



Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

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OFFICE OF THE CONTRACTOR-GENERAL

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KINGSTON 5

JAMAICA, W.I

MEDIA RELEASE

OCG Launches Investigation into Alleged Scrap Metal Export Breaches

Kingston; November 4, 2011 – The Office of the Contractor General (OCG) has launched a formal Special Investigation into the circumstances surrounding the alleged export of 97 containers of scrap metal in alleged violation of a Cabinet Order banning such exports, and without the requisite licenses being issued by the Trade Board.

The decision of the OCG was arrived at after its careful review of certain public statements, regarding the matter, which were made by the Minister in the Ministry of Industry, Investment and Commerce (MIIC), Dr. the Hon. Christopher Tufton, the Permanent Secretary in the Ministry, Mr. Reginald Budhan, the Commissioner of Customs, the Hon. Danville Walker, and the Customs Department.

The OCG has also taken note of certain public statements and allegations that have been made by the Opposition People's National Party (PNP) regarding the matter.

Among other things, the OCG has taken account of the following:

- (1) Minister Tufton's statement that the referenced exports were authorized and facilitated by the Customs Department in violation of a Cabinet Order which stipulated that entities eligible to export scrap metal must first receive a permit from the Trade Board;
- (2) Minister Tufton's statement that the alleged illicit exports were taking place without the knowledge of the Trade Board and his Ministry;
- (3) Minister Tufton's concern as to whether the export of scrap metal, generated by entities in the legitimate course of their business, was being carried out in the manner that was stipulated in the Cabinet Order or, in violation thereof, by middle men or traditional scrap metal dealers;
- (4) The public acceptance, by the Customs Department, of responsibility for allowing certain select entities to export scrap metal without the requisite licences;
- (5) The questionable justification which has been advanced by the Customs Department for its admitted conduct – namely that there has been no loss of revenue during the period and that the



export of the metal generated valuable foreign exchange for the country; and

- (6) The implicit challenges to the Rule of Law that the positions of the Customs Department and that of the Commissioner of Customs, the Hon. Danville Walker, have raised.

The OCG believes that the issues and questions that have been generated by the circumstances of the case, and the allegations that have been made in the matter, are such that the national interest warrants that a formal, comprehensive and independent Investigation be conducted into the matter.

The OCG's Investigation will, therefore, seek to determine, *inter alia*, the following:

- (a) The full particulars regarding the identity of the exporting entities in question and the circumstances in which they were allegedly permitted, authorized or facilitated by the Customs Department, or by any other person or authority, in their export of scrap metal in alleged contravention of the Laws of Jamaica and/or any relevant Cabinet or Ministerial Order;
- (b) The full particulars of the circumstances under which the Trade Board was allegedly circumvented by the Customs Department in the subject exports of scrap metal;
- (c) What Laws, Regulations or Orders may have been breached, and by whom, and whether there is any evidence which would suggest that any Public Officer or person, whether by his or her conduct or participation in any of the above-referenced arrangements, may have contravened the Corruption Prevention Act and/or Section 4 of the Contractor General Act.

Section 15 (1) (e) and (f) of the Contractor General Act empowers a Contractor General, at his discretion, to conduct an Investigation into "the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence, and the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences".

The OCG is aware that the incumbent Commissioner of Customs has signaled his intention to demit his Office today, November 4, 2011. However, this does not in any way exempt the Commissioner from being held to account for the events which transpired whilst he was the lawful Accountable Officer of the Customs Department, nor does it in any way remove him from the lawful subpoena and enquiry jurisdiction of the OCG for the purposes of the conduct of the Investigation.

The full transcript of the letter, dated today, November 4, 2011, which announces the commencement of the OCG's Investigation, and which has been directed, by the Contractor General, to the MIIC Minister, the Permanent Secretary in the Ministry, the Minister of Finance and the incumbent Commissioner of Customs, is attached herewith.

-END-

Contact: The Communications Department, Office of the Contractor General of Jamaica
C/o Craig Beresford, Senior Director of Monitoring Operations, Corporate Communications and Special Projects
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KINGSTON 5

JAMAICA, W.I.

