



Special Report of Investigation

**Concerning Alleged Breaches of
Prescribed Licences for the Scrap
Metal Industry – Exportation of Scrap
Metal in Violation of two (2)
Ministerial Prohibition Orders**

Integrity Commission



This Publication until tabled in Parliament shall be confidential.

Sections 55 (4) and (5) of the Integrity Commission Act states:

“(4) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Commission under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(5) For the purposes of the Defamation Act, any report made by the Commission under this Act and any fair and accurate comment thereon shall be deemed to be privileged.”

Section 56 of the Integrity Commission Act states:

“Subject to section 42(3)(b), every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act (hereinafter called a concerned person) shall regard and deal with as secret and confidential, all information, statutory declarations, government contracts, prescribed licences and all other matters relating to any matter before the Commission, except that no disclosure made by the Commission or other concerned person in the proceedings for an offence under this Act or under the Perjury Act, by virtue of section 17(2) of that Act, shall be deemed inconsistent with any duty imposed by this subsection.

(2) The obligation as to secrecy and confidentiality imposed by this section, in relation to any documents, or information obtained under this Act continues to apply to a person despite the person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every concerned person who is required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate any such information, declaration, letter and other document or thing referred to in subsection (1) disclosed to him in the execution of any of the provisions of this Act to any person —

- (a) other than a person to whom he is authorized under this Act to communicate it; or
- (b) otherwise than for the purpose of this Act,

commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.

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URGENT & CONFIDENTIAL

February 9, 2021

Mr. Greg Christie
Executive Director
Integrity Commission
1st Floor, PIOJ Building
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Dear Mr. Christie:

Re: Special Report of Investigation Concerning Alleged Breaches of Prescribed Licences for the Scrap Metal Industry – Exportation of Scrap Metal in Violation of two (2) Ministerial Prohibition Orders

The then Office of the Contractor General (OCG) initiated an investigation into the captioned matter and I now inform you, that a draft report has been completed.

In the instant regard, I hereby submit a copy of the referenced Report, pursuant to Section 54 of the Integrity Commission Act.

Yours faithfully,

Kevon Stephenson, JP
Director of Investigation
for and on behalf of the Integrity Commission



Table of Contents

1.	Summary of Investigation and Findings	6
1.4	Findings	8
1.6	Recommendations.....	10
2.	Chapter 1 – Background	12
2.2	Initiation of the Investigation	12
2.3	Jurisdiction and Decision to Investigate.....	12
2.4	The Investigation	14
2.5	Individuals and/or Entities Pertinent to the Investigation	14
3.	Chapter 2 – Terms of Reference	17
4.	Chapter 3 – The Law, Evidence & Discussion of the Findings	19
4.2	The Law and applicable Policies	19
4.17	The Evidence.....	25
4.19	Whether the alleged exportation of containers of scrap metal, during the period of the ban imposed on the scrap metal trade, was in violation of the Ministerial Prohibition Orders.	26
4.20	Whether the containers of scrap metal, alleged to have been exported during the period of the ban imposed on the scrap metal trade were exported without the requisite license(s) and/or permit(s) issued by the Trade Board Limited and/or JAMPRO	28
4.21	Whether the Hon. Dr. Christopher Tuffon, former Minister and/or Mr. Reginald Budhan, the then Permanent Secretary in the then MIIC, for and on behalf of the former Minister, had in fact authorised and/or facilitated the Hon. Danville Walker, OJ, the former Commissioner of Customs, in any way, to allow scrap metal exporters, generators and/or agents of same, to export containers of scrap metal during the period in which the then Minister had issued two (2) Ministerial Prohibition Orders, which, inter alia, imposed a ban on the Scrap Metal Trade	29



4.22	Whether the former Commissioner of Customs, the Hon. Danville Walker, OJ., was acting within his powers, when he authorised fifteen (15) scrap metal entities, generators and/or agents of same, to export scrap metal, under the cover of a letter dated October 10, 2011, addressed to the General Manager of the Shipping Association of Jamaica (SAJ), during the period of the ban imposed on the Scrap Metal Trade.....	31
4.23	Whether the containers, exported by scrap metal exporters, generators and/or agents of same, during the period in which the ban was imposed on the Scrap Metal Trade in Jamaica, were exported in accordance with the exportation laws, policy(ies) and/or procedure(s), (if any), of the then MIIC, the JCD and/or any other governing Public Body.....	31
4.24	To ascertain whether any or all of the scrap metal exporters and/or entities who/which are identified to have exported scrap metal, during the period in which the ban was imposed on the Scrap Metal Trade, if any, were legitimately exempted from the said ban, by the then MIIC and/or the Government of Jamaica, and the circumstances under which such exemption was granted.	50
5.	Chapter 4 – Conclusions & Recommendations	52
6.	Chapter 5 – Anti Corruption Initiatives	57



1. Summary of Investigation and Findings

- 1.1 The investigation was initiated by the then Office of the Contractor General (OCG) to examine circumstances surrounding alleged breaches associated with the award and use of certain prescribed licences for the Scrap Metal Industry, regarding the export of containers of scrap metal, in violation of a Ministerial Prohibition Order which had banned such exports.
- 1.2 The decision of the then OCG to commence its Investigation was prompted by certain considerations which included the following:
 - 1.2.1 On August 29, 2011, the Cabinet of Jamaica granted approval for the institution of a ban on the exportation of scrap metal. By way of a Ministerial Prohibition Order dated August 31, 2011, the said ban became effective on September 16, 2011;
 - 1.2.2 Certain public statements made by Senior Public Officials regarding the matter, inclusive of the Hon. Dr. Christopher Tufton, the then Minister in the former Ministry of Industry, Investment and Commerce (MIIC), Mr. Reginald Budhan, the former Permanent Secretary, and the Hon. Danville Walker, OJ, the then Commissioner of Customs. In particular, the referenced former Minister admitted to certain breaches of the Laws of Jamaica, the Ministerial Prohibition Order, as well as applicable Government Policies;
 - 1.2.3 Allegations made by the Hon. Anthony Hylton, in his then capacity as the Opposition Spokesman on the then MIIC, that the export of scrap metal was continuing through the 'backdoor' despite the ban;
 - 1.2.4 The fact that the then OCG had sight of a letter which was addressed to Mr. Trevor Riley, General Manager of the Shipping Association of Jamaica, under the signature of the then Commissioner of Customs, the Hon. Danville Walker, OJ., which



provided a list of some fifteen (15) entities which were reportedly authorized to export scrap metal; and

1.2.5 The gravity of media articles which have, *inter alia*, quoted the Hon. Dr. Christopher Tufton, the then Minister of Industry, Investment and Commerce, as conceding to a breach of the Ministerial Prohibition Order which placed a ban on the exportation of scrap metal.

1.3 Having regard to the foregoing, and based upon the representations which were made to the then OCG and information reviewed, the circumstances surrounding the JCD's decision to allow containers of scrap metal to be exported without the requisite approval of the then MIIC, licences/permits from the Trade Board Limited and registration from JAMPRO, appears to be tainted with (a) irregularity, (b) impropriety, (c) a lack of transparency, and (d) breaches of, the following Ministerial Prohibition Orders, legislations, regulations and/or policies:

1.3.1 The **Trade (Scrap Metal) (Prohibition of Dealing) Order, 2011** and the **Trade (Scrap Metal) (Prohibition of Dealing) (No.2) Order, 2011**;

1.3.2 Section 13(1) of the **Trade Act**;

1.3.3 Sections 4 (2), 11 and 30 of the **Trade (Scrap Metal) Regulations (2007)**; and

1.3.4 Section 5 of the **Jamaica Promotions Corporation Act, 1990**

1.3.5 Section 151 of the **Customs Act**.



1.4 Findings

- 1.4.1 A ban was imposed on the exportation of scrap metal by way of a Ministerial Prohibition Order which became effective on July 29, 2011. Another Ministerial Prohibition Order further extended the effective date of the ban to September 16, 2011, purportedly to facilitate the clearing of existing inventories in the possession of exporters.
- 1.4.2 The exportation of scrap metal is required to undergo a process which includes satisfying certain procedures and rules which are established by the then Ministry of Investment, Industry and Commerce (MIIC), the Trade Board Limited (TBL), Jamaica Promotions Limited (JAMPRO) (for which the referenced Ministry has oversight responsibility) and the Jamaica Customs Agency (then Jamaica Customs Department).
- 1.4.3 In order for an entity to become an authorised exporter of scrap metal, that entity is required to (a) meet the registration requirements of JAMPRO, and (b) be approved and issued the requisite licence from the Trade Board Limited for scrap metal exportation.
- 1.4.4 The only exceptions to the Ministerial Prohibition Order were (a) exportation of scrap metal entered on or before September 16, 2011; and (b) where scrap metal was generated by a body in its normal course of business and **not** by a person acting on behalf of that body whether as a sub-contractor, agent or in any other capacity.
- 1.4.5 The former Commissioner of Customs, the Hon. Danville Walker, OJ, confirmed that he issued a letter to Mr. Trevor Riley, General Manager, Shipping Association of Jamaica (SAJ), dated October 10, 2011, which provided a list of some fifteen (15) scrap metal



generators, agents and/or exporters which he stated "... [generated] *their own scrap and as such are authorized to export same...*"

