

# **Target Growth Competitiveness**

## *Committee Meeting Papers*

*Lola Fong Wright*

**Lola Fong-Wright**

---

**From:** Kayanne Taylor [ktaylor@jamprocorp.com]  
**Sent:** Friday, September 29, 2006 11:54 AM  
**To:** Allain Fisher; Angella Taylor-Spence; Beverley Morgan; Beverley Rose-Forbes; Colin Bullock; Colin Steele; colin.campbell@opm.gov.jm; COMPETITIVENESS COMMITTEE (Business Fax); Delaine Morgan; Dennis Morrison; Dr. Charles Douglas; Harold Davis; James Stewart; James Stewart; Kayanne Taylor; Kenneth Reid; Lincoln Price; Lola Fong-Wright; mininfo-sec@opm.gov.jm; Mr. Lloyd Goodleigh; Neville Ying; Peter Bunting; Sancia Templer; Sen. Dwight Nelson  
**Subject:** Target Growth Competitiveness Committee Meeting

Dear Committee;

You are invited to attend the monthly meeting of the Target Growth Competitiveness Committee on Thursday, October 5<sup>th</sup> at 1pm. This meeting is scheduled to be held at the Jamaica House Breakfast Room. The primary purpose of the meeting is to review and sign off on the Revised Report on the Competitiveness Assessment completed by the ECORYS Team Jan-June 2006 – copies of which were sent to you by email on September 21<sup>st</sup>, 2006. We also propose to schedule the Committee's Policy Retreat and address the matters arising from the Minutes of the last meeting held August 17, 2006 (which are attached for those of you who might not have received them earlier).

We ask that you review these documents and provide us with your comments at Thursday's meeting so we may advise the EU of your position relating to approval of the Study.

Should you be unable to attend at this time, please advise us early. We may also be able to meet on Friday, the 6<sup>th</sup> October at 2:30PM.

Please confirm your availability by telephone at 978 3337 ext. 2104 or by return mail.

Sincerely,

**Kayanne E. Taylor**  
**LOBBYIST, Competitiveness Committee**  
 PSDP: EU/JAMPRO, Kingston, Jamaica  
[ktaylor@jamprocorp.com](mailto:ktaylor@jamprocorp.com)  
 978 3337; 978 7755 ext. 2104  
 394 4880 [mobile]

**NOTES OF MEETING**  
**PSDP Competitiveness Committee**  
**August 17, 2006**  
**JAMPRO Board Room**  
**Time 2:00 pm -3:00pm**

---

Meeting Objective: To review TGCC activity May – August 2006 and schedule activities for the period August – December 2006.

**Members:**

Alaine Fisher (AF)	Jamaica Employers Federation (JEF)
Beverley Rose-Forbes (BRF)	Ministry Of Tourism, Entertainment & Culture
Beverley Morgan (BM)	Jamaica's Exporter's Association (JEA)
Marlene Parker (MP)	Private Sector Organizations of Jamaica (PSOJ)

**Attendees:**

Kenneth Reid (KR)  
Kayanne Taylor (KT)  
Aysha Lawrence (AL)

**Absent:**

Sen. Dwight Nelson – apologies tendered  
Dennis Morrison – apologies tendered  
Sancia Templer – apologies tendered  
Delaine Morgan – on vacation  
Harold Davis – JBDC  
Lloyd Goodleigh  
Lola Fong Wright PSOJ (on vacation)

**Status Report According to Agenda Items:**

**1. Welcome & Call to Order**

Meeting was called to order by Kayanne Taylor, who chaired the meeting on behalf of Dennis Morrison, who had an emergency meeting with the Prime Minister. Apologies were made for the considerably late start at 2:35 pm.

**2. Confirmation of Minutes**

Confirmation of the March 30 minutes - Deferred to round robin poll at a later date.

Minutes for May 3 minutes confirmed by BM and seconded by AF subject to several changes, they were: (a) pg. 1 item 4 line 1 – "... was scheduled *for* (fro); (b) Page 2, line 2, "... relevant to 3 sectors which the Committee believes *merit* (merits); (c) change of the identified 5 sectors (Information Technology, Tourism, Creative Industries and Manufacturing & Agro-processing) to identified 3 sectors (*Tourism, Creative Industries and Agri-Business*) (d) near the foot of page, "BM agreed to think *of* (on). With those amendments the minutes were confirmed.

### 3. Matters Arising

Agenda was reorganized based on time constraints. KT proposed that item 4 (Update on the secretariat) out of matters arising be moved from the last to the first item in the section. It was agreed and the meeting proceeded.

#### - UPDATE:

An update on the Secretariat's activities since we last met on the May 3<sup>rd</sup> 2006 to the present. The update has also been provided in the meeting dossier in the form of a report on activities concluded.

- I. The engagement of a short-term consultant to coordinate the planning for the National Competitiveness Symposium scheduled for July 5.
- II. The Planning Committee met weekly/ Bi-weekly, and during the process of organizing for the Symposium there were several changes to the dates, objectives and to the format of the Symposium.
- III. Encountered resource and budgetary constraints which all culminated in a meeting on June 30, at which it was decided that in the best interest of the Committee and its members, the Symposium should be postponed to a later time to allow for better planning and securing international speakers as the lead time allocated (6 weeks) was too short.
- IV. A date has not yet been confirmed as the Committee has not met since these new developments.
- V. There are some proposed activities that need to be scheduled or consider whether we should schedule including a proposed date in November for the Competitiveness Symposium. During the period as well, the Competitiveness Study which was commissioned and was ongoing from January 2006, the contract for that study was completed on the July 30, 2006.
- VI. Out of the decision to postpone the Symposium the planning Committee took a decision to support the work of the Competitiveness Study by holding a Sector Consultation Series on Competitiveness issues relevant to Tourism, Manufacturing & Agro-processing and Creative Industries. This series was held at JAMPRO on the 18<sup>th</sup> July 2006 and was considered successful. The participation, in terms of attendance, was moderate, there was a target of between 20-30 persons for each workshop and those targets were almost met: Manufacturing and Agro-processing had 18 participants; Tourism had 16 participants; Creative Industries had 17 participants and the General Overview had 17 participants as well. There is a detailed report in the dossier on this series of consultations which was prepared by the Secretariat and the Jamaica Exporter's Association's Competitiveness Advisors who operated as facilitators and rapporteurs for the day. We ask that you review this report and consider how we will utilize the comments and the action steps in this report. All the discussions on the day took place around the findings of the researchers as they had indicated in the final Draft Report.

**Competitiveness Study:** All members of the Committee expressed dissatisfaction with the Competitiveness Study. They all thought that it contained a lot of regurgitated information and

there was no clear way forward identified. KT also agreed with the positions of MP, AF & BM. She went on to say that in the Secretariat there had been several resource and human resource constraints which have impacted the management of this entire research process e.g. No CAU Manager and inadequate staffing. BM agreed with this and went on to state that there were three major concerns as this is the first and the major output of this Committee and our reputation is on the line for precisely the reasons outlined above:

- I. It is not all clear how a major piece of research, such as this, valued at 200,000 Euros, could have been managed in such a way which allows us to have a draft document which have the flaws that have been described; they are a reflection of us as to how we manage the process so that it is only now at the end, payments having been almost completed, for a document which we are all now agreeing is way below the level that we expected. Hence this is the issue of the process.
- II. The unsatisfactory quality of the document, and
- III. The issue which puts our reputation at even greater risk is the discovery of at least one (1) instance of plagiarism in the document – Jamaica Exporters Association's Competitiveness Company identified two whole pages which were lifted completely from a previous study commissioned by UNCTAD – 1998 [Details to be provided to the EU].

It was believed by all present that the EU should be advised and invited to rectify plagiarism and the deficiencies in the research. It was stated that the study gave no idea of the Competitiveness imperatives; the information was dated and not based on primary research/information which was expected for this type of research project. Considering that the Study is not usable this imperils the prospects for the TGCC's work programme. There was no value for the money spent (200,000 Euros) and the integrity of the TGCC, its members and the country are being jeopardized by this substandard work. Hence, the EU needs to be notified of these developments and requested to have the Research Team address the shortcomings in the Study.

**Action:-** The priorities now on the table are:

- (a) to fix the issue of plagiarism, have EU complete a forensic audit of the Study;
- (b) obtain the necessary staffing for the Secretariat positions that are still vacant, (CAU Manager & Research Associate);
- (c) review the structure of the TGCC and clarify questions such as who is responsible for the TGCC etc.;
- d) call an emergency meeting of all the members to look at these issues and decide on the way forward.

It was advised by BRF that we should attempt to get all these issues tabled and discussed at the PSDP Steering Committee meeting in September 2006.

- **ACTIVITIES & DATES FOR APPROVAL (AUGUST – DECEMBER 2006)**

Item deferred until after emergency Committee Meeting with all members (date to given at a later date)

- **STRUCTURE OF THE TGCC**

The structure of the TGCC was called into question during the discussions in the update; it was recommended that an all day retreat should be scheduled to deal with all the issues and problems of the TGCC so that they could be ironed out before moving forward. Members agreed to commit time for this retreat after first meeting with JAMPRO on the resource and structure challenges affecting the TGCC and its Secretariat.

- **PROPOSAL FOR ADDING TWO NEW COMMITTEE MEMBERS**

It was clarified that the correct procedure for invitations was to put the request to the respective organization and have the organization recommend its representative. The Committee members agreed to the invitation of JCC and JMA as these organizations are part of the original scope of the Committee. The invitations should include the Terms of Reference (TOR's) for the TGCC as well as an indication of the nature of representation required.

**4. Next Meeting**

Committee meets on Wednesday September 20<sup>th</sup> 2006 at 11 a.m. in the JAMPRO Board Room. Meeting to be chaired by Hon. Colin Campbell, Minister of Information & Development (OPM)

**5. Adjournment**

The meeting adjourned at 3:40 p.m.

**ACTION ITEMS**

Action	Status	Owners
- Letter to JAMPRO for an emergency Committee meeting of the TGCC to deal with all the issues & problems.	Being organized by the TGCC Secretariat.	TGCC Secretariat
- Letter to EU outlining the problems with study and measures needed to rectify the problem.	Will be discussed and implemented after TGCC emergency meeting	TGCC Chairman

<ul style="list-style-type: none"> <li>- Hiring the CAU manager</li> <li>- Hiring Research Associate</li> </ul>	<p>JAMPRO</p> <p>PSDP has advertised the positions and are awaiting the tenders.</p>	<p>JAMPRO</p> <p>PSDP – Kenneth Reid</p>
<ul style="list-style-type: none"> <li>- Attend and put issues of the TGCC on the table at the JAMPRO Steering Committee meeting in September.</li> </ul>	<p>To be dealt with</p>	<p>TGCC</p> <p>Chairman/ Head Secretariat or Lobbyist</p>



# TARGET GROWTH COMPETITIVENESS COMMITTEE

## Competitiveness Study

### Comments (August 30, 2006)

---

#### Research Review Team (Headed by the PIOJ)

The expectation was that the research would involve an analysis of global trade trends to determine areas of growth in which Jamaica have or could have a competitive advantage. The intention was for the consultant to focus on the global markets and investment trends to determine the more dynamic areas of opportunities for Jamaica. ] \*

The review team coordinated by the PIOJ strongly stated that it could not be determined from the study what the growth industries were from a global perspective. That a primary objective for Jamaica should be that of seeking to establish new areas of opportunity and not just focus on those in which the country is currently involved, or those areas that were identified in the past as growth industries since, those might no longer be the growth areas. / \*

Given that this has not been met, the report in its current state will prove ineffective in advising policy aimed at improving the competitiveness of Jamaica and Jamaican firms.

In addition, there was a general dissatisfaction with the regurgitation of previously published material with no value added.

#### Extracted from the Minutes of the TGCC Monthly meeting held August 17, 2006.

All members of the Committee expressed various levels of dissatisfaction with the Competitiveness Study. They all thought that it contained a lot of regurgitated information and there was no clear way forward identified.

The major issue cited was:

- I. The issue which puts the committee's reputation at risk is the discovery of at least one (1) instance of plagiarism in the document – Jamaica Exporters Association's Competitiveness Company identified two whole pages which were lifted completely from a previous study commissioned by UNCTAD – 1998 (see Lobbyist comments for details). 00

It was believed by all present that the EU should be advised and a request made to the consultant to rectify plagiarism and the deficiencies in the research. It was stated that the study gave no information on the Competitiveness imperatives; the information was dated and not based on primary research/information which was expected for this type of research project. Considering that the Study is not usable in its current form this imperils the prospects for the TGCC's work programme.

**Action:-** The priorities now on the table are:



(a) to address gaps and fix the issue of plagiarism ( the suggestion was to request that the EU complete a forensic audit of the Study;

### **Lobbyist, TGCC**

The following are comments based on an initial review of the document:

#### **General Comments:**

The Legal Report entitled "**Legal and Regulatory Issues and Competitiveness**" is an inadequate and substandard report. Some of the reasons for this conclusion are detailed below.

#### **Legal Review:**

1. References throughout the document to legislative enactments are not properly cited. Any reference to an Act of Parliament must be cited as follows:
  - a. Copyright Act should be cited as **the Copyright Act, 1999 of Jamaica**; short version of the citation may be **Copyright Act 1999, Jamaica** or **Copyright Act, 1999** where it is established earlier in the document that the Copyright Act being referred to is that of Jamaica.
  - b. An amendment or Bill to the Copyright Act should therefore be cited as:
    - i. **The Copyright (Amendment) Act, 2000** or alternately, the **Copyright (Amendment) Bill, 2000**.
  - c. It is also usual in legal analysis and writing to underline or italicize such citations.

**Action Required:** The Consultant should be required to correct all instances throughout the document by correcting citing legislation and ensuring that accurate dates are recorded in those citations.

2. At the Sector Consultation Series, the Legal Consultant made several incorrect statements regarding fundamental principles of law, as well as stated incorrectly that Jamaica has not ratified the WIPO PPP Treaties. In fact Jamaica was among the first group of countries to ratify these treaties in December 2000. I communicated this to the Consultant after the workshop presentation, and have not seen this correction reflected in the Study.
3. The second error made at the Consultation series by the Consultant was that trademark registrations effected through the Madrid Protocol or Madrid System for Registration of International Trademarks allows applicants to make one application which will obviate the need to secure application for protection in all the countries where one needs protection. It was again pointed out by me to the Consultant that this was incorrect because the Madrid System allows for a single application to effect registration in several countries. What the Madrid System allows is for an applicant (of a member state) to file a single application to WIPO for registration in several countries. The law of trademarks still requires that an applicant must file several applications in each country in which he desires protection. Trademark law

and protection is territorial, and as such, for a company/individual to obtain protection in a country that person must apply for protection in each specific country. Accordingly, the comments in Section 2.2.1 of the Report (page 6) must be deleted and corrected by the writer.

4. Section 2.2 of the Report (page 6) outlined "Protection of Industrial Property Rights" purports to discuss industrial property rights but does not make the case for the link between IPRs and Competitiveness. The discussion is therefore of little value to the TOR or needs of the Competitiveness Committee.
5. The statements in Section 3.3.2 of the Report are not properly substantiated which opens them to many questions. For example the writer is arguing for "formalization" of the creative industry without having accurately described the industry and what is meant by "informal". Is the writer for example, stating that the industry does not have formal business arrangements? What is meant by "informal" has to be stated or described, because the word does not mean anything without properly describing the industry. If what is meant is that business in the music industry for example, is not done on the basis of formal instruments and agreements; many industry stakeholders would consider that statement blatantly incorrect. We cannot publish discussions of this nature, when considerable work has been accomplished in the industry contradicting such unsubstantiated generalizations. Further, if the writer is of the view that the industry needs to be formalized, the writer should provide a discussion of the mechanisms recommended to formalize the industry.
6. Again, there is no case made in the discussions for COMPETITIVENESS. What are the global standards to competitiveness and how does the writer propose that we can move towards those standards.
7. Recommendations contained in the Study are general in nature and do not make the case for competitiveness. That is to say, there is no nexus created in the study on the competitiveness imperatives or the way in which the legislation or recommendations of the study will enhance competitiveness or assist the Committee in meeting its stated targets.
8. Further instance: Chapter 5....Competition Policy. The writer refers to the Competition Framework in Jamaica having been "ruled unconstitutional" by the Jamaican Court of Appea[r]" (sic) – For a legal review, the writer should cite the specific case/instance where the Court of Appeal made this ruling. The conclusion in the fourth paragraph about the monopoly behaviour in the Telecommunications sector up to the 1990's is irrational. The monopoly structure within the businesses operating in telecommunications industry up to 2001 did not exist because of the absence of merger regulations in Jamaica. The writer's statement is therefore not substantiated or justified by the relevant facts.
9. Section 5.1 purports to discuss the Stock Exchange Case and states inter alia, that "to date there has been no amendment of the FCA to rectify the deficiency outlined in the Stock Exchange Case. This statement is made without discussing what the "deficiency" is, nor indeed stating how this

decision impacts or otherwise affects "competitiveness" in the business environment in Jamaica.

10. Nowhere in the Chapter on Agro-processing does the writer discuss the importance of the law relating to Geographical Indicators and how the Brand Jamaica campaign for example could take advantage of the law to protect its rights.

Hopefully, by citing these few instances of weakness in the Report, the European Commission Delegation would be guided as to the significant inadequacy of the report. This Report needs substantial work to be improved and to meet the requirements of the Committee and the terms of reference.

#### Report on "Competitiveness in Services"

1. The pages in this report are not numbered.
2. Section 4.2.1 is entirely plagiarized from the 1998 UNCTAD commissioned Study titled "Becoming Globally Competitive: The Case of the Music Industry in Jamaica" by Lloyd Stanbury and Zeljka Kozul-Wright. Pages 5, 6 and 7 of the UNCTAD Study have been "lifted" into the Consultant's Report without any acknowledgement of source reference. This is of grave concern to the Committee and its members are requesting that the EU aggressively address and have this matter rectified by the Consultant before the Report is approved by the Committee. (See comments from TGCC Meeting held on August 17, 2006)
3. Considering that the Committee has not had time or resources to audit this report, the EU is being requested to ensure that the report is audited for any further instances of plagiarism or inaccuracies, before the Committee accepts the Consultant's submission.

**Target Growth Competitiveness Committee  
Sector Consultations  
FINAL REPORT**

**JAMAICA: Building a National Competitiveness Strategy: Creating the Environment for Productive Firms and a Competitive Economy**

The first Workshop Series on Competitiveness was a series of closed forums ('think tanks') geared towards bringing together key stakeholders and members of the public and private sectors to discuss the major issues surrounding competitiveness in certain sectors in Jamaica. These consultations focused on growth sectors of the economy as part of the process of generating discussion and gathering additional data to inform the Competitiveness Study completed by the ECORYS Team between January and June 2006. This study was commissioned by the TGCC, one of the private sector empowerment components of the Private Sector Development Programme (PSDP), a European Union/Government of Jamaica programme designed to mobilize private sector efforts to remove barriers to business and create enabling policies at the government level.

The Consultation/ workshop series was hosted on July 18<sup>th</sup> 2006, in the training room at JAMPRO and targeted three of the sectors studied, which were determined as key sectors with growth potential for Jamaica. The Sectors were:

1. Agri-Business
2. Tourism; and
3. Creative Industries

**Objective:**

Importantly, the Series sought to:

1. Solidify the position of the TGCC as an institution dedicated to consolidating competitiveness work across the country – at macro-level
2. To update the stakeholders on the work of the Committee and further inform them of the national agenda to achieve Jamaica's Competitiveness targets.
3. To highlight and support the findings emerging out of the research; to identify growth areas and to garner feedback from the main stakeholders; and
4. To generate consensus around policy imperatives for lobbying

**What was achieved?**

1. Industry engagement and feedback on the Competitiveness Study will be incorporated in the Final Report
2. Increased familiarity with the TGCC and its work.

**In the pages which follow you will see the nature and content of the discussions held by the participants, which comments and recommendations will be incorporated into the Competitiveness Study and also serve to direct the further engagement of the private and public sectors as the TGCC develops and advances its Lobby and Policy Advocacy agenda.**

## Agri-Business and Manufacturing

Issue	Discussion	Action / Next Steps
<p>Lack of communication, coordination and integrated planning between various entities involved in agri-business development in Jamaica and throughout the region.</p>	<ul style="list-style-type: none"> <li>- There is frequent duplication of activities where multiple projects having overlapping goals and target populations but do not speak to each other. This minimal collaboration results in inefficient use of resources.</li> <li>- There is little understanding and therefore unclear expectations around the roles and responsibilities of different entities involved in sector development and how these entities can best work together. Most evidently, there is a tension between the role of the private sector and the role of the government in developing agri-business opportunities.</li> <li>- The above challenges hinder the ability of sector stakeholders to achieve consensus on the best strategies and overall direction for the sector. Integrated planning is limited and there is too little awareness around the Ministry of Agriculture's sector-wide plan.</li> <li>- Regional collaboration and integrated planning is also limited and must be further developed to take advantage of economies of scale, especially where countries cannot compete as effectively individually as through a collective regional mechanism.</li> </ul>	<ul style="list-style-type: none"> <li>- Raise awareness on the Ministry of Agriculture's sector wide plan.</li> <li>- Increase informal firm-level information sharing, and improve information flow from government to private sector.</li> <li>- Develop an integrated planning process with a focus on achieving consensus on sector wide strategy, and effective resource sharing and rationalization.</li> <li>- Clearly define roles and responsibilities of various entities involved in sector development.</li> <li>- Examine which areas of responsibility should fall under private sector leadership versus public sector/ government leadership.</li> <li>- Identify areas for regional collaboration, planning and resource integration, for example the Caribbean Poultry Farmers initiative.</li> <li>- Explore the cluster model as a methodology through which to coordinate and develop consensus around sector-wide plans, align production and research needs and engage finance interests. Looking at the grouping of firms to achieve greater success and competitiveness.</li> </ul>



Issue	Discussion	Action / Next Steps
Lack of adequate research and development to support diversification of Jamaica's agricultural offering.	<ul style="list-style-type: none"> <li>-There are several potential agri-business opportunities that need to be validated by thorough scientific and market research, for example logwood honey.</li> <li>-The research that is taking place through government ministries (SRC) and various university departments (UWI Life Sciences, Biotech Unit) is not adequately managed and often fails to impact upon agricultural production.</li> <li>-Research efforts need to be aligned with funding opportunities and the banking sector needs to be brought on board for the funding of agricultural research and development.</li> <li>- Further research needs to be carried out on current key agricultural products to ensure compliance with international standards and to secure their position in the marketplace, for example ackee.</li> </ul>	<ul style="list-style-type: none"> <li>- Develop a short list of specific current and potential products that need research and development.</li> <li>- Develop a management mechanism to manage the research endeavors of state ministries and agencies.</li> <li>- Develop a national framework within which firms and banks are actively encouraged to invest in agricultural research and product development, and linked to state agencies and academic institutions mandated to carry out research. (Also link into the Ministry of Agriculture sector-wide plan and short list of current and potential products).</li> </ul>
Limited access to finance and high cost of capital for research, primary production and development of value-added products.	<ul style="list-style-type: none"> <li>-There is little to no access to credit at attractive or even viable rates.</li> <li>- There is also limited access to venture capital funds.</li> </ul>	<ul style="list-style-type: none"> <li>-Develop differential credit schemes where priority products and activities can access credit at improved rates.</li> <li>-Develop framework for channeling venture capital funds to high priority products.</li> </ul>

Issue	Discussion	Action / Next Steps
Lack of transparency and efficiency in the usage and allocation of land for agriculture.	<ul style="list-style-type: none"> <li>- Historically, land usage and allocation in Jamaica has been tied to the subordination of the working class and the promotion of the interests of the landed elite (plantocracy); hence the prevalence of sugar and banana as monoculture crops.</li> <li>- The issue is now to re-think and diversify the usage of our lands in such a way as to promote the development of competitive agro-products.</li> </ul>	<ul style="list-style-type: none"> <li>-Map fertile lands to identify the best fit: specific lands most suitable for specific crops.</li> <li>-Where possible, develop transparent protocol for land allocation.</li> <li>-Explore models that look creatively at land allocation to support competitive production, for example the "one village one product model", where land is allocated to ensure production critical mass and easy monitoring.</li> </ul>
Inadequate development and dissemination of best agricultural practices.	<ul style="list-style-type: none"> <li>- Good agricultural practices are not effectively disseminated to farmers and uptake is slow, particularly in regard to more modern practices involving IT.</li> <li>-This issue is closely linked to farmers being able to adhere to international trading standards and securing entry and longevity in key markets.</li> </ul>	<ul style="list-style-type: none"> <li>-Review how agricultural practices are currently disseminated and monitored throughout the sector to identify gaps.</li> <li>-Explore creative models that look at best organization of farmers for efficient transmission and uptake of agricultural practices.</li> </ul>
Weak linkages between various aspects of the value chain, negatively impacting on competitiveness.	<ul style="list-style-type: none"> <li>-There are weak and unstable linkages between producers and agro-processors, where both parties suffer from fluctuations in product quality, quantity and price.</li> <li>-Too little trust and collaboration between these two aspects of the value-chain.</li> </ul>	<ul style="list-style-type: none"> <li>-Improve communication along the value chain.</li> <li>-Explore the cluster model as a methodology through which to align the interests of various aspects of the v-chain and to build trust (CARAPN).</li> </ul>
Hidden costs of conducting business in Jamaica.	<ul style="list-style-type: none"> <li>-Extortion and security costs sometimes amount to 20-30% of a firm's operating costs, a fact that firms are often times unwilling to disclose.</li> </ul> <p>White collar crime, in the form of fraud, also challenges the viability of agri-businesses.</p>	<ul style="list-style-type: none"> <li>-Explore the real costs that are incurred throughout the sector on account of extortion, security and white collar crime.</li> </ul>
Issue	Discussion	Action / Next Steps
Limited understanding as to how the exchange rate impacts the agricultural sector.	<ul style="list-style-type: none"> <li>-There is significant contention over the issue of exchange rate impact on agricultural production and agri-business development; whether or not</li> </ul>	<ul style="list-style-type: none"> <li>-Carry out a thorough analysis of the impact of the exchange rate on the agricultural sector with</li> </ul>

