

# TRADE GATEWAY

YOUR SOURCE FOR TRADE REMEDIES & TRADE INFORMATION

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Anti-dumping and Subsidies Commission  
Kingston, Jamaica

## NOTEWORTHY

- Check out our website for news and upcoming events in Trade Remedies.

<http://www.jadsc.gov.jm>

## THE ROLE OF THE ANTI-DUMPING AND SUBSIDIES COMMISSION IMPLICATIONS FOR BUSINESSES AT HOME AND ABROAD

### Introduction

The Anti-dumping and Subsidies Commission (the "Commission") is Jamaica's Trade Remedies investigating authority. Trade Remedies are an important trade policy tool for many countries around the world, as through them countries are able to mitigate the negative impact that liberalising imports could have on their domestic industries. There are two aspects to Trade Remedies and this may often be overlooked. On one hand, Trade Remedies benefit domestic industries at home. If, however, an industry is operating in an overseas market, Trade Remedies applied there will have the opposite effect. In this regard the Commission recognises that it has a dual role to play: To fulfil its mandate in the Jamaican market by guarding equity in the international trade arena for domestic industry, and to be a resource for Jamaican firms exporting into overseas markets. Additionally, because it is the only body of its kind in the region set up to deal solely with Trade Remedy matters, the Commission also recognises its ability to be a regional resource.

The number of highly publicised WTO cases and potential cases involving international Trade Remedies such as U.S.: Steel Safeguards and Cotton Subsidies; and EU: Sugar Subsidies, has drawn increasing attention to these disciplines. In addition, the clear signal that with the expiration of the Agreement on Clothing and Textiles (ACT), some countries may resort to using Trade Remedies to shield their domestic textile industries from the threat that is perceived from China, suggests that there will be increased numbers of Trade Remedies cases initiated.

### Mandate and Organizational Structure

The Commission is a portfolio agency of the Ministry of Commerce Science & Technology, (with Energy), and was set up in 1999 to administer Jamaica's Trade Remedy Legislation:-

*The Customs Duties (Dumping and Subsidies) Act, 1999;*



*The building in New Kingston, Jamaica, in which the Commission's offices are located.*

*The Customs Duties (Dumping and Subsidies) (Determination of Fair Market Price, Material Injury and Margin of Dumping) Regulations, 2000;*

*The Safeguard Act, 2001; and*

*The Safeguard Regulations, 2003.*

The Commission embodies the Board of five (5) Commissioners, who are appointed by the Minister for fixed terms, and who independently adjudicate cases and make decisions based on investigations marshalled by the Commission's technical staff and the submissions of the parties. The administrative arm of the Commission, the Secretariat, is composed of a multi-disciplinary team of technicians, including a lawyer, economist, financial analyst, and a support staff, headed by an Executive Director.

The technical team conducts the research and analysis to inform the decisions and other work of the Commission. The team's primary function is to conduct investigations into all aspects of a case and present reports to the Commissioners, which facilitate decision-making by the Commissioners. The Secretariat is also responsible for the necessary public reporting of the decisions on each case investigated, within the statutory timeframe.

*Continues on page 7*

## THE WTO IN BRIEF

### What's New

*Developing countries' goods trade share surges to 50-year peak.*

#### The WTO Reports<sup>1</sup> on Trade and Output in 2004 and Prospects for 2005

WTO economists report real<sup>2</sup> growth of 9% in merchandise trade for 2004. This corresponds to nominal growth of 21%, the highest nominal growth recorded in 25 years. The real growth in trade was more than twice that of output, which grew by 4% in 2004. Both the growth in trade and output exceed their 10-year averages. With the growth in trade in 2004, developing countries saw their share in world merchandise trade rise to 31%, the highest since 1950. Prospects for trade in 2005 however, are less favourable, with economists predicting a deceleration of growth in trade to 6.5% and output to between 3 and 3.5%.

#### Jamaica's Second Trade Policy Review

Trade policy reviews are exercises mandated under the WTO's Trade Policy Review Mechanism (TPRM). Using regular monitoring, the TPRM aims to increase the transparency and understanding of trade policies and practices. All WTO members are reviewed but the frequency of each country's review varies according to its share of world trade. In preparation for a review, a report is written by the WTO Secretariat<sup>3</sup> and one by the Government of Jamaica<sup>4</sup>. Jamaica's first review was conducted in 1998.

