

CRNM PRIVATE SECTOR TRADE BRIEF

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TRADE OPPORTUNITIES & REGULATIONS IN THE US AGRIBUSINESS & SEAFOOD MARKET

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IN THIS ISSUE: the US Food Processing Market is under the spotlight. Credible business opportunities exist which are identified in this volume of tradeBrief. But this market is tightly regulated and we detail the nature of the regulations which frustrate many agri-business exporters and frankly should be one focus of any negotiations with the USA.

-  Overview of the US Food processing Industry
-  Immediate & Medium Term Business Opportunities
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Overview of the US Food Processing Industry

The food processing sector provides one tremendous opportunity for Caribbean (specifically CARICOM and the Dominican Republic) to grow their export sales into the US market. Food processing is one of the largest manufacturing sectors in the US, accounting for approximately 10% of all manufacturing shipments (by value). The processed food industry has grown by over 10% between 1998-2004, and in 2004, the value of processed food shipments was approximately \$470 billion. However, to penetrate the US Processed food market, CARICOM firms have to interface with a dense regulatory mechanism for food safety. This mechanism is explored below, but we believe that no credible negotiations can ignore the impact that these food safety rules have on inflating the transaction cost to mostly "nano" firms attempting to penetrate the US market.

The largest sectors of the industry, in terms of value, are meat, dairy, fruit & vegetable preservation and specialty foods. Other niche sectors include bakeries and tortilla manufacturing, grain and oilseed milling, sugar and confectionary, animal food manufacturing and seafood

products.

Within the industry, the market for organic foods and beverages has grown at a tremendous pace and is expected to generate sales of about \$32 billion by 2009. The organic industry has been experiencing annual growth of 17-22% over the past five years, fueled primarily by the rising consumer concern about food quality and farming standards and greater availability of organic foods through mainstream channels.

The leading players in the US market include Unilever, Archer Daniels Midland Company, Kraft Foods, Tyson Foods and Bunge. Unilever is the world's leading supplier of food products with a portfolio of brands that includes Knorr, Blue Band and Lipton. In 2004, Unilever sold its edible oils and white fats business to a Mexican subsidiary of Associated British Foods. The sale was part of its overall strategy to focus on its core business areas.

Immediate Business Opportunities

Tomato Shortage - Hurricanes including Charley and Francis, which hit Florida in August and September 2004, forced many of the state's tomato farmers to replant crops. Tomato prices in October 2004 rose 167% to about \$15 for a 25-pound box. The surge in the prices of tomatoes, a basic ingredient in many processed foods (sauces, soups and seasonings), has dented margins of food processors and provides an opportunity for Caribbean producers to fill this demand. In 2004, the USA imported 931,972 tons of fresh or chilled tomatoes mainly from Mexico, Canada, the Netherlands and Israel at an average price of US\$1,209/ton. CARICOM firms exported 7 tons of fresh tomatoes at an average price (unit value) of US\$1,571/ton. Where the USA imports tomatoes from Israel and the Netherlands at US\$6,182 and US\$3,503 per ton, CARICOM exporters could steal some market share, but then again, the market seems less price elastic than before.

Increased demand for Healthy Food Products - Food companies are facing rising criticism from consumer groups that they are contributing to obesity in children. Companies are being encouraged to address these concerns by reducing fat and sugar content in foods and ensuring that products are intelligently marketed. For example, Kraft Foods plans to curb its advertising of Oreo cookies, regular Kool-Aid and other popular snack foods to children under 12 as part of an effort to encourage better eating habits.

Additionally, the FDA published a new rule in 2003 requiring manufacturers to list trans-fat on the nutritional facts panel of their products. This is likely to reduce the demand for foods that have a trans-fat content. It may also affect sales of health-orientated products that previously did not mention trans-fats. This impacts on how Caribbean firms market their products in the US and their labeling requirements which is quite costly to adjust. Therefore, firms in the snack foods industry, amongst others, need to be aware of this seemingly consumer-led market requirement for meaningful penetration of the US market.