- 1.4.6 The SAJ plays no role in the exportation of scrap metal. However, the then OCG was advised by the President and General Manager of the SAJ that the reason for the former Commissioner of Customs' letter of October 10, 2011, was to authorize the Association to allow the named entities to ship containers of scrap metal, subsequent to the effective date of the ban.
- 1.4.7 Of the scrap metal generators, agents and/or exporters listed in the JCD's letter of October 10, 2011, the President of the Scrap Metal Federation, Mr. Jonathon Aarons, identified fourteen (14) entities as members of the Federation and confirmed that the entities were not generators but exporters of scrap metal. These entities were identified by Mr. Aarons as having contractual relationships with 'generators' of scrap metal to export on behalf of the generators.
- 1.4.8 Neither the former Minister nor the then Permanent Secretary in the then MIIC were aware that the former Commissioner of Customs, the Hon. Danville Walker, OJ., had authorised certain entities to ship containers of scrap metal subsequent to the Ministerial Prohibition Orders which imposed a ban on the scrap metal trade.
- 1.4.9 No evidence has been unearthed to indicate that the Hon. Dr. Christopher Tuffon, MP, the then Minister of Industry, Investment and Commerce, had allowed and/or issued a licence or permit to any scrap metal entity to exempt such entity from the ban on the scrap metal trade for the period under review.
- 1.4.10 There is no evidence of an approval, from the Cabinet, the MIIC, the Trade Board Limited or JAMPRO, which authorised any of the named



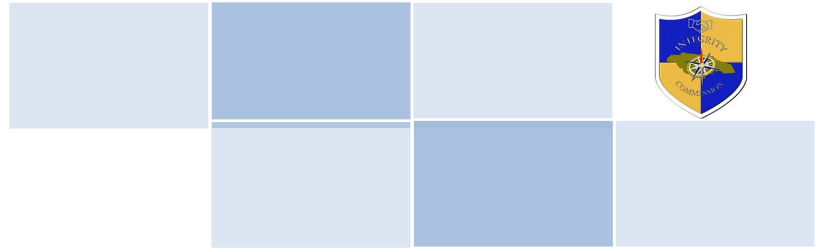
entities to export containers of scrap metal during the periods in which the ban was in effect.

1.5 Conclusions of the Director of Investigation

- 1.5.1 The evidence obtained by the then OCG confirms that approximately 122 containers of scrap metal were exported on behalf of eleven (11) of the scrap metal generators, agents and/or exporters named in the JCD's letter dated October 11, 2011, subsequent to the effective date of the ban, without the requisite licence(s) and/or permit(s) from the Trade Board Limited and JAMPRO, in contravention of the Ministerial Prohibition Orders.
- 1.5.2 The authorization and facilitation of the exportation of scrap metal by the Jamaica Customs Department (JCD), subsequent to the ban on the scrap metal trade, was also in contravention **of Section 13 (1) of the Trade Act, Section 4 (2) of the Trade (Scrap Metal) Regulations (2007) and Section 151 of the Customs Act.**

1.6 Recommendations

- 1.6.1 The DI recommends that the identified breaches of the following legislations and regulations be thoroughly ventilated by the Director of Corruption Prosecution:
- 1.6.1.1 **Trade (Scrap Metal) (Prohibition of Dealing) Order, 2011 and the Trade (Scrap Metal) (Prohibition of Dealing) (No.2) Order, 2011;**
 - 1.6.1.2 Section 13 (1) of the **Trade Act;**
 - 1.6.1.3 Regulation 4 (2) of the **Trade (Scrap Metal) Regulations (2007);** and



1.6.1.4 Section 151 of the **Customs Act**.

1.6.2 The DI recommends that the Jamaica Customs Department exercise due care and implement a system of checks and balances to ensure that all scrap metal exporters/entities are in possession of the requisite licence(s) and permit(s) from the Trade Board Limited (TBL), and are duly registered with JAMPRO prior to authorizing, facilitating and/or allowing such exporters/entities to ship containers of scrap metal.



2. Chapter 1 – Background

2.1 This chapter sets out the background information concerning the investigation, the jurisdiction and the decision to investigate, the scope of the investigation and provides a profile of the subject of the investigation.

2.2 Initiation of the Investigation

2.2.1 The then OCG's decision to undertake an investigation into the captioned matter was predicated on the jurisdiction provided in **Sections 4 and 15** of the then applicable **Contractor General Act**.

2.2.2 Having regard to the allegations which were received, the OCG was advised that the requisite licences/permits which were required for the exportation of scrap metal were not issued to certain scrap metal exporters/entities subsequent to the ban which was imposed on the scrap metal trade and that containers of scrap metal were shipped on the authorization of the Jamaica Customs Department (JCD), contrary to the provisions of the **Trade Act** and the **Trade (Scrap Metal) Regulations**.

2.3 Jurisdiction and Decision to Investigate

2.3.1 By way of definition, **Section 2 of the then applicable Contractor General Act** provides, inter alia, as follows:

"*prescribed licence*" means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;

"*Public body*" means –

(a) Ministry, department or agency of government;



- (b) A statutory body or authority;
- (c) Any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company.

2.3.2 **Section 63, the Integrity Commission Act** provides, inter alia,

“63-- (1) Notwithstanding the amendment or repeal of an Act under this Part, as from the appointed day any legal proceedings or claims pending immediately before the appointed day, which, before the appointed day, were brought, continued or enforced by or against any of the respective Commissions, shall be brought, continued or enforced by or against the Commission in the same manner as they would have been brought, continued or enforced before the appointed

(2) The Commission established under this Act may—

- (a) commence or assume any investigation, swear any information or commence or conduct any prosecution in respect of an offence committed, or alleged to be committed before the appointed day under a provision of either of the amended Acts that has been amended or repealed by this Act, or under the repealed Act, and each such amended or repealed provision and the repealed Act shall be deemed to remain in full force and effect, for the purposes of any such investigation, information and prosecution as it had been immediately before the appointed day; or



(b) continue or do any act, thing or investigation which was pending before the appointed day.

(3) The Court shall, in respect of any proceedings instituted following any investigation under subsection (2), have all the powers that it could exercise pursuant to the amended Acts and the repealed Act as if they remain in full force and effect.”

2.3.3 Based on the foregoing provisions, the Director of Investigation deemed that an investigation was warranted.

2.4 The Investigation

2.4.1 During the course of the investigation, the then OCG conducted a comprehensive analysis of the sworn certified statements, supporting documents and records provided by the Respondents who were requisitioned.

2.5 Individuals and/or Entities Pertinent to the Investigation

2.5.1 The following Public Officials/Officers, former and present, were required to provide sworn written responses to formal Requisitions directed to them:

1. Dr. the Hon. Christopher Tufton, former Minister, then Ministry of Investment, Industry and Commerce;
2. Mr. Reginald Budhan, then Permanent Secretary, in the then Ministry of Investment, Industry and Commerce;
3. The Hon. Danville Walker, OJ., former Commissioner of Customs;
4. Mrs. Sancia Templar-Bennett, former President, JAMPRO;
5. Mr. Douglas Webster, former Trade Administrator, Trade Board Limited;



6. Mr. Devon Manahan, Manager, Scrap Metal Unit, Jamaica Customs Department; and
7. Mr. Nashwell Thomas, Senior Customs, Officer, Jamaica Customs Department;

2.5.2 The following non-Public Official/Officer was required to provide a sworn written response to a formal Requisition directed to him:

1. Mr. Jonathon Aarons, President, Scrap Metal Federation

2.5.3 The following individuals and/or entities, identified as both exporters and/or generators of scrap metal, were required to attend hearings and/or provide sworn written responses to formal Requisitions directed to them:

1. Mr. Madhavaiah Nakka, Managing Director, Virtual Metals Limited;
2. Mr. Raymond Villiers, Director and Chief Operating Officer, VGC Holdings Limited;
3. Mr. Hisatsugu Hirai, Chairman, then Jamaica Public Service Company Limited (JPS);
4. Ms. Roja Buma, Managing Director, SAI Supreme International Limited;
5. Mr. Shamsideen Kenshiro, Managing Director, Vanguard Ventures Limited;
6. Mr. Omar Williams, Managing Director, O.R. Williams & Associates;
7. Ms. Sharon Thomas, then General Manager, IGL Limited;
8. Ms. Nadine Hamilton, Managing Director, Hamilton Demolition & Scrap Traders;
9. Mr. Ivan Irikov, then Managing Director, West Indies Alumina Company (WINDALCO);
10. Mr. Jerome Maxwell, then Managing Director, JAMALCO;



