

**AUDITOR GENERAL'S DEPARTMENT  
SPECIAL AUDIT REPORT  
JAMAICA CUSTOMS AGENCY – BUNKERING OPERATIONS & PRIVATE BONDED WAREHOUSES**

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This report was prepared by the Auditor General's Department of Jamaica for presentation to the House of Representatives.

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**AUDITOR GENERAL'S**  
DEPARTMENT OF JAMAICA

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# Special Audit Report on Jamaica Customs Agency Bunkering Operations & Private Bonded Warehouses



## KEY DATA

- JCA monitors goods flowing through 3 international Airports, over 13 Major Seaports of call, 17 Sufferance Wharves and 111 Private Bonded Warehouses.
- JCA Total Annual expenditure budget for the period 2015 to 2021 totalled \$53.285 billion.
- JCA handled 135.22 million Metric Tonnes of Cargo handled at Jamaican Ports.
- Total Cargo overall handled at all Sufferance Wharves amounted to 13.939 million Tonnes.



## MAIN FINDINGS

- Deficiencies in JCA's controls led to \$2.1 billion in financial exposure related to duties payable for fuel imports.
- Import entries for 50.08 million litres of Bunker Fuel processed up to 3 years after being imported.
- JCA failed to ensure that exports from BFO1's SEZ are authentic
- Deficiencies in internal controls led to a combined \$664.24 million in arrears by three private bonded warehouse operators.



## CONCLUSION & RECOMMENDATION

Our audit identified omissions and significant delays in the processing of import and export declarations resulting in the potential revenue losses to the Government of Jamaica. JCA must take immediate steps to identify the reasons for these omissions and delays and institute the necessary systems and procedures to prevent a recurrence.

## Auditor General's Overview

The Jamaica Customs Agency's (JCA) role in facilitating trade, optimising revenue collection, and protecting Jamaica's borders is critical to the country's welfare. Based on stakeholder concerns regarding the transparency of the operations of the Agency, I commissioned a special audit to assess the adequacy of JCA's internal controls including policies and procedures, to guide its activities, as well as reduce the risk of financial losses and corrupt practices.

The audit found weakness in the JCA's internal systems, such as poor operational practices and levels of accountability which created opportunities for corrupt practices and irregularities going unchecked. If left unresolved, these deficiencies could increase the risk of financial losses. I therefore urge the JCA to seriously consider the recommendation contained in this report, to strengthen its oversight and monitoring capabilities, particularly through ASYCUDA. The JCA must also take immediate steps to collect all outstanding revenues to the Government of Jamaica.

Thanks to the management and staff of the JCA for the cooperation and assistance extended to the audit team.



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Pamela Monroe Ellis, FCCA, FCA  
**Auditor General**

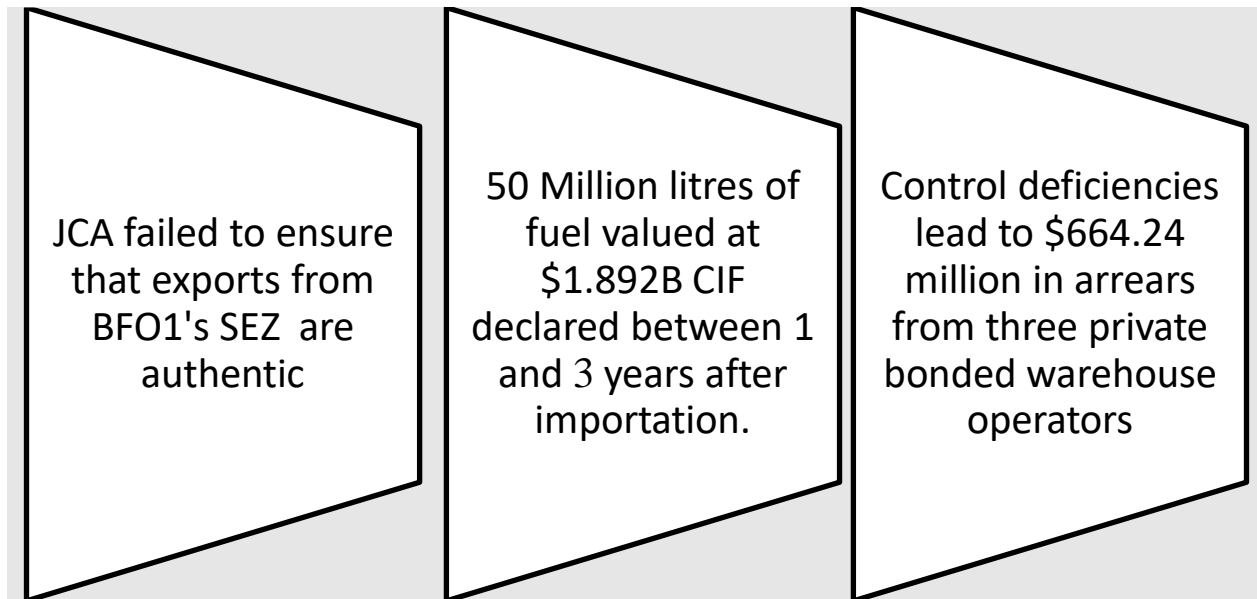
## Executive Summary

We conducted a special audit of the Jamaica Customs Agency (JCA) covering the period 2016 to 2021, to determine whether JCA had in place, internal controls including policies and procedures to guide its activities, as well as reduce the risk of financial losses and corrupt practices. The audit also sought to ascertain the credibility of the allegations made by a whistle-blower under the Protected Disclosure Act regarding malpractice and deficiencies in the operation of its private bonded warehouses. We employed an agile approach to the audit and identified material concerns in the bunkering operations. Whereas we could not confirm with certainty the allegations made by the whistle-blower, our review of JCA's Private Bonded Warehouses and the Bunkering operations revealed control breaches of the Customs and Special Economic Zones Acts, resulting in an estimated \$2.1 billion of financial exposure and \$664.24 million in revenue remaining uncollected.

We noted that as part of the public sector transformation and modernisation programme and in furtherance to its commitment to offering world class service, JCA implemented the web-based Automated System for Customs Data (ASYCUDA) system in 2016 at a cost of US\$4 million. The intention is to improve JCA's effectiveness and efficiency by transforming its operations to a paperless system using the electronic submission of both import and export entry declarations, and the supporting documentation. Therefore, the importer/exporter or his broker would only be required to electronically prepare the respective entry declaration, upload the supporting documentation into ASYCUDA and submit these for approval by the authorized JCA personnel.

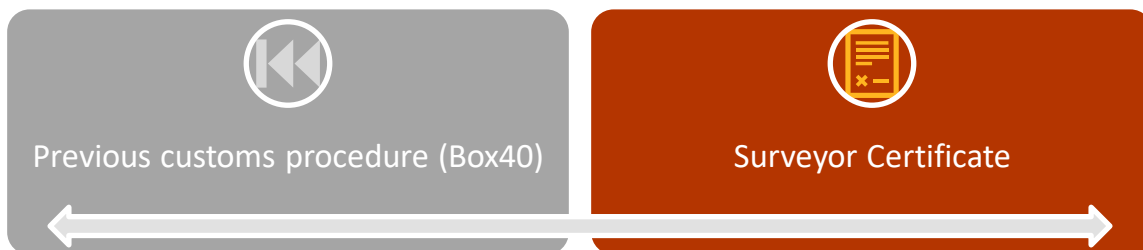
Part One of this report introduces JCA's role, mission, and legal mandate. Our observations and assessments are presented in Parts Two to Four under the headings: "Areas of Control Weaknesses", "Financial Exposure;" and "Non-Transactional Issues;" respectively.

What We found



JCA’s Monitoring of Bunkering Operations in Jamaica

- 1 Bunkering operations in Jamaica are processed using one of two regimes: namely, Warehousing (IM7) utilized by Petrojam and Special Economic Zone (IM9) in the case of Bunker Fuel Operator 1 (BFO1). The major controls under these regimes include:



The “previous customs procedure<sup>1</sup>” required each declaration to be populated with all the related document numbers in the designated area (box 40) in ASYCUDA, to enable an association between an import entry declaration and all subsequent entries for the goods resulting from the declaration whether for exports (EX1/EX9) and/or bringing the fuel into the local market (IM4). Further, all international fuel sales must be verified by a surveyor jointly engaged by both parties to document the date, type and quantity of fuel being imported or exported, a practice which conforms to international standards.

<sup>1</sup> Box 40 is labeled AWB/BL/Previous Document which requires either the Airway Bill, Bill of Lading or Previous Document reference number.



- 2 **The JCA failed to ensure that exports from BFO1’s SEZ were authenticated as it did not enforce strict adherence to the “previous customs procedure” which links the entry placing the fuel in the zone and the corresponding export entry for ship sales or import entry, to recognize local sales.** Also, JCA’s policies and procedures for bunkering operations require the independent Surveyors’ Certificate to be duly signed by authorized personnel. Our review of ASYCUDA revealed that this independent verification mechanism provided by the Surveyor was evident for Petrojam’s imports and exports. However, this control mechanism was non-existent for BFO1. Furthermore, we noted that the Surveyor Certificate was signed by the ship captain for Petrojam’s imports and exports. We were unable to determine that the exports of fuel from BFO1 were valid. This highlights a deficiency in JCA’s internal controls which heightens the risk of non-collection of duties from BFO1.
- 3 **Further, JCA’s Procedures for Sea Bunkering requires that “the Export Entry must also be prepared, and processing fees paid, prior to the activity.” JCA failed to validate the authenticity of 765 declaration entries for BFO1 that were paid late and recorded as exports. These entries related to 296.34 million litres of fuel with a custom value of approximately \$12 billion.** We identified from ASYCUDA that the 765 export entries were held in the system without payment of the export fees for periods ranging up to eight months after they were registered in the system. We noted that the export fees were subsequently paid in August and September 2020, after our office requested bunker fuel reconciliation reports in August 2020. However, owing to the limitation of the information uploaded into ASYCUDA, we were unable to verify that these entries represented legitimate exports.