	<p>devaluation of the Jamaican dollar enhances of hinders competitiveness.</p> <ul style="list-style-type: none"> <li>-The impact of the exchange rate on import levels needs to be explored.</li> <li>-The ability of agri-business firms to respond to exchange rate changes, and at what pace, also needs to be explored.</li> </ul>	<p>recommendations on national level measures to be taken in regard to import levels and firm level measures to be taken in regard to adequately responding to exchange rate fluctuations.</p>
<p>The nature and types of markets in which we compete.</p>	<ul style="list-style-type: none"> <li>- The markets in which our agricultural products compete are not free or fair but rather unequal and unjust, with large multi-national corporations effectively lobbying their governments for protection and safeguards.</li> <li>- Our infant industries within the sector are not afforded a growth enabling environment due in part to the international trading regime.</li> </ul>	<ul style="list-style-type: none"> <li>- Sector interest groups effectively lobby the government and relevant regional mechanisms (CARICOM, CRNM) for the requisite safeguards for infant industries to thrive and grow.</li> <li>- Simultaneously, develop robust transition plans for protected industries to bolster competitiveness beyond safeguards and protectionism.</li> </ul>

## Tourism

Issue	Discussion Items	Next Steps/Action Items
Where is tourism in the development process?	<ul style="list-style-type: none"> <li>- Understanding where tourism is in the development process and developing a consensual approach to it.</li> <li>- Encouraging action from majority on what to do and when – A singular movement beginning with the Tourism Master Plan</li> <li>- What is the literature that has gone before? – Examining the Tourism Master Plan</li> </ul>	<ul style="list-style-type: none"> <li>- Review of what has gone before including the literature</li> <li>- Status/Progress updates on targets</li> <li>- Evaluation and continued verification of targets</li> <li>- Articulation of non-accommodation industry targets</li> </ul>
Framing the process (having the right conversation)	<ul style="list-style-type: none"> <li>- Ensuring that the same conversation is not recurring over and over again</li> <li>- Reviewing the master plan and seeing where it fits into the overall process</li> <li>- Lack of a unified vision – Agents in the field not singing the same song (all need to share the same vision)</li> <li>- Various agencies not speaking to each other</li> <li>- Information sharing (people in the process have to share information)</li> <li>- Deeper engagement of stakeholders within the industry</li> </ul>	<ul style="list-style-type: none"> <li>- Achieve consensus on master plan</li> <li>- Ensure that there is continuity in the process and that the dialogue continues</li> <li>- Improve sharing of information and collaboration among stakeholders within the industry</li> </ul>
Conceptualization of the tourism industry	<ul style="list-style-type: none"> <li>- Clarifying the best model (Cancun vs EP) for the Jamaican tourism industry</li> <li>- Recognizing the need to revisit the method of engaging and giving information – the current method mainly focuses on the outputs of the larger hotels versus the smaller hotels/villas (i.e. Cancun model)</li> </ul>	<ul style="list-style-type: none"> <li>- Encourage deeper engagement and information sharing by stakeholders within the industry</li> </ul>

Issue	Discussion Items	Next Steps/Action Items
Validation of Targets	<ul style="list-style-type: none"> <li>- Targets are not comprehensive and do not take into account the entire tourism offering – these targets solely reflect the Cancun model</li> <li>- Targets need to be continually assessed for relevance as targets may become outdated – Some of the questions to ask on an ongoing basis include:               <ul style="list-style-type: none"> <li>o What is the status of these targets currently - do they ring true?</li> <li>o Has there been an increase in importance of these targets or a discrediting of some?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Include targets for non-accommodation industry such as tours/attractions/ shopping as these are the areas driving tourism expenditure</li> <li>- Add targets for cultural and heritage offerings</li> <li>- Ensure that targets reflect the full balance of the Tourism Master Plan incorporating cultural and heritage targets</li> <li>- Track targets on an ongoing basis to monitor improvements while at the same time assessing and modifying these targets to reflect reality</li> <li>- Benchmark targets within an international context so that targets are not examined in a vacuum but that there are international benchmarks for comparative purposes</li> </ul>
Significance of leakages	<ul style="list-style-type: none"> <li>- In looking at the targets, the presence and importance of leakages has not been fully identified for e.g. - How much revenue is being captured on shore?</li> <li>- Targets need to be more rigorous – how much of it relates to leakages?</li> </ul>	<ul style="list-style-type: none"> <li>- Identify best practices to identify where leakages have been minimized</li> <li>- Reliable data collection</li> <li>- Need to break down expenditures into domestic retention and leakages</li> </ul>



Issue	Discussion Items	Next Steps/Action Items
Contribution of Tourism to Jamaica's Income	<ul style="list-style-type: none"> <li>- Underestimation of the contribution of tourism to the overall income of the country</li> <li>- Realistic vs. formal measurement of tourism's contribution and the false belief that the macro-economy captures all contributions</li> <li>- The formal measurement excludes the informal economy which is an important contributor to the sector</li> <li>- Are we planning under uncertainty?</li> <li>- What percentage of visitor expenditure is truly retained – the targets reflect a gross figure?</li> </ul>	<ul style="list-style-type: none"> <li>- More granular and specific information on the contribution of tourism to Jamaica's income which reflects the informal economy and the presence of leakages.</li> <li>- Incorporate the figures from institutions like STATIN and PIOJ to accurately reflecting the situation (i.e. the informal economy and the presence of leakages)</li> </ul>
Training	<ul style="list-style-type: none"> <li>- Identifying the gaps in training which include: crafts training, foreign language training for persons employed within the industry</li> <li>- Understanding best practices within the industry</li> <li>- Importance of addressing training needs early in the development process of persons within the industry</li> </ul>	<ul style="list-style-type: none"> <li>- Survey of labour to assess current levels of job satisfaction</li> <li>- Provide training at the primary, secondary and tertiary level for the industry which responds to market demand</li> <li>- Identify best practices within the industry to inform the curriculum for training</li> <li>- Targeted interventions to address productivity of labour input</li> <li>- Prepare citizens to be a part of the tourism industry</li> <li>- Provide craft specific training to satisfy current demand</li> <li>- Provide foreign language training for persons employed within the industry</li> </ul> <p>Encourage In-bound stores to assist in developing craft product – i.e. making craft vendors responsive to the needs</p>

Issue	Discussion Items	Next Steps/Action Items
Gaming industry	<ul style="list-style-type: none"> <li>- Understanding gaming casinos and their role in tourism</li> <li>- The failure to understand that gaming in Jamaica is a reality</li> <li>- What is the opportunity cost of this industry being informal versus formal?</li> </ul>	<ul style="list-style-type: none"> <li>- Examine/assess the benefits of the gaming industry to tourism</li> </ul>
On-shore / Off-shore industry regulation – Cruise Ship Industry	<ul style="list-style-type: none"> <li>- Understanding the differences between the on-shore and offshore industry</li> <li>- How are cruise ships taxed?</li> <li>- How are they regulated?</li> <li>- The possibility of having product offerings at all-inclusives (onshore) similar to those on cruise ships</li> <li>- Understanding whether a regional approach is needed to tackle this issue</li> <li>- Are we maximizing our cruise ship visitors in terms of expenditure?</li> <li>- Creating the environment for income spent to be retained on the island</li> </ul>	<ul style="list-style-type: none"> <li>- Conduct research to generate reliable data on cruise ship revenues vs. all inclusives</li> </ul>
Product Development/ Development of Attractions	<ul style="list-style-type: none"> <li>- Developing diverse tourism offerings which appeal to a wider cross-section of individuals</li> <li>- Promoting community tourism, eco-tourism</li> <li>- Developing agro-tourism, health tourism and literary festivals</li> <li>- Linking new products to inflow of visitors from CWC</li> <li>- Maximizing economic benefits for tourism out of CWC</li> </ul>	<ul style="list-style-type: none"> <li>- Link local crafts persons to in-bond stores and suppliers</li> <li>- Identify the levers that maximize tourist spend</li> <li>- Develop new attractions for e.g. Food festivals; events which offer authentic Jamaican experience and create craft-villages around spa areas</li> <li>- Improving quality of festivals which are tested locally first before being offered internationally as a potential draw for tourists</li> </ul>
Issue	Discussion Items	Next Steps/Action Items
Envisioning the “total experience” for tourists	<ul style="list-style-type: none"> <li>- What is the total experience we are offering our tourists?</li> <li>- Identifying tourist segments</li> </ul>	<ul style="list-style-type: none"> <li>- Focus on the total experience not only on tourists within hotels</li> <li>- Target improving the level of service offered within the resort areas e.g. restaurants, tours</li> <li>- Incorporate resort areas into the Tourism Master</li> </ul>

		plan
Vision of the Private Sector	<ul style="list-style-type: none"> <li>- The lack of vision in the private sector</li> <li>- Can the private sector drive product development? How do current festivals operate? What enables them?</li> </ul>	<ul style="list-style-type: none"> <li>- Position product development within tourism as business opportunities which are profitable</li> <li>- Undertake market research</li> <li>- Clarify role of public vs. private in these ventures</li> <li>- Examine regional/international examples of models (local examples include: Walkerswood Tour, Wassi Art)</li> </ul>
Guidelines for the Building code	<ul style="list-style-type: none"> <li>- Opacity and confusion around legislation</li> <li>- Clarifying the process and guidelines</li> </ul>	<ul style="list-style-type: none"> <li>- Develop a code that allows for innovation and the necessary infrastructural improvements</li> <li>- Increase funding for relevant agencies e.g. NEPA in carrying out their responsibilities</li> </ul>

## Creative Industries

Issue	Discussion	Next Steps / Action Items
The need for a paradigm shift among artists	<ul style="list-style-type: none"> <li>- The creative industries is unique in that it goes deeper than the firm to the individual, and as such the individual needs to be considered as an enterprise onto themselves</li> <li>- There is need for training in marketing, distribution, production and management so as to promote vertical integration</li> </ul>	<ul style="list-style-type: none"> <li>- Partner schools for the creative industries, respected practitioners and colleges and universities to develop and to provide holistic training experiences</li> <li>- Model and create case studies of success stories with the goal of replicating them</li> <li>- Empower practitioners to enterprise by developing recurring workshops offered through industry associations</li> </ul>
The image of the creative industries	<ul style="list-style-type: none"> <li>- Careers in the creative industries still viewed as a "last resort" and so financiers and citizens alike don't tend look favorably on artists or promote involvement.</li> <li>- Parents aren't comfortable with children pursuing careers in the creative industries and this often results in the stifling of young talent.</li> <li>- Explore and leverage the ways the creative industries are utilized in other traditional industries, for example its link to tourism. The creative industries can be used to help promote and showcase Jamaica's culture.</li> <li>- In the case of music, we have neglected to put the appropriate infrastructure in place to empower the art form. This has also resulted in little or no efforts to educate the artists about the impact of their music and thereby channel the content in a positive and socially accepted direction. This negligence has forced the development of a level of autonomy and power that is now resulting in streams of negative music with poor social commentary. The question arising from this is: In moving forward do we censor the music, and if so how? Do we absorb some and filter out the undesirable or do we take it whole and parcel.</li> </ul>	<ul style="list-style-type: none"> <li>- Promote the creative industries as a viable livelihood by: 1) Completing and utilizing of Encouragement of Culture and Entertainment Act; 2) highlighting the role of the creative industries as an input into more traditional industries; 3) Introduce and/or strengthen creative programs in mainstream schools</li> <li>- Mobilize industry associations to assess the current repercussions of negative content in Jamaican music and monitor how Jamaican music and artists are handled overseas</li> <li>- Engage the music industry in a dialogue around the development, implementation and monitoring of an industry accepted censorship mechanism</li> <li>- Design a series of workshops</li> </ul>

	<ul style="list-style-type: none"> <li>- There is an ongoing evolution of the industry – the corporations are coming in and facing less difficulty.</li> </ul>	aimed at sensitizing industry players of the impact of negative content
--	--	---

Issue	Discussion	Next Steps / Action Items
Financing ventures within the creative industries	<ul style="list-style-type: none"> <li>-There is a general absence of corporate investment (or the investment that is needed) in the creative industries. NCB has contributed to the more traditional universities, why haven't financial institutions provided similar levels of investment in the creative industries? The Edna Manley College for the Visual and Performing Arts is a suitable candidate for this kind of assistance.</li> <li>-There is over-emphasis on the sponsorship of events by corporations. One reason for this could be the corporations' need for the visibility, time till realized returns and minimal risk associated with events.</li> <li>-Donor and other low interest facilities are made inaccessible to the creative industries via their eligibility structure (e.g. PSDP)</li> <li>-The state is not filling its role in providing and creating the environment to encourage venture capital support for young entrepreneurs within the creative industries. This is especially important in the cases of graduates of the Edna Manley College of the Visual and Performing Arts.</li> <li>-The creative industries also face unique challenges around providing collateral for financing instruments. The basis of these challenges is the over-arching fact that lending institutions still do not see artists' IP as collateral. The publishing sector is especially challenged as valuing</li> </ul>	<ul style="list-style-type: none"> <li>- Practice mutual guarantees</li> <li>- Form a team to examine and detail the procedures necessary to institute a bank which focuses on the creative industries – starting capital may be arise from contributions from the more affluent artists that have gone before</li> <li>- Lobby to have financial institutions develop and institute mechanisms to evaluate various forms of IP</li> <li>- Lobby to have the state take action to encourage corporate investment into the creative industries</li> <li>- Build on initiatives arising from the Encouragement of Culture and Entertainment Act to direct attention for sponsorship from financial institutions towards the Edna Manley College for the Visual and Performing Arts and other schools for the creative industries</li> <li>- Develop training programs to</li> </ul>



	<p>intellectual property would include estimating not only the unit sale price but also the quantity of units that would be sold.</p> <ul style="list-style-type: none"> <li>-Government level policy and the culture of the banks have created an inflexible investment environment and thus this needs to be changed.</li> <li>-An examination of how banking evolved in Jamaica and the resulting framework imposed by the Bank of Jamaica would reveal that retail banking institutions may be averse to taking on the risk associated with financing a venture within the creative industries. Not only is there a need to identify (or create) a financial vehicle that is authorized to take on this kind of risk, but artists also may need to pool resources to absorb and to minimize individual risk.</li> <li>-Copyright will also play a role in courting banks.</li> </ul>	<p>strengthen the industry players' ability to prepare suitable financial documents to increase the likelihood that proposals from artists will be approved by financial institutions.</p>
Advocacy to have more local content on local radio	<ul style="list-style-type: none"> <li>-There needs to be more local content on radio as JACAP collects majority of its payment for overseas</li> </ul>	<ul style="list-style-type: none"> <li>- Establish a task force to examine how content is chosen and the viability of instituting a regulatory framework for this</li> </ul>

## **Final Session: Wrap Up**

### **1. Cross-Cutting Themes**

Several key issues were highlighted as integral to the improvement of competitiveness across all three sectors, namely, improved communications and information sharing, more integrative planning, streamlining of government approvals and processes, and rationalization of resources.

The following three issues were emphasized:

- 1.1 Financing; limited access to finance for research, product development and effective marketing presents a significant obstacle in all three sectors. Cost of capital can be prohibitive and the low risk appetite of the banking sector hinders industry development. This is particularly challenging in the case of development banks, which should be the first source of funding for industry development.
- 1.2 Training; the development of robust and focused training programs must form an essential component of competitiveness strategy across the board. There are training gaps in all three sectors, particularly in the utilization of best-in-class modern technologies (agriculture) and in meeting the needs of the most attractive customer segments (tourism and entertainment).
- 1.3 Marketing; an examination of the best approaches for marketing Jamaican goods and services needs to be conducted. A variety of models need to be explored and tested for viability, for example, collective marketing of Jamaican products and/or services under one brand.

### **2. Further Observations**

A lively discussion ensued in which the following observations were made and points contributed:

2.1 Stakeholder engagement in the development of sector-wide plans must be deepened. There is varying awareness and minimal consensus around the plans developed within each sector, where the planning process is most often led by the government. For example, the definition of the tourism industry, the data on economic impact and the prescribed model of Jamaican tourism presented in the Master Tourism Plan was rigorously challenged. The Culture Act was critiqued as being incomplete and there was little understanding of the Ministry of Agriculture sector plan.

2.2 There is a tangible tension between the role of state and the role of the firm in the development of industry. The most effective relationship between the state and the private sector, towards the development of industry and improvement of national competitiveness, is yet to be determined. Some are doubtful that until state level macro indicators are improved firm level initiative and activity will result in minimal improvements in competitiveness.

2.3 Given that our products and services have to compete globally and our firms are relatively small, can collective brand management provide a solution by allowing for resource sharing in the development of internationally recognized brands? If so, how can collective brands be effectively developed and managed? What are the resources and capacity level required?

2.4 Industry associations need to fill critical gaps by addressing their clients' shortfalls in achieving competitiveness. Associations can assist sector development by providing opportunities for market research, product development, financial brokerage and dissemination of best practices, amongst other things. Most importantly, sector associations need to remain in touch with the evolving needs of their membership if they are to offer relevant services.

2.5 There is a lack of national consensus on where Jamaica is going, development wise – and by extension on the strategies to deploy in becoming more efficient and competitive. This lack of consensus poses a challenge to sector-wide planning, coordination of initiatives and resource sharing. Entities that should be working together are not on the same page.

2.6 The contentious point was made that Jamaica's diminishing national pride is impacting negatively on the country's ability to prepare, plan and act accordingly in the pursuit of national competitiveness. How does national pride and cultural constructs play a role in development and achieving competitiveness?

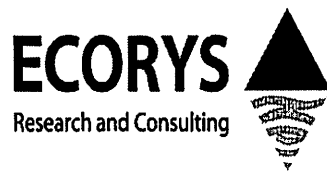
### **3. JAMPRO Request and Contribution**

The session ended with JAMPRO requesting that sector stakeholders and leaders remain in touch with the agency and provide much needed feedback on how the agency can best serve the needs of each sector in the pursuit of competitiveness. Where some sectors have been given priority over other sectors JAMPRO would like to rectify that disconnect, but can only do so with specific instruction from the sectors on what is needed and where there are shortfalls in the services and support provided.

Specific responses were made to two of the observations above:

3.1 Collective branding; JAMPRO is currently developing a program, "Brand Jamaica", which will allow for collective branding of Jamaican goods and services in the international marketplace.

3.2 Association capacity-building; One of the grant facilities under the Private Sector Development Program (funded by the European Union and the Government of Jamaica) provides funding for the capacity building of *Private Sector Organizations*. This category includes the traditional industry associations as well as non-traditional organizations that seek to serve private sector firms as members and/or clients. Under this grant facility industry associations may secure funding to strengthen their services, bolster their programs and improve their operations to the benefit of their members/client firms.



## **Short Term Consultancy for the PSDP Competitiveness Committee**

### **Competitiveness in services**

**FINAL REPORT (REVISED)**

Ecorys competitiveness team:  
Huib Poot  
Michelle Brown  
Kingston, 17-09-2006

# Table of contents

Table of contents .....	1
Executive summary .....	2
1 Introduction .....	4
2 Tourism sector .....	5
2.1 Characteristics and recent trends with respect to visitors .....	5
2.2 Developments in the tourism industry .....	7
2.3 Determinants of competitiveness .....	9
2.3.1 Regulatory environment and incentives .....	10
2.3.2 Productivity .....	11
2.3.3 Access to capital .....	11
2.3.4 Access to inputs .....	12
2.3.5 Infrastructure and utilities .....	13
2.3.6 Cost and quality of workers .....	13
2.3.7 Exchange rate .....	13
2.3.8 Crime and violence .....	14
2.3.9 Marketing .....	14
2.4 Prospects and targets .....	14
3 ICT sector .....	16
3.1 Introduction .....	16
3.2 Telecommunications .....	16
3.3 Internet service providers .....	17
3.4 Software development .....	17
3.5 Call centres/back office operations .....	17
3.6 E-commerce .....	19
3.7 Assessment and target setting .....	20
4 Creative industries .....	22
4.1 International developments .....	22
4.2 Creative industries in Jamaica .....	23
4.2.1 Structure of the music industry .....	23
4.2.2 The music industry in Jamaica .....	25
4.2.3 Trends in the music industry .....	26
4.2.4 Co-operation in the music industry .....	27
4.2.5 Copyrights .....	27
4.2.6 Support to the Jamaican music industry .....	27
4.2.7 Administration of music and culture industries .....	28
4.3 Future prospects .....	29
5 Policy recommendations .....	30

# Executive summary

## *Tourism*

In Jamaica, the tourism sector has become the leading foreign exchange earning sector. In 2004, travel revenue amounted to US\$ 1.4 billion, as compared to total exports of goods of US\$ 1.6 billion. Throughout the 1990s tourism expenditure increased at an average of 6.3 percent per year. A temporary decline occurred in 2001 and 2002 due to the impact of 9/11. However, since then tourism revenues have been on the increase again, with expenditure increasing at 6 percent in 2004 and the number of stop over visitors increasing by an average of 5.3 percent per year between 2002 and 2005, reaching close to 1.5 million visitors. Cruise ship passengers are a strongly growing group of visitors. The Caribbean is the world's largest cruise destination with about half the share of the world market and is also the fastest growing category in the Caribbean leisure market. In Jamaica, visitors from cruise ships are the fastest growing group of visitors to the country, increasing from 490 thousand in 1991 to 1.1 million in 2004.

Accommodation is available in hotels, villas/apartments and guest houses. The hotel sector is dominated by the "all-inclusive" properties, which include most of the larger hotels. The opening up of several large hotels over the past years has resulted in a significant expansion of hotel room capacity in the island. It is estimated that at present there are close to 25,000 rooms. More hotels are under construction or are being planned with a capacity of about 3,000 beds.

Growth prospects for the tourism sector are favourable. For the Caribbean region as a whole, it is expected that the number of tourist arrivals will increase by an annual rate of 4.6 percent over the next 10 years. A similar estimate, 4.3 percent is projected by the World Travel and Tourism Council for the period 2006-2015.

The competitiveness of the tourist sector in the Caribbean is still driven by climate and natural resources, i.e. "sun, sand and beaches". In the case of Jamaica, other competitiveness factors are proximity to the USA, high quality service, as well as cultural factors, especially music and entertainment, heritage, as well as other attractions and facilities. To remain competitive constant improvement and diversification of the product offered is of key importance. In this context hotels are developing products to meet the requirements of specific markets. There are prospects of moving into health/wellness, nature/adventure, eco-tourism, as well as sports related tourism, based on hosting major sports events such as the Cricket World Cup in 2007. These new forms of tourism generally involve stronger involvement with local communities.

A challenge for local manufacturing and farming is to take more advantage of the markets formed by the hotels. The hotel industry source about 50 percent of their traded inputs from domestic suppliers. These include food and beverages, and other manufactures. There is scope for increasing this share.

In terms of policy a priority is reducing the complications in starting and operating a tourist enterprise, especially by reducing the documentary requirements for the various licenses. There is also a need to improve the transparency in accessing incentives.

The ICT sector has grown considerable over the past five years. The growth has especially been in the areas of telecommunications and call centres/back office service providers. The telecommunications market is now fully liberalised. Over the past decade US\$ 700 million has been invested in the telecommunications infrastructure. Two mobile phone companies are operating and a third license for mobile phone operations have been issued. An optic fibre optic cable is connecting Jamaica with the outside world allowing broadband internet connections. Licenses for two more fibre optic cables have been issued.

At present 16 companies are operating in the field of call centres and back office service operations, employing about 10,000 workers. There is a trend in moving up the value chain with an increase in emphasis on back office services requiring more specialised staff.

In comparison with other locations in the Caribbean, Jamaica is often preferred because of the quality telephone network, the size of the potential pool of workers and the cost of workers. Especially the presence of a fibre-optic cable network covering the whole island is a positive factor. Advantages compared to operating in the USA are lower costs, lower turnover of staff and better commitment of workers. Finding adequate space for call centres has become a major problem. There is also still a need to reduce telecommunications costs further.

#### *Creative industries*

The concept of creative industries involves combining various art forms with technology to produce an innovative product or service. Among creative industries, Jamaica has achieved most success in the music industry. However, this component of the music industry is under strong commercial threat because of difficulties in the protection of copy rights and rampant piracy. Internationally, sales of music have been declining. Nevertheless, in Jamaica a cluster type industry has developed with between 50-75 highly specialised companies in production, recording, video production. The music industry employs some 6,000 people. The industry is also faced with a reality whereby most of the revenue is captured abroad by the labels which contract the artists and distribute and market their music. There is scope, however, for doing more of the production and video parts of the process.

In recent years efforts have started to organise the industry and to support its development. Several associations of operators in the industry exist and institutions have been established to capture more of the copy rights from media broadcasts abroad.

Other creative industries which have potential to operate at an international market include, film, advertisement, architectural designs, fashion, dance, book publishing. The most important requirements for developing such and other creative industries are an environment which fosters creativity including a high class educational infrastructure from the primary level, access to up-to-date technological infrastructure and no or low restrictions on the movement of people with their equipment to travel abroad. Access to venture capital funding would also be a favourable factor to the development of such industries. Support could be provided to artists to participate in such events as the annual performing arts Olympics in Hollywood and tours abroad for performing artists/groups.