11. Mr. Joshua Thomas, Managing Director, St. Catherine Metal Recyclers Limited;
12. Mr. Owen Crooks, General Manager, Jamaica Railway Corporation;
13. Mr. Bilton Graham, Kurbriton Limited;
14. Mr. Garfield Sinclair, then President, LIME;
15. Mr. Basil Saddler, Managing Director, Basmag Services Limited;
16. Mr. Evon Brown, then Managing Director, National Rums of Jamaica Limited;
17. Mr. Zephaniah Aarons, Managing Director, Jamaica Metals & Recycling Projects Limited;
18. Mr. Christopher Barnes, Managing Director, The Gleaner Company Limited;
19. Mr. Douglas Benjamin, Island Metals Jamaica Limited;
20. Mr. Garfield Allen, Managing Director, Recimetal Jamaica Limited;
21. Mr. Sudhakar Ramani, Chief Executive Officer, Tropicair Limited;
22. Mrs. Sharon Kleinhans, Managing Director, Caribbean Scrap Metal Limited;
23. Mr. Morlee Williams, Managing Director, Williams Scrap Metal Limited;
24. Mr. Manoharan Thankamma, Managing Director, Swathi Impex Limited;
25. Mr. Peter Graham, Chief Executive Officer, Gas Products Limited;
26. Mrs. Dorothea Gordon-Smith, Managing Director, Garbage Disposal & Sanitation Systems Limited; and
27. Mr. Damion Beharie, Managing Director, Chand Finance and Export Limited.



3. Chapter 2 – Terms of Reference

3.1 This chapter sets out the scope of the investigation and the issues that were explored.

3.2 In conducting this investigation, the then OCG set out to establish the following:

3.2.1 Whether the alleged exportation of containers of scrap metal, during the period of the ban imposed on the scrap metal trade, was in violation of the Ministerial Prohibition Orders;

3.2.2 Whether the containers of scrap metal, alleged to have been exported during the period of the ban imposed on the scrap metal trade were exported without the requisite license(s) and/or permit(s) issued by the Trade Board Limited (TBL) and/or JAMPRO, in contravention of any applicable Laws of Jamaica or policies;

3.2.3 Whether the Hon. Dr. Christopher Tuffon, former Minister in the then MIIC, and/or Mr. Reginald Budhan, the then Permanent Secretary, for and on behalf of the former Minister, had in fact authorized and/or facilitated the Hon. Danville Walker, OJ, the former Commissioner of Customs, in any way, to allow scrap metal exporters, generators and/or agents of same, to export containers of scrap metal during the period in which the then Minister had issued two (2) Ministerial Prohibition Orders, which, *inter alia*, imposed a ban on the Scrap Metal Trade;

3.2.4 Whether the former Commissioner of Customs, the Hon. Danville Walker, OJ., was acting within his powers, when he authorized fifteen



(15) scrap metal entities, generators and/or agents of same, to export scrap metal, under the cover of a letter dated October 10, 2011, addressed to the General Manager of the Shipping Association of Jamaica (SAJ), during the period of the ban imposed on the Scrap Metal Trade;

- 3.2.5 Whether the containers, exported by scrap metal exporters, generators and/or agents of same, during the period in which the ban was imposed on the Scrap Metal Trade in Jamaica, were exported in accordance with the exportation policy(ies) and/or procedure(s), if any, of the then MIIC, the JCD and/or any other governing Public Body;
- 3.2.6 To ascertain whether any or all of the scrap metal exporters and/or entities who/which are identified to have exported scrap metal, during the period in which the ban was imposed on the Scrap Metal Trade, if any, were legitimately exempted from the said ban, by the then MIIC and/or the Government of Jamaica, and the circumstances under which such exemption was granted;
- 3.2.7 To determine whether any recommendations ought to be made to the Director of Corruption Prosecution; and
- 3.2.8 To determine whether recommendations ought to be made in respect of Anti-Corruption initiatives.



4. Chapter 3 – The Law, Evidence & Discussion of the Findings

4.1 The chapter sets out the relevant laws in respect of the investigation, the evidence gathered and the discussion of the findings.

4.2 **The Law and applicable Policies governing the Procedure for the Export of Scrap Metal**

4.3 In an effort to obtain a full understanding of the law, internal policy(ies), process(es) and procedures which are employed regarding the exportation of scrap metal, the then OCG requisitioned the respective Public Officials/Officers to provide insight in the said regard.

4.4 A summary was provided by Ms. Michelle Bryan, Director of Marine Operations at the Jamaica Customs Department (JCD), with responsibility for the overall management of the Scrap Metal Unit. However, Ms. Bryan advised the then OCG that she was not aware of any documented policies/procedures in relation to the operations of the Unit, but that policies and processes were communicated through correspondence forwarded from the Commissioner of Customs.

4.5 According to Ms. Bryan, the registration process required prospective exporters to submit a Letter of Application, Registration Documents, Tax Compliance Certificate (TCC), Taxpayer Registration Number (TRN), and Valid Identification to the Manager/Supervisor of the Scrap Metal Unit of the JCD. Upon receipt, the documents are reviewed and an officer is assigned to conduct a site visit to determine the suitability of the proposed location for loading scrap metal.



4.6 After the site visit, a Site Inspection Report is generated and the application is subjected to a further review by the Deputy Commissioner (Operations).

4.7 Once approved, a letter of recommendation is issued to the Trade Board for an export licence to be granted and to JAMPRO, for the approved scrap metal exporter to be registered.

4.8 **Jamaica Promotions Corporation Act, 1990 (JAMPRO Act)**

4.8.1 Section 5 of the JAMPRO Act empowers the Corporation to keep “...a register (to be known as the Register of Approved Exporters) of the names, addresses and such other particulars as may be prescribed, of such exporters as are approved by the Corporation and apply in the prescribed manner to be so registered.”

4.8.2 In accordance with the aforementioned section, Mrs. Templar-Bennett, former President, JAMPRO advised the then OCG, that a prospective scrap metal exporter (individual or entity), must satisfy the following requirements to be registered with JAMPRO as an authorized exporter:

- 4.8.2.1 Completion of an Application Form;
- 4.8.2.2 Submission of the requisite documents;
- 4.8.2.3 A Letter of Approval from Jamaica Customs which is required to operate as a Scrap Metal exporter;
- 4.8.2.4 Payment of the requisite Registration Fee; and
- 4.8.2.5 Upon submission of all necessary documents, a JAMPRO Officer makes a verification visit to the premises of the company/individual. Thereafter, the application is reviewed to determine whether it will be approved, or if additional information is required to complete the process.



4.8.3 Upon registration, subject to certain conditions, the following process ensues for the arrangement of shipments:

- 4.8.3.1 An officer from the approved entity submits a Shipment Authorization Letter request (in respect of each shipment) to JAMPRO, duly signed by an authorized signatory;
- 4.8.3.2 JAMPRO prepares a letter of authorization, addressed to Jamaica Customs Department (JCD) for processing of export documentation with the JCD.
- 4.8.3.3 The exporter then contacts TBL in order to apply for an export license.

4.9 The Trade Board Limited (TBL) is the agency of the MIIC with responsibility for all licences/permits issued for the exportation of scrap metal. It functions to register scrap metal dealers and carriers/truckers of scrap metal and issues the respective licences/permits as either Type I dealers (itinerant traders who/which are not allowed to export) or Type II dealers (traders who/which are allowed to export).

4.10 The registration is valid for one (1) year (renewable) and only dealers whose registration is current should be allowed to engage in the scrap metal trade, as provided for by the **Trade Act** and associated **Trade (Scrap Metal) Regulations**.

4.11 **Trade Act, 1955**

4.11.1 By virtue of the powers of the Minister as outlined under Section 18(1) of the **Trade Act**, the **Trade (Scrap Metal) Regulations 2007** were developed.

4.11.2 **The Trade (Scrap Metal) Regulations (2007)**



4.11.2.1 Regulation 4 (2) provides that “A person shall not export any specified scrap metal-

(a) unless he is an approved exporter acting under the authority of an export licence granted by the Minister under regulation 12(3)(a); and

(b) except in accordance with the terms and conditions of the export licence.”

4.11.3 In order to obtain the requisite export license, the TBL requires that exporters be registered in accordance with the aforementioned sections of the **Trade Act** and the **Trade (Scrap Metal) Regulations**.

4.11.4 The registration process was outlined by the then Minister of the MIIC, Dr. the Hon. Christopher Tufton, and then Permanent Secretary, Mr. Reginald Budhan, in their responses dated December 2 and 5, 2011 respectively.

4.11.5 The process requires that applicants/exporters submit an Approval Letter from Jamaica Customs and a Scrap Metal Inspection Certificate, to the TBL office. The documents and payment are received by a customer service representative who enters the exporter’s details and the particulars of each shipment into the Trade Board Information System (TBIS).

