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



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 23 of 1995

[L.S.]

AN ACT to amend the Anti-dumping and Countervailing
Duties Act, 1992

[Assented to 28th September, 1995]

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

1. This Act may be cited as the Anti-dumping and Short title
Countervailing Duties (Amendment) Act, 1995.

Interpretation
Act No. 11 of 1992

2. In this Act, “the Act” means the Anti-dumping and Countervailing Duties Act, 1992.

Section 3 amended

3. Section 3 of the Act is amended—

(a) in subsection (1)—

(i) by deleting the definition of “industry” and substituting the following definition:

“industry” in relation to any goods, means such Trinidad and Tobago producers of like goods whose collective output constitutes at least twenty-five per cent of the Trinidad and Tobago production of such like goods, except that—

(a) where certain Trinidad and Tobago producers of like goods are associates of the exporters or importers or are themselves importers of the relevant goods, the Minister may make a determination that such producers shall not be taken into account in applying the foregoing definition; and

(b) Trinidad and Tobago may, for the production in question, be divided into two competitive markets and all or almost all the producers within one such market regarded as the industry, if the producers within such market sell all or almost all their production of the goods in question in that market and the demand in that market is not to any substantial degree supplied by producers of the goods in question located elsewhere in Trinidad and Tobago;”;

(ii) in the definition of “interested person” by deleting—

(A) in paragraph (a), the words “purchases, sales;”;

(B) in paragraph (b), the words “, purchase or sale”; and

(C) paragraph (d);

(iii) by deleting the definition of “margin of dumping” and substituting the following definition:

“ “margin of dumping” or “dumping margin” in relation to an article means the amount, if any, by which the normal value of such article exceeds the price at which it is exported;”;

(b) in subsection (2), by deleting the word “and” at the end of paragraph (b) and deleting paragraph (c);

(c) by repealing subsection (3) and substituting the following subsections:

“ (3) For purposes of this Act, a subsidy shall be deemed to exist where a benefit is conferred through the making of a financial contribution by a government or a public body or through the granting of any form of income or price support, and a government or public body makes a financial contribution where—

(a) it makes a direct transfer of funds or enters into a transaction involving a potential direct transfer of funds or liabilities;

(b) it foregoes or does not collect revenue which is otherwise due;

(c) it provides goods or services other than general infrastructure, or purchases goods;

(d) it makes payments to a funding mechanism, or entrusts or directs a private body to do any of the things described in paragraphs (a), (b) and (c).

(3A) A finding that actionable injury has been caused shall be made for the purposes of this Act where the dumped or subsidized imports are causing or threatening to cause material injury to the industry producing like goods or are materially retarding the establishment of the production in Trinidad and Tobago of like goods.”;

- (d) in subsection (4)(c), by deleting the words “in the opinion of the Minister,”;
- (e) in subsection (5), by deleting from the words “the Minister is satisfied” to the word “that” occurring immediately after paragraph (d).

4. Section 5 of the Act is amended—

Section 5 amended

- (a) in subsection (1), by deleting from the words “, he may” to the end and substituting the words “and where such dumped imports cause actionable injury, the Minister may, by Order, impose a duty to be known as anti-dumping duty, unless he considers that it would not be in the public interest to do so.”;
- (b) in subsection (2), by deleting from the words “to prevent the material injury” to the end and substituting the words “to prevent dumping but shall not exceed the margin of dumping.”;

(c) by inserting after subsection (2), the following subsection:

“ (3) Subject to section 10, anti-dumping duties shall be imposed with prospective effect.”.

Section 6 amended

5. Section 6 of the Act is amended—

(a) in subsection (1), by deleting from the words “material injury to an industry” to the words “is being materially retarded” and substituting the words “actionable injury is being caused”;

(b) in subsection (2), by deleting from the words “to prevent the material injury” to the words “as the case may be” and substituting the words “to prevent actionable injury being caused”.

Section 7 amended

6. Section 7 of the Act is amended by inserting after subsection (2), the following subsection:

“ (3) For the purposes of making the determination under subsection (1), this Act shall apply as though the third country were an industry making a complaint pursuant to section 18.”.

