

TRADE GATEWAY

YOUR SOURCE FOR TRADE REMEDIES & TRADE INFORMATION

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USA FDA FOOD SAFETY MODERNIZATION ACT: IMPLICATIONS FOR JAMAICAN EXPORTS TO THE U.S.A. *TARA MARIE EVANS-ROSE

On January 4, 2011, President of the United States, Barack Obama signed into law the Food and Drug Administration Food Safety Modernization Act (FSMA)¹. This Act has been hailed by many proponents in the field of public health in the United States as a long awaited critical piece of legislation to ensure the protection of food health and safety. It is described as “historic”² by the Food and Drug Administration (FDA) due to its significant change in policy and direction from the United States’ precursor laws, in amending the 1938 Food Drug and Cosmetic Act and the 1906 Pure Food Drug Act³. The shift in policy and direction focuses on a prevention-oriented, scientific approach to food health and safety rather than treating with problems and challenges as they arise⁴.

The FSMA provides the FDA with a legislative mandate and tools for prevention, import oversight, safety and accountability, inspections and ensuring compliance, as well as enhanced partnerships with importers. The legislation has been passed, however there are regulations and standards that will need to be reviewed and developed⁵. It has until 2015 for all aspects to take effect⁶.

What does it do?

The FDA currently regulates the production of eighty per cent (80%) of all food products except meat, poultry and processed eggs, which fall under the jurisdiction of the United States Department of Agriculture (USDA)⁷. The new legislation addresses only FDA oversight and regulations because some products strictly subject to USDA rule-making already follow Hazard and Critical Control Points (HACCP) and other more rigorous standards⁸. The FSMA exempts some products which are already compliant with HACCP and other standards⁹.

The FSMA is said to target the safety of fresh



The Minister of Industry Investment and Commerce, Dr. the Hon. Christopher Tufton speaking at the Jamaica Promotions Corporation's Interactive Exporter Forum at the Terra Nova Hotel on October 25, 2011.

and minimally processed fruits and vegetables as a result of recent health outbreaks in the United States. According to the Centers for Disease Control and Prevention (CDC), recent data shows that each year, an average of one in every six persons in the United States or about 48 million people, get sick, 128,000 are hospitalized and 3,000 die from foodborne diseases¹⁰. The CDC identified known pathogens which are the cause of these illnesses:

- About 90 percent of the estimated diseases were due to seven pathogens noted below:

Salmonella was the leading cause, responsible for about 28 percent of deaths and 35 percent of hospitalizations; *Norovirus*, caused nearly 60 percent of estimated illnesses; but a much smaller proportion of severe illnesses; and others are caused by *Campylobacter*, *Toxoplasma*, *E-coli* O157, *Listeria* and *Clostridium Perfringens*¹¹.

Against this background of increasing outbreaks and domestic costs of treating with foodborne diseases, the US indicated the need for more contemporary legislation with a

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EDITOR'S NOTE

Since 2005, when the first issue of *TRADE GATEWAY* was published, the newsletter has been well received by many with an interest in trade and trade remedies across the globe. The publication features informative articles from International Trade experts including experienced Staff of the Anti-dumping and Subsidies Commission (the Commission). This is the first issue being published since April 2009. Publication of this uniquely packaged, informative source for Trade Remedies and Trade information with its emphasis on trade remedies and matters of interest to Jamaica's trade stakeholders, went through an almost three-year hiatus as a result of the need for the very small complement of technical staff to concentrate its efforts on other priorities. Two investigations were concluded by the Commission over the period, Case No. AD-01-2009, Cement from the United States of America and Case No. AD-01-2010, Cement from the Dominican Republic, both of which were closed with negative final determinations in 2010.

This eclectic edition of *TRADE GATEWAY*, Volume 6 Issue 1 features an article contributed by European Union *guru* on anti-dumping, subsidies and safeguard, Professor Edwin Vermulst, principal in the independent law firm VVGB Advocaten in Brussels, Belgium. The article entitled, "WTO Appellate Body Report in EC-Fasteners: A Winner for China but How Will the EU Implement?" was co-written with VVGB Associate, Ms. Juhi Sud. Washington, D.C. based Attorney-at-Law and International Trade Law expert, Ms. Andrea M. Ewart wrote, "Negotiating Mutual Recognition of Professional Qualifications with the EU" which explores this important issue of services trade that must be tackled by CARIFORUM and the European Union to implement aspects of the Economic Partnership Agreement (EPA).

Included also are the message of the Minister of Foreign Affairs and Foreign Trade delivered at the recent launch of Jamaica's National Aid For Trade Strategy and another article exploring, "Aid for Trade – The Caribbean and Jamaican Context" written by Mr. Donald Simpson and Mrs. Rochelle Whyte, who was the economist on the technical team of the Commission during the year 2009. The "USA FDA Food Safety Modernization Act: Implications for Jamaica Exports to the USA" is written by the Commission's Senior Legal Counsel, Mrs. Tara Marie Evans-Rose. We have included our regular feature articles, "Let's Get Technical" which explains the Commission's investigation process and procedure; CARICOM Corner; Trade Talk for Dummies on material injury; and WTO News In Brief, all written by the Commission's Staff. We also encourage you to try your hand at our puzzle, the Trade Terminology Search.

Following the assumption of the Ministry of Industry Investment and Commerce portfolio by Honourable Dr. Christopher Tufton (from Honourable Karl Samuda), the Agency welcomed in September 2010, a new Board of Commissioners, Mr. Wentworth Charles, Chairman, Dr. Velma Brown-Hamilton, Mr. Errol

Lewin, Ms. Hyacinth Lightbourne, and Ms. Sandra Shirley. Prior to that under Minister Karl Samuda and the chairmanship of Dr. Derrick McKoy, the Board included Commissioners Brown-Hamilton, Leslie Campbell, Hyacinth Lightbourne and Sandra Shirley.

Staff changes during the period of hiatus included most notably Senior Economist, Ms. Keisha-Ann Thompson, who ably served many years with the Commission until earlier this year. General Manager of two years, Ms. Kibret Beckford and administrative support staff members, Ms. Pamela Morgan and Ms. Safa Gregory also moved on after years of service to the Commission, to pursue new goals and opportunities.

We use this opportunity to introduce the Commission's new General Manager, Mr. Ainsworth Carroll and support staff member, Mrs. Audrey Scott-Stewart, each of whom have made contributions on key administrative matters which have supported the accomplishment of this publication.

The Staff of the Commission hopes that this publication will prove informative and valuable. We welcome your feedback.

We take this opportunity to wish everyone a Merry Christmas and a safe and prosperous New Year.

Sincerely,

Tara Marie Evans-Rose,
Senior Legal Counsel
The Anti-dumping and Subsidies Commission
Coordinator, Editor of this Issue

TRADE GATEWAY

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

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NEGOTIATING WITH THE EU MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

IMPLEMENTATION ISSUES UNDER THE CARIFORUM-EU ECONOMIC PARTNERSHIP AGREEMENT

ANDREA EWART, ESQ.

The Economic Partnership Agreement concluded in 2008 between the CARIFORUM countries and the European Union (EU) recognizes that the highly-skilled professional service providers within the Caribbean are particularly well-placed to access the EU services markets. For the Caribbean, and particularly for the CARICOM member states, the services sector is the largest income-earner and employment-generator, while the European Union is the world's largest importer of services. Furthermore, the English/French/Dutch/Spanish-speaking Caribbean shares language, cultural, and historical ties with Europe that make them strong partners.

The CARIFORUM-EC Economic Partnership Agreement (EPA) was negotiated between the EU, on the one hand, and the Caribbean Forum of African-Caribbean-Pacific (ACP) countries on the other, to replace the preferential Cotonou trading arrangements. The Caribbean Forum, or CARIFORUM, comprises CARICOM member states and the Dominican Republic.

The EPA and Professional Mobility

Title II of the CARIFORUM-EC EPA addresses Trade in Services, Investment and E-Commerce. It contains market access commitments for the entry of CARIFORUM professionals and other service providers into the EU markets, and vice versa. The categories to be allowed entry into the EU include: individuals for temporary stays as independent professionals, contractual service suppliers based on an existing contract to supply services in the country, key personnel for a company, sellers of business services, and short-term visitors. The permitted length of stay is specific to the individual catego-

ries and professions. The EPA does not waive any immigration and visa requirements that are in place within a given country.