Jamaica's second trade policy review was held on the 17<sup>th</sup> and 19<sup>th</sup> of January 2005. The delegation from Jamaica comprised representatives from the Planning Institute of Jamaica; Ministries of Finance and Planning; Industry and Tourism; and Commerce, Science and Technology. The Honourable K.D. Knight, Minister of Foreign Affairs and Foreign Trade headed the delegation. Based on the reports, questions were posed by Members,<sup>5</sup> to which Jamaica responded.

The Chairperson, Ambassador, Her Excellency Mrs. Puangrat Asavapisit (Thailand) noted that the review was successful due in large part to the participation of Minister Knight and Ambassador Ransford Smith, Jamaica's WTO Ambassador stationed at the Permanent Mission of Jamaica to the United Nations in Geneva. Members commended Jamaica on its reforms notwithstanding a series of external shocks and a large public debt. Members also highlighted the overall openness of the Jamaican economy, and in particular, commended the liberalisation of telecommunications and financial services. In concluding the review, the Chair noted that Members acknowledged Jamaica's progress in restructuring its economy, notwithstanding the challenges posed by changes in the world economy.

#### Nominations For Director General

The three year term of office of the current Director General (DG) of the WTO, Dr. Supachai Pantichpakdi expires on 31<sup>st</sup> August 2005<sup>6</sup>. Nominations for the post closed on December 31, 2004. Four candidates were nominated, three from developing countries, one of whom is from the African Caribbean and Pacific (ACP) grouping, and one from a developed country. The candidates<sup>7</sup> are:

Carlos Perez del Castillo of Uruguay — Ambassador Castillo is the special advisor on International Trade Negotiations to the President of the Republic of Uruguay.

Jaya Krishna Cuttaree of Mauritius — Minister Cuttaree holds the position of Minister of Foreign Affairs, International Trade and Regional Cooperation of Mauritius, a part of the ACP grouping, of which Jamaica is also a member.

Luiz Felipe de Sexias Correa of Brazil — Ambassador Correa is the Permanent Representative of Brazil to the WTO.

Pascal Lamy of France — Mr. Lamy has held a number of positions in the Government of France. He is best known for his role as Trade Commissioner for the European Union from September 1999 until 2004.

The candidates presented themselves before the General Council of the WTO in January, and for the period January to March, made themselves known to members and engaged in discussions on the pertinent decisions facing the WTO. On May 31, 2005 the General Council will take the decision to appoint one of the candidates.

Some commentators have voiced concerns about the transparency of the process<sup>8</sup> of selection of the DG. All decisions taken in the WTO are arrived at by consensus which makes the process of selection of the DG highly contentious and, according to some, subject to various manoeuvres and manipulating decisions. This was highlighted in 1999 by a battle for the post between Mr. Mike Moore, a former Prime Minister of New Zealand and former Deputy Minister of Thailand, Dr. Supachai Panitchpakdi. A compromise was developed, allowing the DG's tenure to be split into equal three year parts between the two candidates. Mr. Moore was appointed for the first three year period to be succeeded immediately by Dr. Supachai. Neither gentleman could be reappointed nor have his term of office extended.

Unlike his predecessors, the incoming Director General will serve a term of four years. Also, his role may be quite different from theirs if certain recommendations from a report of the Consultative Board commissioned by Dr. Supachai on the Future and Institutional Challenges facing the WTO are followed. The Board indicated that there was a need to reinforce the powers of the DG. The Board also recommended a departure from the traditional, solely administrative, role of the WTO Secretariat, to a more advisory role with respect to international trade policy. The board also suggested that the DG and Secretariat should have the capacity to be at the centre of negotiations during the Ministerial Meetings.

#### Assistance for Developing Countries

Since the start of the year, there have been a number of initiatives funding activities to assist developing countries in their capacity building efforts. Some of these are highlighted below.

*Continues on page 4*

# LET'S GET TECHNICAL

## ANTI-DUMPING INVESTIGATION PROCEDURE

### Introduction

Our keenest students know the basic procedure for an anti-dumping investigation in Jamaica. Nevertheless, we hope that we are always adding to our audience, and recognise that in doing so, there are different levels of familiarity with the mandate of the Anti-dumping and Subsidies Commission (the "Commission"). Therefore, in this inaugural issue, we offer this overview of the investigation procedure in an anti-dumping case.

