

**ANTI-DUMPING AND COUNTERVAILING
DUTIES ACT**

CHAPTER 78:05

Act
11 of 1992
Amended by
23 of 1995

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Note on Omissions

The following Subsidiary Legislation have been omitted:

- (a) Orders made under section 5;
- (b) Notices *re* investigations into allegations of dumping made under section 18;
- (c) Notices *re* Preliminary Determinations arising out of the investigations into the allegation of dumping made under section 24;
- (d) Notices *re* Direction to secure payment of functional duties made under section 25;
- (e) Notices *re* Final Determinations made under section 26;
- (f) Notices *re* Termination of Anti-Dumping Duties made under section 26;
- (g) Notices *re* Expiration of Anti-Dumping Duties made under section 29;
- (h) Notices *re* Determination of Newcomer Investigation made under section 29;
- (i) Notices *re* Determination of Expiry Review made under section 29.

These Subsidiary Legislation are in a state of flux and are of a temporary nature.

See the Current Edition of the Consolidated Index of Acts and Subsidiary Legislation for references to these Subsidiary Legislation.

CHAPTER 78:05

**ANTI-DUMPING AND COUNTERVAILING
DUTIES ACT**

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CHAPTER 78:05

ANTI-DUMPING AND COUNTERVAILING
DUTIES ACT

An Act to authorise the imposition of anti-dumping duties and countervailing duties where goods have been dumped or subsidised; to provide for an Anti-Dumping Authority to investigate dumping or subsidising of goods; to repeal the Customs Duties (Dumping and Subsidies) Act, Ch. 78:04; and for related purposes. 11 of 1992.

*[ASSENTED TO 19TH AUGUST 1992]

PART I

PRELIMINARY

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

2. This Act came into operation on 1st January 1996. Commencement.
[197/1995].

3. (1) In this Act— Interpretation.
[23 of 1995].
“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 such Trinidad and Tobago producers of like goods whose collective output constitutes at least twenty-five per cent of 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

* See section 2 for the date of commencement of this Act.

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;

“interested person” means a person—

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

“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” 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;

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

“material retardation” in respect of the dumping or subsidising 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.

(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 subsidised 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.

(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) 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 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.

Comptroller to
collect duties.

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

Ch. 78:01.

(2) Subject to section 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.
[23 of 1995].

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, 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.

(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 dumping but shall not exceed the margin of dumping.

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

Countervailing
duty.
[23 of 1995].

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 actionable injury is being caused, 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 actionable injury being caused, but shall not exceed the amount of the subsidy given on the goods.

7. (1) Where the Minister is satisfied, having made a determination under Part V, that, in relation to the importation into Trinidad and Tobago of goods produced or manufactured in another country —

Third country anti-dumping and countervailing duties.
[23 of 1995].

- (a) the goods are or have been dumped or subsidised; and
- (b) as a 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 an 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 subsidising of an agricultural product, an increase in the financial burden on that country’s government.

(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.

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

Individual dumping margins.
[23 of 1995].

(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.

Non-discriminatory imposition of duty.
[23 of 1995].

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

organisations 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.

10. (1) Where it appears to the Minister that relief under this section should be available in respect of 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.

Relief in respect of duties.
[23 of 1995].

(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 within ninety days of the notification.

(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.

(4) An application under subsection (2) in respect of 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.

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.

Drawback of duties.

(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.

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.

Ascertainment of normal value. [23 of 1995].

(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—such amount as the Minister determines would be a reasonable amount for administrative, selling and general costs and profit.

(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 realised 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 realised 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 realised 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 realised by the exporters on domestic sales of products of the same general category.

(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 amount as the Minister determines would be a reasonable amount for administrative, selling and general costs and profit;
- (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.

(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 realised 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 realised 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 realised 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 realised by the producers in the third country on domestic sales of products of the same general category.

(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, preferably at the *ex-factory* level or as near to that level as possible;
- (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 are demonstrated affect price comparability.

(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.

(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, 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.

(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 the 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.

(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.

(11) (*Repealed by Act No. 23 of 1995*).

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 determined in accordance
with the following:

Export price.
[23 of 1995].

(a) where the purchase of the goods by the importer
was an arm's length transaction, the export price
shall be 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 export price may, notwithstanding paragraph (a), be determined as 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 realised 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; or
- (c) the goods are not resold in the condition as imported,

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.