We sought to ascertain the reasons for the ‘delayed’ receipt by the JCA, of export fees from BFO1 and if there was a special arrangement for BFO1. This was against the background where the Ministry of Finance granted a 21-day moratorium to Petrojam in respect of payments of all duties on finished petroleum products. In response to our inquiry regarding the reasons for the delayed payment of export fees by BFO1 and whether there was a special arrangement for BFO1, JCA confirmed on February 13, 2021, that there was no special arrangement for BFO1; however, an explanation was not provided regarding the delay in entry declarations and the collection of revenue from BFO1.

- 4 **In response to complaints received under the Protected Disclosure Act (2011), we sought to determine whether BFO1 was adhering to the terms of its Special Economic Zone (SEZ) approval.** The JCA has since indicated that it has commissioned an audit of the operations of the importer, which was still ongoing as at the date of this report. Nonetheless our review revealed the following:
  - i. **Between June 2018 and February 2020, BFO1 failed to declare, in a timely manner, a total of 50.08 million litres (315,269.67 Barrels) of imported fuel in five shipments with a CIF value of \$1.892 billion and estimated duties of \$2.1 billion.** The SEZ and Customs Act requires declarations to be made on or before goods arrive at the port. However, JCA did not always ensure that BFO1 completed a declaration prior to fuel being placed into its SEZ as stipulated by the legislations<sup>2</sup>. We found that import entries, related to these five shipments, were outstanding for periods between one and three years and were only

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<sup>2</sup> Section 43(1) The Special Economic Zone Act

processed in 2021 following our inquiries. JCA eventually submitted a schedule on February 8, 2021 of both IM4 and EX9 entries in support of fuel moved from the SEZ in relation to the 50.08 million litres.

- ii. **We found that JCA did not undertake ongoing monitoring of the import and export activities of BFO1.** JCA could not readily provide evidence that it tracked all fuel placed in and removed from the SEZ to ensure that BFO1 paid all the required duties. Therefore, we could not determine what portion of the estimated \$2.1 billion - referred to above - should have been legitimately free of duties in the case of exports relative to that which was payable for the local sales. As indicated above, we found that the previous customs procedure was not being utilized and neither was the required surveyor certificates uploaded in the ASYCUDA system to enable immediate verification of the quantity of fuel which was exported.
- iii. In a response dated October 29, 2021, JCA indicated that it has since reconciled and accounted for the payment of the export fees and duties for 98 per cent of the import and export entries. However, it did not provide a reconciliation for the disposal of the fuel from the SEZ until November 2, 2021. We noted that this latest reconciliation was materially different from that presented to us eight months prior on March 1, 2021 which at the time included non-fuel items, such as soybean meal and bulk Golden DDG. The continual revision by the JCA to the information provided, casted doubt on the accuracy of the reports provided; therefore, we did not place any reliance on the information submitted. Further, these discrepancies reinforced our concern that the Agency did not faithfully monitor the movements of fuel in and out of the SEZ to ensure that all duties and fees were duly collected in accordance with the SEZ Act, and JCA's policies and procedures. JCA also reported that it recently adjusted its system, having recognized the deficiency in monitoring activities surrounding the movement of fuel associated with IM9 declarations to be able to track the movements as the removals from the SEZ were not reflecting the Previous Customs Procedure.

### Chronic arrears from Private Bonded Warehouse Operators

- 5 **JCA did not faithfully monitor private bonded warehouses which contributed to significant payment arrears by the Warehouse Operators.** JCA's records revealed that three importers owed an estimated \$664.24 million, in excess of the bonds related to the warehouse operations as at **September 30, 2021.** Based on evidence provided by JCA, the related items were imported between 2010 and 2015, but we noted that in most cases the items were removed from the warehouses without the payment of the required duties, in breach of section 122 of the Customs Act. Additionally, the JCA did not provide the reason for not auctioning the items. The JCA indicated that the arrears were incurred prior to the introduction of ASYUCDA as the processes then were completely manual. While we recognize the significant benefits of ASYCUDA, this adverse condition highlights weaknesses in JCA's internal controls and monitoring activities, which may lead to revenue leakages. We noted that 138 entries with related duties of \$308.36 million were brought before the Courts in 2020 following queries

by our office during the period of the audit. Further, during our audit, JCA has brought another matter before the Court in May and August 2021 relating to 80 entries totalling \$142.3 million representing goods imported between 2011 and 2012. Of note, Section 241 of the Customs Act states: “*proceedings under the customs laws may be commenced at any time within seven years after the date of the offence,*” hence the seven-year deadline would have passed.

- 6 **Deficiencies in JCA’s systems of internal control were also demonstrated by its failure to issue demand letters to delinquent importers in a timely manner.** We identified 47-line items with related duties payable amounting to \$38.07 million and found 23 instances with the duties totalling \$19.79 million where letters were prepared three months after the items fell into the overtime category. This highlighted an underlying weakness in JCA’s internal controls, as there was no written policy regarding timelines for the issue of demand notices to delinquent importers, although management indicated that notices were usually prepared and submitted one month after goods became ‘overtime.’

## Recommendations

The JCA should take immediate steps to address the weaknesses identified in the report for which reasonable corrective actions have not been identified or implemented.

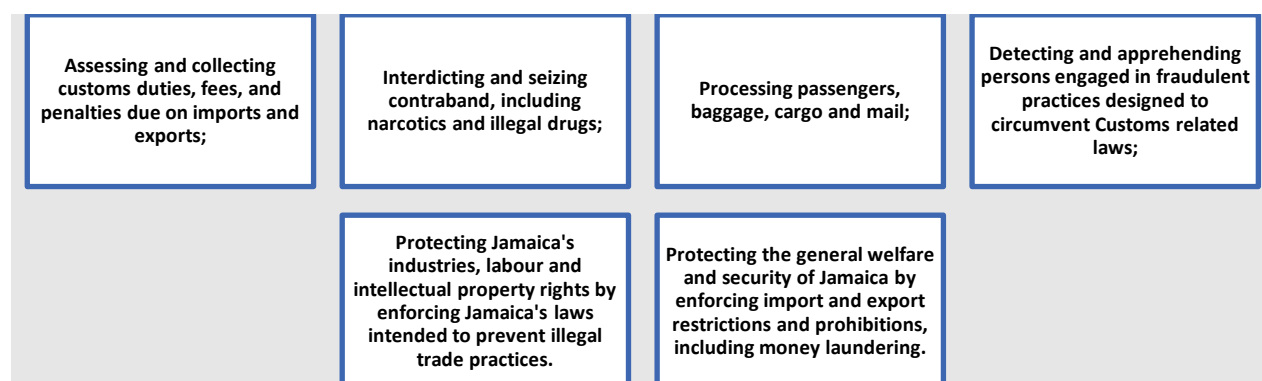
1. Evaluate the reporting capabilities of ASYCUDA in line with the current practices and devise measures to ensure that the Agency strengthens its monitoring and control activities over the activities of the importers and custom brokers to effectively secure the Government of Jamaica’s revenue.
2. Establish detailed procedures to independently and routinely record all movements of bunker fuel imported, sold, or exported; to ensure that the relevant duties and fees are paid immediately when they become due. The JCA could consider a computerized approach in ASYCUDA.
3. Employ strict enforcement of the Customs Act and JCA’s procedures and take immediate steps to collect all outstanding duties and fees.
4. Establish a comprehensive reporting protocol for handling errors and irregular activities for timely resolutions so that all duties and fees due to GOJ are paid without delay. Urgent steps should also be taken to correct the specific errors identified by the JCA in the ASYCUDA system.
5. Accordingly, further strengthening of its monitoring and oversight systems is necessary to enhance the JCA’s effectiveness in protecting Jamaica’s borders against illicit imports while ensuring the equitable collection of revenue, in accordance with its mandate.

## Part One

### Background

**1.1 The Jamaica Customs Agency (JCA) is responsible for collecting all customs duties and related charges for goods being imported, as well as the relevant fees related to all exports.** The Customs Act empowers and authorizes the JCA to equitably collect all revenue due to the Government as a result of items being imported into the island or exported from Jamaica. In the exercise of its powers, the JCA facilitates trade between Jamaica and the rest of the world, while seeking to protect the Country’s borders from illicit imports and exports. Based on the Customs Act, the powers of the JCA are vested in the Commissioner in exercising his/her duties<sup>3</sup>. The customs officers have similar powers, authorities, and privileges as are given by law to the officers of the Constabulary Force<sup>4</sup>. The JCA was designated as an executive agency based on the provisions of the Executive Agencies Act on March 28, 2013, to take effect from April 2, 2013. The JCA executes its mandate as depicted in *Figure 1*.

Figure 1: Execution of Jamaica Customs Agency's Mandate



### Sufferance Wharves

**1.2 The Customs Act 1941 defines a Sufferance Wharf as any place designated by the Minister at which imported goods or goods about to be carried coastwise or exported may be loaded or unloaded under such conditions and in such manner as he may direct<sup>5</sup>.** This includes any quay, jetty, wharf, or “any place other than an approved place of loading or unloading, either generally or in a particular case”. The Customs procedures require that all goods entered into the wharf are fully paid up before they are cleared to be removed.

