

Customs Duties (Dumping and Subsidies) Act 1999

A BILL ENTITLED

AN ACT to Repeal and replace the Customs Duties (Dumping and Subsidies) Act, to establish the Anti-Dumping and Subsidies Commission, and for the implementation by Jamaica of the provisions of the Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade and for connected matters.

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:-

- Short title
commence-
ment.
1. This Act may be cited as the Customs Duties (Dumping and Subsidies) and Act, 1999, and shall come into operation on a day to be appointed by the Minister by notice published in the Gazette.
- Interpre-
tation.
2. - (1) In this Act -
- "the Anti-Dumping agreement" means the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade concluded at Marrakesh, Morocco in 1994;
- "amount of the subsidy" in relation to any subsidized goods, means the amount of the subsidy on the goods -
- (a) determined in the prescribed manner; or
- (b) determined in such manner as the Commission may specify in any case where -
- (i) the manner of determining the amount of the subsidy has not been prescribed; or
- (ii) in the opinion of the Commission, sufficient information has not been furnished or is not available to enable the determination of the amount of the subsidy in the prescribed manner;
- "Commission" means the Anti-Dumping and Subsidies Commission established in accordance with section 3;
- "country of export" means -
- (a) in the case of dumped goods, the country from which

the goods were shipped directly to Jamaica or, if the goods have not been shipped directly to Jamaica, the country from which the goods would be shipped directly to Jamaica under normal conditions of trade; and

- (b) in the case of subsidized goods, the country in which the subsidy originated;

"dumped" in relation to goods, means that the export price of those goods is less than -

- (a) the price at which like goods are sold in the ordinary course of trade for domestic consumption in the exporting country; or
- (b) the cost of production of those goods in the exporting country including any subsidy provided in relation to such production;

"duty" means any duty imposed by virtue of this Act;

"export price" means the export price determined in accordance with sections 19 to 21;

"export subsidy" means subsidies contingent in law or in fact whether solely or as one of several other conditions upon export performance, including those illustrated in the Subsidies Agreement;

"fair market price" means the fair market price determined in accordance with regulations made under section 35;

"functions" includes duties and powers;

"importer" in relation to any goods, has the same meaning as in section 2 of the Customs Act;

"interested party" means a person –

- (a) engaged in the production, purchase, sale, export or import of any goods that are the subject of an investigation;
- (b) engaged in the production, purchase or sale of any goods produced in Jamaica that are like goods in relation to goods that are the subject of an investigation;
- (c) acting on behalf of any person referred to in paragraph (a) or (b);
- (d) who is a user of any goods that are like goods in relation to any

goods that are the subject of an investigation;

"like goods" in relation to any other goods, means -

- (a) goods which are identical in all respects with those other goods; or
- (b) in the absence of such identical goods as aforesaid, goods of which the uses and other characteristics closely resemble those of the other goods;

"margin of dumping" in relation to any goods, means the amount by which the normal value of the goods in the exporting country exceeds the export price thereof;

"material injury" means, in respect of the dumping or subsidizing of any goods, material injury to the production in Jamaica of like goods;

"properly documented", in relation to a complaint in respect of the dumping or subsidizing of goods, means that -

- (a) the complaint -
 - (i) alleges that the goods have been dumped or subsidized, specifies the goods, the country of origin or export of such goods and alleges that the dumping or subsidizing has caused, is causing or is likely to cause, material injury;
 - (ii) states in reasonable detail the facts on which the allegations referred to in subparagraph (i) are based; and
 - (iii) makes such other representations as the complainant deems relevant to the complaint; and
- (b) the complainant provides -
 - (i) such information as is available to him to prove the facts referred to in paragraph (a)(ii); and
 - (ii) such other information as the Commission may reasonably require him to provide;

"provisional duty" means the duty imposed under section 16;

"release" in respect of goods, means to authorize the removal of

the goods from a Customs Officer, warehouse (including bonded warehouse) or duty free shop for use in Jamaica;

"Subsidies Agreement" means the Agreement on Subsidies and Countervailing Measures concluded at Marrakesh, Morocco in 1994;

"subsidy" in relation to goods that are exported to Jamaica means a financial contribution that is made in connection with the production, manufacture or export of those goods for the purpose of conferring a benefit in relation to those goods -

(a) by –

- (i) a government of the country of export or country of origin of those goods; or
- (ii) a public body of that country or of which that government is a member; or
- (iii) a private body entrusted or directed by that government or public body to carry out a government function;

