

**STRENGTHENING OF THE SINGLE ELECTRONIC WINDOW FOR
TRADE AND BUSINESS FACILITATION
IDB Loan #3575/OC-TT**

**TERMS OF REFERENCE
FOR ADVISORY SERVICES TO AMEND THE ANTI-DUMPING AND
COUNTERVAILING DUTIES LEGISLATION IN TRINIDAD AND
TOBAGO**

1. Background

Trinidad and Tobago's trade policy prior to 1992 was based on the principle of import-substitution, which was facilitated by inter alia, an Import Negative List and duty-free concessions in the production of manufactured goods. With the change in trade development strategies on the international arena, import substitution was replaced by export-oriented strategies. This persuaded Trinidad and Tobago to reform its trade policies to an outward looking regime. As a consequence, the trade and investment policies adopted, led to the reduction of the Negative List and the phased reduction of customs duties under the Caribbean Community (CARICOM) CET. The role of the Government was redefined to a promoter and catalyst of trade and industrial development whereas the private sector was identified as the main engine of growth.

The policy reforms were in keeping with the trend toward economic liberalization as the economy was opened up to international competition. However, measures were also implemented to level the playing field for local producers against unfair trading practices. These measures included the introduction of anti-dumping and countervailing duties legislation. The Anti-Dumping and Countervailing Duties Act, Chap. 78:05 ("the Act") was passed in 1992 and amended in 1995. It inter alia, defines the powers of the Anti-Dumping Authority of the Ministry of Trade and Industry ("the Authority") which has the responsibility for applying the provisions of the Act. The Authority is supported by the Ministry's Anti-Dumping Unit, established on January 1, 1996. The Unit is now referred to as the Fair Trading Unit and has responsibility for not only the conduct of anti-dumping and countervailing investigations but also competition policy issues and safeguard measures. The Act is complemented by the Anti-Dumping and Countervailing Duties Regulations, 1996 ("the Regulations") and the Anti-Dumping and Countervailing Duties (Subsidies) Regulations ("the Subsidies Regulations") which guide the Unit in conducting investigations. The Authority has completed thirteen (13) anti-dumping investigations including ten (10) final determinations, two (2) reviews; three (3) countervailing cases against Trinidad and Tobago; and one (1) World Trade Organization ("WTO") Dispute Settlement consultation over the period 1996 to present.

Trinidad and Tobago's anti-dumping regime is impacted by the country's regional and international obligations. It is a signatory to various trade agreements containing provisions for anti-dumping and countervailing measures. These include the Revised Treaty of Chaguaramas establishing the Caribbean Community (CARICOM), including the Caribbean Single Market and Economy (CSME), CARIFORUM-European Union Economic Partnership Agreement, CARICOM-Costa Rica Free Trade Agreement and the Trinidad and Tobago – Panama Partial Scope Trade Agreement. Trinidad and Tobago is also a member of the WTO and adheres to the WTO Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 ("the AD Agreement") and the Subsidies and Countervailing Measures Agreement. Trinidad and Tobago is obligated to notify the WTO on, inter alia; new and amended antidumping laws and regulations, initiation, preliminary and final determinations of trade remedy investigations (anti-dumping, countervailing, safeguard), termination of trade remedy investigations (anti-dumping, countervailing, safeguard); termination of trade remedy duties (provisional and/or definitive), and semi-annual reports on anti-dumping and countervailing actions.

In 2003, the then Ministry of Trade, Industry, Investment and Communications, determined that there was a need to amend the Act, the Regulations and the Subsidies Regulations to ensure that these pieces of legislation served the purpose of safeguarding the local industry from unfair foreign trade. It was also intended that amendments be made to ensure that the legislation was in conformity with the AD Agreement.

In 2013, further review showed that additional amendments were required to allow for the effective implementation of the Act with respect to new comer reviews and the collection of information from the Comptroller of Customs and Excise. Additionally it was realised that currently, provisions in the Act address both the investigations for an anti-dumping investigation and a countervailing investigation, with no distinction between the two. Due to the distinct differences in the criteria for each investigation and the reflection of this distinction in the WTO AD Agreement and the Agreement on Subsidies and Countervailing Measures, a comparison of the entire Act against the provisions of these Agreements is required.

Without the amendments to the legislative framework, dumping will continue to have a negative impact on international trade, domestic industries and competitiveness in the economy. The distortive effect on trade between Trinidad and Tobago and foreign countries will persist. Competitiveness in existing industries will be eroded as they will be unable to compete with imported goods at dumped prices. As a consequence, domestic producers will experience financial and economic losses such as loss of sales and market share, reduced profits, decline in productivity and capacity utilization, reduced return on investments, and adverse effects on cash flow, inventories, employment, wages, growth, investments and ability to raise capital. Moreover, the establishment of new industries in the domestic market may not be able to materialize.

