

GOVERNMENT OF ZAMBIA

ACT

No. 22 of 2002

Date of Assent: 31st December, 2002

An Act to amend the Control of Goods Act.

[31st December, 2002]

ENACTED by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Control of Goods (Amendment) Act, 2002, and shall be read as one with the Control of Goods Act, in this Act referred to as the principal Act.

Short title
and commen-
cement

Cap. 421

(2) This Act shall come into operation on such date as the Minister may, by statutory instrument, appoint.

2. The principal Act is amended by the insertion before section *one* of the following heading:

Insertion of
Part I

PART I

PRELIMINARY

3. The principal Act is amended by the insertion after section *two* of the following heading:

Insertion of
Part II

PART II

CONTROL OF GOODS, COMMODITIES AND ANIMALS

4. The principal Act is amended by the insertion after section *four* of the following new Part:

Insertion of
Part III

PART III

SAFEGUARD MEASURES

4A. In this Part unless the context otherwise requires—
“adjustment plan” in relation to a domestic industry means the plan by the industry to adjust to the increased competition that will follow the removal of the safeguard measures;

Interpretation
of Part III

“Agreement” means the Agreement on safeguards under the World Trade Organisation and any other international trade agreement to which Zambia is a party;

“Authority” means the ad hoc Safeguard Investigations Authority constituted under section *four E*;

“Committee” means the Committee on safeguards under the World Trade Organisation;

“domestic industry” means—

(a) a producer of a product within the Republic which is like or directly competitive with the investigated product;

(b) producers operating within the Republic whose collective output of products which are like or directly competitive with the investigated product constitute a major proportion of the total domestic production of those products;

“domestic producers” means producers operating within the Republic whose collective output of like or directly competitive products to the investigated product constitutes a major proportion of the total domestic production of those products;

“interested party” means—

(a) exporters and foreign producers of the investigated product;

(b) importers of the investigated product;

(c) trade or business associations whose membership is composed of producers, exporters or importers of the investigated product;

(d) the Governments of the exporting countries of the investigated product;

(e) domestic producers;

(f) trade and business associations whose majority membership are producers;

(g) labour unions or other similar organisations representing the interests of workers in the domestic industry;

(h) consumer associations; and

(i) any other person whom the Minister determines to have sufficient interest in the outcome of the safeguard investigation under this Part;

- “ investigated product ” means the imported product subject to safeguard investigations under this Act;
- “ Member ” means a Member State of the World Trade Organisation;
- “ participating interested parties ” means those interested parties that indicate their intention to participate in a safeguard investigation under this Part;
- “ safeguard investigation ” means an investigation into whether increased imports of the investigated product have caused serious injury to the domestic industry;
- “ safeguard measure ” means the temporary imposition of customs tariffs or quantitative restrictions to prevent or remedy serious injury to the domestic industry;
- “ serious injury ” means a significant overall impairment in the condition of a domestic industry; and
- “ threat of serious injury ” means a serious injury that is clearly imminent.

4B. (1) A domestic industry may, in writing, apply to the Minister to commence an investigation into whether increased imports of the investigated product have caused, or threaten to cause, serious injury to the domestic product.

Commencement of investigation

(2) The Minister may, on the Minister's initiative, commence an investigation into whether increased imports of an investigated product have caused or threaten to cause injury to a domestic industry.

(3) The application to the Minister referred to in subsection (1) shall contain the following:

- (a) a comprehensive description of the investigated product, including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;
- (b) a comprehensive description of the domestic product directly competitive to the investigated product including its technical characteristics and uses;
- (c) the percentage of domestic production of the product directly competitive with the investigated product;
- (d) information on the volume and value of the investigated product for each of the three calendar years preceding the application;
- (e) a description of the alleged increase of imports indicating whether the increase is absolute or relative to domestic production or to both.

- (f) information relevant to the evidence of serious injury to the domestic industry for each of the three calendar years preceding the application; and
- (g) any other information which the Minister may prescribe by statutory instrument.

(4) Where the Minister decides not to commence investigations after receipt of an application under this section, the Minister shall inform the applicant and give reasons for not commencing the investigations.

Notification
of conne-
ncement of
investigations

4C. (1) The Minister may, in consultation with the Minister responsible for finance, decide to commence safeguard investigations under subsection (1) or (2) of section *four B*.

(2) Where the Minister decides to commence safeguard investigations, under subsection (1) the Minister shall—

- (a) by statutory order notify the public;
- (b) notify in writing the exporting countries;
- (c) notify the Committee and the secretariat of any other international trade organisation of which Zambia is a member in accordance with the provisions of the Agreement;

of the commencement of the investigations with effect from the date of publication of the order and shall specify that anyone desiring to participate in the investigations shall notify the Minister within a period of thirty days from the date of publication of the order.