# 1 Introduction

In the context of the EC funded PSDP programme, a Competitiveness Committee has been established. Members of this committee include representatives of public and private sector organisations dealing with private sector policy and or implementing private sector support activities. The tasks of the Competitiveness Committee (CC) are:

- Monitoring competitiveness at the macro, meso and micro levels.
- Establish standards for measuring competitiveness.
- Formulate recommendations to policy makers.

The PSDP programme has commissioned a team of researchers from ECORYS in the Netherlands to carry out research on competitiveness in Jamaica. The Ecorys team is composed of Huib Poot, senior consultant at Ecorys Netherlands BV, team leader and competitiveness analyst and Michelle Brown, Attorney At Law of Myers, Fletchers and Gordon, Kingston and the legal expert of the team. The study has been carried out over the period 27 January to 30 June 2006.

The research covers an assessment of competitiveness at the national level, and the level of three selected sectors, including:

- Agro-processing
- Services (Tourism and entertainment, and ICT)

This report presents the findings of the competitiveness assessment of the services industries tourism, ICT and creative industries. The study has the following main components:

- An overview of the performance of the selected services sectors.
- An assessment of competitiveness.
- An evaluation of prospects and formulation of targets.
- Policy recommendations



## 2 Tourism sector

### 2.1 Characteristics and recent trends with respect to visitors

In Jamaica, the tourism sector has become the leading foreign exchange earning sector. In 2005, travel revenue amounted to US\$ 1.5 billion, as compared to total exports of goods of US\$ 1.6 billion. Throughout the 1990s, the sector has been growing steadily with tourism expenditure increasing at an average of 6.3 percent per year. A temporary decline occurred in 2001 and 2002 due to the impact of 9/11. However, since then tourism revenues have been on the increase again, with expenditure increasing at 6 percent in 2004 and the number of stop over visitors increasing by an average of 5.3 percent per year between 2002 and 2005, reaching close to 1.5 million visitors (Table 1). For cruise ship passengers this increase is even 9.4 percent, in spite of a slight dip in 2004. An economic study of the tourism sector for 1997 estimated the direct contribution of tourism to value added at 10 percent for that year. Given the higher increase in visitor expenditure than in GDP, this share has probably increased to 12 percent. It has also been estimated in the same study that in 1997 the sector employed 70,000 workers, assuming a no change in labour productivity this number could have gone up to 90,000 by 2004. The sector also stimulates activity in other sectors, including food, other manufacturing, construction, trade, transport and various creative industries. Overall it is estimated that related activities employ some 170,000 workers and generate 20 percent of GDP.

**Table 1. Number of visitors, 1995 and 2000-2005 (numbers in thousands)**

	1995	2000	2001	2002	2003	2004	2005
Stop-over visitors	1147	1322,7	1276,5	1266,4	1350,3	1414,8	1478,7
Cruise ship visitors	605,2	907,6	840,3	865,4	1132,6	1099,8	1135,8

Source: Jamaica Tourist Board

Most of the stopover tourist arrivals in Jamaica come from the USA with a share of about 70 percent (Table 2). The share of visitors from Canada shows a small decline to 7.5 percent in 2004, whereas the share of visitors from Europe increased to 17 percent. The share of visitors from other Caribbean countries has been fairly constant, while visitors from other countries have declined. Visitors from the USA stay an average of 8.3 days per person in Jamaica in 2004. For Canada, the average number of days is 12.9 and for Europe it is 14.1, though this number is strongly affected by the high proportion of non-resident Jamaicans from the UK whose length of stay is on average 27 days. Average expenditure per visitor day has increased from US\$ 89 to US\$ 101 between 1996 and 2004.

**Table 2. Stopover visitors by country of origin, 2000 and 2004**

	Numbers (1000)		Percentage distribution	
	2000	2004	2000	2004
USA	940,9	996,1	71,1	70,4
Canada	107,5	105,6	8,1	7,5
EU	199	241,9	15,0	17,1
Caribbean	45,6	49,4	3,4	3,5
LA	14,7	10,6	1,1	0,7
Other	15	11	1,1	0,8
	1322,7	1414,6	100,0	100,0

Source: See Table 1.

Accommodation is available in hotels, villas/apartments and guest houses. The opening up of several large hotels over the past years has resulted in a significant expansion of hotel room capacity in the island. It is estimated that at present there are close to 25,000 rooms and 51,600 beds. More hotels are under construction or are being planned for about 10,000 beds in the coming years. It should be noted, that there is considerable seasonal variation in visitor arrivals with the main peak in the winter season (from December to March) and a peak in the months of July and August.

Jamaica is the fourth largest destination for visitors in the Caribbean, after the Dominican Republic (3.7 million visitors in 2005), Cancun, Mexico, (2.1 million), Cuba (2 million) and the Bahamas (1.5 million). Jamaica is the third most important destination for visitors from the USA in the Caribbean after Cancun and the Bahamas accommodating 17 percent of the US visitors to the region. Jamaica accounts for 8 percent of European visitors to the Caribbean region. Main destinations for Europeans are the Dominican Republic, Cuba and the French islands of Guadeloupe and Martinique.

Based on limited available information on tourism expenditure per day (based on total expenditure and average length of stay data), Jamaica takes an intermediate position in the region with about US\$ 100 per day. Visitor expenditure is lower in the Dominican Republic, at US\$ 90 per day, but higher in such destinations as Barbados (US\$ 125 per day) and the Bahamas (US\$ 150 per day).

Cruise ship passengers are a strongly growing group of visitors. The Caribbean is the world's largest cruise destination with about half the share of the world market and is also the fastest growing category in the Caribbean leisure market. In Jamaica, visitors from cruise ships are the fastest growing group of visitors to the country, increasing from 490 thousand in 1991 to 1.1 million in 2004. There is a debate about the net benefits cruise shipping brings to the country, with most of the spending done on board in restaurants, duty free shops, casinos and night clubs, though spending by cruise ship passengers benefits taxi-drivers, shopkeepers and street vendors. The Bank of Jamaica estimates expenditure by cruise ship passengers at US\$ 90 million, or about US\$ 84 per passenger and per day. This is not insignificant, if compared with the US\$ 100 spent by stopover visitors, of which a considerable proportion (57 percent) is spent on accommodation. Cruise ships are sometimes seen as a major competitor to stopover tourism, especially for the all inclusive hotels, being in fact floating hotels. Cruise ships do not pay taxes in the Caribbean and source few goods in the Caribbean, though it has

been reported that in the case of Jamaica, cruise ships seek supplies locally of food and craft items.

Growth prospects for the tourism sector are favourable. For the Caribbean region as a whole, it is expected that the number of tourist arrivals will increase by an annual rate of 4.6 percent over the next 10 years. A similar estimate of 4.3 percent is projected by the World Travel and Tourism Council for the period 2006-2015. This estimate is slightly higher than a similar estimate for the Caribbean as a whole, 3.9 percent, but lower than the growth of visitors projected for the world as a whole, 5.2 percent.

## 2.2 Developments in the tourism industry

The growth of the tourism sector reflects a considerable structural change in the economy of Jamaica away from agriculture and manufacturing. Agriculture has come under pressure as preferential market access is increasingly being dismantled. The importance of manufacturing has declined as protection has been reduced through the 1990s. The current phase of tourism growth is fuelled by both foreign and domestic investments and started in the mid-1980s with the privatisation of several major hotels by the government.

The Jamaican tourism sector is composed of the following sub-sectors (Table 3).

**Table 3. Output, GDP, employment and GDP per worker in tourism activities in 1997 (amounts in J\$ million)**

Sector	Output	%	GDP	%	Employment	%	GDP/worker
Accommodation	24,786.7	55.0	8609.6	52.2	33,927	48.7	253.8
Restaurants/night clubs	2,493.6	5.5	733.4	4.5	3,908	5.6	187.7
Entertainment (tour operators, recreation and attractions)	3,812.2	8.5	1656.8	10.1	4,437	6.4	373.4
Transportation	3,218.7	7.1	1467.4	8.9	12,126	17.4	121.0
Shopping	7,402.4	16.4	2866.9	17.4	13,890	20.0	206.4
Miscellaneous	851.3	1.9	349.1	2.1	579	0.8	602.9
Government-related	2467.0	5.5	797	4.8	739	1.1	1078.5
Total	45031.9	100.0	16480.2	100.0	69,606	100.0	236.8

Source: 1997 economic report on tourism in Jamaica

The main component of the industry is accommodation, which accounts for over half of output and GDP and close to 50 percent of employment in the industry. The next largest components are shopping, entertainment and transportation. In the remaining part of this Chapter the focus is on the accommodation part of the tourism sector, and particularly the hotel industry.

The tourism sector offers a variety of accommodation (see Table 4). The hotel sector is dominated by the “all-inclusive” properties, which include most of the larger hotels (Table 5). The all inclusive concept was first introduced by two local hotel chains in the mid-1980s. These hotel chains were developed by investors diverting from trading and manufacturing. The all inclusive concept is now widely applied by locally and foreign-owned hotels in Jamaica. The concept is also widely applied in other parts of the Caribbean. The smaller properties are largely family-owned entities offering accommodations under “Continental” and “American” plans.

**Table 4. Number of accommodation units by type and number of beds, 2000 and 2004**

	2000		2004	
	Units	Rooms	Units	Rooms
Hotels	197	16100	205	17533
<50 rooms	118	3112	121	3239
51-100	36	2624	40	2884
101-200	20	2870	17	2400
>200	23	7494	27	9010
Guest houses	313	2417	400	2739
Resort villas	1208	3732	1168	3625
Apartments	455	1381	354	1050

Source: See Table 1.

**Table 5. Number of hotels and beds by all-inclusives and others, 2004**

Type of hotels	Units	Rooms
All inclusives	54	10444
Non-all inclusives	151	7089

Source: See Table 1.

All-inclusives are also quite successful in achieving high occupancy rates (Table 6). There is a positive correlation between size of hotels and occupancy (Table 7).

**Table 6. Room nights sold and occupancy rates, 2000 and 2004**

	2000	Occupancy rate	2004	Occupancy rate
Inclusives	2181	70	2496	72
non-inclusives	787	39,3	638	39,1

Source: See Table 1.

**Table 7. Occupancy rates by size of hotel, 2004**

	Winter	Summer
<50 rooms	41	30
51-100	46	38
101-200	74	67
>200	82	75

Source: See Table 1.

Most of the hotels are locally owned, though sometimes operated by foreign “brand” hotel operators (Holiday Inn, Ritz Carlton, Wyndham). The industry is well-established, with a long history of performance. The two largest local chains, Sandals and Super Clubs, have developed into hotel operators and have expanded overseas and own or manage resort properties in the Bahamas, Brazil, Cuba, Curacao and the Eastern Caribbean (St Lucia and Antigua). Super Clubs provides a total of 3600 beds in twelve (12) properties, eight (8) of which are local and four (4) overseas. A newer local hotel chain has been established by the NCC group (which is active in a variety of activities including bread manufacturing, chicken processing, wharves, real estate and trading) aiming at the middle level resort market with the Sunset Resort in Montego Bay (through tour operators), as well as the business traveller market in Kingston (operating the Courtleigh Hotel and the Sutton Hotel, also in Kingston, for blue collar long stay workers) and is also operating the Ruins restaurant in Ocho Rios. Another investor, Chris Blackwell, has invested in developing exclusive small-scale properties, such as Strawberry Hill.

The large hotel chains have developed clear notions of the target markets in which they aim to operate. A distinction is made between the luxury market, which is relatively stable, the more dynamic market of middle class active visitors and the more low cost mass market. Facilities are adjusted to cater to these markets (Jacuzzis in each room in the luxury hotels and sports facilities for active visitors). The smaller hotel sector is declining, as these are more costly to market and operate and have less access to capital at favourable conditions. The local chains are actively looking out for suitable properties to take over both in Jamaica, as well as abroad, though the market of eligible properties in Jamaica is thin, as current owners are reluctant to sell.

Over the past few years substantial investments have been taking place in expanding and upgrading the capacity of the industry. Major new hotels include the Ritz Carlton in Montego Bay, RIU hotels in Negril and Montego Bay, as well as the FDR Pebbles in Trelawny and Robins Bay Beach Hotel in Ocho Rios. The industry is capital intensive. Investment costs per room amount to about US\$100,000. Major refurbishment is required once every 5-10 years, not only to renovate properties, but to add attractions (restaurants, sports facilities, landscaping).

## 2.3 Determinants of competitiveness

The competitiveness of the tourist sector in the Caribbean is still driven by climate and natural resources, i.e. "sun, sand and beaches". In the case of Jamaica, other proven competitiveness factors are proximity to the USA, high quality service, as well as cultural factors, especially music and entertainment, heritage, as well as other attractions and facilities. To remain competitive constant improvement and diversification of the product offered is of key importance. In this context hotels are increasingly developing products to meet the requirements of specific markets. There are prospects of moving into health/wellness, nature/adventure, as well as sports related tourism, based on hosting major sports events such as the Cricket World Cup in 2007.

To strengthen the competitiveness of smaller operators in the tourism sector, the JEA cluster competitiveness project assisted in the formation of a Tourism cluster. This cluster consists of 70 companies, including tour operators, attractions and small and medium hotels and guest houses around the theme of nature/adventure holidays. The main common activity is marketing. A brand has been established, Unique Jamaica, and packaged tours have been developed. Companies are pooling resources to participate in tourism expositions abroad. A web site has also been developed which serves as a source of information on the products offered, but which also serves as a booking engine.

To maintain competitiveness, cost is also important, especially with respect to the European market. Costs are affected by the exchange rate, the cost of workers, costs of utilities (electricity, water, sewage). Other factors include the regulatory environment, access to capital, the quality of workers, infrastructure within the country, airlift capacity, government incentives and factors such as crime. Some of these issues are reviewed below.

**Table 8. Cost indicators by type of hotel**

	Costs as a percentage of sales (%)					
	Wages	Cost of finance	Marketing	General administration	Property maintenance	Other costs
All inclusives	9,2	2,7	13,5	7,6	4,6	7,9
Mixed hotels	12,5	11,1	5,8	8,8	10,1	4,7
Large non-inclusives	23,5	7,1	8,1	18,6	8,9	7,2
Smaller non-inclusives	28,0	24,2	4,8	20,3	5,8	3,2

Source: 1997 economic report on tourism in Jamaica

### 2.3.1 Regulatory environment and incentives

Tourism in Jamaica is regulated by the Jamaica Tourist Board (JTB), for which the Tourism Product Development Company (JTPDCo) acts as an agent in the approval of many licenses. To apply for these licenses several documents have to be submitted and interaction is needed with multiple government departments (JTPDCo, Ministry of Health, Parish Council, Town Planning, Police, and Fire Department). These licenses often need to be renewed on a yearly basis subject to inspections, putting an additional burden on business during their operational phase. A recent review of administrative barriers in Jamaica concluded that despite efforts to promote tourism, starting and operating a tourist enterprise in Jamaica is fairly complicated compared to other countries around the world. It should be noted that in practice the government can be flexible in moving the licensing process along and waivers and exemptions are provided. It is nevertheless recommended to reduce the documentary requirements for the various licenses and to replace licenses with clear guidelines on standards to be complied with, of which compliance is then monitored by inspections with a reasonable frequency.

The tax regime is considered another major burden on the industry, including high property taxes, beach taxes for beach properties, corporate taxes, GCT, import duties and a range of fees to be paid for the different licenses referred to above, though the burden of some of these taxes is reduced by the availability of incentives.

Various incentives programmes have been introduced to stimulate investment in the tourism sector. Under the Hotels Incentives Act 10-year relief from income tax and import duty is available to new hotels and expansions/alterations of existing hotels. The import duty relief is provided for selected goods that are not competing with local products. Under the Resort Cottage Incentives Act, new resort cottages are entitled to seven years relief from income tax. Furthermore, a specific formula applies to estimating GCT on revenues obtained from tourism activities, which increases the deductibility of inputs and resulted in a lower GCT rate of 6.2 percent, which was increased last year by one-third to 8.25 percent. A recent concession, which is considered very favourable for the industry, has been the reduction of import duties on wines and spirits. It should be noted that most non-accommodation activities do not have access to incentives.

Incentives are processed by the Ministry of Tourism and Culture with assistance from JAMPRO. Since the start of the incentives legislation, incentives have been provided to some

219 hotels with 13,601 rooms, of which 80 are presently still operating under incentives with a total of 7,722 rooms.

The incentives available to the tourism sector are quite attractive to investors. However, there are some complaints that the implementation of the incentive schemes is not always transparent and that some investors are able to negotiate more incentives than others. There is therefore a need to make the incentive regime more transparent. In order to facilitate diversification of the tourism sector the incentive regime should be extended to non-accommodation activities. Import duty relief should be extended to all inputs, based on a duty drawback system, as is done in several other countries in the region. Also local input suppliers to the tourism sector should be able to access this duty incentive in order to maintain their competitiveness against directly imported inputs.

### 2.3.2 Productivity

An important factor determining competitiveness is the extent to which activities in the tourism sector are operated efficiently and opportunities for productivity improvement have been exploited. The question can be raised to what extent productivity improvements are possible in the sector and particularly in the accommodation component. In terms of the number of workers per room there seems to be limited scope for productivity improvement. A generally applied standard is that on average, 1.5 workers are employed in the hotel sector. In all-inclusive hotels, because of additional services, this number is even a bit higher. It should be noted though that one hotel in Kingston had been successful in reducing the number of workers per room to about 0.75. This was achieved, by introducing of self service, reducing the number of restaurants, introducing direct payments to waiters/waitresses instead of employing cashiers and reducing security staff. However, especially in the all-inclusive hotels, it was claimed there is little scope for reducing this ratio, if the hotel wishes to maintain adequate service to the visitors.

Productivity improvement can be achieved by higher levels of quality and increasing facilities for hotel guests. Table 9 shows that GDP per worker and GDP per room vary significantly by type of hotel. Productivity is highest for mixed hotels which are generally at the top of the scale in terms of quality, followed by the group of all-inclusives.

**Table 9. Number of hotels, rooms, and productivity indicators per room in 1997**

	Number	Workers/hotel	Rooms	Workers/ Room	GDP/room (J\$ 1000)	Output/room (US\$1000)
Hotels	211	102	15500	1,4	434,1	37,8
-All inclusives	29	397	6749	1,7	535,7	57,2
-Mixed hotels	9	338	2411	1,3	665,9	41,7
-Large non-inclusives	20	157	2500	1,3	288,7	21,6
-Smaller non-inclusives	153	25	3840	1,0	204,8	12,1
Guest houses	274	15	4000	1,0	194,5	10,4

Source: 1997 economic report on tourism in Jamaica

### 2.3.3 Access to capital

Access to capital for the larger properties is not a problem. They can access funding from abroad, or access government-subsidised development loans at favourable interest rates.

Smaller properties have more problems. Often they already have high debt equity ratios. Their debt is predominantly in local currency and a considerable part of their cash flow is devoted to debt servicing. Table 8 confirms that for small hotels financing costs constitute a much higher share of costs (24 percent of sales) than for larger hotels (varying from 2.7 percent for all-inclusives to 11 percent for mixed hotels). As a result, the smaller hotels have problems in mobilising financing for refurbishment or expansion.

For the banking industry, the tourism sector is an important client. In 2005, almost half of outstanding credit to the private sector was for the tourism sector. Half of the credit extended to tourism was in foreign exchange. However, several loans to smaller hotels are in arrears. Consequently, banks view properties of fewer than 100 rooms as not very viable, and see a bleak future for the smaller hotels. Certainly the start-up costs of new small new hotels are considered to be prohibitive. As a result, smaller hotels face difficulties in readily accessing capital.

Pension funds also provide investment financing for hotels. Equity plays a significant role in the investment financing as well. In the case of Courtleigh and Super Clubs a considerable part of the investments is financed out of the corporate funds of the groups.

Several new projects have been funded in the area of attractions by local investors, such as Dolphin Cove, Margaritaville attractions and Chukka Caribbean Adventures.

#### 2.3.4 Access to inputs

The hotel industry source about 50 percent of their traded inputs from domestic suppliers. These include food and beverages, and other manufactures. Netting out utilities, trade and other services the direct import share of inputs declines to about 13-15 percent. No major problems were identified in accessing inputs locally. Although the reliability of supply of farms sometimes is a problem, most hotels have developed good supply relations with local farmers. Some hotels noted problems in accessing quality furniture locally. Several hotels prefer to use local furniture for creating a local atmosphere in the hotel. Matresses are also generally sourced locally. With regards to imported inputs, the average duty paid amounts to around 8 percent. Importing, especially of food can be a hassle, because of cumbersome customs procedures.

Hotels have access to incentives allowing duty free imports of inputs for refurbishing programmes. This does not discriminate local suppliers, as the incentives can also be applied to imported inputs obtained from local suppliers. Incentives cannot be obtained on items which are produced locally such as furniture and paint. There is general satisfaction about this programme, though some hotels felt that the incentives were not applied equitably, some hotels were able to negotiate more items to be included on the list of duty free imports than other hotels.

There is scope for local farming and industry to take more advantage of the supplies needed by the hotels in their establishment phase and during their operations. However, the strengthening of linkages with the local economy should not result in higher costs and therefore reduced competitiveness. There is a need therefore to strengthen the competitiveness of companies which have the potential to supply the hotel sector so that they can supply these inputs at internationally competitive prices. At the same time the hotels should be allowed to



import all of their inputs exempt from import duties, or under some form of duty drawback scheme.

#### 2.3.5 Infrastructure and utilities

A key requirement for the tourist industry is sufficient airlift from major markets. Generally the airlift capacity into Jamaica is considered sufficient. Also the quality of the airport is considered adequate. It is expected that, as the operation of the two international airports will be privatised, their efficiency will be improved further.

A major problem for the tourism industry is the poor state of the road infrastructure within Jamaica. A major improvement has been the renovation of the road connection between the international airport at Montego Bay and Negril. In the Eastern part of the island, however, even major roads are in a poor state of repair. The completion of the Northern Highway, which involves improving major roads along the North Coast between Montego Bay and Ocho Rios is of high importance for the industry. Also improvements to address urban congestion in Montego Bay and Ocho Rios are important.

The quality of utilities, including electricity, water and sewage, and telecommunications has improved somewhat. However, the costs are comparatively high and the reliability, especially of electricity still poses a problem, requiring investments in stand-by facilities. To reduce the costs of utilities, hotels are investing in energy efficiency and water conservation measures.

Under one of the components of the Tourism Master Plan, a Tourism Enhancement Fund has been established, which is being funded from a cess on airplane tickets (US\$ 10) into the country and on visiting cruise ship passengers (US\$ 2). The fund finances the beautification of tourism sites. The fund has just started operations.

#### 2.3.6 Cost and quality of workers

Generally, firms in the tourism sector do not have difficulties in finding qualified workers, except for some specialised occupations like chefs and supervisory staff. The hotels have their own standards in terms of how their staff should implement their tasks and the service they should provide to the guests. Therefore, the hotels have their own training programmes. There is a preference, however, to hire staff which have received hospitality skills training at one of the HEART academies. A problem is staff turnover; there are a considerable proportion of workers who are looking to go abroad.

Over the past decade Jamaica has lost part of its low cost advantage on account of low wages. Wage costs have increased to some 30 percent of the US level and exceed those in Cuba and the Dominican Republic.

#### 2.3.7 Exchange rate

The exchange rate has an important effect on the profitability of the hotel sector. During the mid-1990s, local costs, especially wages, increased faster than the depreciation of the currency. This increase could not be compensated by charging higher prices. As a consequence, profitability was reduced. However, in the past few years, the depreciation of the exchange rate has accelerated, exceeding local cost increases, and therefore increasing

profitability. On the whole it is felt that the competitiveness of the industry on the European market has been strongly eroded in the latter part of the 1990s by the appreciation of the US dollar, in which most hotel prices are expressed, with respect to the Euro. This trend has been reversed after 2002 when the Euro started to depreciate against the US dollar.

#### 2.3.8 Crime and violence

Crime is considered as the main adverse factor for the development of the tourist industry, including harassment of tourists outside the hotels and the negative image of violent occurrences reported in the media abroad. Another problem affecting security is increased squatting around the resorts. Hotels experience high costs for engaging security guards and installing security systems. One hotel reported that this amount was more than double in Jamaica than it was in a location like the Bahamas. Security costs tend to weigh heavier on smaller properties than on larger properties.

To tackle the negative image abroad, the industry has to spend more on marketing than it would have to do otherwise. It has also been reported that as a result of violent incidents, planned expansion investments had to be delayed as bookings experienced a decline.

#### 2.3.9 Marketing

To attract tourists marketing plays an important role. In principle Jamaica has a very attractive product to sell with sun, beaches, mountains, entertainment, culture and other attractions. However, the tourism sector in Jamaica also has to overcome several major adverse factors, including crime, hassle, poor infrastructure in tourist areas, lack of attractive resort towns, poor crafts and craft markets. There is therefore a need for strong marketing of the destination. Especially all-inclusive hotels devote a considerable part of their budget on marketing. Table 17 shows that all-inclusives spend 13.5 percent of their sales on marketing, as compared to 8 percent for large non-inclusive hotels and less than 5 percent for small-scale hotels. For such large chains, such as Super Clubs and Sandals it is estimated that they operate with budgets of around US\$ 30 million per year. As a consequence of problems with Jamaica's image, the room rates which the hotels charge are claimed to be lower than rates for similar rooms and facilities in other countries in the region.