VERY URGENT AND IMMEDIATE

November 4, 2011

Dr. the Hon. Christopher Tufton, MP
Minister of Industry, Investment and Commerce
Ministry of Industry, Investment and Commerce
4 St. Lucia Avenue
Kingston 5

Mr. Reginald Budhan
Permanent Secretary
Ministry of Industry, Investment and Commerce
4 St. Lucia Avenue
Kingston 5

The Hon. Audley Shaw, MP
Minister of Finance
Ministry of Finance
30 National Heroes Circle
Kingston 4

The Hon. Danville Walker, OJ
Commissioner of Customs
Jamaica Customs Department
Myers' Wharf
Newport East
Kingston 15

Dear Sirs:

Re: Formal Notice of Commencement of Special Statutory Investigation – Concerning Alleged Breaches of Prescribed Licences for the Scrap Metal Industry – Exportation of Scrap Metal in Violation of Cabinet/Ministerial Prohibition Order

Pursuant to the powers which are vested in me, by the Contractor General Act, I hereby formally write to notify you that the Office of the Contractor General (OCG), acting on behalf of the Contractor General, has commenced an Investigation into the circumstances surrounding the alleged breaches which are associated



with the award and use of certain prescribed licences for the Scrap Metal Industry, and the controversy surrounding the exportation of Scrap Metal in alleged contravention of a Cabinet Prohibition Order.

The OCG has been, and has remained, acutely aware of the numerous controversies which have attended the grant, use and revocation of licences for the Scrap Metal Industry and which, effectively, led to the Administration placing a ban on the Scrap Metal Trade effective July 2011.

Without prejudice to the foregoing, certain recent activities and admissions by Senior Public Officials, inclusive of the Minister with Portfolio Responsibility for the Ministry of Industry, Investment and Commerce (MIIC), regarding the admitted breaches of the Laws of Jamaica, a Cabinet Decision, as well as applicable Government Policy, have become of increasing concern to the OCG.

The OCG's decision to commence the Investigation has been prompted by certain considerations which include, *inter alia*, the following:

1. The fact that the Administration placed an initial ban on the Scrap Metal Trade with effect from April 28, 2011, after reported thefts of infrastructure to facilitate the trade, and the assertion that *"the current way in which the industry was operating, is not in the best interest of the country."*;
2. The fact that in July 2011, the Cabinet of Jamaica took a collective decision to 'shutdown' the Scrap Metal Industry following an alleged *"upsurge in the theft of valuable infrastructure, including train lines, heritage items and graves..."*;
3. The allegations which were made by the Opposition Spokesman on Industry, Mr. Anthony Hylton, that the export of scrap metal was continuing through the 'backdoor' despite the ban, and the subsequent disclosures of the Permanent Secretary in the MIIC, Mr. Reginald Budhan, that only two (2) entities had received permission to trade in scrap metal under certain specified conditions. The referenced allegations and disclosures were published in a RJR News Article, which was dated October 28, 2011;
4. The fact that on November 2, 2011, it was reported in a RJR News Article that Dr. the Hon Christopher Tufton would have his Ministry lead an *"investigation as to how some companies are still being allowed to export scrap metal despite a ban..."*;
5. The publication of a Gleaner/Power 106 News Article, which was dated November 3, 2011, which indicated that *"The industry, investment and commerce ministry reported that 97 containers were shipped by customs without the requisite permit from the Trade Board."*; such exports, would, on the face of it, amount, *inter alia*, to a breach of the applicable Laws of Jamaica;
6. The gravity of the recent media articles which have, *inter alia*, quoted Dr. the Hon. Christopher Tufton, M.P., the Minister of Industry, Investment and Commerce as conceding to a breach of the Cabinet Order/Decision which purportedly stipulated that entities eligible to export scrap metal must first receive a permit from the Trade Board. In point of fact, a newspaper report, which was published by the Jamaica Gleaner on November 2, 2011, indicated as follows: *"The*



Government yesterday blamed the Jamaica Customs Department for allowing at least eight companies to export scrap metal without the required permits from the Trade Board in the weeks after the industry was banned”;

7. The fact that the OCG has had sight of a letter which was addressed to the General Manager of the Shipping Association of Jamaica, under the signature of the incumbent Commissioner of Customs, the Hon. Danville Walker, which provided a list of some fifteen (15) entities which were authorized to export scrap metal. The referenced letter was dated October 10, 2011, and its contents contradict the statement which was attributed to the Permanent Secretary in the Ministry of Industry, Investment and Commerce on October 28, 2011, at which time it was alleged that only two (2) entities were so authorized to export scrap metal; and
8. The fact that in a media article which was published by the Jamaica Observer on Thursday, November 3, 2011, it was reported that “*The Jamaica Customs Department says it accepts responsibility for allowing select persons to export scrap metal without the requisite licence from the Trade Board for each specific shipment.*” The referenced Media Article also 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 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.*”
9. The questionable justification which has been advanced by the Customs Department for its admitted conduct – namely, among other things, that there has been no loss of revenue during the period and that the export of the metal generated valuable foreign exchange for the country; and
10. The implicit challenges to the Rule of Law that the positions of the Customs Department and that of the Commissioner of Customs, the Hon. Danville Walker, himself, have raised.

