the authority vested in the Chairman of the Bangladesh Tariff Commission as per the SRO No. 210-Law/95/1643/Customs dated 30-11-1995, issued in pursuance of section 3 of the SRO No.209-Law/95/1642/Customs dated 30-11-1995 in consonance with sub-section 6 of section 18(B) of Customs Act 1969.

Any action taken under the specific provision of the Legislation can become an international trade issue as the action represents an accusation that a trading partner is trading unfairly. To the extent possible, effort must be undertaken to demonstrate that any action undertaken is being completed according to the WTO requirements. In discharging the responsibility vested in him, the Chairman of the BTC will be assisted by BTC employees.

In addition, as a Member of the WTO, Bangladesh is bound by the provisions of the WTO Agreement, including the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the AD Agreement). Accordingly, investigations will be conducted in line with the requirements under the AD Agreement.

3. DEFINITIONS

Dumping: takes place where the export price of a product is less than the normal value of the like product.

Export price: is the price paid or payable for the product under investigation (the IP) and is normally measured at the ex-factory level of the exporter.

Interested parties: may include known –

- (a) producers in Bangladesh;
- (b) exporters;
- (c) foreign producers;
- (d) importers;
- (e) trade or business associations whose members are Bangladeshi or foreign producers, exporters or importers; and/or
- (f) the governments of the countries of origin and of export;

of the product under investigation or the like product. This does not preclude the BTC from accepting other parties as interested parties at the behest of the BTC in an anti-dumping investigation.

Investigation period for dumping: is the period for which it is assessed whether dumping took place. This period shall normally be 12 months, and may be more, but in no case less than 6 months, and shall be a period ending as close as possible to the initiation of the investigation.

Investigation period for injury: is the period for which it is assessed whether the Bangladeshi industry experienced material injury. This period shall normally cover a period of three years plus information available on the current financial year at the date that the application was submitted.

IP: is the investigated product, also known as the product under consideration or the alleged dumped product.

Like product: means –

- (a) a product which is identical, i.e. alike in all respects to the product under consideration; or
- (b) in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

In determining whether the product has characteristics closely resembling those of the product under consideration the BTC may consider –

- (i) the raw materials and other inputs used in producing the products;
- (ii) the production process;
- (iii) physical characteristics and appearance of the product;
- (iv) the end-use of the product;
- (v) the substitutability of the product with the product under investigation;
- (vi) tariff classification; and/or
- (vii) any other factor proven to the satisfaction of the Commission to be relevant.

No one or several of these factors can necessarily give decisive guidance.

Margin of dumping: is the extent to which the normal value is higher than the export price, after adjustments have been made for comparative purposes.

Material injury: unless the opposite is clear from the context, refers to actual material injury, a threat of material injury or the material retardation of the establishment of an industry.

Normal value: is normally the price at which the like product is sold for on the domestic market of the exporter. This price must be measured at the same level of trade as the IP, i.e. normally the ex-factory level. Where the normal value cannot be determined with reference to the price on the exporter's domestic market, the normal value may be determined on the basis of the export price from that country to any appropriate third country or on the basis of a constructed normal value in the exporting country, i.e. the cost to produce and sell the like product on the exporter's domestic market, including a reasonable addition for profit.

Price depression: takes place where the Bangladeshi industry's ex-factory selling price decreases during the investigation period.

Price disadvantage: is the extent to which the price of the imported product is lower than the unsuppressed selling price of the like product produced by the Bangladesh industry, as measured at the appropriate point of comparison.

Price suppression: takes place where the cost-to-price-ratio of the domestic industry increases, or where the domestic industry sells at a loss during the investigation period or part thereof.

Price undercutting: is the extent to which the price of the imported product is lower than the price of the like product produced by the domestic industry, as measured at the appropriate point of comparison.