The Commission's mandate with regard to dumping and subsidies is derived from The Customs Duties (Dumping and Subsidies) Act, 1999 (the "Act"). The Act was drafted to give effect to Jamaica's obligations to its trading partners under the World Trade Organization (WTO) Agreement on Implementation of Article VI of General Agreement on Tariffs and Trade (GATT), 1994 (the "Anti-dumping Agreement"). The Act contains the rules that are followed when a written complaint in respect of the dumping of goods is lodged with the Commission.

When a foreign company exports a product to Jamaica at a price<sup>1</sup> lower than the price it normally charges in its domestic market<sup>2</sup>, this is called dumping. The activity of dumping is not strictly prohibited under international trade agreements, however, when dumping causes injury<sup>3</sup> to the Jamaican industry, which produces like goods<sup>4</sup>, the Act and the ADA allow for remedial action to be taken against dumping.

### What recourse does a Jamaican industry affected by dumping have?

A domestic industry claiming injury due to dumping may lodge a written complaint with the Commission seeking imposition of measures to remedy the problem. The Act also provides that the Commission may carry out an investigation on its own initiative. In dumping matters the applicable remedy is the imposition of anti-dumping duties.

For the Commission to embark upon an investigation the complaint must be properly documented. A complaint will only be deemed properly documented if the application identifies the following:

1. The dumped goods;
2. The like domestic goods;
3. The country of export;

4. The affected Jamaican industry;
5. Normal value and export prices and establish that the goods have been dumped;
6. The material injury that the industry has suffered, or is likely to suffer; and
7. How the dumped goods have caused, are causing or are likely to cause material injury.

It must be noted that although the complaint may be made by any one manufacturer in an affected Jamaican industry<sup>5</sup>, the Act requires that it must be made "by or on behalf of" that industry. The complaint will be considered to have been made by or on behalf of the industry if the collective output of the domestic producers supporting the petition represents more than fifty per cent of the output by producers expressing support or opposition to the complaint. Further, under the Act, for an investigation to be initiated by the Commission, the domestic producers expressly supporting the complaint, must account for more than twenty-five per cent of total production of like goods produced by the domestic industry.

### Confidentiality protected by the Act

Businesses and others considering making or responding to a complaint need not be concerned about confidential information being disclosed to competitors or the general public during the investigation process. The protection granted to confidential information under the Act and required by the Agreement, extends to all the parties involved in an investigation. Under the Act, disclosure of information deemed business confidential without the applicant's consent constitutes an offence punishable by a fine and imprisonment.

The Commission ensures that the confidentiality requirement is strictly adhered to, pursuant to this responsibility, the complainant and other parties are required to make two kinds of submissions to the Commission; one that is deemed confidential and the other non-confidential. The confidential version is kept for the eyes of the Commissioners and the Commission's staff only, and may be given back to the party filing same. The non-confidential submission is distributed to other parties to the investigation, and may be seen at appropriate times by the general public. The Commission reviews both submissions to ensure that confidential treatment of certain types of information is warranted and also to ensure that the non-confidential version of a submission is meaningful and permits a valid opportunity for other parties to the investigation to respond.

*Continues on page 5*

*"Businesses and others considering making or responding to a complaint need not be concerned about confidential information being disclosed to competitors or the general public during the investigation process."*



The WTO Building in Geneva



The WTO Logo

The WTO celebrates its 10th Anniversary this year. The Anti-dumping and Subsidies Commission congratulates WTO members on their 10th Anniversary.



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*The WTO in Brief continued from page 2*

The WTO and the Kingdom of the Netherlands launched a new Trainee Programme for least developed countries (LDCs) and other low income, and small and vulnerable, economies (SVEs), on 24 March 2005. The objective is to give officials from those countries the opportunity to learn about trade and development related matters and to develop their knowledge of trade policy, while working for the WTO. The training programme was slated to start on April 1, 2005 and will last for a period of ten months. It is expected that in each year there will be a maximum of twenty participants. The WTO has indicated however, that particular attention will be given to African countries.

