

ANTI-DUMPING

- a guide

Trade Remedies Investigating Authority
Ministry of Foreign Affairs, Regional Integration and International Trade
(International Trade Division)

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INTRODUCTION

ANTI-DUMPING DUTIES

- Essentially deal with the price behavior of Exporters
- Dumping exists when Normal Value is more than the Export Price
- Injury and casual linked are required to proved

The World Trade Organization (WTO) Agreement (Article VI of GATT 1994 and the Agreement on implementation of Article VI of the GATT 1994) lays down the principles to be followed by the member countries for imposition of anti-dumping duties. Pursuant to this Agreement, its

principles have been prescribed in the Trade (Anti-Dumping, Countervailing and Safeguard Measures) Act 2022.

Dumping is said to have taken place when an exporter sells a product to Mauritius at a price less than the price prevailing in its domestic market. However, the phenomenon of dumping is per se not condemnable as it is recognized that producers may sell their goods at different prices to different markets. It is also not unusual for prices to vary from time to time in the light of supply and demand conditions. It is also recognized that price discrimination in the form of dumping is a common international commercial practice. It is also not uncommon that the export prices are lower than the domestic prices. Therefore, from the point of view of antidumping practices, there is nothing inherently illegal or immoral about the practice of dumping. However, where dumping causes or threatens to cause material injury to the domestic industry of Mauritius, the Investigating Authority may initiate an investigation and subsequently impose anti-dumping duties.

DUMPING PER SE NOT PROHIBITED

Cause of action only when dumping causes material injury

LEGAL FRAMEWORK

The Trade (Anti-Dumping, Countervailing and Safeguard Measures) Act 2022, along with the Anti-Dumping Regulations 2023, provide the legal frame work for anti-dumping investigations and for the levy of anti-dumping duties. This Act is based on relevant WTO Agreement, namely Article VI of GATT 1994 and the Agreement on implementation of Article VI of the GATT 1994.

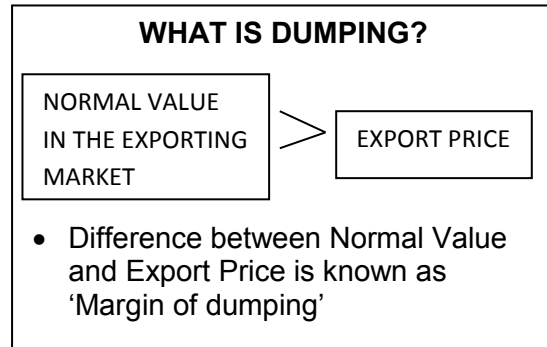
LEGAL FRAMEWORK

- Based on Article VI of GATT 1994; Agreement on implementation of Article VI of the GATT 1994
- Trade (Anti-Dumping, Countervailing and Safeguard Measures) Act 2022
- Anti-Dumping Regulations 2023
- Investigations and Recommendations by Investigating Authority
- Imposition and Collection by Mauritius Revenue Authority

DETERMINATION OF DUMPING

Dumping

Dumping occurs when the export price of goods imported into Mauritius is less than the Normal Value of 'like articles' sold in the domestic market of the exporter. Imports at cheap or low prices do not *per se* indicate dumping.

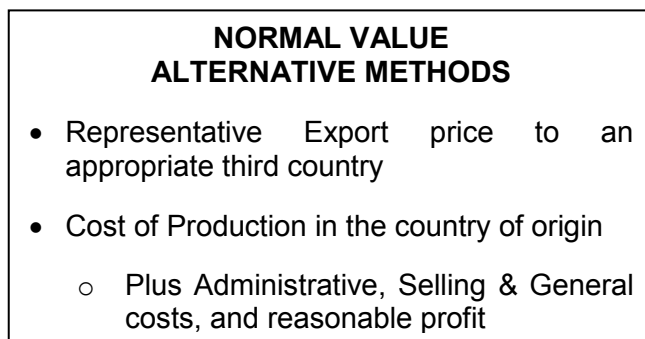


The price at which like articles are sold in the domestic market of the exporter is referred to as the "Normal Value" of those articles.

Normal Value

The normal value is the comparable price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country or territory. If the normal value cannot be determined by means of domestic sales, the Act provides for the following two alternative methods:

- Comparable representative export price to an appropriate third country
- Cost of production in the country of origin with reasonable addition for administrative, selling and general costs and for profits.



