



*Republic of* **Mauritius**

# **TRADE REMEDIES INVESTIGATING AUTHORITY**

**REPUBLIC OF MAURITIUS**

## **A GUIDE TO THE COMPLETION OF A COUNTERVAILING APPLICATION**

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## 1. GENERAL INFORMATION:

This Guide has been designed to assist Mauritian producers in preparing a properly documented application that can be acted upon by the Investigating Authority (IA). It is designed to illustrate what information is needed by the IA for initiating a formal investigation against allegedly subsidised imports that are causing injury to a Mauritian industry. It should be used in conjunction with the Application Questionnaire.

Aspiring applicants are advised to liaise with the IA **throughout the process of compiling the application**. This may assist in a proper understanding of the information required by the IA and assist the IA 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 (Word). 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. These formats can be found in the following webpage: <https://www.mauritiustrade.mu/en>

## 2. THE LEGISLATION:

Countervailing proceedings are conducted in terms of the Trade (Anti-dumping, Countervailing and Safeguard Measures) Act 2022 (the Act). This document can be found in the website of the Ministry of Foreign Affairs, Regional Integration and International Trade at <https://www.mauritiustrade.mu/en>

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 addition, as a Member of the WTO, Mauritius is bound by the provisions of the WTO Agreement, including the Agreement on Subsidies and Countervailing Measures (the SCM Agreement). Accordingly, investigations must be conducted in line with the requirements under the SCM Agreement as interpreted by panels and the Appellate Body. This Agreement, as well as other WTO Agreements, can be found at [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm)

## 3. DEFINITIONS:

Article 2 of the Act contains definitions of some of the most important concepts. You are kindly requested to read those definitions. Succinctly, the main terms are defined below:

**De minimis:** in a subsidy investigation, it means a subsidy of less than one per cent *ad valorem* or, where the investigation concerns a product from a developing country, 2 per cent *ad valorem*;

**Interested parties:** means –

- (a) the exporter or foreign producer of the investigated product;
- (b) the importer of the investigated product;
- (c) a trade or business association, a majority of the members of which are producers, exporters or importers of the investigated product;
- (d) the government of the exporting country;

- (e) the producer of the domestic like product in Mauritius;
- (f) a trade and business association, a majority of the members of which produce the domestic like product in Mauritius;
- (g) a labour union or other organisation representing the interests of workers in the domestic industry;
- (h) a consumer association;
- (i) an industrial user of the investigated product;
- (j) any other natural or legal person who has indicated an interest in participating in the investigation and any other person whom the Investigating Authority determines to have sufficient interest in the outcome of the investigation;

**Investigation period for subsidy:** means a period of one year preceding the date of submission of the application for which data are available;

**Investigation period for injury:** means a period of three years as recent as possible prior to the date of submission of the application;

**Investigated Product:** means the product subject to a dumping or subsidies investigation as described in the notice of initiation of the investigation;

**Investigation Authority:** means the government body that is entrusted with all the functions and powers listed in section 8 of the Act, including initiating trade remedy investigations and conducting them. This body is chaired by the Director, Trade Policy, International Trade Division of the Ministry of Foreign Affairs, Regional Integration and International Trade;

**Like product:** means a product which is identical or alike in all respects to the investigated product, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product;

**Margin of subsidy:** means the total value of subsidies when expressed as a percentage of the CIF export price;

**Material injury:** means actual injury suffered by the Mauritian industry as demonstrated through the examination of various economic factors identified in the Application Questionnaire;

**Mauritian industry:** means all of the producers of the like product in Mauritius or those representing a major proportion thereof. "Major proportion" is determined on the basis of output or production data in units (not value) for the like product during a representative period of time (not less than one year) as recent as possible prior to the submission of the application;

**Minister:** means the Minister responsible for International Trade;

**Price depression:** takes place where the Mauritian 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 Mauritian industry, as measured at the appropriate point of comparison;

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

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

**Related parties:** in a countervailing investigation, shall be deemed to be related to exporters or importers, where –

- (a) one of them directly or indirectly controls the other;
  - (b) both of them are directly or indirectly controlled by a third person; or
  - (c) together they directly or indirectly control a third person,
 provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from

non-related producers, and one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

**Specific subsidy:** means a subsidy which is specific to an enterprise, group of enterprise, industry or group of industry;

**Subsidy:** means –

(a) a financial contribution by a government of a country other than Mauritius that confers a benefit to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods but does not include the amount of any duty or internal tax imposed on goods by the government of the country of origin or country of export from which the goods, because of their exportation, have been exempted or have been or will be relieved by means of a refund or drawback; or

(b) any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, that confers a benefit.

