

PERFORMANCE OF THE ANTI-DUMPING AND SUBSIDIES COMMISSION FOR FINANCIAL YEAR 2004/2005 AND FOCUS FOR FINANCIAL YEAR 2005/2006

1.0 Purpose of Ministry Paper

The purpose of this Ministry Paper is to provide highlights of performance of the Anti-Dumping and Subsidies Commission for the 2004/05 Financial Year and the focus for the 2005/2006 Financial Year.

2.0 Mission, Role and Functions

2.1 Mission

The mission of the Anti-dumping and Subsidies Commission is to foster fair competition and equity in international trade by vigorous and efficient enforcement of Jamaica's Trade Remedies legislation (Anti-dumping, Subsidies and Safeguards), provide advice to the Ministry regarding international trade negotiating policy within the Commission's mandate, and promote public awareness of Jamaica's international trade remedies regime.

2.2 Vision

The vision of the Anti-dumping and Subsidies Commission is to be the vanguard regional trade remedies body, implementing Jamaica's Antidumping, Subsidies and Safeguards legislation in a fair, transparent and expeditious manner; providing accurate information and sound advice, and conducting all aspects of its work with due diligence, maintaining the highest standards of efficiency and integrity.

2.3 Role of the Commission

The core mandate of the Commission is the investigation of unfair international trade practices and determination of measures to remedy these. The Commission was established pursuant to, and to administer the provisions of, the Customs Duties (Dumping and Subsidies) Act of 1999 (the "CDDASA" or the "1999 Act"). In 2001, the Safeguard Act 2001 was passed and administration of this Act was added to the mandate of the Commission. The Commission's core mandate under the 1999 Act is to investigate cases of dumping and improper subsidization of imported goods, and to impose remedies in the form of anti-dumping and countervailing duties to protect local interests. The 2001 Safeguard Act allows for the imposition of measures, in the form of duties or quotas, to defend domestic industries from the detrimental effects of increases

in imports in certain circumstances, where such increases cause or threaten to cause serious injury to the domestic industry. A safeguard may be imposed when there is no unfair trade, so as to allow a particular local industry a grace period to become competitive.

Collectively, the redress available through the legal framework administered by the Commission is known as “Trade Remedies.”

The Commission is a portfolio agency of the Ministry of Commerce, Science and Technology (with Energy). It is comprised of five (5) Commissioners appointed by the Minister for a term of up to three (3) years. The Commissioners independently adjudicate cases and make decisions based on investigations marshalled by the staff of the Secretariat of the Commission.

The Commission is uniquely positioned and competent to deliver sound economic and legal expertise regarding Jamaica’s trade obligations. Thus it plays a growing role in assisting the Government, through technical comments and papers tendered to its portfolio Minister and the Minister of Foreign Affairs and Foreign Trade (MFAFT), to further develop a coherent international trade policy, within the framework of the different trading arrangements to which Jamaica is a signatory, primarily the World Trade Organisation (WTO), but also including the Caribbean Common Market (CARICOM), the CARICOM Single Market and Economy (CSME) and the Free Trade Area of the Americas (FTAA) negotiations.

The Commission is also making strides toward becoming a Centre of Excellence in international trade matters and expects not only to lead, but to assist others in the region, including regional bodies, in matters related to its mandate.

2.4 Functions

The main functions of the Commission are as follows:

- (a) To enhance business competitiveness.

The trade remedy regime, which the Commission administers, is geared toward fostering fair and competitive trade between Jamaica and its international trading partners.

- (b) To conduct dumping, subsidy and safeguard investigations.

Firms suffering material or serious injury or threat of such injury as a result of imports, fair or unfair, into the domestic market, may seek the assistance of the Commission, and if the appropriate conditions exist, the imposition of a duty or a measure will result.

- (c) To assist the Government as it continues to develop a coherent international trade policy.

This function includes review of draft legislation and assistance with drafting instructions as well as other supporting activities to facilitate the improvement of the legislative scheme.