<sup>3</sup> Section 4

<sup>4</sup> Section 3

<sup>5</sup> Section 2 and Subsection 2 of the Customs Act, 1941

## Import Procedures for Goods at Sufferance Wharves

**1.3 The JCA procedures require the submission of an Application for Provisional Clearance (C88) for specific imports on or before the arrival of the shipment.** Within 72 hours of the approval of the C88, the declarant is required to submit the final entries and pay the relevant duties and fees. The only exception to the preceding is in relation to Petrojam where a moratorium is granted for 21 days for finished petroleum products and six weeks for bunker fuel to submit the final entries and payment of associated fees and duties. Where any person has been convicted of an offense in relation to uncustomed goods an application may be made for forfeiture of the goods<sup>6</sup>.

*According to Section 2 of the Customs Act, 1941 “goods liable to duty on which the full duties due have not been paid, and any goods, whether liable to duty or not, which are imported or exported or in any way dealt with contrary to the Customs Laws is defined as “Uncustomed Goods”.*

## Private Bonded Warehouse

**1.4 A private bonded warehouse is a building or other secured area approved and monitored by the Jamaica Customs Agency in which dutiable goods may be stored, manipulated, or undergo manufacturing operations by a private enterprise without payment of duty.** It is a place so appointed by the Minister where appropriate notice has been given in the gazette according to the Customs Act where imported goods are being stored. The Act allows for those goods to be imported and warehoused without payment of duties for a period of one year in the first instance. In these situations, the applicable duties and fees are required to be paid before the goods are cleared to be removed from the private bonded warehouse. Section 3 of the Private Bonded Warehouse manual, revised in 2017, outlines that warehoused goods may be re-warehoused for a period not exceeding one year. Therefore, any goods remaining in the private bonded warehouse after the end of the second year are automatically classified as overtime and all applicable fees and duties become payable immediately. The owner may opt to pay the requisite fees and charges on the goods remaining in the warehouse to the JCA and re-warehouse them for another year. In this case the duty is no longer payable until after another year has elapsed.

All goods being imported and stored, must be secured by way of a bond and sufficient sureties as determined by the Commissioner. Given that the duties are not paid at the time of importation, the Customs Act mandates that all private warehouses operate as a restricted area where the owner may only have access in the presence of an officer of the JCA. Any alteration, including removal of the goods from the private warehouse by the owner without the knowledge of the JCA is considered a breach to which the sanctions of forfeiture and fines shall apply.

## Monitoring of Bunkering Operations

**1.5 The laws of Jamaica do not provide a definition for a bunker or bunkering and neither does the International Maritime Organisation.** However, internationally, bunkering has been defined as “*the*

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<sup>6</sup> Section 203 of the Customs Act

*provision of solid, liquid or gaseous fuel or of any other energy source used for the propulsion of the waterborne vessel as well as for general and specific energy provision on board of the waterborne vessel whilst at berth*". Bunkering activities are considered one of the most significant components of the shipping industry. In addition to the local requirements, there are several international requirements to which there must be compliance. These include the International Maritime Organisation (IMO) representing all governments of the world which has adopted the International Convention for Safety of Life at Sea (SOLAS) and the International Convention for the Prevention of Pollution from Ships (MARPOL) as well as the International Organization for Standardization (ISO) and the International Council on Combustion Engines (CIMAC). These entities and conventions are focused on risk mitigation and safety in all aspects of bunkering activities. As a result, the entire process of bunkering is guided by detailed documentation setting out the duties and responsibilities of all personnel and stages of bunkering. These include the safety and quality checks such as sampling of the fuel that is to be done by each party before, during and after the commencement of the bunkering operation.

**1.6** Two (2) types of bunkering services are authorized by the JCA. The first, is sea bunkering where all the activities are conducted at the seaports. The second is road bunkering where the bunker fuel is loaded into a "tanker wagon" and transported by road to another port/pier where that fuel is then off-loaded and used to bunker a vessel. Bunker Fuel is predominantly imported as finished petroleum products: heavy fuel oil, sometimes referred to as Bunker C or Diesel (Marine Diesel or ULSD).

## Other Regulators of the Bunkering Industry

**1.7 The Port Authority of Jamaica (PAJ) is a statutory organisation established by the Port Authority Act with a mandate to regulate the wharves by making by-laws for their control and management for the maintenance of good order.** This includes regulating the conduct of persons employed on the wharves as well as, ensuring exclusion of undesired persons from the premises. Additionally, the PAJ must perform a security clearance check of all employees who will be engaged in the bunkering activities in accordance with JCA requirements.

**1.8 The Maritime Authority of Jamaica (MAJ) is mandated by the Shipping Act, 1998 to govern "maritime transportation in Jamaica's maritime space" as well as the maintenance of an international ship registry.** In this regard, all vessels intending to trade in Jamaican waters must be issued with a Trading Certificate by the MAJ. Similarly, authorisation is also required from the (MAJ) via receipt of the Trading Certificate, for any entity to legally provide bunkering services in Jamaica's waters. The Shipping Act also empowers the Maritime Authority of Jamaica (MAJ) to ensure that all vessels conducting commercial activities in Jamaican waters meet national and international requirements for maritime safety, security, and pollution prevention. Only the vessels that have been given a certificate of trade by the Maritime Authority of Jamaica (MAJ) can legally conduct bunkering operations in Jamaican waters.

## Special Economic Zones

**1.9 The SEZ Act defines a Special Economic Zone as a geographical area designated by the Minister and published in the Gazette.** By making the designation of a SEZ, companies operating in the Zone are treated, as operating outside of the Customs Area and therefore *“any goods introduced are generally regarded, in so far as import duties and taxes are concerned, as being outside the Customs Territory”* which has the effect of being free from import duties unless it is being introduced in the free circulation area (domestic market). The Special Economic Zone Act 2015<sup>7</sup>, provides for the exemption of Customs Duties, under the Customs Act, however the Customs Fees are not exempted. Additionally, *“All domestic supplies into the SEZ will be zero-rated for GCT including utility services<sup>8</sup>”* as taxes and incentives will be ‘fit for purpose’ and will minimize loss of revenue to the government.

**1.10** Further, goods legally and legitimately placed into the SEZ are allowed in by way of an IM9 import entry declaration at the time the goods are imported. Similarly, goods imported for local consumption require an IM4 entry at the time of importation or at the time of movement from the SEZ into the domestic market. Goods being brought from the SEZ into the domestic market are deemed to be imported into the customs territory and therefore subjected to import duties<sup>9</sup>. To place goods into the SEZ without the appropriate import entry (IM9) or subsequent movement to the domestic market without an IM4 entry is regarded as illegal and a breach of the SEZ and Customs Acts<sup>10</sup>.

**1.11** The stipulation for bunkering in Jamaica is that the fuel must be loaded directly on a vessel that is departing the island or on a tanker that would travel inland to a port and offload on to a vessel that is also leaving Jamaica. Fuel used in the bunkering sector is free of customs duties, specifically Special Consumption Tax (SCT) in contrast to fuel imported for use in the domestic market which attracts all applicable duties. This underscores the importance of strict oversight of this multibillion-dollar industry.

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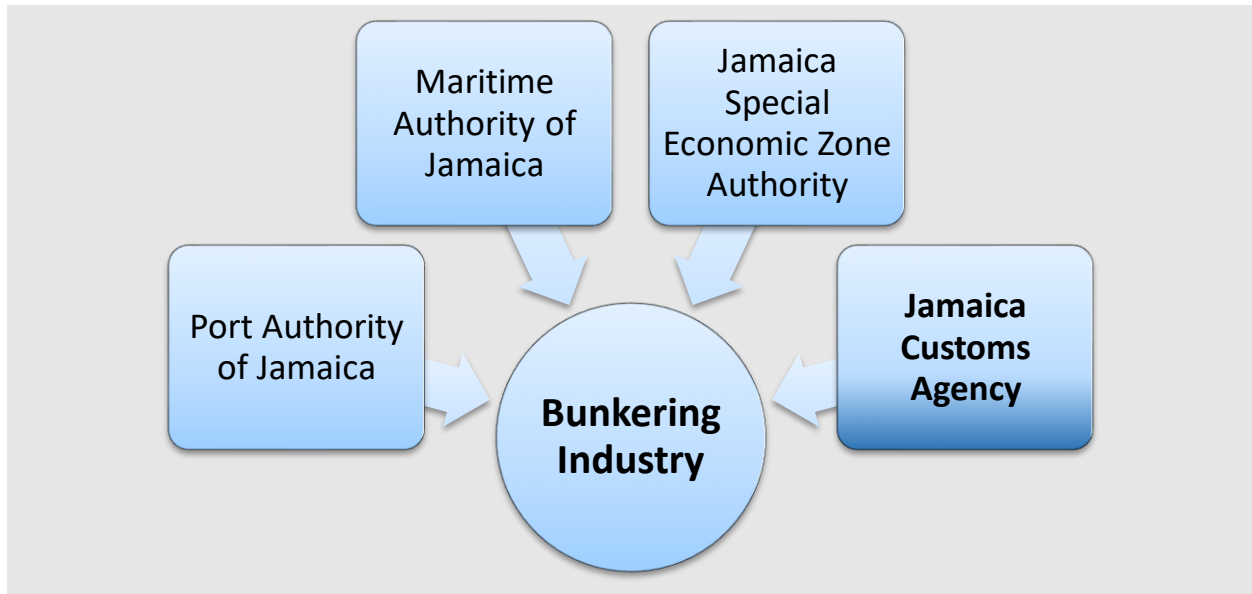
<sup>7</sup> Section 3(1) of the First Schedule

<sup>8</sup> SEZ White paper, p.8

<sup>9</sup> Section 43(2) of the SEZ Act

<sup>10</sup> All goods imported on an IM9 are deemed as goods imported for re-exportation and as such no duties are payable to the Government of Jamaica