Export Price

The export price of goods imported into Mauritius is the price paid or payable for the export of the goods to Mauritius.

Constructed Export Price

If there is no export price or the export price is not reliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer.

EXPORT PRICE

- Arm's length transaction
- Resale price to an Independent buyer
- On a reasonable basis

If the goods are not resold as above or not resold in the same condition as imported, their export price may be determined on a reasonable basis.

Factors Affecting Comparison of Normal Value and Export Price

A fair comparison between Normal Value and Export Price must be made. This requires among others that both values are compared at an ex-factory level, i.e. removing any transport and insurance costs included in those values, and at the same level of trade, Export Prices to an importer cannot be directly compared to Normal Value at retail level. Other factors having an impact on the comparability of Export Price and Normal Value must also be adjusted, including differences in payment terms, packaging, physical characteristics or taxes.

It must be noted that the above factors are only indicative and any factor which can be demonstrated to affect the price comparability, is considered by the Authority.

Margin of Dumping

Margin of dumping refers to the difference between the Normal Value of the like article and the Export Price of the product under consideration. This comparison can only be made after Normal Value and Export Price have been adjusted to ensure a fair comparison between them. Margin of dumping is normally established on the basis of:-

- a comparison of weighted average Normal Value with a weighted average of prices of comparable export transactions; or
- comparison of normal values and export prices on a transaction-to-transaction basis.

A Normal Value established on a weighted average basis may be compared to prices of individual export transactions if the Investigating Authority finds a pattern of export prices that differ significantly among different purchasers, regions, time period, etc. It is significant to note that the alternative method of comparing the normal values and export prices is a major change introduced after the Uruguay Round.

The margin of dumping is generally expressed as a percentage of the CIF export price.

Like Products

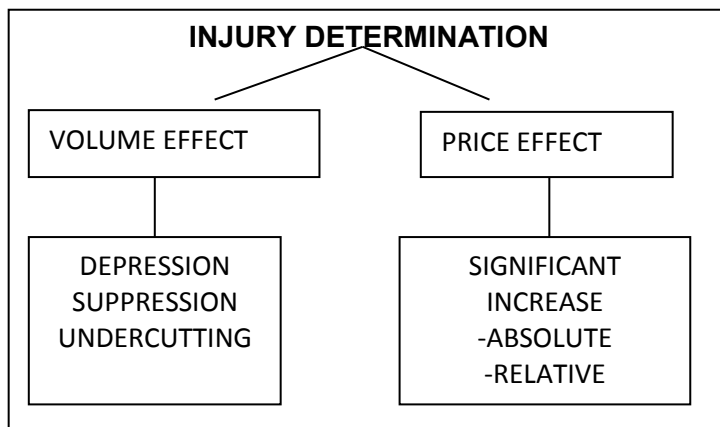
Anti-dumping action can be taken only when there is a Mauritian industry which produces “like articles” when compared to the allegedly dumped imported goods. The article produced in Mauritius must either be identical to the dumped goods in all respects or in the absence of such an article, another article that has characteristics closely resembling those goods.

LIKE ARTICLE

- Identical – alike in all respects
- If not alike in all respects, having closely resembling characteristics

INJURY TO THE DOMESTIC INDUSTRY

The domestic industry in Mauritius must be able to show that dumped imports are causing or are threatening to cause material injury to the ‘domestic industry’. Material retardation to the establishment of an industry is also regarded as injury.



The material injury or threat thereof cannot be based on mere allegation, statement or conjecture. Sufficient evidence must be provided to support the contention of material injury. Injury analysis can broadly be divided in three major areas:

The Volume Effect

The Authority examines the volume of the dumped imports, including the extent to which there has been or is likely to be a significant increase in the volume of dumped

imports, either in absolute terms or in relation to production or consumption in Mauritius, and its affect on the domestic industry.

The Price Effect

The effect of the dumped imports on prices in the Mauritian market for like articles, including the existence of price undercutting, or the extent to which the dumped imports are causing price depression or preventing price increases for the goods which otherwise would have occurred.

The impact on the Mauritian Industry

The consequent economic and financial impact of the dumped imports on the concerned Mauritian industry can be demonstrated, inter alia, by:

- decline in output
- loss of sales
- loss of market share
- reduced profits
- decline in productivity
- decline in capacity utilization
- reduced return on investments
- price effects
- adverse effects on cash flow, inventories, employment, wages, growth, investments, ability to raise capital, etc.

