

LEGAL NOTICE No. 26

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 (SUBSIDIES) REGULATIONS, 1996

1. These Regulations may be cited as the Anti-dumping and Countervailing Duties (Subsidies) Regulations, 1996. Citation

2. In these Regulations—

Interpretation

“enterprise” means a commercial enterprise, industry or a group of commercial enterprises or industries;

“general framework of regional development” means an internally consistent and generally applicable regional development policy consisting of a regional subsidy programme, provided that regional development subsidies granted under the programme are not granted in isolated geographical points having no, or virtually no influence on the development of a region;

“granting authority” means a government or public body outside Trinidad and Tobago that grants a subsidy;

“industrial research” means planned search or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services;

“neutral and objective criteria” means criteria or conditions which are clearly spelled out by written law or other official document so as to be capable of verification and which, as the case may be, do not favour—

(a) certain enterprises over other enterprises and which are economic in nature and horizontal in application, such as number of employees or size of enterprise;

(b) certain regions beyond what is appropriate for the elimination or reduction of regional disparities

within a general framework of regional development;

“pre-competitive development activity” means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use, including—

- (a) the creation of a first prototype which would not be capable of commercial use;
- (b) pilot projects or projects involving the conceptual formulation and design, or initial demonstration, of alternative products, processes or services, provided that the project cannot be converted or used for industrial application or commercial exploitation,

but does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services and other on-going operations, whether those alterations are by way of improvement or not;

“region” means a region within the territory of the country of origin or the country of export.

Subsidy to be specific

3. A subsidy shall be subject to countervailing measures only if it is specific to an enterprise.

Specificity

4. (1) Subject to subregulation (2), for the purposes of determining whether a subsidy is specific to an enterprise, the following principles shall apply:

- (a) where the granting authority, or the legislation pursuant to which the granting authority operates explicitly limits access to a subsidy to an enterprise, such subsidy shall be specific; and
- (b) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes neutral and objective criteria governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria are strictly adhered to.

(2) Notwithstanding any appearance of non-specificity resulting from the application of subregulation (1), if there are reasons to believe that the subsidy may in fact be specific, the Authority may consider the following factors:

- (a) the use of a subsidy programme by a limited number of enterprises;

- (b) the predominant use of a subsidy programme by an enterprise;
- (c) the granting of disproportionately large amounts of subsidy to an enterprise;
- (d) the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy, including, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions;
- (e) the extent of diversification of economic activities within the jurisdiction of the granting authority; and
- (f) the length of time during which the subsidy programme has been in operation.

(3) A subsidy which is limited to an enterprise located within a designated geographical region within the jurisdiction of the granting authority shall be specific, but for the purposes of this subregulation, "subsidy" does not include the setting or change of generally applicable tax rates by any authority entitled to do so.

5. (1) Notwithstanding regulation 4, the following subsidies are deemed to be specific: Deemed specificity

- (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and
  - (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.
- (2) For the purposes of subregulation (1)(a)—
- (a) the mere fact that a subsidy is accorded to enterprises which export shall not, for that reason alone, make the subsidy one that is contingent upon export performance; and
  - (b) subsidies shall be considered to be contingent in fact upon export performance when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings.

6. A determination of specificity shall be clearly substantiated on the basis of positive evidence. Evidence of specificity

7. The following subsidies shall not be subjected to countervailing measures: Non-countervailable subsidies

- (a) subsidies which are not specific within the meaning of regulations 4 and 5;

- (b) subsidies which are specific, within the meaning of regulations 4 and 5, but which meet the conditions provided for in regulation 8, 9 or 10;
- (c) the element of subsidy which may exist in any of the measures listed in the Schedule.

Schedule

Research  
subsidies

8. (1) Subsidies for research activities conducted by firms or by higher education or research establishments on a contract basis with firms shall not be subject to countervailing measures, if the subsidies cover not more than seventy-five percent of the costs of industrial research or fifty percent of the costs of pre-competitive development activity, and provided that such subsidies are limited exclusively to—

- (a) personnel costs in relation to researchers, technicians and other supporting staff employed exclusively in the research activity;
- (b) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;
- (c) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge and patents;
- (d) additional overhead costs incurred directly as a result of the research activity;
- (e) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

(2) For the purposes of this regulation, the allowable levels of non-countervailable subsidy shall be established with reference to the total eligible costs incurred over the duration of an individual project.

(3) Where the research activity consists of industrial research and pre-competitive development activity, the allowable level of non-countervailable subsidy shall not exceed the simple average of the allowable levels of non-countervailable subsidy applicable to both categories, calculated on the basis of all eligible costs as set forth in subregulation (1)(a) to (e).

(4) This regulation does not apply to industrial activity or pre-competitive development activity carried on in relation to civil aircraft as defined in the 1979 Agreement on Trade in Civil Aircraft, as amended, or in any later agreement amending or replacing that Agreement.