Korea has contributed USD 200,000 (approximately CHF 234,000) to the Doha Development Agenda (DDA) Global Trust Fund, to aid in capacity building and technical assistance. The current round of negotiations has been dubbed the "development" round, with a mandate to move the development agenda. This commitment will assist in moving the agenda forward. In particular, it comes at a time when talks about the 6th Ministerial Conference, scheduled to take place in Hong Kong in December 2005, are intensifying. The Doha Development Agenda Global Trust Fund finances activities, which aim to enhance developing countries' participation in the WTO negotiations.

Also significant for developing country capacity building efforts, are donations to the Standards and Trade Development Facility (STDF)<sup>9</sup> by the United Kingdom and Canada of 1.9 million CHF and 385,000 CHF in February and March, respectively. Other contributions to the STDF have come from France, The Netherlands, and Denmark. To date, this brings the number of WTO members who have contributed to the fund to five. The STDF is a joint initiative between the WTO, the World Health Organisation, the World Health Organisation for Animal Health, the World Bank and the Food and Agricultural Organisation.

#### Now on the WTO Website

Since the start of the year there have been a number of interesting and useful additions to the WTO website and WTO publications, that should prove useful to students and experts alike. We have highlighted some of these below:

#### New Pages:

WTO Appellate Body Repertory of Reports and Awards 1995–2004 - a source of Information for those interested in international trade law. Find out more at:

[http://www.wto.org/english/tratop\\_e/dispu\\_e/repertory\\_e/repertory\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/repertory_e/repertory_e.htm).

New Tariffs Gateway. - provides guidance on how to find information about tariffs on the WTO website. Find out more at:

[http://www.wto.org/english/tratop\\_e/tariffs\\_e/tariffs\\_e.htm](http://www.wto.org/english/tratop_e/tariffs_e/tariffs_e.htm).

#### New Publications:

World Trade Review

Appellate Body Annual Report

World Trade Report

The WTO Building

The Future of the WTO: Addressing Institutional Challenges in the New Millennium.

#### Useful Reports:

The WTO Secretariat has introduced annual reports of the Appellate Body, beginning with the report for 2003. The most recent report was for 2004, released January 2005.■

<sup>1</sup>See WTO Press Release, April 14, 2005.

<sup>2</sup>For real growth the effects of inflation have been factored in so that changes in the variable are not reflective of changes in the price level, as in the case of nominal growth.

<sup>3</sup>WT/TPR/S/139.

<sup>4</sup>WT/TPR/G/139.

<sup>5</sup>The minutes of the meeting can be obtained from the WTO website document symbol, WT/TPR/M/139 the questions and responses can be found in document, WT/TPR/M/139/Add.1.

<sup>6</sup>UN Secretary-General, Kofi Annan has proposed Dr. Supachai to lead the United Nations Conference on Trade and Development (UNCTAD).

<sup>7</sup>Biographies of the candidates are available on the WTO website.

<sup>8</sup>Details of the process can be found on [www.wto.org](http://www.wto.org) document code WTL/509.

<sup>9</sup>The Standards and Trade Development Facility (STDF) is a global programme in capacity building and technical assistance to assist developing countries in trade and sanitary and phytosanitary (SPS) measures.





Let's Get Technical continued from page 3

## The Investigation

Initially, the Commission must evaluate the complaint to determine if it is a properly documented complaint supported by the requisite percentage of domestic producers, with a reasonable indication of material injury and dumping disclosed therein. This occurs within the first stage of the case before initiation and is a first step, since if the complaint is not properly documented, the applicant is so notified and given the opportunity to complete or cure the deficiency. If the Commission decides to initiate it must do so within 45 days of the date of submission of the complete complaint. An investigation usually lasts for 180 days, however it may last for as long as 305 days if there are extensions.

Interestingly, while Jamaican law imposes these time limits on investigations, the time frame allotted in the ADA is longer, that is, up to one year, and in special circumstances 18 months. To date, Jamaica and New Zealand are the only countries that operate within the shorter time frames.