#### 4. DOCUMENTATION:

An application must be thoroughly documented and applicants 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 IA. The applicant should be in a position to indicate how any information was derived, including any costs allocations that may have been made.

Unless indicated otherwise, **all** value figures must be stated in Mauritian Rupees (MUR).

#### 5. CONFIDENTIALITY:

**According to section 56 (1) of the Act, the IA will treat in confidence all information for which such treatment is requested. Access to confidential information will be restricted to the officers in charge of the investigation.<sup>1</sup> The IA has set up means to ensure that only authorised personnel can have access to all documentation submitted as confidential.**

However, the IA is required by law to ensure that all interested parties to a countervailing 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 IA. For instance, the IA has the obligation to provide a copy of the non-confidential application to the government of the exporting countries investigated and to the exporter(s) identified in the application.

Any information which is **by nature confidential** (e.g. business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery; information concerning the financial condition of a company which is not publicly available; information concerning the costs, identification of customers, sales, inventories, shipments, or amount or source of any income, profit,

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<sup>1</sup> If any party appeals a determination of the Investigating Authority, according to relevant Mauritian legislation, Courts may need to review portions of the confidential register. By submitting information to the IA, parties expressly accept that confidential information submitted by them may have to be disclosed to Courts under appropriate procedures.

loss or expenditure related to the manufacture and sale of a product), or which if disclosed would be of **significant competitive advantage** to a competitor, or which if disclosed could have a **significant adverse effect** upon a person supplying the information or upon a person from whom the supplier acquired the information, 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 IA.

Parties requesting that information be treated as confidential shall:

- (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 on confidential basis. Annexure I to this questionnaire provides guidelines on how to prepare a non-confidential summary of the confidential information.

**Please Note:\*\*** If the IA 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 at the time it is submitted will be treated as non-confidential and **will be included in the public file** of the investigation. The public file is available for perusal or copying by any interested party or member of the public.

**You are required to indicate clearly in any submission, including this application, 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 AN ANTI-SUBSIDY COMPLAINT SHOULD COVER:**

A countervailing application should provide the IA 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 subsidisation, injury and a causal link between the subsidies and the injury. The more detailed the application is, the easier it will be for the IA to determine whether the application is properly documented and whether it contains *prima facie* proof of injurious subsidisation. The following indicates information required by the IA under the specific headings in the Application Questionnaire.

## 6.1 General information

The following comments are relevant to the questions in **Section A** of the Application Questionnaire

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.

The IA must know 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 IA might raise. It is therefore not normally appropriate for the Managing Director of the domestic producer or the Secretary General of the Mauritius Chamber of Commerce and Industry to be the contact person, even if the ultimate responsibility for the application rests with such person.

If the applicant decides to appoint a legal representative to represent it in the anti-subsidy investigation, you **must attach a power of attorney**. Without this form the IA cannot engage in any contact with the representative. This is to protect both the applicant and IA and to prevent the unauthorised release of any information that might be regarded as confidential. Without a letter of attorney the IA 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.

Copies of recent financial statements of the applicant (or of the companies on behalf of which the application is made where the applicant is a chamber or an association) must be submitted, as all injury information needs to be reconciled to such statements. The financial statements will enable the IA to conduct a desk top verification of the information submitted in section E of the questionnaire, as is required by section 71(1) of the Act.

## 6.2 Product

The following comments are relevant to the questions in **Section B** of the Application Questionnaire

The product under consideration must be defined in detail. Note that it is the imported product that has to be defined and **not** the product manufactured by the Mauritian industry. The scope of the investigation is determined by the imported product, which is referred to in the Application Questionnaire as the “allegedly subsidised product” or “subject product”. Without a proper description of the allegedly subsidised product the IA will not be in a position to initiate an investigation as the Mauritius Revenue Agency (MRA) would not be able to implement any final determination.

The subject product should be described in terms of all the criteria used by the IA to determine likeness of the Mauritian product. These factors are listed in question B-1.1. Please supply as much information on the subject product as possible, including

samples, photographs and/or brochures.

It is important that detailed information be provided regarding any differences between the allegedly subsidised product and the like product produced by the Mauritian industry (section B-2.4). These differences may affect a proper comparison and therefore affect the injury determination.

### 6.3 Interested parties

The following comments are relevant to the questions in **Section C** of the Application Questionnaire

The IA 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. It is advisable that you specifically conduct an internet search for producers/exporters of the allegedly subsidised product in each exporting country and for importers in Mauritius. You should include in the application documentary proof indicating how their identities were established, e.g. printouts from internet web pages.