Smaller hotels rely on the JTB for marketing Jamaica as an attractive destination. A challenge for the hotel industry is to make effective use of the internet and e-commerce for marketing and reservations. A recent initiative to market small hotel properties and attractions is being supported through the JEA's cluster competitiveness project. Under this initiative a membership group has been established of a total of 70 tour operators, hotels, guesthouses and attractions under the name of Unique Jamaica. The initiative aims in particular to develop and market nature/adventure vacation programmes. The group participates in tourism marketing events. A web site has been established through which the members can market their facilities, including the making of bookings.

### 2.4 Prospects and targets

A Master Plan for Sustainable Tourism development has been developed and its implementation is being managed by the Ministry of Tourism and Industry. Targets set in this Master Plan for the period 2000-2010 are presented in Table 10.

**Table 10. Tourism Master Plan targets for 2010**

Indicator	Baseline 2000	Growth rate (% p.a.)	Target 2010
Stopover arrivals (1000)	1,323	5.5	2,200
Cruise passengers (1000)	908	10.0	2,200
Visitor expenditure (US\$ million)	1,333	8.4	2,935
Room stock	23,640	4.0	35,000
Employment	75,000	5.7	130,000
Occupancy	59%	-	69% (75% for all inclusives and 62% for other hotels)
Share of GDP	8%		15%

Source: Jamaica, Master Plan for Sustainable Tourism Development.

As a result of the temporary slow down of tourism in 2001 and 2002, the progress in reaching the target in terms of visitors is behind schedule. However given the pace of recovery over the past two years it does not seem unreasonable to maintain the growth targets presented in the table for the remaining 5 years. In terms of rooms the ongoing expansion programme is on target.

Other trends to be expected according to the master plan are:

- Faster growth for European Plan hotels, which is currently reflected by the coming on stream of several new Spanish-owned hotels.
- More rapid growth of non-hotel accommodation, such as villas and apartments.
- Increased expenditure by tourists on non-accommodation activities, including tours, attractions and sports.

## 3 ICT sector

### 3.1 Introduction

The ICT sector has grown considerable over the past five years. It is composed of the following main groups of activities:

- Telecommunication companies (Cable and Wireless, UK, Digital, Ireland and Centennial, USA)
- Hardware oriented suppliers and services, including the installation of local area networks (e.g. IBM, ICL/Fujitsu, Digital Transtec and Illuminat);
- Assembly of hardware;
- Software developers, e.g. Imex, Advanced Digital;
- ISP providers e.g. C&W, Infochannel, Anbell, N5, Colis and Jamweb;
- Data processing;
- Call centres and back office services;
- Training e.g. HEART/NTA, Caribbean Information Institute, Infoserv and Computer Training Centre.

The growth has especially been in the areas of telecommunications and call centres/back office service providers.

Local firms are represented by the Jamaica Computer Society and the Software Developers' Association.

Government policy toward the information processing sector is contained in an Information Technology Sector Strategy. This strategy essentially targets overseas investors in the labour-intensive low end of the market typified by "call centres". This approach is conditioned by the need to generate significant number of jobs within a short time-frame.

### 3.2 Telecommunications

Good quality low cost telecommunications are a key ingredient for the successful development of the IT sector. The telecommunications market is now fully liberalised. Over the past decade US\$ 700 million has been invested in the telecommunications infrastructure. Two mobile phone companies are operating and a third license for mobile phone operations has been issued. Digicel started operations in early 2001 and has invested US\$ 100 million, and Centennial followed in the last quarter of 2001 with a similar investment programme. One fibre optic cable is connecting Jamaica with the outside world allowing broadband internet connections. Licenses for two more fibre optic cables have been issued. It is expected that these cables will be constructed within the year. Telecommunication costs have been reduced by more than 50 percent and a further reduction of 50 percent is expected to be

realised within the next few years. Cable and Wireless has also invested significantly in the telecommunications infrastructure fully digitalising the fixed-line telephone services through laying an island-wide network of fibre optic cables. In the area of mobile telephone services, The Office of Utilities Regulations is charged with the regulatory supervision of the telecommunications sector.

### 3.3 Internet service providers

The number of internet service providers has increased substantially over the 5 years to reach a total of 15.

### 3.4 Software development

There are some 17-18 companies operating in the field of software development. Most of these are small companies employing between 3-4 people. Two companies are larger ones, one employing some 25 workers and one 40 workers. The local demand for software development comes from the financial sector (banks, insurance companies), hotels, trade and larger manufacturing companies. However, because of the increasing availability of packaged software the demand for services from software companies has been declining. In fact some software development companies have recently closed down. There is also increasing competition on the local market from companies from abroad. There is a scarcity of skilled software developers, as many once they are trained tend to migrate abroad. An issue in the competition with foreign ICT providers is the GCT which is charged on local ICT sales, but not on imported ICT services. One local company has achieved some success in web development and internet solutions and has also branched out in bill payment and money transfer market, creating sites and raising revenue from services and advertisements.

For creating better opportunities in software development there is a need for more trained software developers, in particular people who can write codes. There is a worldwide demand for IT personnel with such skills. Israel and India do well in this area.

### 3.5 Call centres/back office operations

Under the Information Technology Strategy, the government started out with a less successful programme the Information Technology Employment Creation and Development (INTEC) Project to attract call centres to Jamaica. Under this programme low interest loans were provided to new investors. Lack of due diligence resulted in the loss of most of these funds. Currently, the main incentives to investors are exemption of duty on imported equipment. Companies setting up shop in free zones have all the benefits associated with the free zones, including tax holidays. Investors can also get basic training for their staff at HEART for free.

At present 16 companies are operating in the field of call centres and outsourced business processes services, employing about 10,000 workers. There is a trend in moving up the value chain with an increase in emphasis on customer service and back office services requiring more specialised staff in the fields of accounting, human resource development and other skills.

In comparison with other locations, such as Barbados, Grenada and Trinidad Jamaica is often preferred because of the quality telephone network, the size of the potential pool of workers

and the cost of workers. Especially the presence of a fibre-optic cable network covering the whole island is a positive factor. Such a network is considered more reliable than VSAT satellite connections. There is strong competition from Spanish speaking countries, though these countries cater more for the Hispanic markets in the USA. This is less the case for Puerto Rico and the Dominican Republic where there is a considerable bilingual labour force and where telecommunication rates are low. Nevertheless, according to a recent study, Jamaica can compete because of the quality of the work force, the low turnover and the training system put in place to service the call centre industry. Another factor is easy airline access from many destinations in the USA, which facilitates access to the offices by the clients of the company, who often fly over to negotiate transaction deals and to monitor the conducting of the work.

**Table 11. Comparative benchmarks for the IT sector, 2005**

Country	Labour costs (\$)	T1 rates (\$ per month)	Real estate \$sq ft per year	Corporation tax rate (%)	Travel costs to USA (\$)
Jamaica	28	9,025	4.0	331/3	300
Dominican Republic	10	700	4.5	30	400
Puerto Rico	35	600	9	25	300
Trinidad	16	18,000	10	30	500
Barbados	18	6,225	15	30	400
OECS	17	13,000	12	28	400
Guyana	12	14,000	12	30	500

Source: Zagada Institute, Caribbean Call Centre Report 2005: A Customer Care Market, 2006

Advantages compared to operating in the USA are lower costs, lower turnover of staff and better commitment of workers. The companies are mainly hiring CXC graduates, mainly female (85 percent of the work force). Finding suitable candidates has so far not been a major problem. The training provided by HEART is considered a very positive factor. The companies also provide in-house training. The wage rate offered in the industry varies from US\$ 1.20 to US\$ 5.50 per hour. Most companies utilise T1 connection as a communication line with the outside world, the cost of which is now about US\$ 5,300 per month, considerably less than in 2005, when it still was US\$ 9,000 (See Table 11 above). A new type of communication link is the DS3, which has the data transfer capacity of 28 T1s. Electricity costs are also a major cost item. For one company interviewed for this study annual electricity costs amounted to J\$25,000 per worker. The companies' clients are credit card operators, cellular phone companies, financial services, electronic bill payments and the travel industry. Finding adequate space for call centres in Kingston and Montego Bay has become a major problem.

**Table 12. Key Indicators for a major IT company**

Number of work stations	1200
Number of workers	1400 (400 call centre, 1,000 processing operations)
Shifts	Both two shift and one shift operations
Wages per hour	US\$1.20 – US\$ 5.50
Electricity costs (per month)	J\$ 3,000,000
Telecommunications costs (T1) (per month)	US\$ 5,315
Office rental costs (per ft2)	US\$ 2,20 - US\$5.00
DS3 investment costs	US\$ 30-40,000
DS3 monthly rental fee	US\$ 20,000
Investment costs (total)	US\$ 9 million
Investment costs per worker	US\$ 6430
Expansion investment under implementation	US\$ 10 million
Expansion in employment planned	600-800 additional workers

Most companies are foreign owned and revenues are generated abroad. The foreign exchange inflow generated by this sector, therefore consist of payments by the head offices of the companies involved to pay salaries of workers, rental of buildings, telephone rates, maintenance of equipment, utilities and overhead. Based on an average hourly basic wage rate of US\$ 3.50, annual earnings for the 10,000 workers in the sector amount to US\$70 million. Assuming that wage costs amount to 50 percent of the total costs, the foreign exchange inflow of the sector amounts to about US\$ 140 million on an annual basis at its present size.

A main constraints to the further growth of the industry is the lack of readily available office space. This is especially a constraint for companies which would be newly selecting Jamaica as a location. The approach of these companies is first to set up a trial location in a new location and then expanding their operations. Established companies are more ready to invest themselves in new facilities, as is presently being done by at least one company. Another constraint is the difficult process to get work permits for foreign workers. This takes a long time and requires travel to Kingston to submit applications to the Ministry of Labour and Social Security and the Immigration Office. It is desirable to establish an office in Montego Bay to process immigration and work permit applications.

### 3.6 E-commerce

E-commerce involves doing business over the Internet, selling goods and services which are delivered offline as well as products which can be “digitised” and delivered online, such as computer software. A distinction can be made between business to consumers (B2C) e-commerce and business to business (B2B) e-commerce. The B2C e-commerce activities have internationally shown very high growth. However, it is in the B2B domain that the real e-commerce revolution is happening, in contrast with the B2C field, which may follow a more evolutionary path. B2B encompasses a complex and fast evolving set of activities carried out electronically inside companies and between companies. Internationally, B2B is the core of the “e-market”, the most important in economic terms, with more than 80% of total e-commerce activities. It is the fastest growing and most rapidly evolving area of e-commerce.

Cutting costs has been a powerful initial driver of B2B. Cost savings have been recorded of up to 40% on purchasing and procurement. This has a measurable impact on individual companies, and on the economy as a whole. The real e-commerce revolution, however, goes

beyond cost savings. B2B not only reduces the time it takes to get a product to market; it also speeds up processes, improves quality and ensures better service. B2B affects the internal organisation of companies; and has a strong impact on inter-enterprise relations – e.g. subcontracting, supply chain management, procurement, product developments, marketing and distribution. B2B is accelerating the move to outsourcing. This is reinforced by the emergence of increasingly complex, intangible products (software, services, etc.). In many cases, a company's main asset resides in the value added capability derived from knowledge, services offered and intellectual property rather than machinery and physical inventory. In many sectors (logistics, ICT, services), this shift from tangible to intangible products is driving an evolution from linear, vertical supply chains - organised in a traditional, hierarchical manner to new often virtual cluster networks of interdependent, flexible, competence-based companies. In short, a company's competitiveness depends as much on its own organisation as on the efficiency of its network of customers, suppliers, partners and intermediaries.

A specific aspect of B2B e-commerce is the fast-growing phenomenon of electronic marketplaces. These can develop in the "small business' ticket to B2B ecommerce". With the "death of distance" and the lowering of barriers to entry in global markets, e-commerce allows SMEs to successfully take on much larger companies. SMEs are therefore ideally placed, in theory at least, to benefit from the e-commerce revolution, not only in terms of cost savings and improved processes, but also in terms of expanding opportunities. However, obstacles are well documented: high telecommunication costs, limited bandwidth availability, skill gaps and training challenges, difficult access to finance, administrative obstacles to the creation of companies, legal and regulatory complexities of cross-border trade, lack of recognised brands, need to ensure transaction security, etc.

The key challenge is to ensure that SMEs fully grasp the opportunities not only of ecommerce in general, but specifically of B2B. At this time, for a number of reasons, B2C seems to be a key preoccupation for the majority of SMEs. The challenge is to ensure that SMEs become key players in the "main league" of e-commerce, B2B. This is where most opportunities for generating revenues gain be gained, and where legal and regulatory hurdles are less daunting, but where fierce commercial competition from global players is at its most intense.

### 3.7 Assessment and target setting

There remains considerable expansion potential for call centres and back office operations. It is expected that this industry will create 2-3,000 new jobs annually over the next five years. Positive factors in Jamaica are a good quality telecommunications infrastructure at reasonable and declining costs and availability of trainable workers at acceptable costs.

Telecommunication costs are projected to decline further by 50 percent in the coming years. An important constraint is access to low cost office space, which has become a problem and is slowing down the establishment of new call centres. Whereas existing companies are prepared to invest in new buildings, new investors are reluctant to come without access to existing office space. There is scope for converting existing factory space in some of the Free Zones into space suitable for IT operations. The private sector should be encouraged to undertake this type of conversion.

The provision of generous incentives by the government has been a key factor in attracting investors. Government support in the future should especially be focussed on improving and supporting education and training for the sector.



In terms of setting growth targets for the sector, there is little hard information on turnover or the value of exports. The most reliable information is that of employment in the sector. Over the past five years, the call centre/back office sector has expanded by about 1500 workers per year. It can be assumed that this trend continues, which would mean a growth rate in employment of about 15 percent per year.

There will also be demand for IT services in introducing IT in company operations, in terms of management systems, accounting, personnel management, and marketing (web-site development, e-commerce). It is, however, difficult to project the growth of these activities, as little is known about their present size.

## 4 Creative industries

### 4.1 International developments<sup>1</sup>

Creative industries involve those economic activities where copyright, patents, trademarks, and design structure the final product. A set of core industries constituting the “creative industries” can be identified, i.e. the recording industry; music and theatre production; the motion picture industry; music publishing; book, journal and newspaper publishing; the computer software industry; photography; commercial art; and the radio, television and cable broadcasting industries. Creative industries sector lie at the crossroads between the arts, business and technology.

The marriage of technological application and intellectual capital provides the main source of wealth in this sector. This mixture can produce very fast growth. The highest growth is in technology-centred industries such as software programming and video games; the lowest is in music and film. Creative industries as a whole are experiencing growth rates of 7 percent annually in developed countries and in case of developing countries, 4 percent. Globally creative industries are forecast to grow at 10 percent annually during the next decade. However, it should also be noted that growth rates vary widely between countries and over time. Because these industries are all also associated with products subject to unpredictable and changing tastes, their markets are associated with a high degree of uncertainty, and a good deal of effort goes into researching and shaping those tastes.

Currently a number of broad trends – all connected in one way or another to globalization – are shaping the expansion of the cluster of creative industries:

- 1 ***Deregulation of national cultural and media policy frameworks***
- 2 ***Increasing affluence*** has led to shifting demand and employment patterns, which have benefited income-elastic products with high cultural content.
- 3 ***Technological change***, along with widespread diffusion of information technologies, has led to innovation through the emergence of many new formats for product delivery. This has had profound effects on the entire value chain of many creative industries.
- 4 ***The rise of the service economy*** Sectors such as business services, information and communication technologies (ICT), computer software and audiovisual industries have emerged as leading economic activities. The service industries are also a growing source of demand for creative industries’ output, especially in design, advertising and marketing.
- 5 ***Expanding international trade*** includes services.

---

<sup>1</sup> This section draws heavily on: UNCTAD: *Creative Industries and Development*, Paper presented at a conference in Sao Paulo, 13-18 June, 2004.

In the Jamaica the main driver of creative industries is the music industry. This industry includes the manufacturing of music carriers such as vinyl records, cassettes, CDs and DVD audio, writing, performing, manufacturing musical instruments, marketing, copyrighting, videos, distribution, promotion and, increasingly, internet technologies applied to music.

World sales of recorded music have been falling after 2000, having experienced a period of rapid growth in the 1990s. The falling music sales are attributed to the combined effects of digital and physical piracy and competition from other entertainment products. Nevertheless, the global music market was worth \$US32 billion in 2003 with total unit sales (including music video) of 2.7 billion. USA and the UK are number one and number three in the world's top 10 major music markets, accounting for 37 percent and 10 percent of world sales. Germany has dropped from fourth largest market and now ranks fifth in the global music rankings.

Music video sales are still rising, helping offset sales drops in audio formats. Overall music video sales in 2003 were worth US\$2 billion, with DVD music video valued at US\$1.8 billion. The music video sector, as a whole, rose by 46.6 percent and DVD sales were particularly strong, seeing a global 67 percent increase. Spurred by DVD's popularity, the music video share of overall music sales has doubled over three years, now representing 6.3 percent of the total. DVD music sales represent a small though growing fraction of the overall DVD market – 7.1 percent up from 6.3 percent in 2002.

In the top ten markets for DVD, growth increases ranged from 39 percent in Japan (the world's biggest DVD market) to 294 percent in Italy (No.10) with Germany, France, Netherlands, Australia, Canada and UK all seeing around or over 100 percent growth.

In the global market for recorded music, four huge companies have come to dominate, holding 75 percent market share worldwide. These major labels are vertically highly integrated, producing, manufacturing, and distributing recordings and licensing music rights. They are part of broader entertainment conglomerates that in addition are in the business of broadcast, video, books, and film.

## 4.2 Creative industries in Jamaica

The focus here is on the music industry. Jamaica has contributed to the global music industry since the 1920s and has had a huge impact relative to its size. Jamaica, between the mid-1950s and 2000 produced over 100,000 recordings. With more than one new recording each year per thousand people, Jamaica could be, per capita, the world's most prolific generator of recorded music.

### 4.2.1 Structure of the music industry

A concise overview of the structure of the music industry in Jamaica is presented in a study commissioned by UNCTAD in 1998.<sup>2</sup> The description presented in this study still applies to day. This section draws therefore heavily on this report. It identifies 16 separate and identifiable functions involved in the music business: namely, singers, musicians, songwriters, producers, audio engineers, publishers, record manufacturers, promoters, managers, disc jockeys (radio, club and sound system) booking agents, venue operators, merchandise

---

<sup>2</sup> Lloyd Stanbury and Zeljka Kozul-Wright, *Becoming Globally Competitive, The Case of the Music Industry in Jamaica*, UNCTAD, Geneva, 1998.

manufacturers, entertainment attorneys, distributors and retailers. Combined, these activities result in the production of most of the products and services available in the business of music.

#### **Recorded music**

With respect to the recorded music business the UNCTAD study distinguishes four distinct phases i.e. recording, manufacturing, marketing cum distribution and retailing and describes them as follows:

##### ***Recording phase***

The first phase of the process involves the making of a master recording of a musical work in a recording studio by singers, musicians, songwriters, sound engineers and record producers (studio recording facilities are generally rented). The record producer is usually the owner of the master recording, but not the song itself, which remains the property of the creators by virtue of the law of copyright. The commercial exploitation of the recording and the song incorporated in the recording generates income by way of royalties. Royalties generated from the exploitation of the recording are shared amongst the producer and the artist, while royalties from the exploitation of the song are shared between the creator (songwriter) and the publishers. The publisher, on the basis of song-writing agreements, obtains the rights to administer the copyrights on behalf of the songwriters. Publishers and songwriters usually secure the services of music agencies to deal with copyright collection, with the issuance of licenses for the use of musical works and the collection and distribution of royalties generated from the use of the works. The record producers finance the cost of the studio recording process and coordinates the activities of songwriters, singers, musicians, and recording engineers in the recording studio.

##### ***Manufacturing***

Following the completion of the master recording, the record producer, who owns the particular sound recording, enters into an agreement with a manufacturer or distributor, who is given the right to manufacture and distribute the finished product in the form of vinyl records, cassettes, or compact discs. A record/cassette/cd manufacturing facility can be either physically separate or under one roof with the recording studios. This phase is the least costly part of the process on a per unit basis, once the physical plant and equipment are set up.

##### ***Marketing and distribution***

The third phase of the recorded music process involves marketing and distribution of the finished products. It is common for marketing and distribution of finished products to be “handled “ by the same entity. The process consists of bringing the product to the final consumer and to the necessary promotion and advertising required to sell the product. This is the most capital-intensive phase, owing to high costs of advertising and promotion.

##### ***Retailing***

Retailing is typically conducted by different companies from those found in previous phases although not always. There is much variation. Retailers can either be small or large. Being close to the final consumers, retailers are sensitive to the changing market demand patterns and can exert an influence on all the three preceding phases.

#### **Services**

The UNCTAD study identifies a number of music business activities which entail the provision of services only, with no commodities or goods being produced. These service activities include: creative services (provision of concert performance services by singers,

musicians and audio engineers, which are rendered both locally and internationally); technical services (provision of recording studio rental facilities, sound and lighting reinforcement for concerts, and concert venue rentals) ; and representational services (including the functions of artist personal manager, artist business manager, booking agent, publicist, legal counsel, and music publisher). The service sector of music business in Jamaica is seen as particularly important because of its potential for employment for a large number of service providers. The service sector also enjoys the advantage of freedom of movement throughout the global economy as service providers are able to render services relatively freely anywhere in the world. In addition, the facilities of local recording studios and recording personnel, such as musicians and audio engineers, can be engaged by major record companies in an effort to obtain the local music flavour to produce their master recordings in the increasing quest to diversify the recorded music product. Several foreign artists have recorded their music products in Jamaican recording studios, using Jamaican music-related services.

#### 4.2.2 The music industry in Jamaica

There are different views on the structure of the music industry in Jamaica, which is mainly concentrated in Kingston.<sup>3</sup> The majority view is that the music industry in Jamaica is highly fragmented, characterized largely by small and medium-sized enterprises (SMEs) and micro enterprise production units. Many companies are neither legal nor taxable entities, often operating from home rather than an official business address. Another view is, however, that the music scene in Kingston can be considered a genuine cluster where firms are specialised, distributing the different tasks involved in making a recording are divided among different firms. Deals that in the United States and Europe would be done inside a vertically integrated firm in Jamaica take place across independent firms.<sup>4</sup>

Fact is that Kingston has the greatest concentration of studios, second to Nashville in the United States. Estimates of the number of recording companies vary widely from 25 to up to 70. Other businesses provide vital services including artist management, promotion, marketing, stage management, audio engineering, and finance. These businesses also vary enormously in their operational and organizational capacity. It is estimated that the industry employs 6-10,000 workers. Domestic revenues of the music industry are estimated at US\$ 30-35 million (J\$ 1.8-2.1 billion, or about 0.5 percent of GDP). It has furthermore been estimated that income accruing to Jamaicans resident in Jamaica from sales of recorded music abroad could be of the order of US\$40-50 million. To this can be added another US\$20-25 million for tours, sales of ancillary products resulting in total internationally generated revenues of US\$60-75 million. It should be noted though that there are no firm sources for arriving at these estimates.

In Jamaica records are produced by 6 manufacturers for which there remains significant demand. There is one major CD producing company. It costs about US\$2.00 to manufacture a CD in Jamaica. It costs a little less than US\$1.00 to manufacture a CD in the USA. All equipment and material inputs for CD manufacture have to be imported into Jamaica. There would have to be significant investment in a plant with modern technology before Jamaica could become competitive in the manufacture of CDs.

<sup>3</sup> The overview in this Section and in 4.2.3 draws on: Hilary Brown, *National Strategy and Action Plan, to further develop the Jamaican Music Industry*, Ministry of Education, Youth and Culture and UNESCO, December 2005.

And:

Michael Witter, *Music and the Jamaican Economy*, UNCTAD/WIPO, 2004.

<sup>4</sup> As presented in: John McMillan, Trench Town Rock, *The Creation of Jamaica's Music Industry*, Graduate School of Business, Stanford University, Stanford, June, 2005.

Record producers from Jamaica normally do not participate in the manufacturing and distribution phases for the overseas market, which account for the greater portion of the value-added chain, as a result exports of CDs are marginal. It is common for “masters” to be sent to a small number of medium to large record companies in the USA, Europe, and Japan for further mastering and pressing into CDs. The major distribution occurs overseas. Thus, the bulk of the “export” income from music takes the form of fees to performers and recording studios (amounting normally to between 10 and 15 percent of the retail price) and royalty payments to the publisher, the artistes, and to the backing musicians, rather than revenue from the sale of the CDs. Most local producers do not have the financial muscle to underwrite large scale manufacturing or to assume the financial risks inherent in launching new recordings.

The demand for high quality products by the international markets has also meant that Jamaican artists have become international successes only after switching to non-Jamaican record labels. Top Jamaican artistes record overseas; their CDs, are pressed and distributed abroad; and they tour abroad to promote their work. This trend has in part been driven by efficiencies derived from the rapid technological advances in the international music industry.

#### 4.2.3 Trends in the music industry

Regarding the development of the industry, it is clear that the quantity of production continues to be very prolific. It is estimated that more than 200 recordings are released each week. However, concern is widely expressed that quality standards and sales are declining. One factor adversely affecting the quality of music produced is the lack of music programme policy at the different radio station, which allows dj’s to receive payments for the records they play by musicians and producers. Another factor is likely to be strong competition between producers and the need to have a market presence.

