

LEGAL NOTICE NO. 282

REPUBLIC OF TRINIDAD AND TOBAGO

THE ANTI-DUMPING AND COUNTERVAILING DUTIES ACT, 1992

AND

THE ANTI-DUMPING AND COUNTERVAILING DUTIES REGULATIONS, 1996

NOTICE

*(ISSUED IN ACCORDANCE WITH SECTION 29B(3) OF THE
ANTI-DUMPING AND COUNTERVAILING DUTIES ACT)*

DETERMINATION OF A NEWCOMER INVESTIGATION OF
AIR CONDITION EQUIPMENT ORIGINATING IN THE
PEOPLE'S REPUBLIC OF CHINA

NOTICE is hereby given that, in accordance with sections 29B(3) of the Anti-dumping and Countervailing Duties Act, 1992 (“the Act”) the Minister of Trade and Industry has, for the reasons given hereunder, made a determination in respect of a newcomer investigation of air condition equipment originating in the People’s Republic of China (PRC).

A. MEASURES IN FORCE

The measures currently in force on imports into the Republic of Trinidad and Tobago on air condition equipment originating in the PRC, are definitive anti-dumping duties imposed by the Minister of Trade and Industry on 4th October, 2004 and published on 4th October, 2004 as Legal Notice No. 284 of 2004.

B. CURRENT INVESTIGATION

REQUEST FOR REVIEW

After the imposition of the measures in force, the Anti-dumping Authority (“the Authority”) received a request to initiate a newcomer investigation pursuant to section 29B(1) of the Act, from Zhuhai Meike Refrigeratory Co. Ltd. of Hong Qi Pian, Lian Gang Industrial Area, Jin Wan District, Zhuhai City, Guangdong, China, formerly a branch company of Nexus Group Limited and Chigair International Development Limited (“the applicant”).

The applicant claimed that it was not related to any of the exporting producers in the PRC who are subject to the measures in force. Furthermore, it claimed that it had not exported air condition

equipment to Trinidad and Tobago during the period of investigation, i.e., January 2000 to May 2003 (the original investigation period), but has exported air condition equipment to Trinidad and Tobago thereafter.

INITIATION OF A NEWCOMER INVESTIGATION

The Authority examined the evidence submitted by the applicant and considered it sufficient to justify the initiation of an investigation in accordance with section 29B(1) of the Act. A Newcomer Investigation was initiated by Legal Notice No. 287 of 2005, dated 21st December, 2005.

Pursuant to section 29B(4) and (5) of the Act, during the period of the newcomer investigation, air condition equipment exported by the applicant to Trinidad and Tobago were exempted from the measures in force. However, the Comptroller of Customs and Excise was directed to require and take adequate securities for payment of any duty that may be retroactively imposed by the Minister under the Act upon completion of the investigation.

PRODUCT CONCERNED

The products concerned in the current review are the same as those in the investigation that led to the imposition of the measures in force (“the original investigation”), i.e., air condition equipment classified within the following HS Codes and descriptions:

8415.10.00	“Window or wall types, self-contained or ‘split system’ ” (7,000 to 24,000 BTU’s).
8415.81.00	“Incorporating a refrigerating unit and a valve for the reversal of the cooling/heat cycle”. Heat pumps fall within this heading number.
8415.82.00	“Other, incorporating a refrigerating unit”. Chilled water systems, evaporating and fan coil units, air handling units and package systems fall within this heading number.
8415.83.00	“Not incorporating a refrigerating unit”. Dehumidifiers and Air-purifiers fall within this heading number.
8415.90.00	“Parts”.
8418.99.00	“Other”, This category includes condensing units, air cooled condensers, evaporators and condenser coils.

Mini-split systems comprise fan coils or evaporators and a condensing unit whether imported together as a split system or separately as fan coils or evaporators and condensing units. They fall under the following HS Codes and descriptions:

8415.10.00	“Window or wall types, self-contained or ‘split system’ ” (7,000 to 24,000 BTU’s). [Split system: Mini split system (comprising a fan coil or evaporator and a condensing unit) (7,000 to 24,000 BTU’s)]
8415.82.00	“Other: incorporating a refrigerating unit”. [Fan coil or evaporator unit (7,000 to 24,000 BTU’s)]
8415.83.00	“Not incorporating a refrigerating unit”. [Fan coil or evaporator unit (7,000 to 24,000 BTU’s)]
8418.99.00	“Other” [Condensing unit (7,000 to 24,000 BTU’s)]

PARTIES CONCERNED

The Authority officially advised the applicant, representatives of the exporting country, the local importer, the local manufacturer and other interested parties of the initiation of the newcomer investigation. All interested parties were given the opportunity to make their views known in writing and to be heard. Comments were forthcoming from a few local importers of air condition equipment from the PRC and the local manufacturer.

The Authority sent confidential and non-confidential questionnaires to the applicant and the importer, Accel Financial Group Ltd., Eastern Main Road, La Resource, d’Abadie, Trinidad. Other importers requested copies of the questionnaires but they later determined that its completion was unnecessary. The local manufacturer, Peake Industries Limited (“Peake Industries”), submitted comments in response to the initiation of the newcomer investigation.

The Authority verified the information received from Peake Industries and the local importer, Accel Financial Group Ltd. However, the applicant did not submit an exporter questionnaire. The Authority wrote to the applicant on three occasions requesting the completion and submission of the exporter questionnaire. To date the applicant has not responded to these requests.

INVESTIGATION PERIOD

The Newcomer Investigation covered the period from 21st December, 2005 to 5th June, 2006.