- (d) To promote awareness on the part of businesses and the general public about international trade, the legal environment and Jamaica's trade remedy regime.
- (e) To encourage use of the Commission's facilities/services by local industry to enhance the competitiveness of domestic enterprises, both in Jamaica, and as exporters to foreign markets.
- (f) To develop competencies and be a resource to Government, and other clients, for trade remedies and related disciplines in the context of international trade arrangements, other than WTO-related agreements, to which Jamaica is a signatory. Such arrangements include the CSME and the FTAA.

3.0 Priority Target and Objectives for Financial Year 2004/2005

3.1 Cases

The Commission cannot predict its caseload and as such, did make projections regarding the specific number of cases in FY 2004/2005. However, the Commission entered FY 2004/2005 with two (2) groundbreaking cases already open, and focussed on the successful handling of the two (2) investigations simultaneously. The Commission anticipated the possibility that two (2) additional cases might be filed early in the review year and readied itself for the eventuality of having to complete four (4) investigations over the period.

The priority focus for the period under review was to further develop the institutional capacity of the Commission, ensuring competence in its core area of responsibility, i.e. conducting dumping, subsidy and safeguard investigations.

3.2 Legislation

For the 2004/2005 financial year, the Commission focused on refining the trade remedies legislative framework, with particular emphasis on collections to ensure the integrity of the regime. The Government's accelerated CSME legislative agenda was

included in the Commission's work plan for the year. Keeping abreast of WTO and FTAA developments was also accorded priority.

3.3 Public Education and Centre of Excellence

The Commission sought to pursue a programme of public awareness of its mandate. One means would be major public education seminars. However, because of the case load the number of seminars had to be reduced.

The Commission also aimed at increasing its capacity to offer sound training to other governmental entities both at home and abroad and at making major strides in its effort to become a Centre of Excellence in International Trade and Trade Remedies. To that end, efforts to enhance delivery of information by increasing the materials available in the reading room resource centre and via the new interactive website were stepped up. The goal is for Jamaica to be established as a regional centre of excellence and empowered to provide trade-related technical assistance regionally.

3.4 Capacity Building and Institutional Strengthening

In addition to its performance on cases and direct case-related activity, the Commission focussed on internal capacity building and institutional strengthening. During the review year, the Commission aimed at completing and reinforcing training for staff.

4.0 Performance Highlights for Financial Year 2004/2005

4.1 Cases Investigated

The Commission met its targets for handling cases that came before it, meeting deadlines and addressing the new nuances which presented themselves as the cases unfolded. The review year commenced with two (2) pending investigations that had been opened in the prior period but was prepared to handle three (3) or four (4) investigations.

The Commission commenced its first safeguard case on October 16, 2003 in response to a complaint filed by the Caribbean Cement Company Limited and on December 16, 2003, initiated a dumping case against cement from China, also a first for the agency, as this case was self-initiated. A third case was filed during the year and examined by the Commission, but failed to meet the standards required for a properly documented complaint. The industry involved engaged the Commission in discussions regarding curing deficiencies in the filing. That case has yet to be fully documented before the Commission.

In carrying out its mandate, the Commission is required to conduct detailed analysis of confidential current and past financial data of domestic firms, as well as analysis of exogenous factors such as exchange rate fluctuations and market conditions.

International trade remedies, and in particular, safeguards, constitute a still relatively new discipline in Jamaica. The Commission however reached determinations within the statutory timeframes for all the cases. Final determinations were arrived at in the cases in June 2004 in the open dumping case and July 2004 in the Safeguard case. Thereafter, it was determined that the applied level of the tariff on cement should be raised in keeping with the amount determined by the Commission. The Commission however declined to impose a safeguard as the additional international burdens occasioned by such a measure could be avoided and a comparable level of coverage for the domestic industry could be reached without it.

The Commission provided guidance to industries that may have grounds for filing petitions for dumping, subsidies or safeguards. Throughout the year, both in its offices and via telephone, the Commission met with representatives of various sectors and conducted discussions with several domestic industries engaged in production of a variety of goods and even provision of services, with a view to assisting those industries to identify trade remedies cases or determine conclusively whether there was scope for such action.