Related parties: are parties deemed to be related for purposes of an anti-dumping investigation, and sales may be considered not to be at arm's length, if –

- (a) one directly or indirectly owns, controls or holds five per cent or more of the equity shares of the other;
- (b) one has the power to directly or indirectly nominate or appoint a director to the management of the other;
- (c) one is an officer or director of the others business;
- (d) they are legally recognised partners in business;
- (e) one is employed by the other;
- (f) they are both directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person;
- (h) they appear to be related by virtue of their conduct;
- (i) they are blood relatives or are related by marriage, common-law partnership or adoption; or
- (j) if their relationship is otherwise of such a nature that trade between them cannot be regarded to be at arm's length.

Bangladeshi industry: means the domestic producers in Bangladesh as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

4. DOCUMENTATION:

An application must be thoroughly documented and complainants must provide the best information available to them and, wherever possible, give supporting documentary evidence from commercial or publicly available sources.

All calculations should be explicitly shown as well as the sources of all the data used especially noting the period to which the data refer. In preparing an application the applicant should always ensure that it maintains the original calculation sheets for verification by the BTC. The applicant should be in a position to indicate how any information was derived, including any allocations that may have been made.

Other than the section on dumping, all value figures must be stated in Bangladeshi taka.

5. CONFIDENTIALITY:

Information submitted in confidence will be treated as such by the Commission. Access to confidential information will be restricted to the officers in charge of the investigation as well as to the Members of the Commission. The Commission has set up means to ensure that only authorised personnel can have access to all documentation submitted in confidence.

However, the Commission is required by law to ensure that all interested parties to an anti-dumping investigation are given reasonable opportunity to have access to all non-confidential information relevant to the presentation of their case and that is used by the Commission, although this may only be done after initiation of an investigation.

Any information which is by nature commercially confidential (for example, because its disclosure would be of significant competitive advantage to a competitor, or would have a significantly adverse effect on the person supplying the information or the person from whom the information was acquired,) or which is provided on a confidential basis by parties to an investigation will, **upon good cause being shown**, be treated as confidential by the Commission.

Parties requesting that information be treated as confidential should:

- (a) clearly identify the information for which confidential treatment is requested;
- (b) provide justification for the request for confidential treatment; and
- (c) provide a non-confidential version or non-confidential summary of the information for which confidential treatment is requested, or if it is claimed that the information is not susceptible to such a summary, a statement of the reasons why such a summary is not possible. A non-confidential version should reproduce the original but have information considered to be confidential either omitted or summarised. Non-confidential versions should contain sufficient details to allow other interested parties a reasonable understanding of the information submitted in confidence. Annex I to this questionnaire provides guidelines on how to prepare a non-confidential summary of the confidential information.

Please Note ** As provided for in sub-rule (3) of rule 7 of the SRO No. 209-Law/95/1642/Customs, if the Commission finds that the request for confidentiality is not warranted and the supplier of the information is either unwilling to make the information public or to authorise its disclosure in

generalised or summary form, it may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

** Information for which confidential treatment is **not** requested will be treated as non-confidential and will be included in the Commission's public file of the investigation. The public file is available for perusal or copying by any interested party or member of the public.

You should indicate clearly in any submission, including your questionnaire response, what information you consider to be confidential.

It should be noted that if any further submissions are made, non-confidential versions are also required.

6. ISSUES THAT A DUMPING COMPLAINT SHOULD COVER:

An anti-dumping complaint should provide the BTC with information on the applicant, the product and all interested parties. In addition, the application must clearly set out data establishing a *prima facie* case of dumping, material injury and a causal link between the dumping and the injury. The more detailed the application is, the easier it will be for the BTC to determine whether the application is properly documented and whether it contains *prima facie* proof of injurious dumping. The following indicates information required by the BTC under the specific headings in the Application Questionnaire.

6.1 General information

In this section information is required on the applicant. Where the applicant is a chamber or an association applying on behalf of its members, some of the questions might not be relevant. In such instances, the applicant should only respond to those questions that are applicable.

