

LEGAL NOTICE NO. 25

REPUBLIC OF TRINIDAD AND TOBAGO

THE ANTI-DUMPING AND COUNTERVAILING DUTIES ACT, 1992

REGULATIONS

MADE BY THE MINISTER OF TRADE AND INDUSTRY UNDER SECTION 34 OF THE
ANTI-DUMPING AND COUNTERVAILING DUTIES ACT

THE ANTI-DUMPING AND COUNTERVAILING DUTIES
REGULATIONS, 1996

1. These Regulations may be cited as the Anti-dumping and Citation Countervailing Duties Regulations, 1996.
2. (1) A complaint under section 18 of the Act shall contain the Complaints following information:
 - (a) the name and address of the complainant;
 - (b) the industry on whose behalf the complaint is filed and a letter from each producer supporting the complaint, indicating his consent to being represented by the complainant;
 - (c) a list of all known producers in Trinidad and Tobago of the like product;
 - (d) where known, the volume and value of production of each of the producers listed under paragraph (c);
 - (e) a complete description of the allegedly dumped or subsidized product;
 - (f) the names of the country or countries of origin, and where different, of the countries of export;
 - (g) a list of all known producers in the country of origin;
 - (h) a list of all known exporters in the country of origin, and where the goods are exported from a country other than the country of origin, a list of all exporters in the country of export;
 - (i) a list of all known importers in Trinidad and Tobago of the product in question;
 - (j) evidence of dumping or subsidization as the case may be during at least six months prior to the making of the complaint;
 - (k) evidence of actionable injury having regard to the factors enumerated in regulation 4 and evidence that such actionable injury is the result of the allegedly dumped or subsidized imports.

(2) Documents on which the complainant relies to make the complaint shall be furnished with the complaint.

(3) Where the Authority receives a written complaint respecting the dumped or subsidized goods, the Authority shall within fifteen days after the receipt thereof—

- (a) where the complaint complies with section 18(2) of the Act, cause the complainant, and, in the case of subsidized goods, the government of the country of export, to be informed in writing that the complaint was received and that it so complies; or
- (b) where the complaint does not comply with section 18(2) of the Act, cause the complainant to be informed that the complaint was received and that additional information or material is needed in order for the complaint to so comply, and may set any time limit within which such additional information shall be submitted.

(4) For the purposes of subregulation (1), where the Authority receives from a complainant additional written information or material, the complaint is deemed to have been received on the day that the Authority received the additional written information or material.

Preliminary
hearing

3. For the purposes of section 18(5) of the Act, before initiating an investigation, whether on its own initiative or as a result of a complaint, the Authority shall hold a preliminary hearing of all interested persons and such experts and other witnesses as it thinks fit and—

- (a) shall cause notice of the preliminary hearing to be given;
- (b) may, subject to regulation 5, require any of those persons to complete a questionnaire.

Notice of
initiation of
investigation

4. (1) Where the Authority decides to initiate an investigation, notice of the initiation shall be given by the Authority in accordance with section 32 of the Act and may, subject to regulation 5, require any of the persons referred to in that section to complete a questionnaire.

(2) Without prejudice to section 32 of the Act, notice of the initiation of an investigation shall contain the following information:

- (a) the name of the exporting country or countries and the product concerned;
- (b) the date of the initiation of the investigation;
- (c) the basis on which dumping or subsidization is alleged;
- (d) a summary of the factors on the basis of which actionable injury is alleged;
- (e) the address to which interested parties may submit their representations in writing or send requests for a questionnaire and the time limits in which they may do so.

(3) The Authority shall provide a copy of the complaint with every copy of the notice provided pursuant to subregulation (1).

(4) Where the Authority decides not to initiate an investigation, it shall send a written notice of that decision to the complainant setting out therein the reasons therefor.

5. (1) Where the Authority requests the completion of a question- Questionnairesnaire under regulation 3 or 4, it shall allow thirty days or such longer period as it thinks fit in which to provide the information requested.

(2) The Authority shall verify all information provided to it by means of a questionnaire.