Growing Market for Organic Foods - The market for organic foods grew from \$2.9 billion in 2001 to \$5.3 billion in 2004, an 82.8% increase in the three-year period. Consumer awareness of organic substitutes for food products and rising health concerns about junk food has led to rapid growth in this niche segment. Increased consumer adoption could impact sales of other food products. The Organic Foods Production Act (OFPA) of 1990, adopted as part of the 1990 Farm Bill, requires

USDA to develop national standards for organically produced agricultural products to assure consumers that agricultural products marketed as organic meet consistent, uniform standards. The OFPA and the National Organic Program (NOP) require that agricultural products labeled as organic originate from farms or handling operations certified by a State or private agency that has been accredited by the U.S. Department of Agriculture (USDA). The NOP is a marketing program housed within the USDA Agricultural Marketing Service, the agency that sets marketing standards. Neither the OFPA nor these final regulations address food safety or nutrition. Caribbean firms are encouraged to visit the NOP website for further information at

<http://www.ams.usda.gov/nop/indexNet.htm>.

Food Safety standards and Administration in the US Food market

Sanitary and Phyto-Sanitary-SPS (technical term for food safety standards) measures in the USA are governed by the Federal Food, Drug, and Cosmetic Act; the Public Health Service Act; the Food Quality Protection Act; the Animal Health Protection Act; the Federal Plant Protection Act; the Federal Insecticide, Fungicide, and Rodenticide Act; and the Toxic Substances Control Act.

Four agencies share responsibility for implementing these laws: the Food and Drug Administration (FDA) of the Department of Health and Human Services; the Food Safety and Inspection Service (FSIS) and the Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture; and the Environmental Protection Agency (EPA). APHIS regulates imports of plants, animals, and their products into the United States. Following the enactment of the Homeland Security Act of 2002, the functions traditionally carried out by APHIS at U.S. ports of entry were transferred to Customs and Border Protection.

The requirements for recognizing a pest-free area for fruits and vegetables are contained in the Code of Federal Regulations. No specific guidelines exist regarding pest-free areas for grains, nursery stock, or lumber. APHIS has published guidelines for assessing the disease risk of imports of animals and animal products. APHIS' general policy is to evaluate hazards based on "the disease risk associated with the region from which [animals and animal products] are exported, rather than on 'disease free' or 'non-disease free' statuses determined on a country-by-country basis". In this context, APHIS has developed guidelines for evaluating and recognizing regions within or straddling other countries as being safe sources for imports. The evaluation process usually involves visits by APHIS officials to relevant areas. APHIS makes available a list of countries or areas that it recognizes as free of specific livestock and poultry diseases.

In general, imports of plants, animals, and their products require an import permit issued by APHIS. The permit outlines the conditions of entry for the product. Importers can submit applications for permits online via the Import Authorization System. Importers may also use this system to check the status of an existing application and to submit changes.

The process from APHIS' determination to assess the risk presented by imports of a particular product to the issuance of an import licence can take several years, depending on the quality of the data received for the risk assessment, among other factors. Once the regulations allow imports of a product from a particular area, APHIS issues import permits without the need to carry out additional risk assessments for a particular shipment.

FSIS has specific responsibility for the safety of meat, poultry, and egg products. Meat, poultry, and egg products imported into the United States must meet all U.S. food safety requirements. Upon request, FSIS evaluates whether a country's regulatory system for meat, poultry, or egg products attains the same level of protection as the United States. To this end, FSIS reviews the pertinent laws and regulations, and conducts on-site audits. If the country's regulatory system is deemed equivalent, U.S. regulations are amended accordingly. FSIS has published the process whereby it assesses the equivalence of foreign meat and poultry regulatory systems. The same process is used to determine the equivalence of a country's egg products inspection system. To ensure continued compliance with U.S. safety standards, FSIS conducts periodic audits of foreign meat, poultry, or egg products inspection systems and periodically inspects imported products at U.S. ports of entry.

