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**First Session Fourth Parliament Republic of Trinidad
and Tobago**



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 11 of 1992

[L.S.]

AN ACT to authorize the imposition of anti-dumping duties and countervailing duties where goods have been dumped or subsidized; to provide for an Anti-Dumping Authority to investigate dumping or subsidizing of goods; to repeal the Customs Duties (Dumping and Subsidies) Act, Chap. 78:04; and for related purposes.

[Assented to 19th August, 1992]

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:—

PART I

PRELIMINARY

Short title 1. This Act may be cited as the Anti-dumping and Countervailing Duties Act, 1992.

Commencement 2. This Act comes into operation on such day as is fixed by the President by Proclamation.

Interpretation 3. (1) In this Act—

"Authority" means the person designated to be the Anti-Dumping Authority under section 16;

"Comptroller" means the Comptroller of Customs and Excise;

"duty" means anti-dumping duty and countervailing duty, as the case may require;

"importer" in relation to any goods at any time between their importation and the time they are delivered out of customs charge includes any owner or other person for the time being possessed of or beneficially interested in the goods;

"industry", in relation to any goods, means—

(a) the Trinidad and Tobago producers of like goods;

(b) such Trinidad and Tobago producers of like goods whose collective output constitutes a major proportion of the Trinidad and Tobago production of like goods,

but does not include importers of those goods;

"interested person" means a person—

(a) engaged in the production, purchase, sales, export or import of any goods that are the subject of an investigation;

- (b) engaged in the production, purchase or sale of any goods produced in Trinidad and Tobago that are like goods in relation to any goods that are the subject of an investigation;
- (c) acting on behalf of any person referred to in paragraph (a) or (b);
- (d) who is a user of any goods that are like goods in relation to any goods that are the subject of an investigation;

"like goods", in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration;

"margin of dumping" in relation to an article means the difference between the price at which such article is exported and its normal value;

"material injury" (except in section 7) means, in respect of the dumping or subsidizing of any goods, material injury to the production in Trinidad and Tobago of like goods, and includes, in respect only of the subsidizing of an agricultural product, an increase in the financial burden on the Government;

"material retardation" in respect of the dumping or subsidizing of any goods, means material retardation of the establishment of the production in Trinidad and Tobago of like goods;

"Minister" means the Minister to whom responsibility for Trade is assigned;

"provisional direction" means a direction given under section 25(1);

"provisional duty" means provisional anti-dumping duty or provisional countervailing duty, as the case may be, imposed under section 25;

"undertaker" means the Government of the country of export or the exporter as the case may be, from whom an undertaking is accepted or by whom it is given;

"undertaking" means an undertaking given and accepted under section 28.

(2) For the purposes of this Act imported goods shall be regarded as having been dumped—

(a) if the export price from the country in which the goods originated is less than the normal value of the goods in that country;

or

(b) in a case where the country from which the goods were exported to Trinidad and Tobago is different from the country in which they originated—

(i) if the export price from the country in which the goods originated is less than the normal value of those goods in that country; or

(ii) if the export price from the country from which the goods were so exported is less than the normal value of those goods in that country; and

(c) by reason thereof—

(i) material injury to an industry producing like goods has been or is being caused or is threatened or the establishment of an industry to produce like goods has been or may be materially retarded; or

- (ii) in a case where provisional duty has been paid or security taken under section 31 in respect of any duty that may become payable on the goods under this Act, material injury to an industry producing like goods would or might have been caused if the duty had not been paid or the security had not been taken as the case may be.