As a means of addressing these issues, the Government of the Republic of Trinidad and Tobago (“GORTT”) is seeking to review and amend the legal framework to ensure that the Act, Regulations and Subsidies Regulations serve the purpose of safeguarding local industries from unfair foreign trade and ensuring that the legislation is in conformity with the AD Agreement and the WTO Agreement on Subsidies and Countervailing Measures.

The GORTT is seeking to engage a Consultant to review the Act, Regulations and Subsidies Regulations and prepare a comprehensive legislative brief and draft legislation to amend the Act, Regulations and Subsidies Regulations to address the issues identified herein and to ensure consistency with the AD Agreement and the WTO Agreement on Subsidies and Countervailing Measures.

1.1 Programme Details

The Strengthening of the SEW for Trade and Business Facilitation is an Inter-American Development Bank (IDB) funded programme to be executed by the Ministry. The overall objective of this project is to improve trade performance and enhance the business competitiveness of Trinidad and Tobago through the strengthening and transformation of the SEW (TTBizLink) into a world-class solution based on international standards. The expected outcomes of the project are enhanced trade performance and competitiveness of the private sector, improved coordination and interoperability between government agencies and main international trading partners. The project will be divided in three (3) major components:

- **Component 1** - Enhancing and expanding the services of the Single Electronic Window -This component will focus on upgrading the current TTBizLink to international best practices.
- **Component 2** - Enhancing the Interoperability of TTBizLink- This component will facilitate the exchange and analysis of data between TTBizLink and the information systems of key stakeholders as well as the information systems of strategic trading partners of Trinidad and Tobago.
- **Component 3** - Modernizing the Legislative, Institutional Framework for International Trade and Institutional Governance of the SEW. This component will address the deficiencies in the legislative framework and strengthen the institutional governance of the SEW.

The *Advisory Services to amend the Act, Regulations and Subsidies Regulations in Trinidad and Tobago* is being pursued under *Component 3: Modernizing the Legislative, Institutional Framework for International Trade and Institutional Governance of the SEW* of the Strengthening of the Single Electronic Window Programme.

2. General Objective of this Consultancy

The objective of this consultancy is to provide expert services to prepare a legislative brief and draft legislation to amend the **Act, Regulations and Subsidies Regulations** to ensure that it serves the purpose of safeguarding the local industry from unfair foreign trade, allows for effective implementation with respect to new comer reviews and the collection of information from the Comptroller of Customs and Excise, and is in conformity with Trinidad and Tobago's obligations under various regional and international trade agreements including the AD Agreement and the WTO Agreement on Subsidies and Countervailing Measures.

Specific Objectives

The specific objectives of this consultancy are to:

- review the Act, the Regulations and the Subsidies Regulations to determine gaps that prevent the effective implementation of the legislation and identify inconsistencies with the AD Agreement and the WTO Agreement on Subsidies and Countervailing Measures;
- recommend amendments to address the gaps and inconsistencies identified and justify those proposed amendments; and
- draft the proposed amendments.

3. Scope of Services

3.1 Specific Tasks

The specific tasks related to this Consultancy shall be executed in three (3) phases:

Phase 1 - Project Initiation

1. Conduct inception meetings with the Executing Agency and key stakeholders upon commencement of the project to (i) review the process for conducting all activities within the project, (ii) determine roles and responsibilities, (iii) discuss the basis on which this work will be implemented, and (iv) finalize the methodology, work breakdown structure, project schedule for all project deliverables, identification of any risks and mitigation strategies and any other relevant details for the implementation of the project deliverables. This shall be documented in an **Inception Report**.

Phase 2 – Gap Analysis, Stakeholder Consultations and Legislative Brief

2. Review the Act, the Regulations and the Subsidies Regulations and any other relevant material and compare against the provisions of the regional and international trade agreements to which Trinidad and Tobago is a party including the AD Agreement, the WTO Agreement on Subsidies and Countervailing Measures and the Agreement on Subsidies and Countervailing Measures and prepare a comprehensive **Gap Analysis Report** with recommendations for areas which need to be amended or possibly repealed.
3. Prepare a **Draft Legislative Brief** containing proposals for amendments to the Act, the Regulations and the Subsidies Regulations.
4. Conduct **Stakeholder Consultations** on the proposals contained in the Draft Legislative Brief and prepare a **Stakeholder Consultations Report**.
5. Make a **presentation** to any necessary stakeholders on the Draft Legislative Brief and Stakeholder Consultations Report.
6. Incorporate all applicable comments and feedback from the Stakeholder Consultations and presentation in a **Final Legislative Brief**.