The mobility of CARIFORUM professionals can, however be restricted by the absence of the proper mechanisms for ensuring that their existing professional qualifications are recognized within the EU member states. Article 85 of the EPA allows the Signatory Countries to retain the right to require that professionals seeking to practice within their borders possess the necessary qualifications and/or professional experience that are required of their own nationals. Article 85 goes on to recommend that the professionals in the CARIFORUM and the EU negotiate agreements to facilitate the mobility of their professional qualifications. Such agreements are termed mutual recognition agreements (MRAs).

The process of negotiating an MRA requires that the professionals reach agreement on the extent to which the academic credentials and work experience earned in one country equates to those required by the other country. Mutual recognition of professional qualifications allows the qualifications held by a professional to be recognized in the country in which he or she is seeking to practice, removing the necessity for re-qualification. Without an effective mechanism for mutual recognition of professional qualifications, the EPA commitments for the movement of service professionals will be difficult to realize.

What are the issues that will have to be addressed or considered? These are both internal and external to the region.

Internal Requirements and Issues

A starting requirement is the existence of an organized professional body that can fully participate in and support the MRA negotiating process. In fact, Article 85(2) of the EPA implies that the process should be led by professional bodies. It

recommends that the Parties to the EPA "encourage the relevant professional bodies . . . to jointly develop and provide recommendations on mutual recognition" to address each others' criteria for authorizing the operation of that professional in its territory. It is also expected that a profession will have in place an effective code of professional conduct and a system for enforcing it.

National and/or regional accreditation bodies for the relevant profession also have an integral role to play. One element that will be considered critical to the success of the MRA negotiation is the existence of a credible accreditation system for evaluating the relevant programmes at which the professionals receive their academic credentials. It may also be possible to use the MRA negotiations to arrive at agreement on the standards to be used to assess and accredit the relevant academic programmes. Consequently, the process is requires by the existence of experienced accreditation bodies which can demonstrate their ability to assess and accredit academic programmes as having met specified standards.

An effective regulatory framework for ensuring that only qualified professionals are allowed to practice is a third key component. This framework includes: (i) licensing requirements, which may or may not be statutorily-mandated; (ii) and a mechanism for finding and sanctioning violators of these requirements. The point is to be able to ensure that only those persons who meet a prescribed set of standards, including academic and training qualifications and adherence to a professional code of conduct, are able to practice that profession.

External Requirements and Issues

Identification of a negotiating partner(s) within the EU is key. This means identifying the relevant professional association or associations within the EU which play

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LAUNCH OF JAMAICA'S NATIONAL AID FOR TRADE STRATEGY

STATEMENT BY HONOURABLE DR. KENNETH BAUGH,
DEPUTY PRIME MINISTER AND MINISTER OF FOREIGN AFFAIRS AND FOREIGN TRADE
OCTOBER 28, 2011

Deputy Prime Minister and Minister of Foreign Affairs and Foreign Trade, the Honourable Dr. Kenneth Baugh, addressed those gathered, which included, other Government Ministers, Members of the Diplomatic Corps, Representatives of Development Partners, of CARICOM, and Stakeholders from Private and Public Sectors and Civil Society. He indicated pleasure at being able to welcome everyone to the launch of "Jamaica's National Aid for Trade Strategy: Partnership Towards Economic Growth and Development." He particularly thanked partners on the project, the Inter-American Development Bank and the United Kingdom's Department for International Development, for their support in the formulation of the Strategy and singled out for special mention Ms. Krista Lucenti and Ms. Valerie LaCarte, both from the IDB office in Washington D.C. and Ms. Franzia Edwards, Consultant

The Minister recognized during his talk, representatives from the Caribbean Community (CARICOM) Secretariat who were present and noted that there would be a presentation on work on Aid for Trade at the Regional level, which was also proceeding with the support of the IDB and DFID. He commended the initiative by DFID in Aid for Trade (AFT) in the Caribbean, with the

introduction of the CARTFund from which Jamaica has funded projects.

Minister Baugh noted that the project to revise the existing trade policy started as a part of Jamaica's Trade Policy Review at the World Trade Organization (WTO) which took place in January 2011. He noted that Aid for Trade is an initiative of the WTO to assist developing countries, particularly the least developed and most vulnerable to build their trade capacity. The speech given by Minister Baugh to launch the Strategy is substantially reproduced below, with little editing for length only. Thanks to Minister Baugh and the Ministry of Foreign Affairs and Foreign Trade staff for affording the Commission's staff the opportunity to reproduce the speech in this issue of TG.

"Assessments of the data show that the Caribbean benefits least from Aid for Trade. Therefore, when the IDB proffered the idea of partnering with Jamaica to include more substantive information on our trade capacity needs, we responded positively. Out of this came the National Aid for Trade Strategy. Formulating the Strategy was a collaborative effort involving our consultation and coordination mechanism, the Jamaica Trade Adjustment Team (JTAT), the membership of which includes representatives from the Public and Private Sectors and Civil Society. Consultations also included our Development Partners and Cabinet Ministers through a



Source: www.wto.org

meeting of the Cabinet Committee on International Relations and Trade. Support for this project has been at the highest level of Government.

Our private sector has been fully supportive of this effort as demonstrated by their participation in this event. Aid for Trade is about development to enable the private sector to take advantage of market access opportunities. We welcome their interest and involvement.

The National Aid for Trade Strategy was built on a pre-existing review of trade related technical assistance and seeks to identify the gaps in trade capacity needs. This is a clear indication that Jamaica has been receiving trade-related development assistance through the years from the European Union, the USAID, CIDA and other development partners. This assistance has been both at the national and regional levels. However,

in 2005, the WTO Members recognized that to implement the Uruguay Round Agreements and agreements that might result from the Doha Development Round Negotiations, developing countries needed more support. Many developing countries, including those in CARICOM, found it necessary to totally reform their trade regime to put in place new legislation, build new institutions, upgrade institutions and implement procedures to meet international standards.

The entire trading environment has changed and to compete in the global market place, Jamaica and CARICOM countries must continue to adjust. This is not a simple or easy undertaking. Small developing countries, such as Jamaica, must trade in order to achieve sustainable economic growth - it is not a choice for us, it is a necessity. Thus, we view Aid for

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WTO APPELLATE BODY REPORT IN *EC-FASTENERS* A WINNER FOR CHINA BUT HOW WILL THE EU IMPLEMENT?

- *EDWIN VERMULST AND JUHI SUD

In the recently issued report in the case *EC-Fasteners*¹, the World Trade Organisation (WTO) Appellate Body [AB] would appear to have closed the door to the European Union's [EU] 'one country-one duty rule'² applied to exporters from what the EU terms non-market economy [NME] countries such as China and Vietnam, whereby the EU grants individual dumping margins and duties to NME exporters only if they qualify for what is called market economy treatment [MET] or individual treatment [IT].

Since the year 2002, Article 9(5) of the EU's AD legislation has harbored a provision whereby NME exporters who fail to obtain MET, *i.e.* for whom normal value is based on analogue market economy costs or prices, are subject to the country-wide duty unless they comply with the five stipulated IT criteria⁴ to obtain an individual duty. In other words, non-MET exporters will obtain an individual duty based on their dumping margin determined by using their own export prices and the analogue country normal value, only if they satisfy the IT criteria.

China challenged Article 9(5) as being inconsistent with Articles 6.10, 9.2, 9.3 and 9.4 of the WTO Anti-dumping Agreement [ADA] and Articles I:1 and X:3(a) of the GATT 1994. The Panel found Article 9(5) to be inconsistent, among others, with Articles 6.10 and 9.2 ADA. On appeal by the EU, the AB upheld the violation of these articles.

At the outset the AB clarified that individual duties presuppose individual margins and country-wide duties presuppose country-wide dumping margins, thereby reaffirming the Panel's assessment that Article 9(5) concerns the imposition of duties and calculation of dumping margins, even though it refers only to duties.

Regarding Article 6.10, the AB considered that this provision imposes an obligation to determine individual dumping margins for each known producer or exporter but at the same time is subject to certain exceptions under the ADA with sampling not being the only one. That being said, the AB noted that no provision in the covered agreements permits departure from the obligation to determine individual dumping margins only with respect to NME imports. It disagreed with the EU seeking refuge in Section 15 of China's Accession protocol as the legal basis for justifying an exception to the individual dumping margin calculation obligation and considered that Section 15 authorizes differential treatment only for the determination of the normal value aspect of price comparability and notably not the

only for the determination of the normal value aspect of price comparability and notably not the export price.