(b) by means of -

- (i) a direct transfer of funds by the government or body as aforesaid to the enterprise by whom the goods are produced, manufactured or exported; or
- (ii) the acceptance of liabilities (whether actual or potential) of that enterprise by that government or body; or
- (iii) the foregoing or non-collection, of revenue other than allowable exemption or remission due to that government or body by that enterprise; or
- (iv) the provision by that government or body of

- goods or services or other benefits to that enterprise other-wise than in the course of providing general infrastructure; or
- (v) the purchase by that government or body of goods provided by that enterprise; or
- (vi) the provision to the exporter of the goods of any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade, 1994 that is received from such a government or body;

"undertaking" means an undertaking with respect to goods that are the subject of a dumping or subsidizing investigation under this Act, that is to say -

- (a) in the case of dumped goods, an undertaking given by an exporter where the exporter undertakes -
 - (i) to increase, in the manner specified in his undertaking, the price at which he sells the goods to importers in Jamaica in order to eliminate the margin of dumping; or
 - (ii) to cease dumping the goods in Jamaica; and
- (b) in the case of subsidized goods an undertaking given by -
 - (i) an exporter who undertakes to increase, in the manner specified in the undertaking, the price at which he sells the goods to importers in Jamaica; or
 - (ii) the government of a country which undertakes in the manner specified in the undertaking -
 - (A) to eliminate the subsidy on goods exported to Jamaica from that country;
 - (B) to limit the amount of the subsidy on

goods exported to Jamaica from that country; or

(C) otherwise to eliminate the effect of the subsidizing on the production in Jamaica of like goods.

(2) For the purposes of this Act, imported goods shall be regarded as having been dumped -

(a) if the export price from the country in which the goods originated is less than the fair market price of the goods in that country; or

(b) in a case where the country from which the goods were exported to the island is different from the country in which they originated -

(i) if the export price from the country in which the goods originated is less than the fair market price of those goods in that country; or

(ii) if the export price in the country from which the goods were so exported is less than the fair market price of those goods in that country.

Establishment of the Commission. Schedule.

3. - (1) There shall be established for the purposes of this Act, a body to be called the Anti-Dumping and Subsidies Commission.

(2) The provisions of the Schedule shall have effect with respect to the constitution and procedure of the Commission and other-wise in relation thereto.

Functions of the Commission.

4. - (1) The functions of the Commission shall be -

(a) to carry out on its own initiative or on the request of any person, investigations in relation to the dumping of goods or the giving of a subsidy affecting goods and to make such reports and recommendations in relation to such goods as it considers necessary;

(b) to carry out such other investigations as it may consider necessary or desirable in connection with matters falling within the provisions of this Act;

(c) 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;

(d) to carry out such other duties as may be prescribed by or pursuant to this Act.

(2) For the purposes of carrying out its functions pursuant to this Act, the Commission may -

- (a) summon and examine witness;
- (b) call for and examine documents;
- (c) administer oaths;
- (d) require that any document submitted to the Commission be verified by affidavit;
- (e) adjourn any investigation from time to time.

(3) The Commission may hear orally any person who, in its opinion, will be affected by an investigation under this Act, and shall so hear such person if a written request for a hearing has been made by the person showing that he is an interested party likely to be affected by the result of the investigation and that there are particular reasons why he should be heard orally.

(4) A person referred to in subsection (3) shall be entitled to be represented by counsel at a hearing.

(5) In holding a hearing pursuant to subsection (2), the Commission shall take account of the need to preserve confidentiality.

(6) The Commission may require the importer of any goods or such other person as the Commission considers appropriate, to state within such time as the Commission shall specify such facts concerning the goods and their history as it may think necessary to determine whether the goods are being dumped or subsidized and if such information is not furnished to its satisfaction, the Commission may make a finding as to such facts on the basis of the information available to it.

(7) If a person fails or refuses without reasonable cause, to furnish information to the Commission when required to do so, the Commission may apply to a Court for an order to compel the person to furnish the information to the Commission.

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

Commission to
seek infor-
mation.

5. The Commission shall seek to obtain all information that it considers necessary to assist it in its investigation.

Commission
may seek
advice of

6. - (1) The Commission may enter into arrangements with any body or person recognized by the Commission as having specialized knowledge of any matter being investigated by the Commission, to assist it in an persons with

advisory capacity in its investigation of that matter.

specialized

(2) In making arrangements pursuant to subsection (1), the

knowledge.

Commission shall have regard to any budgetary limitations under which it operates.

Evidence.

7. - (1) The Commission may, by notice in writing, require any person who, in the opinion of the Commission is able to provide evidence relevant to an investigation under this Act, to provide, under oath or otherwise, the evidence referred to in the notice.