It is also very important to submit details on the identity and contact details of all Mauritian producers of the like product. There are very specific rules in section 5 of the Act 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 of the like product. Accordingly, the IA 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 Subsidisation

The following comments are relevant to the questions in **Section D** of the Application Questionnaire

The applicant is required to identify the programmes covered by the application and then, for each programme, submit information showing that it is a specific subsidy. Finally, the applicant will have to calculate the subsidy amount.

#### 6.4.1 List of subsidy programmes (**Section D-2.1** of the Application questionnaire)

Please list of the programmes that you understand the producers/exporters in the countries covered by the application are using. Information on these programmes can be obtained from a variety of sources. First, and foremost, you are advised to check whether any of the main users of the anti-subsidy instrument (Canada, the EU and the US) has already investigated that product. Check the websites of these investigating authorities (Canada: <http://www.cbsa-asfc.gc.ca/sima-lmsi/hist-eng.html>, UE: <http://trade.ec.europa.eu/tdi/completed.cfm> and US: [http://esel.trade.gov/esel/groups/public/documents/web\\_resources/search-page.hcsp](http://esel.trade.gov/esel/groups/public/documents/web_resources/search-page.hcsp)).

You may also check the applications where they are available. This is for instance the case in Canada (see for instance the following link to the recently initiated



investigation against steel grating: <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1389/ad1389-i10-ex-eng.html>) and the US (they are available in the page <https://edis.usitc.gov/edis3-external/app>, but free registration is required). Australia's information may also be accessed freely through the internet, after registration, at the following site: <http://adpr.customs.gov.au/Customs/> EU applications are only available in printed format and accessible to parties in a particular case. Applications are particularly useful because public documents tend to be available and they allow obtaining quickly the supporting evidence to prove the existence of subsidies and the industries that may avail of them.

The WTO website can also be useful in this search. First, you can also check the 6-monthly reports that WTO Members have to submit. They can be accessed at the following WTO page: [http://www.wto.org/english/tratop\\_e/scm\\_e/scm\\_e.htm](http://www.wto.org/english/tratop_e/scm_e/scm_e.htm) Another source of information are the bi-annual notifications that each Member must submit to the SCM Committee listing all subsidies under its jurisdiction. These notifications can also be accessed in the link above. Other WTO-related documents that help identifying subsidy programmes are the minutes of the meetings of the SCM Committee, available in the above link, as well as the Trade Policy Review reports, available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp\\_rep\\_e.htm#chronologically](http://www.wto.org/english/tratop_e/tpr_e/tp_rep_e.htm#chronologically).

A list of subsidies may also be obtained from publicly available reports. Some countries monitor regularly the existence of subsidy programmes and make these reports available through the internet. Research by international organisations, NGOs (e.g. Global Subsidies Initiative, available at <http://www.globalsubsidies.org/>), etc. may also provide insight in subsidy programmes. Press-clippings may also provide hints to subsidy programmes.

Finally, examination of the laws of the countries covered by the application should also permit obtaining information regarding subsidy programmes. Access to legislation varies from country-to-country. In the case of the EU, legislation is to be found at the following website: <http://eur-lex.europa.eu/en/legis/index.htm>. In addition, the website of the EU Competition Directorate contains a search engine of state aid cases, through which one can obtain information on subsidies investigated by the European Commission. This is available at [http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3). Legislation of the EU Member States is in many cases freely available on the internet US legislation may be accessed through the following website: <http://www.leg.state.mn.us/lrl/links/legal.asp>

#### 6.4.2 *Financial contribution (Section D-2.2 of the Application Questionnaire)*

Once the applicant has identified the programmes to be targeted, for each programme, separately, he/she has to prove that it is a specific subsidy. To determine the existence of a subsidy, the applicant must first prove the existence of a financial contribution. The following types of financial contributions exist:

- “(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:
- (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
  - (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)<sup>1</sup>;
  - (iii) a government provides goods or services other than general infrastructure, or purchases goods;
  - (iv) a government makes payments to a funding mechanism, or entrusts or directs

a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994;

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<sup>1</sup> In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.”

For instance, a programme which contemplates the provision of bank loans constitutes a financial contribution because giving a loan entails the direct provision of funds. If a company does not have to pay for instance a tax that is otherwise due (i.e. that other companies have to pay), there is a financial contribution as income is foregone or not collected. The same applies generally to import duties. In this case, however, there is an exception to this rule which is contained in footnote 1, cited above. A third example of a financial contribution is the provision of goods or services.

Where a programme cannot fall under one or more of the types of financial contributions listed in the above-quoted provision, this programme does not constitute a financial contribution and hence the IA cannot investigate it.