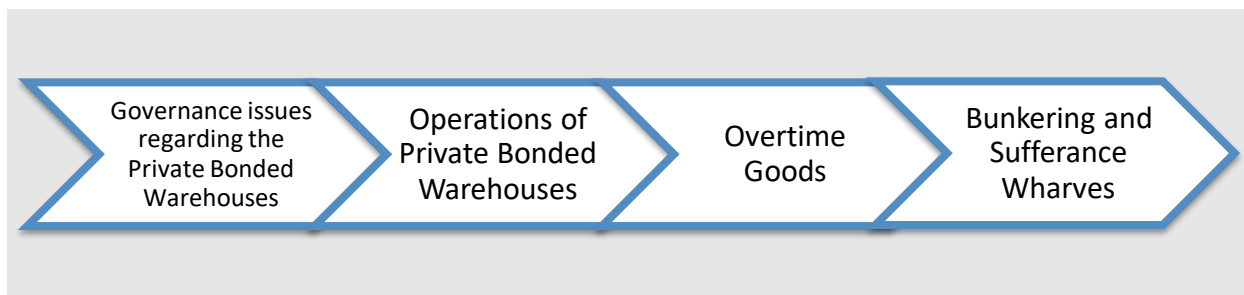
Figure 2: Industry Regulators



**Rationale for the Audit**

1.12 The Auditor General’s Department (AuGD) initiated the audit of JCA based on confidential information that came to its attention, some of which was corroborated by Internal Audit reports, suggesting that there were significant deficiencies and malpractice in the operation of private bonded warehouses. We became interested in whether the management of the JCA had implemented the necessary controls and procedures over the private bonded warehouses to ensure that all import duties due to the Jamaican government were being identified and collected in accordance with the approved procedures. The audit sought to ascertain the effectiveness of the support systems, policies and procedures that guide the JCA’s activities, and the extent to which the JCA had taken the necessary actions to enforce compliance where breaches were identified. The audit focused on the following four areas:

Figure 3: The Areas of Audit Focus





**1.13** We planned and conducted our audit utilizing an agile approach, in accordance with the ISSAIs, which are applicable to Performance and Compliance Audits along with data interrogation techniques. These standards are issued by the International Organization of Supreme Audit Institutions (INTOSAI). We conducted a risk assessment and developed issue analyses with the questions, which the audit sought to answer in order to form our opinions and conclusions. We gained knowledge of the operations of the Jamaica Customs Agency and the role it plays in collecting revenue due to the Government of Jamaica and ensuring the integrity of its borders by reviewing internal and external information, interviews with management, staff and other stakeholders, observations, walkthroughs, and analytical reviews augmented by visits to ports, warehouses, and wharves during the period May to July 2020. We conducted fieldwork between March 2020 and October 2021 to gather sufficient and appropriate audit evidence on which we based our conclusions.

## Whistle Blower Information

**1.14** During the audit, unsolicited information was submitted to the AuGD under the provisions of the Protected Disclosures Act 2011, which indicated *“BFO 1 has been using its status as a Special Economic Zone Operator to import items without the payment of the required Import Duties and GCT and then moving these items into the domestic market without the requisite approvals or taxes and duties, thereby defrauding the government of the required revenue”*. The unsolicited information also includes the allegation that *“the company has been submitting export declarations to the Jamaica Customs Agency for fuel claiming that the said fuel is being exported when in actuality the fuel is being moved to the company’s port facility in Ocho Rios which is not a SEZ and not manned by Customs”*. The JCA later indicated that it commissioned an audit of the operations of the importer, which was still ongoing at the date of this report.

## Audit Limitation

**1.15** The AuGD was refused access to BFO1’s SEZ on June 11, 2021, as the management indicated that their board would need to make the decision regarding the auditors visiting their private premises. The audit walk-through was intended to gain a better understanding of the interaction between JCA in its monitoring role of BFO1’s operation. We note that Section 5 of the fifth schedule of the SEZ Act places an obligation on the developers of the SEZ to reasonably grant access to any representative of the Government in the performance of its legal duties. It should also be noted that the required walk-through was not unique to BFO1, as a similar activity was executed by the AuGD at two other ports based on JCA’s intervention. On October 27, 2021, four months later the team was granted access to conduct a walk-through of the premises.

## Methodology

**1.16** Given the specialised nature of the subject matter our approach to this audit included the following: -

1. Detailed review of the Customs Acts, Customs Regulations as well as the operational policies and procedures provided by JCA.
2. Interviews and meeting with various officers of the JCA who have responsibility for the areas of concern to the AuGD.
3. Seeking written response to questions posed to the JCA for explanation and clarification.
4. Site visits and walk-throughs to understand JCA's operation.
5. Download and analysis of the ASYCUDA database

## Part Two

### Areas of Control Weaknesses

**2.1 By virtue of the provisions of the Customs Act, the JCA is required to monitor the operations at all ports that are authorised to offload and onload goods such that all fees and duties due and payable to the GOJ are collected without delay.** JCA is expected to have in place the necessary policies, procedures, systems, and personnel to ensure that they can deliver on their mandate. In the case of duty-free imports, particularly bunker fuel imports, we expected JCA to take the necessary actions to ensure that adequate security exists to cover the applicable duties and fees. Additionally, JCA is required to take all necessary steps to ensure that they are aware of all movements (in/out) of duty-free goods such that there is no delay in the processing of the requisite documentation and payment of duties and fees as and when they become due. Unless there is a policy to the contrary, all duties and fees are due and payable on importation of goods upon arrival at the wharf and should be fully paid up before they are cleared to be removed from the wharf. We observed that the monitoring procedures employed by JCA to protect the country's revenue did not always provide assurance that there were no leakages.

#### Monitoring of Bunkering Operations and authenticating Exports

**2.2** Bunkering operations in Jamaica are processed using one of two regimes: namely, Warehousing (IM7) which was utilized by Petrojam and Special Economic Zone (IM9) which was the case with Bunker Fuel Operator 1 (BFO1). The major controls under these regimes include:

**2.3** The “previous customs procedure<sup>11</sup>” requires each declaration to be populated with all the related document numbers in the designated area (box 40) in ASYCUDA, to enable an association to be made between an import entry declaration and all subsequent entries for the goods resulting from the declaration whether for exports (EX1/EX9) and/or bringing the fuel into the local market (IM4). Further, all international fuel sales must be verified by a surveyor jointly engaged by both parties to document the date, type and quantity of fuel being imported or exported, a practice which conforms to international standards.

**2.4** The JCA failed to authenticate that those exports from BFO1 were valid, as it did not enforce strict adherence to the “previous customs procedure” which links the entry placing the fuel in the zone and the corresponding export entry for ship sales or import entry, to recognize local sales. Also, JCA's policies and procedures for bunkering operations require the independent surveyors' certificate to be duly signed by authorized personnel. Our review of ASYCUDA revealed that this independent verifying mechanism provided by the Surveyor was evident for Petrojam's imports and exports, however, was non-existent for BFO1. Furthermore, we noted that the surveyor certificate was signed by the ship captain for Petrojam's imports and exports. We were unable to determine that the exports of fuel from BFO1 were valid. This

<sup>11</sup> Box 40 is labeled AWB/BL/Previous Document which requires either the Airway Bill, Bill of Lading or Previous Document reference number.

highlights a deficiency in JCA's internal controls which heightens the risk of non-collection of duties from BFO1.

### Up to three Years Delay in Processing Import Entries

**2.5** Further to our concern highlighted above, between June 2018 and February 2020, BFO1 failed to declare a total of 50.08 million litres (315,269.67 barrels) of imported fuel on five shipments with a CIF value of \$1.892 billion and estimated duties of \$2.1 billion, in a timely manner (Table: 1). These entry declarations were outstanding for periods between one and three years after the date of importation. According to the SEZ Act, JCA is required to arrange for the availability of customs services on a continuous basis to meet the needs of the developer and occupants "in order to facilitate the efficient operation of the zone." This includes: "arrangements for customs procedures and systems that enable electronic transactions and payments and pre-arrival clearance of goods". However, the JCA did not ensure that import entry declarations for SEZ operators were processed on or before the goods entered the Zone in compliance with the SEZ and Customs Act. Hence, the appropriate fees and duties remained uncollected during the intervening period .

**Table 1: Schedule of Late Submission of Import Entries**

Date Imported	Vessel	Entry Date	No. of Years Delay	Fuel Type	Quantity (Bls)	Quantity (Litres)	CIF (\$)	Duties Payable (\$)
2/6/2018	Vessel 2	28/1/2021	2.66	ULSD	85,962.70	13,628,041.15	435,619,390.00	599,077,275.54
2/6/2018	Vessel 2	26/2/2021	2.74	HSD	92,414.60	14,692,746.51	558,288,738.83	666,120,465.96
31/1/2019	Vessel 3	26/2/2021	2.07	ULSD	52,164.52	8,293,496.53	330,843,621.36	371,675,360.45
25/2/2020	Vessel 4	26/2/2021	1.01	ULSD	55,095.34	8,750,236.00	369,327,778.20	394,332,772.19
20/2/2018	Vessel 1	19/2/2021	3.00	HFO - RMG 380	29,632.51	4,711,192.60	197,916,713.59	66,430,558.92
				<b>TOTAL</b>	<b>315,269.67</b>	<b>50,075,712.79</b>	<b>1,891,996,241.98</b>	<b>2,097,636,433.06</b>

**2.6** We noted that the importer prepared the SEZ entries (IM9) during January and February 2021, following our enquiry into the matter. The JCA did not provide a reason for the prolonged delay in the importer submitting the IM9 entries, despite our numerous requests. JCA maintained that the importer was advised to finalise both import and export entry declarations, as they recognised that the fees remained unpaid. JCA further indicated that they had to resort to "severe action" by closing both inlet and outlet valves to prevent the importer from "engaging in any sales transaction" to force the importer to finalise the entries. Based on JCA's Sea Bunkering procedures, two customs officers are required to be present at the SEZ to validate the quantity and type of fuel being bunkered. We saw no evidence that a JCA representative was present at the SEZ when fuel entered the SEZ. JCA admitted that "some of the fuel imported before 2021 was not duly entered by way of an export declaration within the ASYCUDA system".