(2) Where pursuant to subsection (1), the Commission requires any person to provide evidence, the Commission shall, in the notice given under that subsection -

(a) provide sufficient information for the person to identify the evidence; and

(b) specify the time within which and the manner and form in which the evidence is to be provided.

(3) If a person who fails or refuses to provide evidence to the Commission as required under subsection (1), the Commission may apply to a Court for an order to compel the person to provide evidence.

(4) A person who fails to comply with a Court order under section (3) shall be guilty of contempt to Court and shall be liable to be punished accordingly.

(5) Any person who provides evidence to the Commission which he knows or has reason to believe to be false or misleading in a material particular shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; and where the offence is continued after conviction the person shall be guilty of a further offence and shall be liable on summary conviction as aforesaid to a fine exceeding twenty thousand dollars for every day during which the offence is so continued.

Commission to provide access.

8. - (1) Subject to this section the Commission shall -

(a) give notice of the information required to all interested parties in respect of any investigation pursuant to this Act and provide sufficient opportunity to the interested parties to present in writing all the evidence which they consider relevant in respect of the investigation in question;

(b) provide timely opportunities for all interested parties to -

(i) examine all information other than confidential information as defined in subsection (3) used by the Commission in an investigation and relevant to the presentation of their cases; and

(ii) prepare presentations on the basis of that information.

(2) The Commission shall not disclose confidential information supplied to it by an interested party to the other interested parties unless the party submitting the information agrees to such disclosure.

(3) For the purposes of this section and section 10, information is considered confidential if -

(a) because of the nature of the information, disclosure of it would be of significant competitive advantage to a competitor; or

(b) its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information.

(4) Information treated as confidential under this section shall not be disclosed by anyone who received such information by virtue of the provisions of this Act 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 before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Request for
Information
to be kept
confidential.

9. - (1) Where a person who provides the Commission with evidence pursuant to the provisions of this Act wishes some or all of the evidence to be kept confidential, the person shall submit, at the time the evidence is provided, a statement identifying the evidence that he wishes to be kept confidential and stating the reason therefor.

(2) Where pursuant to subsection (1), a person submits to the Commission a statement referred to in that subsection, that person shall also submit to the Commission a summary of the evidence to which the statement relates in sufficient detail to convey a reasonable understanding of the evidence.

Effect of
refusal to
provide in-
formation.

10. Where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, the Commission may make such determination as it thinks appropriate on the basis of the facts available and, for the purposes of this subsection, the Commission shall have regard to the provisions of Annex II of the Anti-Dumping Agreement.

Anti-dumping
and counter-

11. - (1) Duties shall be imposed, in accordance with subsection (2), on all dumped or subsidized goods imported into Jamaica in

vailing duty.

respect of which, before the release of the goods, the Commission has made a finding that the dumping or subsidizing of such goods has caused, is causing or is likely to cause material injury.

(2) The duties referred to in subsection (1) are -

- (a) in the case of dumped goods, an anti-dumping duty in an amount equal to the margin of dumping of the imported goods; and
- (b) in the case of subsidized goods, a countervailing duty in an amount equal to the subsidy on the imported goods,

or, as the case may require, such lesser amount as is considered adequate compensation for the injury.

Other cases.

12. - (1) Duties shall be imposed in accordance with subsection (2) on all dumped or subsidized goods imported into Jamaica -

- (a) in respect of which the Commission has made a finding, after the release of the goods, that the dumping or subsidizing of goods of the same description -
 - (i) has caused, is causing and is likely to cause material injury; or
 - (ii) would have caused material injury except for the fact that provisional duty was applied or an undertaking was accepted in respect of the goods;
- (b) that were released -
 - (i) during the period commencing on the day the preliminary determination is made and ending on the day the Commission makes the finding referred to in paragraph (a);
 - (ii) in any case where an undertaking accepted by the Minister with respect to the goods has been violated, during the period commencing on the day that the undertaking is violated and ending on the day that section 16 becomes applicable to the goods.

(2) The duties referred to in subsection (1) are -

- (a) in the case of dumped goods, an anti-dumping duty in an amount equal to the margin of dumping of the goods; and
- (b) in the case of subsidized goods, a countervailing duty in an amount equal to the amount of the subsidy on the goods,

or, as the case may require, such lesser amount as may be considered adequate compensation for the injury but not exceeding, in the case of any goods to which

subsection (l)(b)(i) applies, the duty (if any) paid or payable in respect of the goods pursuant to section 16.

Anti-Dumping
duty.

13. - (1) There shall be imposed, on all dumped goods imported into Jamaica, being goods described in subsection (2), an anti-dumping duty in an amount equal to the margin of dumping of such goods or as the case may require, such lesser amount as may be considered adequate to remove the injury.