#### 6.4.3 *By a government or any public body (Section D-2.3 of the Application Questionnaire)*

Only programmes involving a financial contribution by a government or a public body can be investigated by the IA. Government is defined in the Act in a wide sense, and it comprises “any provincial, state, municipal or other local or regional government in that country or any person, agency or institution acting for, or on behalf of, or under, the authority of any law passed by those governments”. What is important to take into account in the above definition is that “government” includes all public authorities in the countries at stake, and not only the central government.

In turn, public body is neither defined under the Act nor in the WTO SCM Agreement. Public bodies include industrial companies in which the state holds shares, or over which the state exercises control; banks; insurance companies, etc. It is not required that the state holds 100% of the ownership of the industrial company, bank, insurance company etc. at stake. Even a company over which the state holds a stake of less than 50% may be found to constitute a public body. These are case-by-case determinations, based on the facts presented to the IA.

Financial contributions between private companies are excluded from the sphere of measures that can be investigated by the IA because there is no involvement from a government or any public body. An exception to this rule occurs when the private companies have acted upon the direction or entrustment of a government or a public institution. Thus, if a private bank provides a loan to a private company, there is no government involvement and hence this financial contribution – under the form of the provision of a loan – cannot be examined by the IA. This is not the case, however, where it could be proven that the private bank granted the loan to the private

company because of pressure from a government. Where this situation occurs, even if the measure is between private parties, the IA could investigate it and impose CVD based on it if other requirements are met (see below).

#### *6.4.4 Benefit (Section D-2.4 of the Application Questionnaire)*

Benefit is a separate and different legal element from financial contribution. While the financial contribution requirement is met if a programme falls under any of the categories listed in the provisions cited in section 6.4.2 above, the determination of the existence of a benefit requires normally an economic analysis. Sometimes these analyses can be sophisticated, for instance when assessing whether a benefit has been conferred by way of government purchase of shares in a private company.

When will a financial contribution confer a benefit? According to the WTO's Appellate Body, a financial contribution will only confer a 'benefit', *i.e.*, an advantage, if it is provided on terms that are more advantageous than those that would have been available to the recipient on the market. Thus, for instance in order to determine whether a financial contribution in the form of a loan granted by a public bank confers a benefit to Company A, the applicant will first have to indicate what is the interest rate that the public bank charges to Company A and second, the applicant will have to provide information about the interest rate that a commercial bank in that country would charge for a comparable loan to Company A. If the interest rate applied by the public bank is lower than that applied by the commercial bank, the financial contribution would confer a benefit to Company A.

In case that the financial contribution took the form of the government not collecting taxes, the applicant would first have to provide information on the taxes normally payable by a company in the country at stake and the tax rate effectively paid by the Company A. If the tax rate applied to Company A were to be lower than that normally applied to companies, the financial contribution would confer a benefit to Company A.

Where a company receives a grant, the benefit is automatic.

How to obtain information necessary to prove the benefit? It depends on the nature of the programme. Generally, programmes entailing tax reductions or exemptions only require that the applicant find the "normal" tax rate. Reports published annually by consulting firms such as PwC or KPMG for most countries in the world constitute a starting point. "Doing business in..." is another option. Where the programme takes the form of an exemption of reductions or exemptions in the customs duties payable, the website of the customs dept of the country at stake may be the best starting point to find the customs duties generally applicable. The EU has publicly available information on applied tariffs all over the world, through its website <http://madb.europa.eu/mkaccdb2/indexPubli.htm> However, access to this information is restricted to a determined geographical zone (Europe). JETRO also has tariff information in its website: <http://www.jetro.go.jp/en/jetro/library/tariff/> Where a public company offers goods or services in the market, the applicant will have to obtain first the price at which the goods or services are sold by the public company and then find information on the market regarding the price at which similar goods or services are sold by private companies (if private companies are active at all).

#### *6.4.5 Specific (Section D-2.5 of the Application Questionnaire)*

The fourth legal element is to determine that the subsidy is specific. Subsidies generally available to all companies cannot be attacked. A subsidy is specific in the following circumstances:

First, when the subsidy is limited to one or more companies;  
Second, when it is limited to an industry or a group of industries (but is not generally available);  
Third, when it is specific to companies located in one or more regions of the country (but is not generally available); and  
Fourth, when the subsidy is contingent upon export performance (export subsidies) or contingent upon the use of domestic over imported goods (import substitution subsidies).

What happens if in law a subsidy does not meet any of the above four criteria? Can it still be considered to be specific? Yes. The Act and the SCM Agreement set forth that even when a subsidy is not in law specific, it can be found to be specific where “there are reasons to believe that the subsidy may in fact be specific”. The factors to be taken into account are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. This type of information is normally not easy to obtain. However, in some cases agencies in charge of attracting investments publish statistics on investment attraction. They may be a proof of *de facto* specificity.