**2.7 JCA was unable to provide evidence to readily substantiate whether fuel under the IM9 regime was exported or sold on the local market.** We expected JCA to maintain detailed records of the amount of fuel placed into the SEZ against the amounts sold on the local market vis a vis amounts exported via bunkering. This would serve the purpose of confirming to the JCA the balance of fuel that is in the relevant tanks at any given time; but more importantly, that all duties due on fuel imported into the free circulation area are duly collected. However, we noted that there was a delayed response to our request for reconciliation reports in relation to BFO1.

### **Inaccurate information provided to support usage of fuel Imported in the SEZ**

**2.8** JCA submitted three versions of the said reconciliation occasioned by our request for clarification of items on the said reconciliation. JCA submitted both IM4 and EX9 entries in support of fuel moved from the SEZ in relation to the 50.08 million litres.

- i. We found that JCA did not undertake ongoing monitoring of the import and export activities of BFO1. Consequently, JCA could not readily provide evidence that it tracked all fuel placed in and removed from the SEZ to ensure that BFO1 paid all required duties. Therefore, we could not determine what portion of the estimated \$2.1 billion - referred to above - should have been legitimately free of duties in the cases of exports and that which was payable for the local sales. As indicated above, we found that the previous customs procedure was not being utilized neither was the required surveyor certificates uploaded in the ASYCUDA system to enable immediate verification of the quantity of fuel which was exported.
- ii. In a response dated October 29, 2021, JCA indicated that it has since reconciled and accounted for the payment of the export fees and duties for 98 per cent of the entries. However, it did not provide a reconciliation for the disposal of the fuel from the SEZ until November 2, 2021. The first reconciliation was provided by JCA on February 8, 2021, with subsequent reconciliation on March 1, 2021. The latest reconciliation that was provided in November, was materially different from that presented to us eight months prior on March 1, 2021, which, included non-fuel items, such as soybean meal and bulk Golden DDG. The first reconciliation was provided on February 8, 2021; therefore, the continual revision by the JCA to the information provided, casted doubt on accuracy of reports so provided; therefore, we could not place any reliance on the information submitted. Further, these discrepancies reinforced our concern that the Agency did not faithfully monitor the movements of fuel in and out of the SEZ to ensure that all duties and fees were duly collected in accordance with the SEZ Act, policies, and procedures. JCA also reported that it recently adjusted its system, having recognized the deficiency in accounting for the movement of fuel associated with IM9 declarations to be able to track the movements as the removals were not reflecting the Previous Customs Procedure.

## Local fuel Sales by Petrojam Treated as Exports

**Table 2: Local Fuel Sales treated as Exports**

Fuel Sales Treated as Export	No. of Transaction	Quantity (Litres)	Customs Item Value (\$)
Local Bunker Company Sales	169	210,150,389.09	8,918,488,622.18
Local Bauxite Company Sales	62	65,432,079.58	3,273,563,150.96
Total	231	275,582,468.67	12,192,051,773.14

**2.9** Over the period May 2016 to September 2017, export entry declarations related to 275.6 million litres of fuel with a customs value of \$12.19 billion, representing sales by Petrojam to BFO1, its subsidiary and bauxite companies were classified as exports. This was contrary to the provisions of the Customs Act which describes an export as: ‘means of take or cause to be taken out of the Island or the waters thereof’. In responding to our report, and in reference to the sales to the local bunkering companies, the JCA indicated “in reviewing the declarations specific to this query, we observed that the export declaration in respect of bunker fuel was incorrectly consigned to the local bunkering operator instead of the actual vessel to be bunkered. JCA indicated that the declarant was advised to discontinue this practice of treating sales to local companies as exports”. JCA did not provide us with written proof of this instruction as it indicated that the advice to the declarant was given verbally.

**2.10** Based on our review, 27 per cent (62 of 231) of the local sales above by Petrojam were treated as exports to four local bauxite companies between May 2016 and September 2017. The fuel amounted to a combined 65.4 million litres of automotive diesel oil, marine diesel oil and heavy fuel oil, with a customs valuation of \$3.3 billion. According to the JCA, the sale of fuel to the bauxite company was initiated by the bauxite company by way of a letter to Petrojam. However, JCA did not monitor the fuel after the export entry was finalized to ensure that fuel intended for export was not used in the domestic market, without the requisite duties and taxes being paid in accordance with the Customs Act.

**2.11** We also identified that 68 per cent of the volume of fuel (44.5 million litres) were sales of automotive diesel oil (ADO). As it relates to the bauxite companies, JCA on September 25, 2020, indicated that prior to 2017, it found out that “Export Entries were being used erroneously for the sale of fuel to bauxite companies, which was immediately stopped”. Further, “the bauxite companies are required to submit a signed declaration committing to the legitimate use of the fuel.” Responding to our query, JCA on September 25, 2020, indicated: *‘there has never been a case where the full duties and taxes were not paid for Automotive Diesel Oil. In 2017, an IM4 was done for all the ADO imported for Petrojam Limited and as such the Agency would not be in a position to explain why Petrojam did an export entry for such sale.’* JCA indicated that its Post Clearance Audit Unit, routinely conducts verification of incentives granted based on their risk assessment. The JCA later indicated that regardless of the improper export entries being generated, the specified fuel imported were paid for in full on six IM4 entries which accounted for all the applicable duties. JCA later provided us with six import entry declarations (IM4), which they

purported to be the import entries related to the fuel sold to the bauxite companies, which represented imports of finished products - ADO.

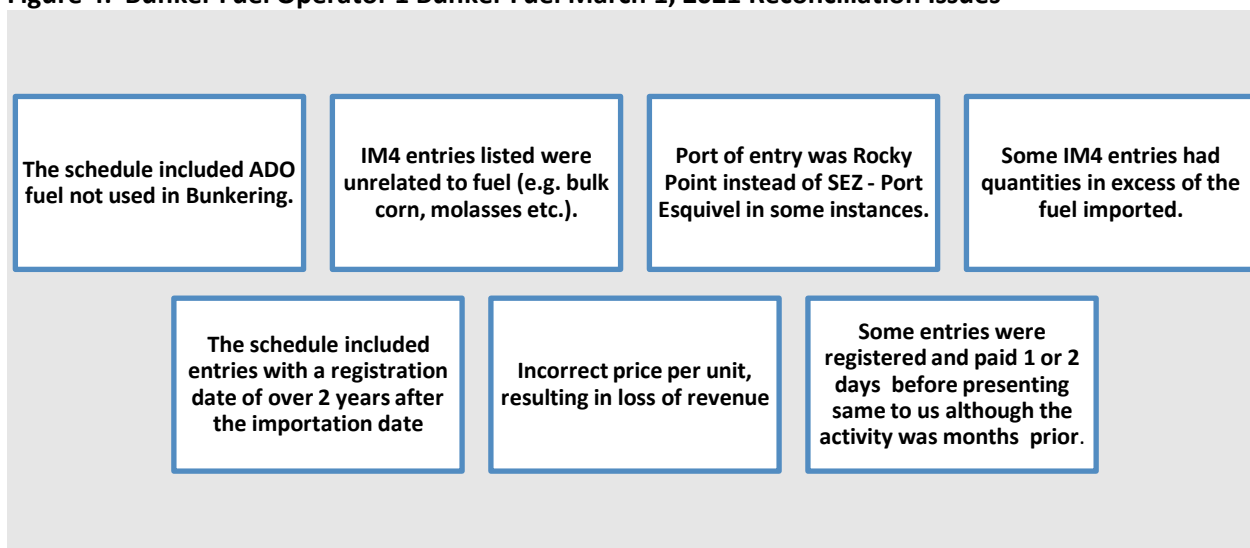
- i. In response to our query regarding the treatment of ADO fuel as exports, Petrojam confirmed that in error the sales were treated as exports and subsequently cancelled the export entries relating to local sales to the bauxite companies on May 14, 2021 in conformity to the JCA's directive. However, Petrojam's response contradicted JCA's assertion that Petrojam imported the items as finished products and the related duties were collected. On the other hand, Petrojam indicated that these '*ADO fuel sales were related to oil produced at its oil refinery through the conversion of various types of crude oil into refined petroleum products to include ADO.*' These conflicting explanations underscore the need for an urgent review by JCA to ensure that liabilities to the Government are accurately settled.

**2.12** Additionally, on JCA's March 1, 2021 reconciliation, we noted 22 entry declarations we registered in ASYCUDA between January and February 2021 for 11,298.52 barrels of ULSD, though shipment records indicated that the fuel was imported two years earlier on January 31, 2019. JCA was unable to provide assurance that it verified how the ULSD imported in January 2019 was disposed of in January 2021 and February 2021, given that there were several subsequent importation and sales of ULSD using the same ULSD tank. Also, a review of the commercial description and supporting documents revealed that in 18 of the 22 instances, the fuel documented related to automotive diesel oil, heavy fuel oil, and MoGAS and not ULSD.

**JCA Response dated March 10, 2021:**

Given the anomalies we had identified in perusing the records, several outstanding declarations were identified. BFO1 was mandated to finalize same and the JCA had placed a lock on the tank containing the fuel. In this process it appears as if all outstanding declarations were not captured.