(3) References in this Act to giving a subsidy are references to giving, directly or indirectly, a bounty or subsidy on the production or export of goods (whether by grant, loan, tax relief or in any other way and whether related directly to the goods themselves or to materials of the goods or to something else) and shall include—

- (a) the giving of any special subsidy on the transport of a particular product; and
- (b) the giving of favourable treatment to producers or exporters in the course of administering any governmental control over the exchange of currencies where such treatment has the effect of assisting a reduction of the prices of goods offered for export,

but do not include the application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

(4) For the purposes of this Act, a purchase or sale of goods shall not be treated as an arm's length transaction if—

- (a) there is any consideration payable for or in respect of the goods other than their price;
- (b) the price is influenced by a commercial or other relationship between the buyer, or an

associate of the buyer, and the seller, or an associate of the seller; or

- (c) in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

(5) Where goods are exported or intended to be exported to Trinidad and Tobago and are purchased by the importer from the exporter (whether before or after exportation) for a particular price and the Minister is satisfied, after having regard to—

- (a) the amount of the price paid or to be paid for the goods by the importer;
- (b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods;
- (c) the likelihood of the recovery within a reasonable time of the amounts referred to in paragraphs (a) and (b); and
- (d) such other matters as the Minister considers relevant,

that the importer, whether directly or through an associate, sells those goods in Trinidad and Tobago (whether in the condition in which they were imported or otherwise) at a loss, the Minister may take the sale of those goods as an indication that the importer or an associate of the importer will, directly or indirectly, be reimbursed, compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price for the purposes of subsection (4)(c).

(6) For the purposes of this Act, persons shall be deemed to be associates of each other only if—

- (a) they are officers or directors of one another's business;

- (b) they are legally recognised partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls, or holds five per cent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are connected by—
 - (i) marriage;
 - (ii) a blood relationship; or
 - (iii) adoption.

(7) For the purposes of this Act, where, during the exportation of goods to Trinidad and Tobago the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

(8) Any duty chargeable under this Act on any goods is a duty of customs and shall be chargeable in addition to any other duty of customs for the time being chargeable thereon, and notwithstanding the provisions of any other law for the time being in force in Trinidad and Tobago, the charge of duty under this Act shall not affect liability to customs duty chargeable under any other Act or the amount of any such duty.

4. (1) The Comptroller shall be responsible for the collection of the duties imposed by this Act.

Comptroller to
collect duties

(2) Subject to subsection (3), for the purposes of collecting and enforcing the payment of duties imposed by this Act the Customs Act and any other written law

relating to the importation of goods shall apply, but to the extent that it is inconsistent with any other written law, this Act prevails.

PART II

IMPOSITION OF DUTIES

Anti-dumping
duty

5. (1) Where the Minister, having made a determination under Part V, is satisfied that goods of any description are being or have been imported into Trinidad and Tobago in circumstances in which they are under the provisions of this Act to be regarded as having been dumped, he may, by Order, impose a duty to be known as anti-dumping duty.

(2) The anti-dumping duty in respect of goods shall be at a rate determined by the Minister after having regard to the desirability of ensuring that the amount of duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to the establishment of an industry, as the case may be, but shall not exceed the difference between the export price of the goods and their normal value.

Countervailing
duty

6. (1) Where the Minister, having made a determination under Part V, is satisfied that some Government or other authority outside Trinidad and Tobago has been giving a subsidy affecting goods of any description which are being or have been imported into Trinidad and Tobago, and by reason thereof material injury to an industry producing like goods has been or is being caused or threatened or the establishment of an industry producing like goods has been or is being materially retarded, he may, by Order, impose a duty to be known as countervailing duty.

(2) The countervailing duty in respect of goods shall be at a rate determined by the Minister after having regard to the desirability of ensuring that the amount of duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to the establishment of an industry, as the case may be, but shall not exceed the amount of the subsidy given on the goods.

7. (1) Where the Minister is satisfied, having made a ^{Third country anti-dumping and countervailing duties} determination under Part V, that, in relation to the importation into Trinidad and Tobago of goods produced or manufactured in another country—

- (a) the goods are or have been dumped or subsidized; and
- (b) as the result material injury to a domestic industry of a third country has been or is being caused or threatened or the establishment of a domestic industry of a third country has been or is being materially retarded,

the Minister may, if requested by the Government of the third country to do so by Order impose anti-dumping duty or countervailing duty, as the case may be.

(2) In subsection (1) "material injury" means material injury to the production in the third country of like goods and includes, in respect only of the subsidizing of an agricultural product, an increase in the financial burden on that country's government.

