

THE SAFEGUARD ACT, 2001

(Act 24 of 2001)

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JAMAICA

No. 24-2001

I assent,

[L.S.]

H. F. COOKE,

Governor-General.

13th day of December, 2001.

AN ACT to Make provisions for safeguard measures in relation to certain products imported into Jamaica under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products and for connected matters.

[The date notified by the Minister bringing the Act into operation]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I. PRELIMINARY

1. This Act may be cited as the Safeguard Act, 2001 and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and com-
mencement.

Interpreta-
tion.

2. In this Act—

“adjustment plan” means a plan for adjusting the domestic industry to competition from imports in accordance with regulations made under section 33;

“applicant” means a person who requests an investigation under this Act;

“Commissioner” means the Commissioner of Customs;

“Committee” means the Committee on Safeguard of the World Trade Organization;

“Council” means the Council for Trade in Goods of the World Trade Organization;

“country” includes an autonomous customs territory;

“Court” means the Supreme Court;

“daily newspaper” means a daily newspaper circulated in Jamaica;

“domestic industry” means—

- (a) the producers, as a whole, of like or directly competitive products, operating within Jamaica; or
- (b) those producers operating within Jamaica whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products;

“domestic producer” means a member of a domestic industry;

“General Agreement” means the General Agreement on Tariffs and Trade, 1994;

“interested party” means—

- (a) an exporter or foreign producer of an investigated product;

- (b) an importer of an investigated product;
- (c) any trade or business association a majority of the members of which are—
 - (i) producers, exporters or importers of an investigated product;
 - (ii) producers of a like or directly competitive product;
- (d) the government of an exporting country;
- (e) a producer in Jamaica of a like or directly competitive product;
- (f) a labour union or other organization representing the interest of workers in a domestic industry;
- (g) any consumer association;
- (h) any industrial user of an investigated product;
- (i) any other person whom the Investigating Authority determines to have a sufficient interest in the outcome of a safeguard investigation under this Act;

“investigated product” means an imported product which is the subject of a safeguard investigation under this Act;

“Investigating Authority” means the person or body appointed under section 3;

“like or directly competitive product” means a locally produced product that is identical or similar to or directly competitive with an investigated product;

“member” means a member of the World Trade Organization;

“notice of investigation” means a notice under section 9 (1) of the decision by the Investigating Authority to conduct a safeguard investigation;

“participating interested parties” means those interested parties that have indicated their interest in participating in an investigation, pursuant to section 9 (3);

“public register” means the public register established under section 16;

“Safeguard Agreement” means the Agreement on Safeguards of the World Trade Organization;

“serious injury” means a significant overall impairment in the position of a domestic industry;

“threat of serious injury” means serious injury that is clearly imminent.

PART II APPOINTMENT AND FUNCTIONS OF INVESTIGATING AUTHORITY

Appointment
of Investi-
gating
Authority.

3. The Minister may, by order, appoint such person or body as he thinks fit to be the Investigating Authority for the purposes of this Act.

Functions
of Investi-
gating
Authority.

4.—(1) The functions of the Investigating Authority are—

(a) to carry out investigations in relation to whether goods are being imported into Jamaica in such increased quantities, absolute or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry;

(b) to determine whether safeguard measures should be applied, suspended or withdrawn in relation to such imported goods;

- (c) to determine the period of application of safeguard measures and the modification or extension of any such period;
- (d) to carry out such other investigations and seek such information as it may consider necessary or desirable in connection with matters falling within the provisions of this Act;
- (e) to advise the Minister on such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister; and
- (f) to carry out such other functions as may be prescribed.

(2) For the purposes of carrying out its functions under subsection (1), the Investigating Authority may—

- (a) summon and examine witnesses;
- (b) request and examine documents;
- (c) administer oaths;
- (d) require that any document submitted to it be verified by affidavit; and
- (e) determine its own procedure and adjourn any hearing from time to time.