4.2 Legislation

During the review year 2004/2005, the Commission's resources were heavily engaged in addressing two (2) cases simultaneously. This compromised its ability to complete its assessment and comments on the legislative scheme. Thus the comprehensive review was a significant target that was not met in the fiscal year.

Nevertheless, the Commission's solicited the assistance of the Attorney General's Chambers, the Ministry of Finance and Planning, Jamaica Customs and other agencies, to research and resolve for the short term, legislative and procedural questions that confronted it. Procedures were required to refine the collection and enforcement of the growing number of trade remedy measures so that matters before the Commission could proceed seamlessly through all its government agency partners. Collaborative efforts to arrive at appropriate procedures, pending legislative amendments, were largely successful. However, much is left to be done to complete the work in this area.

Procedures for consultations were developed under the leadership of the Commission with the strong support of the Ministry of Foreign Affairs and Foreign Trade, Ministry of Finance and Planning, the Ministry of Commerce Science and Technology, the Attorney General's Chambers and others. This was considered by the Commission to be a major accomplishment for the 2004/2005 review year.

As part of the safeguard case, the Commission held its second public hearing at which the Commissioners presided over a public forum that entertained views. Indications are that the hearing contributed significantly to the accomplishment of the Commission's public education goals.

4.3 Public Education

The Commission had a successful year in accomplishing its public education agenda. The public hearing which was a necessary part of the Safeguard case provided an unanticipated platform for education of the public about the safeguard remedy and an opportunity to educate a very interested consuming public about the Commission's work and the policy rationale thereof. Additionally, the media coverage that surrounded the two cases which were completed provided additional opportunities for public education, which the Commission seized to teach the business and consuming public, whenever possible.

There was increased incidence of both casual and serious queries from businesses after periods of public media coverage associated with cases.

In November 2004, the Commission made the keynote presentation at a public education breakfast seminar held by the Jamaica Conference Board (JCB) and the law firm of Myers Fletcher and Gordon (MFG). Although case related matters and the usual resource constraints restricted the ability of the Commission to concentrate on its public education agenda, the year saw new public exposure via its new website and increased responsiveness to the general public via email.

The Commission continued to honour its commitment to public education by appearing at associations and other meetings and responding to inquiries of persons visiting its offices, via telephone, or in writing. Opportunities were seized whenever presented to educate the public via the electronic and print media.

Public education continued through distribution of publications, including the Trade Remedies Guide, Complainant's Questionnaire, Importer's Self-Assessment Guide, and brochures, as well as press releases on two occasions during the year, outlining the Commission's work. The publications are available at the Commission's offices and some, through the Internet as the agency pursued its aim to increase documentation available online.

During the year, the Commission completed the manuscript for a Trade Remedies primer, a handbook providing a basic, practical outline of the investigation process and methodology that the Commission anticipates being able to publish for sale.

Work to acquire critical materials and infrastructure needed to develop the Resource Centre and library continued and an Internet computer station for use by the public visiting the offices of the agency, was added.

In its public education thrust, the Commission emphasised its unique competence to assist Jamaican businesses that export, where they may be subject to scrutiny for dumping, subsidies or safeguard action against them. The Commission utilised the opportunity as the presenter at the JCB/MF&G breakfast seminar to highlight its role in regard to Jamaican exporters, which had previously not been emphasised in its work.

4.4 Capacity Building and Other Achievements:

The Commission met or exceeded all staff training projections for the 2004/2005 Financial Year. Training was undertaken in the following areas:

- Use of particular econometric software acquired by the organisation
- WTO training in dumping disciplines
- WTO Regional Trade Policy course
- Executive programme in the practice of trade policy
- Fulbright Scholarship (legal) Programme
- Enhancement of computer skills for support staff

The positions of Legal Counsel and the supernumerary position of General Manager were filled in January 2005. The new Legal counsel was selected to be one (1) of the two (2) Jamaican participants at the WTO Regional Trade Policy Course proceeding January through April 2005 at the University of the West Indies, Mona Campus.

The Commission approached several sources of funding during the year to provide technical assistance for projects related to its development as a Centre of Excellence in trade matters, and met with several encouraging scenarios, the pursuit of which continues and will form an important focus in the upcoming financial year.