As regards Article 9.2, the AB held that the first and second sentences of this article require the specification of individual duties and naming of suppliers, while the third sentence allows the naming of the supplying country when it is *impracticable* to name individual suppliers. The EU argued that Article 9(5) provides for the imposition of country-wide duties when individual duties cannot be imposed for reasons of ineffectiveness in countering dumping. In the EU's view, imposing individual duties when exporters are related to the State may result in circumvention of higher duties, and therefore Article 9(5) fell within the exception of the third sentence of Article 9.2. Distinguishing ineffectiveness from impracticability, the AB dismissed the EU's contention.

Concerning the practical function of the IT test, the EU claimed that it aims to identify the real source of price discrimination thereby determining if the State and those exporters that do not act independently from the State should be treated as a single exporter subject to a single dumping margin and duty. The AB in rejecting the EU's contention established three cardinal points.

First, Articles 6.10 and 9.2 ADA do not preclude the establishment of a single dumping margin and duty for several exporters subject to the demonstration that they constitute a single entity. This may be gleaned from among others, the corporate and structural links or the material influence of the State on output and/or pricing behavior of exporters. In the AB's view, the EU IT criteria applying cumulatively did not investigate such links or control, *i.e.* the existence of a single exporter, as only two criteria seemed to relate to structural relationships or control and therefore might be relevant to the enquiry, while the remaining three related to broader market distortions.

Second, the State and the NME exporters cannot be presumed to form a single entity and the *burden of proof* is on the investigating authority to establish such singularity based on evidence submitted or gathered during the investigation.

Third, as regards such a single exporter, only a dumping margin and duty based on the weighted average export prices of all of all exporters forming part of the single entity – not the country-wide margin and duty which equally apply to non-cooperating exporters – would be consistent with Articles 6.10 and 9.2.

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CARICOM CORNER

JAMAICA HOSTS CARICOM WORK ON DUMPING AND SUBSIDIES

*Audrey Scott-Stewart

On May 9-12, 2011, Jamaica, under the auspices of the Ministry of Industry, Investment and Commerce was host to government trade officials and trade experts from trade ministries, administrative agencies and Customs departments within the CARICOM region for a three-day meeting and training seminar at the Jamaica Pegasus Hotel in Kingston. The meeting and workshop was held to validate a Project undertaken by CARICOM Secretariat to build capability in the region in antidumping and subsidies (countervail). Funding for the project was provided by the the European Union from the Ninth European Development Fund (EDF).

Honourable Karl Samuda, then Minister of Industry Investment and Commerce delivered an inspiring opening address. He called for CARICOM member countries, though independent and having different strengths, to formulate a coordinated and harmonised approach to the vexed issue of dumped and subsidized imports. Mr Samuda expressed the view that it was important that CARICOM states draw on each others' strengths to overcome challenges and formulate legislation to protect individual member countries and industries. He noted that the Jamaican Government has worked diligently against the challenges posed to its manufacturers by dumping.

Mr. Samuda emphasised that a collaborative approach should be taken towards legislative action that will enhance the region's position in trade and development. He indicated that "We must be cognizant of the fact that dumping is

here with us and is likely to be here with us for a very, very long time. We must therefore safeguard the interests of our member states to ensure that the extent of the dumping does not create any kind of injury to especially fledging industries that are seeking to be established within our respective countries."

Programme Manager with the CARICOM single Market and Economy (CSME) Unit, Ivor Carryl spoke after the Minister and noted that although Chapter 25 of the Revised Treaty of Chaguaramas, which is the instrument of CARCIOM, deals with dumping and subsidisation, the now concluded European Union (EU) - CARIFORUM Economic Partnership Agreement (EPA) has a chapter and a number of bilateral agreements to which CARICOM is a party, contain trade remedies provisions, the mechanisms and laws are still a work in progress in CARICOM economies.

Jamaica's Anti-dumping and Subsidies Technical Staff were then invited to occupy the Chair for the duration of the meeting and this role was shared by Andrea Marie Brown, Executive Director and Ainsworth Carroll, General Manager of the Commission. Jamaica, represented mostly by Senior Legal Counsel to the Commission, Tara Marie Evans-Rose participated enthusiastically, often helping to clarify the nuances in the discussions throughout the three days about the appropriate mechanisms and legislative solutions for trade remedy regimes for the Member States and the region as a whole.

The recommendations from the meeting would form a proposal or proposals for discussion by the Ministerial of the Council of Trade and Economic Development (COTED) of CARICOM toward the decisions about what kind of institutional capacity should be entrenched in the CARICOM system for trade remedy action by individual Member States and by the region as a whole.

TRADE TALK FOR DUMMIES

WHAT IS MATERIAL INJURY?

*Ermine Lewis

In an antidumping or subsidy (countervailing) duty investigation, an investigating authority such as the Anti-dumping and Subsidies Commission must look at whether the domestic producer has suffered "material" injury. The term "material" is not defined in the WTO Antidumping or Subsidies Agreement, but it should be understood that injury to an industry which is the basis for a duty is not insignificant.

Article 3.1 of the Antidumping Agreement (ADA) and Section 12 of the Customs Duties (Dumping and Subsidies)(Determination of Fair Market Price, Material Injury and Margin of dumping) Regulations 2000 require the Commission, in assessing injury, to examine 15 factors in the following categories: the volume of dumped imports; the effect of the dumped imports in the Jamaican market; and the resulting impact on Jamaican producers. The volume of the dumped imports are examined to see whether there has been a significant increase in volume, either in absolute quantity or relative to production or consumption in Jamaica. The impact on prices is assessed by the Commission looking at the trends in prices of the Jamaican like product to see whether there has been price undercutting; price suppression or price depression.

The Commission looks generally at the condition of the industry; at factors such as actual or potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; and actual and likelihood or actual negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

Sources: www.wto.org, www.jadsc.gov.jm



LET'S GET TECHNICAL

ANTIDUMPING INVESTIGATION AND PROCEDURE



Dumping occurs where a foreign company exports a product to Jamaica at a price lower than the price it normally charges on its domestic market. The activity of dumping is not strictly prohibited under international trade agreements. However, when dumping causes material injury to the Jamaican industry which produces like goods, the Custom Duties (Dumping and Subsidies Act (the Act) allows for remedial action to be taken. For example, there is a Jamaican distributor that imports televisions from a foreign producer in China and there is a Jamaican company that manufactures televisions that closely resemble the Chinese televisions. The Chinese televisions are being sold at low prices in the Jamaican stores and as a consequence the Jamaican company is experiencing a loss in sales, revenue and market share, since the customers are buying the cheaper Chinese televisions. The Jamaican company does some research and finds out that the Chinese company is selling the televisions to the distributor at a price lower than they are sold on the market in China.

What steps should the Jamaican company and/or industry take?

The Jamaican company turns to the Anti-dumping and Subsidies Commission for help asking for the imposition of antidumping duties. Antidumping duties are applied on imported goods in addition to regular customs duties.

The Commission provides producers with information and application packages that guide them on how to file a complaint. The Jamaican producers must ensure that a complaint is properly documented i.e. it must include the following information:

- ◆ A description of the dumped imported goods;
- ◆ The country of export and producer, if different, if known
- ◆ The Name and Address of the Importer or distributor;
- ◆ A description of the like domestic goods, i.e. the Jamaican goods

- ◆ A description of the affected Jamaican industry, i.e. the names of the Jamaican company (ies)
- ◆ The Normal Value and Export Price(s) and show that the goods have been dumped;
- ◆ The material injury that the industry has suffered, or is likely to suffer;
- ◆ How the dumped goods have caused, are causing or are likely to cause the material injury; and
- ◆ Any other information the company deems relevant to the Commission's ability to make a determination.

The complaint must contain in reasonable detail, the facts which form the basis for the allegations of dumping and that the dumping has caused, is causing or is likely to cause future material injury to the domestic industry. Financial and other record evidence are required in addition to statements about the facts. The Commission must be satisfied that the complaint is made by or on behalf of the domestic industry as a whole. It may be made by one or more manufacturers or by a representative on behalf of the affected Jamaican industry. This requires that support is expressly stated by (1) the collective output of the domestic producers supporting the complaint represents more than 50% of the output by producers expressing support or opposition to the complaint; and (2) the domestic producers expressly supporting the complaint account for more than twenty-five per cent of total production of like goods produced by the domestic industry.