(3) The Investigating Authority may require the importer of any goods or such other person as the Investigating Authority considers appropriate, to state, within such time as the Investigating Authority may specify, such facts concerning the goods and their history as it may think necessary and if such information is not furnished to its satisfaction, the Investigating Authority may make a finding as to such facts on the basis of the information available to it.

(4) If a person fails or refuses without reasonable cause, to furnish information to the Investigating Authority when required to do so, the Investigating Authority may

apply to the Court in accordance with rules of Court for an order to compel the person to furnish the information to the Investigating Authority.

(5) A person who fails to comply with an order of the Court shall be guilty of contempt of Court and shall be liable to be punished accordingly.

Factors to be considered in determining serious injury.

5. A determination as to whether increased imports of an investigated product have caused or threaten to cause serious injury to a domestic industry shall be based on an evaluation of all such relevant objective and quantifiable factors as may be prescribed.

PART III. INVESTIGATION *Conduct of Investigation*

Power to carry out investigation.

6.—(1) The Investigating Authority may—

- (a) upon a written request by or on behalf of the domestic industry; or
- (b) on its own initiative,

carry out an investigation to determine whether increased imports of a product have caused or threaten to cause serious injury to a domestic industry.

(2) A request under subsection (1)(a) shall contain the prescribed information.

Withdrawal of request.

7. A request under section 6 (1) (a) may be withdrawn prior to the date of commencement of an investigation referred to in section 8 (2).

Procedures for commencement of investigation.

8.—(1) The Investigating Authority shall commence a safeguard investigation only when it has determined that there is sufficient evidence of serious injury, or threat thereof, caused by increased imports to the domestic industry.

(2) The Investigating Authority may, on receipt of a request under section 6 (1) (a), commence an investigation within thirty days of the date of receipt of the request.

(3) Where—

(a) the request involves complex issues; or

(b) the Investigating Authority has obtained additional information,

the period specified in subsection (2) may be extended for such longer period as the Investigating Authority may determine.

9.—(1) The Investigating Authority shall, where it decides to conduct an investigation, forthwith give written notice of its decision to the interested parties in accordance with the provisions of this section.

Notice of investigation.

(2) Notice of an investigation shall be published in the *Gazette* and in a daily newspaper.

(3) Interested parties desiring to participate in the investigation shall inform the Investigating Authority in writing within ten days of the date of publication of the notice pursuant to subsection (2) or within such longer period as the Investigating Authority may determine.

(4) A notice under subsection (2) shall contain such information as may be prescribed.

(5) The Investigating Authority shall forthwith notify the Committee of an investigation in the prescribed manner.

10.—(1) The Investigating Authority shall complete an investigation within six months from the date of commencement thereof so, however, that the period of six months may be extended by the Investigating Authority for a further period of three months.

Timetable for investigation.

(2) Where the Investigating Authority considers that a provisional safeguard measure should be applied, it shall make a determination in accordance with section 17 not earlier than thirty days, and not later than sixty days, after the date of commencement of the investigation.

(3) During the investigation, the Investigating Authority shall establish and forthwith notify all participating interested parties, of such deadlines as are necessary for the conduct of the investigation.

(4) The deadlines established by the Investigating Authority under subsection (3) shall be such as to provide sufficient opportunities for all participating interested parties to comment on the matters being considered in the investigation.

Investigative powers.

11.—(1) The Investigating Authority may, by notice in writing, require any person who, in its opinion, is able so to do, to provide such data or information as it thinks relevant to the performance of its functions.

(2) Where the Investigating Authority serves a notice under subsection (1), it shall, in the notice—

- (a) provide sufficient information for the person to identify the data or information required; and
- (b) specify the time within which and the manner and form in which the data or information is to be provided.

(3) If a person fails or refuses without reasonable cause, to furnish any data or information to the Investigating Authority when required to do so, the Investigating Authority may apply to the Court in accordance with rules of Court for an order to compel the person to furnish the data or information to the Investigating Authority.