It is important that the BTC knows who the contact person at the applicant is. The contact person should be somebody that has been involved with the completion of the Application Questionnaire and that would be in a position to answer questions the BTC might raise. It is therefore not normally appropriate for the Managing Director of the domestic producer or the Chairman of the Chamber of Commerce to be the contact person, even if the ultimate responsibility for the application rests with such person.

The Applicant might wish to appoint a legal representative to represent it in the anti-dumping investigation. Should this be done, you **must** attach a letter of attorney. Without this form the BTC cannot engage in any contact with the representative. This is to protect both the Applicant and BTC and to prevent the unauthorised release of any information that might be regarded as confidential. Without a letter of attorney the BTC will only liaise with the contact person at the Applicant.

As regards corporate information, where the Applicant is a chamber or an association, the information under question A-4 should be completed, insofar as is possible, for each of its members individually. This can be done in the form of annexures attached to the application.

It is important to attach copies of the financial statements of the applicant (or of the members where the applicant is a chamber or an association), as all injury information needs to be reconciled to such statements. The financial statements will enable the BTC to conduct a desk top verification of the information submitted in section E of the questionnaire, as is required by Article 5.3 of the AD Agreement.

6.2 Product

It is important that the product under consideration be properly defined. Note that it is the imported product that has to be defined and not the product produced by the domestic industry. The scope of

the investigation is determined by the imported product, which is referred to in the Application Questionnaire as the “product under consideration” or the “IP”. Without a proper description of the IP the BTC will not be in a position to initiate an investigation as the NBR would not be able to implement any final determination.

The IP should be described in terms of all the criteria used by the BTC to determine likeness of the Bangladeshi product. These factors are listed in question B-1.1. Please take care to supply as much information on the IP as possible and provide samples, photographs and/or brochures of the IP.

No anti-dumping investigation can be initiated unless the BTC has determined that imports of the IP have increased either in absolute terms or relative to production or consumption in Bangladesh. It is therefore of the utmost importance that the official import statistics be obtained from the NBR. A summary of these statistics should be provided in response to question B-1.3, while the full set of data can be appended as an annexure. The more detailed information can also assist the Applicant in determining the export price of the IP and price undercutting.

It is important that detailed information be provided regarding any differences between the IP and the like product produced by the Bangladeshi industry. These differences may affect a proper comparison and therefore affect the injury determination. Likewise, any differences between the IP and the like product sold on the domestic market of the exporting country may affect the margin of dumping.

6.3 Interested parties

The BTC is obliged to inform all interested parties of the initiation of an investigation. If it is subsequently shown that there are interested parties, e.g. exporters, that have not been properly informed of the investigation, this may lead to a significant retardation in the finalisation of any investigation. It is thus important not only to provide the names of exporters and importers, but also their contact details. You should retain documentary proof indicating how their identities were established. It is advisable that you specifically conduct an internet search for producers/exporters of the IP in each exporting country and for importers in Bangladesh. You may append printouts from internet web pages as proof of the identity and addresses of interested parties.

It is also very important to submit details on the identity and contact details of all domestic producers of the like product. There are very specific technical rules that define industry standing in investigations which cannot be met without this information. In this regard, it must be shown that the Applicant and other producers that support the application account for at least 25% of the total production volume for local consumption of the like product. Accordingly, the BTC will require not only contact details of the producers, but will also investigate the actual production volumes. In addition, the application must be supported by at least 50% of those producers, by volume of production, that express and opinion on the investigation.

6.4 Dumping

The Applicant is required to submit information on 4 aspects, being the export price, the normal value, a fair comparison and the margin of dumping.

6.4.1 Export price

The export price has to be determined for the IP or the alleged dumped product. If it is alleged that the product is dumped from more than one country, an export price will have to be determined in respect of each country. As indicated in the questionnaire, there are different ways to determine the export price. Since the export price has to be determined at the ex-factory level, the ideal is to obtain a price as close to this level as possible, as this not only makes it easier to calculate the ex-factory export price, but is also more accurate. In cases where several models or products form part of the investigation, you should strive to obtain export prices for at least those models that represent a major proportion of the total volume of alleged dumped exports to Bangladesh.