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.

Determination
of margin of
dumping.
[23 of 1995].

(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.

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 facts available.

Power of
Minister to
make
determinations
on available
facts.
[23 of 1995].

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.

Calculation of
costs.
[23 of 1995].

(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.

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

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.

Anti-Dumping
Authority.

(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 subsidising of any goods at the direction of the Minister, on his own initiative or on receipt of a complaint in writing by or on

Initiation of
investigation.
[23 of 1995].

behalf of 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 of 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.

(2) A complaint under subsection (1) shall—

- (a) allege that the goods have been or are being dumped or subsidised, specify the goods and allege that the dumping or subsidising 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.

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

(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 subsidised 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) actionable injury; and
- (c) a causal link between such imports and the alleged actionable injury.

(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.

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.

Regional cases.
[23 of 1995].

(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.

19. (1) The Authority shall ensure that all interested persons are given reasonable opportunity throughout the investigation—

Rights of
interested
parties.
[23 of 1995].

- (a) to present in writing all evidence relevant to the investigation;
- (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.

(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 organisations shall not be interested persons but shall be entitled to submit to the Authority information which is relevant to the investigation of dumping, subsidisation, injury and the causal link between injury and dumping or subsidisation.

(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.

Requests as to
essential facts.
[23 of 1995].

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

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 authorisation 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.

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

General conduct of investigation.

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

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,

False or misleading evidence or information.

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

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

Termination of investigations. [23 of 1995].

(2) Where, upon the recommendation of the Authority, the Minister, at any time before making a final determination of

dumping or subsidising, is satisfied in respect of some or all of the goods under investigation, that—

- (a) there is insufficient evidence of dumping or subsidising 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 subsidising 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) 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 subsidisation 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.

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 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.

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, provided that no such direction shall take effect less than sixty days after the date of initiation.

(2) The rate or amount of such duty to be paid or secured shall not exceed the dumping margin or the amount of subsidisation, 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) lower, there shall be no requirement to pay the difference;
- (b) higher, 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.

Final
determination.
[23 of 1995].

26. (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.

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

(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.

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.

Appeal to Tax
Appeal Board.
Ch. 4:50.

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 actionable injury.

Undertakings.
[23 of 1995].

(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.

(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.

(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 fulfilment of the undertaking.

(7) }
(8) } ***(Repealed by Act No. 23 of 1995).***

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

Review of
imposition of
duties.
[23 of 1995].

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 subsidisation.

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

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. Duration of duties.
[23 of 1995].

(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.

29B. (1) Where a person satisfies the Authority that, in relation to a product which is subject to an Order under section 7 — Newcomer review.
[23 of 1995].

(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 subjected 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).

Retrospective
duty.
[23 of 1995].

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.

(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 subsidised 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 subsidised 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, except that an anti-dumping duty shall not be imposed with retroactive effect prior to the date of initiation of the investigation.

(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.

Notices.

32. Notices under this Act shall—

- (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 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.

Additional liability for offence by body corporate.

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

Regulations. [23 of 1995].

- (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 subsidisation 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;
- (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; and
- (i) the countervailability and non-countervailability of subsidies and the calculation of the amount of countervailable subsidies.

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

SUBSIDIARY LEGISLATION

ANTI-DUMPING AND COUNTERVAILING DUTIES REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.
 2. Complaints
 3. Preliminary hearing.
 4. Notice of initiation of investigation.
 5. Questionnaires.
 6. Investigation in the territory of other countries.
 7. Joining investigations.
 8. Expert evidence.
 9. Provision of evidence to Authority.
 10. Finding of actionable injury.
 11. Findings to be given on evidence available.
 12. Preliminary findings.
 13. Final finding.
-

25/1996.

**ANTI-DUMPING AND COUNTERVAILING
DUTIES REGULATIONS***made under section 34*

Citation.

1. These Regulations may be cited as the Anti-Dumping and Countervailing Duties Regulations.

Complaints.

2. (1) A complaint under section 18 of the Act shall contain the following information:

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

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

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

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

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

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

Preliminary hearing.

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

Notice of
initiation of
investigation.

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

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

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

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

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

Questionnaires.

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

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

Investigation in
the territory of
other countries.

