

# THE ANTI-DUMPING & SUBSIDIES COMMISSION



## TRADE REMEDIES GUIDE

### INTRODUCTION

This guide is designed to introduce Jamaica's international trade remedy regime. The information contained in this guide is for reference purposes only, and should not be regarded as providing a definitive statement of law.

There are three different types of international trade remedies available to the productive sectors. These are anti-dumping duties, countervailing duties and temporary Safeguard measures. Anti-dumping and countervailing duties are available to provide protection from unfair trading practices from our international partners. In the instance where the trading is fair but the quantities of imports are excessive, safeguard duties provide temporary relief from these excessive imports, allowing the domestic industry to make adjustments in order to become competitive.

Each of these measures is discussed in this brochure.

### ANTI-DUMPING AND COUNTERVAILING DUTIES

#### **The Legislation**

The Customs Duties (Dumping and Subsidies) Act of 1999 (the Act) provides the legal basis for the use of antidumping or countervailing duties in order to maintain fair levels of import competition for Jamaican producers when the dumping or subsidisation of imported goods causes material injury, or threatens to cause material injury to an established Jamaican industry.

The World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-Dumping Agreement) and the Agreement on Subsidies and Countervailing Measures (WTO Subsidies Agreement) provide the international framework of rules and obligations on which the Jamaican legislation is based.

The Act does not provide an alternative to normal tariffs, but allows for the imposition of anti-dumping and countervailing duties as a temporary means of dealing with dumped or

subsidised goods that are causing injury to Jamaican producers.

### **What is Dumping?**

Dumping occurs when the export price of the goods imported into Jamaica is less than the normal value of the goods in the country of export.

The export price is usually the price the importer in Jamaica pays for the goods. The normal value is usually the price at which like goods are sold in the ordinary course of trade for domestic consumption in the country of export or the country of origin.

In specific circumstances the actual prices may not be suitable, in which case there are alternatives that can be used. In the case of normal values, prices to third countries can be used or the price may be constructed from cost and profit information. Proxies for export prices may be based on the price to an independent buyer, adjusting for any costs or charges incurred upon importation or any other reasonable basis.

After the export price and normal value have been identified, the two must be compared to arrive at the amount of dumping. For a fair comparison of the two prices, all differences that affect price comparability must be considered and an adjustment made accordingly. Differences that could affect price comparability include differences in terms and conditions of sale, for example, sales at different levels of trade, at different periods of time, taxation, quantities, and physical characteristics.

If the difference between the normal value and the export price, expressed as a percentage of the export price is greater than 2 per cent and this causes injury to the Jamaican industry, then antidumping duties can be applied.

### **What is Subsidisation?**

This occurs where a government or any public body of a country provides a financial contribution that confers a benefit to a producer or producers in that country. In the event of these goods being exported to Jamaica, such goods can attract countervailing duties, if they cause injury to a Jamaican producer.

Under WTO rules there are different types of subsidies, some are deemed to be trade distorting and others are not. Countervailing measures can only be used against those that distort trade, these are called specific subsidies. An example of a specific subsidy is one aimed specifically at assisting exports.

The complainant/applicant must be able to identify the subsidy at issue and its nature and operation, including the product coverage and the form of assistance provided.

An investigation will seek to establish the extent to which the goods benefit from government assistance. Once the level of assistance (amount of subsidies) has been determined this will form the basis for the countervailing duty.

### **APPLYING FOR AN INVESTIGATION**

An application for investigation of dumping or subsidization is normally made by or on behalf of a Jamaican industry that is affected by the imports. However, in certain circumstances the Commission (hereinafter known as “the Commission”) may on its own, initiate an investigation. The Jamaican producers that comprise the industry making the application must represent a major proportion of the Jamaican production of like goods. Minimum degrees of industry support for an application are required by the legislation.

## **The Goods under Consideration and Like Goods**

The “goods under consideration” are the goods that imported into Jamaica at the dumped or subsidised price, and that are the subject of the investigation. The term “like goods” refers to those goods that are like the goods under consideration. There are two types that must be considered; the goods that are produced in the domestic market of the exporter and those that are produced by the domestic industry in Jamaica.