The compendium of admissions and allegations are of such grave national, administrative, governance and legal import that the OCG, after due consideration, and in light of the admission of breaches by the Minister of Industry, Investment and Commerce and the Commissioner of Customs, has deemed it prudent to undertake a formal Statutory Investigation into the matter.

In light of the aforementioned considerations, the OCG’s formal Statutory Investigation into the referenced matter will be directed, *inter alia*, at making a statutory determination with respect to the following:

1. Obtaining the full particulars of the Cabinet Decision and Government of Jamaica Policy regarding the imposition of a ‘shutdown’ of the Scrap Metal Industry as announced by the Administration in July 2011;
2. The full particulars of the breaches of (a) the applicable Laws of Jamaica, (b) the Cabinet Decision, and (c) the relevant Government Policies, and whether the circumstances which surrounded the breaches of the applicable laws, decisions and policies, *viz.* the allowance and facilitation of the continued exportation of scrap metal, by select entities, contravened, *inter alia*, the provisions and/or requirements of:
 - a. The Contractor General Act, 1983, and, in particular, whether the referenced licences have been



awarded and/or used in full compliance with Section 4 (1)(b) of the Contractor General Act, which provides that it shall be the function of a Contractor-General, on behalf of Parliament “to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.”

- b. The Trade Act;
 - c. The Customs Act;
 - d. The applicable Cabinet Decision which prohibited the exportation of Scrap Metal; and
 - e. Any and all relevant GOJ Policies and procedural requirements which were attendant to the stated prohibition of the export of Scrap Metal.
3. The full particulars regarding the circumstances by and through which certain specified entities were permitted to export scrap metal and whether same was in contravention of any applicable Laws of Jamaica, GOJ Cabinet Decisions and/or Ministerial Orders which prohibited same;
 4. The full particulars of the circumstances under which the Trade Board was allegedly circumvented in the exportation of the scrap metal by select entities and the extent and degree to which the requirements of the Trade Act were breached;
 5. The personal, business and/or professional relationships, if any, which currently exist or which have previously existed between any public official and person who may have been involved, or who is currently involved, whether directly or indirectly, in the facilitation of the export of scrap metal, by any entity, subsequent to the imposition of the ban;
 6. The full particulars regarding the identity of the exporting entities in question and the circumstances in which they were allegedly permitted and facilitated by the Customs Department, or by any other person or authority, in their export of scrap metal in alleged contravention of the Laws of Jamaica and/or any relevant Cabinet or Ministerial Order;
 7. Whether the entities which were allowed by the Jamaica Customs Department to export scrap metal on behalf of the purportedly legitimate entities did so exclusively for and on behalf of the said entities;
 8. Whether there is any evidence which would suggest that any Public Officer or person, whether by his or her conduct or participation in the above-referenced arrangement, may have contravened the Corruption Prevention Act and/or Section 4 of the Contractor General Act;
 9. Whether any other Laws of Jamaica may have been contravened, wittingly or unwittingly, by any Public Officer/Public Official who was involved in this matter, or whether there is any evidence of a breach of duty or misconduct on the part of any such Public Officer/Public Official.

Pursuant to Section 15(1) of the Contractor General Act, the Contractor General is empowered to conduct an investigation into any or all of the following matters:

- (a) the registration of contractors;
- (b) the tender procedures relating to contracts awarded by public bodies;



- (c) the award of any government contract;
- (d) the implementation of the terms of any government contract;
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;**
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.**

You should also be guided by the provisions which are embodied in Sections 4, 16, 17, 18, 20, 21, 28 and 29 of the Act.

The OCG's Investigation Team in this matter will be headed by Ms. Carla Kelly, the OCG's Senior Special Investigator, who will be directly responsible to me for the conduct of the Investigation.

Ms. Kelly will make contact, in due course, with certain officers and officials of the Ministry of Industry, Investment and Commerce, as well as other persons of interest, inclusive of the incumbent Commissioner of Customs, the Hon. Danville Walker, and representatives of the Trade Board, to advise them of the Investigation process and the Requisitions which the OCG will be making of them in pursuit of the conduct of the Investigation.

The OCG is aware that the incumbent Commissioner of Customs has signaled his intent to demit office today, November 4, 2011. However, this does not in any way exempt the Commissioner from being held to account for the events which transpired whilst he was the lawful Accountable Officer of the Customs Department, nor does it in any way remove him from the lawful subpoena and enquiry jurisdiction of the OCG for the purposes of the conduct of its Investigation.

Please accept my gratitude for your anticipated cooperation and assistance in this very important matter.

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copy: The Hon. Andrew Holness, MP, Prime Minister of Jamaica
Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary
Dr. Wesley Hughes, CD, JP, Financial Secretary, Ministry of Finance
Mr. Douglas Webster, Administrator, Trade Board