Every investigation has three major decision stages; Initiation, Preliminary Determination and Final Determination. After the domestic industry submits a complaint, the procedure is as follows:

### INITIATION

1. If the complaint is properly documented, then, as stated above, within 45 days of the date of receipt of the complaint by the Commission or the date on which it becomes properly documented and supported, the Commission must determine whether to initiate an investigation, and will inform the complainant and others of its determination in that respect as prescribed under the Act (Section 22 (1) of the Act).
2. The Commission gives notice of its decision to initiate to the Minister (of Commerce, Science and Technology), the exporter and importer of the dumped goods and the country of export. A copy of the notice must be published in the Gazette and in a Jamaican daily newspaper (Section 25 (1) of the Act). In addition, it is the Commission's practice to notify persons and public entities that it considers to be reasonably likely to be substantially interested in the matter.
3. Once an investigation has been initiated, the Commission sends out questionnaires to the foreign producer, exporter and importer, as well as Requests for Further Information (RFI) to the domestic industry. The parties are given thirty days in the first instance, to respond to the questionnaires. Reasonable extensions for submissions may be granted after consideration of the circumstances, throughout the duration of the investigation. Information which is timely received by the Commission is considered along with all the material previously submitted to the Commission in each successive decision stage of the investigation.

### PRELIMINARY DETERMINATION

4. The Commission analyses the responses and makes its Preliminary Determination (PD) within 90 days of the date of initiation (Section 27 (1) of the Act), or 135 days if an extension is required. The extension gives an additional 45 days before the PD is due (Section 29 (1) of the Act).

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## Trade Talk For "Dummies"

*One of the features of the workplace of international trade, is the tendency of everyone involved to use words, abbreviations and acronyms and assume that the audience knows precisely what is being referred to. Those who hear them often formulate an understanding of what is being referred to without a full working definition or explanation. If you don't do it yet, you will soon find yourself doing it. In this corner, we will enlighten our readers about words, abbreviations and acronyms used in "trade speak" which you often hear and of which you want to know the precise meaning.*

### WHAT IS THE ACP?

ACP is the abbreviated name by which the African, Caribbean and Pacific group of countries is known. This group comprises 79 members, mainly of former European colonies. Jamaica is included in the ACP grouping. The objectives of the ACP are to contribute to the economic development and to the social progress of its member states. The EU is the main trading partner of the ACP countries accounting for some 30% of total ACP trade (2002 data; data for 2003 not available). By comparison, the US accounted for 21% of ACP trade in the same year. EU imports from the ACP are also more diversified than US imports, which are more concentrated in oil and oil products. Nevertheless, in 2003, the ACP accounted for only 2.9% of total EU imports, compared with 3.4% in 1997 and 6.7% in 1976. Trade with the EU, therefore, remains important for the ACP, but marginal for the EU.

The ACP group enjoys non-reciprocal preferential access to European markets under the Lomé and Cotonou Agreements. As of September 2002, the EU and the ACP officially opened negotiations on Economic Partnership Agreements (EPAs). Under the Cotonou Agreement, the EU and ACP have five years to set up EPAs, which the EU is proceeding to do regionally. The aim of the EPAs is to redefine the trade regime between the EU and the ACP countries, replacing the existing system.

The ACP has been thrust into the international trade spotlight as a result of the challenge by Brazil and others to the EU sugar regime before the WTO Dispute Settlement Body. The WTO panel examining the matter, found that EU export subsidies on sugar were in violation of WTO rules. Unless appealed successfully, the decision will affect preferences which the ACP currently enjoys in the EU market. The ACP is also concerned about the upcoming reforms to the EU sugar regime that will affect the price that the ACP receives for its sugar. The Caribbean's main sugar producing countries; Barbados; Belize; Guyana; Jamaica; St. Kitts and Nevis; and Trinidad and Tobago are part of the ACP and are affected by the shocks to the sugar sector.

The ACP has also made headlines because of the opposition of Latin American banana producers to EU proposals to remove quotas and increase tariffs on bananas. The ACP would benefit from this change since bananas from these countries would enter duty free under the proposed new regime.

The present Chairman of the ACP Council of Ministers is Victor Borges Minister of Foreign Affairs from Cape Verde. Jamaican Minister of Foreign Affairs and Foreign Trade, K.D. Knight was Chairman until January, 2005. ■



# TRADE REMEDIES CORNER

## What Are Trade Remedies

Trade Remedies are WTO sanctioned measures that are designed to correct the harmful effects of unfair trade practices or subsidies and to safeguard local industries from the harmful effects of increased imports. They are regarded as an important safety valve for countries seeking to liberalise trade. In particular, it has been noted that the existence of these safety valves has actually made it possible for continued liberalisation.

