

**NOTIFICATIONS OF LAWS, REGULATIONS AND
ADMINISTRATIVE PROCEDURES RELATING
TO SAFEGUARD MEASURES**

JAMAICA

The following communication, dated 18 March 2004, has been received from the Permanent Mission of Jamaica.

With reference to the notification obligation under Article 12.6 of the Agreement on Safeguards, Jamaica has made the following notification.

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**THE SAFEGUARD ACT 2001
(Act 24 of 2001)**

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A BILL

ENTITLED

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.

[]

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
commencement.

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 Safeguards 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

Appoint-
ment of
Investigating
Authority.

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

Functions of
Investigating
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 –

- (g) summon and examine witnesses;

- (h) request and examine documents;
- (i) administer oaths;
- (j) require that any document submitted to it be verified by affidavit; and
- (k) 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
commence-
ment 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 provisional safeguard measure, forthwith publish a notice of that application in the *Gazette* and in a daily newspaper.

Notice of application of provisional safeguard.

(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 provisional 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 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

Determination
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.

Definition Safeguard Measures

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

- (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,

General
principles for
applying
definitive
safeguard
measure.

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

Progressive
liberalization.

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 to 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 1 January 1995 (hereinafter referred to as an earlier safeguard measure).

Re-application
of 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*

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

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

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.

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MEMORANDUM OF OBJECTS AND REASONS

As a result of the increased liberalization of trade, domestic producers are facing increasingly significant import competition. Under the World Trade Organization (WTO) Agreement 1994, a Member may implement temporary safeguard measures on products from all sources imported in 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 producing like or directly competitive products.

These safeguard measures are applied only where the imports cause or threaten to cause serious injury or a significant overall impairment in the position of the industry. The purpose of these measures is to give the affected domestic industry an opportunity to adjust to the increased import competition. It is proposed that a safeguard measure be imposed only as long as is necessary to prevent or remedy serious injury.

This Bill seeks to make provision for the application of safeguard measures in keeping with the WTO Agreement. The Bill provides, *inter alia*, for the establishment of an investigating authority:

- (a) to conduct an investigation, whether at the request of a domestic industry or on its own initiative in order to determine whether increased imports of a product have caused or threatened to cause injury;
- (b) to impose safeguard measures, including provisional measures, by way of increased duties and import quotas;
- (c) to conduct hearings in relation to investigations;
- (d) to keep a public register of its decisions and other prescribed information.

Interested parties must be notified by the Investigating Authority and given an opportunity to present evidence and opinions and respond to the presentation of other parties.

The Bill also provides for:

- (a) the protection of trade secrets and other confidential information;
- (b) the progressive liberalization of safeguard measures which are applied for periods in excess of one year;

- (c) a review by the Investigating Authority of any definitive safeguard measure that is applied for more than three years;
- (d) the allocation of quotas among exporting countries by agreement between those countries and the Government;
- (e) the restriction on the application of safeguard measures in relation to a product imported from a developing country which supplies less than *three per cent* of the total imports of that product;
- (f) the factors to be taken into account by the Investigating Authority in making a determination in relation to a product being investigated.

PHILLIP PAULWELL
Minister of Industry, Commerce and Technology

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THE JAMAICA GAZETTE SUPPLEMENT
PROCLAMATIONS, RULES AND REGULATIONS

Vol. CXXVI

MONDAY, 4 AUGUST 2003

No. 77

No. 92

THE SAFEGUARD ACT, 2001

(Act 24 of 2001)

THE SAFEGUARD ACT, 2001 (APPOINTED DAY) NOTICE

In exercise of the power conferred upon the Minister by section 1 of the Safeguard Act, 2001, the following Notice is hereby given:

1. This Notice may be cited as the Safeguard Act, 2001 (Appointed Day) Notice.
2. The 1st day of August 2003 is hereby appointed as the day on which the Safeguard Act, 2001 shall come into operation:

Dated this 31st day of July 2003.

PHILLIP PAULWELL
Minister of Commerce, Science and Technology

THE JAMAICA GAZETTE SUPPLEMENT
PROCLAMATIONS, RULES AND REGULATIONS

Vol. CXXVI

THURSDAY, 21 AUGUST 2003

No. 84

No. 104

THE SAFEGUARD ACT, 2001

THE SAFEGUARD REGULATIONS, 2003

In exercise of the powers conferred upon the Minister by sections 5, 6, 9, 11, 14, 15, 18, 22, 24, 30 and 33 of the Safeguard Act, the following Regulations are hereby made:

1. These Regulations may be cited as the Safeguard Regulations, 2003.
2. (1) A determination as to whether increased imports of an investigated product have caused serious injury to a domestic industry under section 5 of the Act shall be based on the following factors, that is to say:
 - (a) the rate and amount of increase in imports of the investigated product, in absolute terms and relative to domestic production of like or directly competitive products;
 - (b) the share of the domestic market taken by increased imports of the investigated product;
 - (c) the prices of the investigated product, especially for the purposes of determining whether the industry has suffered price effects, including:
 - (i) price undercutting;
 - (ii) price suppression; and
 - (iii) price depression;
 - (d) the impact of increased imports of the investigated product on the domestic industry as evidenced by relevant economic indicators, including:
 - (i) production;
 - (ii) utilization of production capacity;
 - (iii) changes in the levels of inventory;
 - (iv) the market share;
 - (v) any change in the levels of sale;
 - (vi) the level of employment and wages in the domestic industry;
 - (vii) productivity;

- (viii) profit;
- (ix) return on investment; and
- (x) cash flow;
- (e) such other factor as the Investigating Authority considers relevant.

(2) A determination as to whether increased imports of an investigated product have threatened to cause serious injury to a domestic industry under section 5 of the Act shall be based on the following factors, that is to say:

- (a) the actual and potential export capacity of the country or countries of origin or of export and the likelihood that this capacity will be used for exports into Jamaica, taking into account the availability of other export markets to absorb an increase;
 - (b) the rate of increase in the import of the product under investigation to Jamaica in absolute and relative terms;
 - (c) any build-up of inventories of the investigated product in Jamaica and in the countries of export;
 - (d) evidence of the possibility of a further increase in imports;
 - (e) trade restriction on exports to third country markets;
 - (f) the potential impact of increased imports of the investigated product on the domestic industry as evidenced by relevant economic indicators, including:
 - (i) production;
 - (ii) utilization of production capacity;
 - (iii) changes in the levels of inventory;
 - (iv) the market share;
 - (v) any change in the level of sale;
 - (vi) productivity;
 - (vii) profit;
 - (viii) return on investment;
 - (ix) cash flow; and
 - (g) such other factors as the Investigating Authority considers relevant.
- (3) In this Regulation:

"price depression" means the reduction in the domestic industry's selling price as a result of increased imports of the investigated product;

"price suppression" means the decline in the margin between an organization's unit cost and selling price;

"price undercutting" means the margin between the Jamaican market price of the investigated product and that of the domestic like or directly competitive product.

INVESTIGATION

Conduct of Investigation

2. A written request by or on behalf of a domestic industry under section 6(1)(a) of the Act shall include the following information:

- (a) the full name, business name, where applicable, and address of the applicant;
- (b) a description of the volume and value of its domestic production of the like or directly competitive products;
- (c) a list of all known domestic producers of the like or directly competitive products;
- (d) whether the request is made by or on behalf of the domestic industry, and the percentage of domestic production of the like or directly competitive products produced by the domestic industry;
- (e) a complete description of the investigated product, including its trade name or identification, technical specifications, characteristics, uses, tariff classification and the customs duties applicable;
- (f) a complete description of the domestic like or directly competitive product, including its trade name or identification, technical specification, characteristics, uses and tariff classification;
- (g) evidence that the domestic product is like or directly competitive to the imported product;
- (h) the name of the country of origin and the country of export of the imported product;
- (i) the identity and address of each known foreign producer, exporter and domestic importer of the imported product, or his duly authorized representative;
- (j) information, by country of origin, on the volume and value of the imported product which shows the increase in imports of the investigated product in absolute terms or relative to domestic production, or both, for each of the three calendar years preceding the request, and any more recent partial-year data on a monthly basis or, where the data is unavailable, other available basis;
- (k) the volume and value of the domestic like or directly competitive product for each of the last years and the expected volume of production in the year in which the request is being submitted, on a monthly basis or, where the data is unavailable, other available basis;

- (l) information in support of the existence of serious injury or threat of serious injury to the domestic industry, for each of the three calendar years preceding the request and any more recent partial-year data, on a monthly basis or, where the data is unavailable, on such basis as the Investigating Authority may determine, including:
 - (i) the volume and value of domestic production;
 - (ii) utilization of production capacity;
 - (iii) any change in the levels of inventory;
 - (iv) the market share;
 - (v) any change in the levels of sales;
 - (vi) the level of employment and wages in the domestic industry;
 - (vii) any change in the price level;
 - (viii) productivity;
 - (ix) profit and loss;
 - (x) cash flow;
 - (xi) the export capacity of the exporting countries;
 - (xii) inventories in Jamaica and in the exporting countries;
 - (xiii) any information regarding the probability that imports will increase, including trade restrictions on exports to third country markets; and
 - (xiv) any other indicator considered relevant by the applicant.
- (m) an explanation, in light of the information provided and the requirements of the Act, of the reasons why it is believed that serious injury exists or there is a threat thereof and why it is believed to be caused by the increased imports;
- (n) a statement giving:
 - (i) specific reasons and objectives for seeking the application of a safeguard measure; and
 - (ii) the type and level of safeguard measure considered necessary to ensure the achievement of the objects pursued;
- (o) a plan for the adjustment of the domestic industry from competition from imports, in accordance with the reasons and objectives set out in the statement mentioned in paragraph (n);
- (p) where a provisional safeguard measure is sought:
 - (i) information regarding circumstances in which delay in taking action will cause damage to the domestic industry, which it would be difficult to repair;

