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Committee on Anti-Dumping Practices

Committee on Subsidies and Countervailing Measures

NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

JAMAICA

The following communication, dated 8 August 1995, has been received from the Permanent Mission of Jamaica.

In accordance with Article 18.5 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 and Article 32.6 of the Agreement on Subsidies and Countervailing Measures, the Government of Jamaica hereby notifies the Committee on Anti-Dumping Practices and Committee on Subsidies and Countervailing Measures that it is currently applying the Customs Duties (Anti-Dumping and Subsidies) Act 1959. Attached herewith is a copy of the Act.

A new Act is currently being drafted in order to implement the provisions of the Agreements in domestic law. When the Act has entered into force, a copy will be sent to the Secretariat.

The Government of Jamaica also wishes to state that with respect to Article 16.5 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, and Article 25.12 of the Agreement on Subsidies and Countervailing Measures, the competent authority for initiating and conducting anti-dumping, subsidies and countervailing duty investigations is the Anti-Dumping Advisory Board established under the Customs Duties (Anti-Dumping and Subsidies) Act of 1959.

CUSTOMS DUTIES (DUMPING AND SUBSIDIES)

THE CUSTOMS DUTIES (DUMPING AND SUBSIDIES) ACT

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SCHEDULE

CUSTOMS DUTIES (DUMPING AND SUBSIDIES)

THE CUSTOMS AND DUTIES (DUMPING AND SUBSIDIES) ACT

[4th March 1959]

1. This Act may be cited as the Customs Duties (Dumping and Subsidies) Act.

2. (1) In this Act -

"Board" means the Anti-Dumping Advisory Board established under section 14;

"Commissioner" means the Commissioner of Customs and Excise;

"country" includes any territory;

"fair market price" means the price determined in accordance with the provisions of section 9;

"importer" has the meaning assigned to it by section 2 of the Customs Act,

and references to producing goods include references to growing or manufacturing goods and to the application of any process in the course of producing goods.

(2) In this Act references to the country from which goods are exported to the Island are references to the country from which they were consigned to the Island and goods which in the course of consignment from any country to the Island pass through or are transhipped in any third country shall not on that account be regarded for the purposes of this Act as having been exported from that third country.

3. (1) Where it appears to the Minister -

(a) that goods of any description are being or have been imported into the Island in circumstances in which they are under the provisions of this Act to be regarded as having been dumped; or

(b) that some Government or person outside the Island has been giving a subsidy affecting goods of any description which are being or have been imported into the Island,

and that, having regard to all the circumstances it would be in the interest of the Island, he may exercise the power conferred on him by this Act to impose and vary duties of customs in such manner as he thinks necessary to meet the dumping or the giving of the subsidy.

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

(3) References in this Act to giving a subsidy are references to giving, directly or indirectly, a bounty or subsidy on the production or export of goods (whether by grant, loan, tax relief or in any other way and whether related directly to the goods themselves, to materials of the goods, or to something else) and include -

(a) the giving of any special subsidy on the transport of a particular product; and

(b) the giving of favourable treatment to producers or exporters in the course of administering any governmental control over the exchange of currencies where such treatment has the effect of assisting a reduction of the prices of goods offered for export,

but do not include the application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

4. (1) The power which the Minister may exercise under this Act is a power by order to impose on goods of a description specified in the order a duty of customs chargeable on the import of the goods into the Island at a rate specified in the order.

(2) The matters by reference to which the description of goods in an order is framed shall include either the country in which the goods originated or the country from which the goods were exported to the Island.

(3) Subject to the provisions of subsection (2), an order under this section may include such provisions with respect to the description of the goods chargeable with duty and with respect to the cases or the manner in which duty is chargeable as may appear to the Minister to be required for the purposes of this Act, and in particular -

(a) provisions limiting the description of the goods by reference to the particular persons or organizations by whom the goods were produced or who were concerned with the production of the goods in some specified manner;

(b) provisions defining the rate of duty by reference to value or weight or other measure of quantity;

(c) provisions directing that duty be charged for any period or periods whether continuous or not, or at different rates for different periods or parts of periods; and

(d) in connection with the commencement, variation or termination of a duty, provisions authorizing repayments in respect of duty where it is shown that the prescribed conditions are fulfilled.