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

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

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

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

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

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

9. (1) Where—

(a) in an investigation respecting the dumping or subsidising of goods; or

(b) in relation to the sale of—

(i) goods to an importer in Trinidad and Tobago; or

(ii) goods released ninety days prior to the initiation of an investigation,

Provision of evidence to Authority.

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

Trinidad and Tobago, the Authority may, by notice in writing, require the person to provide the Authority, with the evidence referred to in the notice.

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

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

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

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

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

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

Finding of actionable injury.

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

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

(2) Where imports of goods from more than one country are simultaneously subject to investigation pursuant to the Act, the effect of imports from all the countries taken cumulatively

may be deemed to be an effect of imports from each of the countries subject to investigation where the following conditions are satisfied:

- (a) the imports of any exporter taken into account are dumped by a margin which is not less than two per cent; and
- (b) the volume of the imports from any country taken into consideration is not negligible within the meaning of section 23(8) of the Act; and
- (c) a cumulative assessment of the imports is appropriate in the light of the conditions of the competition between the imported products and the conditions of competition between the imported product and the like goods produced by the industry.

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

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

- (a) the rate of increase of dumped or subsidised imports into Trinidad and Tobago;
- (b) export capacity in the country of export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to Trinidad and Tobago;
- (c) the depressant or suppressant effect of the prices of imports and the likelihood that such prices will increase the demand for further imports;

- (d) inventories of the product being investigated;
- (e) the nature of any subsidy or subsidies and the trade effects likely to arise therefrom.

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

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

- (a) there is a concentration of the dumped or subsidised imports into an isolated market; and
- (b) the dumped or subsidised imports are causing actionable injury to the producers of all of the production within such market.

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

Findings to be given on evidence available.

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

Preliminary findings.

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

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

Final finding.

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

- (a) its final finding as to—
 - (i) the export price, normal value and the margin of dumping of the said goods;
 - (ii) whether subsidy is being granted in respect of the goods under investigation and the quantum of such subsidy;
 - (iii) whether import of such articles into Trinidad and Tobago causes or threatens to cause material injury to any industry established in Trinidad and Tobago or materially retards the establishment of any industry in Trinidad and Tobago;
- (b) the basis of its findings; and
- (c) its recommendations for the action to be taken,

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

**ANTI-DUMPING AND COUNTERVAILING
DUTIES (SUBSIDIES) REGULATIONS**

ARRANGEMENT OF REGULATIONS

REGULATION

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SCHEDULE.

26/1996.

**ANTI-DUMPING AND COUNTERVAILING DUTIES
(SUBSIDIES) REGULATIONS**

made under section 34

Citation.

1. These Regulations may be cited as the Anti-Dumping and Countervailing Duties (Subsidies) Regulations.

Interpretation.

2. In these Regulations —

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

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

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

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

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

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

(b) certain regions beyond what is appropriate for the elimination or reduction of regional disparities within a general framework of regional development;

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

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

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

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

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

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

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

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

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

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

Deemed
specificity.

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

- (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and
- (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

(2) For the purposes of subregulation (1)(a)—

- (a) the mere fact that a subsidy is accorded to enterprises which export shall not, for that reason alone, make the subsidy one that is contingent upon export performance; and

- (b) subsidies shall be considered to be contingent in fact upon export performance when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings.

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

Evidence of specificity.

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

Non-countervailable subsidies.

- (a) subsidies which are not specific within the meaning of regulations 4 and 5;
- (b) subsidies which are specific, within the meaning of regulations 4 and 5, but which meet the conditions provided for in regulation 8, 9 or 10;
- (c) the element of subsidy which may exist in any of the measures listed in the Schedule.

Schedule.

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

Research subsidies.

- (a) personnel costs in relation to researchers, technicians and other supporting staff employed exclusively in the research activity;
- (b) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;
- (c) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge and patents;

- (d) additional overhead costs incurred directly as a result of the research activity;
- (e) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

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

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

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

Subsidies to disadvantaged regions.

9. (1) Subsidies to disadvantaged regions within the territory of the country of origin or the country of export, given pursuant to a general framework of regional development, and which would be non-specific if the criteria laid down in regulation 4 were applied to eligible region concerned shall not be subject to countervailing measures provided that—

- (a) each disadvantaged region is a clearly designated contiguous geographical area with a definable economic and administrative identity;
- (b) the region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances;
- (c) the criteria include a measurement of economic development which shall be based

on a combination, or at least one, of the following factors:

- (i) one of either income per capita or household income per capita, or gross domestic product per capita, which shall not be above eighty per cent of the average for the territory of the country of origin or country of export concerned;
- (ii) unemployment rate, which shall be at least one hundred and ten per cent of the average for the territory of the country of origin or country of export concerned,

as measured over a three-year period; and

- (d) the requirements of regulation 10 in relation to the regional subsidy programme concerned are satisfied.