(2) The goods referred to in subsection (1) are goods -

(a) in respect of which the Commission has made a finding, after the release of the goods that -

(i) either -

(A) there has occurred a significant importation of like goods that were dumped, which dumping has caused material injury or would have caused material injury except for the application of anti-dumping measures; or

(B) the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause material injury; and

(ii) material injury has been caused by reason of the fact that the imported goods -

(A) constitute a significant importation into Jamaica; or

(B) form part of a series of importations into Jamaica, which are significant in the aggregate and have occurred within a relatively short period of time,

and in order to prevent the recurrence of the material injury, it appears necessary to the Commission that duty be assessed on the imported goods; and

(b) that were released during the period of ninety days preceding the day on which the Commission made a preliminary determination of dumping in respect of the goods or goods of that description.

Counter-
vailing duty.

14. - (1) There shall be imposed on all subsidized goods imported into Jamaica, a countervailing duty in an amount equal to the amount of the subsidy on the goods.

(2) The goods referred to in subsection (1) are goods -

(a) in respect of which the Commission has made a finding, after the release of the

goods, that -

(i) material injury has been caused by reason of the fact that the imported goods -

(A) constitute a significant importation into Jamaica; or

(B) form part of a series of importations into Jamaica, which are significant in the aggregate and have occurred within a relatively short period of time; and

(ii) a countervailing duty should be imposed on the subsidized goods in order to prevent the recurrence of such material injury;

(b) that were released during the period of ninety days preceding the day on which the Commission made a preliminary determination of subsidizing in respect of the goods or goods of that description; and

(c) in respect of which the Commission has made a specification pursuant to section 27.

(3) Where -

(a) subsidized goods on which a countervailing duty is imposed pursuant to subsection (1) are imported into Jamaica; and

(b) the amount of the subsidy on such goods is less than the amount of the duty so imposed,

then the countervailing duty imposed pursuant to this section shall be equal to the amount of the subsidy or, as the case may require, such lesser amount as may be considered adequate compensation for the injury.

Provisional
duty.

15. - (1) Where the Commission makes a preliminary determination in respect of the dumping or subsidizing of imported goods at any stage of an investigation under this Act, there may be imposed, in respect of those goods, provisional duties in accordance with this section.

(2) Subject to subsection (3), provisional duties shall be paid by the importer of dumped or subsidized goods that are of the same description as any goods to which the preliminary determination applies and that are released during the period commencing on the day on which the preliminary determination is made and ending on -

(a) the day on which the Commission terminates the investigation pursuant to section 32 with respect to goods of that description; or

(b) the day on which the Commission makes a finding with respect of any goods of that description,

whichever is the earlier.

(3) Provisional duties shall be imposed at not earlier than sixty days after the date on which the investigation was initiated and shall be effective for a period not exceeding four months, or, at the request of exporters representing a significant percentage of trade concerned, a period not exceeding six months.

(4) Where provisional duties are imposed under this section in respect of any goods, the importer of those goods shall, at his option -

- (a) pay or cause to be paid on the imported goods, provisional duty in an amount not greater than the estimated margin of dumping or the estimated amount of the subsidy on those goods; or
- (b) post or cause to be posted security in a prescribed form and in an amount or to a value not greater than the estimated margin or estimated amount of subsidy as aforesaid.

(5) Any provisional duty paid or security posted pursuant to subsection (4) shall be returned to the importer -

- (a) where the Commission causes the investigation to be terminated pursuant to section 26(2) with respect to goods of that description; or
- (b) where the Commission makes, in relation to goods of that description, a finding only to the effect that the dumping or subsidizing of those goods is likely to cause material injury.

(6) Where any provisional duty is returned to an importer pursuant to subsection (5), the importer shall be paid interest thereon at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the duty was paid and the time it is returned.

Payment and
collection
of anti-
dumping
duties.

16. - (1) Anti-dumping duties (other than provisional duties) imposed in respect of any goods under this Act -

- (a) shall be paid by the importer of such goods upon being notified in writing by the Commission that such duties are payable in respect of those goods;
- (b) shall be applied on a non-discriminatory basis on imports of such goods from all sources found to have dumped goods and caused injury, other than imports from those sources from which price undertakings have been accepted pursuant to section 32.

(2) Any person who fails to pay any amount payable under sub-section (1) shall pay, in addition to that amount, interest at the prescribed rate or at a rate determined in the prescribed manner, in respect of each month or fraction of a month commencing thirty days after the date on which a notification referred to in subsection (1)(a) is served.

Return of
duty where
finding set
aside or
rescinded or
proceedings
terminated.