For products that separately classifiable under the Harmonised Systems Code, the National Board of Revenue import statistics can be used. These statistics are at a Cost and Price level, which means that the price includes ocean freight, harbour costs in the exporting country and inland freight in the exporting country. In the case of imports by rail or road, this price will include internal freight costs in the exporting country only. These costs need to be adjusted to obtain the ex-factory export price. The following example illustrates the calculation to be made:

Table 6.4.1.1

Price level/cost item	Taka/unit
C&F price	125
Less: Ocean freight	10
FOB price	115
Less: Harbour costs	5
Less: Inland freight	10
Ex-factory export price	100

Note that in some instances NBR statistics cannot be used. This will happen in two cases: (a) where imports are declared in a different unit of measurement, e.g. motorcycles and compact fluorescent lights are declared by weight, rather than by units; and (b) where several different products are classifiable under the same tariff subheading. In such instances the export price may be determined on another basis.

Another possibility for determining the export price is by approaching an exporter and requesting a quotation for export of the product to Bangladesh. Depending on the level of trade at which such a quotation is made, the same adjustments as indicated in the table above may need to be made.

As a last resort, the export price may be determined on the basis of the reselling price by an importer. In this case, additional to the adjustments indicated above, adjustments will have to be made for the profit realised by the importer, the importer's selling, general and administrative costs, including transport from the harbour, customs clearance costs (duties, landing costs, etc.) and for insurance.

In each instance, it is important to supply the BTC with as much information as possible to substantiate how the calculation was made. This should include quotations from a freight forwarder to ship the product from the exporting country to Bangladesh and to move the product internally in the exporting country.

In cases where the exporter and the importer are related, the export price may not reflect trade in the ordinary course of trade, i.e. the price may be affected by the relationship. In such instances, where there is reason to believe that the price does not reflect sales in the ordinary course of trade, the Applicant may construct the export price using the selling price to the first independent buyer as starting point and determine the ex-factory export price by deducting all costs from the point of resale. A reasonable amount for the importer's profit must also be deducted. The following calculation shows how the calculation can be made:

Table 6.4.1.2

Cost item	Taka	Calculation
Retail price	T999.00	
Less: VAT @ 15%	T130.30	
Net price	T868.70	999/1.15
Less: Profit @ 5% on selling price	T41.37	
Total cost	T827.33	868.7/1.05
Less: Selling, general and administrative (SGA) costs 8%	T61.28	

In-store cost	T766.05	827.33/1.08
Less: Domestic freight (T30/unit)	T30.00	
Landed cost	T736.05	
Less: Landing and clearing costs (duty 25%, landing cost 1%)	T151.88	
CIF price	T584.16	736.05/1.26
Less: Insurance (1% on FOB)	T5.51	584.16/1.06*.01
Less: Ocean freight (5% on FOB)	T27.55	584.16/1.06*.05
FOB cost	T551.10	
Less: Harbour costs (5% on Ex-factory)	T25.51	551.1/1.08*.05
Less: Inland freight in exporting country (3% on ex-factory)	T15.31	551.1/1.08*.03
Ex-factory export price	T510.28	

Note that the Applicant should attempt to substantiate each and every adjustment made. Thus, freight forwarders could provide the total cost of moving the product from the exporter's factory to the market in Bangladesh, thus covering all costs up to the importer's in-store cost. Some form of proof also needs to be submitted in respect of the SGA costs and profit margin for the importer. This can be done *inter alia* through reference to the costs incurred and profit realised by other sellers, including domestic producers, in the market.

6.4.2 Normal value

The normal value is the value to which the export price is compared to determine whether dumping is taking place. If the normal value is higher than the export price, there is dumping.