## **Injury**

Injury refers to the negative effect (harm or damage) that the Jamaican industry sustains as a result of the dumped or subsidised imports. There are three types of injury; there is material injury, threat of material injury and material retardation to the establishment of a domestic industry. The Act sets out the factors that must be considered to analyse each types of injury.

The evidence presented by the domestic industry must support at least one of the three types of injury and must reveal that the dumping or subsidisation of the imported goods causes the industry to be in that state. The Act also requires an examination of those factors other than the dumped or subsidised imports that could have also caused injury.

## **INVESTIGATION PROCESS**

Once an application is received by the Commission it goes through the following stages:

### **Acceptance of Application/Complaint**

Upon receipt of a written application, the Commission has 45 days to examine the documents and evaluate the complaint. The

Commission will examine the documents and request from the Complainant/Applicant, any additional information necessary to ensure that the case is adequately documented.

Once the documentation is complete, the Commission will evaluate the information and supporting evidence and determine whether the evidence provides a reasonable indication that the goods under consideration are dumped, or subsidised, and whether it has resulted in injury to Jamaican producers of like goods.

When an application is accepted the Commission is required to advise the governments of the exporting countries concerned. In the case of a subsidy application an opportunity for consultation with interested governments must also be provided before initiation of an investigation.

### **Initiation**

Applicants/complainants will be advised as soon as possible after acceptance whether the Commission is satisfied that there is sufficient evidence to justify the initiation of an investigation. If the evidence is not sufficient then an investigation is not initiated and the applicant/complainant is notified of that fact and the reasons there for.

The initiation of an investigation is made public through notification in the Jamaican Gazette and publication in a daily newspaper. The information concerning initiation of an investigation is also disseminated to all known interested parties, including the government of the exporting countries, and to other relevant parties as a courtesy.

On initiation of a dumping or subsidy investigation known foreign exporters and producers and Jamaican importers are contacted by the Commission and requested to provide

information to assist the investigation. This may include:

- General information about the company
- Cost of production information
- Sales and pricing information

The full investigation involves a critical evaluation of the evidence in the application/complaint and extensive gathering and analysis of industry and trade data to establish whether dumping or subsidisation is causing injury.

### **Preliminary Determination**

Within 90 day of the commencement of the investigation, the Commission is usually in a position to either terminate the investigation where no injury is found, or issue a Preliminary Determination. A Preliminary Determination may result in provisional duties being imposed on the goods under consideration. The 90 day period may be extended for an additional 45 days where the circumstances of the case are particularly complex. In some cases, the investigation may be suspended after a Preliminary Determination is made and where the Commission has accepted an undertaking.

### **Undertakings**

After the Preliminary Determination is made, the government of the country of export or the exporters of the goods may submit an undertaking that future trade to Jamaica will be conducted so as to avoid causing or threatening to cause material injury to a Jamaican industry.

Undertakings usually take the form of price increases on future imports to Jamaica of goods that are the subject of the investigation. Any price increases resulting from undertakings cannot exceed the margin of dumping or the amount of the subsidy.

Following acceptance of an undertaking, the investigation of injury can be completed if the Commission or the government of the country of export or the exporter so desires.

### **Final Determination**

Within 90 days of the making of a Preliminary Determination the Commission must make a Final Determination, and if satisfied that the evidence of dumping or subsidies and injury and a causal link between the two is conclusive, final duties will be imposed.

## **REMEDIES**

A determination for the imposition of anti-dumping or countervailing duties can be taken by the Commission only when it is satisfied that material injury to the domestic industry is being caused by the dumped or subsidised imports. The amount of the duties imposed may not exceed the level of the dumping margin or the amount of the subsidy. However, the Commission may determine a level of duty less than the margin of dumping or the amount of the subsidy as may be considered adequate to remove the injury.