17. Where -

(a) pursuant to an application under section 33 a finding described in any of sections 12 to 15 -

(i) is set aside or rescinded; or

(ii) is set aside or rescinded in relation to particular goods; or

(b) all proceedings under this Act in respect of the dumping or subsidizing of all or any of the goods to which such a finding applies are subsequently terminated as described in section 26,

any duty paid or payable under this Act on goods imported into Jamaica that are of the same description as goods to which the finding relates shall cease to be payable or be refunded to the importer forthwith after the finding is so set aside or rescinded or proceedings are so terminated.

Exemption of
goods from
application
of Act.

18. The Minister may, after consultation with the Minister responsible for finance, make regulations subject to affirmative resolution exempting any goods or class of goods from the application of this Act.

Determination
of export
price of
goods.

19. The export price of goods sold to an importer in Jamaica, notwithstanding any invoice or affidavit to the contrary, is an amount equal to the lesser of -

(a) the exporter's sale price for the goods, adjusted by deducting therefrom -

(i) the costs, charges and expenses incurred on sales of like goods for use in the country of export;

(ii) any duty or tax imposed on the goods by or pursuant to a law of Jamaica to the extent that the duty or tax is paid by or on behalf or at the request of, the exporter; and

(iii) all other costs, charges and expenses resulting from the exportation of the goods, or arising from their shipment, from the country of origin or country of export, as the case may be; and

(b) the price at which the importer has purchased or agreed to purchase the goods,

adjusted by deducting therefrom all costs, charges, expenses, duties and taxes described in paragraph (a).

Export price where information not available.

20. - (1) Where, in the opinion of the Commission, sufficient information has not been furnished or is not available to enable the determination of the export price, that price shall be determined in such manner as the Minister may prescribe.

(2) Where goods are or are to be shipped to Jamaica and there is no known purchaser in Jamaica of the goods, export price of the goods shall be determined in such manner as the Commission may specify.

Export price where goods are exported through another country.

21. - (1) Where goods are exported to Jamaica from one country but pass in transit through another country, the export price of the goods shall, subject to such terms and conditions as are prescribed as to shipment, documentation, warehousing, transshipment or the like, be determined as if the goods were shipped directly to Jamaica from the first mentioned country.

(2) Where any goods are or are to be shipped indirectly to Jamaica from the country of origin through one or more other countries, the export price of the goods shall, notwithstanding any other provision of this Act, be determined as if the goods were or were to be shipped directly to Jamaica from the country of origin.

Investigation on receipt of complaint.

22. - (1) Subject to this section, where the Commission receives a written complaint in respect of the dumping or subsidizing of goods, the Commission shall, within forty-five days after receipt of such complaint, carry out an investigation into the matter if the Commission is satisfied that -

- (a) the complaint is properly documented;
- (b) there is evidence that the goods have been or are being dumped or subsidized;
- and
- (c) the evidence discloses a reasonable indication that the dumping or subsidizing of the goods has caused, is causing or is likely to cause material injury.

(2) The Commission shall not carry out an investigation pursuant to subsection (1) unless the Commission has determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by the domestic producers of like goods, that the complaint has been made by or on behalf of those producers.

(3) For the purposes of subsection (2), the complaint shall be considered to have been made by or on behalf of the domestic producers if it is supported by those domestic

producers whose collective output constitutes more than fifty percent of the total production of the like goods produced by that portion of the domestic industry expressing either support for or opposition to the complaint.

(4) An investigation shall be initiated where the domestic producers expressly supporting the complaint pursuant to subsection (2) account for more than twenty-five percent of total production of like goods produced by the domestic industry.

Procedures re-
investigation
complaint.

23. - (1) Where the Commission receives a written complaint or intends to initiate an investigation in respect of the dumping or subsidizing of goods, the Commission shall, in writing, within forty-five days there- after -

- (a) where the complaint is properly documented, inform the complainant, and, in the case of subsidized goods, the government of the country of export, that the complaint was received and that it is properly documented; or
- (b) where the complaint is not properly documented, inform the complainant that the complaint was received and that additional information and material are needed.

(2) For the purposes of subsection (1), the date on which the Commission receives the additional information and material referred to in subsection (1)(b) shall be deemed to be the date on which the complaint was received.

Where Commis-
sion decides
not to
specified in the
investigation.

24. Where, after receipt of a properly documented written complaint in respect of the dumping or subsidizing of goods the Commission decides not to conduct an investigation in respect of some or all of the goods specified in the complaint, the Commission shall give written notice of its decision setting out the reasons therefor, to the complainant and, in the case of the subsidized goods, to the government of the country of export.

Notice of
intention to
commence
investiga-
tion.