8. Any duty or provisional duty shall be non- ^{Extent of duty} discriminatory and payable on all imports of such goods, if found to be dumped or subsidised and, where applicable, causing material injury except in the case of imports from those sources from which undertakings have been accepted.

Orders imposing
duties

9. (1) Subject to subsection (2), an Order under this Part may include such provisions as may appear to the Minister to be required for the purposes of this Act, and in particular—

- (a) provisions limiting the description of the goods by reference to the particular persons or organizations by whom the goods were produced or who were concerned with the production of the goods in some specified manner;
- (b) provisions defining the rate of duty by reference to value or weight or other measure of quantity;
- (c) provisions directing that duty be charged for any period or periods whether continuous or not, or without any limit of period, or at different rates for different periods or parts of periods;
- (d) provisions to take account of retrospective duty under section 30; and
- (e) in connection with the commencement, variation or termination of a duty, provisions authorising repayments in respect of duty where it is shown that the prescribed conditions are fulfilled.

(2) The description of goods in an Order shall include a reference to the country in which the goods originated and where the country from which the goods were exported to Trinidad and Tobago is not the country of origin, to the country from which the goods were so exported.

Relief in respect
of duties

10. (1) Where it appears to the Minister that relief under this section should be available as respects a duty imposed by an Order (being an Order made to afford protection against dumping) he may, if he thinks fit, in that or a subsequent Order under this Act apply this section in relation to the duty.

(2) Where this section applies in relation to any duty, the importer of any goods chargeable with the duty as being goods originating in or, as the case may be, exported from a specified country may apply to the Minister for relief from the duty on those goods.

(3) If on an application made under subsection (2) the Minister is satisfied that the export price of the goods from that country with the amount of the duty added to it exceeds the normal value of the goods in that country, he shall notify the Comptroller of the amount of the excess, and the Comptroller shall remit or repay the duty up to that amount.

(4) An application under subsection (2) as respects any goods shall not be made more than six months after the duty has been paid on the goods, and for the purposes of the application the applicant shall furnish such information and evidence as the Minister may require from him for ascertaining the export price or normal value.

(5) This section shall have effect in relation to a duty imposed by an Order (being an Order made to afford protection against the giving of a subsidy) as if references to the normal value in a country were references to the export price from that country increased by such amount (if any) as may be necessary to offset the effect of the giving of the subsidy.

(6) If a person for the purposes of an application under this section—

- (a) makes any statement which is false in a material particular; or
- (b) produces any account, estimate, return or other document which is false in a material particular,

the amount of any duty remitted or repaid under this section on the application shall be recoverable as a debt due to the State and if the statement was made or the

document was produced knowingly or recklessly that person commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and imprisonment for one year.

Drawback of duties

11. (1) The Minister may by Order provide for the allowance of drawback in respect of all or any duties under this Act, on the export of goods in such circumstances and subject to such conditions as he may specify.

(2) The drawback may be in respect of duty paid on the goods or in respect of duty paid on materials used in the manufacture of goods and the rate of the drawback may be determined in such manner by reference to such matters as the Minister may specify.

(3) The Comptroller shall be responsible for the payment of drawback under this section.

Ascertainment of normal value

12. (1) Subject to this section, for the purposes of this Act, the normal value of any goods exported or intended to be exported to Trinidad and Tobago shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Subject to subsection (4), where the Minister is satisfied that—

(a) the normal value of goods exported or intended to be exported to Trinidad and Tobago cannot be determined under subsection (1) because—

(i) there is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or

- (ii) the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) are not suitable for use in determining such a price; or
 - (b) like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1),
- subsection (3) shall have effect.

(3) Where this subsection has effect, the normal value for the purposes of this Act shall be the sum of—

- (a) such amount as determined by the Minister to be the cost of production or manufacture of the goods in the country of export;
- (b) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—
 - (i) such amounts as the Minister determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and
 - (ii) an amount calculated in accordance with such rate as the Minister determines would be the rate of profit on that sale having regard to

the rate of profit normally realized on sales of goods of the same general category in the domestic market of the country of export of the goods where such sales exist.