Section 7A inserted

7. The Act is amended by inserting after section 7, the following section:

“Individual
dumping
margins

7A. (1) Where practicable the Authority shall determine individual dumping margins for each known exporter or producer concerned.

(2) Where it is not practicable to determine individual dumping margins for each known exporter or producer concerned, the Authority shall select a representative sample of exporters, producers or products, determine

individual dumping margins in respect of the exporters, producers or products comprised in the sample and then determine the dumping margin of all the exporters, producers and products not included in the sample on the basis that the normal value for such exporters, producers and products shall be the weighted average normal value of the exporters, producers or products included in the sample.

(3) Where subsection (2) applies, the Authority shall select a sample which is statistically valid on the basis of the information available to the Authority at the time of selection or which is the largest percentage of the volume of the exports from the country in question which can be reasonably investigated.

(4) Where practicable the Authority shall select any sample in consultation with the exporters, producers and, in the case of subsidies, the representatives of the exporting country.

(5) In deciding whether it is practicable to determine individual dumping margins for each known exporter or producer concerned and in determining which is the largest percentage of the volume of exports which can reasonably be investigated, the Authority shall take into consideration the number of exporters, producers and products involved, the time limits imposed by this Act or any regulations made under this Act, the logistics of visiting the premises of all the exporters and producers concerned and any other relevant matter.

(6) This section shall not prevent the Authority from determining an individual dumping margin for any exporter or producer or product not included in the sample but in respect of which a questionnaire is duly completed and returned within the prescribed deadline.”.

Section 8 repealed
and substituted

8. Section 8 of the Act is repealed and the following section is substituted:

“Non-discrim-
inatory
imposition of
duty

8. Any duty or provisional duty shall be non-discriminatory and payable on all imports of goods found to be dumped, or subsidized, and causing actionable injury, except that duties shall not be imposed on imports from sources in respect of which undertakings have been accepted.”.

Section 10 amended

9. Section 10 of the Act is amended—

(a) in subsection (3), by inserting after the words “duty up to that amount”, the words “within ninety days of the notification”;

(b) by inserting after subsection (3), the following subsection:

“ (3A) Where the export price is determined in accordance with section 13(1)(b) and there is conclusive evidence that any increase in the price at which the goods were resold to an independent party is duly reflected in subsequent selling prices, then for the purposes of determining the amount of any relief under this section, the reference to duties in section 13(1)(b)(i) shall not include anti-dumping duties.”.

10. Section 12 of the Act is amended—

Section 12 amended

(a) in subsection (3)(b) by deleting from the words “export—” to the end and substituting the words “export, such amount as the Minister determines would be a reasonable amount for administrative, selling and general costs and profit.”;

(b) by inserting after subsection (3), the following subsection:

“ (3A) In determining the amount referred to in subsection (3)(b), the Minister shall use as a basis the amount of administrative, selling and general expenses actually incurred and the amount of profit actually realized by the exporter under investigation on domestic sales of the like product, or where these are not available, any of the following:

(a) the amount of administrative, selling and general expenses actually incurred and the amount of profit actually realized by the exporter under investigation in respect of the production and domestic sales of the same general category of products; or

(b) the weighted average of the amounts of administrative, selling and general expenses actually incurred and profit actually realized by other exporters under investigation in respect of the production and domestic sales of the like product; or

(c) any other reasonable basis provided that the amount for profit so established shall not exceed the profit normally realized by the exporters on domestic sales of products of the same general category.”;

(c) in subsection (6)(c)—

(i) by deleting subparagraph (ii) and substituting the following subparagraph:

“ (ii) such amount as the Minister determines would be a reasonable amount for administrative, selling and general costs and profit;”;

(ii) by deleting subparagraph (iii);

(d) by inserting after subsection (6), the following subsection:

“ (6A) In determining the amount referred to in subsection (6)(c)(ii), the Minister shall use as a basis the amount of administrative, selling and general expenses actually incurred and the amount of profit actually realized by a producer in the third country on domestic sales of the like product, or where these are not available, any of the following:

(a) the amount of administrative, selling and general expenses actually incurred and the amount of profit actually realized by a

producer in the third country in respect of the production and domestic sales of the same general category of products;

(b) the weighted average of the amounts of administrative, selling and general expenses actually incurred and profit actually realized by producers in the third country in respect of the production and domestic sales of the like product; or

(c) any other reasonable basis provided that the amount for profit so established shall not exceed the profit normally realized by the producers in the third country on domestic sales of products of the same general category.”;

(e) in subsection (7)—

(i) in paragraph (a), by inserting after the word “trade”, the words “, preferably at the *ex*-factory level or as near to that level as possible”;

(ii) in paragraph (c), by inserting after the words “differences which”, the words “are demonstrated”;

(f) by inserting after subsection (7), the following subsection:

“ (7A) Where the comparison under the previous subsection requires a conversion of currencies, such

conversion shall be made using the rate of exchange prevailing on the date of sale except that—

(a) where foreign currency is sold on forward markets in a transaction directly linked to an export sale, the currency of the export sale shall be converted at the rate of exchange used in the forward sale; and

(b) movements in exchange rates need not be taken into account until they have been sustained over a substantial period.”;

(g) in subsection (9), by inserting after the words “be so ascertain”, the words “, and where such a direction is made, references in this Act to the country of export shall be interpreted as including references to the country of origin”;

(h) by inserting after subsection (10), the following subsection:

“ (10A) For the purposes of paragraph (b) of subsection (10), the seller of like goods shall be deemed to be able to fully recover the amounts referred to in subparagraphs (A) and (B) of paragraph (a) of that subsection if prices are above the weighted average of such amounts on a per unit basis calculated over the investigation period.”;

(i) by repealing subsection (11).

11. Section 13 of the Act is amended—

Section 13 amended

(a) in subsection (1)—

- (i) by deleting the words “shall be—” and substituting the words “shall be determined in accordance with the following:”;
- (ii) in paragraph (a), by inserting after the words “arm’s length transaction,” the words “the export price shall be”;
- (iii) in paragraph (b), by inserting after the words “who is not an associate of the importer,” the words “the export price may, notwithstanding paragraph (a), be determined as”;

(b) in subsection (2) by deleting the comma at the end of paragraph (b) and substituting the words “; or” and by inserting after paragraph (b), the following paragraph:

“ (c) the goods are not resold in the condition as imported.”.

12. The Act is amended by inserting after section 13, the following section: Section 13A inserted

“Determina-
tion of margin
of dumping

13A. (1) The dumping margin of an exporter shall be determined by taking the weighted average of all prices of exports to Trinidad and Tobago made in the investigation period and comparing this amount with the weighted average of the normal value for the same period.

(2) Notwithstanding subsection (1), the Authority may determine the dumping margin as the weighted average of the individual dumping margins determined by comparing export prices transaction by transaction with normal values established transaction by transaction where normal values are subject to significant variations during the investigation period.

(3) Notwithstanding subsections (1) and (2), the Authority may determine the dumping margin as the weighted average of the individual dumping margins determined by comparing export prices transaction by transaction with the weighted average normal value for the investigation period where it finds a pattern of export prices which differ significantly among different purchasers, regions or periods and such differences cannot be taken into account appropriately by the application of subsection (1) or subsection (2) and the reasons for that determination shall be stated in any Order imposing anti-dumping duty.”

Section 14 repealed
and substituted

13. Section 14 of the Act is repealed and the following section is substituted:

“Power of
Minister to
make
determina-
tions on avail-
able facts

14. Where any interested person refuses access to, or otherwise does not provide, necessary information within a reasonable period, or significantly impedes the investigation, the Minister may make determinations pursuant to section 24 or section 26 of this Act on the basis of the facts available.”

Section 14A inserted

14. The Act is amended by inserting after section 14, the following section:

“Calculation
of costs

14A. (1) All cost calculations shall be based on available accounting data, normally allocated, where necessary, in proportion to the turnover for each product and market under consideration.