(3A) An order under this section shall have effect for such period (not exceeding twelve months) as may be specified therein.

(4) Any duty chargeable under this Act on any goods shall be chargeable in addition to any other duty of customs for the time being chargeable thereon, and notwithstanding the provisions of any other enactment for the time being in force in the Island (including, unless the contrary is expressly provided, any future enactment) the charge of duty under this Act shall not affect liability to customs duty chargeable under any other enactment or the amount of any such duty.

(5) Subject to the provisions of this Act any duty imposed under this Act shall be collected and enforced as if it were a duty imposed under the Customs Act, and shall, after collection, be credited to the Consolidated Fund:

Provided that subsection (2) of section 20 of the Customs Act (which charges duty on imported composite goods by reference to any dutiable article forming part or an ingredient thereof) shall not apply to a duty under this Act.

5. (1) Where it appears to the Minister that relief under this section should be available as respects a duty imposed by an order under this Act (being an order made to afford protection against dumping) he may, if he thinks fit, in that or a subsequent order under this Act apply the provisions of this section in relation to the duty.

(2) Where this section applies in relation to any duty, the importer of any goods chargeable with the duty as being goods originating in or, as the case may be, exported from a specified country may apply to the Minister for relief from the duty on those goods.

(3) If on the application so made the Minister is satisfied that the export price of the goods from that country with the amount of the duty added to it exceeds the fair market price of the goods in that country, the Minister shall notify the Commissioner of the amount of the excess, and the Commissioner shall remit or repay the duty up to that amount.

(4) An application under this section as respects any goods shall not be made more than six months after the duty has been paid on the goods, and in connection with any such application the applicant shall furnish such information and evidence as the Minister may require from him for ascertaining the said export price or fair market price.

(5) The foregoing provisions of this section shall have effect in relation to a duty imposed by an order under this Act (being an order made to afford protection against the giving of a subsidy) as if references to the fair market price in a country were references to the export price from that country increased by such amount (if any) as may be necessary to offset the effect of the giving of the subsidy.

(6) If a person for the purposes of an application under this section -

(a) makes any statement which is false in a material particular; or

(b) produces any account, estimate, return or other document which is false in a material particular,

the amount of any duty remitted or repaid under this section on the application shall be recoverable as a debt due to the Crown and if the statement was made or the document was produced knowingly or recklessly that person shall be liable on summary conviction in a Resident Magistrate's Court to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred dollars or to both.

6. (1) The Minister may by order provide for the allowance of drawback in respect of all or any duties under this Act on the export of goods in such circumstances and subject to such conditions as he may specify.

(2) The drawback may be in respect of duty paid on the goods or in respect of duty paid on materials used in the manufacture of the goods and the rate of the drawback may be determined in such manner and by reference to such matters as the Minister may specify.

7. (1) The Commissioner may require the importer of any goods to state such facts concerning the goods and their history as he may think necessary to determine whether the goods are goods originating in a country specified in an order under this Act or are goods exported from any country, and to furnish him in such form as he may require with proof of any statements so made; and if such proof is not furnished to his satisfaction or the required facts are not stated, the goods shall be deemed for the purposes of this Act to have originated in, or as the case may be, to have been exported from, such country as the Commissioner may determine:

Provided that the Commissioner shall require proof of the country in which goods originated in relation to any duty under this Act in the case only of goods exported from such countries as the Minister may direct in relation to that duty.

(2) Where an order under this Act limits the description of goods in respect of which duty is chargeable under this Act or the cases in which duty is so chargeable so that the question whether any and if so what duty is chargeable on the goods depends on other matters besides the country in which the goods originated or from which they were exported, the Commissioner may also require the importer to state such facts as he may think necessary to determine that question so far as regards those other matters and to furnish them in such form as he may require with proof of any statement so made; and if such proof is not furnished to his satisfaction or the required facts are not stated, those facts shall be deemed for the purposes of duty under this Act to be such as he may determine.

8. (1) In relation to goods imported into the Island the export price from the country in which the goods originated or from which they were exported shall be determined as follows.