C. RESULTS OF THE INVESTIGATION

“NEWCOMER” QUALIFICATION

1. The Authority was required by section 29B(2) of the Act to verify that—

- (a) the applicant did not export air condition equipment to Trinidad and Tobago during the original investigation period;
- (b) that the applicant is not associated with any person whose product is subject to the measures in force upon importation into Trinidad and Tobago; and
- (c) the applicant has exported air condition equipment to Trinidad and Tobago after the original investigation period.

2. During this investigation, it was alleged that the applicant is associated with a company called Landa Air Con, which produces air condition equipment bearing the name “LAMDA”. It was also contended that Landa Air Con and LAMDA products were subject to the original investigation.

3. During the original investigation, Landa Air Con was not named as an exporter or producer of air condition equipment in the PRC. In addition, no determination was made in respect of and no anti-dumping duty was imposed on the imports of air condition equipment of a company called Landa Air Con.

4. The Authority did not find any evidence or information which indicates that Landa Air Con or LAMDA are subject to the measures in force and that the applicant is associated with the said company.

5. Investigations by the Authority only revealed the existence of a company called Landa (Hong Kong) Co. Ltd. for which the applicant manufactures Window Type air conditioners. However, Landa (Hong Kong) Co. Ltd. is not subject to the measures in force. Further, there are currently no anti-dumping duties imposed on air condition equipment origination in Hong Kong, which holds membership in the WTO separate and apart from the PRC.

6. The applicant produced information on its shareholding, which showed that it is owned by persons who are not named in the Order imposing the measures in force and the Authority did not find any evidence or information which indicates or establishes that the applicant is associated with any person whose products are subject to the measures in force.

7. The Authority verified that the applicant did not export air condition equipment to Trinidad and Tobago during the original investigation period and had exported the said products to Trinidad and Tobago after that period.

8. Based on its investigations, the Authority determined that the applicant is a newcomer in accordance with the provisions of section 29B(1) of the Act.

CALCULATION OF EXPORT PRICES AND NORMAL VALUES

Since the exporter did not submit a questionnaire, the Authority, pursuant to regulation 11 of the Anti-dumping and Countervailing Duties Regulations, 1996, based its calculations on information available.

Export price data was taken from the CARICOM Invoice issued to the applicant upon shipment of the products to Trinidad and Tobago and the quotation submitted by the applicant in its application for a newcomer investigation.

Normal value data was taken from information submitted by Peake Industries, which was based on a foreign consultant's report on price data for air condition equipment in the PRC, as well as pricing information provided by the applicant.

DETERMINATION OF EXPORT PRICE

The export price was established at the ex-factory level and was based on the quotation submitted by the applicant and the above-mentioned CARICOM Invoice. No pricing information was provided for mini-split systems of 7,000 BTU.

DETERMINATION OF NORMAL VALUE

In the absence of an exporter questionnaire, which would have addressed, among other relevant information, the volume of local sales by the applicant and the calculation of the ex-factory normal values, the

Authority adopted the following approach in the calculation of normal values for the products subject to this investigation:

- (i) it was assumed that sales of air condition equipment existed on the local market because of the information received in the original investigation;
- (ii) the Authority was not able to determine the volume of local sales by the applicant and as such was unable to determine if these sales were less than 5% of the export sales volume;
- (iii) the Authority used the information available from the applicant and Peake Industries and determined ex-factory normal value by deducting 10% from the retail price. This adjustment took into account transportation and packaging costs, which is the normal rate to cover such costs in the air condition equipment industry;
- (iv) the Authority determined that spare parts and brackets formed part of the air condition unit and the cost of the spare parts and brackets were already incorporated into the normal value and export prices provided by the applicant; and
- (v) the Authority calculated average ex-factory normal values using the pricing information submitted by both Peake Industries and the applicant for air condition equipment for ranges 9,000 to 24,000 BTU. No pricing information was provided for mini-split systems of 7,000 BTU.

Both the applicant and the importer, Accel Financial Group Ltd., contended that the ex-factory export price was equal to the ex-factory normal value. However, the Authority could not verify this because—

- (i) the applicant did not submit an exporter questionnaire which specifically addressed the calculation of the ex-factory normal value under the heading “Normal Value based on Domestic Sales”; and
- (ii) upon examination of the said quotation, the Authority concluded that the prices were in fact ex-factory export prices and not ex-factory normal values. This was determined in accordance with section 13 of the Act since it was evident that the quotation was directed to the importer, Accel Financial Group Ltd. outlining the unit price (USD), the capacity and the terms and conditions for purchasing the products from the applicant.

DUMPING MARGIN

The Authority concluded that dumping existed and an average dumping margin was calculated by comparing the ex-factory normal values to the ex-factory export prices as a percentage of the ex-factory export prices.

The Authority determined that mini-split systems of range 7,000 BTU exported to Trinidad and Tobago by the applicant be subject to the "All Other Exporters/Manufacturers" duty of 141% imposed by Legal Notice No. 284 of 2004. This was due to the fact that the Authority was unable to calculate an individual dumping margin for the applicant in respect of this product since the applicant did not submit an exporter questionnaire and no pricing information for mini-split systems of range 7,000 BTU during the investigation.

The average dumping margin for mini-split systems was 26% for ranges 9,000 BTU to 18,000 BTU.

CONCLUSION

In light of the results of the investigation, it is determined that definitive anti-dumping duties should be imposed for the applicant at the level of the dumping margin found.

RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

The anti-dumping duty applicable to Zhuhai Meike Refrigeratory Co. Ltd. should be levied retroactively on imports of the products concerned from the date of the initiation of the newcomer investigation, that is 21st December, 2005, in accordance with section 29B(4) of the Act.

This review does not affect the date on which the measures imposed by the Legal Notice No. 284 dated 4th October, 2004. As such, the measures imposed by the aforementioned Legal Notice, will expire on 5th October, 2009.

Dated this 1st day of September, 2006.

K. VALLEY
Minister of Trade and Industry