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

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

Regional
subsidy
programmes.

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

11. (1) Subsidies to promote the adaptation of existing facilities to new environmental requirements imposed by law resulting in greater constraints and financial burden on firms or

Subsidies for
adaptation of
existing
facilities.

enterprises, shall not be subject to countervailing measures, provided that the subsidy—

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

Calculation of amount of countervailable subsidy.

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

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

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

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

pay for a comparable commercial loan which the firm or enterprise could actually obtain on the market, in which case the benefit shall be the difference between the two amounts;

(c) a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan in the absence of the government guarantee, in which case the benefit shall be the difference between the two amounts adjusted for any differences in fees;

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

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

(a) the amount of the countervailable subsidies shall be determined per unit of the subsidised product exported to Trinidad and Tobago;

(b) an interested party may claim the following deductions from the total subsidy:

(i) any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;

(ii) export taxes, duties or other charges levied on the export of the product to Trinidad and Tobago specifically intended to offset the subsidy,

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

- (c) where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidisation;
- (d) where the subsidy can be linked to the future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned and the amount so calculated which is attributable to the investigation period (including that which derives from fixed assets acquired before this period) shall be allocated as described in paragraph (c), but where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan and be treated in accordance with subregulation (3)(b);
- (e) where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period shall in principle be attributed to this period, and allocated as described in paragraph (c), unless special circumstances arise justifying attribution over a different period.

SCHEDULE

Regulation 7(c).

DOMESTIC SUPPORT MEASURES

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

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

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

GOVERNMENT SERVICE PROGRAMMES

2. General Services

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

- (a) research, including general research, research in connection with environmental programmes, and research programmes relating to particular products;
- (b) pest and disease control, including general and product-specific pest and disease control measures, such as early-warning systems, quarantine and eradication;
- (c) training services, including both general and specific training facilities;
- (d) extension and advisory services, including the provision of means to facilitate the transfer of information and the results of research to producers and consumers;
- (e) inspection services, including general inspection services and the inspection of particular products for health, safety, grading or standardisation purposes;
- (f) marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers; and

- (g) infrastructural services, including electricity, reticulation, roads and other means of transport, marker and port facilities, water supply facilities, dams and drainage schemes, and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only, and shall exclude the subsidised provision of on-farm facilities other than for the reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges.

3. Public stockholding for food security purposes

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

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

4. Domestic food aid

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

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

5. Direct payments to producers

Support provided through direct payments (or revenue foregone, including payments in kind) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria set out in paragraph 1, plus specific criteria applying to individual types of direct payment as set out in paragraphs 6 through 13. Where exemption from reduction is claimed for

any existing or new type of direct payment other than those specified in paragraphs 6 through 13, it shall conform to the criteria (b) through (e) in paragraph 6, in addition to the general criteria set out in paragraph 1.

6. Decoupled income support

- (a) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period.
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.
- (c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period.
- (e) No production shall be required in order to receive such payments.

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

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

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

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

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

- (a) Eligibility for such payments shall be determined by reference to clearly-defined criteria in programmes designed to facilitate the retirement of persons engaged in marketable agricultural production, or their movement to non-agricultural activities.
- (b) Payments shall be conditional upon the total and permanent retirement of the recipients from marketable agricultural production.

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

- (a) Eligibility for such payments shall be determined by reference to clearly-defined criteria in programmes designed to remove land or other resources, including livestock, from marketable agricultural production.

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

11. *Structural adjustment assistance provided through investment aids*

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

12. Payments under environmental programmes

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

13. Payments under regional assistance programmes

- (a) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in a law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than to reduce that production.
- (c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) Payments shall be available only to producers in eligible regions, but generally available to all producers within such regions.
- (e) Where related to production factors, payments shall be made at a degressive rate above a threshold level of the factor concerned.
- (f) The payments shall be limited to the extra costs of loss of income involved in undertaking agricultural production in the prescribed area.