#### 6.4.6 Calculation of the subsidy rate (**Section D-3 of the Application Questionnaire**)

The final step is to compute the aggregate subsidy rate for all the programmes. The amount of subsidy is determined separately for each programme, depending on the facts of the case. This is explained with a hypothetical case in which an exporter has availed of two programmes:

The first programme is contingent upon export performance. It consists of an exemption of paying corporate income tax if the company exports more than 30% of its output. The taxable benefits were USD 1 million and the normal tax rate is 30%. The company should have therefore paid USD300,000 as corporate income tax. This is the amount of the subsidy (because it did not have to pay anything at all). The subsidy rate for this particular programme results from dividing the subsidy amount (USD300,000) by the export turnover of the company (because this is an export subsidy). If the total export turnover is USD15 million, the subsidy rate will be  $0.3/15 = 2\%$ .

The second programme consists of a grant of USD100,000 to attend an export fair in Mauritius. Again, this is an export subsidy. The amount of the subsidy is equivalent to the grant, i.e. USD100,000. Say further that the fair concerns cheese, the product for which you request the start of the investigation. How will you calculate the subsidy rate if the exporter in addition to exporting cheese also exports other dairy products? The subsidy rate will be calculated based on the proportion of exports of cheese only. Thus, out of the USD15million in exports, the applicant should try to find out how much turnover corresponds to cheese exports. Say that USD3million correspond to that product. The subsidy rate will therefore be  $0.1/3 = 3.33\%$ . However, if the trade fair is not an international trade fair, but specifically a Mauritius trade fair, then only the value of the cheese exported to Mauritius will be considered in the calculation.

The aggregate subsidy rate is therefore  $2\% + 3.33\% = 5.33\%$ .

The applicant may not be in a position to have access to all the information which would allow it to make a very accurate calculation. The standard set forth in the Act

is not one of perfection. The IA will only request that the applicant submit the information that should be reasonable accessible to it, taking into account the specifics of each case.

No investigation can be initiated where the subsidy rate is *de minimis*. Unlike dumping, the *de minimis* varies depending the stage of development of the countries at stake. Thus, in cases of developed countries, no investigation can be initiated if the subsidy margin is less than 1%. In case of developing countries, investigations may not be initiated in case the subsidy rate is less than 2%.

## 6.5 Material injury

The following comments are relevant to the questions in **Section E** of the Application Questionnaire

The applicant must establish a *prima facie* case that the Mauritian industry is experiencing material injury. Mauritian industry is understood to mean all Mauritian producers of the like product or those which represent a major proportion of the total production of the like product in Mauritius. The applicant must note that if the investigation is initiated, all or a major proportion of the Mauritian producers of the like product must participate in the investigation by providing a reply to the questionnaire that the IA will send them. Failure to do so, the investigation **will have to be terminated**, in compliance with the Act and WTO Agreements to which Mauritius is signatory.

In terms of its national and international obligations, the IA must consider the evolution of the volume of subsidised imports into Mauritius. For this reason, the statistics (from Statistics Mauritius) must be submitted. Please indicate if the tariff heading(s) under which the allegedly subsidised product is classified covers other products. If so, please estimate the volume of imports of the allegedly subsidised product. You will need to justify the estimation.

Secondly, you must provide information on the effect of the imports of the allegedly subsidised product on the prices of the like product manufactured and sold by the domestic industry in Mauritius. This information should allow the IA to analyse if imports caused a decrease of the prices, or impeded the increase of the prices, of the domestic industry or if prices of imports are below the prices of the domestic industry (i.e. if prices of imports undercut prices of the Mauritian industry).

In addition, the IA must evaluate the impact of the imports on the performance of the domestic industry. To this end, the IA must examine the impact on fifteen variables. While it is not required that the applicant submit definitive information on all these factors prior to initiation, the more information provided in this regard, the greater the transparency of the proceeding and the more informed a decision the IA will be able to take in deciding 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 and production books. If the domestic industry produces various products, the information for the like product will have to be separated from that of other products manufactured and sold by the domestic industry in Mauritius. If you have questions on how to do so, please contact the IA for assistance.

Please reply to all questions in the Application Questionnaire, submitting evidence that support your allegations. In addition, you will have to fill out the Excel tables.

Note that the tables already contain pre-set formulas. Do not modify or change them. If you have questions concerning them, please contact the IA.

If the applicant considers that it is not yet suffering actual injury, but that a threat of material does exist, then the applicant is requested to contact the IA as soon as possible. Certain additional information may be requested to be submitted.