(4) A person who fails to comply with an order of the Court shall be guilty of contempt of Court and shall be liable to be punished accordingly.

(5) Any person who provides data or information to the Investigating Authority which he knows or has reason to believe is false or misleading in a material particular shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

12.—(1) A person who, pursuant to the provisions of this Act, provides the Investigating Authority with information, the whole or part of which he desires to be kept confidential, shall submit, at the time the information is provided, a written statement identifying the information which is to be kept confidential and the reasons therefor.

Treatment of
confidential
information.

(2) A statement submitted pursuant to subsection (1) shall be accompanied by a summary of the information to which the statement relates in sufficient detail so as to facilitate a reasonable understanding of the information.

(3) If, on an examination of the information, the Investigating Authority is satisfied that a request for confidentiality is not justified and the person who provided the information is not willing to withdraw the request for confidentiality, the Investigating Authority shall treat that information as confidential.

(4) Information which is treated as confidential under this section shall not be disclosed by any person who received the information otherwise than in the discharge of his functions under this Act.

(5) Any person who contravenes the provisions of subsection (4) shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a

fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Reliance on
available
information.

13. Where an interested party refuses access to or otherwise does not provide the necessary information within a reasonable period or significantly impedes an investigation, the Investigating Authority may make such determination as it thinks appropriate on the basis of the facts available.

Written
arguments.

14.—(1) All participating interested parties shall have the opportunity, in accordance with the provisions of this Act and any regulations hereunder, to present evidence and arguments in writing.

(2) Where, in relation to an investigation, the Investigating Authority is to consider whether or not to apply a provisional safeguard measure, any participating interested party may, within the time specified in the notice under section 9, submit written arguments concerning any matter it considers relevant to the preliminary phase of that investigation.

Hearings.

15.—(1) Subject to subsection (2), the Investigating Authority may hear any person who in its opinion, is affected by an investigation under this Act, and shall so hear such a person if he makes a written request for a hearing stating that—

- (a) he is an interested party who is likely to be affected by the result of the investigation; and
- (b) there are practical reasons why he should be heard orally.

(2) A person referred to in subsection (1) shall be entitled to be represented by counsel at a hearing.

16. Subject to section 12, the Investigating Authority shall establish and maintain a public register relating to each investigation or other proceeding conducted under this Act.

Public register access.

PART IV. APPLICATION OF SAFEGUARD MEASURES

Provisional Safeguard Measures

17.—(1) A provisional safeguard measure may be applied only if the Investigating Authority determines that—

Application of provisional safeguard measures.

- (a) there are critical circumstances, including delay in taking action, which would cause damage which would be difficult to repair; and
- (b) there is clear evidence that increased imports of the investigated product have caused or threaten to cause serious injury to the domestic industry.

(2) The Investigating Authority may impose a provisional safeguard measure where it determines that there is clear evidence that increased imports have caused, or are threatening to cause, serious injury.

(3) Where, at the conclusion of an investigation by the Investigating Authority, it determines that the goods under investigation did not cause or threaten to cause serious injury, any amount collected as a provisional safeguard measure under subsection (2) shall be refunded.

18.—(1) The Investigating Authority shall, upon taking a decision to apply a provisional safeguard measure, forthwith publish a notice of that application in the *Gazette* and in a daily newspaper.

Notice of application of provisional safeguard measure.

(2) A notice referred to in subsection (1) shall contain the prescribed information.

Duration of
provisional
safeguard
measure.

19. A provisional safeguard measure—

- (a) shall not be applicable for more than two hundred days; and
- (b) may be suspended by the Investigating Authority before the date of its expiry.

Payment
and refund
of pro-
visional
safeguard
measure

20.—(1) Subject to subsection (3), the amount of a provisional safeguard measure shall be determined by the Minister on the recommendation of the Investigating Authority.

(2) The amount of a provisional safeguard measure shall be paid to the Commissioner.