In the last 5 years, studio capacity in Jamaica has grown rapidly with the spread of digital technology that makes it possible to establish home studios, which has cut into the demand of the commercial studios. The technological revolution in recording equipment has enhanced the capacity to record, though most Jamaican studios are still technologically behind the big commercial studios in the USA. Difficulties in accessing finance are one reason restricting investment in new technology. Although also the view has been expressed that the level of technology of the Jamaican recording industry is quite appropriate in terms of the requirement of the market. Another constraint to the development of recording studios is a shortage of trained technical personnel – sound and recording engineers – to keep the studios operating and maintained efficiently. Some musicians are investing in studios and recording equipment in a drive for independence from the producer, the commercial studio, and the recording company. Often these initiatives fail at the point of distribution of the final product because of inadequate business knowledge and the inability to match the power of the large distribution companies.

An important complementary sector to the music industry is tourism, as reggae promotes the tourist industry. Music festivals such as Reggae Sunfest have huge destination appeal and festival tourism has become an important niche market for the tourism industry. Another important complementary sector is IT, particularly because of the technological linkage, as well as a medium for promotion and sales. Furthermore, the music industry can have a potentially important link with the film industry through the production of music videos.

music videos can be considered a major promotional tool for the music industry. To take advantage of this link, the quality of locally made music videos needs to be upgraded.

The development of the local music industry is also benefiting from the establishment of creative partnerships with music business companies in more advanced countries through technology licence agreements and marketing and distribution joint ventures, whereby foreign distribution companies provide sales, marketing, and distribution services for Jamaican labels using facilities abroad to manufacture CDs from masters received from Jamaica.

Some measure of success has been achieved in attracting foreign artistes to record in studios in Jamaica in order to capture the Jamaican sound. Studio rentals and the cost of engineers in Jamaica are also lower than in Jamaica than in the USA. Some foreign companies produce masters in Jamaican recording studios.

#### 4.2.4 Co-operation in the music industry

In order to organise the industry and to get better mutual co-operation, attempts have been made to create a Musicians Federation and a Songwriters Guild which functions poorly, however. The recording side of the industry has a representative association in Jamaica. Moreover, several collecting societies have emerged since the 1990s, including Jamaica Association of Authors and Publishers (JACAP) in 1998, Jamaica Musical Rights Administration Society (JAMRAS), Jamaica Copyright Licensing Agency (JAMCOPY), Jamaica Performers Administration Society (JPAS) and the Intellectual Property Service Centre (IPC). These societies cover the range of rights management services necessary to realize significant returns within the music industry. They are however in need of capacity building in human resource and financial terms.

#### 4.2.5 Copyrights

A negative development in the industry relates to IPRs. The music industry is affected by infringement of copyrights in the production and consumption of music, which is increasingly made easier by developments in micro-electronics in the music industry. At the same time the established Jamaican music industry suffers from considerable financial losses as a result of piracy. It is vital therefore to establish effective copyright protection and enforcement mechanisms.

Enforcement of copyrights is a highly problematic area in Jamaica, although the present copyright law, which has been updated to international standards in 1993, is considered adequate. Legislation has been updated largely for TRIPs compliance and adherence to the Berne and Rome conventions. Jamaica has a copy right organisation JIPO which registers patents. However, copyright laws need to keep up with technology and adequate domestic IPR systems need to be established to incorporate the conventional reciprocal arrangements with IPR systems in external markets to enable global collections of copyright royalties. Therefore, the actual administration of Copyrights and the Intellectual Property regimes that are in place are critical for the industry.

#### 4.2.6 Support to the Jamaican music industry

Increasingly attempts are made to provide support to a more effective development of the sector in terms of generating revenues for the country. One of the support programmes is

implemented by the JEA cluster competitiveness programme. Under this programme support has been provided to the establishment of a consortium of music producers, studios and professionals has been established, Jamaica Signature Beats, with 30 members to provide technical and creative expertise to the international music industry (international labels, bands and producers). A web site has been developed to market the services of the members. It is planned to develop this web site into a booking engine and as a channel for the sale of music. Furthermore tours are organized for visitors to recording studios.<sup>5</sup>

In terms of marketing JAMPRO supports the attendance of Jamaican, producer and recording companies at international music expositions abroad. JAMPRO's PSDP also supports the introduction of a music award in Jamaica, being administered by the Recording Industry Association of Jamaica (RIAJam). Increased international exposure to Jamaican music is also provided through some private sector initiatives. MTV has introduced the tempo programme involving time slots devoted to Caribbean music, which provides local artists and production companies to provide content. In a similar vein Viacom which operates BET Jazz channel has introduced BET J programmes with Jamaican music, content for which is being provided by a local company RETV.

#### 4.2.7 Administration of music and culture industries

One of the main problems facing the culture industry is that its administration is fragmented among a number of ministries and agencies and this makes it difficult to coordinate the regulatory framework and implement the National Culture Policy. Until recently responsibility for culture was assigned to the Ministry of Education Youth and Culture with related agencies splintered in at least four ministries: the Ministry of Education, Youth and Culture (Jamaica Cultural Development Commission, Jamaica National Heritage Trust and the Institute Of Jamaica); the Ministry of Development (JAMPRO Film and Entertainment Commission); the Ministry of Commerce, Science and Technology (Jamaica Intellectual Property Office); the Ministry of Industry and Tourism (Entertainment Unit); and the Ministry of Information (Creative Production and Training Centre).

The National Cultural Policy aims to consolidate these various agencies to facilitate effective administration.<sup>6</sup> With the change in the leadership of the ruling Peoples National Party ("PNP") in April 2006, a number of Ministries were reorganized. Entertainment and culture now falls within the purview of the newly created Ministry of Tourism, Entertainment and Culture. The rationale for the change was that a natural synergy existed between the three segments with culture and entertainment being the major attraction of the islands booming tourism industry. With the creation of this new ministry, it appears that the streamlining and rationalizing of cultural agencies and policies has begun. Trinidad and Tobago represents one model that the government could look at in rationalizing agencies dealing with culture. In Trinidad and Tobago the Ministry of Culture is the umbrella group for a number of government agencies and organizations that deal with the various sectors in the industry. This type of centralized system will benefit Jamaica with reduced administrative expenses from one administrative system, less bureaucracy for creating a regulatory framework, as well as by making coordination of the overall cultural strategy much easier.

---

<sup>5</sup> Issues related to developing e-commerce capabilities in music are explored in: UNCTAD, *Electronic Commerce and Music Business Development in Jamaica, a Portal to the New Economy?* Geneva, 2002

<sup>6</sup> Culture Division, Ministry of Education, Youth and Culture, *The National Cultural Policy of Jamaica, Towards Jamaica the Cultural Superstate*, Kingston, March 2003.



### 4.3 Future prospects

Future development prospects for the culture industry are favourable. Jamaica has a unique and very competitive capability and unquestionable competitive advantages in musical production that can be further developed in the light of a huge international market. Prospects and issues to be addressed include:

- 1 There is a trend for music artists that earnings from performance are becoming more important than earnings from the sale of records. In this context it is important that restrictions on international travel for artists and their equipment abroad to conduct performances within the region and without are eliminated or reduced
- 2 There is scope for taking more advantage of the music infrastructure present in Jamaica and the lower costs at which this industry operates as compared to similar companies in the USA. There are opportunities for capturing opportunities of technical activities (music production, re-mixing, video production and other areas) which are increasingly being outsourced by recording companies in the USA, as well as for attracting foreign musicians to record in studios in Jamaica.
- 3 There is a need to strengthen the skills of managers of Jamaican artists not only in selling the artists' musical talents, but also in being key players in merchandising.
- 4 Generally there is a need to strengthen training in music skills in the formal educational system and in related technical and managerial skills through specialised courses at the tertiary education level.
- 5 There is also a need for certification of skilled workers in the industry in order to be able to offer standardised quality services.
- 6 Piracy has become a major issue among entertainers. Regulatory frameworks have been put in place, but infringement of copyright laws does not seem to be a deterrent to either consumer or vendor. Perhaps the creation of online music stores where artistes have some control over sales and distribution may be one possible strategy. Making the music accessible directly to the consumer for less than it would cost to buy it from the stores but with a guarantee of quality may put a dent in the piracy stranglehold. There is also scope to develop a marketing channel for music through mobile phones.
- 7 Establishing of linkages between Jamaican and international recording companies is needed to capture more benefits of the music revenues generated abroad.
- 8 Venture capitalists/angels should become more interested in the music industry. Venture capital is often more appropriate for financing music ventures than credit because of the high risk, but also because of the scope for high returns.

Other creative industries which have potential to operate at an international market include, film, advertisement, architectural designs, fashion, dance, book publishing. The most important requirements for developing such and other creative industries are an environment which fosters creativity including a high class educational infrastructure from the primary level, access to up-to-date technological infrastructure and no or low restrictions on the movement of people to travel abroad. Access to venture capital funding would also be a favourable factor to the development of such industries.

In terms of targets, given that there is considerable scope for diversification, the growth of the creative industries should at least match that what is expected to be achieved at world level, i.e. a growth rate of 10 percent in terms of value added generated by creative industries.

## 5 Policy recommendations

In order for the services sectors reviewed above to achieve their development potential and their targets, the following sector specific policy issues need to be addressed.

### *Tourism*

- 1 Rationalisation of the tax and incentive regime, reducing tax holidays, eliminating customs duties or providing for duty drawbacks on all capital equipment and operational inputs, instead of duty exemptions for a specified range of goods. The same regime should apply to non-accommodation activities (attractions, entertainment, sports, leisure complexes, transport). The rationalisation of the tax and incentive regime should be carried out as part of an overall overhaul of the tax and incentive regime for the private sector as a whole.
- 2 Improve transparency in the approval process for building hotels and tourism facilities, including the conducting of proper environmental impact assessments. Transparent guidelines for development approval should be prepared. Eliminate unnecessary approvals (health, safety) and replace these by clear guidelines and monitoring process. More detailed analysis is needed to rationalise the approval process for establishing businesses in the tourism sector.
- 3 Strengthen training for the industry on a cost-sharing basis, building on the experiences with the training provided by HEART. Also establish a job classification system with standard qualifications to which training should be geared.
- 4 Further development of infrastructure in tourist areas, including roads, beautification of resort areas, improvement of infrastructure around attractions. For resort areas town plans are required to facilitate an integrated approach to all aspects of the resort (housing, shops, roads, parks, attractions).
- 5 Facilitate private investment in improving tourist attractions. The development of tourist attractions should be predominantly a private sector activity.
- 6 Private sector development programmes to focus more strongly on assisting companies in the tourism sectors, including small hotels and non-accommodation activities. Special emphasis should be put on supporting cluster initiatives in the tourism sector, including strengthening linkages with creative industries and the introduction of IT technologies in hotel operations and marketing.

It should be noted that several of these recommendations are also presented in the tourism master plan.<sup>7</sup> But since then little progress has been achieved in implementing these recommendations.

### ***ICT***

- 1 Strengthening of IT facilities and education at schools and training institutions
- 2 Promote the availability of office space for call centres/back office operations through tax incentives.
- 3 Facilitate immigration and work permit procedures for foreign workers in the sector, establish work permit processing facility in Montego Bay.
- 4 Private sector development programmes should support companies in introducing IT solutions to improve the competitiveness of their companies, as well as the development of IT companies which are geared to providing IT solutions to the business sector.

### ***Creative industries***

- 1 Ensure free movement of workers in the sector and their equipment.
- 2 Strengthen music training in schools
- 3 Strengthen training of technical workers and of managers
- 4 Through private sector development programmes
  - Assist companies in accessing venture capital or other appropriate sources of funding.
  - Assist in strengthening collection agencies.
  - Support collaboration within the sector, such as through the Jamaica Signature Beat initiative of the JEA Competitiveness Company.

---

<sup>7</sup> Commonwealth Secretariat, Master Plan for Sustainable Tourism Development-Jamaica, 2002.

**Short Term Consultancy for the PSDP Competitiveness  
Committee**

**Legal and regulatory issues and  
competitiveness**

**FINAL REPORT (REVISED)**

Ecorys competitiveness team:  
Huib Poot  
Michelle Brown  
Kingston, 15-09 -2006

# Table of contents

<b>1 Executive Summary</b>	<b>4</b>
<b>2 Agro-Processing</b>	<b>5</b>
2.1 The regulatory framework	5
2.2 Protection of industrial property rights	6
2.2.1 Trade Marks	6
2.2.2 Patents	7
2.2.3 Geographical Indications	8
2.2.4 Designs	9
2.2.5 Trade Secrets and Confidential Business Information	9
2.2.6 Recommendations	9
2.3 Standards and licensing	10
2.3.1 The Regulation of Factories	11
2.3.2 Protecting Food and Drugs	12
2.3.3 Food Storage and Prevention of Infestation	12
2.3.4 The Regulation of Standards	13
2.3.5 Recommendations	13
<b>3 Legislative and regulatory issues for creative industries</b>	<b>14</b>
3.1 Introduction	14
3.2 Legislative review of the creative industries	15
3.2.1 Copyright regulation	15
3.2.2 The Cyber Crime and Electronic Transactions	16
3.2.3 Legal Deposits	17
3.2.4 Recommendations	18
3.3 General issues	19
3.3.1 Fragmented administration	19
3.3.2 Recommendations	19
<b>4 Labour and competitiveness</b>	<b>20</b>
4.1 Effectiveness of labour laws	20
4.2 Flexible work arrangements	21
4.3 Retraining of the Workforce	22
4.4 Recommendations	23
<b>5 Competition Policy</b>	<b>24</b>
5.1 Deficiencies in the FCA – the Government’s response	24
5.2 Lack of merger regulation.	26

5.3 Recommendations.	26
<b>6 Other legal framework issues for businesses</b>	<b>27</b>
6.1 Incentives	27
6.1.1 Industrial Incentives.	28
6.1.2 The Export Industry Incentives	28
6.1.3 Motion Picture Industry Incentives	28
6.1.4 The Entertainment Industry (Promotion) Bill, 1995	29
6.1.5 Recommendations	29
6.2 Acquiring funds for modernization.	30
6.3 Business Registration.	31
6.4 Settlement of disputes.	32
<b>7 The legislative process in Jamaica</b>	<b>34</b>
7.1 Major challenges in creating legislation.	34
7.2 The legislative process.	35
7.3 Recommendations.	35
<b>8 The CARICOM Single Market.</b>	<b>36</b>
8.2 The Four Pillars of the CSM.	37
8.2.1 The Free Movement of Skilled Labour	37
8.2.2 The Free Movement of Capital	38
8.2.3 The Right of Establishment	39
8.2.4 The Right to Provide Services	40
6.3 The CSME and IPR protection.	40
<b>9 Recommendations</b>	<b>41</b>
9.4 A comprehensive review of the Agro-processing industry	41
9.5 Increased enforcement of IPR in the culture industry.	42
9.6 Labour competitiveness.	42

# 1 Executive Summary

In the context of the EC funded PSDP programme, a Competitiveness Committee has been established. Members of this committee include representatives of public and private sector organisations dealing with private sector policy and or implementing private sector support activities. The tasks of the Competitiveness Committee (CC) are:

- Monitoring competitiveness at the macro, meso and micro levels.
- Establish standards for measuring competitiveness.
- Formulate recommendations to policy makers.

The PSDP programme has commissioned a team of researchers from ECORYS in the Netherlands to carry out basic research on competitiveness in Jamaica. The Ecorys team is composed of Huib Poot, senior consultant at Ecorys Netherlands BV, team leader and competitiveness analyst and Michelle Brown, Attorney At Law of Myers, Fletchers and Gordon, Kingston, the legal expert of the team. The study is being carried out over the period 27 January to 30 June 2006.

This report is part of the results of the research on competitiveness and reviews existing legislation and regulations affecting economic activity, both in place and under preparation and to make policy recommendations on amending these laws and regulations to ensure a positive impact on competitiveness.

The study analyses legislation at a macro level, as well as at the level of selected industries, i.e. agro-processing and creative industries. At the macro level issues addressed are labour and competitiveness, competition policy and the judiciary process. Furthermore, attention is paid to the implications of the CSME for the national legislative and regulatory framework. At the end of main sections in each chapter detailed recommendations are provided. The last chapter of the report contains a summary of recommendations.

Unless otherwise stated, all references to statutes in this study are references to Jamaican statutes.

## 2 Agro-Processing

### 2.1 The regulatory framework

The Agro-processing sector is beset with a number of regulatory and administrative inefficiencies adversely affecting competitiveness. These inefficiencies concern, industrial property rights, licensing, and regulations governing quality standards.

With regard to industrial property rights, the regulatory and administrative framework, including enforcement mechanisms, for patent protection is weak and ineffective and the Patent Act which exists is antiquated. By contrast, the regulatory framework for the protection of trademarks in Jamaica is effective and generally in keeping with international standards.

There are not enough inspectors to ensure the patentability of products for which patents are sought. This causes some lengthy delays in the grant of a patent and is a deterrent to local and foreign inventors who may wish to apply for a local patent. A more efficient system of patent registration will, by increasing the number of patent applications filed, also increase revenues to JIPO, and, by extension, the Government.

With regard to the system of licensing and standards that exist for the industry, there is significant duplicity in the number of statutes and agencies that are created thereunder, which is both cumbersome and costly for the industry. There are fairly extensive statutes, fifteen in total,<sup>1</sup> that regulate the procedure for registration and set the standards for quality in the industry.

Strict safety and environmental standards are essential because the industry is heavily export oriented and local producers must meet international standards to gain access to overseas markets. Regulatory agencies are thus extremely vigilant. However, a factory may be visited on numerous occasions by inspectors from various agencies inspecting for the same or similar standards.

The Government is actively revamping various regulatory regimes which impact on the industry, but these changes are not industry specific and there is no holistic approach to creating a regulatory framework specific to this industry. The latest regulatory developments affecting the industry are:

- The anticipated enactment of an Occupational Health and Safety statute (OSHA) that is expected will replace the extensive Factories Act and the regulations thereunder.

---

<sup>1</sup> See note 14 below.



- Changes to labour legislation to permit flexible work arrangements. The aim is to allow factories, shops, offices and other places of business to legally operate for longer periods of time than the current prescribed hours of operation, thereby enhancing output, and it is hoped, productivity.<sup>2</sup>
- Jamaica has been continuously amending its industrial property rights system and has now embarked on a framework to monitor electronic commerce and to implement various international treaties.

## 2.2 Protection of industrial property rights

Industrial Property Rights are crucial for this industry which comprises entities trading locally and internationally in products that have formula or other forms of inventions and trade marks that can be easily replicated and are therefore an important factor in determining the competitiveness of this industry.

### 2.2.1 Trade Marks

The *Trade Marks Act, 1999* and the *Trade Marks Rules, 2001* provide a fairly modern framework for the registration and protection of trade marks. The legislation is comparable to that of the United Kingdom and is compliant with both the Paris Convention for the Protection of Industrial Property, 1883 and the WTO's Trade Related Aspects of Intellectual Property Rights Agreement ("the TRIPS Agreement").

Upon registration of a trade mark, the registered proprietor is entitled to exclusive use of and dealings with his trade mark and other related rights.

Prior to the Madrid System<sup>3</sup> for the registration of trade marks, trade marks were by their nature territorial. Thus, there was no system by which trademarks could be issued in one country and offer protection in another country. The Madrid System allows nationals of member countries to be able to make trade mark filings in multiple member countries by means of one application.<sup>4</sup> International registrations under the Madrid Protocol will last for ten years and can be renewed for an additional ten years.

Currently, Jamaica is not a party to the Protocol Relating to the Madrid Agreement. It is recommended that Jamaica hasten to ratify the Madrid Protocol. Three main benefits appear obvious. First, it will provide trademark protection for Jamaican exporters in any signatory country that they choose by allowing them to make one application for trademark registration. There will be one application fee and one fee for renewal in all territories. The time spent in registering the single application will also be substantially reduced.

<sup>2</sup> See Chapter 4 "Labour and Competitiveness".

<sup>3</sup> The Madrid System incorporates the *Madrid Agreement Concerning the International Registration of Marks*, which was concluded in 1891 and entered into force in 1892, and the *Protocol Relating to the Madrid Agreement*, which came into operation on 1 April 1996.

<sup>4</sup> Many countries did not immediately sign on to the Madrid System. In fact, the United States only acceded in November 2003 and the European Union in October 2004. It is expected that most trading nations will now hasten to accede.

Second, the fact that Jamaica is not a signatory to the Madrid Protocol may be a disincentive to foreign investors. Investors will be more inclined to invest in territories where their trademarks are automatically recognized and where they will thus not have to expend time and money in registering them in more than one country.

Third, the ability to gain international protection of trademarks will be an incentive to local companies to register trademarks locally. This increase in local registrations will also increase revenues to JIPO.<sup>5</sup>

#### 2.2.2 Patents

The *Patents Act, 1857* is not very modern and needs significant overhaul. One of the main reasons for the poor regulatory framework for registering patents is that traditionally Jamaica, like many developing countries, have participated in more labour intensive and agricultural industries and have not embraced research and development. Patenting inventions was thus never a major activity on the island.

Jamaica is not a signatory to WIPO's Patent Cooperation Treaty which standardizes the filing of patent applications. It also grants international protection<sup>6</sup> to inventors in the sense that prior to the grant of a patent under the PCT, an international search is conducted to ensure that the invention was not previously granted. As well, the application for a patent will be published internationally, thereby giving inventors worldwide an opportunity to ensure that no one is granted a patent on a product which they have invented.

Foreign and local inventions alike are protected for an initial period of 14 years with the possibility of a further period of 7 years. An application for a patent can be made as long as the invention is new in Jamaica, the foreign patent holder is the applicant in Jamaica, the invention being patented is the same, and the foreign patent still subsists. The patent must not be previously known in Jamaica.

The major administrative inefficiency with the patent registration regime in Jamaica is the delays in the grant of a patent. It usually takes up to two years after the date of first application for a patent to be granted and the patentee may not institute proceedings for infringement until after the patent has been granted. A worse case scenario can see a patent being granted some seven years after the first application.

The main reason for the delay in granting patents is that in many instances there are no technical experts in the island who can conduct the required tests to ensure the patentability of the invention. The agency therefore relies on other agencies such as the Bureau of Standards to examine products. However, because the prescribed fee for inspections is less than JA\$100, it is sometimes difficult to source examiners from other agencies to conduct these tests with any urgency. In some instances, technical expertise

<sup>5</sup> "Modernizing Jamaica's Intellectual Property System", A Report and Recommendations prepared by the International Intellectual Property Institute under a grant from the World Intellectual Property Organization, Spring 2000.

<sup>6</sup> There is as yet no international patent. Applicants will file a single application. An international search is conducted to ensure that no prior patents exist, and then the national authorities will proceed with the grant of the patent. Over one million patent applications were filed up to 2004 under the PCT.

may be found within the industries itself, especially in the ICT industry, but this leads to a question of conflict of interest, thus affecting the efficacy of the test results. This option is rarely utilized.

There are also regulatory challenges. For instance, some of the countries' whose markets Jamaicans are most likely to be interested in, such as the United States of America, require that an invention must be unknown in the world if an application for registration is to be made in those countries. Many Jamaicans, therefore, make their filings overseas before doing so in Jamaica.

Although Jamaica is a signatory to the Paris Convention, no implementing legislation has yet been enacted. Thus, there is no provision under the Act for claiming priority based on an earlier application in another country and patents from overseas will not have the advantage of priority filings.<sup>7</sup>

The lack of priority can be a deterrent to investors who wish to set up operations in Jamaica but who first require patent protection. There would be more of an incentive to invest in a location where priority can be secured by an earlier application, than file a fresh application in Jamaica which will only provide protection as of the date of the local application, especially in light of the delays in obtaining a patent. Similarly, it leaves local producers unprotected in foreign markets in that those producers who have filed an application in Jamaica or some other country will not be able to claim priority for their inventions (and therefore protection) in another member country.

Urgent attention needs to be paid to the patent regulatory framework in Jamaica. An effective system to patents inventions will offer a number of economic benefits to the island. One benefit is an incentive to innovate. The fact that inventions will be protected will create an incentive to inventors to participate in research and development. Also, potential sources of funding will be more willing to invest in research and development if they are assured patent protection for a realistic period. As well, in the race to find an alternative to an existing patented invention, companies will themselves find new and innovative inventions which may also be patentable.

### 2.2.3 Geographical Indications

Jamaica enacted its *Geographical Indications Act, 2004*. The Act is TRIPS compliant and thus will afford an international standard of protection.

There are many private sector, or joint private and public sector initiatives launched in Jamaica in the last decade, all geared towards protecting Jamaica's brand name and improving the quality of products supplied under that Jamaican recognized names and insignias. The Brand Jamaica campaign, the Buy Jamaican Build Jamaica campaign are two examples of initiatives formed to protect Jamaica's distinctly positive reputation internationally, recognizing this reputation to be a valuable commercial asset.

---

<sup>7</sup> The Paris Convention allows an applicant to file a patent in a country, and within 12 months from the date of that filing to file that patent in other countries and claim the date of the earliest filing as the date of filing in the second country.

The Act will provide significant protection not only to individual producers, but to these campaigns. The Act is designed to protect any designation of the Jamaican name and will prove beneficial to the agro-processing industry which has been plagued with the unauthorized and erroneous use of labels such as “made in Jamaica” on products or services that are not indigenous to Jamaica. This erroneous use of labels, bearing Jamaica’s geographical indicators,<sup>8</sup> on poor or lesser quality products and services could damage the reputation of legitimate Jamaican products. Second, such erroneous labelling allows persons to profit from the use of the Jamaican international reputation, in areas such as music and sauces and spices, without legitimate Jamaican producers deriving any benefit.