- (ii) a statement indicating the level of tariff increases requested; and
 - (iii) an economic report which quantifies the impact of the measure requested on the final and intermediate consumers of the product concerned, and on the public interest; and
 - (q) such other information as the Investigating Authority may reasonably require.
3. Every person who:
- (a) makes a written request under section 6(1)(a) of the Act; and
 - (b) alleges that any information contained in or submitted along with the request is confidential,
- shall submit a confidential version along with a non-confidential summary of the request.
4. A notice of an investigation under section 9(2) of the Act shall contain the following information:
- (a) the data and time of commencement of the investigation;
 - (b) the reasons for the investigation;
 - (c) a summary of information on which allegations of increased imports and any serious injury or threat thereof caused by increased imports are based;
 - (d) whether the application of a provisional measure will be considered;
 - (e) the name, business address and telephone numbers of the contact person at the offices of the Investigating Authority;
 - (f) the proposed schedule for the investigation, including:
 - (i) the date by which interested parties desiring to participate in the investigation must so inform the Investigating Authority in writing;
 - (ii) where the application of a provisional measure will be considered, the schedule for and the deadline pertaining to the preliminary phase of the investigation;
 - (iii) the date by which a hearing, if desired, must be requested; and
 - (iv) the proposed dates for the determination regarding the application of a provisional measure, if relevant, for the determination regarding serious injury.

Public Register

5. (1) The public register established under section 16 of the Act, shall contain:
- (a) all non-confidential submissions as well as verification reports, records of hearing and any other information which is of a public nature;

- (b) all notices and statements of reasons relating to the investigation published by the Investigating Authority.

(2) The public register shall be made available to members of the public during the business hours of the Investigating Authority for the purpose of inspection and the making of copies of extracts therefrom upon payment of the prescribed fee.

(3) A separate register shall be kept in respect of or any confidential information submitted to the Investigating Authority and shall not be open for inspection.

6. In order to verify information submitted or to obtain further details, the Investigating Authority may conduct visits and inspect facilities of an interested party.

Safeguard Measures

7. A notice of application of a provisional safeguard measure under section 18 of the Act shall contain the following information:

- (a) the information specified in regulation 3;
- (b) the country or countries of origin of the investigated product;
- (c) the basis for the determination of:
 - (i) circumstances under which delay would cause damage that would be difficult to repair;
 - (ii) the existence of clear evidence that increased imports of the investigated product have caused or threaten to cause serious injury.
- (d) the amount of tariff increase proposed as the provisional safeguard measure;
- (e) the duration of the provisional safeguard measure; and
- (f) such other information as the Investigating Authority thinks necessary.

8. A notice upon making a determination as to the cause of serious injury or threat of serious injury under section 22 of the Act shall contain the following information:

- (a) the information specified in regulation 3;
- (b) the country of origin of the investigated product;
- (c) a summary of the information obtained in the investigation, including:
 - (i) the factors considered and the relevance of those factors;
 - (ii) the finding and conclusions reached on the issues of facts and law considered;
- (d) the reasons why the Investigating Authority has concluded that the application of a definitive safeguard measure is in the public interest; and

- (e) the name, business address and telephone numbers of the contact person at the offices of the Investigating Authority.

9. A notice of application of a definitive safeguard measure under section 24 of the Act shall contain the following information:

- (a) the information specified in regulation 3;
- (b) a summary of the affirmative injury determination, including the factors considered and the relevance thereof, as well as of the findings and conclusions, and the reasons therefor, on the issues of fact and law considered;
- (c) the reasons why the Minister has concluded that the application of a definitive safeguard measure is in the public interest;
- (d) the form, level and duration of the proposed definitive safeguard measure, and an explanation thereof in light of the domestic industry's adjustment plan;
- (e) the date of application of the definitive safeguard measure;
- (f) if a quantitative restriction is proposed, the allocation of the quotas among the supplier countries, and an explanation and the relevant information regarding the basis on which the allocation has been made;
- (g) if the duration of the measure is more than one year, a timetable for the progressive liberalization of the measure; and
- (h) the name of any developing country which is exempted from the measure.