6. (1) The Authority may carry out an investigation in the terri- Investigation in the territory of other countriesories of another country, if the circumstances warrant, provided the Authority notifies such country in advance and such country does not object to the investigation.

(2) The Authority may carry out an investigation at the premises of a commercial organization situate in the territory of another country or may examine its records if such organization agrees, and if the country, in whose territory the commercial organization is situated, is notified and raises no objection to the conduct of such investigation or examination of records.

7. (1) Two or more investigations may be joined and carried on as one Joining investigations investigation where the investigations deal with the same or like goods.

(2) An investigation may not be joined pursuant to subregulation (1) if a preliminary determination under section 24 of the Act has been made in respect of it.

(3) Where investigations are joined pursuant to subregulation (1) the Authority shall cause a notice of the joining to be given in writing to the importers, exporters, governments of the countries of export and complainants, if any, involved in the investigations.

8. The Authority may require such experts and other persons as it Expert evidence thinks fit to tender any evidence relevant to the investigations being carried out.

9. (1) Where—

(a) in an investigation respecting the dumping or subsidizing Provision of evidence to Authority of goods; or

(b) in relation to the sale of—

- (i) goods to an importer in Trinidad and Tobago; or
- (ii) goods released ninety days prior to the initiation of an investigation,

the Authority believes on reasonable grounds that any person in Trinidad and Tobago is able to provide evidence relevant to the investigation or to the making, for the purpose of facilitating the administration or enforcement of the Act, of an estimate of the duty that may be payable on the goods when imported into Trinidad and Tobago, the Authority may, by notice in writing, require the person to provide the Authority, with the evidence referred to in the notice.

(2) Where, by notice given pursuant to subregulation (1) the Authority requires any person to provide evidence, it shall—

- (a) include in the notice sufficient information for the person to identify the evidence;
- (b) specify in the notice the time within which and the manner and form in which the evidence is to be provided.

(3) Where a person is required by notice given pursuant to subregulation (1) to provide the Authority with evidence, the person shall—

- (a) if it is reasonably practicable for the person to do so, provide the evidence in accordance with the notice;
- (b) if it is reasonably practicable for the person to provide a part only of the evidence in accordance with the notice—
 - (i) so provide that part of the evidence; and
 - (ii) provide the Authority with a written statement identifying the remainder of the evidence and specifying the reason why it is not reasonably practicable for the person to provide the remainder of the evidence in accordance with the notice; and
- (c) if it is not reasonably practicable for the person to provide the evidence in accordance with the notice, provide the Authority with a statement so stating and specifying the reason why it is not reasonably practicable to so provide the evidence.

(4) Where, pursuant to subregulation (2)(b), the Authority specifies the time within which evidence is to be provided, the Authority may, either before or after the expiration of that time, extend the time within which the evidence is to be provided.

Finding of
actionable
injury

10. (1) Where a complaint of actionable injury is made, the Authority shall examine such facts as the Authority considers relevant under the circumstances, and shall give due consideration to the following factors:

- (a) the volume of dumped or subsidized imports as assessed in absolute terms or relative to production or consumption in Trinidad and Tobago;

- (b) the effect of dumped or subsidized imports on prices shall be assessed by reference to—
 - (i) whether there has been significant price undercutting by the dumped or subsidized imports as compared with the price of like goods produced in Trinidad and Tobago; or
 - (ii) whether the effect of such imports is to depress to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree;
- (c) the consequent impact of dumped or subsidized imports on the industry which produces like goods as assessed by reference to all relevant economic factors and indices having a bearing on the state of the industry, notably sales, profits, production, market share, productivity, return on investment, rate of use of production capacity, inventories, cash flow, employment, wages, growth, ability to raise capital and investments,

but nothing in this subregulation shall be construed as binding the Authority to give priority to any of the factors mentioned in paragraphs (a) to (c) in the making of its decision.