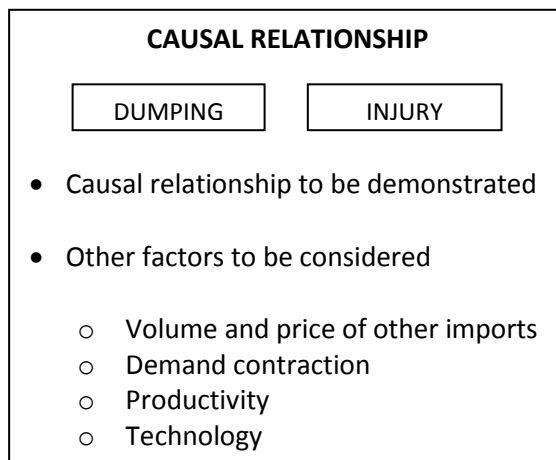
INJURY-EVALUATION OF ECONOMIC INDICATORS
<ul style="list-style-type: none">• ACTUAL/POTENTIAL DECLINE IN<ul style="list-style-type: none">○ Sales○ Output○ Profits○ Market Share and growth○ Productivity○ Return on Investment○ Cash flow○ Capacity Utilization etc.○ Employment and wages○ Inventory/Stocks○ Ability to raise capital or investment

Injury analysis is a detailed and intricate examination of all the relevant factors. It is not necessary that all the factors considered relevant display a negative performance. Material injury can be found where for instance important factors such as output, sales volume, sales prices and profitability fell during the period of investigation for injury purposes.

Causal Link

A 'causal link' must exist between the material injury being suffered by the Mauritian industry and the dumped imports. In addition, other injury causes have to be investigated so that they are not attributed to dumping. Some of these are

volume and prices of imports not sold at dumped prices, contraction in demand or changes in the pattern of consumption, export performance, productivity of the domestic industry etc.

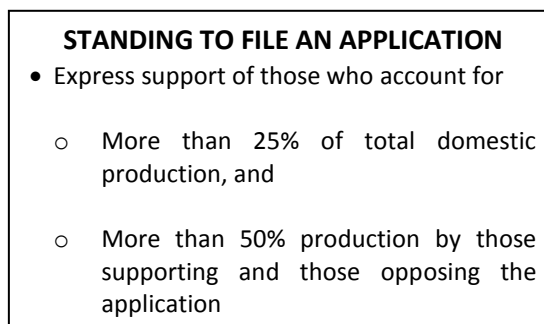


WHO CAN FILE AN APPLICATION?

An anti-dumping investigation can normally be initiated only upon receipt of a written application by or on behalf of the "Domestic Industry".

In order to constitute a valid application, the following two conditions have to be satisfied:

- The domestic producers expressly supporting the application must account for not less than 25% of the total production volume of the like product by the domestic industry in Mauritius; and



- The domestic producers expressly supporting the application must account for more than 50% of the total production of the like article by those expressly supporting and those opposing the application.

DOMESTIC INDUSTRY

- Producers of like articles as a whole or those producers whose output is a major proportion of total Mauritian production
- The following may be excluded
 - Importers of the subject product
 - Those related to importers or exporters

Domestic Industry

Domestic industry means the Mauritian producers of like articles as a whole or those producers whose collective output constitutes a major proportion of total Mauritian production.

Producers who are related to the exporters or importers or are themselves importers of the allegedly dumped goods *may* be deemed not to form part of the domestic industry.

RELIEF TO THE DOMESTIC INDUSTRY

Relief can be provided to the domestic industry in the form of antidumping duties or price undertakings.

1. ANTI-DUMPING DUTIES

Anti-dumping duties are imposed on a source specific basis and can be expressed either on ad valorem or specific basis. Non-cooperative exporters are required to pay the residual duty, which is generally the highest of the co-operative exporters.

RELIEF TO DOMESTIC INDUSTRY

- Lesser duty Rule
 - Only that amount of duty which is sufficient to remove the injury to the domestic industry

Lesser Duty Rule

Under the WTO provisions, national authorities cannot impose duties higher than the margin of

dumping. However, where the injury margin is lower than the margin of dumping and a duty based on the injury margin is considered sufficient to remove the injury suffered by the Mauritian industry, the Act sets forth that any anti-dumping duty may be based on the injury margin.