(3) A person liable to pay the amount of a provisional safeguard measure may give security for such payment—

- (a) by deposit of a bond with the Commissioner in the amount of the provisional safeguard measure which shall be in such form and with such sureties as the Commissioner may approve; or
- (b) partly by a bond approved by the Commissioner as aforesaid and partly by deposit of such sum with the Commissioner as he may specify.

(4) If an investigation does not result in a determination that increased imports have caused or threaten to cause serious injury to the domestic industry, the Commissioner shall forthwith—

- (a) refund any amount collected as a provisional safeguard measure or any sum deposited under subsection (3); and
- (b) release any bond deposited under that subsection.

Conclusion of Investigation

Determina-
tion of
cause or
threat of
serious
injury.

21.—(1) The Investigating Authority shall determine, in accordance with the provisions of sections 5 to 15 and on the basis of evidence obtained in the investigation, whether

increased imports of the investigated product have caused or threaten to cause serious injury to the domestic industry.

(2) A determination under subsection (1) shall, subject to section 12, be published in a report containing a detailed analysis of—

- (a) the information obtained in the investigation, setting out the Investigating Authority's findings and reasoned conclusions on all pertinent issues of fact and law;
- (b) the relevance of the factors examined by the Investigating Authority pursuant to section 5.

22.—(1) The Investigating Authority shall, upon making a determination as to the cause of serious injury or threat of serious injury, forthwith publish a notice of that determination in the *Gazette* and a daily newspaper.

Notice of determination re cause of serious injury or threat thereof.

(2) A notice under subsection (1) shall contain the prescribed information.

Definitive Safeguard Measures

23.—(1) Where the Investigating Authority determines that—

General principles for applying definitive safeguard measures.

- (a) increased imports have caused or threaten to cause serious injury to a domestic industry; and
- (b) the application of a definitive safeguard measure is in the public interest,

the Investigating Authority may, subject to subsections (2) and (3), apply such a measure.

(2) The duration and level of a definitive safeguard measure shall be determined by the Minister on the recommendation of the Investigating Authority and be no more than is necessary to prevent or remedy serious injury and to facilitate adjustment.

(3) In deciding whether to apply a definitive safeguard measure, the Investigating Authority shall take into account the fact that—

- (a) if adequate trade compensation cannot be agreed with the members whose exporting interests would be affected by the measure, those members shall be free, in accordance with the Agreement, to suspend substantially equivalent concessions under the General Agreement if the Council does not disapprove of such suspension; and
- (b) the right of suspension of equivalent concessions shall not be exercised for the first three years that a safeguard measure is in effect (including the period of application of the provisional safeguard measure) if the measure has been taken as a result of an absolute increase in imports.

Notice of application of definitive safeguard measure.

24.—(1) The Investigating Authority shall, upon taking a decision to apply a definitive safeguard measure, forthwith, publish a notice of that application in the *Gazette* and a daily newspaper before the measures take effect.

(2) A notice under subsection (1) shall contain the prescribed information.

Form and application of definitive safeguard measure.

25.—(1) A definitive safeguard measure shall be applied in the form of either a tariff increase or a quota on imports in accordance with regulations made under section 33.

(2) Subject to section 26, a definitive measure shall be applied to all imports of the investigated product, irrespective of the source, entered on or after the date on which the measure takes effect.

(3) The Minister shall seek to reach an agreement as to the allocation of the quota with those members having a substantial interest in supplying the investigated product.

26.—(1) Subject to subsection (2), a definitive safeguard measure shall not be applied to imports of the investigated product originating in a member that is a developing country so long as those imports account for not more than three per cent of Jamaica's total imports of the investigated product.

Non-application of definitive safeguard measure to certain developing countries.

(2) Where imports from members that are developing countries individually account for more than three per cent, but collectively account for more than nine per cent, of Jamaica's imports of the investigated product, a definitive safeguard measure may be applied to such imports.