Phase 3 – Legislation and Final Report

7. Use the approved Legislative Brief to prepare **Draft Legislation** to amend the Act, the Regulations and the Subsidies Regulations.
8. Conduct **Stakeholder Consultations** on the Draft Legislation to relevant stakeholders.
9. Incorporate all applicable comments and feedback from the Stakeholder Consultations into the **Finalized Legislation** for amendments to the Act, the Regulations and the Subsidies Regulations.
10. Prepare a **Final Report** containing a clear and concise summary of the activities undertaken, inputs, outputs, conclusions, recommendations and lessons learnt.

4. Deliverables / Specific Outputs

The Consultant will be expected to submit deliverables to the Ministry in accordance with the following deliverable schedule:

| No | Deliverable | Delivery Timeframes (Working Days) | Client Review Period (Working Days) | Payment Amount | Report Details |
|-----------|--------------------|---|--|-----------------------|-----------------------|
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PHASE 1: Project Initiation

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|---|------------------------|--|--------|---|---|
| 1 | Draft Inception Report | 5 days after commencement of services. | 5 days | Ten percent (10%) of contract price payable upon approval of Deliverable 2. | Electronic MS Word and PDF 2 bound hard copies |
| 2 | Final Inception Report | 1 day after client's review | 2 days | | |

PHASE 2: Gap Analysis, Stakeholder Consultations and Legislative Brief

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|---|--|--|---------|---|---|
| 3 | Draft Gap Analysis Report | 14 days after approval of Deliverable 2. | 10 days | Fifteen Percent (15%) of contract price payable upon approval of Deliverable 4. | Electronic MS Word and PDF 2 bound hard copies |
| 4 | Final Gap Analysis Report | 3 days after client's review. | 2 days | | |
| 5 | Draft Legislative Brief | 21 days after approval of Deliverable 4. | 10 days | Twenty Percent (20%) of contract price payable upon approval of Deliverable 7. | Electronic MS Word and PDF 1 bound hard copy |
| 6 | Stakeholder Consultations | 7 days after approval of Deliverable 5. | | | |
| 7 | Report and presentation on the Stakeholder Consultations | 7 days after completion of Deliverable 6 | 7 days | | |

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|--|---------------------------------------|---|---------|--|---|
| 8 | Finalized Legislative Brief | 15 days after approval of Deliverable 7 | 21 days | Ten (10%) of the Contract Price payable upon approval of Deliverable 8. | Electronic MS Word and PDF 2 bound hard copies |
| PHASE 3: Legislation and Final Report | | | | | |
| 9 | Draft Legislation and Regulations | 21 days after approval of Deliverable 8. | 21 days | Fifteen Percent (15%) of contract price payable upon approval of Deliverable 9. | Electronic MS Word and PDF 1 bound hard copy |
| 10 | Stakeholder Consultations | 21 days after approval of Deliverable 9 | | Twenty five percent (25%) of the contract price payable upon approval of Deliverable 11. | PowerPoint Presentation |
| 11 | Finalized Legislation and Regulations | 10 days after completion of Deliverable 10. | 10 days | | Electronic MS Word and PDF 2 bound hard copies |
| 12 | Final Report | 10 days after approval of Deliverable 11. | 5 days | Five percent (5 %) of the contract price payable upon approval of Deliverable 12. | Electronic MS Word and PDF 2 bound hard copies |

5. Characteristics of the Consultancy

The characteristics of this Consultancy are outlined as follows:

- Type of Consultant: Individual Consultant selection based on qualifications (ICQ)
- Start and Contract Duration: 1st Quarter of 2021 - Seven (7) calendar months after signing of contract.
- Place(s) of work: the Ministry and Consultant's work office. For foreign consultants, two (2) separate missions to Trinidad and Tobago are expected with approximately ten (10) business days on the ground in total. **This requirement will be reviewed given COVID-19 precautions in place at time of negotiations with shortlisted consultant.**

6. Requirements Skills and Core Competencies

The Consultant will be expected to possess the following

- Master’s Degree or higher in Law, International Trade or Economics;
- At least ten (10) years’ experience in the drafting of trade remedy laws ;
- Knowledge of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the WTO Agreement on Subsidies and Countervailing Measures;
- Experience in the law making process and legislative drafting techniques in Trinidad and Tobago or another Common Law jurisdiction;
- Experience in working across multiple government organizations and private sector stakeholders involved in trade;
- Working knowledge of projects funded by Inter-American Development Bank, World Bank, United Nations or similar multilateral organizations;
- Strong communication /analytical/presentation skills;
- Fluent in English.