Figure 4: Bunker Fuel Operator 1 Bunker Fuel March 1, 2021 Reconciliation Issues



## 765 Export Entries from the SEZ not validated

2.13 Further, JCA's Procedures for Sea Bunkering requires that *"the Export Entry must also be prepared, and processing fees paid, prior to the activity."* JCA failed to validate the authenticity of 765 declarations entries for BFO1 that were paid late and recorded as exports. These entries related to 296.34 million litres of fuel with a custom value of approximately \$12 billion. We also observed from the ASYCUDA database, long payment delays for these export entry declarations under the SEZ Export Regime (EX9). The registration of the entries is summarised as follows:

Table 3 : Late Payment of Export Entries

Month of Registration	No. of Entries	Litres (M)	Percentage
Jan-20	334	125.417	43.7
Jun-20	52	16.745	6.8
Jul-20	260	91.593	34
Aug-20	119	62.587	15.5
<b>Total</b>	<b>765</b>	<b>296.342</b>	<b>100</b>

2.14 We sought to ascertain the reasons for the 'delayed' receipt by the JCA, of export fees from BFO1 and if there was a special arrangement for BFO1 as we saw no evidence in ASYCUDA. This was against the background where the Ministry of Finance granted a 21-day moratorium to Petrojam in respect of payment of all duties on finished petroleum products. In response to our inquiry regarding the reasons for the delayed payment of export fees by BFO1 and whether there was a special arrangement for BFO1,



JCA confirmed on February 13, 2021, that there was no special arrangement for BFO1; and an explanation was not provided regarding the delay in entry declarations and collection of revenue from BFO1.

**2.15** Following queries made by the AuGD team in August 2020, the entry declarations were paid in August and September 2020 after being held in the system for up to eight months; with the majority (700) of the entries, paid on September 9, 2020. JCA's policies and procedures require that the entries be paid immediately at the time of registration or soon thereafter. The lengthy delays between the registration of the export entry declaration and the payment, points to a system breakdown, especially that most export entry declarations were over two months overdue and had to be batch-processed and paid. JCA did not give the specific reason for the delay although BFO1 would have sold fuel on the local market that was not declared on the entry purportedly placing the fuel in its SEZ. In responding, JCA indicated that it has taken steps to correct the anomalies. However, these systemic weaknesses increase JCA's risk to financial exposure.

**Table 4: Late Payment on Export Entries**

Date	No. Entries	Receipt No.	Litres	CIF (\$)	Fees Paid (\$)
21-Aug-2020	1	62881	1,782,523	102,637,631.34	3,005.00
25-Aug-2020	64	19041	17,583,218	702,030,425.71	192,320.00
09-Sep-2020	700	20334	276,976,333	11,206,553,040.43	2,103,500.00
<b>Total</b>	<b>765</b>		<b>296,342,074</b>	<b>12,011,221,097.48</b>	<b>2,298,825.00</b>

### Import Declarations accepted by JCA without independent verification

**2.16** We saw no evidence of independent verification by a surveyor, of the type and volume of fuel being transacted by BFO1. We reviewed a sample of the export entries and observed that the expected surveyor's certificates were not uploaded to ASYCUDA for BFO1 whereas this was done in respect of Petrojam's imports and exports. International fuel trade requires that a professional surveyor, contracted by both parties to the transaction, certifies the type and volume of fuel transacted and these are included in the Customs procedures. This requires the surveyor to take before and after measurements at both ends of the transaction in addition to the securing of samples to be laboratory tested. In their response JCA acknowledged that the independent surveyor's certificate is required as part of their Standard Operating Procedures (SOP). JCA further stated that the Customs Officer is required to sign the certificate as witness of verification of the fuel imported. As a result, where the certificate is missing, the declaration is routed for query. JCA has not queried those declarations but indicated that the certificates were being uploaded into ASYCUDA and going forward they will ensure that the independent surveyor's report is uploaded.

**2.17** Also, we noted where the original invoices from the supplier were not available in ASYCUDA, instead we only saw CARICOM invoices that were uploaded by the importer and as such we are unable to verify that the entries represented legitimate exports. JCA advised that a CARICOM invoice "can be used when goods are shipped together by an agent from different suppliers not necessarily from within

*CARICOM, to capture the invoice numbers and total invoice amount for the shipment*". Further, the supplier's invoice would be compared with the CARICOM invoice for verification and if there are concerns, the matter is referred to the Valuation and Verification Unit. We observed shipments of fuel using CARICOM invoices from suppliers external to CARICOM. However, we saw no evidence of involvement by any agents in consolidations to ensure that the conditions for acceptance of the CARICOM invoices were fulfilled. JCA did not provide any other evidence to support its processing of BFO1's import of fuel into the SEZ using the CARICOM invoice. Additionally, JCA accepted that at the time of processing, the original supplier's invoices were not available in ASYCUDA and as such we are unable to see how the CARICOM invoices was verified.

## Part Three

### Financial Exposure

#### Late Processing of Application for Provisional Clearance documents

**3.1 We identified 60 applications from Petrojam for provisional clearance of goods (C88) for fuel imported from 2016 to 2019 that were approved up to a month after the vessels departed from the port where the fuel was offloaded<sup>12</sup>.** The purpose of the document is for the importer to formally request permission from the JCA for the goods to be offloaded and taken into storage with the undertaking to submit the required final import entry declaration (IM4) and the payment of the applicable duties and fees within 72 hours<sup>13</sup>. Upon completion by the importer, the C88 is presented to the Sufferance Wharf Unit (SWU) and if approved, the importer then pays the required fee and produces the C88 at the port for immediate clearance from the port. JCA acknowledged that in some cases the vessel was allowed to off-load the bunker fuel prior to receipt of the application for provisional clearance but did not provide a rationale for its action. JCA further indicated, that despite evidence of some deficiency, it would have had knowledge of the imports through the vessel's manifest information uploaded to ASYCUDA, as well as physical presence of the JCA officer to verify the quantity of bunker fuel imported. Nevertheless, the JCA did not give a reason for the delayed processing of the C88 or indicate how it intended to reduce the likelihood of removal of goods from the port prior to the approval of the C88, in accordance with the Customs Act and regulations.

#### Discrepancies and unaccounted for HFO, ULSD and MDO

**3.2 Our review of 30 import entry declarations and the associated export entry declaration of bunkering fuel for the period 2016 to 2018 revealed discrepancies with HFO<sup>14</sup>, ULSD<sup>15</sup> and Marine Diesel Oil (MDO) imports.** The Ministry of Finance and the Public Service (MOFPS) authorised JCA to allow for bunker fuel to be imported on a C88 by Petrojam and subsequently exported during a 21-day period before the final entries and payment of the applicable fees and duties become due. The JCA indicated that this was later extended to six weeks. When the delay period has passed and there is bunker fuel remaining, an import entry declaration (IM4) should be completed to properly account for the clearance into the domestic market so that the relevant duties can be paid over to the JCA. However, none of the 30 import entries (IM7) for the 2016 to 2018 period were prepared within later delay period of six weeks (or 42 days). Additionally, a combined 5.5 million litres of ULSD and MDO were exported outside JCA's six-week policy period. This was despite the MOFPS setting a condition that the facility should be terminated if Petrojam did not adhere to the terms. Further, we noted 6.7 million litres (1%) of the total HFO imported by Petrojam, remained unaccounted for. We conducted a comparative analysis of the combined ULSD and MDO imported and subtracted the declared exports between

<sup>12</sup> Provisional Clearance of Goods Application also called "Pre-Clearance Letters" are required to be completed and approved by the Sufferance Wharf Unit (SWU) on the arrival of the vessel at the port.

<sup>13</sup> Section 30 of the Customs Regulations and Section 14 of the Customs Act

<sup>14</sup> HFO-Heavy Fuel Oil

<sup>15</sup> USLD-Ultra Low Sulphur Diesel

2016 and 2018 and found that of an estimated 22.8 million litres imported, 31.9 million litres were exported. This represented 140 per cent of the fuel imported and therefore could not be considered as accurate.

**Table 5: Percentage of Bunker Fuel Exported outside the six-week Period**

Details/Duration	HFO (LTR)	HFO (%)	USLD (LTR)	Marine Diesel Oil (LTR)	USLD (%)
Imported in Litres	<b>631,392,780.00</b>		<b>22,795,671.00</b>		
Exported within 6 weeks	580,023,655.58	92%	22,247,058.50	4,097,555.50	116%
Exported outside of 6 weeks	44,635,043.56	7%	3,721,231.00	1,804,064.29	24%
Unreconciled Fuel	<b>6,734,080.86</b>	1%	<b>-9,074,238.29</b>		-40%

Source: AuGD Analysis of JCA data

### Late Processing of Export Entry Declaration

**3.3 Our review of JCA's database identified 225 items relating to 144 export entries for bunker fuel that were entered into the ASYCUDA database up to one year after the vessel to which the fuel was exported departed from the port.** Further the entries were registered in the ASYCUDA database during the period of September 11 to 30, 2020, shortly after the AuGD team requested JCA's bunker reconciliation records. We noted where the entries were finalized up to 20 months after the date of export. Further, the departure dates (export) of the ships, for the period January 26, 2019, to August 25, 2020 were brought to books after the ships were deemed to have sailed, which undermines transparency and heightened the risk of errors or misrepresentations.