The three Trade Remedies are: anti-dumping duties, countervailing duties and safeguard measures. Anti-dumping duties are imposed on a specific product from a specific country or countries, where through an investigation the authorities find that goods are being dumped and this dumping causes material injury to a domestic industry. Countervailing duties are imposed on a specific product from a specific country, if an investigation finds that goods are being subsidised and this subsidisation is causing material injury to a domestic industry. Safeguard measures are imposed against all countries (that is on an MFN basis) where it is found through an investigation that increased imports are causing serious injury to a domestic industry.

### Jamaica

To date, Jamaica has concluded five Trade Remedy investigations. Four of these investigations addressed allegations of dumping. In all cases, anti-dumping duties were imposed on the specific product from the country under investigation. Three of the matters concerned the dumping of cement from Thailand, Indonesia and China, respectively. The other dumping matter concerned the fertiliser from the Dominican Republic.

<b>Trade Remedy Measures Imposed by Jamaica</b>			
<b>Country/Customs Territory</b>	<b>Product</b>	<b>Date Imposed</b>	<b>Duty Imposed %</b>
China, People's Republic	Ordinary Portland Grey Cement	20 July 2004	89.79
Dominican Republic	Inorganic Fertiliser	4 May 2002	15.61
Indonesia	Ordinary Portland Grey Cement	2 July 2002	9.89
Thailand	Ordinary Portland Grey Cement	11 June 2001	87.91

The fifth Trade Remedy case concluded by Jamaica was a Safeguard matter. In this matter, it was found that imports of cement from a number of countries had increased and these imports caused injury to the domestic cement producer. The recommendation in that case was for the imposition of a safeguard duty. After consideration by the Minister a safeguard duty was not imposed, as the international burdens occasioned by such a measure could be avoided and a comparable level of coverage for the domestic industry could be reached by increasing the level of the applied tariff rate in line with the amount recommended as a safeguard duty.

For more information on the cases completed by the Commission, visit the Commission's website at [www.jadsc.gov.jm](http://www.jadsc.gov.jm).

### Global Trends in the Use of Trade Remedies

Historically, the most utilised of the three Trade Remedies has been and continues to be anti-dumping duties. There are a number of reasons posited for this, namely that the procedures for anti-dumping investigations are much more developed than those for countervailing and safeguard investigations, and also that anti-dumping measures are less political in effect. The duties in anti-dumping investigations are imposed on a product and country specific basis and there is no requirement to hold consultations with the governments involved, unlike the case of countervailing and safeguards. In addition where a country imposes a safeguard measure, it may be required to pay compensation to members whose trade is affected by the measure.

As at October 2004, of the 148 members of the WTO, seventy-nine have notified the Committee on Trade In Goods that they have anti-dumping legislation in place. Within CARICOM, the Members having anti-dumping legislation at October 2004 are, Antigua and Barbuda, Barbados, Dominica, Grenada, Haiti, Jamaica, Saint Lucia, Suriname and Trinidad and Tobago; with the active members, in terms of use, being Trinidad and Tobago and Jamaica.

Notwithstanding the fact that anti-dumping is the most utilised of the three Trade Remedies, reports are that anti-dumping activity is on the decline. For the period 1 July 2003 to 30 June 2004, Members notified 276 final and provisional measures (including undertakings). This compares with 414 reported for the period 1 July 2002 to 30 June 2003. This decline in anti-dumping activity has led to some speculation that it may be indicative of a permanent trend, effected, in part, by the changing landscape of trade and liberalisation. Those who hold this view attribute this decline to the changing nature of liberalisation, which is, in practice less characterised by the principle of multilateralism, and more and more, by preferential trade agreements, which are in themselves means of limiting trade. ■



*The Role Of The Anti-dumping and Subsidies Commission, continued from page 1*

### Role and Functions, and Objectives of the Commission

The Commission's primary function is to conduct investigations and make determinations in Trade Remedy matters. In addition, an important part of its mandate is to increase awareness of Trade Remedies and Jamaica's obligations under the WTO Agreements among businesses and the general public. The Commission has also acted in an advisory capacity on Trade Remedy and related matters, both nationally and regionally.

### How The Commission Assists Jamaican Business At Home

Trade Remedies are intended to enable domestic producers to compete effectively in an increasingly open trading environment. These remedies offer domestic producers an adjustment period to improve their competitiveness against increased importation of like products<sup>1</sup>. The competition from foreign origins may be unfair (Dumping and Subsidies) or fair<sup>2</sup> (Safeguards). During the period of enforcement of the particular remedy, the affected businesses are expected to improve their internal capacities, economies and structure, in order to more successfully compete in the domestic market with the same goods that are being regulated by the Trade Remedies.