Unfortunately the Act is currently not enforceable for two reasons. First, the Regulations have not been passed in Parliament and therefore no registration of geographical marks has taken place. It is recommended that these regulations are passed quickly and Gazetted within the 2006/2007 legislative year. Second, Jamaica has not applied for any international protection of local geographic indicators.

Once these issues have been dealt with, the Act will be a very powerful tool for local producers in their effort to reclaim the economic benefits that naturally flow from products that use the islands international brand name.

#### 2.2.4 Designs

*The Designs Act, 1937* is also not very modern and also requires significant overhaul. The designs registry is inactive in Jamaica and this inactivity does not appear to be influenced by the regulatory framework but by other factors in the society, for example commercial practices.

#### 2.2.5 Trade Secrets and Confidential Business Information

There is currently no regulatory framework for the protection of trade secrets and confidential business information, which are very important assets of businesses and which are likely to contribute most significantly to the establishment and maintenance of competitive advantage.

#### 2.2.6 Recommendations

The fee structure for inspecting products for patentability needs to be revisited to create a reasonable expectation of obtaining quality inspections within a reasonable time frame. If necessary, JIPO may need to source local and overseas expertise, such as patent agents, when required, to efficiently evaluate inventions to ensure that they are patentable. In addition, there should be guidelines stipulating the time frames within which applications for patents must be processed.

---

<sup>8</sup> Geographic Indicators are defined by Article 22 of TRIPS as indications that identify a good as originating in the territory of a Member or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Members are therein mandated to provide protection for the geographical indicators of other Members.

JIPO and the private sector must keep pressure on the Ministry of Commerce, Science and Technology to ensure that Jamaica enacts implementing legislation for the Patent Cooperation Treaty and the Madrid Protocol, recognizing that this is yet another tool to protect local applicants for industrial property rights as well as of attracting foreign investment in industrial enterprises.

JIPO should consider pursuing a partnership with the Kingston Legal Aid Clinic and the Norman Manley Law School Legal Aid Clinic to provide legal assistance for simple IPR registrations. The services would be at a much reduced rate than that offered by the private bar and thus would be more affordable for SMEs. In some cases it is clear that more specific expertise may be needed from the private bar.

The MITEC should also look at:

- Modernizing the *Design Act, 1937*; and
- Introducing a regulatory framework for the protection of trade secrets and confidential business information.

## 2.3 Standards and licensing

The duplicity in the regulatory framework governing the granting of licenses to factories and other places of business as well as the monitoring of standards is a major challenge facing the agro-processing industry. A number of regulatory agencies have been established and there are significant overlapping of inspections and benchmarks for safety. This hampers competitiveness within the industry as resources are taken away from production to meet the variety of regulations. For instance, agro-processing plants are required to be inspected by and obtain licenses from:

- The Ministry responsible for industry which administers the *Standards Act, 1969*, through the Bureau of Standards, as well as the *Processed Food Act, 1959*.
- The Ministry of Health which administers the *Public Health Act 1985*, through the Environmental Control Division.
- Ministry responsible for Trade which administers the *Food Storage and Prevention of Infestation Act 1958*.
- The Ministry of Labour which administers the *Factories Act 1943*, through the Industrial Safety Division.

This duplicity has been exacerbated by the fact that increasingly, agro-processors must adhere, not only to national standards, but also to international food safety and environmental protection standards to gain access to key international markets. Companies acquiring international quality and product safety standards are also monitored regularly by internationally recognised independent auditors.

All agro-processors that were interviewed are aware of the international food safety and quality standards, HACCP and ISO, and many are already in compliance.<sup>9</sup> Various

<sup>9</sup> One example of the impact of international standards on a sector is the ackee sector. This sector is currently particularly fragile because of recent safety concerns with batches of the product imported into the United States. A lot of extra attention is being paid to inspections of ackee processing factories, because of the importance of the industry, which is currently worth approximately \$400 million in 2005 with potential for further growth. Of eighteen ackee processing factories currently registered

governmental agencies support companies in their quest to become HACCP and ISO compliant, including the Bureau of Standards through the Quality Jamaica Project and JAMPRO through the PSDP. These programmes support part of the compliance costs of firms. The Quality Jamaica Project also conducts training programmes on these standards and several agro-processors have benefited therefrom.

### 2.3.1 The Regulation of Factories

The regulation of factories under the *Factories Act, 1943* falls under the purview of the Minister responsible for labour. All factories must register under the Act and be inspected by the Chief Factory Inspector who will keep a register of all licensed factories.<sup>10</sup> The penalty for operating a factory without the requisite registration is a maximum fine of JA\$100 (US\$1.52) and a maximum fine of JA\$10.00 (US\$0.15) per day for each day upon which the offence continues.<sup>11</sup>

The statute, first enacted in 1943 and last amended in 1968, has extensive regulations which govern the safety, health and welfare of factories, building operations, engineering construction and docks. The Chief Factory Inspector can inspect any factory and take samples of the products, materials used therein and inspect all books, documents and information deemed necessary for this purpose.<sup>12</sup> This is to maintain quality assurance measures that safeguard not only the public but the brand names and the competitiveness of Jamaican brands of products.

The Factories Act is expected to be repealed shortly and replaced with an Occupational Safety and Health statute ("OSHA"), a statute created jointly by the Ministry of Labour and the International Labour Organization ("the ILO"). OSHA will extend inspection and other issues of Health/Safety in not just factories but all places of work and increase worker participation in workplace safety. Sources within the government and private sector have expressed doubt as to whether the OSHA is sufficient to replace the *Factories Act, 1943*<sup>13</sup> Others question whether such extensive legislation and regulations as exist in the Act and regulations are still required, especially in light of increased international inspections.

There are a number of benefits to be derived from an overarching statute such as the OSHA:

- The statute has much wider application than any other related statute in Jamaica. There are presently fifteen statutes which deal with occupational health and safety issues in Jamaica,<sup>14</sup> the main statute being the *Factories Act, 1943*. The

---

in Jamaica only six are HACCP compliant, but most, if not all, are working at becoming fully compliant. In an effort to protect the industry the Bureau of Standards has begun inspecting each batch produced prior to export. "Viable Ackee Industry must be Protected" Chief Inspector in Charge of the Bureau of Standards, Central Division, Delroy Harris BSJ Inspector May Pen (JIS), Monday, May 08, 2006

<sup>10</sup> The *Factories Act, 1943* extends to building operations or engineering construction for industrial or commercial purposes, or by way of trade or business and to every dock, wharf or quay and any warehouse used for the purpose of such dock, wharf or quay. See the *Factories Act, 1943*, ss. 24 and 25

<sup>11</sup> *Factories Act*, s. 13

<sup>12</sup> *Factories Act*, s. 18

<sup>13</sup> The consultant has yet to see a copy of the OSHA.

<sup>14</sup> Interim Report of the Committee on Labour Market Reforms March 15, 1996 ("the Eaton Report"), p.140-141. These statutes include the *Women (Employment of) Act, 1942*; *The Factories Act, 1943*; *the Standards Act, 1969*, *The Labour Officers (Powers) Act, 1943*; *The Juveniles Act, 1951*; *The Mining Act, 1947*; *The Processed Food Act, 1959*; *The Labour Relations Code*; *The Apprenticeship Act, 1959*; *The Employment (Termination and Redundancy Payments)*

*Factories Act, 1943* applies only to factories and does not address similar concerns in other places of work in other sectors, such as, agriculture, education, and health.

- There is also no provision in the *Factories Act, 1943* for consultants and other forms of contractors. In an era when Jamaica is moving towards flexible work arrangements (see Chapter 6) then legislation must address concerns of all persons working in places of work and not just employees in the more traditional sense.
- The *Factories Act, 1943* also limited in scope. It does not for example cover areas such as noise control or hazardous chemicals,<sup>15</sup> as does the proposed OSHA model which it is hoped the Government will substantially adopt.

### 2.3.2 Protecting Food and Drugs

The *Food and Drugs Act, 1975* prohibits the sale of food that is adulterated, poisonous, harmful, unfit for human consumption, or produced, preserved, packaged, stored under unsanitary conditions.<sup>16</sup> Food must be correctly labelled, packaged, processed, sold and advertised as prescribed by regulations under the Act.<sup>17</sup> Breaches of the above sections are an offence punishable upon summary conviction by a Resident Magistrate to a fine not exceeding JA\$50,000 (US\$762) or to imprisonment for a term not exceeding one year.

An inspector appointed by the Minister of Health may, under this Act,<sup>18</sup> enter any place where food, drugs, cosmetics or any device is being manufactured, prepared, preserved or packaged and conduct an examination to ensure that the requisite standards are being maintained. The inspector may open packages or containers, take samples, or examine documents, records, etc found on the premises.

### 2.3.3 Food Storage and Prevention of Infestation

The Minister responsible for administering this Act is the Minister with responsibility for Trade. *The Food Storage and Prevention of Infestation Act, 1958* provides that an inspector appointed under this Act may enter any place where he reasonably believes that food is stored, sold, manufactured, or any vehicle used to transport such food that appears to be, or which he reasonably believes to be infested, and may:

- take samples of the food;
- examine the place or vehicle;
- open and examine any container he believes contains food;
- inspect, seize and detain any food;
- condemn and destroy that food; and
- prohibit the sale or transportation of any food.

---

*Act, 1974; The Quarries Control Act, 1984; The Public Health Act, 1985; and The Natural Resources Conservation Authority Act, 1991.*

<sup>15</sup> The Eaton Report, p. 142

<sup>16</sup> Food and Drugs Act, 1975, s. 5

<sup>17</sup> *Ibid*, s. 6

<sup>18</sup> *Ibid*, s. 19

#### 2.3.4 The Regulation of Standards

The Bureau of Standards is established by virtue of the *Standards Act, 1969*, to promote and encourage the maintenance of standards in relation to commodities, processes and practices. The Bureau has the power to promote research in the area of standards and to examine and test commodities, processes and practices. It provides licenses to any operation in relation to the manufacture, production, processing or treatment of a commodity, process or practice for which a standard specification or a compulsory standard specification has been declared.<sup>19</sup>

#### 2.3.5 Recommendations

A comprehensive industry analysis is needed to rationalize the various regulatory agencies with oversight in the industry to determine the most effective means for inspecting and licensing factories to ensure that the public is protected and the integrity of the industry locally and internationally is maintained. This will require inter-agency collaboration and the joint issuing of combined licensing, examinations, standards by regulatory agencies. As far as is practicable, the government should seek to move the industry into a system of self regulation with checks and balances from unexpected inspections in the form of local and international inspectors.

It is recommended that the government should create a national occupational health policy, with OSHA as the main regulatory framework. As well, if OSHA does not repeal the *Factories Act, 1943*, then the Act should be revisited:

- To upgrade the penalty infrastructure to ensure that factories have an economic incentive not to operate illegally.
- To determine if the extensive regulations thereunder are warranted, or if this is one area in which self regulation, or lesser regulation, is sufficient.

It is recommended that the penalties under the *Factories Act, 1943*, the *Food and Drugs Act, 1975*, and the *Food Storage and Prevention of Infestation Act, 1958*, be increased substantially to act as a deterrent to the operation of illegal and/or substandard factories in Jamaica. Alternatively, if OSHA repeals one or more of these statutes, OSHA should contain sufficiently pecuniary penalties to act as a deterrent.

There must be a concerted effort of all stakeholders in the industry: the Government, the various industry organizations such as the Jamaica Agro-processors Association (JAPA) and individual agro-processors to ensure that the entire industry becomes HACCP and ISO compliant.

---

<sup>19</sup> The Standards Act, 1969 s. 6



## 3 Legislative and regulatory issues for creative industries

### 3.1 Introduction

Jamaica has a fairly strong and relatively modern regulatory framework for the protection of IPR. Both the private and the public sector recognizes the growing importance of electronic commerce in the entertainment industry. All aspects of IPR regulation are centralized under the Ministry of Commerce, Science & Technology at the Jamaica Intellectual Property Office, which took over on February 1, 2002 from the now defunct Copyright Unit.

As well, the government has kept abreast of international developments in the industry and has recognized and taken steps to continue its review of existing legislation. The government will soon ratify the WIPO Copyright Treaty and the Performance and Phonograms Treaty with the passage of the *Copyright (Amendment) Bill, 2000*, which is currently being drafted. Continued reviews are needed, in particular, with regard to the dynamic changes in electronic commerce and the provision of incentives to the industry as a means of stimulating more local production.

The major challenge to the industry is that there is a very weak administrative mechanism for the enforcement of intellectual property right infringements. Traditionally, neither the Government nor the private sector have focussed on IPR as a right in property capable of being protected or even valued as collateral. In fact, many artistes have historically “allowed” piracy of their works in an effort to promote their product. The heightened international exposure and influence in the local industry has changed these perceptions and mechanisms for IPR protection are increasing.

The government has responded to the challenge of enforcing infringements of IPR with the formation of the Intellectual Property Branch of the Jamaica Constabulary Force, attached to the Organized Crime Division. Most offenders apprehended to date are relatively small peddlers of pirated CDs, cassettes and DVDs.

Other major challenges to the competitiveness of the industry are the fragmented administration of the industry, the high percentage of informal participants in the industry. With regards to the music industry, the lack of outdoor venues for performances also severely hampers the industry. Many Jamaicans and visitors to the island complain of an inability to attend live music performances. By contrast there are numerous private and public play houses in Jamaica where the performing arts are exhibited at least four nights every week.

## 3.2 Legislative review of the creative industries

### 3.2.1 Copyright regulation

The legal and regulatory framework in Jamaica for copyright protection is comparable to international standards. Jamaica has ratified the Berne Convention<sup>20</sup> which requires signatories to protect copyrighted work of authors from other signatory states in the same way that a signatory state protects the work of its own nationals. It also provides that the copyright to the author of an original work is automatic, that is, there is no need for registration to create a copyright.

The *Copyright Act, 1993* protects proprietary interests in original creations by protecting original copyrights, performers' rights, recording rights and rights in performances. These protections are granted for fifty (50) years, which is in keeping with international standards.<sup>21</sup>

The Act provides an extensive list of infringements of copyrights,<sup>22</sup> including infringements of:

- the right of the copyright owner;
- the rights of exclusive licensee;
- concurrent rights;
- moral rights and related rights.

The Government is in the process of preparing a *Copyright (Amendment) Bill, 2000*. This Bill will implement the provisions of the WIPO Copyright Treaty<sup>23</sup> ("the WCT") and the WIPO Performance and Phonograms Treaty ("the WPPT").

The Bill creates the following offences:

- The manufacture, import, sale, rental, or other distribution of any circumvention device that will be used to circumvent or facilitate the circumvention of a technological protection measure.<sup>24</sup>
- The removal or alteration of rights management information<sup>25</sup> attached to a copy of any protected work without the permission of the owner;
- The distribution or broadcast of protected work knowing that the rights management information attached to that work has been removed or altered without the permission of the owner;<sup>26</sup>

<sup>20</sup> The Berne Convention for the Protection of Literary and Artistic Works, last amended in 1979.

<sup>21</sup> In the EU and the US these protections have been extended to seventy (70) years.

<sup>22</sup> Copyright Act, ss. 31-41.

<sup>23</sup> The WIPO Copyright Treaty provides protects copyrights from infringements relating to information technology. Some of the protections include:

- Protecting computer programs as literary works;
- Providing added protection to authors over the rental or distribution of those works;
- Prohibiting the circumvention of technological measures geared at protecting works; and
- Prohibiting the unauthorized modification of rights management information.

<sup>24</sup> A "circumvention device" is defined (in section 4 of the Bill) as a device which is primarily designed or produced to circumvent a technological protection measure that controls access to protected work, or a device which has limited commercial significance other than to circumvent a technological protection measure. A "circumvention protection measure" is defined the descrambling a scrambled work, decrypting of an encrypted work or other wise bypassing or impairing a technological protection measure without the authority of the copyright owner.

<sup>25</sup> "Rights management information" is defined (in section 4 of the Bill) as information which identifies the work, the author, the owner of rights in the work, or information on the terms and conditions of the use of the work, or numbers of codes that represent that information.

<sup>26</sup> Copyright (Amendment) Bill, 2000 s. 4, amending section 46 of the Copyright Act, 1993.

- The sale, distribution or other transfer of ownership, communicated to the public, or, the rental or lending to the public of a copy of any recording of a performer to the public without the authorization of the performer.<sup>27</sup>

The major difficulty with Jamaica's copyright regulation is that enforcement is weak and penalties for copyright infringement are generally ineffective. By way of example:

1. The fines for breaches of the *Copyright Act, 1993* are clearly insufficient to act as a deterrent against copyright infringement. Unfortunately, the *Copyright (Amendment) Bill, 2000* does not increase these penalties. Thus:
  - a. The penalties for selling, renting, offering for sale or rental; importing or otherwise distributing items which infringe a copyright is a mere JA\$100,000 (US\$1,530) or up to two years imprisonment where the matter is adjudicated by a Resident Magistrate<sup>28</sup> or an undetermined fine and up to five years imprisonment where the matter is adjudicated in the Supreme Court.
  - b. The penalty for possessing an article specifically designed to make copies of a copyrighted work, knowing that the article is to be used to make such copies, or for causing copyrighted work to be performed or shown in public knowing that a copyright subsists, is JA\$50,000 (US\$765), or up to two years imprisonment where the matter is adjudicated by a Resident Magistrate or an undetermined fine and up to five years imprisonment where the matter is adjudicated in the Supreme Court.

### 3.2.2 The Cyber Crime and Electronic Transactions

With increased attention being paid to electronic transactions, the Government of Jamaica has developed an Electronic Transactions Policy, released by the Ministry of Commerce Science and Technology in 2003<sup>29</sup>. The Electronic Transactions Policy recognizes that ecommerce will soon be a major driver of the economy and provides the Government's strategy to monitor fraud and other illegal activity which takes place over the Internet. Two of the proposals put forward were the need to pass statutes dealing with electronic transactions and cyber crime.

*The Electronic Transactions Bill, 2006* has been drafted and circulated to the relevant public and private sector stakeholders for comments. The Bill was returned to the Chief Parliamentary Council for amendments in 2005.

The aim of the Bill is to give Jamaicans confidence that their online transactions are safe and regulated by internationally accepted standards, to create a monitoring authority to develop and supervise administrative operation of these standards, and to provide a framework to ensure safe electronic commerce. By facilitating legitimate electronic transactions, this statute provides a regime for the development of e-commerce in the local music industry, and for the effective enforcement of IPRs which exist or are

<sup>27</sup> Copyright (Amendment) Bill, s. 6

<sup>28</sup> Matters are brought before the Resident Magistrate where the damages flowing from the breach are less than JA\$250,000.

<sup>29</sup> This policy is in response to its Information, Commerce and Technology (ICT) Policy.

transferred electronically. The Trade Board has been nominated as the Certifying Authority.<sup>30</sup>

Specifically, the Bill:

- provides for a mechanism to be created to identify electronic signatures and signify approval of the signatory;
- allows for certain paper based legal requirements to be met with the use of electronically transmitted documents;
- provides for the establishment of regulations for authorizing and facilitating electronic payments to the Government;
- sets out guidelines for the receipt and acknowledgement of electronic communication, and a mechanism to identify the time and place of receipt. These principles apply unless otherwise agreed by the parties to the contract.

The cyber crime legislation is still being drafted by the Chief Parliamentary Council and has not yet been released for comments.<sup>31</sup> It is expected that it will regulate the unauthorised access, modification and impairment of data or electronic communication held on a computer or otherwise stored by electronic means. This is similar to the approach taken by the EU in its 2001 Cyber Crime Convention where countries are required to criminalize hacking, the production sale of hacking tools, child pornography and extend criminal liability for IPR violations.

The EU has also created a system for co-operation with mutual assistance requests from enforcement agencies in other nations. Jamaica should consider developing a system of co-operation with mutual assistance requests from other countries, at the very least within the CARICOM Single Market.<sup>32</sup>

Two issues will likely delay the coming into effect of both statutes. First, the Government had declared an intention to enact the *Electronic Transactions Bill, 2006* (to be administered by the MITEC) at the same time as the cyber crime statute, (to be administered by the Ministry of Justice) because both are complementary pieces of legislation. The second reason for the delay is that the regulations under the *Electronic Transactions Bill, 2006* are still in a preliminary stage of development. There is no indication as to whether the regulations for the cyber crime are being developed simultaneously, but this is unlikely.

### 3.2.3 Legal Deposits

Legal Deposit statutes have been enacted in most Commonwealth countries. The *Legal Deposits Act, 2002*, did not come into effect until October 2004<sup>33</sup>. By virtue of the Act, any resident of Jamaica who produces any document<sup>34</sup> in a written, recorded, stored or

<sup>30</sup> *Electronic Transactions Bill, 2006*, s. 33. The Certifying Authority will authorise, regulate and authenticate the issue of certificates for electronic signatures by local or overseas certification service providers.

<sup>31</sup> The consultant has not yet reviewed the Cyber Crime Bill.

<sup>32</sup> See Chapter 7 below.

<sup>33</sup> The *Legal Deposit Act, 2002* (Appointed Day) Notice, No.92B, Vol. CXXVII, Friday, September 10, 2004.

<sup>34</sup> Section 2 of the *Legal Deposit Act, 2002* defined "document" as "document" means library matter of any kind, nature and description and includes any document, paper, record, tape or other thing published by a national publisher or a publisher resident in a foreign country, on or in which information is written, recorded, stored or reproduced;

reproduced form must deposit the document at the National Library of Jamaica within one month of publication. In its first year of operation, only 46 books were deposited.

Unfortunately, the Act has been largely ignored by the music industry as not applicable to audio visual material, but this is not the case. Although the Act serves a wider purpose, to preserve the literary output of Jamaica and to make that output available to researchers and others,<sup>35</sup> it will also assist with protecting copyrights in that the law will presume that the author stated on a deposited document is the author of that document. This is thus one easy way in which artistes can protect the IPR in their creative material. More needs to be done by sector organizations and JIPO to encourage the deposit of documents.

#### 3.2.4 Recommendations

1. The fines for infringing copyrights should be substantially increased from a maximum of JA\$50,000/JA\$100,000 to act as a deterrent for pirates. This increase should be made in the *Copyright (Amendment) Bill, 2000*, that will shortly be passed in Parliament. Alternatively, if including increased penalties will unduly delay the enactment of the Bill, then priority should be given to passing another amendment to increase penalties to a realistic level that will act as a deterrent.
2. The government must be more proactive in pursuing enforcement mechanisms for all forms of IPR listed above. There are three possible ways in which this can be achieved.
  - a. The speedy passage of statutes, such as the *Copyright (Amendment) Bill*, the *Electronic Transactions Bill, 2006* and the cyber crime statute, and regulations, such as those under the *Geographical Indications Act, 2004*.
  - b. Enhancing the role of the security forces in the enforcement of IPR by providing for more enforcement personnel and continued training for the IPR unit of the Constabulary Force and promoting the use by them of tools such as the Banderole<sup>36</sup> system to boost enforcement;
  - c. Provide legal experts in at least one of the islands legal aid clinics to offer advice on registering IPR and enforcement mechanisms. JIPO can lead this effort by pursuing cooperation arrangements with the Kingston Legal Aid Clinic and the Norman Manley Law School Legal Aid Clinic in obtaining lower cost legal advice on issues of enforcement.

<sup>35</sup> "Reform of the Finnish Legal Deposit Act" Esko Häkii, Tietolinja News 1/1999.

<sup>36</sup> The Banderole system consists of identification patches attached directly to official recordings which can be used to distinguish them from counterfeit copies. When goods are seized therefore without the official identification it will be easier to prosecute offenders and to confiscate counterfeit copies

### 3.3 General issues

#### 3.3.1 Fragmented administration

The administration of the entertainment industry is fragmented among a number of ministries and agencies and this makes it difficult to coordinate the regulatory framework and implement the National Culture Policy<sup>37</sup>. Until recently, responsibility for culture was assigned to the Ministry of Education Youth and Culture with related agencies splintered in five ministries:

- the Ministry of Education, Youth and Culture (Jamaica Cultural Development Commission, Jamaica National Heritage Trust and the Institute Of Jamaica);
- the Ministry of Development (JAMPRO Film and Entertainment Commission);
- the Ministry of Commerce, Science and Technology (Jamaica Intellectual Property Office);
- the Ministry of Industry and Tourism (Entertainment Unit); and
- the Ministry of Information (Creative Production and Training Center).

Trinidad and Tobago has a different approach to the organization of its cultural industry and it represents one model that the Jamaican Government could look at in rationalizing agencies dealing with culture. In Trinidad and Tobago the Ministry of Culture is the umbrella Ministry under which there are a number of government agencies and organizations that deal with the various sectors in the industry. This type of centralized system will reduce administrative expenses, lessen bureaucracy and make it easier to coordinate the national culture strategy.

The rationalization of the industry has begun with the shift of ministerial functions in March 2006. The now leader of the ruling Peoples National Party, Mrs. Portia Simpson-Miller, has incorporated culture within the Ministry of Tourism, citing a natural connection between both portfolios. As well, Development and Information has been merged.

#### 3.3.2 Recommendations

1. It is recommended that the government revisit its Electronic Transactions Policy and hasten the implementation of the strategies listed therein to incorporate the use of e-commerce as a tool for developing the cultural industry and to foster the link between the music industry and the new digital age. A review of the *Electronic Commerce Bill, 2006* and the cyber crime statute is essential to ensure that they provide the maximum protection to the industry in the digital age. The Bills must be made a priority in the legislative agenda for 2006/2007.
2. There must be a thorough review of the new role of the participants in the enforcement of IPRs (the security forces, the judiciary, the collection societies, trade associations, etc.). Special attention must be paid to the training of key enforcement personnel.