The Investigation

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

An investigation is carried out in three stages: Initiation, Preliminary Determination and Final Determination. Investiga-

tions may last for 180 days but may run up to 225 days if extensions are taken. The Act imposes these time limits on investigations whereas the WTO Anti-dumping Agreement permits a longer period of up to one year, and in special circumstances 18 months. Jamaica is one of only two WTO member countries that conduct investigations within such short time frames.

The Board consists of five Commissioners whose duty it is to make the decisions in any investigation. They also determine the duties that should be imposed against imports of the dumped product. The investigative process is supported by the Commission's technical staff who compile and analyses the evidence and submits the information to the Board of Commissioners. On receiving the filing from the domestic industry, the Commission reviews the information contained in it and conducts independent research to verify or check the allegations of the parties. The Act requires the Commission to review the complaint within forty-five (45) days from the date of receipt. If the Commission is satisfied that the complaint is properly documented; that there is evidence that the goods have been or are being dumped; and the evidence discloses a reasonable indication that the dumping has caused, is causing or is likely to cause material injury, the Commission initiates or formally commences an investigation. The Minister of Industry, Investment and Commerce, complainant, exporter, importer and the public are notified and a Statement of Reasons provided which sets out the reasons for initiation. The Notice of Initiation is published in a local newspaper and the Jamaica Gazette. Where there is insufficient information and evidence to initiate an investigation, the Commission may request additional information from the domestic industry

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(Continued from page 3) Negotiating Mutual Recognition with the EU...

the role of gatekeeper for that profession. There may be an EU-wide association. Otherwise, one such association will have to be identified for each EU country of potential issue to the CARIFORUM professional sector.

An examination of how the issue of mobility for the given profession is handled at the international level can provide guidance to the process. Within some professions there are international agreements that address the mobility of professional qualifications among the signatory countries. Where a profession has decided to, or is exploring the issue of mobility of credentials, it will be extremely helpful to determine whether such a regime exists and, if it does, who are the signatories or subscribers? A workable framework may already exist or can be developed on the basis of this type of arrangement. Alternatively, an agreement at the regional level may provide a model or guide to the process.

The EU's own regime for intra-regional mobility of the specific profession must also be assessed. Generally speaking, using EU-wide guidelines provided for that purpose, each EU Member State determines the professional qualifications that are required for practice by a given profession within its borders (receiving country) and against which it reviews the qualifications of a professional from another EU member state (sending country). If a significant gap is found between the requirements of the receiving country and those of the sending country, the receiving country may require the nationals of the sending country to undergo additional professional or practical experience, or an examination. The EU is also developing the concept of a European Higher Education Area which, by 2012, is scheduled to re-focus the entire system on the development of learning outcomes spanning all levels of the educational system (e.g. from a carpenter to an engineer).

Finally, **the professionals need to be prepared to take steps to address the mobility of the profession within the CARIFORUM region.** Despite the CARICOM Single Market & Economy (CSME) commitment to freedom of movement, its regime to address mobility of professional qualifications has not as yet been established. The addition of the Dominican Republic also needs to be addressed. Otherwise, it could be deemed hypocritical for CARIFORUM professionals to request from the EU recognition that they withhold from each other.

Despite the challenges, the successful negotiation of an MRA between a specified professional grouping of CARIFORUM and EU holds significant promise for the CARIFORUM professional.

Once an MRA is negotiated, a CARIFORUM professional could become eligible to work, partner on short-term contracts, join bidding consortia, and partner with firms across the 27 EU member states. ■

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(Continued from page 4)...Statement by Minister Launch of Aid For Trade Strategy)

Trade as an important initiative to enhance our export capacity and improve our competitiveness.

While the focus has been on financing from International Development Partners, we have also invited some of our local financial institutions to this event. Aid for Trade is an initiative which could be explored at the local level in which our financial institutions as well as representatives of the private sector can consider some of the projects identified in the Strategy as investment opportunities. Can there be an enhanced partnership between the producers and the financial institutions? Can larger companies in Jamaica work with communities to encourage productive enterprise? We want the private sector to be engaged in more projects which will stimulate production and expansion of exports. Private sector companies worldwide are getting actively involved in Aid for Trade. Can we explore and be guided by their best practices?

In July, with the National Aid for Trade Strategy at a very advanced stage, a brochure was prepared by the IDB. We were able to introduce our National Aid for Trade Strategy at the WTO Third Global Review of Aid for Trade held in Geneva, from 18-19 July 2011. Bilateral meetings were also held with several of our development partners, who are represented here today. The CARCIOM Secretariat was also able to speak to the work being done at the regional level.

At this Review, the role of Development Banks in Aid for Trade was highlighted, as well as the important role now being played by development partners from the South such as the Peoples Republic of China, Chile, India and others. South-South Cooperation has been encouraged for many years in UNCTAD and in the Commonwealth. It is now becoming increasingly important. We can all participate whether it is in providing training, sharing experiences or in funding projects. I must also state that the WTO Director General, Pascal Lamy, the Deputy Director General, Valentine Rugwabiza, and the staff of the WTO's Development Division have been very encouraging in this Aid for Trade effort.

We now have a Strategy document which we are formally unveiling this morning. A lot of work has gone into its preparation. In the action matrix, we have identified projects, some of which are already being funded. However, there is a lot more which is required. I urge our International Development Partners and our local private sector and financial institutions to carefully examine the document and particularly the action matrix. The implementation of the Strategy is now our challenge given the current economic climate. We would be unrealistic, if we did not acknowledge that in the international community, this is a difficult period for everyone. At the national level, our fiscal space is limited given our very high debt. Nevertheless, to succeed we must cooperate at every level to find creative ways of strengthening our trade regime, and to bring our institutions, processes and procedures to international standards. An area of particular importance is food safety. Cabinet has recently approved the National Food Safety Policy.

The US Food Safety Modernization Act makes its implementation even more urgent. Again, I reiterate that trading for

(Continued on page 10)

(Continued from page 5, WTO Appellate Body Report in EC-Fasteners...)

of all exporters forming part of the single entity – not the country-wide margin and duty which equally apply to non-cooperating exporters – would be consistent with Articles 6.10 and 9.2. At first blush, the AB ruling seems to be a big blow for the EU, one of the top three users of the AD instrument⁵, particularly because China is the top target of the EU's AD investigations⁶. But there is more than what meets the eye. While permitting the application of a single duty for exporters and the State under certain conditions, the AB appears to have given the EU leeway to consider other factors and positive evidence beyond corporate/commercial relationships, such as instruction and control of pricing and output, in deciding to apply a single duty to exporters and the State. Furthermore, though the AB unequivocally imposed the burden of proof upon the EU to establish the singularity of exporters and the State in order to apply a single duty, there is no indication of the limit to the EU's discretion to "gather" evidence from exporters.

In the first AD investigation concerning China post the AB ruling, the EU would appear to continue its practice of granting individual duty rates based on the satisfaction of the MET/IT criteria, but a footnote in the notice of initiation of the investigation states that even those exporters who consider that they may not meet these criteria are invited to cooperate in light of the AB ruling⁷. The EU further notes that gathering such information does not prejudice whether and which consequences will be attached to the AB ruling.

While it remains to be seen how the EU will officially implement the AB report, the first indications do not seem to be promising. On 18 August, 2011, the European Union reportedly informed the DSB of its intention to implement the recommendations and rulings of the DSB in a manner that respects its WTO obligations and noted that it will need a reasonable period of time to do so. The cases mentioned above however, unfortunately

suggest that the EU might simply make cosmetic changes instead of rigorously amending its practice in this regard. If so, future recourse by China to the WTO dispute settlement procedures seems likely. ■

Endnotes:

1. *European Communities-Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/AB/R.

3. Vermulst, *EU Anti-Dumping Law and Practice*, pg. 307 (2010).

4. The five IT criteria are: (i) in case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits; (ii) export prices and quantities, conditions and terms of sale are freely determined; (iii) majority of shares belong to private persons; state officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference; and (v) State interference is not such as to permit circumvention of measures if individual exporters are given different duty rates.

5. WTO Annual Report 2011, http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep11_e.pdf

6. EU statistics concerning use of trade defence instruments 2010, http://trade.ec.europa.eu/doclib/doc/2010/january/tradoc_145673.pdf.

7. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:236:0018:0024:EN:PDF>

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(Continued from page 7)...Let's Get Technical, Antidumping Investigation and Procedure..

and the forty-five days would run from the date the Commission receives the required additional information. The Commission does not publicise its receipt of a complaint until it decides to open an investigation.

On Initiation, the Commission sends questionnaires to the domestic industry, exporter, importer and other interested parties to the investigation. Responses to questionnaires are received from the parties along with other relevant information which the parties may submit. The Commission

analyses the responses and all the record evidence and conducts independent research, which is integrated into its assessment of the case. The investigation must be terminated if the Commission considers that there is insufficient evidence of dumping, that the margin of dumping is *de minimis* (or less than 2% of the export price) or that any injury caused by the dumping is negligible (Section 26 (1) of the Act). If the conditions for termination do not exist, the Commission makes a Preliminary Determination (PD), pursuant to Section 27 (1) of the Act within 90 days from

of initiation. Some circumstances provided in Section 29 (1) of the Act (such as the complexity of a matter) allow for an extension of up to 45 days for PD. The Commission provides parties with a Notice of the Preliminary Determination and a Statement of Reasons, which outlines the bases for the determination. Where an affirmative Preliminary Determination has been made, the Commission may decide that provisional (or interim duties) should be applied to the imports for a maximum period of four months. Provisional duties are deemed applicable where the Commission

finds them necessary to prevent injury being caused to the domestic industry during the investigation.

After the Preliminary Determination, the Commission may accept a price undertaking from the exporter or the government of the country from which the goods are exported. A price undertaking must specify that the exporter will cease the dumping or increase the price at which the goods will be sold in order to eliminate the margin of dumping.

(Continued on page 10)

(Continued from page 8) Statement by Minister Launch of Jamaica's National Aid For Trade...

Jamaica is not an option, It is an essential requirement of economic growth. Our private sector cannot only rely on the domestic market, they must export to be viable and to grow their businesses and create employment.

I want to make a point about gender - women may not out-number men in our proceedings this morning, but, in Jamaica, it is clear, that women are a force in the society. They are a strong and rising group in business and in trade. Most small businesses opened in Jamaica today are owned and operated by women. We have to ensure that they are beneficiaries of Aid for Trade.

We are currently undertaking a project for the revision of our national trade policy. An objective of this is to ensure that trade is recognized and acknowledged as a national development priority and that it is mainstreamed or integrated into the National Development Plan – Vision 2030—Jamaica. The revised policy also must contribute to bringing

(Continued from page 9) Let's Get Technical Antidumping Investigation and Procedure..

If an undertaking is accepted the collection of duties ordered at the Preliminary Determination stage will be suspended (Section 32 of the Act). If no undertaking is given the investigation continues and the Commission may send out supplemental questionnaires and receive responses and any other information, including submissions and arguments on the Statement of Reasons for the Preliminary Determination and rebuttals to other parties' arguments. The Commission analyses the information before it and makes a Final Determination (FD) within 90 days of the Preliminary Determination. The Commission publishes a Notice of the FD and provides parties with a Statement of Reasons for the Final Determination. The Final Determination may be either affirmative, with definitive duties being levied

about coherence and coordination with all our various strategies, such as the National Export Strategy, the Growth Inducement Strategy and, of course, our National Aid for Trade Strategy. The involvement of the private sector in this project is also critical and, I am pleased to say, that as with this Aid for Trade Strategy, they are involved.

We are looking forward to implementation of the Strategy. I am hoping that at the Fourth WTO Global Review of Aid for Trade, Jamaica will be in a position to report that the implementation of the Strategy has had successful outcomes through the partnership between the private sector, the public sector and the International Development Partners whether they are located in the North or the South.

It will be challenging, but, in partnership, we can achieve good results.

Thank you."

After the Minister spoke, the National Strategy document was presented and discussed by the Consultant on the project, Ms. Franzia Edwards. Some copies were also made available.■



on imports of the dumped product, or it may be negative.

Final anti-dumping duties may be in effect for a period of up to five-years, subject to review. If the final determination is negative any duties collected based on the PD must be refunded. Under the Act, parties may apply to the Supreme Court to review and set aside the FD of the Commission if dissatisfied with the determination (Section 33 of the Act). The Court may set aside the matter and send it back for the Commission to make a new FD.

Obtaining More Information

If you are considering lodging an anti-dumping complaint with the Commission, we advise that you first read the Act and visit our website: <http://www.jadsc.gov.jm>. The WTO website at <http://www.wto.org> is also a valuable source of information.

**TRADE TERMINOLOGY SEARCH
AUDREY SCOTT-STEWART**

B Z R T Y I N D U S T R Y T I I
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FIND THE FOLLOWING WORDS:

- | | |
|----------------|---------------|
| AGREEMENT | PROFITS |
| CARICOM | QUOTA |
| CAUSATION | REMEDIES |
| CLASSIFICATION | SUBSIDISATION |
| CUMULATION | TARIFF |
| CUSTOMS | TAXATION |
| DECLARATION | VOLUME |
| DE MINIMIS | POLICY |
| DETERMINATION | NORMAL VALUE |
| DUMPING | MEASURES |
| DUTIES | INVESTIGATION |
| EXPORT PRICE | INJURY |
| FREIGHT | INDUSTRY |
| IMPORTS | |

If you have remaining questions or concerns, a member of the Technical Staff of the Anti-dumping and Subsidies Commission is available to speak with you. You may call us at 927-8665 or 978-1800 to schedule an appointment to visit our offices.

Application and information packages are available from the Commission's offices, 18 Trafalgar Road, Second Floor, Kingston 10.■



WTO IN BRIEF

The Doha Round and Eighth WTO Ministerial Conference - KHALILE NELSON



The World Trade Organisation (WTO) Doha Development Round was marked by a core concern: that the multilateral trading system should benefit the developing countries, which constitute over three-quarters of WTO Members. In the Doha Declaration, Members pledged to enable developing countries to “secure a share in the growth of world trade commensurate with the needs of their economic development” through two key routes:

- Improving market access to Northern markets for developing countries, by reducing import tariffs which prevent increased prices and distort competitiveness; and
- Phasing out domestic and export subsidies, that enable the over-production of goods at very low prices, often leading to the dumping of these goods at prices that are cheaper than those of locally produced goods.

Rules were identified as an area for continued negotiations in the Round.

Agriculture was also identified as a strategic area for trade reform, as well as non-agricultural market access (NAMA), trade in services (GATS), developing country issues (Special and Differential Treatment); and Aid for trade. In the intervening period, countries have proved unwilling to open up their agricultural markets without the commitment from developing countries to lower barriers in services and non-agricultural goods. Rich countries also want to limit the scope of Special and Differential Treatment Measures (SDT) which would soften the impact of tariff reductions for developing countries. The promise of Doha as a catalyst for development has largely not been met. The Round has suffered from missed deadlines as a result of the failure of Members to find consensus.

The Ministerial Conference of Ministers responsible for Foreign Trade in their respective WTO Member countries, is the highest decision-making body of the WTO. The Eighth Ministerial Conference is taking place from December 15 – 17, 2011 in Geneva.

It was hoped that this Ministerial will be able to bridge differences and find areas of consensus that have thus far proved elusive. Addresses from the Director-General and the Chair of the General Council. In the plenary session, Ministers will be able to make statements based on a list of speakers. There will be working sessions in which Ministers will be able to interact and participate in discussions under three broad themes: “Importance of Multilateral Trading System and the WTO,” “Trade and Development” and “Doha Development Agenda”. It is hoped that Ministers will also make decisions on intellectual property, electronic commerce, small economies and least developed countries and other matters.

The enormous investment of many countries including Jamaica in this development round, leaves many feeling that it is important for the Doha Round to reach completion. Some note that leaders of the world need to moderate political concerns and seek to strengthen global trade to increase the benefits which are experienced nationally.■

Sources: www.wto.org; <http://ec.europa.eu/trade>



THE DOHA DEVELOPMENT ROUND

A Note About Jamaica and Rules Negotiations

Jamaica has been involved in the World Trade Organization (WTO) negotiations during the Doha Round led by its able Permanent Representative and Staff of the Mission in Geneva and the Foreign Trade Department at the Ministry of Foreign Affairs and Foreign Trade in Kingston.