In the case of dumping, the duty imposed on the dumped goods is expected to effect an upward adjustment of the export price of the dumped goods to their normal value. In the case of Safeguards, the measure is imposed on the imported goods to reduce the quantity of imports where the product has been imported in such increased quantities that it is harmful to domestic industry. There is a clear expectation that businesses are going to adjust their ability to compete with the imports and the period of the imposition of Safeguard measures is to allow that adjustment to occur. It is important to note that the foregoing measures are all intended to be temporary. In practice however, anti-dumping and countervailing measures can be extended indefinitely, but there are limits to reapplying safeguard measures. The Commission assists business by evaluating the need for a remedy and ensuring that all the necessary requirements for imposing the remedy, both nationally and internationally, are met.

### Limitations to Effective Use of Trade Remedies by Domestic Producers

The main limitation on the effective use of Trade Remedies by our domestic producers is a pervasive lack of knowledge about them. The Commission continues to seek to address this gap by making businesses and the public more aware of these remedies and educating them on the nature of each.

Another limitation that our domestic producers face is a lack of in-house expertise, and sometimes recorded data, or the financial resources to hire outside expertise to assist them in documenting a complaint to be filed with the Commission. These limitations should not deter producers who are being harmed by imports, since the Commission as far as possible, while preserving its objectivity, will assist with the preparation of the complaint. This process ensures that the applicant has a properly documented complaint, without which the Commission cannot proceed. If, despite the guidance offered by the Commission, the process of putting needed information together remains an obstacle, which it may, particularly for small and moderate sized firms, then professional assistance must be sought.

A further difficulty that the domestic producer may face is in obtaining data that must be included in the complaint. A sustained and coordinated effort is sometimes required to obtain data from the institutions that warehouse and collect it. This remains a challenge, which has been discussed by policy makers and negotiators with a view towards taking steps to diminish the difficulty in this area.

### How The Commission can assist Jamaican Business Abroad

The imposition of Trade Remedies against Jamaican businesses abroad may affect local producers, making it more difficult for them to gain and retain market share overseas. In many instances, the Jamaican producer's respective share of total imports of any one product in a large overseas market may be very small. A minimum volume threshold is required before a foreign country can take Trade Remedy measures against an exporter. Their relatively small volume of product in an overseas market would be expected to negate the likelihood of cases being brought against Jamaican exporters. However, due to the practice of combining all sources of the product together, called "cumulation," Trade Remedies measures could still be imposed against Jamaican products, although they may have a relatively small share of the particular market. It is important to note however, that when Jamaican producers are exporting to markets of relatively similar size to Jamaica, the exposure is greater.

In order for Jamaican manufacturers and exporters to maintain the market share that they have gained in overseas markets, they must acquire increased knowledge of the potential barriers to trade and implement strategic plans to ensure that their products are not targeted. If Jamaican businesses do find that their products are targeted overseas, then they must defend their interests. The Commission can assist in these respects by equipping business with the knowledge and expert analysis required. As the only independent agency of its kind in the region, the Commission is singularly prepared to extend its assistance, not only to Jamaican industries but other regional industries that face the threat of Trade Remedies in overseas markets.

### Conclusion

The Commission plays a vital role in ensuring that businesses at home receive the appropriate remedy. This role is critical, as developing countries have encountered difficulty in utilising Trade Remedies due to their complexity, and rigour, and the limited timeframes in which the investigating authority must act. The Commission is also in a position to ensure that Jamaican businesses venturing abroad have the tools necessary to legitimately defend their interests. In furtherance of this dual role, the Commission is committed to monitoring and contributing to the development of the rules that govern the application of Trade Remedies.

The participation of the business community in trade policy development and its use is critical. The Commission contributes its expertise to the ability of business to make its contribution in the development of these rules. In so doing, the Commission supports businesses in their drive towards expanding and preserving their market share at home and abroad. ■

<sup>1</sup>See endnote 4 of "Let's Get Technical" on page 8.

<sup>2</sup>There is no distortionary pricing practice, rather it is the volume of importation that causes problems for the domestic industry.