The normal value can be determined in one of 3 ways. The first methodology has to be considered before recourse may be had to either of the other 2 methodologies. Thus, the Applicant must first endeavour to obtain a price for the product on the market in the exporting country. As for the export price, this price should preferably be at the ex-factory level. However, if the price can only be obtained at the wholesale or retail level, the necessary adjustments should be made to derive the ex-factory price. Similar adjustments will be made to those made to the export price. If the price was obtained at retail level and the producer sells direct to retailers, the following adjustments could be made:

Table 6.4.2.1

Cost item	Rupees	Calculation
Retail price	R 999.00	
Less: VAT @ 15%	R 130.30	
Net price	R 868.70	999/1.15
Less: Profit @ 5% on selling price	R 41.37	
Total cost	R 827.33	868.7/1.05
Less: Selling, general and administrative (SGA) costs 8%	R 61.28	
Ex-factory price	R 766.05	827.33/1.08

Price lists may also be used, as can international publication or prices indicated in journals, magazines or the newspaper, while some prices can also be obtained from the internet. It is important that the source of the price information be indicated and that a copy of the relevant document be included in the application submitted to the BTC.

Where the normal value cannot be determined on the basis of domestic sales in the exporting country, the Applicant should clearly indicate what attempts were made to obtain such prices, including submitting proof of correspondence with agents requested to obtain prices. The Applicant can then determine the normal value with reference to either the export price from the exporting country to any third country or the constructed normal value of the product. If the export price to another country can be used, this will often be the easier methodology to

apply. Several countries publish their import statistics on the internet and these data can be used to determine normal values in many instances. Thus, information on imports into the European Union and the United States are available free of charge. The BTC can be approached for more information in this regard. Care should be taken that information is provided on the same basis as for imports into Bangladesh, i.e. that imports are not recorded by weight when the product is priced per unit. In addition, where several products are classified under the same tariff heading, this approach cannot be used (on the basis of import statistics). However, it may still be possible to obtain quotes for export of the product from the exporting country to a third country. In such instances these quotes may be used. Care should be taken in each instance that the necessary adjustments are made to derive the ex-factory export price. Thus, the EU compiles import data on a CIF basis, whereas the US compiles data on an FOB basis.

Applicants may also elect to construct a normal value. This involves determining the cost of product and sales in the exporting country and adding a reasonable profit to the cost. The cost should include all direct and indirect production costs, but also requires substantiation of all the major cost items, e.g. raw materials, labour costs, depreciation. While the Bangladeshi industry's factors of production may be applied, i.e. the units of labour, raw materials, energy, etc. these items have to be costed in the exporting country. This means that the Applicant will have to find proof of the cost of the raw material in the exporting country, as well as the cost of gas/electricity, labour, etc. This may be more difficult than to obtain a domestic selling price. It must be remembered that the cost build-up is not for the IP, but for the like product sold on the domestic market of the exporter.

The following example shows how a constructed normal value can be determined:

Table 6.4.2.2	Cost	Unit cost
Production volume (kg)	100 000	
Raw materials	BDT 600 000.00	BDT 6.00
Labour	BDT 150 000.00	BDT 1.50
Processing	BDT 50 000.00	BDT 0.50
Power and fuel	BDT 50 000.00	BDT 0.50
Total direct production cost	BDT 850 000.00	BDT 8.50
Indirect labour	BDT 30 000.00	BDT 0.30
Depreciation	BDT 10 000.00	BDT 0.10
Other factory overheads	BDT 5 000.00	BDT 0.05
Total cost of production	BDT 895 000.00	BDT 8.95
Salesmen salaries	BDT 33 000.00	BDT 0.33
Other selling expenses	BDT 11 000.00	BDT 0.11
Administrative expenses	BDT 27 500.00	BDT 0.28
Total cost	BDT 966 500.00	BDT 9.67
Profit (5%)	BDT 48 325.00	BDT 0.48
Constructed normal value	BDT 1 014 825.00	BDT 10.15

6.4.3 Fair comparison

A fair comparison needs to be made between the normal value and the export price to ensure that like is compared to like. Thus, if there is a consumption tax (e.g. VAT) in the exporting country that is not levied on the exported product, this has to be deducted from the domestic selling price in that country. The same applies for all other differences that affect prices at the time such prices were set.