(2) If the goods are imported under a contract of sale which is a sale in the open market between buyer and seller independent of each other and the Minister is satisfied as to that fact, as to the price on that sale and as to such other facts as are material for this purpose, the export price shall be the price on that sale subject to a deduction for the cost of insurance and freight from the port or place of export in the said country to the port or place of import, and for any other costs, charges or expenses incurred in respect of the goods after they left the port or place of export, except so far as any such costs, charges or expenses have to be met separately by the purchaser.

(3) If subsection (2) does not apply, the Minister shall determine the export price by reference to such sale of the goods (or of any goods in which the first-mentioned goods were incorporated) as he may select with such adjustments as may appear to him to be proper.

9. (1) The fair market price of any goods in a country shall for the purposes of this Act be determined as follows.

(2) Subject to subsection (3), the fair market price shall be taken to be the price at which goods of the description in question (that is to say, any identical or comparable goods) are being sold in the ordinary course of trade in the said country for consumption or use there, but subject to any necessary adjustments, whether for differences in conditions and terms of sale, or differences in taxation or otherwise, which may be required for the purpose of ensuring that the comparison between the fair market price and the export price is effectively a comparison between the prices on two similar sales.

(3) If it appears to the Minister that goods of that description are not being sold in the said country, or not in such circumstances that the fair market price can be determined in accordance with subsection (2), the fair market price shall be determined by the Minister by reference to any price obtained for goods of that description when exported from the said country, with adjustments made for the purpose mentioned in subsection (2), or, if the Minister thinks fit, by reference to the cost or estimated cost of

production of the goods the dumping of which is in question, with such additions in respect of selling cost and profit as may appear to the Minister to be proper.

(4) No account shall be taken under this section of any application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

10. Where the export price of any goods from the country in which they originated is in question and some stage in the production of the goods, or of any components or materials incorporated in the goods, was carried out after they last left that country, the deductions to be made by the Minister in the price by reference to which the export price is to be ascertained shall include a deduction for the cost of carrying out any such stage in the production of the goods and in the production of any components or materials incorporated in the goods; and the fair market price shall be the fair market price of those goods or, as the case may be, of those components or materials in the state in which they left that country.

11. (1) Goods shall be regarded for the purposes of this Act as having originated in a country -
(a) if those goods were wholly produced in that country; or

(b) if some stage in the production of the goods was carried out in that country and the cost of carrying out such other stages, if any, in the production of the goods as were carried out after those goods last left that country (but before, the import of the goods into the Island) was less than twenty-five per cent of the cost of production of the goods as so imported; or

(c) if some stage in the production of any components or materials incorporated in the goods was carried out in that country and the cost of carrying out such other stages in production as were carried out after those components or materials last left that country to convert those components or materials into the goods as imported into the Island was less than twenty-five per cent of the cost of production of the goods as so imported.

(2) Any reference in this Act to the country in which goods originated shall be taken, in a case where there are two or more countries which answer to that description, as a reference to any of those countries.

12. (1) The Minister may by regulations prescribe for the purposes of this Act -

(a) the costs, charges and expenses to be taken into account in ascertaining costs of production or the cost of any stage in production;

(b) the manner in which cost of production is to be ascertained in cases where different stages are carried out by different persons;

(c) the manner in which the cost of different stages of production is to be ascertained.

(2) All regulations made under this Act shall be subject to negative resolution of the House of Representatives.

13. (1) Any order made by the Minister under this Act shall be laid before the House of Representatives as soon as may be after it is made.

(2) Any such order as aforesaid imposing a duty of customs, shall cease to have effect on the expiration of a period of twenty-one days from the date on which it is made, unless at some time before the

expiration of that period it has been approved by resolution passed by that House, but without prejudice to anything previously done thereunder or to the making of a new order.

(3) Any such order aforesaid, other than an order imposing a duty of customs, shall be subject to negative resolution of the House of Representatives.

(4) Any such order as aforesaid may be varied or revoked by a subsequent order made in the like manner and subject to the like provisions.

(5) As soon as may be after the end of each financial year the Minister shall lay before the House of Representatives a report as to the orders under which duties have been chargeable under this Act during that year, indicating the contents of those orders and their operations in that year in relation to goods which have been imported into the Island.

PART II

Anti-Dumping Advisory Board

14. (1) There shall be established for the purposes of this Act, a body to be called the Anti-Dumping Advisory Board.