10. A notice of termination of an investigation without applying a definitive safeguard measure under section 27 of the Act for publication in the *Gazette* shall contain the following information:

- (a) a complete description of the investigated product, including its trade name or identification, technical specifications, characteristics and uses, its tariff classifications and duties applicable;
- (b) a complete description of the like or directly competitive product, including its trade name or identification, technical specifications, characteristics and uses;
- (c) the business name and address of the applicant, if any, and all other known producers of the domestic like or directly competitive products;
- (d) the country or countries of origin or export of the investigated product;
- (e) the name, address and telephone number of contact person at the Investigating Authority;
- (f) the reason for the termination of the investigation.

11. A notice of commencement of a review of a definitive safeguard measure under section 30 of the Act shall:

- (a) be published in the *Gazette* and in a daily newspaper; and

- (b) contain the information specified in regulation 5.

12. A notice of the decision taken consequent on the review of a definitive safeguard measure under section 30 of the Act shall contain the following information:

- (a) a complete description of the investigated product, including its trade name or identification, technical specifications, characteristics and uses, its tariff classifications and duties applicable;
- (b) a complete description of the like or directly competitive product, including its trade name or identification, technical specifications, characteristics and uses;
- (c) the business name and address of the applicant, if any, and all other known producers of the domestic like or directly competitive products;
- (d) the country or countries of origin or export of the investigated product;
- (e) the name, address and telephone number of contact person at the Investigating Authority;
- (f) the date of application of the definitive safeguard measure and the form and duration of the definitive safeguard measure imposed;
- (g) the reason for the Investigating Authority's decision to either maintain or withdraw the definitive safeguard measure or to increase the pace of liberalization of the domestic industry.

13. (1) The domestic industry's written request for an extension of a definitive safeguard measure should be received by the Investigating Authority no later than nine months before the end of the initial period of application of the measure.

(2) In addition to the requirements set out in regulation 3 the request shall contain details demonstrating that:

- (a) an extended period of application of the measure continues to be necessary to prevent or remedy serious injury to the domestic industry;
- (b) the domestic industry is adjusting to newly occurring circumstances; and
- (c) the domestic industry is carrying out its adjustment plan.

Quotas

14. (1) A definitive safeguard measure in the form of a quota on imports of the investigated product, applied pursuant to section 25 of the Act, shall not reduce the quantity of those imports below the average level registered in the most recent three representative years for which statistics are available (hereinafter referred to as the "representative period")

(2) Notwithstanding the provisions of paragraph (1), the Investigating Authority may, if it is satisfied that a different level is necessary to prevent or remedy serious injury or threat thereof, apply a quota which reduces the quantity of imports of the investigated product below the average level registered in the representative period.

(3) Where more than one country exports the investigated product to Jamaica, the quota on imports shall be allocated among supplying countries, on the basis of the agreement reached pursuant to section 25(3) of the Act.

15. (1) Where the Investigating Authority determines that an allocation pursuant to regulation 15(3) is not reasonably practicable, the Investigating Authority shall allocate the quota among Members having a substantial interest in supplying the investigated product.

(2) An allocation under paragraph (1) shall be based upon the proportions of the investigated product supplied by such Members during the representative period.

16. In making an allocation of the quota among supplying countries, the Investigating Authority shall take account of any special factors which have affected trade in the investigated product.

17. Where the Investigating Authority determines that there is serious injury to the domestic industry, it may allocate the quota among supplying members on a different basis, provided that consultations have been held with supplying members under the auspices of the Committee, and the Committee is satisfied that:

- (a) imports from certain suppliers have increased disproportionately in relation to the total increase in imports of the investigated product during the representative period;
- (b) the reasons for the departure from the method for quota allocation specified in regulation 15(3) are justified; and
- (c) the conditions of such departure are the most equitable to all concerned suppliers of the product.

Hearings

18. A notice of the hearing shall be published in the *Gazette* and in a daily newspaper.

19. If an interested party fails to attend a hearing, the Investigating Authority may:

- (a) proceed without the participation of the party; and
- (b) take account of such facts and information available to it.

20. (1) The facts required to be submitted under section 4(3) of the Act shall be submitted no later than five days before the scheduled date of the hearing.

(2) An interested party may, within five days after the hearing, submit further written arguments and information in response to the arguments and information presented at the hearing.

Dated this 18th day of March, 2003.

PHILLIP PAULWELL,
Minister of Commerce, Science and Technology.