(2) Notwithstanding subsection (1), where an exporter is able to prove that—

- (a) the generally accepted accounting principles of the exporting country provide for the allocation of costs, or of certain costs otherwise than on the basis of turnover;
- (b) historically the exporter has kept its accounting records and has allocated its costs in accordance with such principles; and
- (c) such records reasonably reflect the costs associated with the production and sale of the product under consideration,

the Authority may accept such cost allocations in lieu of an allocation determined in accordance with subsection (1).

(3) Unless already reflected in the cost allocations made in accordance with the previous subsections, costs shall be adjusted appropriately for those non-recurring items of costs which benefit future or current production, or for circumstances in which costs during the investigation period are affected by start-up operations.”.

15. Section 18 of the Act is amended—

Section 18 amended

- (a) in subsection (1), by deleting the words “producers in Trinidad and Tobago of like goods” and substituting the words “an industry producing like goods, provided that the Authority shall not initiate an investigation where the members of such industry who support the complaint do not account for more production of the like goods in Trinidad and Tobago than do the

members if any of such industry who signify to the Authority in writing their opposition to the complaint and for the purposes of this subsection any producers excluded from the definition of "industry" pursuant to section 3(1) shall not be taken into account";

(b) in subsection (2), by deleting the words "shall be in a form approved by the Authority and";

(c) by inserting after subsection (3), the following subsection:

" (3A) The investigation of dumping or subsidization shall normally cover a period of not less than six calendar months immediately prior to the initiation of the investigation.";

(d) in subsection (5), by deleting paragraphs (b) and (c) and substituting the following paragraphs:

"(b) actionable injury; and

(c) a casual link between such imports and the alleged actionable injury.";

(e) by inserting after subsection (5), the following subsection:

" (6) The procedures of customs clearance of goods shall not be affected or hindered by reason only of the opening of an investigation pursuant to this Act."

Section 18A inserted

16. The Act is amended by inserting after section 18, the following section:

"Regional cases

18A. (1) Where injury has been determined by reference to a competitive market within Trinidad and Tobago in accordance with

paragraph (b), of the definition of "industry" in section 3(1), the exporters shall be given an opportunity to cease exporting at dumped prices to the area concerned or to give undertakings in accordance with section 18.

(2) Where exporters have been given the opportunity referred to in subsection (1) and they have not within thirty days ceased exporting to the area concerned or given undertakings in accordance with section 18, anti-dumping duties shall be levied on all imports from the country in question of the like goods into any part of Trinidad and Tobago, except as provided by subsection (3).

(3) Where the imports of goods to the area concerned of Trinidad and Tobago are exported by suppliers who do not supply such goods to the rest of Trinidad and Tobago, anti-dumping duty levied pursuant to subsection (2) of this section shall be levied only on those suppliers."

17. Section 19 of the Act is amended—

Section 19 amended

(a) by renumbering the section as section 19(1) and—

(i) by inserting after the word "opportunity", the words "throughout the investigation";

(ii) in paragraph (a), by deleting the words ", and, to present such evidence orally";

(b) by inserting after subsection (1) as renumbered, the following subsections:

" (2) Information provided pursuant to subsection (1)(a) shall not be taken into account unless it is reproduced in writing in non-confidential form and made available to other interested persons.

(3) For the purposes of subsection (1)(a), the Authority shall on request give interested persons an opportunity to meet and in so doing the Authority shall take account of the convenience of those persons and the need to preserve confidentiality, but no interested person shall be obliged to attend any such meeting and failure of any such person to attend shall not be prejudicial to that person's case.

(4) Industrial users of the product under investigation, and where the product is commonly sold at the retail level, representative organizations shall not be interested persons but shall be entitled to submit to the Authority information which is relevant to the investigation of dumping, subsidization, injury and the casual link between injury and dumping or subsidization.

(5) The procedures set out in this Act shall not prevent the Authority from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from recommending the imposition of duties under this Act and within the deadlines prescribed by or under this Act.”.

Section 19A inserted

18. The Act is amended by inserting after section 19, the following section:

“Requests as
to essential
facts

19A. (1) Exporters, foreign producers and importers of the product subject to investigation, and in the case of subsidization, the representatives of the

country of origin, may request to be informed by the Authority of the essential facts and considerations on the basis of which it is intended to recommend to the Minister the imposition of anti-dumping duty or countervailing duty or the definitive collection of amounts secured by way of provisional duty.