The Staff of the Anti-dumping and Subsidies Commission have followed the negotiations relating to the Anti-dumping Agreement and have offered proposals, some of which came to the floor of the Rules Negotiation Committee. In the main, Jamaica’s proposals on rules sought to remove ambiguity in provisions, to reduce abuse and detrimental inconsistency in practices by some Members. Some sought to

introduce flexibility in the use of the rules, such as longer implementation periods, technical and financial assistance and implementing the principle of special and differential treatment (S&DT) in the Agreement.

Jamaica’s experience was that though there was interest in matters of specific concern to Jamaica and other Small Vulnerable Economies, it was difficult to get “traction” toward outcomes favourable to our point of view. Active opposition to reaching outcomes that addressed separately the needs of any additional category of developing country Member. Any S&DT which may have been negotiated for Jamaica and its cohort would advantage larger “emerging” economies. This appeared unacceptable to influential Members. Also, the ex-

ports of many developing countries are the target of trade remedy actions, thus reaching consensus on issues proved challenging.

Although Jamaica has implemented the Rules reasonably successfully over the years since the launch of the Doha, from the trade remedy perspective, Jamaica still cares about implementation costs, training and technical assistance, aid for trade and capacity to follow and participate in the negotiations to benefit Jamaica’s ability to use the rules to the advantage of its industries.



Aid For Trade

The Caribbean and Jamaican Context

*Donald Simpson & Rochelle Whyte

Aid for Trade (AFT) launched in 2005, was designed to help developing countries increase exports of goods and services, integrate into the multilateral trading system and benefit from the process of trade liberalization. This has become increasingly important as the inability of developing countries to unlock dynamism within their economies has inhibited both social and economic development in the lives of their citizenry. To unleash economic transformation within these economies, the Aid-for-Trade Initiative seeks to leverage development assistance by funding, monitoring and evaluating projects to help developing countries increase export volumes and enhance the process of globalization to become more inclusive. The growing importance of AFT to the development agenda of OECD countries has resulted in increased inflows from donor countries and institutions even during the world financial crisis.

The Third World Trade Organization Aid for Trade Global Review (July 18–19, 2011) highlighted the international community response to the challenge of helping developing countries overcome structural and capacity limitations that inhibit their potential to maximize the benefits of increased trade on economic development. The Review provided clear evidence of the positive outcome that could be realized from initiatives resulting in the prioritization of trade, by addressing targeted bottlenecks that undermine the ability of producers to connect to global markets.

The Review highlighted a large number of case stories from partner countries, bilateral and multilateral donor agencies, providers of South-South cooperation and regional economic communities who probed deeper into the policies, processes, and programmes on Aid for Trade. A major objective of the Review was to enhance the WTO and donor agencies' ability to have a better understanding of the policies and programmes that are working; the key ingredients of success; and lessons that governments and prac-

tioners can learn from these experiences. The case stories provided details of how Aid for Trade programmes and projects have made a difference in building human and institutional capacities, supporting the private sector, meeting standards, remedying market failures, facilitating trade and improving infrastructure.

Of the over ten sessions conducted at the review, two were of particular importance to the Caribbean: (1) Aid for Trade in Latin America and the Caribbean: Promoting regional Trade Integration for Sustainable Growth; and (2) Aid for Trade: South-South Cooperation.

Aid for Trade in Latin America and the Caribbean: Promoting regional Trade Integration for Sustainable Growth

During this session the main issues discussed were:

- ◆ The relatively high inter regional transportation cost
- ◆ The need to increase regional trade by modifying hardware (e.g. Infrastructure development) and software (e.g. Regulations) issues
- ◆ Increased focus on Public Private Partnership. However it was highlighted that there are obstacles for the private sector in the form of artificial barriers to export despite the existence of over 70 bilateral agreements regionally
- ◆ The need for external assistance to aid in fostering increased regional integration especially in the area of technical assistance through combined efforts with the multilateral Agencies (such as the Inter-American Development Bank) in order to maximize resources allocated for trade and development targeted at South-South trade

Aid for Trade: South-South Cooperation

– The growing importance of South-South trade was highlighted in this session as the presentation revealed an increase of approximately 10 per cent over the last decade compared with 4 per cent for North-North trade. The largest trade volume for South-South trade

was between China and Africa which accounted for the largest portion. It was highlighted that China purchases US\$40 billion of LDC exports (approximately 23 per cent of LDC trade). The growing importance of the Africa-China trade regime has resulted in approximately 50 per cent of China's foreign aid going to Africa.

Jamaica: Trade Performance and Aid for Trade Strategy

Trade Performance

Jamaica's merchandise trade deficit widened by 85.9 per cent in 2010 to \$3.9 billion, relative to the trade deficit recorded in 2000. For the 10 year period, the highest merchandise trade deficit of \$5.8 billion was recorded in 2008. This high trade deficit was due to numerous factors, chief among which was the higher average price per barrel for petroleum products and higher importation of substitutes for domestic crops due to the passage of Hurricane Dean in 2007.

The widening of the trade deficit occurred as expenditure on imports grew at a faster rate during the period 2000 – 2010. Relative to expenditure on imports in 2000, Jamaica's import bill was 52.9 per cent higher in 2010, increasing to US\$5 057.6 million. The major contributor to the increase in the import bill was the category "Mineral Fuels & Lubricants" as reflected by the US\$995 million increase in the value of its import, relative to 2000.

Merchandise exports recorded marginal growth of 2.1 per cent in 2010 to US\$1 328.2 million, relative to receipts received in 2000, owing primarily to fluctuations in the exportation of Sugar and Chemicals (including Ethanol), as other major traditional and non-traditional exports remained relatively flat over the period. In 2009, both exports and imports declined by 50.8 per cent and 39.4 per cent respectively, due to the effects of the global recession on the domestic economy.

These developments in Jamaica's mer-

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(Continued from page 12) Aid for Trade: The Caribbean and Jamaican Context...

chandise trade highlight the imbalance in the country's external trade position and wider weaknesses in the trade structure. Aid for Trade could help to address these weaknesses if the National Strategy is tailored to meet the broader AFT objective of increasing the exports of goods and services in developing countries.

Trade Openness

Jamaica's trade to GDP ratios, which provides a measure of trade openness for the period 2005-2010, are

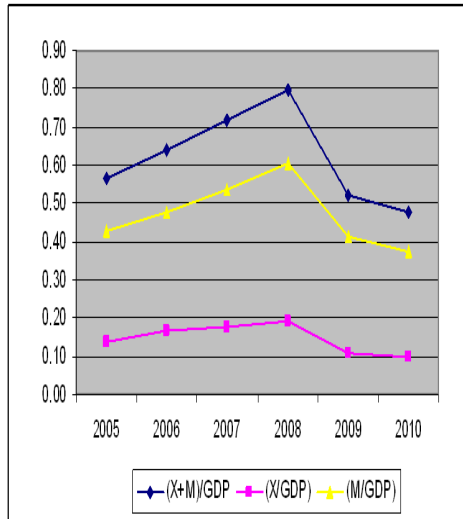


Figure 2. Jamaica's Trade Openness Indicators for 2005-2010

increase from the 2005 baseline period. Other official flows doubled, reaching US\$51 billion in 2009, a likely reflection of the donor response to the global economic crisis. Disbursements have been increasing at a constant growth rate of between 11% -12 % for each year since 2006 – reaching US\$29 billion in 2009 – indicating that past commitments are being met. However, an assessment of Jamaica's receipts from trade related initiatives and activities in 2010, showed marginal growth in monies received when compared with the period prior to the launch of the Initiative in 2005.

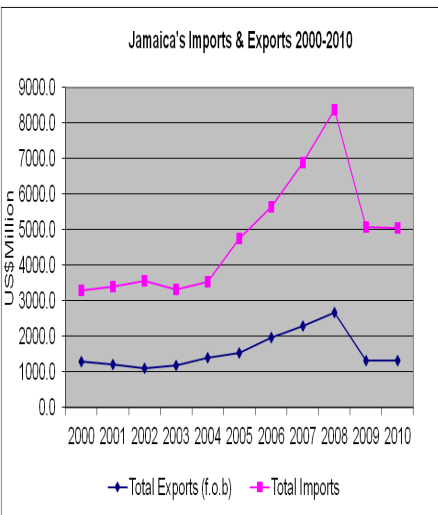


Figure 1. Jamaica's Total Imports and Exports for the period 2000-2010

depicted in Figure 2 below. Jamaica's trade openness (Exports + Imports / Nominal Gross Domestic Product) increased in the years 2005 to 2008, largely reflecting an increase in imports and marginal growth in the level of exports relative to Gross Domestic Product. In 2009, there was a sharp decline in the level of trade openness due to the adverse effects of the recession on the economy, reflected in a decline in the importation and exportation of goods and services.