(4) The Minister may, in his discretion, determine that the normal value for the purposes of this Act, shall be the price that, by reason of the quantity of goods, being like goods sold at arm's length in the ordinary course of trade in the country of export for export to a third country, is representative of the price paid in such sales of those goods and may be the highest price paid for such like goods.

(5) Subject to subsections (9) and (10), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the foregoing provisions of this section by reason that the Government of the country of export—

(a) has a monopoly, or substantial monopoly, of the trade of the country; and

(b) determines or substantially influences the domestic price of goods in that country,

subsection (6) shall have effect.

(6) Where this subsection has effect the normal value of the goods for the purposes of this Act shall be a value ascertained in accordance with whichever of the following paragraphs the Minister determines is appropriate and reasonable in the circumstances of the case:

(a) a value equal to the price of like goods produced or manufactured in a third country determined by the Minister and sold for home consumption in the ordinary course of trade in that third country, being sales that are arm's length transactions;

(b) a value equal to the price that, by reason of the quantity of goods, being like goods produced or manufactured in a third

- country determined by the Minister and sold for export from that country to another country in the ordinary course of trade, is representative of the price paid in such sales of the like goods, and may be the highest price paid for the like goods;
- (c) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a third country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:
- (i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;
 - (ii) such amounts as the Minister determines to be reasonable amounts for administrative and selling costs, delivery charges, and other costs or charges necessarily incurred in selling the like goods;
 - (iii) an amount calculated in accordance with such rate as the Minister determines is to be regarded as the rate of profit on the sale of the like goods, having regard to the rate of profit normally realized on sales of goods of the same general category in the relevant market where such sales exist;
- (d) where the Minister determines that paragraphs (a) to (c) do not provide an adequate basis for determination of normal value, he shall determine the normal value on the basis of a value equal to the price payable for like goods produced or manufactured in Trinidad and

Tobago and sold for home consumption in the ordinary course of trade in Trinidad and Tobago in sales that are arm's length transactions duly adjusted, if necessary, to reflect reasonable profits.

(7) Where the normal value of goods exported or intended to be exported to Trinidad and Tobago is the price paid for like goods, in order to effect a fair comparison the normal value and the export price shall be compared by the Minister—

- (a) at the same level of trade;
- (b) in respect of sales made at as nearly as possible the same time; and
- (c) with due allowances made as appropriate for any differences in terms and conditions of sales, differences in taxation, and any other differences which affect price comparability.

(8) Where the normal value of goods exported to Trinidad and Tobago is to be ascertained in accordance with subsection (3)(a) and (b) or (6)(c), the Minister shall make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(9) Where—

- (a) the actual country of export of goods exported or intended to be exported to Trinidad and Tobago is not the country of origin of the goods; and
- (b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,

the Minister may direct that the normal value of the goods shall be so ascertained.

(10) Where the Minister is satisfied, in relation to goods exported or intended to be exported to Trinidad and Tobago that—

(a) the price paid for like goods—

(i) sold for home consumption in the country of export in sales that are arm's length transactions; or

(ii) sold in the country of export to a third country in sales that are arm's length transactions,

is, and has been for an extended period of time and in respect of a substantial quantity of like goods, less than the sum of—

(A) such amount as the Minister determines to be cost of production or manufacture of the like goods in the country of export; and

(B) such amounts as the Minister determines to be reasonable amounts for administrative and selling costs, delivery charges and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and

(b) it is likely that the seller of those like goods will not be able to fully recover the amounts referred to in subparagraphs (A) and (B) of paragraph (a) within a reasonable period of time,

the price so paid for those like goods shall be deemed not to have been paid in the ordinary course of trade.

(11) Where the Minister is satisfied that the normal value of goods cannot be determined under section (1) because there is an absence of sales that would be relevant for the purpose of determining a price under that subsection for the reason that the goods are substandard or defective and for that reason

cannot be sold in the country of export, he shall determine the normal value for the purposes of this Act to be the normal value of those goods were they in a standard or non-defective condition.