## 6.6 Causality

The following comments are relevant to the questions in **Section F** of the Application Questionnaire

The applicant must submit evidence to show *prima facie* that the injury experienced by the domestic industry is caused by the subsidies and not by other factors. It is therefore important to draw links between the presence of the increased subject product into the Mauritian market and the injury claimed to be experienced by the applicant. Normally, a clear link is visible where imports of the allegedly subsidised product increase and there is an equal decrease in domestic industry sales, especially where the landed price of the allegedly subsidised product, 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. A decrease in the profits for the like product, or any losses incurred in the sales thereof, following the appearance of the allegedly subsidised imports, is also a strong causality indicator.

The applicant 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

Once received, the application will go through a number of processes prior to initiation. First, the IA will have to determine whether the application is properly documented. During this process the IA 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.

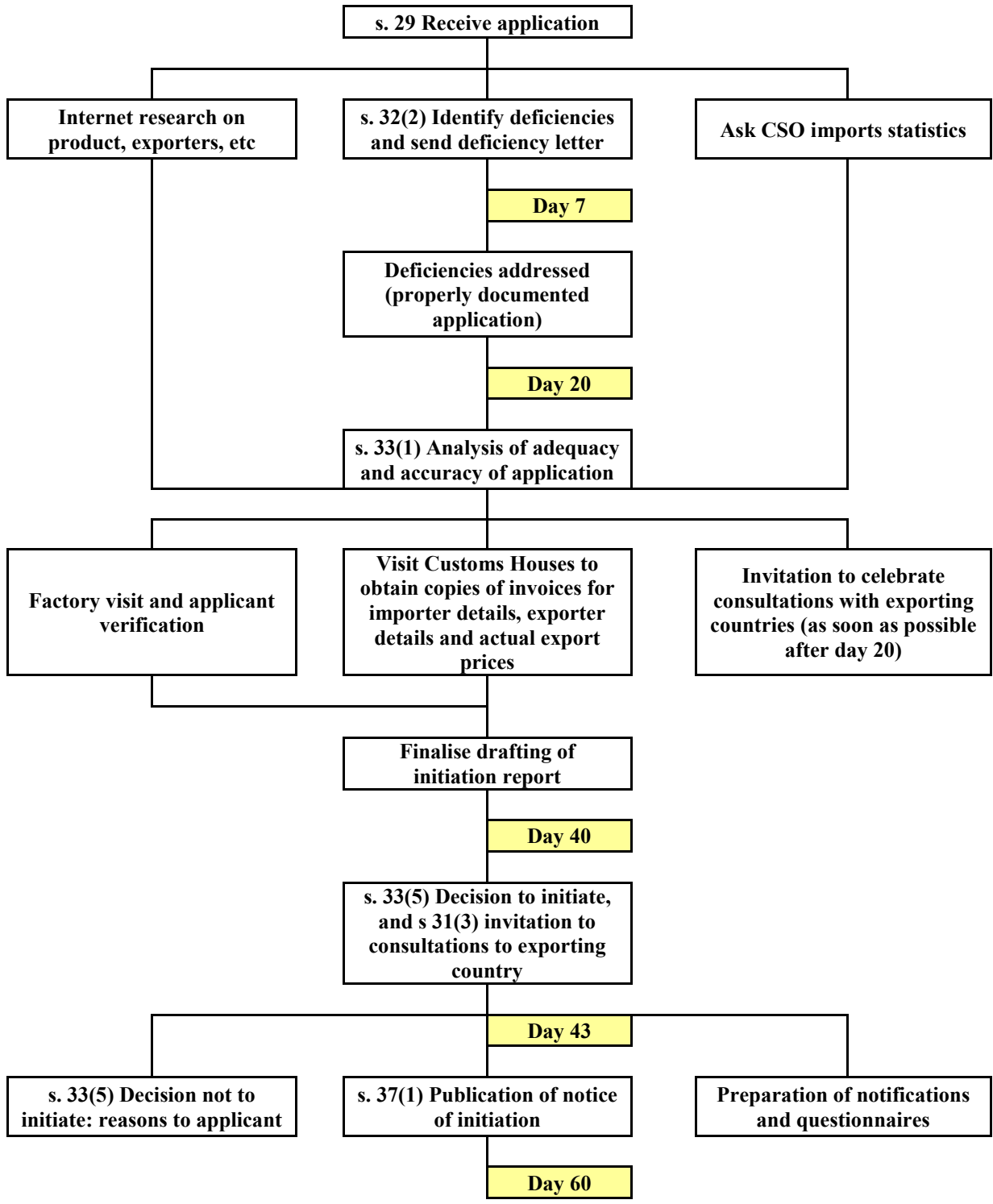
Once the IA is satisfied that it has received a properly documented application, it may arrange for verification of the information contained in the application to confirm the veracity of the information. It is therefore important that you maintain copies of all working documents and files used in the preparation of the Application Questionnaire response. The IA will also of its own conduct further research, as it is required to do in terms of section 40 (1) of the Act, to confirm whether the information on subsidies and injury appear accurate and whether all interested parties have been identified.