*Let's Get Technical continued from page 5*

At this time the Commission can terminate the investigation if it considers that there is insufficient evidence of dumping, that is, the margin of dumping is *de minimis* (less than 2% of the export price) or the injury caused by the dumping is negligible (Section 26 (1) of the Act). If there is sufficient evidence of dumping and injury the Commission may determine at this stage if provisional duties<sup>6</sup> are needed or whether duties should be made retroactive<sup>7</sup>.

5. After the PD is made, the Commission may accept an undertaking from the exporter or the government of the country from which the goods are exported. An undertaking must either specify the increased price at which the goods will be sold in order to eliminate the margin of dumping or that the exporter will cease the dumping. If the undertaking is accepted the collection of duties ordered at the PD will be suspended (Section 32 of the Act). An investigation may continue after acceptance of an undertaking.
6. If the investigation continues, the Commission may send out supplemental questionnaires and receive responses and any other relevant information, including commentary on the PD and rebuttals to parties' arguments.

## FINAL DETERMINATION

7. The Commission analyses the information before it and makes a Final Determination (FD) within 90 days of making a PD. This is either within 225 days of initiation, or if no extension was sought before PD, within 180 days (Section 30 (1) of the Act). A final determination may be either affirmative, or negative. If the determination is affirmative, that is, if the Commission has found evidence of dumping that causes injury, then duties will be imposed. If the determination is negative, all duties collected based on the PD will be refunded and undertakings, if any, cancelled. Negative determination occurs where the Commission does not find evidence of dumping or injury or a link between them. Note that in instances where the Commission finds dumping and injury but no link between them the determination would also be negative.
8. This may not always be the end of the matter as the parties have the right under the Act to make an application to the Supreme Court to review and set aside the determination of the Commission (Section 33 of the Act).
9. If the Court finds cause to set aside the Commission's determination, it would send it back to the Commission for reconsideration. The Commission would then make a new FD and publish notice of this in the manner prescribed (Section 31 (1) of the Act).

An investigation involves the critical evaluation of evidence provided in the complaint and requires the extensive gathering and analysis of industry and trade data to establish whether dumping is causing injury to the local industry involved. All investigations must be conducted in a WTO compliant manner, following the procedural and substantive requirements set out in the ADA.

At each stage of the investigation, the Commissioners make decisions based on the record, the information contained in the submissions of the parties and analysis presented to them by the technical staff. The Commissioners may also conduct, themselves or through staff, any analysis they deem appropriate to ensure that they have a sufficient basis for their decision. The

Commissioners determine anti-dumping duties, if any, on imports of the dumped product. Duties imposed are collected by the Customs Department. Anti-dumping duties may be in effect for a period of up to five years. As noted before, there is also the possibility of an undertaking to eliminate the margin of dumping, which would replace or defer the collection of duties.■

<sup>1</sup> This price is called the export price.

<sup>2</sup> This is called normal value

<sup>3</sup> "Injury" is viewed in three senses in the WTO Agreement, past and present (material injury), future (threat of material injury) or material retardation to the establishment of a domestic industry.

<sup>4</sup> "Like goods" is defined in the Act as:

(a) goods which are identical in all respects with those other goods; or

(b) in the absence of such identical goods, goods of which the uses and other characteristics closely resemble those of the other goods.

<sup>5</sup> Called domestic producers in the Act.

<sup>6</sup> These duties would be applicable from the date of the preliminary determination onwards and can only be imposed if the circumstances for their imposition are met.

<sup>7</sup> These duties would apply from the date of initiation onwards and can only be imposed if the circumstances for their imposition are met.



### *Obtaining More Information*

**To find out more about submitting a complaint to the Commission, read *The Customs Duties (Dumping and Subsidies) Act, 1999*, and visit our website at <http://www.jadsc.gov.jm>.**

**You may call us at 920-1493 or 920-7006. A member of the Commission's technical staff will speak with you, either by telephone or in person should you wish to set an appointment to visit our office.**

**Application and information packages are available from the Commission's office at 24 Trafalgar Road, Kingston 10. The WTO website at <http://www.wto.org> is also a valuable source of information.**

## TRADE GATEWAY

YOUR SOURCE FOR TRADE REMEDIES & TRADE INFORMATION  
*The Newsletter of the Anti-dumping and Subsidies Commission*

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