Export price

13. (1) Subject to this section, for the purposes of this Act, the export price of any goods exported or intended to be exported to Trinidad and Tobago which have been purchased by the importer from the exporter shall be—

(a) where the purchase of the goods by the importer was an arm's length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents—

(i) costs, charges, and expenses incurred in preparing the goods for shipment to Trinidad and Tobago that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and

(ii) any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export; or

(b) where the purchase of the goods by the importer was not an arm's length transaction, and the goods are subsequently sold by the importer in the condition in which they were imported to a person who is not an associate of the importer, the price at which the goods were sold by the importer to that person less the sum of the following amounts:

(i) the amount of any duties and taxes imposed under this Act or any other Act;

- (ii) the amount of any costs, charges, or expenses arising in relation to the goods after exportation;
- (iii) the amount of the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies as the rate of profit on the sale by the importer having regard to the rate of profit that would normally be realized on sales of goods of the same general category by the importer where such sales exist.

(2) Where—

- (a) goods are or are to be shipped to Trinidad and Tobago on a consignment basis and there is no known purchaser in Trinidad and Tobago for the goods; or
- (b) there is no exporter's sale price or no price at which the importer or a person not associated with the importer, has purchased or agreed to purchase the goods,

the export price, for the purposes of this Act, shall be determined in such manner as the Minister considers appropriate having regard to all the circumstances of the exportation.

14. Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under section 12 or the export price of goods to be ascertained under section 13, the normal value or export price, as the case may be, shall be an amount determined by the Minister having regard to such information as is available to him.

Normal value
and export price
in certain
circumstances

Construction of
references to
country of origin

15. (1) Goods shall be regarded for the purposes of this Act as having originated in a country—

- (a) if those goods were wholly produced in that country;
- (b) if some stage in the production of the goods was carried out in that country and the cost of carrying out such stages, if any, in the production of the goods as were carried out after those goods last left that country (but before the import of the goods into Trinidad and Tobago) was less than twenty-five per cent of the cost of production of the goods as so imported; or
- (c) if some stage in the production of any components or materials incorporated in the goods was carried out in that country and the cost of carrying out such stages in production as were carried out after those components or materials last left that country to convert those components or materials into the goods as imported into Trinidad and Tobago was less than twenty-five per cent of the cost of production of the goods as so imported.

(2) Any reference in this Act to the country in which goods originated is a reference, in a case where there are two or more countries which answer to that description, to any of those countries.

PART III

ANTI-DUMPING AUTHORITY

Anti-Dumping
Authority

16. (1) The Minister may designate the Permanent Secretary in his Ministry or such other person as he thinks fit, to be the Anti-Dumping Authority for the purposes of this Act.

(2) The Minister may provide to the Authority the services of such other persons and such other facilities as he thinks fit.

17. (1) It shall be the duty of the Authority in accordance with Regulations made under section 34— Duties of Authority

- (a) to investigate into the existence, degree and effect of the alleged dumping, or grant of subsidy of any goods;
- (b) to ascertain in accordance with the regulations whether any goods imported into Trinidad and Tobago cause or threaten to cause material injury to any industry established in Trinidad and Tobago or materially retard the establishment of any new industry in Trinidad and Tobago;
- (c) to identify goods liable for any duty or additional duty chargeable under this Act;
- (d) to submit his findings to the Minister as to the margin of dumping or the nature and amount of subsidy in relation to such goods; and
- (e) to make recommendations to the Minister regarding directions and determinations.

(2) The Authority shall conform, in the performance of his duties and exercise of his powers with any general or special directions given to him by the Minister.

PART IV INVESTIGATIONS

18. (1) The Authority may initiate an investigation to determine the existence and effect of any alleged dumping or subsidizing of any goods at the direction of the Minister, on his own initiative or on receipt of a complaint in writing by or on behalf of producers in Trinidad and Tobago of like goods. Initiation of investigation

(2) A complaint under subsection (1) shall be in a form approved by the Authority and shall—

- (a) allege that the goods have been or are being dumped or subsidized, specify the goods and allege that the dumping or subsidizing has caused, is causing or is likely to cause material injury or has caused or is causing material retardation;
- (b) state the facts on which the allegations referred to in paragraph (a) are based;
- (c) make such other representations as the complainant deems relevant to the complaint;
- (d) contain such information as is available to the complainant to prove the facts referred to in paragraph (b), and such other information as the Authority may reasonably require him to provide.

