



**Legal opinion on the recently announced ban on
plastic bags, plastic straws and Styrofoam in
Jamaica**

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This document contains the professional opinion of the Jamaica Environment Trust (JET). In arriving at our opinion, we made every reasonable attempt to ensure that our resource persons are informed and reliable and experts in the area in which their comment and analysis is sought. JET encourages readers to apply their own critical analysis to the information provided in this document and by others, particularly where JET's opinion differs from those others.

On September 17, 2018, Minister without Portfolio in the Ministry of Economic Growth and Job Creation, the Hon. Daryl Vaz, announced the Government of Jamaica's (GOJ's) new strategy to address the country's widespread problem of plastic pollution at a press conference at the Office of the Prime Minister in Kingston, Jamaica. The strategies outlined were:

1. Plastic Bags:

- There will be a ban on the importation, manufacturing, distribution, and use of all single-use plastic carrier bags commonly called scandal bags.
- The ban applies to bags with dimensions at or below 24 inches by 24 inches.
- The ban excludes single-use plastic bags utilised to maintain public health or food safety standards such as those used to package raw meats, flour, rice, sugar and baked goods such as bread,
- Manufacturers and importers of shopping bags made of polyethylene must apply to the National Environment and Planning Agency (NEPA) for limited exemptions. These applications will be considered on a case-by-case basis for continued manufacture and importation no later than January 1, 2021.

2. Plastic Straws:

- There will be a ban on the import and manufacture of plastic drinking straws.
- There will be no ban on wax-lined paper straws or other non-plastic straws.
- The importation of straws attached to lunch juice boxes and drink pouches will be banned as at January 1, 2021. This deadline was arrived at based on the Government's discussions with the private sector regarding the timeframe for the conversion of existing equipment.
- For the medical sector as well as persons with disabilities, drinking straws made from alternative materials such as paper or bamboo are not always suitable. In light of this, exemptions will be examined in consultation with key stakeholders. Applications for such exemptions should be applied through the NEPA

3. Styrofoam

- The ban will apply to the importation of expanded polystyrene foam, commonly referred to as Styrofoam, used as finished goods in the food and beverage industry i.e. food and beverage containers.
- The local manufacture and distribution of polystyrene foam for use as finished goods in the food and beverage industry will be banned as at January 1, 2020.
- The use of polystyrene for the packaging of food items such as raw meats will be exempt.
- Producers of products which utilise such packaging must apply to NEPA for limited exemptions.
- Industry is encouraged to manufacture/distribute paper-based and other environmentally friendly alternatives for the domestic market.

The GOJ has indicated that they will be addressing the ban on under the Trade Act

Does the Trade Act adequately deal with the ban on importation and manufacturing of plastic bags, plastic straws and Styrofoam?

The Trade Act 1955, last amended 2009 does give the Minister the power to control imports, exports, hiring and prices under **section 8** of the Act which states inter alia:

*8.-(1) Subject to the provisions of subsection (2), the Minister **may by order provide for –***

(a) prohibiting absolutely the importation or exportation of goods or any class or description of goods from or to any country;

(b) prohibiting the importation or exportation of goods or any class or description of goods from or to any country except under the authority of a licence granted by the Minister;

(c) regulating the distribution, purchase or sale of goods or any class or description of goods;

(d) controlling the prices at which goods or any class or description of goods may be sold, whether by wholesale or retail;

(e) the furnishing by persons carrying on or employed in connection with any trade or business of information concerning all or any of the elements of the cost or of the sale price of goods or any class or description of goods bought or sold whether by wholesale or retail in such trade or business;

Section 10 of the Act deals with the power of the Minister to provide mechanisms for compliance and accounting. Where persons are involved in the business or trade of regulated items (meaning items which fall under section 8 of this Act) and there is a breach, the offender is liable to on summary conviction thereof before a Resident Magistrate to such **fine not exceeding two million dollars or to such term of imprisonment with or without hard labour not exceeding two years**. This penalty does not apply to the importation of goods or of any class or description of goods into Jamaica. **In those circumstances, the Customs Act will apply for the penalties for the importation of banned substances as they would be considered uncustomed goods.**

10.-(1) An order made by the Minister under the provisions of section 8-

(a) may provide that persons carrying on or employed in connection with any trade or business shall produce to the Minister, or any person authorized in that behalf by the Minister, such books, accounts or other documents relating to their trade or business as the Minister may require and that such persons shall furnish to the Minister, such estimates, returns or information as the Minister may from time to time require; and

(b) may provide for such supplementary and incidental matters as may be necessary or expedient for the purposes of the order including in particular the entering and inspection of premises to which the order relates by any person specified in the order with a view to securing compliance therewith; and

(c) notwithstanding anything contained in the Interpretation Act, may provide that, subject to affirmative resolution, in respect of any breach of the provisions of the order, other than a breach to which subsection (2) refers, that the offender shall be liable on summary conviction thereof before a Resident Magistrate to such fine not exceeding two million dollars or to such term of imprisonment with or without hard labour not exceeding two years as may be prescribed therein.

