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FIRST SESSION FOURTH PARLIAMENT REPUBLIC OF TRINIDAD AND TOBAGO
AND
FOURTH SESSION FOURTH PARLIAMENT REPUBLIC OF TRINIDAD AND TOBAGO

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REPUBLIC OF TRINIDAD AND TOBAGO
ACT NO.11 OF 1992 AS AMENDED BY
ACT NO.23 OF 1995

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

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

D. DOLLY
Acting Clerk of the Senate

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

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

PART I

PRELIMINARY

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

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

Interpretation **3.** (1) In this Act-

"the Act" means the Anti-dumping and Countervailing Duties Act, 1992

"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 percent of the Trinidad and Tobago production of such like goods, except that-

- (a) where certain Trinidad and Tobago producers of like goods are associates of the exporters or importers or are themselves importers of the relevant goods, the Minister

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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 any 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

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

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

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

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

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

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

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

- (2) For the purpose 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-

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- (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 subsidized imports are causing or threatening to cause material injury to the industry producing like goods or are materially retarding the establishment of the production in Trinidad and Tobago of like goods.

(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 purpose of this Act, where, during the exportation

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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
collection of collect duties

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

(2) Subject to subsection (3), for the purposes of collecting and enforcing the payment of duties imposed by this Act the Customs Act and any other written law relating to the importation of goods shall apply, but to the extent that it is inconsistent with any other written law, this Act prevails.

PART II

IMPOSITION OF DUTIES

Anti-dumping
duty

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

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

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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.

Third country
and counter-
vailing duties

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

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

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

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

(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.

Individual
determine
dumping
concerned.
margins

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

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

Orders imposing **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
duties purposes of this Act, and in particular-

(a) provisions limiting the description of the goods by reference to the particular persons or organizations by whom the goods were produced or who were concerned with the production of the goods in some specified manner;

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

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

Relief in
this
respect of

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

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

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

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

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

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

(a) makes any statement which is false in a material particular; or

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

the amount of any duty remitted or repaid under this section on the application shall be recoverable as a debt due to the State and if the Statement was made or the document was produced knowingly or recklessly that person commits an offence and is liable on summary conviction to a fine fifteen thousand dollars and imprisonment for one year.

Drawback of duties

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

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

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

Ascertainment of normal value

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

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

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

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

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

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

- (a) the amount of administrative, selling and general expenses actually incurred and the amount of profit actually realized by the exporter under investigation in respect of the production and domestic sales of the same general category of products; or
- (b) the weighted average of the amounts of administrative, selling and general expenses actually incurred and profit actually realized by other exporters under investigation in respect of the production and domestic sales of the like product; or
- (c) any other reasonable basis provided that the amount for profit so established shall not exceed the profit normally realized by the exporters on domestic sales of products of the same general category.

(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

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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 the 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

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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 realized by a producer in the third country on domestic sales of the like product, or where these are not available, any of the following:

- (a) the amount of administrative, selling and general expenses actually incurred and the amount of profit actually realized by a producer in the third country in respect of the production and domestic sales of the same general category of products;
- (b) the weighted average of the amount of the amounts of administrative, selling and general expenses actually incurred and profit actually realized by producers in the third country in respect of the production and domestic sales of the like product; or
- (c) any other reasonable basis provided that the amount for profit so established shall not exceed the profit normally realized by the producers in the third country on domestic sales of products of the same general category.

(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

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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 or 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,

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

- (A) such amount as the Minister determines to be cost of production or manufacture of the like goods in the country of export; and
- (B) such amounts as the Minister determines to be reasonable amounts for administrative and selling costs, delivery charges and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and

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

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

(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.

Export Price

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

- (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,

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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 realized on sales of goods of the same general category by the importer where such sales exist.

(2) Where-

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

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as the Minister considers appropriate having regard to all the circumstances of the exportation.

Determina-
tion of
margin of
the
dumping

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

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

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

Power of
otherwise does
Minister to
make
determinations
on available
facts

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

Calculation
of costs

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

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

(a) the generally accepted accounting principles of the exporting country provide for the allocation of costs, or of certain costs otherwise than on the basis of turnover;

(b) historically the exporter has kept its accounting

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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 **15.** (1) Goods shall be regarded for the purpose of this Act as references to having originated in a country-country of origin

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

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

PART III

ANTI-DUMPING AUTHORITY

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

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

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

- (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

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Initiation of

18. (1) The Authority may initiate an investigation to determine the Investigation existence and effect of any alleged dumping or subsidizing of any goods at the direction of the Minister, on his own initiative or on receipt of a complaint in writing by or on behalf of an industry producing like goods, provided that the Authority shall not initiate an investigation where the members of such industry who support the complaint do not account for more production of the like goods in Trinidad and Tobago than do the members if any of such industry who signify to the Authority in writing their opposition to the complaint and for the purposes of this subsection any producers excluded from the definition of "industry" pursuant to section 3(1) shall not be taken into account.