(3) Where the Authority initiates an investigation pursuant to subsection (1), notice to that effect shall be given.

(4) Where the Authority decides with respect to some or all of the goods specified in the complaint not to cause an investigation to be initiated, he shall cause a written notice of his decision, setting out the reasons for it, to be sent to the complainant and, in case of subsidized goods, to the Government of the country of export.

(5) Before initiating an investigation into a complaint the Authority shall satisfy itself that it has sufficient *prima facie* evidence of—

- (a) dumping or the giving of a subsidy and of the quantum;
- (b) material injury or material retardation, as the case may be, where applicable; and

- (c) where applicable, a causal link between such imports and the alleged material injury or material retardation, as the case may be.

19. The Authority, shall ensure that all interested persons are given reasonable opportunity—

Rights of interested parties

- (a) to present in writing all evidence relevant to the investigation, and, to present such evidence orally;
- (b) to have access to all non-confidential information relevant to the presentation of their case and used by the Authority in the investigation;
- (c) to present opposing views and offer rebuttal arguments.

20. (1) Any information provided to the Authority on a confidential basis by any person in the course of an investigation shall, upon the Authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed by the Authority to any other person without the specific authorization of the person providing such information.

Treatment of confidential information

(2) The Authority may request persons who have provided confidential information to furnish—

- (a) a non-confidential summary of the information; or
- (b) if it is claimed that the information is not susceptible of such summary, a statement of the reasons why such summary is not possible,

and he may disregard any information for which the person submitting it fails to provide either a satisfactory summary or satisfactory reason why such summary cannot be provided.

General conduct
of investigation

21. (1) An investigation shall be carried out in the prescribed manner.

(2) Interested parties to an investigation may be represented by an attorney-at-law or by an agent.

False or misleading
evidence or
information

22. A person who—

(a) gives to the Authority information, whether orally or in writing, or documents, which he knows, or has reason to believe to be false or misleading in a material particular; or

(b) at an investigation, gives evidence, or produces a document which he knows, or has reason to believe to be false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and imprisonment for one year.

Termination of
investigations

23. (1) Investigations initiated pursuant to section 18 are terminable in accordance with this section and section 28.

(2) Where the Minister, at any time before making a final determination of dumping or subsidizing, or the Authority, at any time before a preliminary determination of dumping or subsidizing is made by the Minister, is satisfied in respect of some or all of the goods under investigation, that—

(a) there is insufficient evidence of dumping or subsidizing to justify proceeding with the investigation; or

(b) there is insufficient evidence that material injury to an industry has been or is being caused or threatened or establishment of an industry has been or is being materially retarded by means of the subsidizing or dumping of the goods—

the Minister shall direct the Authority to—

- (i) terminate the investigation with respect to those goods; and
- (ii) give notice of such termination.

(3) Where—

- (a) an investigation is terminated under subsection (2), and it is subsequently ascertained that information supplied affecting the investigation was incorrect or did not disclose material facts, and that the information is of such a nature as materially to affect the decision to terminate the investigation; or
- (b) an investigation is terminated pursuant to an undertaking and the undertaker violates the undertaking,

the Authority may initiate a further investigation.

(4) Notice shall be given of an investigation under subsection (3).

(5) The Authority may, in his discretion, suspend or terminate an investigation—

- (a) at the request in writing on behalf of an industry at whose instance the investigation was initiated;
- (b) where the margin of dumping of or the amount of subsidy on the goods or the actual or potential volume of dumped or subsidized goods is negligible.

PART V

DETERMINATIONS

24. (1) Within three months after an investigation has been initiated pursuant to section 18, the Minister shall make a preliminary determination, on the basis of

Preliminary
determination

the information made available during the investigation, if he has reasonable cause to believe, that the goods which were the subject of the investigation are goods in respect of which he may make an Order imposing duty.