### **Provisional Measures**

The Commission may make a determination for the imposition of provisional measures when satisfied that there is reasonable cause to believe that:

- The goods are being dumped or subsidised; and
- As a result, material injury to an industry has been or is being caused or is threatened; and
- Action is necessary to prevent material injury being caused during the remaining period of investigation.

### **Final Measures**

The Commission may make a determination for the collection of definitive anti-dumping or countervailing duties at the Final Determination

prospectively for a period of five years from the date first imposed, unless the duties have been reassessed review initiated within that period.

### **Retroactive Measures**

The Commission may determine that definitive duties be imposed retroactively for the period for which provisional measures, if any, have been applied. In addition, in special circumstances, the Commission may determine that anti-dumping or countervailing duties be levied retroactively on goods that entered Jamaica for home consumption not more than 90 days prior to the date of the imposition of provisional measures, or up to the date of initiation of the investigation whichever is sooner.

### **Collection of duties**

Anti-dumping or countervailing duties are collected by the Jamaica Customs Department.

### **NOTICES**

The Commission is required to make its findings public, and to inform all interested parties of the facts and conclusions that have formed the basis of its determinations. Notification also provides the parties and the public with an opportunity to comment. Notices are published in the Jamaican Gazette and in a Jamaican daily newspaper, in the following instances:

- Initiation of investigations, reviews and reassessments;
- Preliminary determinations, and
- Imposition of determinations and the imposition provisional duties;
- Final of definitive anti-dumping or countervailing duties;
- Termination of investigations, (including termination on acceptance of an undertaking).

### **SAFEGUARDS MEASURES**

Safeguards Measures are one other trade remedy, in addition to anti-dumping and countervailing

duties that are available to Jamaican industry. They are temporary remedies for serious injury or threat of serious injury to a Jamaican industry that is caused by sudden increases in imports (surges).

### **The Legislation**

The legal basis for Safeguards can be found in the Safeguards Act 2001, based on the WTO Agreement on Safeguards, and the Safeguard Regulations 2003. The Safeguards Act 2001 provides for inquiries to be carried out into imported goods by the Commission, and for recommendations to be made to the Minister of Industry Commerce and Technology about instituting emergency temporary safeguard measures to allow an industry to adjust to increased competition from imports.

### **APPLYING FOR AN INVESTIGATION**

An application for temporary safeguard measures can be made by or on behalf of a Jamaican industry. The Jamaican producers making the application must represent a major proportion of Jamaican production of like goods [and/or] directly competitive goods.

### **Increased Imports**

For safeguard measures to be applied there must be an increase in imports. This increase in imports must be assessed in relation to domestic production and must either be an absolute or a relative increase.

### **The Goods under Consideration and Like or Directly Competitive Product**

As in the case of anti-dumping and countervail, the imports that are the subject of the investigation are referred to as the “goods under consideration”. Unlike anti-dumping and subsidies proceedings however, like goods refer only to those goods that are produced by the



Jamaican industry that are like the goods under consideration. There is no need to examine a like good produced in the foreign market of the exporter. Another distinction is that in Safeguard proceedings the comparison is broader in the sense that the locally produced good need not be like but directly competitive. This means other factors such as the degree of substitutability.

### **Serious Injury**

Serious injury means significant overall impairment in the position of a domestic industry. There are three types of injury serious injury, threat of serious injury and material retardation. The Safeguard Act and Regulations set out the factors that must be considered for each.

### **INVESTIGATION PROCESS**

A written application must be submitted to the Commission, and evidence of actual or potential injury must be provided by the Jamaican industry to support the request for a temporary safeguard measure. Simple assertions unsubstantiated by relevant evidence, cannot be considered sufficient to meet the Commission's requirements. Once an application is received by the Commission it goes through the following stages:

#### **Acceptance of Application/Complaint**

Upon receipt of a written application, the Commission has 30 days to examine the documents and evaluate the complaint. The Commission will examine the documents and request from the Complainant/Applicant, any additional information necessary to ensure that the case is adequately documented.

Once the documentation is complete, the Commission will evaluate the information and supporting evidence and determine whether the evidence supports the allegations made and an investigation can be initiated.