(3) The statutory order referred to in subsection (1) shall contain such information as the Minister may prescribe.

Schedule of
investigations

4D. (1) The Minister shall complete the safeguard investigations commenced under section *four C* within a period of six months from the date of commencement of the safeguard investigations.

(2) The Minister may extend the period referred to in subsection (1) for a further period of two months.

Constitution
of Safeguard
Investigations
Authority

4E. (1) For the purpose of conducting safeguard investigations under this Part the Minister shall, in consultation with the Minister responsible for finance, constitute the ad hoc Safeguard Investigations Authority consisting of the following members:

- (a) a representative of the ministry responsible for commerce, trade and industry;
- (b) a representative of the ministry responsible for finance;
- (c) a representative of the ministry responsible for foreign affairs;

- (d) a representative of the Zambia Revenue Authority;
- (e) a representative of the Zambia National Farmers Union;
- (f) a representative of the Zambia Association of Manufacturers;
- (g) a representative of the Zambia Chambers of Commerce and Industry;
- (h) a representative of Zambia Institute of Certified Accountants;
- (i) a representative of the Zambia Consumers Association;
- (j) a legal practitioner;
- (k) a representative of the Cross Border Traders Association of Zambia; and
- (l) two other persons.

(2) The members of the Authority referred to in subsection (1) shall be appointed by the Minister.

(3) The Chairperson of the Authority shall be appointed by the Minister and the Vice Chairperson shall be appointed by the members from among their number.

(4) The Authority may invite any person whose presence is in its opinion desirable to attend and participate in the conduct of safeguard investigations under this Part.

4F. The Authority shall conduct safeguard investigations to determine whether increased imports of the investigated product have or are threatening to cause serious injury to a domestic industry on the basis of the following factors:

Functions of
Authority

- (a) the rate and amount of the increase in imports of the investigated product, in absolute terms and related to domestic production of like or directly competitive products to the investigated product;
- (b) the share of the domestic market taken by increased imports of the investigated product;
- (c) the price of the investigated product in relation to the domestic like or directly competitive products;
- (d) the impact of increased imports of the investigated product as anteceded by specific indicators including production, capacity utilisation inventories, sales and market share prices;
- (e) factors other than increased imports of the investigated product which may cause or threaten to cause serious injury to the domestic industry;
- (f) the actual and potential export capacity of the country of production or origin of the investigated product;

	(g) inventories of the investigated product in the countries of exportation; and
	(h) probability of exports of investigated products to enter the Republic in increasing quantities.
Powers of Authority	<p>4G. The Authority may—</p> <p>(a) request for information and data from participating interested parties, officers from the Zambia Revenue Authority, forwarding companies and other persons from the public and private sector who it considers relevant for the performance of its investigative functions; and</p> <p>(b) conduct investigations to verify or obtain further details concerning information submitted under paragraph (a).</p>
Confidentiality of information	<p>4H. (1) The Authority shall treat as confidential any information or data submitted to it under section <i>four</i> G which is confidential in nature or is submitted on a confidential basis which the Authority considers warrants confidential treatment:</p> <p>Provided that where the Authority does not consider the information or data submitted to it under this Part to be confidential and if the provider of the information is unwilling to make the information public, the Authority shall not consider that information to be part of its investigations.</p>
Conduct of investigations	<p>4I. Where the Minister decides that safeguard investigations should be conducted under this Act, the Authority shall receive and consider oral and written submissions from participating interested parties within such times as the Minister may prescribe, in order to determine and recommend to the Minister—</p> <p>(a) the imposition of provisional safeguard measures;</p> <p>(b) the necessity to conduct public hearings on the matter;</p> <p>(c) the imposition of safeguard measures; or</p> <p>(d) that the investigations should be discontinued.</p>
Conduct of hearing	<p>4J. (1) Where a hearing is to be conducted as part of the safeguard investigations under this Part the Minister shall not less than sixty days before the commencement date of the hearing by <i>Gazette</i> notice notify the public—</p> <p>(a) that the hearing will be conducted by the Authority;</p> <p>(b) the date, duration, venue and time of the hearing; and</p> <p>(c) that participating interested parties intending to make representations at the hearing should notify the Authority at least seven days before the date of the hearing, and submit the names of their representatives and the witnesses who will appear at the hearing.</p>

4K. (1) The Authority after conducting safeguard investigations including the conduct of a hearing where applicable, shall make determinations on the basis of the information available to it and recommend to the Minister that—

Determination
of
investigations

- (a) provisional safeguard measures should be imposed;
- (b) provisional safeguard measures should not be imposed;
- (c) definitive safeguard measures should be imposed; or
- (d) definitive safeguard measures should not be imposed.