(2) The Minister's preliminary determination shall be given by notice.

(3) This section and section 26 shall not apply to an investigation terminated under section 23.

Direction

25. (1) Where the Minister has made a preliminary determination under section 24, he may, if he is satisfied that such action is necessary to prevent material injury being caused during the period of investigation, by notice give a direction to the Comptroller that payment of provisional duty in respect of those goods shall be made or payment shall be secured in accordance with section 31.

(2) The rate or amount of such duty to be paid or secured shall not exceed the difference between the export price of the goods and their normal value or the amount of subsidization, as the case may be, which has been determined by the Minister under section 24.

(3) Where provisional duty collected, is, in relation to duty to be imposed following a final determination under section 26—

(a) higher, there shall be no requirement to pay the difference;

(b) lower, the difference shall be refunded.

(4) A direction shall cease to have effect following the final determination made by the Minister under section 26.

(5) When any direction ceases to have effect any security given pursuant to the direction shall be released, except to the extent that duty is payable pursuant to an Order under this Act.

26. (1) Within six months after the making of a preliminary determination under section 24, the Minister shall make a final determination as to whether or not, the goods which were the subject of the investigation are goods in respect of which he may make an Order imposing duty.

(2) The final determination of the Minister shall be given by notice.

PART VI

APPEALS

27. A person aggrieved by an Order imposing duty may appeal to the Tax Appeal Board in accordance with the Tax Appeal Board Act.

PART VII

MISCELLANEOUS

28. (1) Where, in relation to the exportation of any consignment of goods to Trinidad and Tobago, an investigation is initiated pursuant to section 18, the Minister may cause the investigation to be suspended or terminated if he is given and accepts an undertaking by the Government of the country of export or by the exporter of the goods that the Government or the exporter, as the case may be, will so conduct future export trade to Trinidad and Tobago of like goods to the goods in the consignment as to avoid causing or threatening material injury to an industry or materially retarding the establishment of such an industry.

(2) The price increases in such an undertaking shall not exceed the difference between the export price of the goods and their normal value or the amount of the subsidy, as the case may be.

(3) The Minister may be given and accept any amendment to an undertaking because of altered circumstances.

(4) If the Minister accepts an undertaking the investigation of the extent of injury to an industry shall be completed if the Government of the country of export or the exporter, as the case may be, so desires.

(5) If an investigation referred to in subsection (4) is completed and no determination of material injury, threat thereof, or material retardation to the establishment of an industry is made, the undertaking shall lapse, except in cases where a determination of no threat of injury is attributable to a significant degree to the existence of the undertaking, in which case the Minister may require that the undertaking be maintained for such reasonable period as he may determine.

(6) The Minister may require any party from whom undertakings have been accepted to provide information relevant to the fulfillment of the undertaking.

(7) The Minister shall review the need for the continuation of an undertaking where warranted on his own initiative, or if an interested person so requests and submits positive evidence substantiating the need for review.

(8) Undertakings shall remain in force only so long and to the extent necessary to counteract the injurious effects of the dumping or subsidization.

(9) If an investigation is terminated in accordance with subsection (1), notice of the termination shall be given.

Duration of
duties

29. (1) The Minister shall review the need for the continued imposition of a duty where warranted on his own initiative, on the recommendation of the Authority or if an interested person so requests and submits *prima facie* evidence substantiating the need for review.

(2) A duty shall remain in force only so long as and to the extent necessary to counteract the injurious effects of the dumping or subsidization and may be reduced or withdrawn in the Minister's discretion.

30. (1) Duty and provisional duty shall only be applied to goods which are entered for home consumption after the date of an Order imposing duty or, where section 25 applies, after the date of the provisional direction, except as provided by this section. ^{Retrospective duty}

(2) Where a final determination of material injury to an industry (but not of a threat thereof or of material retardation to the establishment of an industry) is made by the Minister, or in the case of a final determination of threat of material injury where the effect of the dumped or subsidized goods would, in the absence of provisional duty being paid or security being taken under section 31 have led to a finding of material injury, duty may be imposed retrospectively for the period for which duty was paid or security taken.