### **Initiation**

Applicants/complainants will be advised as soon as possible after acceptance whether the Commission is satisfied that there is sufficient evidence to justify the initiation of an investigation. If the evidence is not sufficient then an investigation is not initiated and the applicant/complainant is notified of that fact and the reasons therefor.

The initiation of an investigation is made public through notification in the Jamaican Gazette and publication in a daily newspaper. The information concerning initiation of an investigation is also disseminated to all known interested parties, including the government of the exporting countries, and to other relevant parties as a courtesy.

Throughout an investigation the Commission gathers and considers information in order to determine whether increased imports are causing serious injury to a domestic industry.

The Commission considers the written request and other information provided by the industry, and also considers submissions from interested parties who provide factual evidence and comments on issues relating to imports and injury.

It is important that submissions address the question of serious injury to the domestic industry, and emphasize factual evidence, instead of providing merely unsubstantiated statements. Submissions should also address the issue of remedial action should serious injury to the domestic industry be found by the Commission.

The full investigation involves a critical evaluation of the evidence in the application/complaint and extensive gathering and analysis of industry and trade data.

**REMEDIES****Provisional Measures**

Between 30 and 60 days after the commencement (initiation) of the investigation, the Commission may recommend the imposition of provisional measures. The Commission's recommendation and reasons therefor are published in the same manner as the Commission's decision to initiate an investigation. A report concerning the Commission's recommendations is provided to the Minister who has the responsibility to decide on the amount of the provisional safeguard measure.

**Final Measures**

Within 6 months of the date of initiation of the investigation the Commission is required to make a final determination as to whether increased imports of the investigated product have caused or threaten to cause serious injury to the domestic industry. The Commission is required to carry out the identical notification and reporting functions as at the Provisional Measures stage, and the Minister is required to determine the duration and amount of the definitive safeguard measure.

**REMEDIES**

The decision on whether to impose a remedy and the nature and extent of any remedy is made by the Minister and in all cases, that decision is published in the Jamaica Gazette and in a Jamaican daily newspaper.

A provisional safeguard measure may take the form of a tariff increase imposed for a maximum of 200 days.

A definitive or final safeguard measure may take the form of an increase in the tariff or the

imposition of a quantitative import restriction (quota).

A definitive safeguard measure may be no more than is necessary to prevent or remedy serious injury and to facilitate the structural adjustment on the part of the domestic industry adversely affected by increased imports. A definitive safeguard measure shall not be applied for a period of more than four years in the first instance, which includes the period of application of the provisional safeguard measure.

**CONFIDENTIAL INFORMATION**

Both the Customs Duties Dumping and Subsidies Act and the Safeguard Act include specific provisions for the treatment of confidential information that is provided to the Commission. The Commission has a duty to ensure that confidential information is protected, and a duty to make all non-confidential information available.

The Commission compiles a Public File for each investigation. These files contain all non-confidential information relating to the investigations, and are available for viewing and copying (for a nominal fee).

For additional information on the treatment of confidential information please contact the Commission and request a copy of the Commission's Practice Notice on the Designation and Disclosure of Confidential Information in Anti-dumping and Subsidies Investigations.

**ASSISTANCE TO APPLICANTS AND OTHER PARTIES**

The Commission provides an Application Kit, Handbooks and other necessary documents to assist parties in compelling their submissions. Other useful information is provided on the Commission's web site at [www.jadsc.gov.jm](http://www.jadsc.gov.jm). Parties can also contact the Commission directly

at its offices to speak to its Technical Staff. The Commission is open Monday to Friday from 8:30 am to 5 pm.



**Further information and Application  
Forms can be obtained from:**

**The Anti-Dumping & Subsidies  
Commission**

**18 Trafalgar Road, Kingston 10**

**Telephone: (876) 927-8665/978-1800**

**Fax: (876) 978-1093**

**E-Mail: [antidump@jadsc.gov.jm](mailto:antidump@jadsc.gov.jm)**

**Or visit our website at [www.jadsc.gov.jm](http://www.jadsc.gov.jm)**