4.11.6 An officer with supervisory access to the TBIS – usually the Assistant Trade Administrator or a designate – assigns a processing officer to carry out due diligence, entailing verification of the documents submitted and ensuring that the data captured in TBIS is consistent with that supplied by the applicant. Provided that there is no discrepancy or other issue with the application, the processing officer will accord preliminary approval for the license.



4.11.7 When the processing officer has completed the requisite due diligence, the documents are passed on to a supervisor who carries out further assessment before granting a final approval of the permit, which is done electronically via TBIS. The licence is printed in triplicate and two (2) copies of the licence are given to the exporter.

4.11.8 Mr. Douglas Webster, Trade Administrator, TBL in his response to the then OCG, which was dated December 2, 2011, corroborated the above mentioned export licensing process.

4.11.9 Mr. Webster, further advised the then OCG that after a scrap metal exporter is duly registered with the entity, the TBL also issues a shipment certificate for each shipment of scrap metal upon receipt of an inspection certificate from Jamaica Customs, indicating that the container of scrap metal has been inspected at the exporter's loading site, no stolen material has been identified and the container has been sealed.

4.12 Mr. Devon Manahan, Manager, Scrap Metal Unit, (JCD) stated that subsequent to receiving the export license, a letter is issued to JAMPRO and MIIIC by the Deputy Commissioner (Operations).

4.13 The Deputy Commissioner also issues a letter to the SAJ to facilitate the release of empty containers to licensed exporters.

4.14 **Customs Act, 1941**

4.14.1 Upon receipt of the empty container, the exporter then notifies the JCD of its intention to load the container, in order to ensure that Customs Officers are present to witness and supervise the loading



process of the container(s), as provided for under the **Customs Act** and associated **Customs Regulations**.

4.14.2 By virtue of the powers of the Minister as outlined under Section 257 of the **Customs Act**, the **Customs Regulations** were developed.

4.14.3 **Customs Regulations, 1955**

4.14.3.1 Regulation 79 which provides that “No goods in respect of which bond is required under section 152 of the Act and no goods in respect of which duty has been deposited pending exportation or payment of duty guaranteed in the event of non-exportation shall, unless the Collector-General shall otherwise direct, be deemed to have been put on board an aircraft or ship or exported unless the same shall first have been entered on the prescribed form nor unless they shall have been produced thereafter and immediately prior to loading to the proper officer for examination nor unless upon examination the goods shall forthwith have been conveyed to and put on board the exporting aircraft or ship and there produced to the proper officer if he shall so require nor unless the Master or other responsible officer of the exporting aircraft or ship shall have certified on the shipping bill or other form that the goods have been received on board.”

4.15 Once the JCD is notified (either in writing or via telephone), an officer is dispatched to the exporter’s premises to conduct an inspection of the loading of containers for export. If everything is in order, the officer issues a signed inspection form to the exporter and the container is sealed.



4.16 Upon receipt of the inspection form, the exporter then approaches TBL and JAMPRO in order to obtain a shipment certificate and a letter of authorization, respectively, for each shipment to be exported. After obtaining these documents, the exporter is required to submit same to the JCD for verification.

4.17 **The Ministerial Prohibition Orders**

4.17.1 A ban was imposed on the Scrap Metal Trade by way of two Ministerial Prohibition Orders, the **Trade (Scrap Metal) (Prohibition of Dealing) Order, 2011** dated July 25, 2011 and the **Trade (Scrap Metal) (Prohibition of Dealing) (No.2) Order, 2011** dated August 31, 2011 (appended hereto as **Appendix I**), both of which were approved by the Cabinet of Jamaica.

4.17.2 By way of these Orders, the imposition of the ban on the Scrap Metal Trade became effective on July 25, 2011 and was further extended to September 16, 2011 to facilitate the clearing of existing inventories in the possession of exporters.

4.17.3 The only exceptions to the Ministerial Prohibition Order were (a) the exportation of scrap metal entered on or before September 16, 2011; and (b) where scrap metal was generated by a body in its normal course of business and not by a person acting on behalf of that body whether as a sub-contractor, agent or in any other capacity.



4.18 The Evidence & Discussion of Findings

4.19 Whether the alleged exportation of containers of scrap metal, during the period of the ban imposed on the scrap metal trade, was in violation of the Ministerial Prohibition Orders.

4.19.1 The evidence obtained by the then OCG confirms that approximately 122 containers of scrap metal were exported subsequent to the effective date of the ban. The referenced containers were exported on behalf of the following eleven (11) scrap metal exporters, generators and/or agents of same, which were named in the former Commissioner's letter dated October 10, 201, which is appended hereto as **Appendix II**:

Table 1

	Name of Entity	Containers Exported
1.	Virtual Metals Limited	15
2.	Vanguard Ventures Limited	at least 3
3.	Hamilton Demolition & Scrap Traders	2
4.	St. Catherine Metal Recyclers Limited	33
5.	Kurbriton Limited	at least 20
6.	Basmag Services Limited	at least 1
7.	Jamaica Metals & Recycling Projects Limited	at least 3
8.	Recimetal Jamaica Limited	at least 29
9.	Williams Scrap Metal Limited	1
10.	Swathi Impex Limited	at least 6
11.	Chand Finance & Export Limited	at least 3

4.19.2 The DI found that the Hon. Danville Walker, OJ, in his former capacity as the Commissioner of Customs, confirmed that he dispatched the



said letter dated October 10, 2011, to the General Manager of the Shipping Association of Jamaica (SAJ), Mr. Trevor Riley, authorizing fifteen (15) entities to export scrap metal after the effective date of the ban.

- 4.19.3 The referenced letter contradicted statements attributed to the then Permanent Secretary in the then MIIC on October 28, 2011, at which time it was alleged that only two entities were so authorized to export scrap metal.
- 4.19.4 Mr. Devon Manahan, Manager of the Scrap Metal Unit, JCD, by way of his response dated February 24, 2012, confirmed that of the entities listed in the letter of October 10, 2011, at least eleven (11) were allowed to export containers of scrap metal by the JCD, through the directive of the former Commissioner of Customs, the Hon. Danville Walker, OJ., after the ban was imposed between the period September 16, 2011 to October 28, 2011.
- 4.19.5 It is instructive to note that a media article published by the Jamaica Observer on November 3, 2011, which is appended hereto as **Appendix III**, quoted a 'Release' which was purportedly issued by the Jamaica Customs Department as follows "*...it is apparent that certain interpretations were made of the order by the department which were not in alliance [sic] with what the Ministry of Industry, Investment and Commerce required. The department accepts full responsibility for the misinterpretation that resulted in these scrap metal exports.*"
- 4.19.6 Dr. Christopher Tufton and Mr. Reginald Budhan, then Minister and Permanent Secretary of the then MIIC also advised the then OCG, in their responses dated December 2 and 5, 2011 that the Ministry received information from the JCD which confirmed that companies



were being facilitated to export scrap metal after the imposition of the ban. Dr. Tufton added that further checks carried out by the Ministry revealed that the entities which exported were regular scrap metal exporters and were not generators of their own scrap.

4.20 Whether the containers of scrap metal, alleged to have been exported during the period of the ban imposed on the scrap metal trade were exported without the requisite license(s) and/or permit(s) issued by the Trade Board Limited and/or JAMPRO.

4.20.1 Mr. Douglas Webster, the then Trade Administrator, Trade Board Limited, indicated to the then OCG, in his response dated December 2, 2011, that after the effective date of the ban imposed on the scrap metal trade, the Trade Board issued only one (1) licence.

4.20.2 Mr. Webster confirmed that the licence issued after the second Ministerial Prohibition Order was issued to Crown Packaging (Jamaica) Limited on September 29, 2011 based upon directives received directly from the MIIC. Mr. Webster further stated that, *“Since the issuance of this license (sic) the Trade Board has issued no other.”*

4.20.3 Mrs. Sancia Bennett-Templar, the then President of JAMPRO stated in her response to the then OCG dated November 21, 2011, that JAMPRO operated in full compliance with the said Ministerial Prohibition Orders and issued only one authorization letter after the effective date of the ban. Mrs. Bennett-Templar confirmed that JAMPRO issued an authorization letter to Jamaica Railway Corporation in accordance with the exceptions under the Ministerial Prohibition Order.



4.20.4 In relation to the requirement for export licenses/permits from the Trade Board and JAMPRO for shipments processed during the ban, Mr. Devon Manahan, Manager, Scrap Metal Unit, JCD stated the following, “...as an exporter, one has to be registered with JAMPRO as well as obtain a general annual exporter’s licence from Trade Board, however, further note that each shipment of scrap metal required an additional licence from Trade Board. It is this licence that the former Commissioner instructed the unit to forgo.”

4.20.5 Mr. Manahan further stated that the directive for the officers to forgo the TBL shipment permit and JAMPRO letter of authorization for the entities named in the former Commissioner’s letter dated October 10, 2011 was issued verbally by the then Commissioner of Customs, Mr. Danville Walker, OJ.