(2) Where imports of goods from more than one country are simultaneously subject to investigation pursuant to the Act, the effect of imports from all the countries taken cumulatively may be deemed to be an effect of imports from each of the countries subject to investigation where the following conditions are satisfied:

- (a) the imports of any exporter taken into account are dumped by a margin which is not less than two per cent; and
- (b) the volume of the imports from any country taken into consideration is not negligible within the meaning of section 23(5A) of the Act; and
- (c) a cumulative assessment of the imports is appropriate in the light of the conditions of the competition between the imported products and the conditions of competition between the imported product and the like goods produced by the industry.

(3) The effect of dumped or subsidized imports shall be assessed in relation to the production of the like goods by industry when available data permit the separate identification of that production on the basis of such criteria such as the production process, producers' sales and profits, and if such separate identification of that production is not possible, the effects of the dumped or subsidized imports shall be assessed by the examination of the production of the narrowest group or range of goods which includes the like goods, for which the necessary information can be provided.

(4) A determination of threat of actionable injury may only be made where a particular situation is likely to develop into actionable injury and in making such determination the Authority shall take into consideration such factors as:

- (a) the rate of increase of dumped or subsidized imports into Trinidad and Tobago;
- (b) export capacity in the country of export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to Trinidad and Tobago;
- (c) the depressant or suppressant effect of the prices of imports and the likelihood that such prices will increase the demand for further imports;
- (d) inventories of the product being investigated;
- (e) the nature of any subsidy or subsidies and the trade effects likely to arise therefrom.

(5) Injuries caused by other factors, such as volume and prices of imports which are not dumped or subsidized, contraction in demand, or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign producers and the industry, developments in technology and the export performance and productivity of the industry, which, individually or in combination, also adversely affect the domestic industry shall not be attributed to the dumped or subsidized imports.

(6) The Authority may, in exceptional cases, give a finding as to the existence of actionable injury even where a substantial portion of the domestic industry is not so injured if—

- (a) there is a concentration of the dumped or subsidized imports into an isolated market; and

- (b) the dumped or subsidized imports are causing actionable injury to the producers of all of the production within such market.

11. Where an interested party or country refuses access to, or otherwise does not provide necessary information to the Authority within the time limit fixed by the Authority or within a reasonable period if no time limit is fixed by the Authority, or impedes its investigations, the Authority may record its findings on the basis of the information available to it and put up such recommendations to the Minister as it thinks fit under the circumstances.

12. (1) The Authority shall within seventy-five days of the receipt of the complaint, or such extended time as the Minister may, subject to section 24(1) of the Act, in any case allow, submit preliminary findings to the Minister to enable him to make a preliminary determination under section 24 of the Act and take any provisional measures under section 25 of the Act.

(2) Without prejudice to section 32 of the Act, the notice referred to in section 24(2) of the Act shall contain the following information:

- (a) the name of the suppliers, or where this is impracticable, the name of the supplying country concerned;
- (b) a description of the product which identifies it adequately for customs purposes;
- (c) the margins of dumping or subsidization established and an explanation of the reasons for the methodology used;
- (d) considerations relevant to the injury determination; and
- (e) the main reasons leading to the determination.

13. The Authority shall submit to the Minister a detailed report containing—

- (a) its final finding as to—
 - (i) the export price, normal value and the margin of dumping of the said goods;
 - (ii) whether subsidy is being granted in respect of the goods under investigation and the quantum of such subsidy;

(iii) whether import of such articles into Trinidad and Tobago causes or threatens to cause material injury to any industry established in Trinidad and Tobago or materially retards the establishment of any industry in Trinidad and Tobago;

(b) the basis of its findings; and

(c) its recommendations for the action to be taken,

within one hundred and twenty days from the date of preliminary determination or within such extended time as the Minister may, subject to section 26(1) of the Act, grant in exceptional cases.

Dated this 30th day of January, 1996.

M. ASSAM

Minister of Trade and Industry

Laid in the House of Representatives this 16th day of February, 1996.

J. SAMPSON

Clerk of the House

Laid in the Senate this 6th day of February, 1996.

N. COX

Clerk of the Senate