(2) The Minister may, on receipt of the recommendation of the Authority and in consultation with the Minister responsible for finance—

- (a) confirm the determination of the Authority; or
- (b) refer the matter to the Authority for further investigations.

(3) Where the Minister in accordance with subsection (2), decides not to apply provisional safeguard measures, the Minister shall by *Gazette* notice publish a notice which shall contain the following information:

- (a) the decision not to apply provisional safeguard measures;
- (b) a comprehensive description of the investigated product, including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;
- (c) a comprehensive description of the domestic like or directly competitive product;
- (d) the reasons for the decision not to apply provisional safeguard measures; and
- (e) a statement indicating whether the investigation will be terminal or that the investigations will continue to the final phase of determining the application of definitive safeguard measures or otherwise.

4L. (1) The Minister shall, in consultation with the Minister responsible for finance and on the recommendation of the Authority, determine that definitive safeguard measures be applied.

Imposition of
definitive
safeguard
measures

(2) Where the Minister in accordance with subsection (1) determines that definitive safeguard measures are to be applied—

- (a) the Minister shall cause a report of the proceedings of investigations of the Authority and findings including a detailed analysis of the information obtained in the investigations and the conclusions of the investigations to be published in the *Gazette*;

- (b) the Minister shall by statutory instrument issue a notice of application of definitive safeguard measures containing the following information:
- (i) the determination of serious injury or threat of serious injury and evidence of the cause of the serious injury;
 - (ii) a comprehensive description of the investigated product including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;
 - (iii) a comprehensive description of the domestic like or directly competitive products including their technical characteristics and uses;
 - (iv) the names of all known producers of the domestic like or directly competitive products;
 - (v) the country of origin of the investigated product;
 - (vi) a summary of the report referred to in paragraph (a);
 - (vii) details concerning the domestic industry's adjustment plan;
 - (viii) the form, level and duration of the proposed definitive safeguard measures;
 - (ix) the proposed date of application of the definitive safeguard measures;
 - (x) if a tariff increase in customs duties is to be imposed as part of the definitive safeguard measures, that the amount of increase in custom duties shall be determined by the Minister responsible for finance, by statutory instrument;
 - (xi) if a quantitative restriction is to be imposed that the quotas may be prescribed and that the quotas shall be allocated among the supplier countries at such rates as the Minister may prescribe;
 - (xii) if the proposed duration of the definitive measures is more than one year (including the period of application of any provisional safeguard measure) a time schedule for the progressive liberalisation of the measure; and
 - (xiii) the names of the developing countries exempted from the measure.

(3) Where the Minister decides to apply definitive safeguard measures under this section, the Minister on behalf of Republic shall notify the Committee and the Secretariat of any other international trade organisation of which Zambia is a member and shall initiate consultations in accordance with the Agreement.

(4) Subject to subsection (4) definitive safeguard measures shall be applied for a period of not more than four years including the period of application of any provisional safeguard measure unless otherwise extended under this Act.

(5) Notwithstanding subsection (3), a definitive safeguard measure shall be applied for a total cumulative period of not more than eight years, including the period of application of any provisional safeguard measure, and any extension of a definitive safeguard measure, shall be in accordance with the provisions of the Agreement.

4M. (1) Subject to the other provisions of this section definitive safeguard measures in the form of a quota on imports of the investigated product shall not reduce the quantity of those imports below the average level registered in the most recent three years for which statistics are available.

Quotas as
definitive
safeguard
measure

(2) Notwithstanding subsection (1) the Minister may, on the recommendation of the Authority, when satisfied that a different level is necessary to prevent or remedy serious injury or threat of serious injury, apply a quota which reduces the quantity of imports of the investigated product below the average level registered in the most recent three years for which statistics are available.

(3) Subject to the other provisions of this section, where more than one country exports the investigated product to the Republic, the application of definitive safeguard measures in the form of a quota on imports shall be allocated among supplying countries in such proportions as may be agreed by the Government and the Governments of those Members having substantial interest in supplying the investigated product based on—

- (i) the proportions of the investigated product supply by such countries during the previous three years; and
- (ii) on any special factor which may have affected or may be affecting trade in the investigated product.

(4) Notwithstanding subsection (3) where serious injury to the domestic industry has been established, the Minister may, on the recommendation of the Authority, allocate quotas among the supplying countries on a basis different from the agreement referred to in subsection (3) if consultations have been held with supplying Members under the auspices of the Committee and evidence to the committee is submitted that—

- (a) imports from certain countries have increased in disproportionate percentage in relation to the total increase in imports of the investigated products during the most recent three years according to available statistics; and
- (b) the conditions of the allocation of quotas are equitable to all suppliers concerned.