4.21 Whether the Hon. Dr. Christopher Tuffon, former Minister and/or Mr. Reginald Budhan, the then Permanent Secretary in the then MIIC, for and on behalf of the former Minister, had in fact authorised and/or facilitated the Hon. Danville Walker, OJ, the former Commissioner of Customs, in any way, to allow scrap metal exporters, generators and/or agents of same, to export containers of scrap metal during the period in which the then Minister had issued two (2) Ministerial Prohibition Orders, which, inter alia, imposed a ban on the Scrap Metal Trade.

4.21.1 In an attempt to ascertain the grounds upon which the former Commissioner of Customs granted such an authorisation, the then OCG sought to determine whether the Hon Dr. Christopher Tuffon or Mr. Reginald Budhan, the then Minister and Permanent Secretary respectively, or any other Senior Public Official/Officer within the MIIC, or any other Government Entity, had authorized the former Commissioner to issue such a directive.



4.21.2 Dr. Christopher Tuffon and Mr. Reginald Budhan, advised the then OCG in their responses dated December 2, and 5, 2011 that they were unaware that the former Commissioner of Customs, the Hon Danville Walker, had authorized the following fifteen (15) scrap metal exporters, generators and/or agents of same to export scrap metal after the ban was imposed:

Table 2

Scrap Metal Exporters, Generators and/or Agents listed in the JCD's letter dated October 10, 2011
1. VGC Holdings Ltd/Virtual Metals Limited
2. JPS/Supreme International
3. O.R. Williams and Associates/ Vanguard Ltd
4. WINDALCO, JPS and IGL/ Hamilton Demolition
5. JAMALCO /St. Catherine Metals
6. Jamaica Railway Cooperation/Kurbriton Limited
7. LIME/ Basmag Service
8. Clarendon Distillers/Jamaica Metal
9. Jamaica Gleaner/Island Metal
10. Jamaica Public Service/West Indies Recyclers
11. JAMALCO/Reci Metal
12. Tropicair/Caribbean Scrap Metal Limited
13. Gas Products/Williams Scrap Metal
14. JAMALCO/Swathi Impex Limited
15. Garbage Disposal & Sanitation Systems Ltd. /Chand Finance & Export Limited".



4.22 Whether the former Commissioner of Customs, the Hon. Danville Walker, OJ., was acting within his powers, when he authorised fifteen (15) scrap metal entities, generators and/or agents of same, to export scrap metal, under the cover of a letter dated October 10, 2011, addressed to the General Manager of the Shipping Association of Jamaica (SAJ), during the period of the ban imposed on the Scrap Metal Trade.

4.22.1 In response to whether it was within the authority of the former Commissioner of Customs to issue such a directive without seeking the permission or approval from the then MIIIC, the former Minister and the then Permanent Secretary responded “*Not applicable*”.

4.22.2 The DI found that neither the former Minister nor the then Permanent Secretary were (a) aware of the actions of the Hon. Danville Walker, OJ, former Commissioner of Customs to allow certain scrap metal entities/exporters subsequent to the ban, (b) aware of the reasons for which such entities were allowed or (c) aware of the legitimacy of the process through which the named entities were allowed to export as they were unable to confirm whether the entities listed in the referenced letter of October 10, 2011 were approved by the Trade Board Limited or JAMPRO to export.

4.23 Whether the containers, exported by scrap metal exporters, generators and/or agents of same, during the period in which the ban was imposed on the Scrap Metal Trade in Jamaica, were exported in accordance with the exportation laws, policy(ies) and/or procedure(s), (if any), of the then MIIIC, the JCD and/or any other governing Public Body.

4.23.1 The then OCG sought to ascertain from the respective scrap metal exporters, generators and/or agents of same; their knowledge and/or awareness of the policies and procedures for the exportation of scrap metal, the implications of the imposition of the ban and the



extent of their involvement in the exportation of scrap metal after the effective date of the ban.

4.23.2 Detailed below, are extracts from responses received from eleven (11) of the scrap metal entities listed in the JCD's letter of October 10, 2011. The information presented below is also based upon a review of the shipping documents retained from the JCD by the OCG, for the period September to October 2011:

Virtual Metals Limited (VML)

4.23.3 Mr. Madhavaiah Nakka, Managing Director of Virtual Metals Limited (VML) confirmed that the entity was aware of the ban on the export of scrap metal. In relation to his understanding of the ban, Mr. Nakka stated that he understood the ban to mean that, "... *no scrap metals should be bought or exported.*"

4.23.4 Mr. Nakka gave the following response in relation to his knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, "*The request letter was done to Scrap metal unit at Jamaica Customs. A representative of Jamaica Customs examined and approved our loading site and then they issued authorization letters for export to the Trade Board and JAMPRO which they acted upon.*"

4.23.5 Mr. Nakka also confirmed that VML was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed.

4.23.6 In response to whether the entity had acquired the requisite export licenses/permits from JAMPRO and TBL for shipments made during the period of extension of the ban, Mr. Nakka advised the then OCG,



inter alia, that, "... No, we received a telephone call from a representatives [sic] of Jamaica Customs Scrap Metal Unit who told us that our company is authorized to load containers. "

4.23.7 Mr. Nakka advised the then OCG that he was not aware of the letter dated October 10, 2011, written by the former Commissioner of Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban.

4.23.8 The then OCG found that fifteen (15) containers of scrap metal were shipped by VML after the effective date of the ban.

4.23.9 Upon a review of the entity's respective authorization file, provided by JAMPRO, the then OCG also found that the last registration for export issued by JAMPRO to VML was valid up to August 9, 2011.

4.23.10 It was also observed that the entity neither applied for nor received the requisite licence from the Trade Board Limited to export scrap metal during the extension period or subsequent to the effective date of the ban.

Vanguard Ventures Limited (VVL)

4.23.11 Mr. Sunday Daramola, Director of Operations, Vanguard Ventures Limited (VVL) confirmed that the entity was aware of the ban on the export of scrap metal. Mr. Daramola indicated that he understood the ban to mean, "... no Scrap metal exportation until further notice."

4.23.12 Mr. Daramola gave the following response in relation to his knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, "To maintain a log of all suppliers, Name, Address and Identification Cards."



4.23.13 Mr. Daramola confirmed that the entity was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed. Mr. Daramola stated, *inter alia*, that “...I got a call from Mr. Jonathan Aron [sic] (the president of the Scrap metal Federation of Jamaica) that a list had been drawn of the companies that can export and that Vanguard Ventures Limited/O.R. Williams is one of those Companies. I came back to Jamaica and shipped two 40ft containers for O.R. Williams.”

4.23.14 Mr. Daramola also stated that he was not aware of the letter dated October 10, 2011, from the former Commissioner of Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban.

4.23.15 The then OCG found that at least three (3) containers of scrap metal were shipped by VVL after the effective date of the ban.

4.23.16 The OCG also conducted a review of the respective registration file for VVL from JAMPRO and found that the last approval for shipment from JAMPRO, prior to the referenced ban was valid until June 21, 2011.

4.23.17 The then OCG found that the last export licence approved by the Trade Board Limited on behalf of VVL was issued on July 28, 2011 and was valid for a period of one (1) year. However, no shipment certificates were issued by TBL to VVL after the ban was imposed.



Hamilton Demolition & Scrap Traders (HD&ST)

4.23.18 Ms. Nadine Hamilton, Managing Director, Hamilton Demolition & Scrap Traders (HD&ST) confirmed that the entity was aware of the ban on the export of scrap metal. Ms. Hamilton indicated that she understood the ban to mean, *inter alia*, that “... *I would not be granted ant [sic] permission or license by the Trade Board or JAMPRO or be allowed by Customs to ship any containerized scrap metal out of Jamaica.*”

4.23.19 Ms. Hamilton gave the following response in relation to her knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, “...*Request and obtain a license to export scrap metal related to that contract from the Trade Board and JAMPRO. I would then seek and obtain approval from the shipping line to use their containers to export the scrap metal. On release of the container from the port of Jamaica to HD&ST the Customs Department is informed of the location where the container is to be placed and loaded.*”

4.23.20 Ms. Hamilton also confirmed that HD&ST was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed. She stated, *inter alia*, that “*Yes, I was verbally informed that HD&ST was authorized and could proceed to prepare and export scrap metal during the referenced period. The verbal authorization was given to me by Mr. Danville Walker the Commissioner of Customs of the Jamaica Customs Department and subsequently HD&ST submitted Entry Documents to the Customs Department and they were accepted.*”

4.23.21 It should be noted that Ms. Hamilton advised the then OCG that she was solicited to pay the sum of Fifty United States Dollars USD\$50.00



per ton for each container shipped as a result of her interest to export scrap metal, since the imposition of the ban. However, Ms. Hamilton declined to indicate the name(s) of the individuals/entities that made the solicitation and did not identify same as a policy of the Jamaica Customs Department. She advised the then OCG that she made no such payments and no benefits were provided to her.