25. - (1) Where the Commission decides to proceed with an investigation in respect of the dumping or subsidizing of goods -

- (a) the Commission shall give notice of that decision to -
 - (i) the Minister; and
 - (ii) the exporter, the importer, the government of the country of export, the complainant (if any,) and such other person as may be prescribed; and
- (b) a copy of the notice shall be published in the **Gazette** and in a daily newspaper circulating in Jamaica.

(2) A notice given under subsection (1) shall -

- (a) specify the goods being investigated;
- (b) specify the country or countries in which the goods originated or from which they are exported;
- (c) give a summary of the information received;
- (d) invite representations regarding the investigation to be made to the Commission;
- (e) specify a period within which interested parties may present their views in writing to the Commission or make arrangements with the Commission to be heard, which period shall, in the case of an exporter or the government or person giving a subsidy affecting the goods in question, be not less than thirty days from the commencement of the investigation.

Termination
of investi-
gation.

26. - (1) Where at any time before making a preliminary determination in an investigation relating to the dumping or subsidizing of goods -

- (a) the Commission is satisfied, in respect of some or all of those goods that -
 - (i) there is insufficient evidence of dumping to justify proceeding with the investigation in relation thereto; or
 - (ii) the margin of dumping is **de minimis** or that the volume of dumped imports actual or potential, or the injury, is negligible;
- (b) the Commission comes to the conclusion, in respect of some or all of those goods, that the evidence does not disclose a reasonable indication that the dumping or subsidizing thereof has caused or is likely to cause material injury,

the Commission shall act in accordance with subsection (2).

(2) The Commission shall -

- (a) cause the investigation to be terminated with respect to the goods in respect of which it is satisfied as mentioned in subsection (1)(a) or has come to the conclusion referred to in subsection (1)(b); and
- (b) cause notice of the termination to be given and published as provided in section 25.

(3) For the purposes of subsection (1) -

- (a) the margin of dumping shall be considered to be **de minimis** if it is less than two percent, expressed as a percentage of the export price;
- (b) the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for

less than three percent of imports of the like product in Jamaica, unless countries which individually account for less than three percent of imports of the like product collectively account for more than seven percent of imports of the like product.

Preliminary determination of dumping or subsidizing.

27. - (1) Subject to sections 31 and 32, within ninety days after the commencement of an investigation relating to the dumping or subsidizing of goods, the Commission shall, in accordance with subsection (2), make a preliminary determination of dumping or subsidizing with respect to the goods in respect of which the investigation has not been terminated pursuant to section 26.

(2) The Commission shall make the preliminary determination after estimating and specifying, in relation to each importer of goods in respect of which the investigation is made, as follows -

(a) in the case of dumped goods -

(i) estimating the margin of dumping of the goods to which the preliminary determination applies using the information available to the Commission at the time the estimate is made; and

(ii) specifying the goods to which the preliminary determination applies;

(b) in the case of subsidized goods -

(i) estimating the amount of the subsidy on the goods to which the preliminary determination applies using the information available to the Commission at the time the estimate is made; and

(ii) specifying the goods to which the preliminary determination applies; and

(iii) subject to subsection (2), where the whole or any part of the subsidy on the goods to which the preliminary determination applies is an export subsidy, specifying that there is an export subsidy on the goods and estimating the amount of the export subsidy thereon; and

(c) in the case of dumped or subsidized goods, specifying the name of the person who, on the information available to the Commission at the time it makes the estimate referred to in paragraph (a)(i) or (b)(i), as the case may be, the Commission believes to be the importer in Jamaica of the goods.

Notice of preliminary

28. Where the Commission makes a preliminary determination of dumping or subsidizing in respect of goods, the Commission shall -

determination.

- (a) publish notice of its determination as provided in section 25;
- (b) give written notice of its determination to the Minister, stating the reasons therefor, together with such other material relating to the determination as may be necessary.

Extension of
time.

29. - (1) In any investigation relating to the dumping or subsidizing of goods, the Commission, before the expiration of the ninety days referred to in section 27, shall give written notice to the Minister, the persons and the government referred to in section 25 that, by reason of the matters specified in subsection (2), the decision referred to in paragraph (d) of that subsection will not be made within the period of ninety days as aforesaid and that the period of ninety days is extended to one hundred and thirty-five days.

(2) The matters referred to in subsection (1) are -

- (a) the complexity or novelty of the issues presented by the investigation;
- (b) the variety of goods or number of persons involved in the investigation;
- (c) the difficulty of obtaining satisfactory evidence in the investigation;
- (d) any other circumstances specified in the notice that, in the opinion of the Commission, makes it unusually difficult for the Commission to decide within the ninety days whether to terminate the investigation with respect to some or all of the goods or proceed in accordance with section 26(1) or accept an undertaking.