Subsidies to  
disadvantaged  
regions

9. (1) Subsidies to disadvantaged regions within the territory of the country of origin or the country of export, given pursuant to a

general framework of regional development, and which would be non-specific if the criteria laid down in regulation 4 were applied to eligible region concerned shall not be subject to countervailing measures provided that—

- (a) each disadvantaged region is a clearly designated contiguous geographical area with a definable economic and administrative identity;
- (b) the region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances;
- (c) the criteria include a measurement of economic development which shall be based on a combination, or at least one, of the following factors:
  - (i) one of either income per capita or household income per capita, or gross domestic product per capita, which shall not be above eighty percent of the average for the territory of the country of origin or country of export concerned;
  - (ii) unemployment rate, which shall be at least one hundred and ten percent of the average for the territory of the country of origin or country of export concerned,  
as measured over a three-year period; and
- (d) the requirements of regulation 10 in relation to the regional subsidy programme concerned are satisfied.

(2) A measurement of economic development under subregulation (1)(c) may include such other factors as the Authority thinks fit.

10. In order for a subsidy to qualify for an exemption under regulation 9, the regional subsidy programme under which the subsidy is granted shall provide for the following:

Regional  
subsidy  
programmes

- (a) ceilings on the amount of subsidy which can be granted to each subsidized project, such ceilings being—
  - (i) differentiated according to the different levels of development of eligible regions; and
  - (ii) expressed in terms of investment costs or the cost of job creation;
- (b) the broad and even distribution of subsidies so as to avoid the predominant use of subsidies by, or the granting of disproportionately large amounts of a subsidy to, any enterprise.

Subsidies for  
adaptation of  
existing  
facilities

11. (1) Subsidies to promote the adaptation of existing facilities to new environmental requirements imposed by law resulting in greater constraints and financial burden on firms or enterprises, shall not be subject to countervailing measures, provided that the subsidy—

- (a) is a one-time non-recurring measure;
- (b) is limited to twenty per cent of the cost of adaptation;
- (c) does not cover the cost of replacing and operating the subsidized investment, which are to be fully borne by firms and enterprises;
- (d) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and
- (e) is available to all firms and enterprises which can adopt the new equipment or production processes.

Calculation of  
amount of  
counter-  
available  
subsidy

12. (1) The amount of countervailable subsidies shall be calculated in terms of the benefit conferred to the recipient and which is found to exist during the investigation period for subsidization.

(2) The investigation period for subsidization shall normally be the most recent accounting year of the beneficiary, but may be any other period of at least six months prior to the initiation of the investigation for which reliable financial and other relevant data are available.

(3) The following principles shall apply to the calculation of the benefit conferred to the recipient:

- (a) provision by a government of equity capital shall not be considered as conferring a benefit, unless the investment can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country of origin or the country of export;
- (b) a loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm or enterprise receiving the loan pays on the government loan and the amount that the firm or enterprise would pay for a comparable commercial loan which the firm or enterprise could actually obtain on the market, in which case the benefit shall be the difference between the two amounts;
- (c) a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee

pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan in the absence of the government guarantee, in which case the benefit shall be the difference between the two amounts adjusted for any differences in fees;

- (d) the provision of goods or services or purchases of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration and the adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

(4) The following principles shall apply to the calculation of the amount of countervailable subsidies:

- (a) the amount of the countervailable subsidies shall be determined per unit of the subsidized product exported to Trinidad and Tobago;
- (b) an interested party may claim the following deductions from the total subsidy:
  - (i) any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;
  - (ii) export taxes, duties or other charges levied on the export of the product to Trinidad and Tobago specifically intended to offset the subsidy,

but the Authority shall not make any deduction under this paragraph, unless the interested party proves that the claim is justified;

- (c) where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidization;
- (d) where the subsidy can be linked to the future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned and the amount so

calculated which is attributable to the investigation period (including that which derives from fixed assets acquired before this period) shall be allocated as described in paragraph (c), but where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan and be treated in accordance with subregulation (3)(b);

- (e) where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period shall in principle be attributed to this period, and allocated as described in paragraph (c), unless special circumstances arise justifying attribution over a different period.

#### SCHEDULE

[Regulation 7(c)]

#### DOMESTIC SUPPORT MEASURES

1. Domestic support measures for which exemption from countervailing duty is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade-distorting effects on production. Accordingly, all measures for which exemption is claimed shall conform to the following basic criteria:

- (a) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and
- (b) the support in question shall not have the effect of providing price support to producers;

plus policy-specific criteria and conditions as set out below.