Jamaica's Aid-for-Trade Strategy

Subsequent to the launch of the Aid for Trade Initiative in 2005, some developing countries began to realize benefits from the renewed focus on development assistance. The WTO estimates that in 2009, global aid-for-trade commitments reached approximately US\$40 billion, a 60 per cent

In a bid to increase the gains from Aid-for-Trade, the Jamaican Government with the assistance of the IDB commenced drafting a national strategy in 2010, which was aimed at highlighting Jamaica's trade related priorities to attract Aid-for-Trade resources that are best suited to the country's outlined priorities. A brochure outlining the main elements of the Draft Strategy was completed and circulated at the Global Aid-for-Trade Review in July 2011. Jamaica's Aid-for-Trade Draft Strategy identifies priority areas, referred to as pillars for development under which projects and programmes will be designed to address sectoral challenges and garner increased donor support and technical assistance. The pillars are:

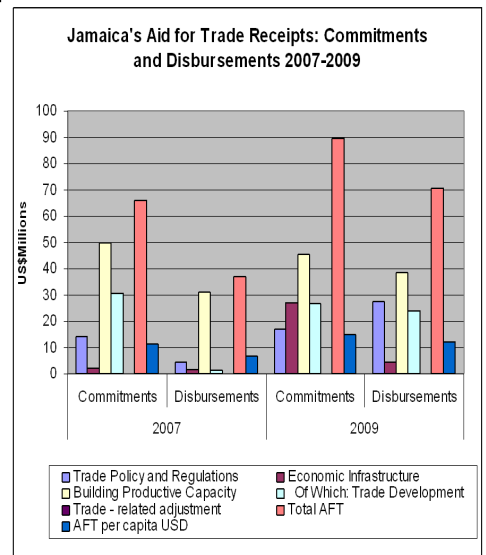
✦ **Network Infrastructure:** which seeks to create systems and linkages

to facilitate the production of goods and services with a focus on physical and ICT network infrastructure

✦ **Competitiveness:** geared towards strengthening the capacity to adjust to and compete in a global environment, and to meet regulations and standards specified in international agreement

✦ **Export Diversification and Trade Development:** aimed at exploiting Jamaica's comparative advantages in goods and services and strengthening intellectual property protection and awareness

It is expected that these initiatives will assist Jamaica to address constraints



Source: World Trade Organization: Aid for Trade at a Glance 2009, 2011

affecting exports and trade-related infrastructure. Specific benefits which are expected to accrue from Aid-for-Trade include the establishment of Economic Zones and Logistic Hubs, assistance with the Climate Change Adaptation Programme as well as food security promotion, with an emphasis on agro-processing and market access.■

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(Continued from page 1)...USA FDA Food Safety and Modernization Act....

focus on science-based prevention. According to the FDA Commissioner, Margaret Hamburg M.D., "Foodborne illnesses and deaths are preventable, and as such, are unacceptable." She notes that the U.S. "must, and can, do better by intensifying our efforts to implement measures that are prevention-oriented and science-based. We are moving down this path as quickly as possible under current authority, but eagerly await passage of new food safety legislation that would provide us with new and long overdue tools to further modernize our food safety program."¹²

The FDA has identified the four main themes of the FSMA as being prevention; inspections, compliance and response; import safety and enhanced partnerships¹³.

Prevention

Title I of the FSMA entitled "Improving The Capacity To Prevent Food Safety Problems" requires that all food facilities including foreign firms are required to submit to biennial renewal registration. This commenced on October 1 – December 31, 2010 for a fee¹⁴. The FDA will also be empowered to suspend a facility's registration where it is determined that there is a reasonable probability that the manufactured food will cause serious adverse health consequences. Where registration is suspended, the FDA will not allow any imports from the facility to enter the country until an informal hearing is held¹⁵.

The FSMA provides for hazard analysis and risk-based preventive controls. This involves the evaluation of any known and foreseeable hazards that could affect food manufactured, processed, packed or held in a facility¹⁶. The FDA will also be responsible for identifying and putting in place preventive controls to ensure that the food is not adulterated or misbranded¹⁷. These preventive controls can include sanitation procedures for surfaces, utensils and equipment that come into contact with food or involved in food preparation; hygiene training for employees; a programme for food allergen control and environmental monitoring; a plan for recalls and activities to verify suppliers¹⁸. Provision is also made for the monitoring and verification of preventive controls, and taking corrective ac-

tion where they are not effective; record-keeping and written plans and documentation of procedures for compliance¹⁹.

The FSMA authorizes the FDA to collect fees related to re-inspection, mandatory recalls and the voluntary qualified importer programme (VQIP) which are to be published on August 1 each year²⁰. For the fiscal year 2011, the fees for foreign facilities are US\$325 per hour for re-inspection. The Act places a cap on the total fees to be collected in any one fiscal year by the FDA for foreign facilities and the VQIP of US\$25,000,000²¹. Another notable aspect of the FSMA is that it provides for domestic capacity building, focusing on increasing the capacity for laboratory analysis and for the development of information technology systems²².

Inspections, Compliance and Response

Title II of the FSMA, entitled "Improving Capacity to Detect and Respond to Food Safety Problems" provides for the identification and inspection of facilities, accreditation of laboratories for food inspection, tracking and tracing of food, surveillance systems, mandatory recall and training of food safety officials²³.

As part of the new pro-active approach to food safety, the FSMA is to ensure that domestic facilities, foreign facilities and ports of entry are identified and resources allocated for inspection of these facilities. For domestic facilities that are identified as being high risk, inspections are to take place at least once in the 5-year period after January 2011 and thereafter at least once every three years. Others are to be inspected at once in the 7 year period after January 2011 and then at least once every five years thereafter²⁴. At least 600 foreign facilities are to be inspected within the first year of enactment, and in each of the 5 year periods after January 2011, at least twice the number of the previous year are to be inspected²⁵. The schedule for inspections outlined in the Act suggests an emphasis on ensuring the food safety of foreign food or imports over domestically produced food. Resources for inspections at the Ports of Entry are to be allocated based on certain factors including the known safety risks of the imported foods, known safety risks of the countries or regions or origin of the imports and

transit countries through which the food is transported, the compliance history of importers, the activities undertaken by importers to meet the foreign supplier verification programme (FSVP) and importers' participation in the Voluntary Qualified Importer Programme which are addressed later in the article²⁶.

The FSMA places greater emphasis than was previously placed on accreditation of laboratories for food testing. This will involve the FDA implementing a programme for food testing by accredited laboratories and also creating a registry of accreditation bodies recognized by the FDA and laboratories recognized by the accreditation bodies²⁷. Foreign bodies deemed compliant with the accreditation standards will be recognized²⁸. For accreditation, the FDA shall develop model laboratory standards and the FSMA confers on the FDA authority to review accreditation of laboratories every five years and to revoke those that are non-compliant²⁹.

Methods and technologies for the tracking and tracing of food are another of the tools employed by the FSMA to gather information that can be used to protect the public³⁰. The FDA are to start pilot projects in October 2011 to assess which methods can be used to quickly identify the recipients of food and are to develop a product tracing system. This will allow for early detection and response time to mitigate food safety hazards³¹. Surveillance systems are also going to be used to gather information and data on foodborne illnesses³².

The FDA is empowered with a mandatory recall authority³³ as part of the FSMA's mandate to improve the response time for treating with foodborne illness and contaminants. This is a departure from previous regulations where the FDA could only request a recall, the firm's decision to recall the product was voluntary³⁴. The FSMA allows a producer to voluntarily cease distribution and recall food articles where the FDA determines that the food is adulterated³⁵. However, where the producer refuses to do so, the FDA can require the producer to immediately cease distribution and notify the public³⁶.

Import Safety

Title III of the Act treats with "Improving

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the Safety of Imported Food” by establishing the Foreign Supplier Verification Programme (FSVP), the Voluntary Qualified Importer Programme (VQIP), import certification and prior notice of imported food shipments.