Final deter-
mination or
termination.

30 - (1) Within ninety days after making a preliminary determination of dumping or subsidizing in respect of goods, the Commission shall make a final determination of the matter -

- (a) upon being satisfied, in relation to each importation of the goods, that the conditions specified in subsection (2) apply; and
- (b) after taking action in accordance with subsection (3).

(2) The conditions mentioned in subsection (1)(a) are that - (a) the goods have been or are being dumped or subsidized; and

- (b) neither the margin of dumping of or the amount of the subsidy on the goods, nor the actual or potential volume of dumped or subsidized goods is negligible.

(3) The Commission shall specify in relation to each importation the following -

- (a) in the case of dumped goods, the goods to which the determination applies and

the margin of dumping of the goods;

(b) in the case of subsidized goods -

(i) the goods to which the determination applies;

(ii) the amount of the subsidy on the goods; and

(iii) where the whole or any part of the subsidy is an export subsidy,
the amount of the export subsidy on the goods.

(4) Where the Commission makes a final determination of dumping or subsidizing, the Commission shall notify the Minister accordingly and shall cause notice of such determination to be published as provided in section 25.

Action on
final deter-
mination or
decision
referred back
by Court.

31. - (1) Where a final determination under section 30(1) is set aside and the matter referred back to the Commission on an application under section 34, the Commission shall -

(a) reconsider the matter and make a new final determination; and

(b) cause notice of the action taken pursuant to paragraph (a) to
be given and published as provided in section 25.

(2) Where a final determination under section 30(1) is referred back to the Commission pursuant to an order under section 33 the Commission shall -

(a) reconsider the final determination and confirm or rescind it or, in the case of a
final determination, vary it; and

(b) cause notice of the action taken pursuant to paragraph (a) to
be given and published as provided in section 25.

(3) Where the Commission reconsiders a matter involving a final determination pursuant to subsection (1) or reconsiders and rescinds a final determination pursuant to subsection (2), section 30 shall again apply in respect of the goods to which the final determination applied as if that section had not previously applied in respect of those goods, so, however, that the action that the Commission is required by that section to take shall, notwithstanding anything therein, be taken by the Commission within such period as is specified by the Supreme Court.

Acceptance of
undertaking.

32. - (1) Subject to subsection (2), the Commission may, in any investigation relating to the dumping or subsidizing of goods, accept an undertaking with respect to dumped or subsidized goods where it is of the opinion that observance of the undertaking will eliminate -

- (a) the margin of dumping of or the subsidy on the goods -
 - (i) where the undertaking is given by an exporter, if they are sold by the exporter to importers in Jamaica; and
 - (ii) where the undertaking is given by the government of a country from which the goods are exported to Jamaica, if they are exported to Jamaica from that country pursuant to sales thereof by exporters to importers in Jamaica; or
- (b) any material injury that is being or is likely to be caused by the dumping or subsidizing.

(2) The Commission shall not accept an undertaking with respect to dumped or subsidized goods -

- (a) unless it is of the opinion that observance of the undertaking will not cause -
 - (i) where the undertaking is given by an exporter, the price at which the goods are sold to importers in Jamaica by the exporter; or
 - (ii) where the undertaking is given by the government of a country, the price at which the goods will be sold to importers in Jamaica when exported to Jamaica from that country,
 - to increase by an amount which is not less than the estimated margin of dumping of the goods or the estimated amount of the subsidy thereon;
- (b) where it has made a preliminary determination of dumping or subsidizing with respect to the goods; or
- (c) where it is of the opinion that it would not be practicable to administer the undertaking.

(3) The Commission shall, where practicable, provide to the exporter the reasons which have led it to consider acceptance of an undertaking as inappropriate and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

Application
for judicial
review.

33. An application may be made to the Supreme Court to review and set aside -

- (a) a final determination of the Commission under section 30;
- (b) a decision of the Commission under section 31 to review or not to review an undertaking;
- (c) any order, finding, ruling or determination of the Commission.

Grounds of

34. - (1) An application under section 33 may be made on the grounds

application
for review.

that the Commission has -

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

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

Regulations.

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

Repeal of
Customs Duties
(Dumping and
Subsidies)
Act.

36. The Customs Duties (Dumping and Subsidies) Act is hereby repealed.

SCHEDULE

(Section 3)

Constitution of the Board. 1. The Commission shall consist of a chairman and four other members appointed by the Minister.

Temporary appointment. 2. The Minister may appoint any person to act temporarily in the place of any member of the Commission in the case of the absence or inability to act of such member.

Chairman. 3. - (1) The Minister shall appoint such person as he considers suitably qualified to be Chairman of the Commission.