(2) Where under any such order the importation of goods or of any class or description of goods, from any country is prohibited except under the authority of a licence granted by the Minister, any goods imported in breach of such prohibition shall be deemed to be prohibited goods within the meaning of the Customs Act, which have been imported contrary to the prohibition against their importation, and the provisions of section 210 of the said Act shall apply accordingly.

The Minister can however grant licences for the importation of the prohibited goods on such conditions as prescribed by the Act.

Therefore, it is our view that if there is a well worded order applied by the Minister under the Trade Act and the Customs Act (relating to importation of uncustomed goods within the borders), then it should be sufficient to:

- **ban the importation, manufacturing, distribution of single-use plastic carrier bags, plastic drinking straws and expanded polystyrene foam (Styrofoam) food and beverage containers into Jamaica;**
- **grant exemptions to the ban; and**
- **enforce the ban**

**Jamaica Environment Trust
September 28, 2018**

Addendum to Legal Opinion on the recently announced ban on plastic bags, plastic straws and Styrofoam in Jamaica

The GOJ has indicated that it will also be using The Standards Act (1969) and The Natural Resources Conservation Authority Act (1991) to address the recently announced ban on plastic bags, plastic straws and Styrofoam in Jamaica.

THE STANDARDS ACT 1969

The Standards Act allows the Minister to make regulations for:

11 - (c) prohibiting, either absolutely or subject to such conditions as may be prescribed and regulating the sale of any commodity or class of commodity or the use in any trade or business of any commodity, process or practice, in respect of which a compulsory standard specification has been declared unless the same conforms to that specification;

(d) with respect to the packaging, labelling, description and advertising of any commodity for which a standard specification has been declared;

(e) with respect to the inspection and testing of commodities, processes and practices and the entry upon premises for these purposes;

(f) requiring such persons as may be prescribed to keep in relation to such commodities, processes or practices as may be prescribed, such books and records as the Bureau may consider necessary for the proper administration and enforcement of this Act;

(i) providing for the condemnation, seizure, detention and disposal of any commodity or class of commodity- (i) which does not conform to the compulsory standard specification which has been declared in respect thereto; or (ii) the labelling of which does not comply with regulations made in respect thereto;

(j) prescribing anything which may be or is required to be prescribed under this Act;

(k) prescribing penalties for the breach of any regulation not exceeding a fine of five hundred thousand dollars or imprisonment with or without hard labour for a term of twelve months.

NATURAL RESOURCES CONSERVATION AUTHORITY (NRCA) ACT, 1991

The NRCA Act states:

32 - (1) Where the Authority reports to the Minister- (a) the existence of any local condition in any part of the Island tending to endanger the environment, and there are no powers under any law other than this section whereby such condition may be removed or guarded against; or (b) **that a natural resource in any part of the Island appears to be threatened with destruction or degradation and that measures apart from, or in addition to those specifically provided for in this Act should be taken promptly, the Minister may by order published in the Gazette, direct the enforcement of any measures recommended by the Authority or any measures that he thinks expedient for removing or otherwise**

guarding against any such condition and the probable consequences thereof, or for preventing or mitigating as far as possible such destruction or degradation. (2) An order made under subsection (1) may be made to extend to the whole Island or to any part thereof and may contain such ancillary and supplementary matters as the Minister thinks fit.

Therefore, it is our view that if the following are applied:

- a. Trade Act and Customs Act to regulate the importation of uncustomed goods within the borders;
- b. Trade Act to regulate the distribution, purchase or sale of goods or any class or description of goods within the borders;
- c. Standards Act to regulate the sale of any commodity or class of commodity or the use in any trade or business of any commodity, process or practice, packaging, labelling, description and advertising of any commodity where a compulsory standard specification has been declared (applicable where there will be permits/licenses have been granted);
- d. NRCA Act to enforce prohibitory measures for environmental protection;

They should be sufficient to:

- a. ban the importation, manufacturing, distribution of single-use plastic carrier bags, plastic drinking straws and expanded polystyrene foam (Styrofoam) food and beverage containers into Jamaica;
- b. grant exemptions to the ban; and
- c. enforce the ban

**Jamaica Environment Trust
October 19, 2018**