The FSVP verifies that food is produced in conformity with FDA requirements and standards. Verification processes can include monitoring of records for shipments, annual on-site verifications, periodic testing and sampling of shipments, hazard analysis checks and risk based preventive control plans³⁷. The VQIP allows the FDA to provide for an expedited review and importation of food articles by importers who volunteer to participate in the programme³⁸. Importers will be eligible for this programme where the safety risks of food produced in these facilities are known, the exporter and the food facilities have a history of compliance with requirements and there is deemed to be capacity in the country of export to ensure compliance³⁹. The FDA will require prior notice as to whether the food articles have been denied entry in another country. Importers will also be issued a facility certification⁴⁰.

Enhanced Partnerships

The effective operation of the FSMA will require the cooperation of other governments. The FDA will be responsible for developing a plan to assist in building the capacity of foreign governments to deal with food safety⁴¹. This will be done through bilateral and multilateral arrangements and agreements on food safety, electronic data sharing, mutual recognition of inspection reports, training for foreign governments and food producers on the FDA requirements and the acceptance of laboratory methods, testing and detection techniques by foreign governments⁴². The FDA is also charged to enter into agreements with foreign governments to allow for the inspection of foreign facilities and can refuse entry of food articles where inspection has been denied⁴³. This enhanced partnership envisions the FDA having offices in other countries⁴⁴.

Funding

Title IV, “Miscellaneous” provides for funding and increases in the staff complement of the FDA. It is estimated that FSMA will require an estimated US\$1.4 – 2 billion to invest in training and conduct other programmes⁴⁵. The breadth of the FSMA and the funds required to implement the provisions is daunting in light of the current budget deficit that the United States is experiencing. This could result in additional funds being sought through fees and costs borne by those who must comply with the Act. Further, it is likely that the costs to foreign facilities, importers and exporters will be greater than domestic facilities and producers.

Implications for Jamaica

Jamaican exports to the US

Jamaica exported approximately US\$118 million in food to the United States in 2010⁴⁶. Food exports from Jamaica can comprise sugar, bananas, citrus and other fruits, ackee, coffee, rum, yam and other agricultural products, baked goods, juices and drinks⁴⁷. The Ministry of Industry Investment and Commerce (MIIC) which has major portfolio responsibility for the sector, has estimated that more than 200 Jamaican exporters will be affected by the new US law⁴⁸. This includes approximately 160 registered exporters and over 40 traders⁴⁹. The Ministry indicates that there are about 84 producers who are exporters of fresh fruits, vegetables, ground provisions and spices and about 70 exporters of processed foods including baked goods, fish, sauces, spices, juices, jams, jellies, fruits, vegetables and ackee⁵⁰. About ten Jamaican exporting firms, mostly ackee producers, are Hazard Analysis Critical Control Points (HACCP) compliant⁵¹.

The FSMA will have several significant effects on Jamaican exports to the United States:

Capacity Building, Investment and Costs for Exporters

Jamaican exporters already selling or interested in exporting food products to the US market are faced with a significant investment of resources and cost outlays to be compliant in order for their exports to enter the United States. This is likely to prove a hurdle for exporters in developing countries

and smaller firms that are already challenged by limited resources and income. Under the FSMA, the costs and fees for facility and importer re-inspections and recalls are to be borne by the exporting firms, where previously costs were absorbed by agency. There are also costs for administration of the VQIP, issuance of export certificates and for establishing third party accreditation programmes. Resource outlays and investment capital will also be needed to undertake the control plans, hazard analysis and testing by accredited laboratories. The increased costs will place at a greater competitive disadvantage in the United States market, exporters who are not subsidised and thus already face challenges, as these increased costs are likely to translate into increased prices.

Another likely impact of the more stringent regulations and restrictions as provided for under the FSMA are also other logistical challenges, such as shipping delays and inconsistency in supply of products, which will in turn affect demand for the affected goods, particularly where ready substitutes are available.

Limited Time for Preparation

Jamaican exporters are faced with limited time for preparation to meet the new requirements. The FDA has indicated that it will be conducting fifty audits of Jamaican firms and food facilities that export to the United States in January 2012. At these audits the companies will be required to produce on request their food safety plans.

Quality of Exports

The FSMA is also likely to improve the quality of the exports, where the exporter is able to become compliant with the regulations. However, with the new regulations and standards, Jamaican exporters will have to familiarize themselves with the new standards as it is likely that what they currently use will no longer be deemed acceptable for entry into the United States.

Non-Tariff Barrier to Trade and Distortion

The FSMA provisions and future regulations have the potential to operate as a non-tariff barrier measure and distort trade between Jamaica and the United States, primarily for Jamaican exports to the United States. Provisions requiring biennial registration, inspections, new regulations could prove onerous

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and high costs or fees for importers and exporters can result in non-tariff barriers to trade and trade distortions. The FDA's authority to suspend or revoke a facility's registration based on a reasonable probability and the mandatory recall authority also presents serious concerns in terms of what safeguards will be put in place to prevent any abuse of this authority.

Trade Relations

The FSMA will affect trade relations between the United States and Jamaica, increasing the regulatory role that the Government of Jamaica will be required to play to facilitate the compliance of our exporters. The focus by the US on this issue too, makes it likely that the US will ensure that it is addressed in any future trade negotiations on food safety issues. In particular where there are provisions for enhanced partnerships through bilateral and multilateral agreements and the recognition of accredited foreign laboratories and auditors. Observers of international trade relations would probably agree too that there is a marked likelihood that some provisions of the FSMA will be the subject of dispute settlement at the World Trade Organisation (WTO) Dispute Settlement Body (DSB), as they are measures which it could be argued, operate quite effectively as non-tariff barriers to trade in the US food market. Under the WTO member countries are required to put in place food safety regulations that are based on scientific evidence. Regulating labeling requirements, use of specific technical equipment, sampling and other methods of ensuring food safety naturally make it more difficult for exporters particularly ones from developing countries to access markets in other countries. A science-based approach to food safety agreed by the WTO seeks to make competition in these circumstances more equitable.

The Role of the Government of Jamaica and other Stakeholders

Minister of Industry, Investment and Commerce, Dr. the Hon. Christopher Tufton addressed businesspersons at an interactive exporter forum hosted by Jamaica Promotions Corporation (JAMPRO) at the Terra Nova Hotel in Kingston, on October 25, 2011. He urged Jamaican exporters to become compliant with the new regulations under the FSMA as quickly as possible, in order to enhance the quality and competitiveness of their products.

"It is an opportunity for you to become more competitive, to boost your firm's level of operation to internationally recognized benchmarked standards, that provide for you an opportunity to compete in a marketplace that is constantly changing," he said.

The Ministry has been working with stakeholders to facilitate compliance by Jamaican exporters. These include:

- A National FSMA Task Force of technical experts from several stakeholder agencies has been set up to conduct audits and to assess the readiness of Jamaican exporters in light of the new regulations. The Task Force comprises professionals from institutions such as the Scientific Research Council, Jamaica National Agency for Accreditation and Certification, the National Certification Body of Jamaica, Ministry of Agriculture & Fisheries – Plant Quarantine Inspection, South Regional Health Authority – Ministry of Health, JAMPRO, Jamaica Customs, Technological Solution Limited and the Jamaica Exporters' Association.

- The Bureau of Standards and the Jamaica Exporters' Association have hosted workshops to explain to and inform exporters of the new regulations and requirements.

- A loan facility of \$100 Million is being made available to exporters by EXIM Bank at 6.5% - 7% interest per annum for J\$ loans and 5% - 6% per annum for US\$ loans.

- Assistance is also being sought from the FDA for technical assistance and training in the new regulations.

The United States is Jamaica's major trading partner and food trade with the US is significant. The enforcement of the FSMA has serious implications for the acceptability of Jamaica's exports

in that market and the resulting income stream for Jamaica's firms and economy. There is also a potential ripple effect if products are rejected in the US market, for their acceptability elsewhere. Therefore, compliance with the new FSMA regulations is critical. Jamaica's approach has been to focus on becoming compliant as quickly as possible. However, all the Jamaican stakeholders recognize that preparing our exporters to be compliant in time for each phase of the new processes is a challenging process in light of the costs, time and our resource constraints. However, Jamaicans regard ourselves as by nature, resilient. This latest challenge posed by the implementation of the FSMA has to be viewed with the same resilience by Jamaica's food exporting community as another hurdle which "we shall overcome."

Endnotes:

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