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

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

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

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

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

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

- (a) dumping or the giving of a subsidy and of the quantum;
- (b) 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.

Regional

18A. (1) Where injury has been determined by reference to a competitive market within Trinidad and Tobago in accordance with paragraph (b), of the definition of " industry" in section 3(1), the exporters shall be given an opportunity to cease exporting at dumped prices to the area concerned or to give undertakings in accordance with section 18.

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

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

Rights of persons are interested parties

19. (1) The Authority, shall ensure that all interested given reasonable opportunity throughout the investigation-

- (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.

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

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

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

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

Requests as to essential facts

19A. (1) Exporters, foreign producers and importers of the product subject to investigation, and in the case of subsidization, the representatives of the country of origin, may request to be informed by the Authority of the essential facts and considerations on the basis of which it is intended to recommend to the Minister the imposition of anti-dumping duty or countervailing duty or the definitive collection of amounts secured by way of provisional duty.

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

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

Treatment of confidential information

20. (1) Any information provided to the Authority on a basis by any person in the course of an investigation shall, upon the Authority

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information being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed by the Authority to any other person without the specific authorization of the person providing such information.

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

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

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

General conduct of investigation **21.** (1) An investigation shall be carried out in the prescribed manner.

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

False or misleading evidence or information **22.** A person who-

- (a) gives to the Authority information, whether orally or in writing, or documents, which he knows, or has reason to believe to be false or misleading in a material particular; or
- (b) at an investigation, gives evidence, or produces a document which he knows, or has reason to believe to be false or misleading in a material particular,

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

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

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

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- (a) there is insufficient evidence of dumping or subsidizing to justify proceeding with the investigation; or
- (b) there is insufficient evidence that material injury to an industry has been or is being caused or threatened or establishment of an industry has been or is being materially retarded by means of the subsidizing or dumping of the goods-

the Minister shall direct the Authority to-

- (i) terminate the investigation with respect to those goods; and
 - (ii) give notice of such termination.
- (3) Where-
- (a) an investigation is terminated under subsection (2), and it is subsequently ascertained that information supplied affecting the investigation was incorrect or did not disclose material facts, and that the information is of such a nature as materially to affect the decision to terminate the investigation; or
 - (b) an investigation is terminated pursuant to an undertaking and the undertaker violates the undertaking,

the Authority may initiate a further investigation.

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

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

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

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(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 determination 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 subsidization, as the case may be, which has been determined by the Minister under section 24.

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

- (a) 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 **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

Appeal to Tax Appeal Board **27.** A person aggrieved by an Order imposing duty may appeal to the Tax Appeal Board in accordance with the Tax Appeal Board Act.
Chap.4:50

PART VII

MISCELLANEOUS

Undertakings **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,

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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.

(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 fulfillment of the undertaking.

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

Review of
imposition of
duties

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

(2) Where an interested party so requests and submits evidence of changed circumstances sufficient to warrant a review, the Authority may make a recommendation pursuant to subsection (1) if at least one year has elapsed since the duty was imposed or last reviewed.

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

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

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

Duration of
duties

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

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

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

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

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

(6) Notice shall be given of the termination or expiry of a duty

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for any reason whatsoever.

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

Newcomer
review

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

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

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

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

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

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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 subsidized goods would, in the absence of provisional duty being paid or security being taken under section 31 have

led to a finding of material injury, duty may be imposed retrospectively for the period for which duty was paid or security taken.

(3) Where the Minister determines-

(a) in respect of dumped goods-

(i) either that there is a history of dumping causing material injury or that the importer was or should have been aware that the goods were dumped and that such dumping would cause injury; or

(ii) that the material injury is caused by substantial dumped imports of a product in a relatively short period to such an extent that in order to preclude it recurring the Minister is of the opinion that it appears necessary to impose a dumping duty retrospectively;

(b) in the case of subsidized goods, in critical circumstances, where the Minister determines that material injury which is difficult to repair is caused by massive imports, in a relatively short period, of goods benefiting from export subsidies paid or bestowed inconsistently with the provision 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.

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(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.

Additional liability
or 22 is

for offence

by body corporate

33. Where a person by whom an offence against section 10(6)

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.

Regulations

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

(a) required or permitted by this Act to be prescribed;
or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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

(a) the manner in which complaints of dumping or subsidization will be received;

(b) the information required for consideration of such complaints and the method by which such information will be obtained, both within and outside Trinidad and Tobago;

(c) the conduct of investigations;

(d) the circumstances and manner in which investigations may be joined and carried on as one and the persons to whom notice of the joining shall be given;

(e) the manner in which the injury to the industry may be determined;

(f) the manner in which goods liable for duty will be

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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;
- (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.

Repeal
repealed.
Chap. 78:04

35. The Customs Duties (Dumping and Subsidies) Act is

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

N.Cox
Acting Clerk of the House

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

R. CUMBERBATCH
Acting Clerk of the Senate

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