(3) The Investigating Authority shall notify the Committee of the non-application of a definitive safeguard measure to imports originating in a member that is a developing country.

27. If, at any point during an investigation, the Investigating Authority terminates the investigation without applying a definitive safeguard measure, the Investigating Authority shall forthwith notify the Committee and all interested parties of the termination and shall publish a notice of the termination in the *Gazette* and a daily newspaper.

Notice of termination of investigation with no safeguard measure applied.

28.—(1) Unless it is extended in accordance with section 31, a definitive safeguard measure shall be applied for a period of not more than four years, including the period of application of any provisional safeguard measure.

Duration of definitive safeguard measure.

(2) The total duration of a definitive safeguard measure, including the period of application of any provisional safeguard measure, the period of initial application and any extension thereof pursuant to section 31, shall not exceed ten years.

29. A definitive safeguard measure that is applied for more than one year shall be progressively liberalized at

Progressive liberalization.

regular intervals during the period of application, in accordance with the relevant provision of the notice published pursuant to section 22(1).

Review of Definitive Safeguard Measures

Review of
definitive
safeguard
measures.

30.—(1) Subsection (2) shall apply in any case where the duration of a definitive safeguard measure (including the period of application of any provisional safeguard measure) exceeds three years.

(2) The Investigating Authority shall, not later than the end of the first half of the period of application of the measure, carry out a review of the case, including a review of the effects of the definitive safeguard measure on the domestic industry concerned.

(3) The provisions of sections 11 to 16 shall apply, with necessary modifications, to a review carried out pursuant to subsection (2).

(4) The Investigating Authority shall—

- (a) prepare a written report of the results of the review; and
- (b) based on those results, decide whether to maintain or withdraw the definitive safeguard measure or to increase the pace of its liberalization.

(5) The Investigating Authority shall publish in the *Gazette* and a daily newspaper—

- (a) a notice of the decision taken pursuant to subsection (4) (b); and
- (b) a summary of the results of the review.

(6) A notice under subsection (5)(a) shall contain the prescribed information.

PART V. EXTENSION AND RE-APPLICATION
OF A SAFEGUARD MEASURE

31.—(1) Where the domestic industry considers that there is a continuing need to apply a definitive safeguard measure beyond the initial period of application, it shall submit a written request for extension of the measure in accordance with regulations made under section 33.

Extension of definitive safeguard measure.

(2) The Investigating Authority shall, in relation to a request under subsection (1), conduct an investigation to determine whether an extension should be granted.

32.—(1) A new safeguard measure shall not be applied for a period of at least two years to imports of a product which were the subject of a definitive safeguard measure first applied after January 1, 1995 (hereinafter referred to as an earlier safeguard measure).

Re-application of safeguard measure.

(2) A new safeguard measure shall not be applied to the imports of a product for a period equal to one-half of the duration of an earlier safeguard measure applied on that product, if such duration was more than four years.

(3) Notwithstanding the provisions of subsections (1) and (2), a safeguard measure may be applied, for a period of one hundred and eighty days or less, to imports of an investigated product which were the subject of an earlier safeguard measure, if—

- (a) at least one year has elapsed since the date of imposition of the earlier safeguard measure on those imports; and
- (b) a safeguard measure has not been applied on those imports more than twice in the five year period immediately preceding the date on which the new safeguard measure is to take effect.

PART VI. GENERAL

Regulations. 33. The Minister may make regulations, subject to affirmative resolution, generally for giving effect to the provisions of this Act.

Application for judicial review. 34. An application may be made to the Court to review and set aside a final determination of the Investigating Authority under section 21.

Grounds for review. 35.—(1) An application under section 34 may be made on the grounds that the Investigating Authority has—

- (a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) erred in law in making the determination, whether or not the error appears on the face of the record;
or
- (c) based the determination on an erroneous finding of fact that was made in a perverse or capricious manner or without regard to the material before the Investigating Authority.

(2) An application may be made under this section by any person directly affected by the determination.