Once the IA is satisfied that all requirements have been met and that the application establishes a *prima facie* case of injurious subsidisation, it will initiate an anti-subsidy investigation. All interested parties will be informed of the investigation and asked to participate. Domestic producers of the like product will be sent an injury questionnaire to elicit information that had not submitted prior to initiation and update the information contained in the application. Again, the more complete your application, the less pressure will be placed on you to supply the information within a reasonably short period, normally 37 days, after initiation of an investigation. After

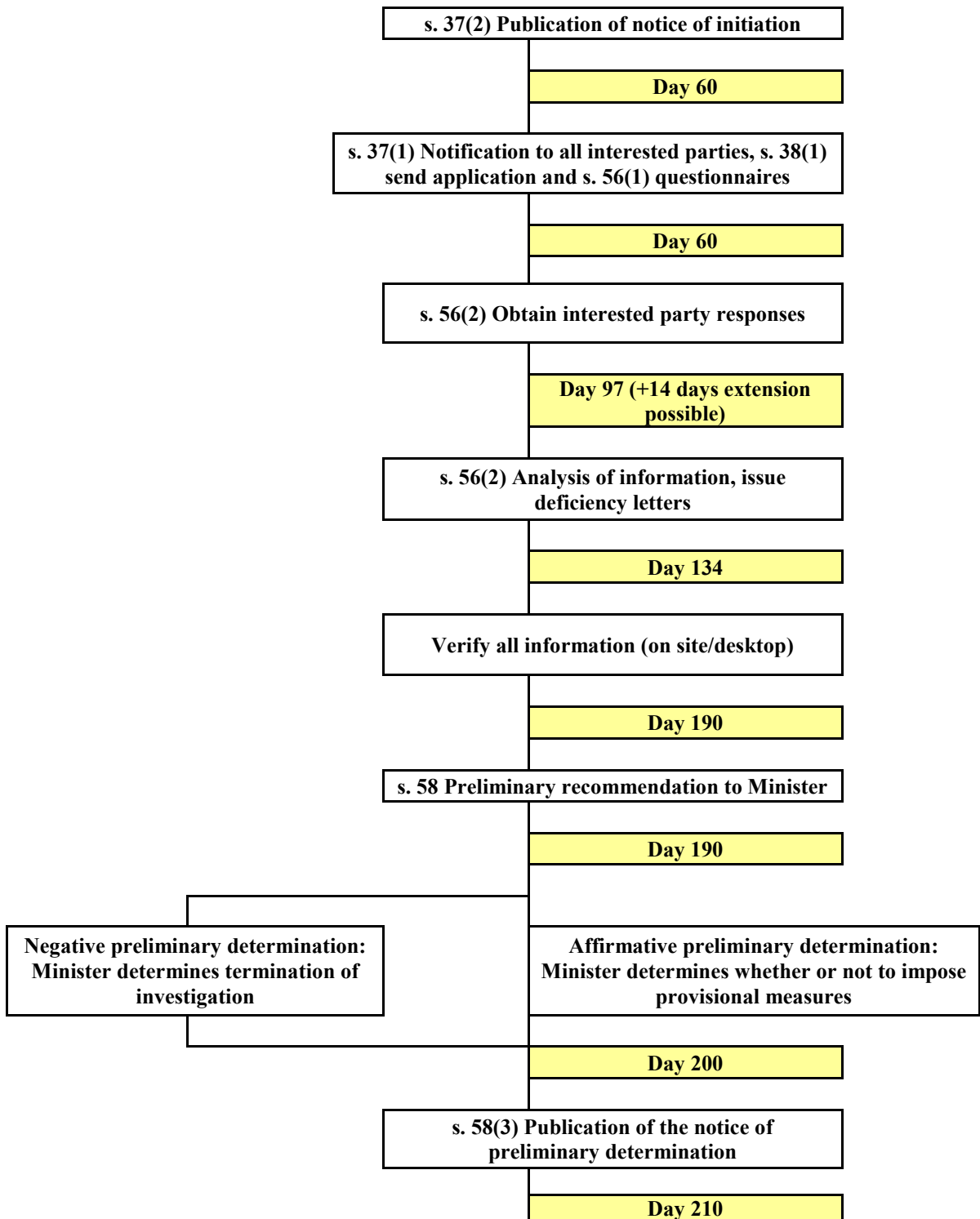
receipt of all parties' comments, you will have the opportunity to access the public file kept by the IA to study the non-confidential responses of all interested parties. The IA may proceed to a preliminary finding, which could result in the imposition of preliminary duties before proceeding to a final determination.