(2) In the case of the absence or inability to act of the Chairman, the Minister may appoint any other member to perform the functions of the Chairman.

Tenure of office. 4. - (1) The appointment of every member of the Commission shall be evidenced by instrument in writing, and such instrument shall state the period of office of the member, which shall not exceed three years.

(2) Every member of the Commission shall be eligible for reappointment.

(3) The Minister may at any time revoke the appointment of any member of the Commission if he thinks it expedient to do so.

Resignation. 5. - (1) Any member of the Commission other than the Chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman, and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Commission.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect from the date of the receipt by the Minister of such instrument.

Publication of membership. 6. The names of all members of the Commission as first constituted and every change in the membership thereof shall be published in the Gazette.

Seal and execution of documents. 7. - (1) The Seal of the Commission shall be kept in the custody of the Chairman or any officer of the Commission authorized by the Commission in that behalf, and shall be affixed to instruments pursuant to a resolution of the Commission, in the presence of the Chairman or any other member of the Commission authorized to act in that behalf, and the secretary thereof.

(2) The Seal of the Commission shall be authenticated by the signature of the Chairman.

(3) All documents other than those referred by law to be under seal, made by, and all decisions of the Commission may be signified under the hand of the Chairman and any other member or officer of the Commission authorized to act in that behalf.

Procedure and meetings. 8. - (1) The Commission shall meet at such times as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such places and times and on such days as the Commission shall determine.

(2) The Chairman may at any time call a special meeting of the Commission and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two members of the Commission.

(3) The Chairman shall preside at all meetings of the Commission at which he is present and in the case of the Chairman's absence from any meeting, the members present forming a quorum shall elect one of their number to preside at the meeting.

(4) The decision of the Commission shall be by a majority of votes and, in addition to an original vote, the Chairman or other person presiding at a meeting shall have a casting vote in any case in which the voting is equal.

(5) Minutes in proper form of each meeting of the Commission shall be kept.

(6) The quorum of the Commission shall be [three].

(7) Subject to the provisions of this Act the Commission may regulate its own proceedings.

(8) The validity of any proceedings of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

Expenses of the Commission.

9. The expenses of the Commission shall be defrayed out of sums provided for the purposes of the Commission by Parliament.

Disclosure of financial interest.

10. A member of the Commission who is interested in any company or undertaking which is an interested party in any proceedings before the Commission shall disclose to the Commission the fact and nature of his interest and shall not take part in any deliberation or decision of the Commission relating to such matter, and such disclosure shall be recorded in the records of the Commission.

Protection of members.

11. - (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Commission in respect of any act done ***bona fide*** in pursuance or execution or intended execution of the Commissions functions under this Act.

(2) Where any member of the Commission is exempt from liability by reason only of the provisions of this paragraph, the chairman shall be liable to the extent that it would be if the member were a servant or agent of the Commission.

- Report to
Minister. 12. The Commission shall furnish the Minister with such report and other information as he may require from time to time with respect to the activities of the Commission.
- Delegation. 13. - (1) Subject to the provisions of this Act the Commission may delegate to any member or committee of the Commission the power and authority to carry out such functions of the Commission as the Commission may determine.
- (2) Every delegation under this paragraph shall be revocable by the Commission and no delegation shall prevent the exercise by the Commission of any function delegated.
- Remuneration 14. There shall be paid from the funds of the of members. Commission to the Chairman and other members of the Commission such remuneration whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.
- Chairman or
member of
the Commis-
sion not
public office. 15. The office of Chairman or member of the Commission shall not be a public office for the purpose of Chapter V of the Constitution of Jamaica.

MEMORANDUM OF OBJECTS AND REASON

The Government has decided to introduce new legislation in order to upgrade the existing Anti-Dumping laws. This Bill therefore seeks to repeal and replace the Customs Duties (Dumping and Subsidies) Act.

The Bill provides inter alia for -

- (a) the establishment of an Anti-Dumping and Subsidies Commission;
- (b) the imposition of Anti-Dumping and Countervailing duties in relation to goods which are found on investigation to be dumped or subsidized;
- (c) the exemption of goods from the application of the Act;
- (d) the carrying out by the Commission of investigations to determine whether goods are dumped or subsidized.

The Bill also gives recognition to the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade, which was concluded in Marrakesh, Morocco in 1994. Accordingly, the requirements of the Act regarding the determination of dumping etc. are intended to be in harmony with the Agreement.

Phillip Paulwell
Minister of Commerce and Technology

THE CUSTOMS DUTIES DUMPING AND SUBSIDIES) ACT, 1999
(Act of 1999)

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SCHEDULE