**Table 6: Late Entries Prepared for Petrojam**

Entries and Transaction Entered Per Day					
Date	Day	No. of Entries	No. of Items	Quantity (Litres)	Customs Value (\$)
11-Sep-20	Friday	27	45	80,983,544.00	4,452,570,960.65
12-Sep-20	Saturday	19	30	103,254,076.00	4,801,311,382.83
17-Sep-20	Thursday	1	1	2,091,397.00	76,451,189.96
18-Sep-20	Friday	42	62	119,195,913.00	7,041,151,240.43
19-Sep-20	Saturday	10	16	31,704,533.00	899,204,940.89
21-Sep-20	Monday	39	64	190,996,442.62	9,061,348,152.27
22-Sep-20	Tuesday	4	5	15,460,732.00	672,796,614.24
30-Sep-20	Wednesday	2	2	23,659,085.64	963,343,039.41
<b>Total</b>		<b>144</b>	<b>225</b>	567,345,723.26	27,968,177,520.68

Table 7: Import Entries Prepared after Vessel Departed the Port

50 Day Summary			
Range of Days After Ship Depart	No. of Items Exported	Quantity (Litres)	Customs Value (\$)
Unknown	78	80,787,015.00	4,161,856,450.62
1 – 50	8	22,461,090.00	1,052,496,831.64
51 – 100	27	71,847,605.06	3,370,639,986.67
101 – 150	21	72,569,924.86	2,500,487,496.39
151 – 200	13	37,333,658.00	1,555,317,600.15
201 – 250	24	100,123,946.70	6,442,677,328.06
251 – 300	17	38,758,367.00	2,582,173,237.48
301 – 350	15	49,727,859.10	1,982,435,575.86
351 – 400	11	34,158,490.00	1,367,129,766.69
401 – 450	8	55,988,513.54	2,744,123,699.16
451 – 500	-	-	-
501 – 550	-	-	-
551 – 600	3	3,589,254.00	208,839,547.96
<b>Total</b>	<b>225</b>	<b>567,345,723.26</b>	<b>27,968,177,520.68</b>

## Private Bonded Warehouse Operators allowed to owe Duties in excess of their Authorised Bonds

**3.4 Three importers that operated private bonded warehouses owed an estimated \$664.24 million after bond drawdowns and recoveries in relation to the warehouse operations as at September 30, 2021 (Table 8).** The duties were in relation to goods that were imported between 2010 and 2015. We noted that items were removed from the warehouses without the payment of the required duties in most cases. In other instances, we noted that the overtime goods were not auctioned (Section 122 – Customs Act)<sup>16</sup>. This adverse condition can lead to significant losses and delays in the collection of revenue. The JCA indicated that these arrears were incurred prior to the inception of AYSUCDA as the processes then were completely manual with the various inventories recorded in ledgers, which makes the process of monitoring bonds in relation to duties on warehoused items extremely difficult or impossible. JCA further indicated that with the implementation of ASYCUDA, the process is more manageable.

**Table 8: Delinquent Warehouse Operators Outstanding Balance**

Importers	Vehicle Supplies Importer 1 (\$ million)	Spirits Importer 1 (\$ million)	Spirits Importer 2 (\$ million)
<b>Initial Liability</b>	460.86	136.59	116.17
<i>Bond drawdown</i>	(12)	(80)	
<i>Subsequently removed from the assessment</i>	(3.83)		
<i>Duplicated amount</i>	(2.06)		
<i>Ex-warehouse and paid</i>		(14.01)	
<i>F/X re translation</i>	180.91	4.49	
<i>Paid</i>	(25.67)		(97.21)
<b>Outstanding Balance</b>	<b>598.21</b>	<b>47.07</b>	<b>18.96</b>

### Spirits Importer 1

**3.5 As at March 16, 2017, Spirits Importer 1 owed \$136.59 million in overtime duties for goods imported in the island between 2012 and 2015.** After unsuccessful attempts to recover the amounts owed, the JCA transferred the matter to its Legal Department on February 1, 2017, for action. The JCA drew down on the bond of \$80 million in December 2016 and September 2017, however the amounts were insufficient to cover the liability. An agreement was made on March 27, 2018, with the delinquent importer to pay \$1.5 million monthly until the debt was fully discharged; however, only \$14.01 million was paid up to September 30, 2021. During our audit, on May 20, 2020, the JCA issued a demand notice to the delinquent importer for payment to be made within 30 days, which included a threat of legal action. Further, on November 24, 2020, the JCA instructed the Attorney General to commence court proceedings against the importer. As at September 30, 2021, the importer owed the government \$47.07 million.

<sup>16</sup> The Customs Act amendment 2014, section 14 states that: “Unless otherwise provided under Act, duty shall be payable on goods at the rate of duty in force- (2) In the case of goods that are removed from a Queen’s warehouse or a private warehouse for use within Jamaica, the declaration referred to in subsection (1) shall be registered in the Customs System at the time of the removal of the goods from the warehouse.”

## Spirits Importer 2

**3.6 We also identified that as at December 12, 2010, another importer, Spirits Importer 2, owed \$116.17 million in duties for overtime goods.** The JCA did not provide evidence that it attempted to draw down on the bond of \$3.5 million for the importer. The JCA issued a demand notice for \$74 million, on January 12, 2012, which was unsuccessful and therefore, a payment plan was negotiated in 2013. Spirits Importer 2 has since paid \$97.21 million over the period January 2013 to July 2020, and owed the government \$18.96 million as at September 30, 2021. During our audit, two further demand notices which included a threat of legal action, were issued on September 28, 2020 and April 26, 2021, respectively, for the balance to be paid within 30 days on both occasions.

## Vehicle Supplies Importer 1

**3.7 Vehicle Supplies Importer 1 owed the government at least \$598.21 million as at September 30, 2021.** In October 2015, Vehicle Supplies Importer 1 was liable for \$460.86 million in duties for overtime goods, which included goods not found during a stock count. These goods were imported into the island between 2011 and 2015. The JCA drew down on Vehicle Supplies Importer 1 bond of \$12 million in March 2016, after unsuccessfully trying to recover the outstanding liability. The bond was insufficient to cover the outstanding liability, therefore, the JCA filed a suit and commenced court proceedings on August 17, 2016, where the JCA applied for an injunction to recover duties relating to 30 entries totalling \$54.03 million. A further 138 entries with related duties of \$308.36 million were brought before the courts in 2020 following on from queries made by the AuGD during the period of our audit.

**3.8** Further, 80 entries totalling \$142.30 million representing goods imported between 2011 and 2012 were only brought before the courts on May 5, 2021, and August 26, 2021, after our repeated inquiries. Of note, Section 241 of the Customs Act states: “proceedings under the customs laws may be commenced at any time within seven years after the date of the offence.” These goods were imported in 2011 and 2012, hence the seven-year deadline would have passed. JCA’s delay in taking legal action to recover these debts could result in the loss of \$142.30 million from duties owed by this importer. Other actions of the JCA, resulted in the collection of \$25.67 million of the duties owed, in three payments, with \$25 million being paid in January 2021. JCA in its response dated October 29, 2021, indicated that a judgement was awarded in the amount of \$367 million in June 2021 in favour of the Commissioner. We noted however, that this judgement did not include the entries submitted in May 2021 totalling \$142.30 million, revalued to \$224.56 million as at September 30, 2021.

**3.9 Deficiencies in JCA’s systems of internal control were also demonstrated by its failure to issue demand letters to delinquent importers in a timely manner.** We identified 47 line-items with related duties payable amounting to \$38.07 million and found 23 instances with the duties totalling \$19.79 million where letters were prepared three months after the items fell into the overtime category. This highlighted an underlying weakness in JCA’s internal controls, as there was no written policy regarding timelines for the issue of demand notices to delinquent importers, although management indicated that notices were usually prepared and submitted one month after goods became ‘overtime.’



## Part Four

### Non-Transactional Issues

#### The IM7 Regime Automatically Gives Petrojam 365 days to Submit

**4.1 We observed that on 48 occasions, Petrojam submitted final import entries and paid the applicable duties and fees after the specified period of 21 days or six weeks elapsed.** In this regard, two moratoria was awarded to Petrojam. The first, was that Petrojam was allowed a 21-day period after the date of import of finished petroleum products to submit final entries and pay the applicable duties. The second, was a six -week period (or 42 days) after the date of importation of bunker fuel for Petrojam to export as much of the fuel as they were able, submit the final entries and pay the applicable duties and fees. Petrojam benefitted from the system as the IM7 regime used by JCA to process the qualifying imports is set to automatically give 365 days to submit final entries and human override is necessary to prevent an unauthorised 323-day extension. The JCA indicated on September 14, 2020, that until recently, ASYCUDA had no “regime to accommodate the historical directive given to the JCA by the MOFPS for Petrojam. As such, until a proper deferment system could be implemented the only regime that could accommodate a paperless system to facilitate the tracking of imports for domestic purpose or exportation is the Warehousing Regime through the IM7.

#### Bond Security Check Turned off in ASYCUDA

**4.2 Over the period October 2015 to September 2, 2020, there were 355 occasions where the surety checking feature of ASYCUDA was turned off for 94 (85 per cent) of the private bonded warehouse operators (PBWO); of these, 16 operators had the checking feature tuned off for over a year (Tables 9 and 10).** Best practice dictates that an effective bond monitoring system is one that ensures that total duties related to warehoused items do not exceed the warehouse operator’s bond, which is the reason for the surety check being built into the system. Where the system is allowed to operate as designed, JCA would benefit from the reduced need for auctioning overtime goods or the pursuit of legal actions that are often time consuming and costly to collect the applicable duties and fees. The human override prevented the system from operating as designed and facilitated situations where the duties exceeded the bonds thus increasing the effort and cost of collecting the applicable duties. To verify the capacity and authority to turn off the surety check, we requested the audit trail to identify the user(s) that turned off the check, but this was not provided. Instead, JCA provided us with the database with the numbers of the turn off and in a response dated October 29, 2021, further highlighted a path to view the audit trail in the ASYCUDA Client. The database tables of the audit trail were not provided to facilitate an analysis of the entire population identifying the users and the dates of each action; therefore, we could not confirm the legitimacy of the actions of the users.

**Table 9: Importers with more than 10 ‘Bond Checks Turn Off’ since October 2015**

Private Bonded Warehouses	Number of times bond check turned off
Warehouse 1	20
Warehouse 2	17
Warehouse 3	17
Warehouse 4	14
Warehouse 5	13
Warehouse 6	13
Warehouse 7	12
Warehouse 8	11
Warehouse 9	11

**4.3** The Warehouse Manager cited the reason for turning off the checking feature as “technical issues” including but not limited to duplicated declarations, incorrect uploading of inventory during the transition from the Legacy System to ASYCUDA, cancellations, assessed and stored declarations. These errors in the database should not be allowed to perpetuate as the problems identified will continue to worsen. More importantly, such errors are likely to make certain reports from ASYCUDA inaccurate and unreliable.