(2) Requests for information pursuant to subsection (1) shall be addressed to the Authority in writing specifying the particular issues on which information is sought and be received not later than one month after the publication of a direction under section 25.

(3) The information provided in response to a request shall be given by the Authority in writing without prejudice to any subsequent decision which may be taken by the Minister and the information shall be given no later than fifteen days prior to submission to the Minister of the proposed final determination pursuant to section 26.”.

19. Section 23 of the Act is amended—

Section 23 amended

(a) by repealing subsection (1) and substituting the following subsection:

“ (1) An investigation shall be terminated pursuant to this section, section 26 or section 28.”;

(b) in subsection (2)—

(i) by inserting after the word “Where”, the words “, upon the recommendation of the Authority,”;

(ii) by deleting from the words “or the Authority,” to the words “is made by the Minister,”;

(c) by repealing subsection (5) and substituting the following subsections:

“ (5) Without prejudice to section 23(1), the Minister may, upon recommendation of the Authority, direct that an investigation be suspended or terminated at the request in writing on behalf of an industry at whose instance the investigation was initiated.

(6) The Minister shall direct that the investigation be terminated with respect to an exporter or producer where, upon a recommendation of the Authority, the Minister is satisfied that the margin of dumping for that exporter or producer is less than two per cent of the customs value or, as the case may be, the margin of subsidization is less than one per cent of the customs value.

(7) The Minister shall direct that an investigation be terminated with respect to dumped imports from a particular country where, upon a recommendation of the Authority, he is satisfied that the volume of such imports, actual or potential, or the injury is negligible.

(8) For the purposes of subsection (7), the volume of dumped imports from a particular country shall be regarded as negligible if it is found to account for less than three per cent of all imports into Trinidad and Tobago of the like product, but this subsection shall not apply where two or more

countries which individually account for less than three per cent of all imports into Trinidad and Tobago of the like product collectively account for more than seven per cent of such imports.”.

20. Section 25 of the Act is amended—

Section 25 amended

(a) in subsection (1), by inserting after the words “with section 31”, the words “, provided that no such direction shall take effect less than sixty days after the date of initiation”;

(b) by repealing subsection (2) and substituting the following subsection:

“ (2) The rate or amount of such duty to be paid or secured shall not exceed the dumping margin or the amount of subsidization, as the case may be, which has been determined by the Minister under section 24.”;

(c) in subsection (3)—

(i) in paragraph (a), by deleting the word “higher” and substituting the word “lower”; and

(ii) in paragraph (b), by deleting the word “lower” and substituting the word “higher”.

21. Section 26 of the Act is amended—

Section 26 amended

(a) by repealing subsection (1) and substituting the following subsections:

“ (1) 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.

(1A) The notice of a final determination and of any Order consequent upon that final determination shall be published no later than four months after making the preliminary determination under section 24, except that where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Authority, the said period of four months may be extended to six months.”;

(b) by inserting after subsection (2), the following subsection:

“ (3) Notwithstanding any other provision of this Act, the final determination shall be made no more than eighteen months after the date of initiation of the investigation.”.

Section 28 amended

22. Section 28 of the Act is amended—

(a) in subsection (1), by deleting from the words “or threatening” to the end and substituting the words “actionable injury.”;

(b) by inserting after subsection (1), the following subsections:

“ (1A) No undertaking shall be accepted pursuant to this section unless a preliminary determination has been made pursuant to section 24, nor shall an undertaking be accepted if it is offered later than fifteen days prior to the submission by the Authority to the Minister of proposals for definitive action.

(1B) The Minister may refuse to accept an undertaking if he considers its acceptance impractical, or for any reason of public policy, and he shall communicate the reasons for so doing in writing to the person offering the undertaking and shall, where practicable, allow that person to make comments thereon before the refusal takes effect.

(1c) An undertaking may be suggested by the Authority but no person shall be obliged to enter into such an undertaking.