Typical examples of adjustments that may need to be made include the following:

- Payment terms (payment terms are often different on domestic and export markets);

- Packaging;
- Differences in products, e.g. for size or strength (e.g. 50% versus 70% hydrochloric acid)
- Rebates and discounts;
- Commission; and
- Delivery costs (already addressed above).

The Applicant is required to submit such data as are reasonably available to it to indicate the adjustments that need to be made.

6.4.4 *Margin of dumping*

The margin of dumping is the difference between the normal value and the export price after all adjustments have been made. The margin of dumping per unit is then divided by the C&F export price to determine the margin of dumping percentage. This margin must be more than 2%, failing which the BTC may not recommend the imposition of anti-dumping duties.

6.5 **Material injury**

The domestic industry must establish a *prima facie* case that it is experiencing material injury. In terms of its legal and international obligations, the BTC must consider the evolution of the volume of dumped imports into Bangladesh and the price effects thereof on the industry. For this reason it is important that the NBR statistics be submitted. The NBR has indicated that it is willing to assist the domestic industry by providing this information on request. It must also be shown that the industry is suffering price injury through price depression, price depression and/or price undercutting (see the definitions above).

In addition, the BTC must, during the course of an investigation, evaluate an additional 15 injury factors. While it is not absolutely required that the industry submit definitive information on all these factors prior to initiation, this will greatly enhance not only the transparency of the proceeding, but will assist the BTC in taking a properly evaluated decision on whether a *prima facie* case of material injury has been established. Where the domestic industry only produces a single product, this information should be readily available from its financial statements.

The table in the Application Questionnaire has been devised to obtain the maximum amount of data with the least possible burden on the domestic industry, with most of the rows self-calculating. Please request an electronic version of the questionnaire so that you can compile the data in the Excel spreadsheet inserted in the Word document.

6.6 **Causality**

The Applicant must submit evidence to show *prima facie* that the material injury experienced by the domestic industry is caused by the dumping and not by other factors. It is therefore important to draw links between the presence of the increased alleged dumped products into the Bangladeshi market and the injury experienced by the industry. Normally, a clear link is visible where imports of the IP increase and there is an equal decrease in domestic industry sales, especially where the landed price of the IP, i.e. the price after importation and after customs duties have been paid, is lower than the price of the domestic industry, indicating that price undercutting is taking place.

The industry is, however, also required to indicate which other factors contributed to the industry's injury. This might include natural disasters, strikes, changes in consumer demand, technological advances, decreased export volumes, etc.