**4.4** Additionally, JCA indicated that its treatment of the problem was intended to facilitate trade, based on a build-up in inventory on the port, special orders, peak season orders, economic conditions (slow sales, for example in the COVID-19 pandemic etc). This breakdown is of concern as prior to the introduction of ASYCUDA, importers exceeding their surety amounts had caused problems which resulted in costly legal proceedings inclusive of potential losses of the government’s revenue.

**Table 10: Importers With More Than 365 Days Bond Check Turn-Off**

Private Bonded Warehouses / WHS No.	Number of days
Warehouse 10	1075
Warehouse 11	959
Warehouse 12	958
Warehouse 13	956
Warehouse 14	653
Warehouse 15	644
Warehouse 16	615
Warehouse 17	584
Warehouse 18	509
Warehouse 19	410
Warehouse 20	402
Warehouse 21	391
Warehouse 2	389
Warehouse 22	374
Warehouse 7	374
Warehouse 23	370

4.5 Further, we observed seven instances where bond amounts stated in the bond documents were less than the bond amounts reflected in ASYCUDA. The Warehouse Manager indicated that the values were used as a place holder in the early implementation phase of the system but was subsequently corrected and updated in ASYCUDA, after our inquiry. This deficiency represented a risk of revenue loss to the GOJ and highlights weaknesses in JCA’s bond security practices.

**Table 11: Incorrect Bond Amount Inputted to ASYCUDA**

Warehouse	Bond amount in ASYCUDA (\$)	Actual Bond amount (\$)	Difference (\$)
Warehouse 24	1,500,000	500,000	1,000,000
Warehouse 25	1,400,000	1,000,000	400,000
Warehouse 26	510,000	400,000	110,000
Warehouse 27	900,000	500,000	400,000
Warehouse 28	2,000,000	1,000,000	1,000,000
Warehouse 29	10,000,000	500,000	9,500,000
Warehouse 30	800,000	300,000	500,000

## Acronyms and Abbreviations

### A

**Automated Systems for Customs Data (ASYCUDA)** - A web-based integrated customs management application system for international trade and transport operations. It allows clients of the JCA, including Customs Brokers & Shipping Agents, to undertake e-transactions such as the submission of manifests, declarations, payments, and documents.

### B

**Berth**- A ship's allocated place at a dock or wharf.

**Bond** – Security for the duties and taxes payable upon doing an import entry where the duties and taxes are not payable upfront.

**Bond drawdown** - An action to liquidate the bond given to cover default by the warehouse keeper.

**Bond security** – Same as bond.

**Bunkering** – The supplying of fuel to be used by ships.

**Bunkering Operators** – An entity which supplies bunkering fuel used by ships.

### C

**C88** – A form designed to replace all documents previously submitted to request approval for the provisional clearance of goods.

**Commissioner** – The head of the Jamaica Customs Agency (JCA).

**Cost, Insurance and Freight (CIF)** –An international shipping agreement, which represents the charges paid by a seller to cover the costs, insurance, and freight of a buyer's order while the cargo is in transit.

**Customs Act** – The Act which empowers and authorizes the JCA to equitably collect all revenue due to the Government as a result of items being imported into the island or exported from Jamaica

**Customs Administrative Fee (CAF)** - A fee imposed on or in connection with importation or exportation and is an approximate cost of the services rendered.

**Customs Controlled Port** - A port designated under section 27; "customs laws" means this Act and all other laws relating to the. importation, exportation, movement, or storage, of goods, the administration or enforcement of which are the responsibility

**Customs Duty** - This is the duty payable on imported goods.

**Customs Officer** – A law enforcement officer who enforces **customs laws**, on behalf of the government of Jamaica.

**Customs Territory** – The territory in which the customs law of a state applies in full.

### D

**Demand letters** – A formal letter to the warehouse keeper demanding payment for overtime goods within a specified time.

**Duty-free imports** – The act of being able to purchase an item in particular circumstances without paying import, sales, value-added, or other taxes

### E

**EX1** – Permanent Export

**EX9** – Export from free zone

**Environmental Levy** – 0.5% of the CIF value of all imports.

**Export Entry** – A declaration legally required for all export shipments used to provide information about the sender and the shipment to the Jamaica Customs Agency.

### H

**Heavy Fuel Oil (HFO)** - Residual fuel incurred during the distillation of crude oil. It is used to generate motion and/or heat that have a particularly high viscosity and density. Heavy fuel oil is mainly used as a marine fuel.

### I

**IM4** – Entry for home use.

**IM7** – Entry for Warehousing.

**IM9** – Other import procedure.

**Import Entry** – This is the primary import document on which all the particulars of the import, including the name of the importer, shipping information and the duties are recorded.

**The International Convention for Safety of Life at Sea (SOLAS)** – An international maritime treaty which sets minimum safety standards in the construction, equipment, and operation of merchant ships.

**The International Convention for the Prevention of Pollution from Ships (MARPOL –**

The main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.

**The International Council on Combustion Engines (CIMAC)** - The leading global non-profit Association of the Internal Combustion Machinery Industry consisting of National Member Associations and Corporate Members in 27 Countries in America, Asia and Europe.

**The International Maritime Organisation (IMO)**- The United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships.

**The International Organization for Standardization (ISO)** - An international nongovernmental organization made up of national standards bodies that develops and publishes a wide range of proprietary, industrial, and commercial standards.

**The International Organization of Supreme Audit Institutions (INTOSAI)**– An intergovernmental organization whose members are supreme audit institutions.

### J

**Jamaica Customs Agency (JCA)** – Jamaica’s principal border management entity established to facilitate trade, optimise revenue collection, and deliver high quality customer service.

**Jamaica Special Economic Zone Authority (JSEZA)** - The Agency of the Government of Jamaica responsible for facilitating the development of and promoting investments in Special Economic Zones (SEZs) in Jamaica. The JSEZA was established in 2016 under the Special Economic Zones Act.

### M

**Marine Diesel Oil (MDO)** - A type of fuel oil which is a blend of gasoil and heavy fuel oil, with more gasoil than intermediate fuel oil used in the maritime field.

**Maritime Authority of Jamaica (MAJ)** – A legal entity established on January 1, 1999, under the Shipping Act 1998 with principal objects to develop shipping and regulate matters pertaining to merchant ships and seafarers.

**Minister** – The Minister of Finance who has direct portfolio responsibility over the Jamaica Customs Agency.

**Motor Gasoline (MOGAS)** - Lead-free, ethanol-free gasoline used by ground vehicle.

### N

**Notional Guarantee** – A value that represents a bond amount; however, it is not supported by an actual financial instrument. It is used in place of an actual bond to facilitate warehouse entries.

### O

#### **Overtime** -

Warehoused goods that have been entered and delivered either for use within the Island, or as aircraft's or ships' stores, or for exportation for a period over one year after the day on which the same were warehoused, or within such further period and in such cases as the Commissioner shall direct.

### P

**Pier**- A platform reaching out to sea that can be used as a landing place for ships.

**Port**- A place within the harbour where a ship can dock for a commercial purpose of either handling cargo or passengers or taking care of the ship's requirements.

**Port Authority of Jamaica (PAJ)** - A statutory organisation established by the Port Authority Act with a mandate to regulate the wharves.

**Port of Entry** – A place where goods or individuals may lawfully enter a country.

**Private Bonded Warehouses** - A building or other secured area approved and monitored by the Jamaica Customs Agency in which dutiable goods may be stored, manipulated, or undergo manufacturing operations by a private enterprise without payment of duty.

**Provisional Clearance** – The clearance of goods under a provisional goods declaration.

**Public Accountability Inspectorate (PAI)** – A board implemented by the Government of Jamaica charged with the responsibility of reviewing critical reports tabled in Parliament.

### R

**Road Bunkering**- the use of tankers to supply fuel for use by ships

### S

**Sea bunkering**- the use of barges to supply fuel for use by ships

**Seafarer**– A person employed by a shipowner to do ship service on board a ship at sea.

**Special Consumption Tax (SCT)** – Tax imposed at various rates on the importation or local manufacture of 'prescribed goods' (i.e., certain petroleum products, ethanol, alcoholic drinks, tobacco, and motor vehicles).

**Special Consumption Tax Ad valorem (SCTA)** – Tax imposed at various rates on the importation or local manufacture of 'prescribed goods' (i.e., certain petroleum products, ethanol, alcoholic drinks, tobacco, and motor vehicles).

**Special Consumption Tax Specific (SCTS)** – Tax imposed at various rates on the importation or local manufacture of 'prescribed goods' (i.e., certain petroleum products, ethanol, alcoholic drinks, tobacco, and motor vehicles).

**Special Economic Zone (SEZ)** - Refers to designated geographical areas with special economic regulations that differ from general trade, tax, and investment rules.

**Special Economic Zone (SEZ) Act** – An Act to provide for the establishment, development, and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto.

**Standard Compliance Fee (SCF)** - A fee of 0.3% collected on behalf of the Bureau of Standards. SCF is calculated on the CIF value.

**Suffrance Wharf** – A licensed private wharf where dutiable goods may be kept until the duty is paid.

### T

**Tax Compliance Certificate (TCC)** - Is a document issued to an individual or a company as proof that returns, and payments of tax liabilities and wage related statutory deductions are up to date.

### U

**Ultra-Low Sulphur Diesel (ULSD)** - Diesel fuel having sulphur content of 0.0015 percent (15 ppm) of sulphur or less.