The full investigation process is as outlined below:

**PRE-INITIATION PROCEDURE**

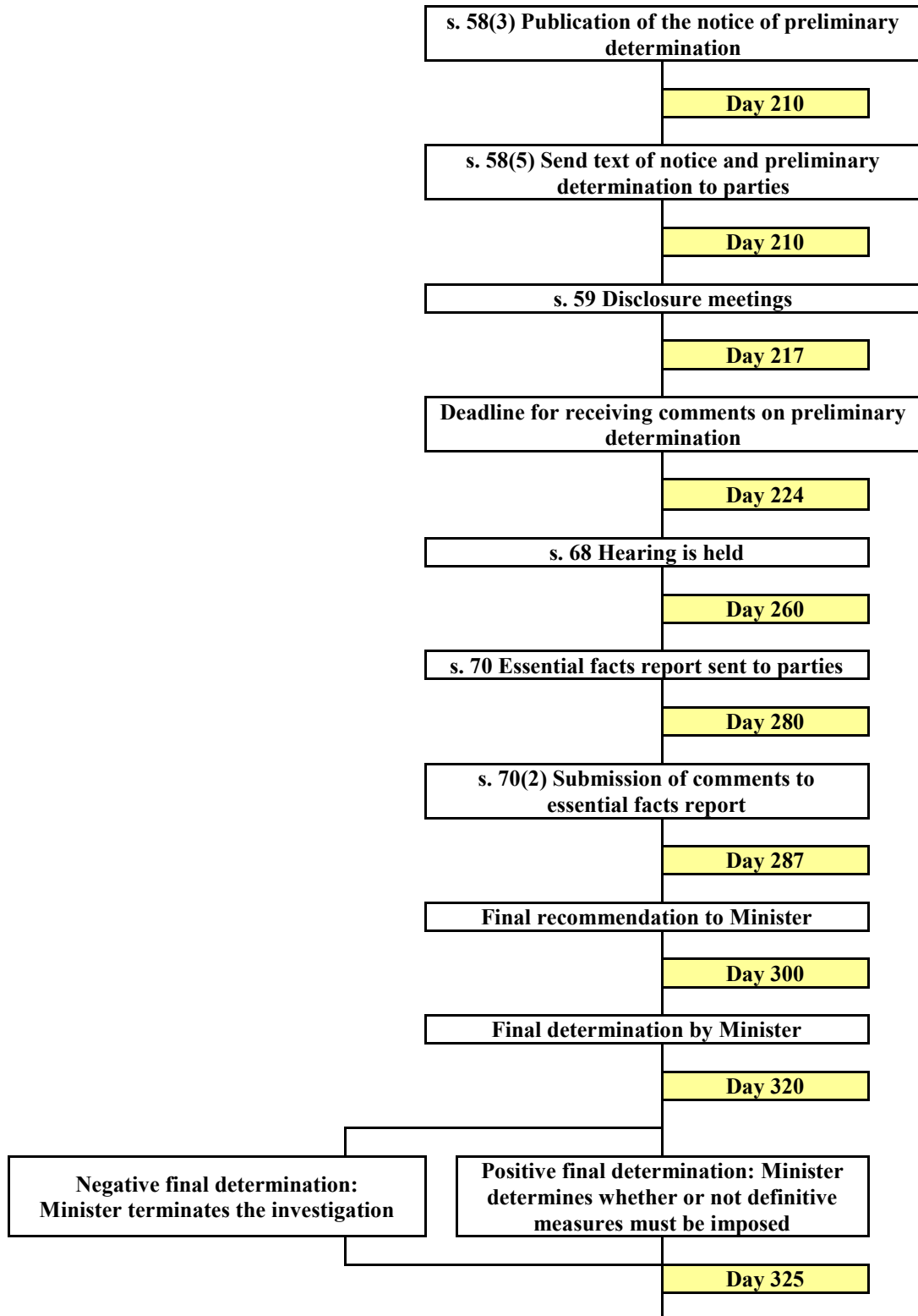


**PRELIMINARY INVESTIGATION PROCEDURE**





## FINAL INVESTIGATION PROCEDURE



**s. 71(4)&(5) Publication of the notice of final determination & final report**

**Day 330**

**Send text of notice to parties**

**Day 331**