---

<sup>37</sup> "The National Culture Policy of Jamaica: Towards Jamaica the Cultural Superstate", Culture Division, Ministry of Education, Youth and Culture, March 2003

## 4 Labour and competitiveness

### 4.1 Effectiveness of labour laws

Some labour laws in Jamaica are archaic and needlessly detailed and overprotective of labour. The regulatory regime in many instances still reflect the islands nineteenth century colonial history when the government needed to legislate minute details in order to protect workers many of whom were illiterate and poorly organized into unions. There was also a great sensitivity to the employment of women. This is no longer the case and there is no longer a need to legislate as extensively as appears in many labour statutes in Jamaica.

For instance, there are still laws on the books prohibiting the employment of women in night work,<sup>38</sup> except: to complete work commenced during the day to preserve raw materials; where the woman is a nurse or pharmacist; or, where the work place is in a cinema or theatre, in a hotel, guesthouse, bar, restaurant or club.

In the regulations thereunder,<sup>39</sup> a woman may be employed in overtime work in a factory only by reason of pressure of work in the factory, and cannot be employed in a factory:

- later than 1p.m. on a Saturday;
- for more than 10 hours on any day;
- for more than 40 hours in any week; or
- continuously for more than 4½ hours without an interval for a meal or rest.

Similarly, the *Shops and Offices Act, 1961*<sup>40</sup> provides for regulations to be made to prescribe, in relation to any shop<sup>41</sup> or office<sup>42</sup>, the following:

- The hours during which it may be open to transact business.
- The hours during which persons may be employed.
- The circumstances in which persons employed shall be entitled to overtime wages.
- The intervals for meals and rest to be allowed to employed persons and the hours during which such intervals shall be allowed.

<sup>38</sup> The *Women (Employment of) Act, 1942*. The statute defines night work as work in an industrial undertaking for a period of at least 11 consecutive hours including the interval between 10:00p.m. and 5:00a.m. The Chief Factories Inspector under the Factories Act, a Medical Health Officer or an officer of the Jamaica Constabulary Force is mandated to ensure compliance with this statute.

<sup>39</sup> The *Employment of Women in Factories Regulations, 1961*, Reg 3  
<sup>40</sup> Section 5

<sup>41</sup> A "shop" is defined in Section 2 of the *Shops and Offices Act, 1961* as any premises where dry goods, hardware, jewellery, books or stationery are sold, whether by retail or wholesale. The Minister of Labour may, by Order, declare any other establishment or premises as a shop for the purposes of this statute.

<sup>42</sup> An "office" is defined in section 2 of the *Shops and Offices Act, 1961*, as any establishment, being an establishment maintained for the purposes of any profession or trade or business

Currently shops and offices may be authorised to open outside the prescribed hours in the case of emergency, or, in accordance with a schedule prepared by the occupier and approved by the Minister subject to restrictions imposed by the Minister of Labour<sup>43</sup>. It is unlawful for a person to be employed in any shop outside the prescribed hours of work<sup>44</sup>.

So, for example, airport shops may be open on any day without restriction as to hours<sup>45</sup>. Pharmacies may be open between the hours of 8:00 a.m. to midnight<sup>46</sup>. Wholesale shops in Kingston/St. Andrew may open from 9:00a.m.-1:00p.m. on a Saturday, 9:00a.m. – 3:00p.m. on a Thursday and from 9:00a.m. – 4:00p.m. on all other days<sup>47</sup>. During the Christmas shopping season shops (except Airport shops/Pharmacies) may open from 8:00a.m. – 10:00p.m. on Saturday and the working day immediately preceding Christmas and from 8:00a.m. – 7:00p.m. all other days<sup>48</sup>.

The penalties under the statute speak to its current irrelevance. The minimum fine for employing a woman at night is JA40 (US\$0.61). Any person who breaches the *Shops Regulations, 1961* is guilty of an offence and upon summary conviction before a Resident Magistrate is liable to a fine of up to JA\$50 (US\$0.76) and to imprisonment of up to three months in default of payment.<sup>49</sup>

It is clear that such statutes are not sustainable in today's competitive global environment where factories and other offices are mechanised at great expense and need to produce at maximum output. A number of sectors have already been exempted, such as tourism and health services.

## 4.2 Flexible work arrangements

The debate on whether a legislative framework to facilitate flexible work arrangements should be created has been a hotly debated topic in Jamaica for over a decade. Currently, factories can operate between forty to sixty hours per week and must lay idle for the remainder of the week. This is a waste of resources, especially for owners of factories, shops and offices that made large capital outlays to mechanize, usually at uncompetitive interest rates.

The main opponents of flexible work arrangements are trade unions that fear that their members will be disadvantaged and churches who fear that the social fabric of the nation will be eroded by a seven day work week.

Proponents, mostly the private sector, argue that allowing factories and other places of business to open for longer hours will facilitate productivity and employment and this could be one catalyst to improving the competitiveness of the agro-processing industry.

---

<sup>43</sup> Section 5 (c)

<sup>44</sup> The Shops Regulations, 1961, Reg. 8

<sup>45</sup> Ibid, Regulation 4 (1)

<sup>46</sup> Ibid, Reg. 4 (2)

<sup>47</sup> Ibid, Reg. 4 (3)

<sup>48</sup> Ibid, Reg. 4 (5)

<sup>49</sup> Ibid, Reg. 12



As well, for seasonal industries, flexible time arrangements are critical to meet fluctuations in demand.

The Government is sympathetic to the arguments raised by the private sector for the implementation of a regime for flexible work arrangements and has long stated its intention to provide such a regime. The flexible work regime will be implemented by amending existing labour statutes and regulations as opposed to creating new legislation. However, progress has been slow.

The Labour Advisory Committee (LAC)<sup>50</sup> included flexible work arrangements as a part of its Labour Market Reform to be undertaken by the Government. The Labour Market Reform Committee was established in 1995 "to develop and recommend strategies to deal with the international economy".<sup>51</sup> The Committee presented an interim report, the Eaton Report, which outlined the main areas which the Ministry of Labour needed to address to make the Jamaican private sector more competitive in the global economy,<sup>52</sup> one of which was the adoption of flexible work hours.

A Flexi-work Committee was appointed in July 2000 by the Minister of Labour and Social Security to facilitate the implementation of a flexible work arrangement within the fiscal year 2000 to 2001. The Committee has recommended a number of methods in which flexible work arrangements could be accommodated in labour contracts. These include: part-time work with benefits, tele-commuting, job sharing, a compressed work week, shift swaps, making overtime voluntary.

To date, however, the regulatory framework has not been implemented. In fact, in mid 2006, no drafts of the amendments have yet been prepared. Admittedly, the delay in the implementation of the flexible work regime has been due to the opposition by various interest groups such as trade unions and the church. However, there has also been a lengthy lull from both the private sector (in keeping the issue in the public sphere and on the Government's agenda) and from the public sector (providing little push to draft legislation or engage the stakeholders further on the issue).

### 4.3 Retraining of the Workforce

The need to retrain the workforce has become more immediate as more industries are forced to mechanise or become too uncompetitive to remain viable. In addition, the Jamaican economy has moved from an agriculture base to providing a manufacturing,

<sup>50</sup> The LAC is a tripartite body (comprising the Jamaica Federation of Trade Unions, the Jamaica Employers Federation and the Ministry of Labour) set up to generally advise the Minister of Labour on areas of the economy that affect labour.

<sup>51</sup> Greenpaper on Proposals for the Introduction of Flexible Work Arrangements

<sup>52</sup> The Eaton Report noted ten areas which the Ministry of Labour needed to address urgently. They are:

1. A review of the Labour Relations and Industrial Disputes Act;
2. Restructuring of the Ministry of Labour;
3. Flexible Work Hours;
4. National Pension Scheme Portability of Pensions;
5. Occupational Health and Safety;
6. Transportation;
7. Physical Security;
8. Gender Issues;
9. Labour Market Information;
10. Training and Education

culture, tourism, information technology and other services, and there has been a growing need to retrain the work force to meet the changing demands of these industries.

Retraining is a monumental task in Jamaica where it is estimated almost seventy percent (70%) of the labour force has not passed any examinations<sup>53</sup> and only twenty percent (20%) of adults are literate. The government has a number of initiatives aimed at supporting workers by way of retraining them to enter the workforce as employees or to assist them with the skills and in limited instances the finances to become self employed.

For example, HEART offers an extensive programme ranging from hospitality, information and communication, building construction, commercial, beauty care, agriculture, early childhood education, and machine and appliance maintenance. It has entered into creative cooperation agreements with many companies to facilitate enterprise based training and community based training to increase the level of skill and competence of workers in a variety of industries and communities. Programmes such as this provide employees with certification which is nationally recognized. This type of partnership can and should be driven by both the private and the public sectors to develop a larger pool of skilled labour relevant to the changing needs of the private sector. As well retraining is critical to ensure that workers who may be displaced by liberalization will be able to rejoin the work force.

#### 4.4 Recommendations

It is recommended that an extensive review of labour laws and regulations is undertaken to identify and remove those pieces of legislation that are no longer practicable/applicable to Jamaican circumstances. The aim of such a review should be to move labour relations towards self-regulation where possible.

Flexible work hours will certainly address one key component of productivity for the private sector businesses. The policy aspects of flexible work hours, which has begun at the ministerial level, should be finalized quickly and the regulatory framework developed.

The government and private sector stakeholders must look at current retraining facilities and programmes with a view to expanding them. For instance, in anticipation of an extension of the skilled nationals regime of the CSM (see chapter 7) the government has expanded the curriculum in teacher training colleges, upgrading them to tertiary level institutions. This will mean that teachers graduating will be required to fulfil another one year to matriculate with a first degree, thus allowing them to compete more effectively in the regional and international markets.

As well, the government must pay additional attention to the literacy rates, bearing in mind that the future competitiveness of the Jamaican industries begins with unearthing and developing skills from the primary level. It is also important to inculcate a culture of competitiveness at the primary level and to foster more IT level skills in early childhood education.

---

<sup>53</sup> "The Labour Force", 2005, page 40.

## 5 Competition Policy

Jamaica for the past two decades has been enduring a structural readjustment programme aimed at creating a market driven economy. This has led the Government to privatize a number of entities previously owned by it and outsourcing the management of numerous others to the private sector.

The implementation of a competition regime was integral to this structural readjustment process. To this end, Jamaica enacted its *Fair Competition Act, 1993* ("FCA") to increase economic efficiency and protect consumers in the market. The FCA has established a competition authority, the Fair Trading Commission ("the Commission"), that will work along with the courts and the Ministry of Commerce, Science and Technology to administer and enforce the Act.

Jamaica is one of two CARICOM countries (the other being Barbados) which has enacted a statute to regulate competition, the FCA. Trinidad is expected to enact similar legislation sometime in the 2006/7 legislative year.

### 5.1 Deficiencies in the FCA – the Government's response

The Jamaican Court of Appeal in the *Jamaica Stock Exchange*<sup>54</sup> case highlighted two major deficiencies with the FCA which negatively affect the effectiveness of the regulatory framework for developing competitiveness in Jamaican businesses.

First, the structure of the Commission was ruled to be in breach of the principles of natural justice as well as the principle of the separation of powers enshrined in the Jamaican Constitution. This was because the FCA empowered the Commission to act as investigator, complainant and adjudicator of complaints that came before it. As a result of the *Jamaica Stock Exchange* case, the Commission can still investigate and instigate cases of anti-competitive behaviour, but can no longer adjudicate these complaints.

To date there has been no amendment of the FCA to rectify this deficiency outlined in the *Jamaica Stock Exchange*. The government's sluggish response thereto has severely hampered the Commission in its efforts to administer and enforce the Act and has meant that the Commission can now only use moral suasion to elicit compliance from the private sector.

---

<sup>54</sup> *Jamaica Stock Exchange v. Fair Trading Commission* S.C.C.A. No. 92/97. The judgement was delivered in January 2001.

A number of solutions to the breaches of natural justice found by the appellate court were proffered, including: amending the FCA to allow for the formation of an independent competition tribunal to hear cases investigated by the Commission; or sending all investigations to the Supreme Court for adjudication. Five years later, the Ministry of Commerce, Science and Technology still has not made any amendments to the FCA. In fact, the government still has not finalized its position as to how to deal with the issue.

The second major drawback of the FCA outlined in the *Jamaica Stock Exchange* case is that it is a statute of general application. The *Jamaica Stock Exchange* argued that it is governed by a sector specific statute, the Securities Act, which takes precedence over the FCA which is a statute of general application. The court found that there were various sections of the Securities Act which stipulated in great detail how the *Jamaica Stock Exchange* should operate and this was proof sufficient of the intent of the legislature that the *Jamaica Stock Exchange* be governed by the Securities Act.

Jamaican regulators within the financial services industry and FSC are working towards recognizing concurrent jurisdiction for the financial services regulators and the Commission on issues relating to competition policy within the operations of the various financial institutions. There is still no consensus as to whether regulations/policy guidelines outlining the concurrent jurisdiction will be created; outlining issues such as which regulator should a complainant approach first in the event of anti-competitive behaviour being practiced by a financial institution.

The *Jamaica Stock Exchange* case creates an opportunity for many “regulated” sectors to claim that they are excluded from the operation of the FCA. So for example, the Jamaica Bar Association has also sought to rely on its Legal Profession Act to stipulate that it already has a method of self regulation geared specifically to legal professionals and that this legislation supersedes the general nature of the FCA.

The Commission’s inability to fully enforce the FCA could be one of the reasons why it has utilized such a large part of its resources in dealing with misleading advertising as opposed to cases dealing with anti-competitive behaviour<sup>55</sup>. This could undermine the intent of the FCA (being to provide for the proper conduct of businesses, ensure fair competition and guard against anti-competitive behaviour in Jamaica) and leave consumers open to practices such as price fixing and collusion.

In the wake of the *Jamaica Stock Exchange* case, the Commission can (and have) brokered consent agreements with sectors/companies. These agreements however do not have the force of law and are at times flaunted. The Commission can also refer matters to the Supreme Court for adjudication, however, the time delays and the cost of so doing render this option ineffective. Court dates for trial are now being set as far away as 2009/2010 for cases that were originally filed some two or three years ago.

---

<sup>55</sup> In the 2003/2004 fiscal year the FTC completed 244 investigations, 205 of which dealt with misleading advertising. It initiated no investigations that were concluded in that year; issued 14 opinions; concluded one case of abuse of dominant position and seven cases regarding other offences against competition. These figures are comparable with those for previous years.

## 5.2 Lack of merger regulation.

The private sector in Jamaica has always opposed merger regulation. The reason for this opposition is that it was presumed that merger regulations were intended to prevent mergers.<sup>56</sup> The fear is that the government should not prevent companies from restructuring, including merging, as this is an effective method streamlining companies and even industries to remain competitive. These fears stem in large part from a lack of understanding of what merger regulations seek to control, that is, those mergers which lead to anti-competitive behaviour in the marketplace.

Merger controls are therefore omitted from the FCA. The Barbadian model has some reference to merger control, but nothing substantive. The CARICOM Competition Bill does have merger regulation.

As Jamaica opens its borders to the CARICOM Single Market<sup>57</sup> and to FDI in general, it is important that there be some regulatory structure to protect local enterprises from potentially harmful mergers and acquisitions, and to protect local consumers from the effect of such mergers or acquisitions.

## 5.3 Recommendations.

A policy decision is required by the Ministry of Commerce, Science & Technology to determine how it intends to handle the question raised in the Stock Exchange case regarding the unconstitutionality of the FCA. More specifically, the Government must decide whether the FCA will be amended to:

- create a competition tribunal to adjudicate cases investigated by the Commission, or,
- provide that the Commission refer all matters to the courts to be adjudicated.

The creation of a competition tribunal is preferable for two reasons. First, it will be more efficient to have a tribunal dedicated to hearing competition policy matters than to refer matters to an already overburdened court system that is plagued with backlog. Second, the creation of a special purpose tribunal such as that contemplated in these circumstances, would allow for the development of specialized area of expertise and body of law and practice in this area. The specificity of the cases will make it easier to train the relevant personnel and to solicit technical assistance from countries and international organizations with more developed competition policy systems.

There are indications that the Ministry of Commerce, Science & Technology is looking at creating merger regulations as an essential part of Jamaica's competition policy regime, and this should be encouraged. Certainly the CARICOM Single Market will require that individual countries develop such regulations in line with the draft CARICOM Competition Policy Law which does include merger regulation.

---

<sup>56</sup> "Voluntary Peer Review on Competition Policy: Jamaica", Report prepared by the United Nations Conference on Trade and Development, United Nations New York and Geneva, 2005

<sup>57</sup> See Chapter 7 below.

## 6 Other legal framework issues for businesses

There are also other factors which impact on the business environment and difficulties in which companies face in beginning and conducting business in Jamaica. Some of these factors, include the lack of incentives, the cumbersome framework for business registration, an inadequate system for the settlement of disputes, the antiquated and costly system for property registration and a collateral regime which is in dire need of an overhaul.

### 6.1 Incentives

Jamaica seems to be at a crossroads with its policy on incentives. In keeping with Jamaica's WTO commitments, all export incentives will be phased out by the end of 2007. The prevailing view of the Government<sup>58</sup> is that incentives do not assist in the development of industries and in fact that they stifle competitiveness by lulling sectors into a sense of complacency. On the other hand, a number of industries, most notably the tourism sector, have benefited and grown extensively with the aid of incentives. Certainly, to the extent that specific industries can so benefit, then sectoral policies should encourage incentive legislation.

In addition, it is felt that incentives are mostly discretionary and have in the past led to inefficiencies resulting from varying interpretations of the intent and coverage of incentives granted. There are also administrative problems with most incentive regimes in that private sector businesses complain of delays determining which government official is empowered to authorize the application of the incentive. These types of delays typically cause lengthy delays at Jamaica's ports.

A national policy on incentives may not be possible or desirable, but some overarching principles should be determined and communicated to the private sector. The private sector also needs to be more proactive and creative in lobbying for incentives and other solutions to the main issues which plague them. In the past, both the agro-processing and creative industries have benefited to different extents from incentives. Agro-processors have access to a number of general tax incentives for manufacturing - embodied in the *Industrial Incentives Act, 1956* and the *Export Industry Encouragement Act, 1956*.

The Modernization of Industry (MOI) programme is another incentive regime within the development strategy of the government and is undertaken by the Jamaican Industrial Development Corporation (JIDC) and administered by JAMPRO. It offers incentives to manufacturers in the form of an exemption from GCT on capital goods. The programme is aimed at producers who have purchased or plan to purchase approved capital

---

<sup>58</sup> The Government's view on incentives is backed by the Orane Report on Reform in the Jamaican Tax System.

equipment to be used for retooling and modernization of the industrial sector to enhance productivity and competitiveness.

#### 6.1.1 Industrial Incentives.

This *Industrial Incentives Act, 1956* allows the Minister responsible for industrial development to accord tax and customs duty exemptions for certain “approved enterprises” producing “approved products” where the manufacture of the product will provide economic and non-economic benefit to the island, including employment opportunities. In granting incentives, the Minister must consider:

- the effect of approval on existing industries;
- whether the manufacture of the product would utilize raw materials or skill available in the island;
- whether sufficient existing manufacturing facilities exist to produce the product; and
- the risk involved in manufacturing the product.

Approved enterprises are entitled to income tax relief on income tax on the profits or gains from the manufacture of the approved product for up to seven years from the date of production of the approved production, or for up to ten years from the date of production of a “new product” as defined in the Act. The approved enterprise may also be entitled to either a one hundred percent (100%) or a fifty percent (50%) exemption of customs duty and general consumption tax for the production of the approved product for up to seven years.

#### 6.1.2 The Export Industry Incentives

The *Export Industry Encouragement Act, 1956* allows the Minister in charge of industrial development, currently the Minister of Industry, Technology, Energy & Commerce (MITEC), to declare certain products “approved export products” and certain exporters as “approved export manufacturers” if: the products are being produced solely for export to countries outside the Caribbean Common Market; are adequately financed; and the manufacturer have access to technical assistance, adequate raw materials, and adequate personnel; Manufacturers benefiting under the *Industrial Incentives Act, 1956* cannot benefit under this Act, but are allowed to benefit under the factories incentive legislation. Approved export manufacturers are entitled to importation of containers, labels, fuel, raw materials to be used in the production of the approved export products free of customs and excise duties as well as general consumption tax.

Jamaica will have to repeal this statute as a part of its WTO commitments to phase out all export subsidies by the end of 2007.

#### 6.1.3 Motion Picture Industry Incentives

The government has also given incentives to the cultural industry under the *Motion Picture Industry (Encouragement) Act, 1948*, which was last amended in 1999. The Act provides incentives to recognized motion picture producers, including:

- The right to import plant, equipment, machinery and materials for building studios or for use in the production of motion pictures free of customs duty, stamp duty and general consumption tax (GCT), where the articles could not be manufactured locally.
- A rebate of any stamp duty, customs duty or GCT paid on the purchase of such plant, equipment, machinery and materials purchased in Jamaica.
- Relief from income tax in respect of profits or gains from motion picture production in Jamaica for nine years from the date of release of the motion picture.

Though some Orders have been made naming enterprises as recognized motion picture producers, the Act has not significantly increased or promoted motion picture production in Jamaica as a competitive industry.

Other sectors of the entertainment industry are better, or at least equally suited to such incentives. There are presently many noted and experienced producers in this music sector, all of whom see the potential for enhanced growth and competitiveness of the Jamaican music product in the local and international market. All attest to the benefits that incentives could provide in the future development of the industry, not the least of which is an inducement to industry participants to formalize.

#### 6.1.4 The Entertainment Industry (Promotion) Bill, 1995

The government has given instructions for the drafting of the *Entertainment Industry (Encouragement) Bill, 1995* to further encourage the development of the entire entertainment industry. It is expected that this Bill, when enacted, will repeal the *Motion Picture Industry (Encouragement) Act, 1948*. The Bill, drafted approximately twelve years ago, has still not been enacted into law and does not appear on the Legislation Programme 2005/2006. In the Memorandum of Objects and Reasons included in the Bill, the Government recognizes that the entertainment industry has been identified as an important industry to the economy and that there is a need to develop the regulatory framework to enhance the growth of the industry and to encourage the realization of its economic potential.

The Bill proposes to extend the categories of recognized producers who are entitled to receive incentives. These categories include the motion picture, music, drama, dance, literary arts, fine arts, fashion and beauty sectors. The incentives will include:

- Tax concessions for recognized producers;
- Importation of plant, equipment, machinery and materials for building of studios used for entertainment production free of customs duties and GCT where the article cannot be manufactured locally;
- Musicians will be allowed to import (free of all import duties) certain articles, yet to be named.

#### 6.1.5 Recommendations

There is a general need to rationalise the incentive regime for both these industries, which have the unfulfilled potential of becoming internationally competitive. Even if the prevailing position of the Government is to reduce the number of incentives, it is



recommended that for these industries, incentives may be critical to the development of the industry and should be considered.

It appears that the *Entertainment Industry (Encouragement) Bill, 1995* is again on the front burner for consideration by the Government. It is expected that a thorough but speedy review of the Bill be conducted to ensure that it is still relevant, addresses the current concerns of the industry, is in keeping with the thrust towards electronic commerce and will foster development of the industry. It should then be made a priority on the 2006/2007 legislative agenda.

The following in particular must be addressed:

1. The inclusion of provisions for IPR protection.
2. The provision of investment incentives, not only for film production, but for the more lucrative music sector or the fast developing performing arts sector.
3. The Bill does not mention incentives to develop avenues of electronic transactions within the entertainment industry (most likely because these were not relevant concerns twelve years ago when it was first drafted).
4. The Bill still provides for specific incentives to be given to film producers for the development of the film industry in Jamaica.<sup>59</sup> These minimum investment amounts should be increased to make them more relevant to current standards in the industry and thereby encourage more substantial investment in the industry.
5. Under the Bill as currently drafted, only musicians will be allowed to import certain articles<sup>60</sup> duty free. It is recommended that all recognized producers, as defined by the Bill, be given this concession and that the articles which can be imported be as extensive as possible.

## 6.2 Acquiring funds for modernization.

With regards to the vexed issue of obtaining loans, both the agro-processing and the culture industries have made extensive lobbies to the government to institute loan programmes for development purposes at concessionary rates of interest and with reduced collateral requirements. There are currently a number of agencies, such as JNBS in collaboration with USAID, which provide loans to SMEs. However, loans by JN Small Business Loans are at a rate of 1%, which may in keeping with industry standards, but are too exorbitant for many SMEs. SMEs, which represent the largest growing segment of the Jamaican economy, are often priced out of the loan market because of the unattractive rates of interest and the unattainable credit requirements.

Uncompetitive pricing is exacerbated by the fact that Jamaica's collateral regime has long been regarded as antiquated and a hindrance to investment and mechanization of many businesses. The main issue is that it does not allow for the use of movable property as

---

<sup>59</sup> These incentives are reserved for a qualifying company producing a film in which at least 75% or some lower percentage not being less than 10% as specified by the Minister is carried out in Jamaica. Where the amount of the investment in the qualifying company is JA\$12,000 or more, or, a total investment of over JA\$125,000 is made by an individual in any one year, the individual making the investment shall be entitled to deduct the investment amount from its total profits for the year. See the *Entertainment Industry (Encouragement) Bill, 1995*, s. 19(4).

<sup>60</sup> These articles are to be listed in a Schedule which is yet to be drafted.

collateral and the transfer of fixed assets, as mentioned above, is expensive and time consuming.