(5) Notwithstanding any other provision of this Part, a definitive safeguard measure in the form of a quota allocated in accordance with subsection (4) shall not be extended beyond the initial period.

Notification
in event of
termination
of
investigation
without
application of
safeguard
measure

4N. (1) The Minister may, on the recommendation of the Authority and in consultation with the Minister responsible for finance terminate an investigation under this Part on the ground that the application of safeguard measures on the available evidence is not justifiable.

(2) Where the Minister terminates an investigation under subsection (1) the Ministers shall inform the exporting countries of the investigated product and the Committee in accordance with the requirements of the Committee under the Agreement.

Non-
application of
definitive
safeguard
measures to
certain
developing
countries

4O. Notwithstanding the other provisions of this Part, a definitive safeguard measure shall not be applied on imports of the investigated product originating from a Member which is a developing country where the imports amount to not more than three percent of the Republic's total import of the investigated product.

Progressive
liberalisation
of safeguard
measure

4P. The Minister in consultation with the Minister responsible for finance shall progressively liberalise at regular intervals the definitive safeguard measures whose duration exceeds one year in accordance with the schedule of liberalisation published in the notice of definitive safeguard measures under paragraph of subsection (2) of section *four L*.

4Q. (1) If the duration of a definitive safeguard measure relating to quotas including the period of application of any provisional measure exceeds three years, the Minister shall cause the Authority to conduct a review in accordance with section *four F* to *four K* of this Part, including a review of the effects of the definitive safeguard measure on the domestic industry concerned and the industry's progress in implementing its adjustment plan.

Review of
definitive
safeguard
measure

(2) The Authority shall produce results of the review referred to in subsection (1) in a report which the Minister shall publish in a *Gazette* notice.

(3) The Minister shall on the recommendation of the Authority as contained in the report referred to subsection (2) and in consultation with the Minister responsible for finance make a decision to—

- (a) maintain the definitive safeguard measure;
- (b) withdraw the definitive safeguard measure; or
- (c) increase the pace of liberalisation of the definitive safeguard measure.

(4) The decision of the Minister under subsection (3) shall—

- (a) be published in the *Gazette*; and
- (b) be notified to the Committee and the Secretariat of any other international trade organisation of which Zambia is a member in accordance with the provisions of the Agreement.

4R. (1) If the domestic industry considers that there is continuing need to apply a definitive safeguard measure relating to quotas on imports beyond the initial period of application, it shall, six months before the end of the period of application of a safeguard measure submit a written request for extension of the measure to the Minister with evidence showing that the industry is carrying out its adjustment plan.

Extension of
definitive
safeguard in
relation to
quotas

(2) Where a written request by the domestic industry is submitted to the Minister under subsection (1), the Minister shall cause the Authority to conduct an investigation in accordance with this Part to determine whether an extension of the application of a definitive safeguard measure is warranted.

(3) Subject to the other provisions of this Part, a definitive safeguard measure shall be extended once for a period of not more than four years.

(4) The Minister shall, on the recommendation of the Authority and in consultation with the Minister responsible for finance, extend the application of a definitive safeguard measure if satisfied that the measure is necessary to prevent or remedy serious injury and that there is evidence to show that the domestic industry is adjusting.

(5) Where the Minister decides to extend the application of a definitive safeguard measure under subsection (4), the Minister shall—

- (a) by statutory notice, publish a notice of extension of application of a definitive safeguard measure which shall include the duration of the extension and the time schedule to progressively liberalise the measure; and
- (b) notify the Committee and the secretariat of any other international trade organisation of which Zambia is a member in accordance with the Agreement.

(6) Where the application of a definitive safeguard measure is extended under this section, the safeguard measure shall not be more restrictive than that applied at the initial instance.

(7) During the period that the application of a definitive safeguard measure is extended, the safeguard measure shall be progressively liberalised in accordance with the schedule to be published in the notice to extend the safeguard measure published in the *Gazette* under subsection (5).

Reapplication
of a
definitive
safeguard
measure

4S. The Minister may, in consultation with the Minister responsible for finance, apply a definitive safeguard measure of not more than one hundred and eighty days in relation to quotas on imports of an investigated product which was the subject of an earlier safeguard measure if—

- (a) a period of not less than one year has elapsed since the date of application of the earlier safeguard measure on those imported products;
- (b) a safeguard measure has not been applied on imports of the product more than twice in the period of five years immediately preceding the date on which the new safeguard measure is to take effect; and
- (c) an investigation has been conducted by the Authority in accordance with sections *four F* to *four K*.

4T. The Minister may, by statutory instrument, make regulations for the carrying out of the provisions of this Part and for prescribing anything which by this Part is required to be prescribed.

Regulations
on safeguard
measures