Other Achievements

- Jamaica's Second Trade Policy Review and the CSME thrust were among the international trade issues regarding which the Commission's staff joined other Government ministries and agencies in reporting, analysis and discussion, as requested and appropriate. The Commission applied its unique expertise and experience to produce papers and comments, and attend meetings on issues as requested.
- Primarily as a member of the Jamaica Trade and Adjustment Team (JTAT), but also in response to other requests, the Commission continued to play its part as a resource for ministers and other officials responsible for foreign trade policy as well as private sector players responsible for trade policy positioning and international negotiations.
- Development of an internal system of policies and procedures, both for case management and administration was a major point of focus. This effort was deemed to be even more important as the Government and Ministry urged the development of procedures for cost savings, access to information, corporate governance and ISO-9000 readiness. The Commission continued to implement systems to support the migration of its paper-based

administrative record to an electronic record system by which submissions to it may be made on compact disk or diskette.

- The Commission contributed to the National Youth Service (NYS) Programme by accommodating and training one of its students for six (6) weeks in summer 2004.
- The Commission maintained its focus on financial/asset management and conservation to the benefit of its staff who enjoyed greater efficiency and resource availability to facilitate their tasks.

5.0 Strategic Focus/Summary of Main Programmes with Targets for 2005/2006

The nature of the Commission's mandate and its still limited experience when compared with its trading partners', some of which have utilised trade remedies for upwards of fifty (50) years, make the Commission unable to predict the number of cases that will be filed. It has been determined however, that three (3) new cases can be handled in FY2005/2006, at least one of which may be a Subsidies case, and another, a Safeguard.

With its growing understanding of the needed adjustments, the Commission also envisages that subject to resource availability, it will be able to build into its operations, capacity adjustments to handle greater numbers of cases as they arise.

In its handling of cases as well as the increasing comment and advice functions, the Commission will continue to develop excellence in its procedures, build institutional capacity, and ensure competence in its core area of responsibility, that of conducting dumping, subsidy and safeguard investigations. The Commission aims to marshal the resources required, externally as well as internally, to add the flexibility to enable it to respond efficiently, within the statutory timeframe on cases and within appropriate time frames where no statutory time controls exist, to other matters within its remit.

The Commission has renewed its efforts to complete its review and tender proposals, as well as comments to refine the legislation, at the earliest possible time. Documentation of legislative changes required will be forwarded to the Chief Parliamentary Counsel (CPC) in the first and second quarters of the FY 2005/2006. In the third and fourth quarters, any remaining non-legislative procedures that require revision will be completed. Subject to caseload, the Safeguard Act will also be reviewed by the fourth quarter.

The Commission will continue to build capacity in the disciplines impacting international trade, in particular trade remedies. The essential means of achieving these objectives is ongoing training of the Commission's staff with the goal being primarily the ability to handle its work with maximum accuracy and timeliness. The Commission strives for

the creation of a cadre of specialists in areas including the international trade law, negotiation, rules, and remedies.

The Commission is committed to the development of its public education programme and intends to hold two public seminars in FY 2005/2006. The first is already being planned and is expected to take place in the first quarter of the financial year. The Commission also intends to add to its growing collection of materials to enable the establishment of a library of international trade information. The Commission will also enhance the delivery of information by increasing the materials available in the reading room resource centre and via the website.

The longer term goal of the Commission, which has been projected in funding proposals being put forward to various potential international donors and clients is that within the next three (3) to seven (7) years, depending upon funding secured, the Commission will be established as a regional Centre of Excellence and empowered to provide, trade-related technical assistance widely within the Caribbean region. In support of this goal, the Commission intends to aggressively approach providers of funding outside its budget, including fee-earning opportunities as well as sources of technical assistance to enable its ongoing development as a Centre of Excellence.

6.0 Budgetary Allocation

The approved budget was \$30.02 M and \$30.50 M for 2003/04 and 2005/06 respectively. The approved budget for Financial Year 2005/6 is \$26.25 M.

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