The United States has recognized 34 foreign systems as equivalent to the U.S. meat, poultry, and/or egg products regulatory systems. No CARICOM Countries are approved to date to export meat, poultry and egg products to the USA. Only meat, poultry, and egg products from facilities certified by the inspection service of the FSIS-recognized system can be imported into the United States. The FDA has primary responsibility for the safety of all other foods, and of veterinary drugs, and for enforcing the Federal Food, Drug, and Cosmetic Act, and other related federal laws.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) requires that; domestic and foreign facilities that manufacture, process, pack, and hold food for consumption in the United States register with the FDA; the FDA receive notice prior to the entry of food that is imported or offered for import into the United States; and that persons involved in the manufacture, distribution, and receipt of food in the United States establish and maintain records that identify the immediate previous sources and immediate subsequent recipient of that food. The Bioterrorism Act also gave the FDA the authority to administratively detain any food for which there is credible evidence or information that the food presents a threat of serious adverse health consequences or death to humans or animals. Since mid 2003, the FDA has promulgated various regulations to implement these requirements.

The registration requirement of the Bioterrorism Act can be completed online and is free of charge. It is required once for each facility, but the information provided must be updated if it changes. Overseas facilities must designate a U.S. agent at the time of registration. The agent must live or maintain a place of business in the United States and be physically present there. Approximately 238,000 facilities have registered with the FDA. Of these, some 55% were overseas facilities.

Under the prior notice requirement of the Bioterrorism Act, all food imports must be notified to the FDA using CBP's Automated Commercial System or the FDA's Prior Notice System Interface. Food subject to the prior notice requirement includes dietary supplements, infant formula, beverages (including alcoholic beverages), and pet food. There are time limits for sending the notice of food import to the FDA, based on the mode of transportation used: eight hours for food arriving by water, four hours by air or rail, and two hours by road.

The agencies responsible for regulating agricultural biotechnology in the United States are APHIS, EPA, and FDA. Under APHIS regulations, organisms and products altered or produced through modern biotechnology that are or are believed to be plant pests are subject to a permit or

notification requirement prior to being imported into the United States, moving across States, or being released from an area of physical confinement into the environment.

The EPA regulates the distribution, sale, use, and testing of plants and microbes that produce pesticidal substances. It establishes tolerances for residues of herbicides used on novel herbicide-tolerant crops. It regulates micro-organisms intended for commercial use that contain or express new combinations of traits, including "intergeneric microorganisms" formed by deliberate combinations of genetic material from different taxonomic genera.

The United States in some instances applies trade measures to enforce U.S. environmental provisions, notably those governing the use of marine resources. The enforcement of these environmental regulations is the task of two agencies: the Bureau of Oceans and International Environmental and Scientific Affairs of the Department of State, and the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. NOAA enforces both the Marine Mammal Protection Act (MMPA), to protect marine mammals, and the Endangered Species Act (ESA), which protects all six species of sea turtles in the United States.

The MMPA prohibits the importation of marine mammals and their parts or products into the United States. However, the Secretary of Commerce may issue permits allowing for the importation of living marine mammals for purposes of scientific research, enhancement, or public display. Parts and products may be imported for the purpose of scientific research. Under the MMPA yellowfin tuna from the eastern tropical Pacific can only be imported into the United States if it comes from a country with an "affirmative finding". Four countries have received such a finding: Ecuador, El Salvador, Mexico, and Spain. Tuna from these countries can only be labeled as "dolphin safe" if caught without the chase and encirclement of dolphins in the entire trip and without killing or seriously injuring any dolphins in the set in which the tuna was caught.

The United States prohibits imports of shrimp and shrimp products harvested with technology that may adversely affect sea turtle species. Exempt from the ban are products from countries that have been certified by the Department of State "as having taken certain specific measures to reduce the incidental taking of sea turtles" or as having a fishing environment that does not pose a threat to sea turtles. Certification takes place annually. Shrimp harvested in cold-water regions is also exempt. In April 2005, the Department of State certified 37 sources as meeting the requirements for export of shrimp to the United States.

There are various instances of firms who have invested heavily to become HACCP certified, but because there is no national traceability mechanism, still cannot export from their CARICOM-based facilities. As usual, we encourage companies in the food processing sector who interface with this regulatory machinery to contact us with your experiences at privatesector@crnm.org. These could prove invaluable in negotiating to improving our capacity to meet these requirements and unlock more export sales.