4.23.22 Ms. Hamilton confirmed her knowledge of the letter dated October 10, 2011, from the former Commissioner of Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban. She advised the then OCG, *inter alia*, that “...I had meetings and telephone conversations [with] the Commissioner of Customs, the Director of Customs (Mr. Manahan), the president of the Scrap Metal Association (Mr. Aarons) and I made phone calls to the MIRC regarding the list of persons authorized to ship scrap metal.”

4.23.23 The then OCG confirmed that two (2) containers of scrap metal were shipped by HD&ST after the effective date of the ban.

4.23.24 The respective registration file for HD&ST from JAMPRO indicated that the last registration for export which the entity received from JAMPRO was valid until August 9, 2011.

4.23.25 The then OCG found that the last export licence approved by the Trade Board Limited to HD&ST was issued on July 28, 2011 and was valid for a period of one (1) year. However, no shipment certificates were issued by TBL to HD&ST after the ban was imposed.



St. Catherine Metal Recyclers Limited (SCMRL)

4.23.26 Mr. Joshua Thomas, Managing Director, St. Catherine Metal Recyclers Limited (SCMRL) confirmed that the entity was aware of the ban on the export of scrap metal. Mr. Thomas stated his understanding of the ban as follows, *“A ban was placed on the Scrap Metal Industry to stop the widespread theft that was affecting the country’s infrastructure.”*

4.23.27 Mr. Thomas gave the following response in relation to his knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, *“Licences were required by Jampro, Trade Board and Customs before Scrap Metal could be exported.”*

4.23.28 Mr. Thomas also confirmed that SCMRL was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed. He stated, *inter alia*, that, *“...We were further given permission to export by the Ministry of Industry and Commerce and this was extended by the then Commissioner of Customs, Danville Walker.”*

4.23.29 In relation to the requirement for export licenses/permits from JAMPRO and TBL for shipments made during the extension period of the ban, Mr. Thomas advised the then OCG, *inter alia*, that, *“We had the Trade Board Licence which was not expired. We did not have Jampro’s shipment by shipment permit.”*

4.23.30 Mr. Thomas also advised the then OCG that he was not aware of the letter dated October 10, 2011, from the former Commissioner of Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban.



4.23.31 The then OCG found that at least thirty-three (33) containers of scrap metal were shipped by SCMRL after the effective date of the ban.

4.23.32 A review of the respective registration file for SCMRL from JAMPRO indicated that the last registration for export the entity received from JAMPRO was valid until September 16, 2011.

4.23.33 The then OCG found that the last export licence approved by the Trade Board Limited was issued to SCMRL on July 29, 2011 and was valid for a period of one (1) year. However, no shipment certificates were issued by TBL to SCMRL after the ban was imposed.

Kurbriton Limited (KL)

4.23.34 Mr. Frederick Graham of Kurbriton Limited (KL) confirmed that the entity was aware of the ban on the export of scrap metal. Mr. Graham indicated the following regarding his understanding of the ban, *“Ban on the purchase and exportation of scrap, subject to an exceptional license being granted.”*

4.23.35 Mr. Graham gave the following response in relation to his knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, *“We obtained approval from Jampro as an Exporter (only load during the period which customs officers were present.”*

4.23.36 Mr. Graham also confirmed that KL was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed.



4.23.37 Mr. Graham indicated that he was not aware of the letter dated October 10, 2011, written by the former Commissioner of Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban.

4.23.38 The then OCG found that at least twenty (20) containers of scrap metal were shipped by Kurbriton Limited after the effective date of the ban.

4.23.39 A review of the respective registration file for Kurbriton Limited from JAMPRO revealed that the last registration for export the entity received from JAMPRO was valid until August 28, 2011.

4.23.40 The then OCG found that the last export licence issued by the Trade Board Limited to Kurbriton Limited was approved on July 27, 2011 and was valid for a period of one (1) year. However, no shipment certificates were issued by TBL to KL after the ban was imposed.

Basmag Services Limited (BSL)

4.23.41 Mr. Basil Saddler, Managing Director, Basmag Services Limited (BSL) confirmed that the entity was aware of the ban on the export of scrap metal. Mr. Saddler indicated that he understood the ban to mean that, "... [as] of July 29, 2011 the exportation of scrap metal ceased."

4.23.42 Mr. Saddler gave the following response in relation to his knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, "*First, we inform Scrap Metal section of the Custom Department of my intention to export a shipment of scrap so they can assign an officer and schedule a date*



for the loading. A request is then made to the shipping line for container/containers to be delivered to my loading site and then a shipment letter is requested from JAMPRO. After loading is completed the custom officer submits to us an inspection document authorizing the export of the container with the scrap metal. This document is then taken to the Trade Board where an export license is granted.

4.23.43 Mr. Saddler also confirmed that BSL was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed.

4.23.44 In relation to the requirement for export licenses/permits from JAMPRO and TBL for shipments made after the imposition of the ban, Mr. Saddler advised the then OCG, *inter alia*, that, “During the extension period August 31, 2011 to September 16, 2011 and also in October 2011 when WE were advised by the Customs Department to export scrap, we were told by Mr. Nash, custom supervisor in the Scrap Metal Unit of the Jamaica Custom Department that the process no longer require us going to JAMPRO and Trade Board. This became [sic] as a surprise to me as no reason was given for the change....”

4.23.45 In response to whether he was aware of the letter dated October 10, 2011, written by the former Commissioner of Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban, Mr. Saddler stated the following, “We were made aware by Mr. Jonathon Aarons, president of the Scrap Metal Federation on October 12, 2011, that our company Basmag Services limited was on a list with nine (9) other scrap metal exporters submitted to the shipping section to resume exporting...”



4.23.46 The then OCG found that at least one (1) container of scrap metal was shipped by BSL after the effective date of the ban.

4.23.47 A review of the respective registration file for BSL from JAMPRO revealed that the last registration for export the entity received from JAMPRO was valid until August 7, 2011.

4.23.48 The then OCG found that the last export licence issued by the Trade Board Limited to BSL was approved on July 28, 2011 and was valid for a period of one (1) year. However, no shipment certificates were issued by TBL to BSL after the ban was imposed.

Jamaica Metals & Recycling Projects Limited (JMRPL)

4.23.49 Mr. Zephaniah Aarons, Managing Director, Jamaica Metals & Recycling Projects Limited (JMRPL) confirmed that the entity was aware of the ban on the export of scrap metal. Mr. Aarons indicated the following regarding his understanding of the ban, *"I understood the ban to mean no Scrap Metal could be exported."*

4.23.50 Mr. Aarons gave the following response in relation to his knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, *"...JAMPRO would come and visit the site... then we are given a letter to apply for the Trade Board licence."*

4.23.51 Mr. Aarons also confirmed that JMRPL was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed.

4.23.52 Mr. Aarons advised the then OCG that he was not aware of the letter dated October 10, 2011, from the former Commissioner of



Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban.

4.23.53 However, it should be noted that Mr. Aarons indicated that he was advised of the following, by Mr. Devon Manahan, Manager of the Scrap Metal Unit at the JCD, "... [Mr. Manahan] advised me that based on Danville Walker's interpretation of the order, Companies with industrial contracts would be able to export. **He indicated that based on Mr. Walker's understanding of the order, we would not be required to go through JAMPRO or the Trade Board.** He indicated that our names would be on a list along with the customs declaration form and all we would be required to do was to carry the container along with c87 form to the terminal and we would be allowed entry..." (DI Emphasis)

4.23.54 The then OCG found that at least three (3) containers of scrap metal were shipped by JMRPL after the effective date of the ban.

4.23.55 A review of the respective registration file for JMRPL from JAMPRO revealed that the last registration for export the entity received from JAMPRO was dated July 28, 2011, which contained a shipment date of August 3, 2011. The expiration date of the approval for shipment was not clear.

4.23.56 The then OCG found that the last export licence issued by the Trade Board Limited to JMRPL was approved on July 28, 2011 and was valid for a period of one (1) year. However, no shipment certificates were issued by TBL to JMRPL after the ban was imposed.



Recimetal Jamaica Limited (RJL)

4.23.57 Mr. Garfield Allen, Managing Director, Recimetal Jamaica Limited (RJL) confirmed that the entity was aware of the ban on the export of scrap metal. Mr. Allen indicated his understanding of the ban as follows, *“My understanding was that there was a purported temporary ban on the trade in order to control the industry...”*

4.23.58 The only exceptions to the Ministerial Prohibition Order were (a) exportation of scrap metal entered on or before September 16, 2011; and (b) where scrap metal was generated by a body in its normal course of business and **not** by a person acting on behalf of that body whether as a sub-contractor, agent or in any other capacity.