#### GOVERNMENT SERVICE PROGRAMMES

##### 2. *General Services*

Policies in this category involve expenditures (or revenue foregone) in relation to programmes which provide services to agriculture or a rural community. These programmes shall not involve direct payments to producers or processors. These programmes include but are not restricted to the following:

- (a) research, including general research, research in connection with environmental programmes, and research programmes relating to particular products;
- (b) pest and disease control, including general and product-specific pest and disease control measures, such as early-warning systems, quarantine and eradication;
- (c) training services, including both general and specific training facilities;
- (d) extension and advisory services, including the provision of means to facilitate the transfer of information and the results of research to producers and consumers;

- (e) inspection services, including general inspection services and the inspection of particular products for health, safety, grading or standardization purposes;
- (f) marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers; and
- (g) infrastructural services, including electricity, reticulation, roads and other means of transport, marker and port facilities, water supply facilities, dams and drainage schemes, and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only, and shall exclude the subsidized provision of on-farm facilities other than for the reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges.

3. *Public stockholding for food security purposes*

Expenditure (or revenue foregone) in relation to accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.

The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by the government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.

4. *Domestic food aid*

Expenditures (or revenue foregone) in relation to provision or domestic food aid to sections of the population in need.

Eligibility to receive the food aid shall be subject to clearly-defined criteria related to nutritional objectives. Such aid shall be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidized prices. Food purchases by the government shall be made at current market prices and the financing and administration of the aid shall be transparent.

5. *Direct payments to producers*

Support provided through direct payments (or revenue foregone, including payments in kind) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria set out in paragraph 1, plus specific criteria applying to individual types of direct payment as set out in paragraphs 6 through 13. Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in paragraphs 6 through 13, it shall conform to the criteria (b) through (e) in paragraph 6, in addition to the general criteria set out in paragraph 1.

6. *Decoupled income support*

- (a) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period.
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.

- (c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) The amount of such payments in any given years shall not be related to, or based on, the factors of production employed in any year after the base period.
- (e) No production shall be required in order to receive such payments.

7. *Government financial participation in income insurance and income safety-net programmes*

- (a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30% of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments.
- (b) The amount of such payments shall compensate for less than 70% of the producer's income loss in the year the producer becomes eligible to receive this assistance.
- (c) The amount of any such payments shall relate solely to income; it shall not relate to the type or volume of production (including livestock units) livestock undertaken by the producer; or to the prices, domestic or international, applying to such production; or to the factors of production employed.
- (d) Where a producer receives in the same year payments pursuant to this paragraph and pursuant to paragraph 8 (relief from natural disasters), the total of such payments shall be less than 100% of the producer's total loss.

8. *Payments (made either directly or by way of a government financial participation in crop insurance schemes) for relief from natural disasters*

- (a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30% of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and lowest entry.
- (b) Payments made following a disaster shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals, land or other production factors) due to the natural disaster in question.
- (c) Payments shall compensate for not more than the total cost of replacing such losses and shall not require or specify the type or quantity of future production.
- (d) Payments made during a disaster shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b).
- (e) Where a producer receives in the same year payments pursuant to this paragraph and pursuant to paragraph 7 (income insurance and income safety-net programmes), the total of such payments shall be less than 100% of the producer's total loss.

9. *Structural adjustment assistance provided through producer retirement programmes*

- (a) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to facilitate the retirement of

persons engaged in marketable agricultural production, or their movement to non-agricultural activities.

- (b) Payments shall be conditional upon the total and permanent retirement of the recipients from marketable agricultural production.

10. *Structural adjustment assistance provided through resource retirement programmes*

- (a) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to remove land or other resources, including livestock, from marketable agricultural production.
- (b) Payments shall be conditional upon the retirement of land from marketable agricultural production for a minimum of three years, and in the case of livestock on its slaughter or definitive permanent disposal.
- (c) Payments shall not require or specify any alternative use for such land or other resources which involves the production of marketable agricultural products.
- (d) Payments shall not be related to either type or quantity of production or to the prices, domestic or international, applying to production undertaken using the land or other resources remaining in production.

11. *Structural adjustment assistance provided through investment aids*

- (a) Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages. Eligibility for such programmes may also be based on a clearly-defined government programme for the reprivatization of agricultural land.
- (b) The amount of such payments in any given year shall not be related to, or based on the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than as provided for under criterion (e).
- (c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) The payments shall be given only for the period of time necessary for the realization of the investment in respect of which they are provided.
- (e) The payments shall not mandate or in any way designate the agricultural products to be produced by the recipients except to require them not to produce a particular product.
- (f) The payments shall be limited to the amount required to compensate for the structural disadvantage.

12. *Payments under environmental programmes*

- (a) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfillment of specific conditions under the government, including conditions related to production methods or inputs.
- (b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.

13. *Payments under regional assistance programmes*

- (a) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity,

considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in a law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.

- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than to reduce that production.
- (c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) Payments shall be available only to producers in eligible regions, but generally available to all producers within such regions.
- (e) Where related to production factors, payments shall be made at a degressive rate above a threshold level of the factor concerned.
- (f) The payments shall be limited to the extra costs of loss of income involved in undertaking agricultural production in the prescribed area.

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*