(2) The provisions of the Schedule shall have effect with respect to the constitution and procedure of the Board and otherwise in relation thereto.

(3) In the Schedule and in any other provisions of this Act relating to the Board any reference to the Minister is a reference to the Minister responsible for industry.

15. The functions of the Board shall be -

(a) to carry out such investigations in relation to the dumping of goods or the giving of a subsidy affecting goods as may be referred to it by the Minister and make such reports and recommendations in relation to such goods as it considers necessary;

(b) to carry out such other investigations as may be requested by the Minister or 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; and

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

16. (1) Any person acting on behalf of an industry established in Jamaica which is considered to be injured or threatened with injury by imported goods which are regarded as having been dumped or in relation to which a subsidy has been given may lodge a written complaint to the Minister who shall refer such complaint to the Board for investigation.

(2) The complaint shall contain sufficient evidence of the dumping or the giving of a subsidy and shall also indicate the injury resulting therefrom or threatened thereby.

(3) Where the Board, on receipt of a complaint, considers that there is not sufficient evidence to justify initiating an investigation under this Act it shall so notify the complainant and the Minister.

(4) Where the Board considers that there is sufficient evidence to justify an investigation it shall carry out such investigation forthwith and shall -

- (a) publish a notice regarding the investigation and containing the particulars specified in subsection (5) in the *Gazette* and in a daily newspaper circulating in Jamaica;
- (b) notify the importers and exporters of the goods in question and, in the case of the giving of a subsidy affecting goods, the Government of the country which appears to the Board to be giving the subsidy;
- (c) notify the complainant.

(5) A notice given under subsection (4) 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 communication, regarding the investigation to be made, to the Board; and
- (e) specify a period within which interested parties may present their views in writing to the Board or make arrangements with the Board to be heard which period shall, in the case of an exporter or of the Government or person giving a subsidy affecting the goods in question, be not less than ninety days from the commencement of the investigation.

17. The Board shall seek to obtain all information it considers necessary to assist it in its investigation and, where it considers appropriate, shall examine and obtain verification of the documents submitted to it.

18. The Board may, with the approval of the Minister, enter into arrangements with any body or person recognized by the Board as having specialized knowledge of any matter being investigated by the Board, to assist it in an advisory capacity in its investigation of any matter before it.

19. The Chairman of the Board may direct that information relating to any investigation being carried out by the Board be received in whole or in part by such member or members of the Board as the Chairman may specify and such member or members shall submit the information so received to the Board.

20. (1) For the purposes of carrying out its functions pursuant to this Act, the Board is hereby empowered to -

- (a) summon and examine witnesses;
- (b) call for and examine documents;
- (c) administer oaths;
- (d) require that any document submitted to the Board be verified by affidavit;

(e) adjourn any investigation from time to time.

(2) The Board may hear orally any person it considers 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.

(3) In holding a hearing pursuant to subsection (2) the Board shall take account of the need to preserve confidentiality.

(4) The Board may require the importer of any goods or such other person as the Board considers appropriate, to state 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 Board may make a finding as to such facts on the basis of the information available before it.

(5) Where the Board, for the purposes of carrying out its functions under this Act, exercises any of its powers under paragraph (a), (b) or (d) of subsection (1) and any person, without sufficient cause

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(a) fails or refuses to attend before the Board as a witness on being summoned by the Board to do so; or

(b) fails or refuses to produce for examination any document so required by the Board or to have any document verified by affidavit as required by the Board; or

(c) being a witness, refuses to answer any question put to him by or with the permission of the Board,

then such person shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

21. (1) Any information received by or on behalf of the Board, in pursuance of an investigation under this Act, shall be used only for the purpose for which it was submitted and shall be treated as confidential.

(2) Information treated as confidential under subsection (1) shall not be revealed 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.

(3) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence and on summary conviction therefor before a Resident Magistrate shall be liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

22. (1) The Board, on the completion of an investigation under this Act, shall forthwith prepare and submit to the Minister, a report together with its recommendations.

(2) On receipt of the report referred to in subsection (1) the Minister shall forward it to the Minister responsible for finance along with such recommendations as the Minister thinks fit.

23. All complaints referred to the Board under this Act shall be dealt with promptly and should normally be concluded within six months of the commencement of the investigation.