(3) Where the Minister determines—

(a) in respect of dumped goods—

- (i) either that there is a history of dumping causing material injury or that the importer was or should have been aware that the goods were dumped and that such dumping would cause injury; or
- (ii) that the material injury is caused by substantial dumped imports of a product in a relatively short period to such an extent that in order to preclude it recurring the Minister is of the opinion that it appears necessary to impose a dumping duty retrospectively;

(b) in the case of subsidized goods, in critical circumstances, where the Minister determines that material injury which is difficult to repair is caused by massive imports, in a relatively short period, of goods benefiting from export subsidies paid or bestowed inconsistently with the provisions of the General Agreement on Tariffs and Trade concluded in Geneva in the year 1947 and where it is deemed necessary, in order to preclude the recurrence of such material injury it is necessary to impose a countervailing duty retrospectively,

the Minister may impose duty on goods which were entered for home consumption not more than ninety days prior to the date of the provisional direction.

(4) Where an undertaking is violated by the undertaker and the Minister imposes provisional duties, duty may be imposed on goods entered for home consumption not more than ninety days before the date of the provisional direction, except that such retrospective duty shall not apply to goods that have been entered for home consumption before the date of the violation of the undertaking.

Securities for
payment of duty

31. (1) The Comptroller may require and take securities for payment of duty payable under this Act and pending the giving of the required security he may refuse to pass any entry or to do any other act in relation to any matter in respect of which the security is required.

(2) Any security under this Act may, as required by the Comptroller, be by bond with sureties or guarantee, or by a deposit of cash, or by all or any of those methods, to the satisfaction of the Comptroller.

(3) Any such security may be given in relation to any particular transaction, or generally with respect to any class of transactions or to all transactions, and for

such period and amount as the Comptroller thinks fit, and under such conditions as to forfeiture, penalty, or otherwise as the Minister may direct.

(4) Any bond or other security entered into or given under this Act by a person under the age of 18 years (otherwise than as a surety or guarantor) shall have the same force, effect, and validity as if that person had been of full age.

(5) Security under this section may be either in the prescribed form or to the like effect, or in such other form as the Comptroller in any particular case approves.

32. Notices under this Act shall—

Notices

- (a) specify the reasons for the giving of the notice;
- (b) be given to—
 - (i) the Government or Governments of the country or countries of the export of goods to which the notice relates;
 - (ii) exporters and importers known by the Minister or Authority to have an interest in those goods;
 - (iii) the complainant in relation to those goods;
 - (iv) where section 7 applies, the Government of the third country on behalf of whom the Minister is taking action; and
- (c) be published in the *Gazette*.

33. Where a person by whom an offence against section 10(6) or 22 is committed is a body corporate, every director or other officer concerned in any capacity in the management of the body corporate is guilty of the like offence unless he proves that the offence was committed without his consent or connivance and that

Additional liability
for offence
by body corporate

he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Regulations

34. (1) The Minister may make Regulations prescribing for the purposes of this Act all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1) Regulations under this section may provide for—

- (a) the manner in which complaints of dumping or subsidization will be received;
- (b) the information required for consideration of such complaints and the method by which such information will be obtained, both within and outside Trinidad and Tobago;
- (c) the conduct of investigations;
- (d) the circumstances and manner in which investigations may be joined and carried on as one and the persons to whom notice of the joining shall be given;
- (e) the manner in which the injury to the industry may be determined;
- (f) the manner in which goods liable for duty will be identified;
- (g) the manner in which recommendations regarding determinations and directions will be submitted to the Minister; and
- (h) the form in which complaints or representations may be made, notices issued or information furnished and the

form of bonds, guarantees and other securities.

(3) Regulations made by the Minister under this section shall be subject to negative resolution of Parliament.

35. The Customs Duties (Dumping and Subsidies) Act is repealed. Repeal Chap. 78:04

Passed in the House of Representatives this 7th day of August, 1992.

N. COX

Acting Clerk of the House

Passed in the Senate this 12th day of August, 1992.

R. CUMBERBATCH

Acting Clerk of the Senate