Injury Margin

Besides the calculation of the margin of dumping, the Authority also calculates the injury margin, which is the difference between the fair selling price due to the domestic industry and the landed

cost of the product under consideration. Landed cost for this purpose is taken as the assessable value under the Customs Act plus the basic customs duties and clearance costs.

INJURY MARGIN	
•	Difference between the unsuppressed Selling Price and the landed value
•	Landed Value is
○	Assessable value under customs Act, plus
○	Basic Customs Duty and clearance costs

De Minimis Margins and negligible imports test

Any exporter whose margin of dumping is less than 2% of the export price shall be excluded from the purview of anti-dumping duties even if the existence of dumping, injury as well as the causal link are established.

DE MINIMIS AND NEGLIGIBILITY MARGINS	
•	Margin of Dumping
○	Exporter Specific
○	Less than 2% of Export Price
•	Volume of Dumped Imports
○	Country specific
○	Less than 3% from individual country and cumulatively not more than 7%

Further, investigations against any country must be terminated if the volume of the dumped imports from that particular country are found to be below 3% of the total imports, unless the cumulative imports from all those countries that individually account for

less than 3%, combined are more than 7% of total imports of the like product in Mauritius.

2. PRICE UNDERTAKINGS

The Authority may suspend or terminate an investigation if the exporter concerned furnishes an undertaking to revise his price to remove the dumping or the injurious effect of dumping. No undertaking can however be accepted before the preliminary determination is made. No anti-dumping duties are recommended on such exporters from whom price undertaking has been accepted. A price undertaking may, however, be rejected in case it is found that acceptance of such undertaking is impracticable or is unacceptable for any reason.

THE APPLICATION PROCEDURES

Applications can be made by or on behalf of the concerned domestic industry to the Chairperson of the Investigating Authority, that is, the Director, Trade Policy in the International Trade Division of the Ministry of Foreign Affairs, Regional Integration and International Trade, for an investigation of any alleged dumping. The Investigating Authority may initiate an investigation when there is sufficient evidence that dumped imports are causing or are threatening to cause material injury to the Mauritian industry producing like articles or are materially retarding the establishment of an industry.

Copies of the prescribed application form are available from the Investigating Authority.

Information Required

Applications should be submitted to the Chairperson of the Investigating Authority in the prescribed form.

Period of Investigation

The period of investigation for dumping purposes is normally a year but in no case less than six months. For injury purposes, the period of investigation is longer, i.e. typically three years. It is, however, important that the period taken into consideration for detailed investigation should be representative and as recent as possible. The Investigating Authority may change the investigation period from that proposed by the industry.

Confidential Information

Any information provided to the Investigating Authority on a confidential basis by any party shall not be disclosed to any other party without the specific authorization of the party providing the information, if the Investigating Authority is satisfied about its confidentiality. Interested parties supplying information on a confidential basis are required to furnish non-confidential summaries thereof or a statement of reasons as to why such summarization is not possible.

If the Investigating Authority is not satisfied that the confidentiality is warranted or the provider of information is not willing to disclose it in a generalized form, then such information may be disregarded.

INVESTIGATION PROCESS

An application received by the Authority is dealt with as follows:

1. *Preliminary Screening:*

The application is scrutinized to ensure that it is adequately documented and provides sufficient evidence for initiation. If the evidence is not adequate, then a deficiency letter is issued, normally within 7-14 days of the formal receipt of the application.

2. *Initiation:*

When the Investigating Authority is satisfied that there is sufficient evidence in the application with regard to dumping, material injury and causal link, a Public Notice is issued initiating an investigation to determine the existence and effect of the alleged dumping.

The Authority notifies the diplomatic representative of the Government of each exporting country before proceeding to initiate the investigation.

The initiation notice will be issued normally within 45 days of the date of receipt of a properly documented application, and must be issued within a maximum of 60 days.

3. *Access to Information:*

The Investigating Authority provides access to the non-confidential evidence presented to it by various interested parties in the form of a public file, which is available for inspection after receipt of the responses.

4. *Preliminary Findings:*

The Investigating Authority will proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, make a preliminary finding containing the detailed information on the main reasons behind the determination. The preliminary finding will normally be made within 150-180 days of the date of initiation.