4.23.59 Mr. Allen gave the following response in relation to his knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, *“...We received a letter from custom... a copy of custom’s approval letter was presented to Jampro, The shipping association of Jamaica and the Trade Board. Jampro responded by giving us an export license... The trade board responded and provided us with a license to export scrap metal... We were required to obtain a license from the Trade Board and a letter from Jampro for each set of containers’ that was been exported...after presenting custom inspection certificate...”*

4.23.60 Mr. Allen also confirmed that RJL was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed.

4.23.61 In relation to the requirement for export licenses/permits from JAMPRO and TBL for shipments made after the imposition of the ban, Mr. Allen advised the then OCG, *inter alia*, that, *“The process was*



identical to that prior to the purported ban on the industry with the exception that we were not required to obtain the licences from trade board or letter from Jampro.”

4.23.62 Mr. Allen advised the then OCG that he was not aware of the letter dated October 10, 2011, written by the former Commissioner of Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban.

4.23.63 The then OCG found that at least twenty-nine (29) containers of scrap metal were shipped by RJL after the effective date of the ban.

4.23.64 However, it should also be noted that Mr. Allen further provided the then OCG with a list of containers of scrap metal which were exported by his entity for the year 2011. It was observed that of the said list, a total of seventy-four (74) containers of scrap metal were shipped between September 19, 2011 and December 20, 2011, subsequent to the imposition of the ban on the export of scrap metal.

4.23.65 A review of the respective registration file for RJL from JAMPRO revealed that the last approval for shipment the entity received from JAMPRO was valid until August 9, 2011.

4.23.66 The then OCG found that the last export licence issued by the Trade Board Limited to RJL was approved on July 25, 2011 and was valid for a period of one (1) year. However, no shipment certificates were issued by TBL to RJL after the ban was imposed.

Williams Scrap Metal Limited (WSML)

4.23.67 Mr. Morlee Williams, Managing Director, Williams Scrap Metal (WSML) confirmed that the entity was aware of the ban on the export



of scrap metal. Mr. Williams stated his understanding of the ban as follows, *“A ban was placed because the country (including private entities) lost millions of dollars due to the upsurge in the theft of valuable infrastructure.”*

4.23.68 Mr. Williams gave the following response in relation to his knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, *“Entities involved were: JAMPRO, Customs and Trade Board. JAMPRO visited site to see if site meets requirement. Approval was given based on inspection. A call was made to Customs within three (3) days for them to examine scrap metals. Customs examined scrap metals to be exported. Trade Board gave approval to export scrap metal after receipt of letter from Customs.”*

4.23.69 Mr. Williams also confirmed that WSML was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed.

4.23.70 Mr. Williams advised the then OCG that he was not aware of the letter dated October 10, 2011, written by the former Commissioner of Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban.

4.23.71 The then OCG found that one (1) container of scrap metal was shipped by WSML after the effective date of the ban.

4.23.72 A review of the respective registration file for WSML from JAMPRO revealed that the last approval for shipment the entity received from JAMPRO was dated September 14, 2011 with a shipment date of September 17, 2011 and was valid until September 26, 2011.



4.23.73 The then OCG found that the entity WSML was last issued a licence for shipment by the Trade Board Limited on March 15, 2011 and was valid for a period of one (1) year. However, no shipment certificates were issued by TBL to WSML after the ban was imposed.

Swathi Impex Limited (SIL)

4.23.74 Mr. Manoharan Thankamma, Managing Director, Swathi Impex Limited (SIL) confirmed that the entity was aware of the ban on the export of scrap metal. Mr. Thankamma stated the following regarding his understanding of the ban, *“No Scrap Metal should be bought or exported.”*

4.23.75 Mr. Thankamma gave the following response in relation to his knowledge of the procedure and methods of authorization required prior to being licensed to export of scrap metal, *“Swathi impex limited wrote a letter to Customs (Scrap Metal unit) to become an exporter. Customs examine our locations, pass it as being fit then issue authorization letters to Trade board and Jampro to allow as [sic] to be exporter.”*

4.23.76 Mr. Thankamma confirmed that SIL was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed.

4.23.77 Mr. Thankamma also confirmed his knowledge of the letter dated October 10, 2011, written by the former Commissioner of Customs, the Hon. Danville Walker, OJ, which purported to authorize a list of entities to export scrap metal during the period of the ban. He stated that, *“The President of the Scrap metal federation of Jamaica telephoned us the information.”*



4.23.78 The then OCG found that at least six (6) containers of scrap metal were shipped by SIL after the effective date of the ban.

4.23.79 A review of the respective registration file for SIL from JAMPRO revealed that the last two (2) approvals for shipment the entity received from JAMPRO were dated July 25, 2011, with a shipment date of August 2, 2011. The date of validity appeared to represent August 9, 2011, in both instances.

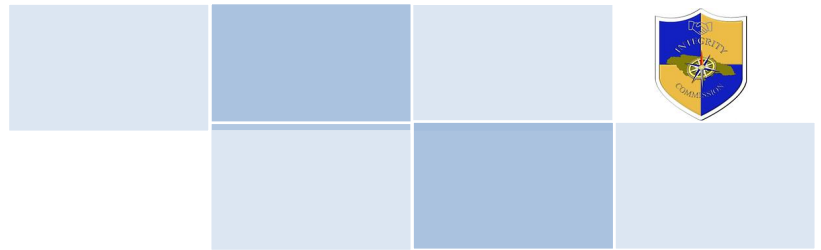
4.23.80 The then OCG found that the entity SIL was last issued an export licence by the Trade Board Limited on July 26, 2011 and was valid for a period of one (1) year. However, no shipment certificates were issued by TBL to SIL after the ban was imposed.

Chand Finance & Export Limited (CFEL)

4.23.81 Mr. Rakesh Chander, Director, Chand Finance and Export Limited (CFEL) advised the then OCG that the entity was authorized by the JCD to export scrap metal during the period in which the referenced ban was imposed.

4.23.82 The then OCG found that at least three (3) containers of scrap metal were shipped by CFEL after the effective date of the ban.

4.23.83 A review of the respective registration file for CFEL from JAMPRO revealed that the last two (2) approvals for shipment the entity received from JAMPRO were dated July 21 and 26, 2011, respectively. The shipment dates as outlined on the authorization letters were August 3 and 8, 2011, which also bore respective dates of expiration of August 8 and 13, 2011.



4.23.84 The then OCG found that the entity CFEL, was last issued export licences by the Trade Board Limited on July 21 and 25, 2011 which were each valid for a period of one (1) year. However, no shipment certificates were issued by TBL to CFEL after the ban was imposed.

4.23.85 Detailed in **Table 3** below, are extracts from responses received from the scrap metal entities listed in the JCD's letter of October 10, 2011 regarding shipment approvals from the Trade Board and JAMPRO. The information presented in **Table 3** is also based upon a review of the shipping documents retrieved from the JCD by the OCG, for the period September to October 2011:



Table 3

	Name of Entity	Containers Exported after September 21, 2011	Date of last JAMPRO Shipment Approval	Date of Last TBL Export License
1.	Virtual Metals Limited	15	August 9, 2011	No TBL License
2.	Vanguard Ventures Limited	at least 3	June 21, 2011	July 28, 2011
3.	Hamilton Demolition & Scrap Traders (HDST)	2	August 9, 2011	July 28, 2011
4.	St. Catherine Metal Recyclers Limited	at least 33	September 16, 2011	July 29, 2011
5.	Kurbriton Limited	at least 20	August 28, 2011	July 27, 2011
6.	Basmag Services Limited	at least 1	August 7, 2011	July 28, 2011
7.	Jamaica Metals & Recycling Projects Limited	at least 3	July 28, 2011	July 28, 2011
8.	Recimetal Jamaica Limited	at least 29	August 9, 2011	July 25, 2011
9.	Williams Scrap Metal Limited	at least 1	September 26, 2011	March 15, 2011
10.	Swathi Impex Limited	at least 6	August 9, 2011	July 26, 2011
11.	Chand Finance & Export Limited	At least 3	July 26, 2011	July 25, 2011



4.24 **To ascertain whether any or all of the scrap metal exporters and/or entities who/which are identified to have exported scrap metal, during the period in which the ban was imposed on the Scrap Metal Trade, if any, were legitimately exempted from the said ban, by the then MIIC and/or the Government of Jamaica, and the circumstances under which such exemption was granted.**

4.24.1 By way of a letter dated August 10, 2011, which was addressed to Mr. Danville Walker, former Commissioner of Customs, from Mr. Reginald Budhan, Permanent Secretary, then MIIC, the following, *inter alia*, was indicated:

"This letter serves to advise that the captioned company [Crown Packaging Jamaica Limited] exports copper chips which is processed and reused in its business. The current prohibition on the export of scrap metal is not intended to affect this company.

Please allow the company to continue to export the said item subject to an inspection by your department to ensure that there is no dealing or trading in scrap metal being done locally as part of its business process. The company must also meet all the requirements necessary for export..."