Possible areas of improvement include establishing a legal and regulatory framework for secured transactions and abolishing legislation which constrains financial institutions in their ability to pledge collateral. The *Credit Reporting Bill* now being drafted will also go a long way in alleviating the risk associated with lending to SMEs by monitoring the industry and categorizing the risk potential of industries, entities and individuals. There are also plans afoot to create a regional credit rating agency to bolster the Financial Services Agreement being negotiated (see chapter 7).

Enhancing the judicial system to make it easier to repossess collateral in the event of default and to gain other forms of compensation is also required. For cases where the damages of less than JA\$250,000.00 (US\$3,800) is claimed will be heard in the Resident Magistrates courts. It is more likely that a resolution will be had within one year of filing an action. For other matters, which will be heard in the Supreme Court in Jamaica, it is likely that the matter will be adjudicated in 2011 or beyond.

### 6.3 Business Registration.

The ease with which businesses are able to register is critical to encouraging foreign investment as well as the formalization of local businesses. The *Companies Act, 2004*, of Jamaica has greatly simplified the processes for registration; however, there are still a lot of administrative procedures which can impede the formation of a company. The regulatory and administrative requirements of the *Companies Act, 2004* still appears to be a work in progress as the government continues to make amendments to the statute to clarify various positions.

One major benefit to the statute is that unless a company wishes to limit its activities, it can now conduct any legal activity. Companies now file an Article of Incorporation and Certificate of Incorporation at a cost of JA\$10,000 (US\$152) for a local company and JA\$18,000 (US\$274) for an overseas company. This document is in excess of forty pages and can at first glance be a deterrent to SMEs seeking to formalize.<sup>61</sup>

The first hindrance to business registration that still exists is that the process is still more lengthy and costly than it needs to be because the forms and procedures outlined in the statute and regulations require that the COJ collect more information than should be required for incorporation. Quite rightly, the IADB Report<sup>62</sup> stated that business regulation is intended to establish a location that a business can be found for contract enforcement or to fulfil certain public requirements such as the payment of taxes. If this is the case, then it is hard to see why it is necessary to file a forty page document, as one of at least five documents which are required in order to incorporate.<sup>63</sup> All the

<sup>61</sup> A closer look at the document however, which is available online at the Companies Office of Jamaica ("the COJ"), will reveal that it is a standard form document which most companies will be able to use. For companies conducting more complicated operations, or, for proprietors who wish to prevent a company from performing certain functions there will need to be modifications

<sup>62</sup> "Jamaica: A Private Sector Assessment", a Report prepared by Paul Holden and Sarah Holden of the Enterprise Research Institute (ERI) for the InterAmerican Development Bank.

<sup>63</sup> In addition to the Articles of Incorporation companies must file:

- Form 23 – Notice of Appointment of/Change of Directors

information requested on these additional forms are already contained in the Articles of Incorporation, and the cost to register each document is JA\$2,000 (US\$30).

The second hindrance to business registration is that the administrative procedures within the COJ appear to be inconsistent. For example, the COJ continually sends back documents for revisions that could have been detected on a thorough first examination.

Third, the reasons for rejecting documents at times appear completely arbitrary. It appears as if the COJ does not have clear agency wide standards and this leads to inconsistencies in the information provided to the public. This causes cost and time delays in dealing with applications, leads to a heightened sense of frustration among users, and is a hindrance for companies seeking to register a company in Jamaica. The five working days for company registration can turn into weeks.

Fourth, it was expected that with computerization there would no longer be the need to manually check each document filed as this creates substantial delays in the system. This is not the case and documents are still checked manually, again causing some delay to clients.

It is recommended that a review must be done of the legislative framework for the registration of businesses in Jamaica. The system, though much improved since the passage of the *Companies Act, 2004*, can still be cumbersome and expensive. One way in which this can be done is to make a policy decision as to what business registration is meant to achieve in Jamaica. The documents needed to achieve this purpose must then be tailored so as to enable the COJ to collect that information in the most effective manner, preferably by electronic means.

As well, administrative inefficiencies (such as those described above, as well as the effectiveness of the computerization system) need to be reviewed. In addition, even those documents that can be filed on line are still manually checked. It is recommended that the computerization of the office be completed with alacrity to allow certain services to be completed fully online.

## 6.4 Settlement of disputes.

Jamaica has a Dispute Resolution Foundation which provides services in mediation, arbitration, negotiation and other forms of dispute resolution. The Foundation has been very active in training mediators and also provides mediators to settle disputes. Many of the disputes and the training that takes place at the Foundation relate to domestic intervention and community related disputes.

For those matters before the courts, the court has now concluded a pilot project<sup>64</sup> aimed at reducing the number of cases actually litigated to completion; reducing the time and cost to litigate matters; improving access to the court by lessening the number of cases before

- 
- Form 20 – Notice of Appointment and Change of Company Secretary
  - Form 17 – Notice of Address of Registered Office
  - Form 5 – Notice to the Registrar

<sup>64</sup> Practice Direction #2002-2, "Court Connected Mediation Pilot Project".

the court; and promoting an early resolution of disputes. This pilot project ended successfully in 2005 and new rules for the automatic referral of matters for arbitration have been drafted and will shortly be in force.<sup>65</sup>

Once enacted, all civil cases filed in the Supreme Court will automatically go to mediation once a Defence is filed.<sup>66</sup> There are two main concerns regarding these new rules. First, it is viewed as unnecessary for parties to be forced into mediation if neither is interested in pursuing this avenue. This could result in further delaying trials and increase litigation costs, because the parties will now be mandated to take an extra step in settling disputes before trial. The second concern with mandatory mediation is regarding the timing. In Jamaica, it will on average take four to five years from the filing of a Defence until the matter is finally adjudicated. The concern is that at the stage when parties are filing a Defence they are usually still in a militant mood and will rarely be in a frame of mind to settle. At a later stage in the process, when a trial is imminent, mediation is more likely to be effective at this stage.

For these reasons it is recommended that the proposed mediation rules be revisited. The Rules Committee of the Jamaica Bar Association is currently discussing these concerns and may make representations for a further review of the proposed mediation rules.

It is also recommended that the Foundation attempt to expand its commercial mediation options to:

- facilitate SMEs who do not wish to or cannot afford to take matters through the burdensome court system; and
- to provide consumer confidence in the process for settling disputes in Jamaica.

---

<sup>65</sup> These rules will be an addition to the Civil Procedure Rules, 2002, which overhauled procedure in the islands civil courts.

<sup>66</sup> There are rules to dispense with mediation but this is only with the leave of a court after an application has been made.

## 7 The legislative process in Jamaica

### 7.1 Major challenges in creating legislation.

A hallmark of any competitive economy is the ability of both the private sector and the public sector to adjust quickly to meet new technological, administrative and regulatory challenges. It should not be easy to create, amend, repeal legislation, but there must be an effective legislative process whereby it can within a reasonable time respond to changes in the market, to either protect or facilitate the needs of the private sector.

Jamaica does not have a responsive legislative system. The Ministry with responsibility for a sector is responsible for policy formation, and, in conjunction with the Chief Parliamentary Council, for the creation of the regulatory framework to implement the policy. In many instances policy making at the level of both the Ministries and the legislative drafting is needlessly slow.

The duplicity of Committees formed, sometimes within other Committees, to make recommendations can at times lead to inefficiency and delays in policy making. In addition, there tends to be a slow response of Parliament in making or amending legislation in keeping with industry, global or even local trends. The normal process for the passage of any statute will require four Cabinet Submissions to be made, not including those that are necessary for the passage of the regulations for each statute.

It is not surprising therefore that there are a number of nineteenth century labour statutes which are certainly no longer relevant, or that Jamaica's labour policy reform is proceeding at such a slow pace. The Labour Market Reform Committee was established in 1995 and made recommendations in the form of the Eaton Report which recommended ten areas that needed the urgent attention of the Ministry of Labour to make Jamaican industry competitive in the changing international market.<sup>67</sup> This restructuring process is still ongoing but fact has not progressed beyond the policy making level.

Another example of tardy policy and legislative response to market demand is the response of the MITEC to adjusting Jamaica's competition policy framework in the wake of the Stock Exchange case in 2001.<sup>68</sup> This tardiness has left the FTC in abeyance for over four years.

By contrast, the Government has moved speedily to formulate its Electronic Transactions Policy, 2003 and to issue drafting instructions to the Office of the Chief Parliamentary

---

<sup>67</sup> See note 58 on page 25.

<sup>68</sup> See Chapter 5.

Council ("The CPC") to create the regulatory framework. The government has also moved with alacrity to formulate the OSHA.

## 7.2 The legislative process.

There are a number of government agencies involved in the legislative process.

1. The Ministry which proposes the new legislation.
2. The primary legislative arm of the government is the CPC.
3. The Legal Reform Department must be notified if the proposals for amendments or new legislation include any significant change to a legal principle or procedure.
4. The Attorney General, as the legal adviser to the government must be sent drafts of all cabinet submissions for the amendment or creation of legislation and will be requested to render an opinion on any point of law which arises therefrom.
5. All other government ministries and departments will receive a copy of any bill drafted by the CPC and be given an opportunity for comments.
6. Draft Bills are also usually sent to industry stakeholders for comments.

## 7.3 Recommendations.

Drafting instructions for a Bill should be issued at the same time as for the regulations thereunder. In many instances the drafting instructions issued are for the Bill only and does not include the regulations. Thus the *Geographical Indicators Act, 2004* issued in 2005 is still unenforceable because the regulations thereunder have yet to be passed. The *Pensions (Superannuation Funds and Retirement Schemes) Act, 2004* was passed in 2004 and the regulations were just passed in the second quarter of 2006. The *Electronic Transactions Bill, 2006* has been reviewed and commented on by private sector stakeholders without the benefit of reviewing the proposed regulations.

When legislation is drafted in parts, the full understanding of the implications of the statute and the administrative structure for overseeing the regulation and enforcement is not fully known or understood. As well, the statute is unenforceable without the regulation and thus by preparing the Act without the regulations is merely an academic exercise.

Second, a more effective system of accountability is needed to ensure that policy decisions to be made by Ministries or other government agencies which impinge on the creation of policies or drafting/amendments of legislation are concluded in a timely fashion. There must also be similar accountability for the CPC whereby statutes cannot be allowed to languish for an inordinate period of time without resolution. Perhaps this might simply require bringing in drafters with expertise in the drafting of certain technical pieces of legislation to assist in putting together relevant and thorough pieces of legislation in a more timely fashion.

## 8 The CARICOM Single Market.

The CARICOM Single Market ("the CSM"), which was established by the Revised Treaty of Chaguaramas ("the Revised Treaty"), will include fourteen Member States who are collectively referred to as the Community. They are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago. Haiti, is entitled to membership, however, it has not fulfilled the requirements for accession to the Revised Treaty.

On December 30, 2005 Jamaica's former Prime Minister P.J. Patterson signed the Declaration of the CSM signifying Jamaica's entry into the CARICOM Single Market, (the "CSM"). Jamaica joined five other Member States (Suriname, Trinidad and Tobago, Barbados, Guyana and Belize) that have already entered into the CSM. The other Member States subsequently signed a Declaration of Intent signifying their intention to join the CSM in June 2006.

The CSME is being implemented in two phases: The CARICOM Single Market (CSM) which came into being in January 2006, and the CARICOM Single Economy which is slated to come in force in 2008.

The objective of the CSM is to create one economic space between Member States, melting away economic and social borders. The four main pillars of the CSM are the:

- free movement of skilled labour throughout the Community;
- free movement of capital throughout the Community;
- free movement of services throughout the Community; and
- right to establish economic enterprises throughout the Community.

The second phase, the CARICOM Single Economy, is slated to come on stream in December, 2008. The Single Economy will include the harmonization of:

- fiscal (tax) policies,
- monetary policies, including a single CARICOM currency;
- external trade policy;
- sectoral policies in areas such as competition policy, investment incentives agriculture, manufacturing, transportation, and environmental protections;
- legislation in areas such as customs, taxation, competition policy; and
- regional institutions for the settlement of internal disputes as well as disputes between Member States and the rest of the world.

## 8.2 The Four Pillars of the CSM.

### 8.2.1 The Free Movement of Skilled Labour

The regime for the free movement of skilled labour allows five categories of skilled CARICOM nationals<sup>69</sup> to move within the Community to work, look for work, or engage in self employment. The movement of persons is not automatic. Skilled nationals must be certified by the appropriate authority and obtain a Skills Certificate. This Skills Certificate recognizes the CARICOM national as a skilled person in a particular category. Skilled nationals also have the following collateral rights:

- The freedom to enter and leave the host country at will;
- The ability to buy property in the host country as is needed for personal or business use;
- The freedom of spouses or immediate dependent relative of skilled nationals to move with the skilled national and reside in the host country for as long as the skilled national resides there. The spouse will only be able to work in the host country with a work permit, or, if they qualify, with a skilled certificate.

The CSM has thus created two regimes in Jamaica for the employment of non-Jamaican labour. The first is a work permit regime<sup>70</sup> which provides that citizens and residents of Jamaica, as well as other persons who enter that country to work, require a work permit. The second regime which operates concurrently with the work permit regime<sup>71</sup> is a skills certificate regime for skilled nationals of the CSM.

The most obvious labour related implication of the CSME is a vastly expanded regional labour market for skilled labour. Employers in any Member State can now select employees from a labour force of skilled labour in twelve countries. This can be both a threat and an opportunity for the Jamaican labour force. It is a threat because free movement will only allow the movement of skilled labour. A large percentage of the Jamaican workforce will be at a disadvantage as many will not qualify as Skilled Persons. Literacy rates in 2001 were estimated at 86% in Jamaica compared with 100% in Barbados and 94% in Trinidad. Enrolment in tertiary level programmes was estimated at 8% in Jamaica and Trinidad as compared with 29% in Barbados. Training options discussed in Chapter 4 of this Report are crucial to allowing Jamaicans to gain competitive advantage in their local and regional labour market.

As well, there will be increased competition for jobs in the already competitive Jamaican employment market as skilled labour from every Member State will be competing for jobs in the Jamaican labour market alongside the local labour force. In light of the fact

<sup>69</sup> The five categories are: university graduates, media workers, sportspersons, artistes and musicians. At the 27<sup>th</sup> Conference of Heads of Government of the Caribbean Community, held in Basseterre, St. Kitts, July 3 – 6, 2006, a decision was taken to extend the categories of skilled workers to include teachers and nurses who had undergone tertiary level training, as well as some categories of workers who had attained an associate's degree. Implementing legislation is underway, as is the administrative procedures for these categories. It must be noted with relation to the movement of musicians under the Revised Treaty, although musicians can move freely throughout the Community, their equipment cannot. CARICOM has been notified about this situation and appears sympathetic to changing it. No timetable has yet been set for amendments to the regime for the free movement of musicians. Jamaica (both the private sector and the Government) needs to keep this on the table at CARICOM level discussions

<sup>70</sup> The work permit regime is governed by the *Immigration Regulations, regulation 10*

<sup>71</sup> The skills certificate regime is governed by the *Caribbean Community (Free Movement of Skilled Persons) Act, 1997*



that real wages in Jamaica are higher than in some other Member States, there is likely to be a greater competition for jobs in Jamaica than in other territories.

The expanded labour market is an opportunity for Jamaican skilled labourers because they can now compete for jobs in twelve Member States, without nationality restrictions. Jamaican skilled nationals will be able to move throughout the entire Single Market to work, look for work or to engage in self employment, without the need to apply for a work permit, and without the inconvenience and expense of continually renewing that permit.

#### 8.2.2 The Free Movement of Capital

Companies incorporated in the Community, as well as CARICOM nationals can now, at least in theory, move capital freely within the community. This includes the freedom to move capital payments<sup>72</sup> as well as current payments. A lot still needs to be done to make this a reality. For instance, Barbados still maintains some foreign exchange controls which limit the amount of capital that businesses can take out of the country. They have expressed an intention to fully liberalize the foreign exchange controls, but to date this has not been done.

The ability to move capital freely within the Community is crucial to enhancing the competitiveness of Jamaican industries, especially since the major problems faced by SMEs is in sourcing capital for mechanization and expansion. The introduction of new financiers in the market who can provide loans with more liberal collateral requirements or cheaper rates of interest could very well assist local entrepreneurs to revive failing enterprises or industries.

Member States are currently negotiating a Financial Services Agreement ("FSA") and CARICOM Investment Code ("CIC") which will provide the regulatory framework for the movement of capital and investment flows into and throughout the Community.

This regime will provide additional sources of funding for Jamaican SMEs in two ways. First, entities in any Member State will be given access to official sources of funding and refinancing available to home country entities.<sup>73</sup> These include public credit guarantee systems to finance development. Second, it will allow SMEs incorporated in the Community to use collateral located throughout the Community to guarantee loans<sup>74</sup>. Regional governments who sign the FSA will have committed to create a unified regime for the acceptance of securities and cash as collateral under both pledge and title transfer structures. Collateral includes securities, mortgage, certificates of title, performance bonds, and repurchase agreements.

---

<sup>72</sup> Article 40 of the Revised Treaty defines capital and related payments and transfers to include:

- (a) equity and portfolio investments;
- (b) short-term bank and credit transactions;
- (c) payment of interest on loans and amortization;
- (d) dividends and other income on investments after taxes;
- (e) repatriation of proceeds from the sale of assets; and
- (f) other transfers and payments relating to investment flows

<sup>73</sup> FSA, Article 10.

<sup>74</sup> FSA, Article 19.

It is important to caution that this may well not impact the local business community because these agreements are still in the negotiations phase. More importantly, these agreements will not affect the concept of risk which the local financial sector has regarding some industries (such as the creative industry) and some sectors within the Jamaican industry (such as the SME sector). Thus, while there may be more avenues for obtaining funding, the crucial problem of the ability to access these funds and the costs attendant to such loans may still be too prohibitive to provide any real assistance to those industries and sectors which are most in need of support and most at risk of collapse.

It is left to be seen how these theoretical structures will enhance the SMEs in Jamaica, if at all. The greatest fear of the Jamaican private sector is that because Jamaica is seen in the region as such a volatile economy, there might be few regional institutions willing to lend to a Jamaican SME and few willing accept certain forms of collateral located in Jamaica.

### 8.2.3 The Right of Establishment

The third pillar of the CSM is the right of establishment. The right of establishment allows CARICOM nationals to incorporate an economic enterprise in any Member State within the Community, or to establish, within the Community, agencies, branches and subsidiaries of any economic enterprise<sup>75</sup> already incorporated in another Member State.

As well, the right of establishment allows:

- managers, technical and supervisory staff of any economic enterprise, their spouses and immediate dependent family members, to move to any territory in the Community where the enterprise has relocated and work without the need for a work permit.
- CARICOM nationals to engage in non-wage earning activity (self employment) of a commercial, industrial, agricultural, professional, or artisanal nature;
- CARICOM nationals to create and manage an economic enterprise within the Community.

By creating a regime where a Jamaican company can freely expand into markets in any Member State and compete with local companies in that market, this right of establishment expands the market for Jamaican goods and services to the Community and thereby enhances the competitiveness of Jamaican enterprises. It also forces Jamaican enterprises to become more competitive in the home territory, because enterprises from within the Community can also freely enter the Jamaican market and compete.

<sup>75</sup> By virtue of Article 32(5) of the Revised Treaty, an "economic enterprise" includes any type of organization for the production of or trade in goods or the provision of services owned or controlled by a national of a Member State. A "national" of a Member State is a person who is:

(i) a citizen of that State;  
(ii) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration; or  
(iii) is a company or other legal entity constituted in the Member State in conformity with the laws thereof and which that State regards as belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Community and which is substantially owned and effectively controlled by persons mentioned in sub-paragraphs (i) and (ii).

## 8.2.4 The Right to Provide Services

CARICOM nationals can now move throughout the signatory territories<sup>76</sup> and provide services<sup>77</sup>. Priority is to be given to the removal of restrictions on services which directly affect the production costs or facilitate the trade in goods and services which generate foreign exchange earning. This includes removing restrictions on the entry of personnel, their spouses and immediate dependent family members to move throughout the Community with the service provider.

The measures to be adopted within the Community to facilitate the movement of capital and services and the right of establishment include:

- Harmonized legal and administrative requirements for the operation of partnerships, companies or other entities;
- The abolition of exchange controls;
- Establishment of an integrated capital market in the Community; and
- Convergence of macro-economic policies.

## 6.3 The CSME and IPR protection.

The regional protection of IPR is critical to the continued competitiveness of Jamaica's culture and agro-processing industries, for example, the free movement of artistes, musicians and media workers within the Community presents a huge opportunity to the Jamaican entertainment industry.

The CSM contemplates the development of a regional system for the protection of IPR. Article 66 of the Revised Treaty mandates the Council for Trade and Economic Development (COTED) to "promote the protection of intellectual property rights within the Community". This is to be achieved in a number of ways, including, strengthening national regimes for the protection of IPR and the establishment of a regional administration for intellectual property rights, except copyrights. Jamaica is already leading the region in this regard with the establishment of JIPO and the continued development of a fairly strong IPR regulatory regime.

There is a plan to have a CARICOM intellectual property organization with regional functions similar to those which JIPO performs in Jamaica. Because each Member State has different levels of legislation to protect IPR, harmonization would be time consuming and costly and this is not a priority item being considered by COTED at this time. There will also have to be allocations for the administrative running of such a department and COTED and the Member States are not now willing to take on this responsibility.

<sup>76</sup> The signatory territories currently consist of the six signatories to the agreement implementing the CSM: Jamaica, Suriname, Trinidad and Tobago, Barbados, Guyana and Belize. In June 2006, it is expected that the entire Community will be signatories.

<sup>77</sup> The Revised Treaty defines services in Article 36 to include all Four Modes of services recognized by the WTO. The provision of services means the supply of services:

- (a) from the territory of one Member State into the Territory of another Member State;
- (b) in the territory of One Member State to the service consumer of another Member State;
- (c) by a service supplier of one Member State through commercial presence in the territory of another Member State;
- (d) by a service supplier of one Member State through the presence of natural persons of a Member State in the territory of another Member State.

## 9 Recommendations

### 9.4 A comprehensive review of the Agro-processing industry

The main recommendation for the agro-processing industry is the need to create a sector policy to guide the development of the industry. Key to this policy should be a review of the duplicitous requirements for standards and licenses in the agro-processing industry. The legislation in the industry appears to be ad hoc pieces of legislation not enacted with a clear policy formulation in mind. The result is that different institutions were created attached to various agencies to set standards for and inspect for things that should be centralized. This review must take into account the regulatory as well as the institutional requirements for the industry. The Government is adding to this confusion with the creation of the OSHA which will have its own set of standards and licensing requirements.

First, the Government and agro-processors need to arrive at a shared understanding of what these various licenses and standards are aimed at achieving.<sup>78</sup>

Second, a comprehensive industry analysis is needed to rationalize the various regulatory agencies with oversight in the industry to determine the most effective means for inspecting and licensing factories to ensure that the public is protected and the integrity of the industry locally and internationally is maintained. The modernization of the islands' IPR regulatory framework and enforcement mechanisms are also essential for this industry analysis as a means to encourage innovation and protect manufacturers.

Third, the government should create a national occupational health policy operating parallel to the sectoral policies (such as the agro-processing sector policy), with OSHA as a main input of the regulatory framework.

Fourth, the industry needs the creation of a system for financing the retooling of the industry. In terms of the regulatory framework, the government must ensure that its collateral regime encourages investment by providing for allowing for more flexible collateral criteria, such as the use of movable property and eventually, the use of collateral located within CARICOM.

---

<sup>78</sup> Standards and licences in Jamaica are generally aimed at protecting the public and enabling agro-processors to maintain market access into key international markets, such as North America and Europe.

As far as is practicable, the government should seek to move the industry into a system of self regulation with checks and balances from unexpected inspections from local and international inspectors.

Fifth, it is recommended that the penalties under the *Factories Act, 1948*, the *Food and Drugs Act, 1975* and the *Food Storage and Prevention of Infestation, 1958* be increased substantially to act as a deterrent to the operation of illegal and/or substandard factories in Jamaica.

Finally, there must be a concerted effort of all stakeholders in the industry: the Government, the various industry organizations such as the Jamaica Agro-processors Association (JAPA) and individual agro-processors to ensure that the entire industry becomes HACCP and ISO compliant.

## 9.5 Increased enforcement of IPR in the culture industry.

First, it is recommended that the Government and industry associations must encourage the formalization of the industry through the various associations which represent artistes

Second, the Government must enhance the role of the security forces in the enforcement of IPR. This be achieved by, first drafting and enacting regulations to legislation already passed by the Jamaican Parliament, such as the Geographical Indicators Act. In addition, statutes which have been in abeyance for some time must be pushed through the legislative process, including the *Copyright (Amendment) Bill, 2000*, the *Electronic Transactions Bill, 2006*, the cyber crime statute, and the *Entertainment Industry (Encouragement) Bill, 1995*.

It is recommended that the government revisit its Electronic Transactions Policy and hasten the implementation of the strategies listed therein to incorporate the use of e-commerce as a tool for developing the cultural industry and to foster the link between the music industry and the new digital age.

There must be a thorough review of the new role of the participants in the enforcement of IPRs (the security forces, the judiciary, the collection societies, trade associations, etc.). Special attention must be paid to the training of key enforcement personnel.

## 9.6 Labour competitiveness.

It is recommended that an extensive review of labour laws and regulations is undertaken to identify and remove those pieces of legislation that are no longer practicable/applicable to Jamaican circumstances. The aim of such a review should be to move labour relations towards self-regulation where possible.

The policy aspects of flexible work hours should be finalized quickly and the regulatory framework developed.