5. *Provisional Duty:*

A provisional duty not exceeding the provisionally estimated margin of dumping may be imposed on the basis of the preliminary findings recorded by the Authority.

The provisional duty can only be imposed after the expiry of 60 days from the date of initiation of investigation. The provisional duty will remain in force only for a period not exceeding 6 months, extendable to 9 months under certain circumstances.

6. *Oral Evidence:*

Interested parties who participate in the investigations can request the Authority for an opportunity to present relevant information orally. However, such oral information shall be taken into consideration only if it is subsequently reproduced in writing.

7. *Final Determination:*

The final determination is normally made within 150 days of the date of preliminary determination.

8. *Disclosure of Information:*

The Investigating Authority will inform all interested parties of the essential facts which form the basis for its decision before the final finding is made.

9. *Time-limit for Investigation Process:*

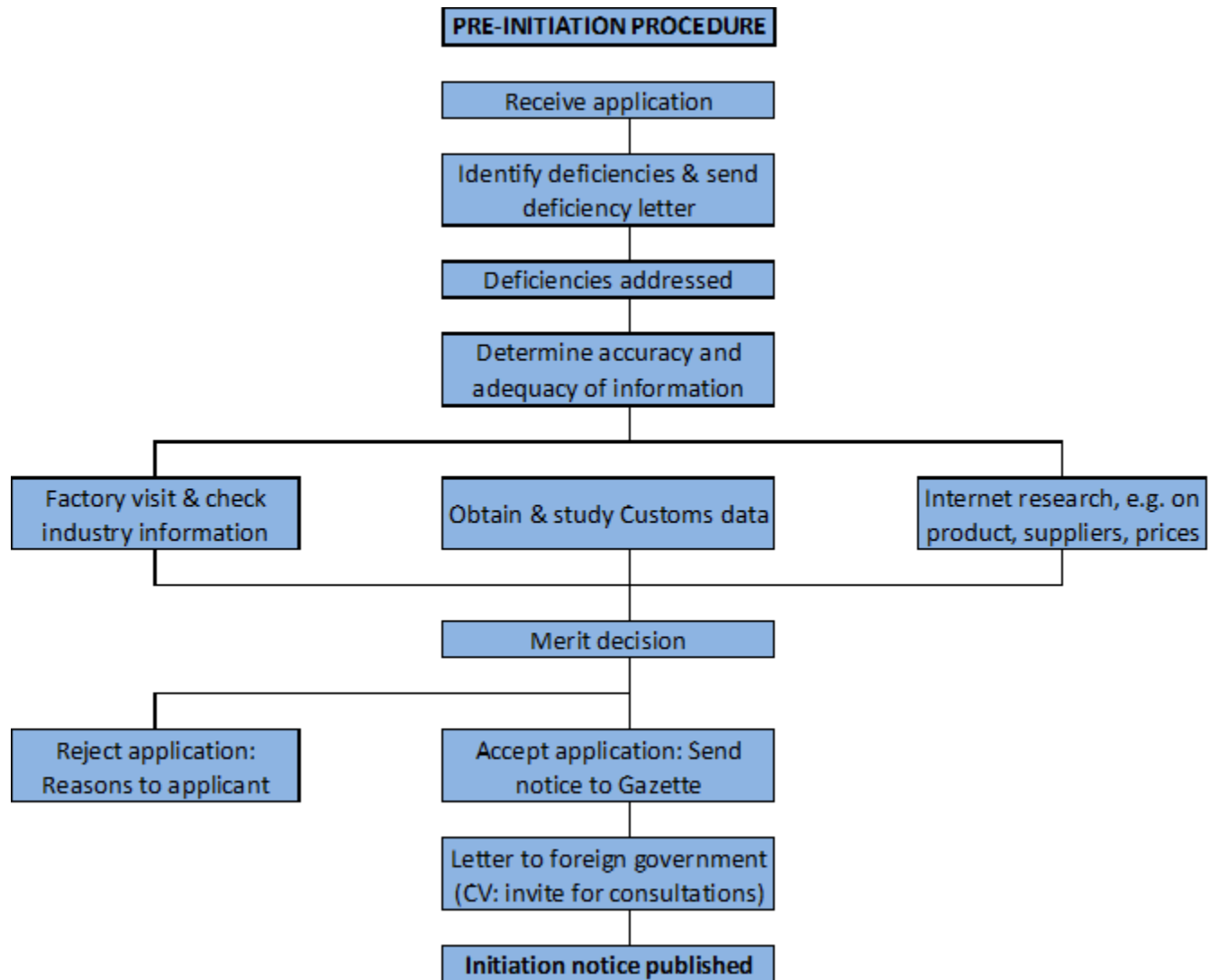
The normal time allowed by the statute for conclusion of investigation and submission of final findings is one year from the date of initiation of the investigation. The above period may be extended by 6 months under special circumstances.