4.24.2 Mr. Douglas Webster, Trade Administrator, Trade Board Limited also indicated the following, in relation to entities which were exempted from the scrap metal ban, *"The TBL received directive [sic] via letter from the MIIC to issue licenses to Crown Packaging Jamaica Ltd. and the Jamaica Railway Corporation."*

4.24.3 Having regard to the foregoing, it was observed that the then MIIC had given the JCD and the Trade board Limited permission to allow



the entity known as, Crown Packaging Jamaica Limited, to export copper chips after the ban was imposed on the scrap metal trade.

4.24.4 Upon a review of certain shipping documentation, amongst other information provided to the then OCG by Crown Packaging Jamaica Limited, it was found that the referenced entity exported four (4) containers, during the period in which the ban was imposed on August 20, 2011, September 28, 2011, November 14, 2011 and December 26, 2011, respectively.

4.24.5 It should be noted that the Trade Board Limited confirmed that Crown Packaging Jamaica Limited was the only entity, to which an export licence was issued after the imposition of the ban. However, the referenced entity was not identified by JAMPRO, as an entity to which an authorization letter was issued after the effective date of the ban.

4.24.6 However, the Jamaica Railway Company Limited was identified by JAMPRO as the only agency to which a shipment authorization letter was granted, after the imposition of the ban on the scrap metal trade.

4.24.7 Mr. Devon Manahan, Manager, Scrap Metal Unit, JCD, in his response to the then OCG dated February 24, 2012, stated that Kurbriton Limited and St. Catherine Metal Recyclers Limited were also exempted by way of letter dated August 10, 2011 issued by the then Commissioner of Customs, the Hon. Danville Walker.

4.24.8 Mr. Manahan indicated that his understanding was that these entities were exempted because they generated their own scrap metal and had contractual arrangements with Government Agencies that generated scrap metal.



5. Chapter 4 – Conclusions & Recommendations

- 5.1 This chapter sets out the conclusions drawn from the investigation and the recommendations made to improve compliance with the law.
- 5.2 This investigation was initiated to examine the allegations surrounding breaches associated with the award and use of certain prescribed licences for the Scrap Metal Industry, regarding the export of containers of scrap metal, in violation of a Ministerial Prohibition Order which had banned such exports.

Conclusions

- 5.3 The DI concludes that the referenced eleven (11) scrap metal entities which were found to have exported scrap metal during the period of the ban were aware of the ban imposed on the scrap metal trade by way of the **Trade (Scrap Metal) (Prohibition of Dealing) Order, 2011** and the **Trade (Scrap Metal) (Prohibition of Dealing) (No.2) Order, 2011**.
- 5.4 The DI concludes that the JCD approved and facilitated the shipment of approximately 122 containers of containers of scrap metal, on behalf of approximately eleven (11) entities, during the period of the ban imposed on the scrap metal trade, in violation of the **Trade (Scrap Metal) (Prohibition of Dealing) Order, 2011**, the **Trade (Scrap Metal) (Prohibition of Dealing) (No.2) Order, 2011** and **Section 151 of the Customs Act**.
- 5.5 The DI concludes that the containers exported by the referenced eleven (11) scrap metal exporters during the period in which the ban was imposed on the scrap metal trade, were exported in breach of the exportation policy(ies) and/or procedure(s), of the then MIIC, the JCD, the



Trade Board Limited and JAMPRO as well as the **Trade Act**, the **Customs Act** and the **Jamaica Promotions Act**.

- 5.6 The DI further concludes that the referenced eleven (11) entities were allowed by the JCD to export scrap metal during the period of the ban, without the requisite licence(s) and/or permit(s) from the Trade Board Limited and JAMPRO, in contravention of **Sections 8 and 13(1) of the Trade Act**, **Section 5 of the Jamaica Promotions Corporation Act** and **Regulations 4(2), 11 and 30 of the Trade (Scrap Metal) Regulations (2007)**.
- 5.7 The DI has reasonable grounds to conclude that Dr. Christopher Tuffon and Mr. Reginald Budhan, then Minister and Permanent Secretary respectively, of the then MIIC did not in any way, facilitate and/or authorize the former Commissioner of Customs, the Hon. Danville Walker, OJ, to allow the referenced eleven (11) scrap metal exporters, generators and/or agents of same, to export containers of scrap metal during the period in which the ban was imposed on the scrap metal trade.
- 5.8 The DI further concludes that the former Commissioner of Customs, the Hon. Danville Walker, OJ, was not acting within his powers, when he allowed fifteen (15) scrap metal entities and/or agents of same, to export scrap metal during the period of the ban imposed on the scrap metal trade.
- 5.9 The DI concludes that the former Commissioner of Customs, the Hon. Danville Walker, OJ, was not acting within his powers, when he allegedly verbally authorized officers of the Scrap Metal Unit of the JCD, to allow the referenced fifteen (15) scrap metal exporters and/or entities to export scrap metal without the requisite export licenses from the Trade Board Limited and JAMPRO.



- 5.10 The DI concludes that none of the referenced fifteen (15) scrap metal exporters and/or entities named in October 11, 2011 letter written by the former Commissioner of Customs, the Hon. Danville Walker, OJ, were legitimately exempted from the said ban, by the then MIIC and/or the Government of Jamaica.
- 5.11 Notwithstanding statements made by Mr. Reginald Budhan, then Permanent Secretary in the MIIC, indicating that the Jamaica Railway Corporation and Crown Packaging Jamaica Limited were exempted by authority granted under the referenced Ministerial Prohibition Order, the DI has seen no documentary evidence to support a conclusion that the said entities were legally exempted from the ban on the scrap metal trade.

Recommendations to the Director of Corruption Prosecution

- 5.12 The DI recommends that the findings of this investigation be referred to the Director of Corruption Prosecution (DCP) for consideration of the following provisions, pursuant to section 54(3) (b) of the Integrity Commission Act, to determine whether any exporter or public officer contravened any applicable laws:

5.12.1 Section 11(1) of the **Trade Act** which provides that *“Where an order made by the Minister under the provisions of section 8 prohibits the importation or exportation of any goods except under the authority of a licence granted by the Minister, the Minister may, subject to the provisions of this section, grant or withhold licences for the importation or, as the case may be, exportation of such goods...”*

5.12.2 Section 13(1) of the **Trade Act** provides that **“Any person who –**



(a) contravenes or fails to comply with any term, condition, or restriction of, or subject to which, any licence is granted under section 11;

shall be guilty of an offence and on summary conviction thereof before a Resident Magistrate shall be liable to a fine not exceeding two million dollars and in default of payment to imprisonment with or without hard labour for a term not exceeding two years.” (DI Emphasis)

5.12.3 Regulation 4(2) of the **Trade (Scrap Metal) Regulations (2007)** provides that, “A person shall not export any specified scrap metal- (a) unless he is an approved exporter acting under the authority of an export license granted by the Minister under regulation 12(3)(a); and (b) except in accordance with the terms and conditions of the export licence.”

5.12.4 Regulation 30 of the **Trade (Scrap Metal) Regulations (2007)** provides that **“Every person who exports or enters for export scrap metal –**

(a) without a valid licence or shipment certificate or otherwise in contravention of these Regulations;

(b) during any period in which his licence is suspended or revoked, commits a offence.” (DI Emphasis)

5.12.5 Section 151 of the **Customs Act** states, inter alia, that **“If any person shall put on board any aircraft or ship, or put off or put into any vessel to be water-borne to any aircraft or ship for exportation** or use as stores, or bring to any aerodrome, Customs area, quay, wharf or any place whatever in the Island for exportation or use



as stores, or export any goods prohibited to be exported, or any goods the exportation of which is restricted, contrary to such restriction, or attempt to perform or be knowingly concerned in the performance of any of the aforesaid acts, he shall (except as otherwise provided in section 144) incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods and all such goods shall be forfeited.” (DI Emphasis)

Recommendations to the Jamaica Customs Department (JCD)

- 5.13 It is recommended that the Jamaica Customs Department exercise due care and implement a system of checks and balances to ensure that all scrap metal exporters/entities are in possession of the requisite licence(s) and permit(s) from the Trade Board Limited, and are duly registered with JAMPRO prior to authorizing, facilitating and/or allowing such exporters/entities to ship containers of scrap metal.



6. Chapter 5 – Anti Corruption Initiatives

6.1 This chapter outlines initiatives directed at minimizing irregularity, impropriety, lack of transparency and breaches of applicable legislations, regulations and/or policies in the operation of the scrap metal trade.

6.1.1 It is recommended that all government agencies that are responsible for the management and operation of the scrap metal trade should clearly establish and comply with formalized guidelines to prevent any irregularity, impropriety and ambiguity in the said process.

6.1.2 It is recommended that in circumstances where a Public Body has identified that there is a breach of any applicable laws, regulations or guidelines, the responsible agency should seek to remedy the said breach in an expeditious and effective manner.

A handwritten signature in blue ink, appearing to read 'K. Stephenson'.

Kevon A. Stephenson, J.P
Director of Investigation
for and on behalf of the Integrity Commission

February 9, 2021

Date