24. The Board in considering any matter before it pursuant to this Act, shall have regard, as appropriate, to the provisions of the General Agreement on Tariffs and Trade concluded at Geneva, Switzerland in the year 1947.

25. The Board may review, and submit a reappraisal to the Minister of, any matter which was the subject of an investigation by it pursuant to this Act.

26. The Minister may make regulations generally for giving effect to any provision of this Act relating to functions and activities of the Board.

SCHEDULE

(Section 14)

1. The Board shall consist of a Chairman and thirteen other members of whom -
 - (a) nine, to be known as appointed members, shall be appointed as follows -
 - (i) two members shall be representatives of the Jamaican Manufacturers Association and shall be appointed by the Minister from a panel of five persons nominated by that Association;
 - (ii) two members, shall be representatives of the Jamaica Chamber of Commerce (one of whom shall represent the Montego Bay Chapter of that body) and shall be appointed by the Minister from a panel of five persons nominated by that Chamber;
 - (iii) one member shall be a representative of the Small Business Association and shall be appointed by the Minister from a panel of three persons nominated by that Association;
 - (iv) one member shall be a representative of the Revenue Board and shall be appointed by the Minister after consultation with the Chairman of that Board;
 - (v) one member shall be a representative of the Customs and Excise Department and shall be appointed by the Minister after consultation with the Commissioner of Customs and Excise;
 - (vi) one member shall be a representative of the Planning Institute of Jamaica and shall be appointed by the Minister after consultation with the Director General of that Institute;
 - (vii) one member shall be appointed by the Minister from among persons appearing to the Minister to be suitably qualified to represent consumers; and
 - (b) four members, to be known as *ex officio* members, as follows -
 - (i) the Solicitor-General or his nominee;
 - (ii) the Permanent Secretary in the Ministry responsible for industry or his nominee;
 - (iii) the Chairman of the Prices Commission or his nominee;
 - (iv) the Permanent Secretary in the Ministry responsible for agriculture or his nominee;
and
 - (v) the Permanent Secretary in the Ministry responsible for consumer affairs or his nominee.
2. The Minister may appoint any person to act temporarily in the place of any member of the Board, other than an *ex officio* member, in the case of the absence or inability to act of such member.

3. (1) The Minister shall appoint such person as he considers appropriate to be Chairman of the Board.

(2) In the case of the absence or inability to act of the Chairman, the Deputy Chairman shall perform the functions of the Chairman and in his absence or inability to act as Chairman the Minister may appoint any other member to perform the functions of the Chairman.

4. The member appointed pursuant to paragraph 1(a)(iv) shall be Deputy Chairman of the Board.

5. (1) The appointment of every member of the Board, other than the *ex officio* members, 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 Board shall be eligible for reappointment.

(3) Notwithstanding anything to the contrary the Minister may at any time revoke the appointment of any member of the Board, other than an *ex officio* member.

6. (1) Any member of the Board other than the Chairman or an *ex officio* member 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 Board.

(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.

7. The names of all members of the Board as first constituted and every change in the membership thereof shall be published in the *Gazette*.

8. (1) The Board 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 Board shall determine.

(2) The Chairman may at any time call a special meeting of the Board 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 Board.

(3) The Chairman shall preside at all meetings of the Board at which he is present and in the case of the Chairman's absence from any meeting, the Deputy Chairman shall preside.

(4) In the absence of the Chairman or Deputy Chairman from any meeting, the members present and forming a quorum shall elect one of their number to preside at that meeting.

(5) The decision of the Board 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.

(6) Minutes in proper form of each meeting of the Board shall be kept.

(7) The quorum of the Board shall be six.

(8) Subject to the provisions of this Act the Board may regulate its own proceedings.

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

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

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

11. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Board in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

12. The Board 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 Board.

13. (1) Subject to the provisions of this Act the Board may delegate to any member or committee of the Board the power and authority to carry out such functions of the Board as the Board may determine.

(2) Every delegation under this paragraph shall be revocable by the Board and no delegation shall prevent the exercise by the Board of any function delegated.

14. The office of the Chairman or member of the Board, other than an *ex officio* member, shall not be a public office for the purpose of Chapter V of the Constitution of Jamaica.