7. Selection Criteria

| | Criteria | Maximum Points |
|----------|---|-----------------------|
| 1 | Academic Qualification | 20 |
| | 1.1 Master’s Degree or higher in Law, International Trade or Economics | 20 |
| 2 | General Experience | 25 |
| | Experience in drafting laws as evidenced by | |
| | (a) 1 – 5 instruments drafted | 15 |
| | (b) 6 – 10 instruments drafted | 20 |
| | (c) More than 10 instruments drafted | 25 |
| 3 | Specific Experience | 40 |
| | 3.1 Experience in the development or application of trade remedy laws as evidenced by: | 20 |
| | (a) 1 – 5 years’ experience | 10 |
| | (b) >5 – 10 years’ experience | 15 |
| | (c) More than 10 years’ experience | 20 |
| | 3.2 - Knowledge of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the WTO Agreement on Subsidies and Countervailing Measures. | 10 |

| | Criteria | Maximum Points |
|----------|--|-----------------------|
| | 3.3 Knowledge of the WTO Agreement on Subsidies and Countervailing Measures. | 10 |
| 4 | Adequacy for the Assignment | 15 |
| | 4.1 Experience in the law making process and legislative drafting techniques in Trinidad and Tobago or another Common Law jurisdiction. | 5 |
| | 4.2 Experience working across multiple government organizations and private sector stakeholders involved in trade. | 5 |
| | 4.3 Working knowledge of projects funded by Inter-American Development Bank, World Bank, United Nations or similar multilateral organizations. | 5 |
| | Total | 100 |

8. Supervision and Reporting Requirements

The Consultant will report to the Programme Manager, Project Implementation Unit and the Director, Legal Services, Ministry of Trade and Industry. Additionally, the incumbent will be required to work with the Office of the Chief Parliamentary Counsel of the Ministry of the Attorney General and Legal Affairs and other key stakeholders in executing this consultancy. All submissions must be in English Language, delivered via the form and media stated by the MTI and delivered on the date requested and addressed to:

Programme Manager
Strengthening of the Single Electronic Unit (SEW) for Trade and Business Facilitation
Ministry of Trade and Industry
Level 9, Nicholas Tower
63-65 Independence Square
PORT OF SPAIN
Email: PIUSEW@gov.tt

9. Responsibility of the Client

The Ministry, as the Executing Agency for the Project, shall support the implementation of this Consultancy. Accordingly, the Ministry shall:

- i. Facilitate the arrangements for interviews and provision of access to Project documents, relevant existing regulations and legislation as required.
- ii. Provide a Counterpart Team to guide the implementation of the Consultancy.
- iii. Provide relevant and appropriate information as required by the Consultant.

10. Responsibility of the Consultant

The Consultant will:

- i Absorb all other expenses including direct staff, office space and facilities, computer systems and software, telecommunication systems, travel expenses, hard copy report deliveries and any other incidentals.
- ii Undertake the activities of the consultancy utilizing primarily its own resources.
- iii Respect and adhere to the proposed time-frames.
- iv Conduct meetings with stakeholders in a professional, responsible manner.
- v Ensure the validity and reliability of any documents developed and/or utilized by the Consultant for training, workshops and sessions.
- vi Ensure the confidentiality of all aspects of the process/consultancy

11. Working Language

The working language shall be English

12. Confidentiality

The Consultant shall not, except as authorized by the Ministry or required by the stipulated duties under the contract, use for the Consultant's own benefit or gain or divulge to any persons, firm, company or other organization whatsoever any confidential information belonging to the Government or relating to the affairs or dealing which may come to the provider's knowledge during the engagement. This restriction shall cease to apply to any information or knowledge which may subsequently come into the public domain other than in breach of this clause.

13. Ownership

All data, records, reports and other documents prepared by the Consultant, or obtained from whatever source in connection with carrying out the functions of this position, shall become and remain the property of the Ministry. The service provider shall not later than upon termination or expiration of the contract, deliver all such documents to the Ministry together with a detailed inventory thereof. The Consultant may retain a copy of such documents but shall not use them for purposes unrelated to this contract without prior written approval of the Ministry.

14. Eligibility

The applicable rules of the Government of the Republic of Trinidad and Tobago will apply in determining the eligibility and selection of the consultant. It should be noted that only individuals from member countries of the Inter-American Development Bank (IDB) are eligible to apply.