7. INVESTIGATION PROCESS

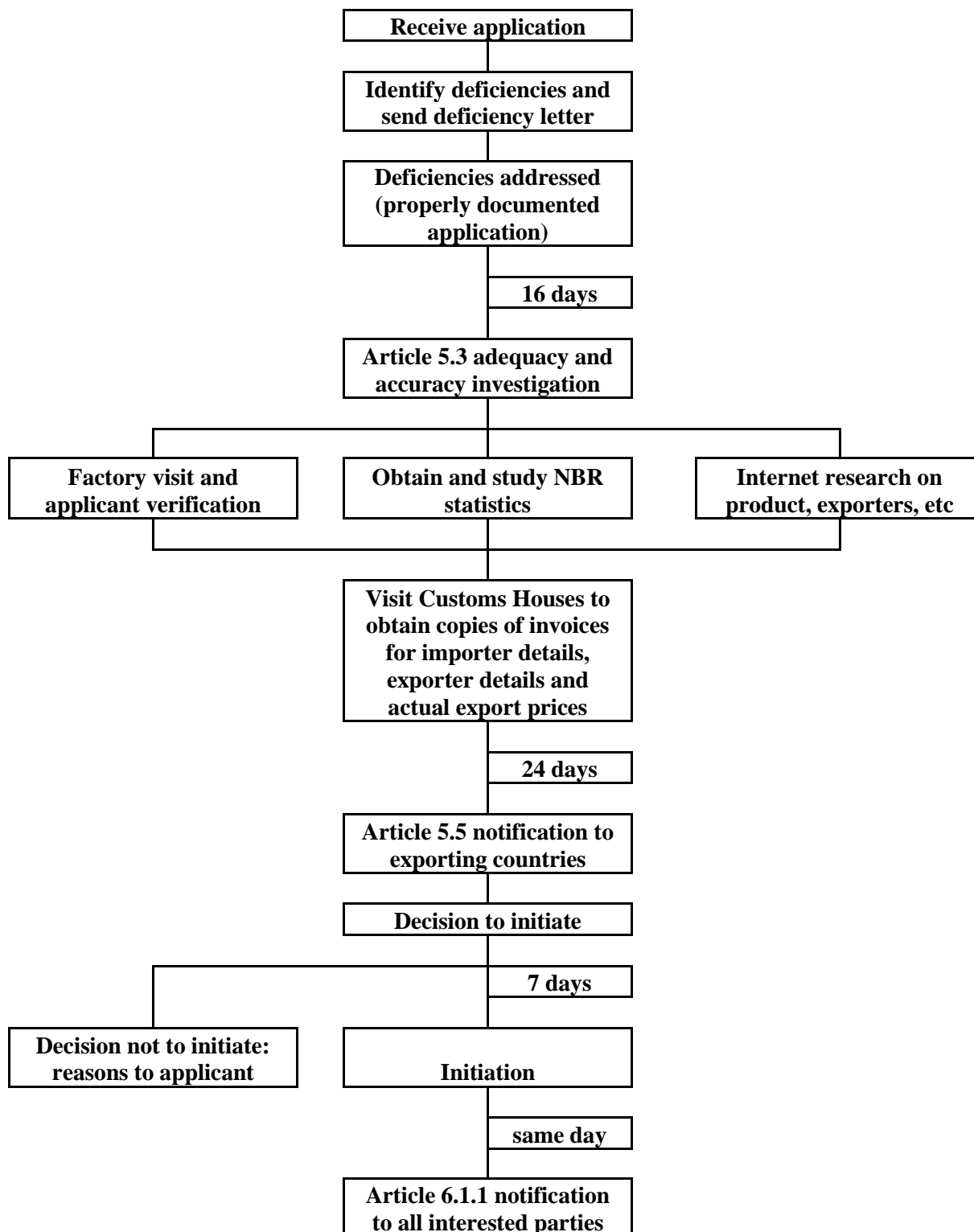
The complaint once received will go through a number of processes prior to initiation. First, the BTC will have to determine whether the application is properly documented. During this process the BTC will scrutinise all information supplied in the Application Questionnaire and specifically investigate whether the necessary substantiating documentation has been appended to the application. It will therefore save considerable time if you ensure that you have submitted copies of all supporting documentation on which you relied in completing the application.

Once the BTC is satisfied that it has received a properly documented application, it may arrange for verification of the information contained in the application to confirm the veracity of the information. It is therefore important that you maintain copies of all working documents and files used in the preparation of the Application Questionnaire response. The BTC will also of its own conduct further research, as it is required to do in terms of Article 5.3 of the AD Agreement, to confirm whether the normal value and export price information, the adjustments made and the margin of dumping determined appear accurate and whether all interested parties have been identified.