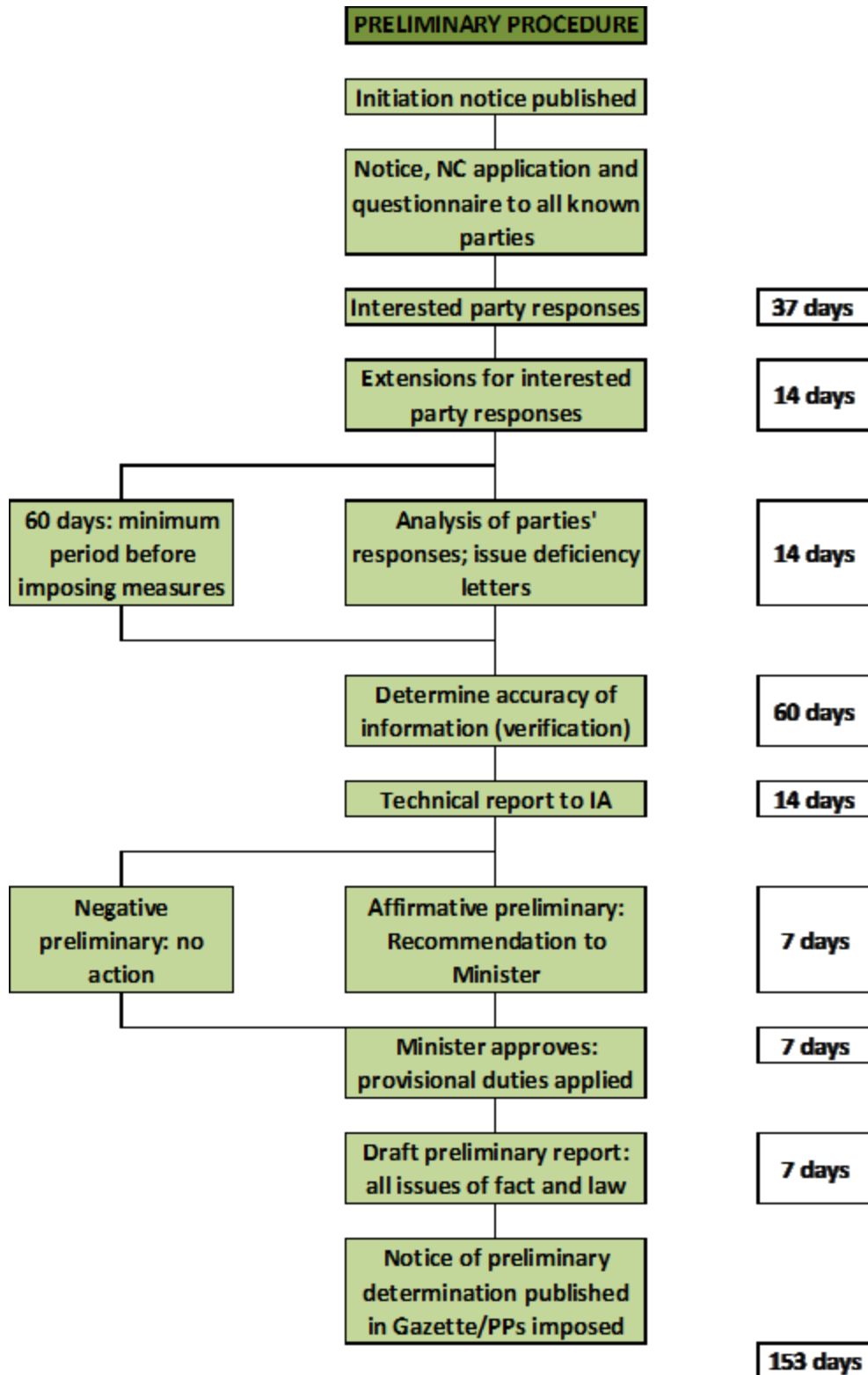
10. Termination:

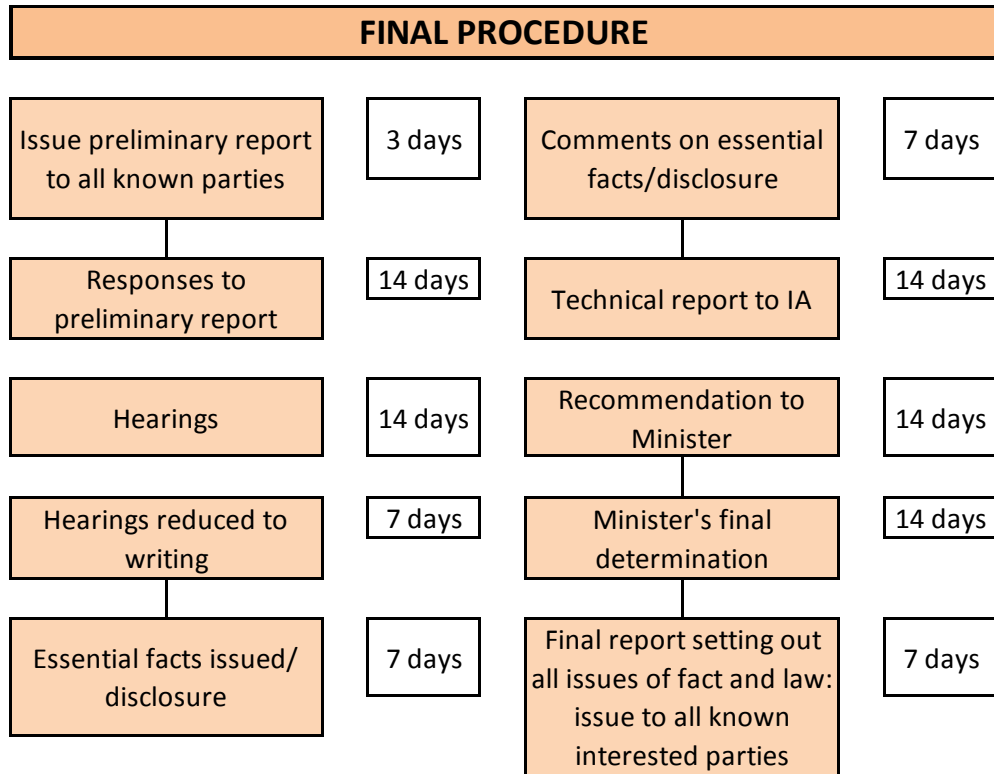
The Authority may suspend or terminate the investigation in the following cases:

- i) if there is a request in writing from the domestic industry at whose instance the investigation was initiated;
- ii) when there is not sufficient evidence of dumping or injury;
- iii) if the margin of dumping is less than 2% of the export price;
- iv) the volume of dumped imports from a country is less than 3% of the total imports of the like article into Mauritius or the volume of dumped imports collectively from all such countries is less than 7% of the total imports;
- v) injury is negligible; or
- vi) there is not a causal link between the dumping and the injury.

11. Flowchart of the procedure:







OTHER PROVISIONS

REVIEW

An anti-dumping duty imposed under the Act shall have effect for a maximum period of 5 years from the date of imposition, unless revoked earlier.

The Investigating Authority may also review the need for the continued imposition of the anti-dumping duty, from time to time. Such a review can be done on the Investigating Authority's own initiative or on the basis of request received from an interested party in view of the changed circumstances. A review shall also follow the same procedures prescribed for an investigation to the extent they are applicable.

The Investigating Authority is also required to carry out a review for determining margins of dumping for any new exporter or producer from a country that is subject to anti-dumping, where these exporters or producers are new and are not related to any of the exporters or producers who are subject to anti-dumping duty on the product.

DEFINITIVE COLLECTION OF PROVISIONAL DUTY

If the anti-dumping duty imposed on the basis of final findings is higher than the provisional duty already imposed and collected, the difference shall not be collected.

If the final anti-dumping duty is less than the provisional duty already imposed and collected, the difference shall be refunded.

If the provisional duty is withdrawn based on a negative final finding, then any provisional duty already collected shall be refunded and any guarantees shall be released.