(1D) The fact that a person does not offer an undertaking or did not accept an invitation to do so, shall in no way prejudice the consideration of that person's case.”;

(c) by repealing subsection (2) and substituting the following subsection:

“ (2) The price increase in an undertaking shall not exceed the margin of dumping, or the amount of the subsidy, as the case may be.”;

(d) by repealing subsections (7) and (8).

23. Section 29 of the Act is repealed and the following sections are substituted: Section 29 repealed and substituted

“Review of
imposition of
duties

29. (1) The Minister shall review the imposition of a duty where warranted on his own initiative, or on a recommendation of the Authority.

(2) Where an interested party so requests and submits evidence of changed circumstances sufficient to warrant a review, the Authority may make a

recommendation pursuant to subsection (1) if at least one year has elapsed since the duty was imposed or last reviewed.

(3) Prior to making a recommendation pursuant to subsection (1) the Authority may initiate an investigation pursuant to section 18 if warranted, and such initiation shall not affect the duties in force.

(4) Where warranted by the review, the Minister may amend or revoke the Order imposing the duty, except that the duty shall be maintained or confirmed to the extent necessary to counteract the injurious effects of dumping or subsidization.

(5) Subsections (1) to (4) shall apply to price undertakings as though references to duties included references to price undertakings.

Duration of
duties

29A. (1) Subject to this section, duties shall expire on the fifth anniversary of their entry into force or, as the case may be, their last review.

(2) Duties shall not expire on the fifth anniversary referred to in subsection (1) if on that date an investigation is in progress pursuant to section 29 or this section.

(3) Where at least one month prior to the fifth anniversary referred to in subsection (1) an interested person submits to the Authority *prima facie* evidence that expiry of the duties would lead again to actionable injury, the Authority shall immediately initiate an investigation.

(4) The provisions of this Act shall apply to an investigation initiated under this section in the same way as they apply to investigations initiated under section 18.

(5) Duties shall remain in force pending the outcome of an investigation initiated under this section or section 29.

(6) Notice shall be given of the termination or expiry of a duty for any reason whatsoever.

(7) Subsections (1) to (6) shall apply to price undertakings as though reference to duties included references to price undertakings.

Newcomer
review

29B. (1) Where a person satisfies the Authority that, in relation to a product which is subject to an Order under section 7—

- (a) it did not export the product to Trinidad and Tobago during the investigation period used for the purposes of determining the facts on the basis of which the Order was made;
- (b) it is not an associate of any person whose products are subject to the Order upon importation into Trinidad and Tobago; and
- (c) it has exported the product to Trinidad and Tobago after the investigation period,

the Authority shall initiate an investigation pursuant to section 9 as applied by and limited by this section.

(2) The investigation referred to in subsection (1) shall be carried out as expeditiously as possible in accordance with the provisions of this Act, but shall be limited

to verifying the matters in paragraphs (a), (b) and (c) of subsection (1) and to determining the dumping margin of the person in question.

(3) Upon conclusion of the investigation referred to in subsection (1), the Minister shall make a 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, and notice of the determination shall be given.

(4) During the investigation referred to in subsection (1), the goods exported by the person in question shall be exempt from anti-dumping duty, and any Order which the Minister makes imposing anti-dumping duty on such goods shall have retrospective effect to the date of the initiation of the investigation.

(5) The Comptroller shall require and take adequate securities for payment of duty becoming due retrospectively in accordance with subsection (4).”

Section 30 amended

24. Section 30(3) of the Act is amended by inserting after the words “the date of the provisional direction”, the words “except than an anti-dumping duty shall not be imposed with retroactive effect prior to the date of initiation of the investigation”.

Section 34 amended

25. Section 34(2) of the Act is amended—

(a) by deleting the word “and” at the end of paragraph (g);

(b) by deleting the fullstop at the end of paragraph (h) and substituting a semi-colon; and

(c) by inserting after paragraph (h), the following paragraph:

“(i) the countervailability and non-countervailability of subsidies and the calculation of the amount of countervailable subsidies.”.

Passed in the Senate this 18th day of July, 1995.

D. DOLLY
Acting Clerk of the Senate

Passed in the House of Representatives this 13th day
of September, 1995.

J. SAMPSON
Clerk of the House