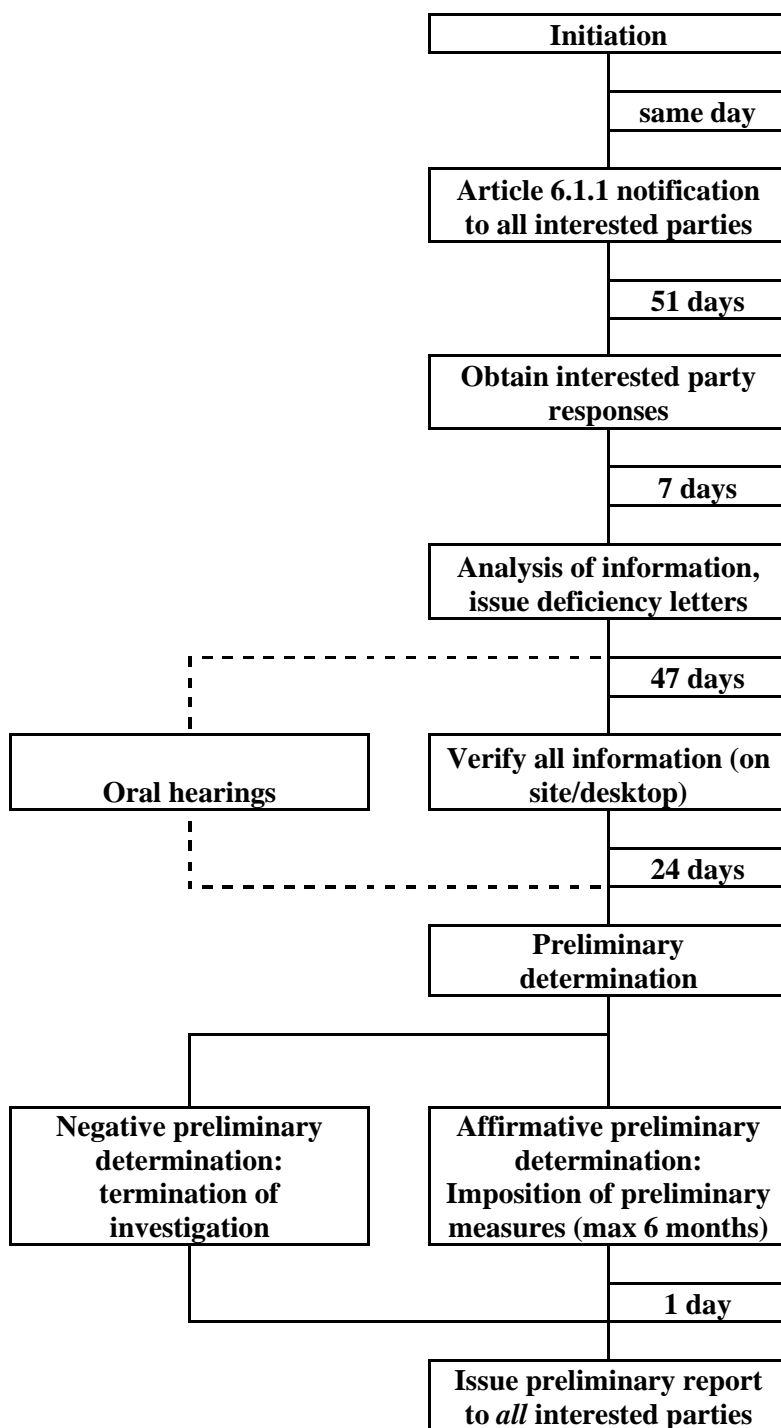
Once the BTC is satisfied that all requirements have been met and that the application establishes a *prima facie* case of injurious dumping, it will initiate an anti-dumping investigation. All interested parties will be informed of the investigation and asked to participate. You will also be sent an injury questionnaire to elicit any additional information that you had not submitted prior to initiation. Again, the more complete your application, the less pressure will be placed on you to supply the information within a reasonably short period after initiation of an investigation. After receipt of all parties' comments, you will have the opportunity to access the public file kept by the BTC to study the non-confidential responses of all interested parties. The BTC may proceed to a preliminary finding, which could result in the imposition of preliminary duties before proceeding to a final determination.

The full investigation process is as outlined below:

PRE-INITIATION PROCEDURE



**PRELIMINARY INVESTIGATION
PROCEDURE**



**PRELIMINARY INVESTIGATION
PROCEDURE**

