

SEP 18 2018



Canada Border Services Agency Agence des services frontaliers du Canada

President Président

Ottawa, Canada
K1A 0L8

The Honourable Kevin Sorenson, P.C., M.P.
Chair
Standing Committee on Public Accounts
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Sorenson:

This is further to the letter sent by the Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness, on April 10, 2018. In the Minister's letter, the Government of Canada has committed to providing the Standing Committee on Public Accounts with responses to the recommendations contained in its 34th report, *Report 2, Customs Duties, from the 2017 Spring Reports of the Auditor General of Canada – Part 1*, by September 30, 2018. Please find enclosed the Canada Border Services Agency's (CBSA) report.

The CBSA would like to thank the Standing Committee for its report and its ongoing commitment to improve transparency and program integrity.

Yours sincerely,


John Ossowski

Enclosure

Canada 

**PROGRESS REPORT TO THE HOUSE OF COMMONS STANDING COMMITTEE ON
PUBLIC ACCOUNTS ON REPORT 2, CUSTOMS DUTIES,
FROM THE 2017 SPRING REPORTS OF THE AUDITOR GENERAL OF CANADA – PART 1**

Pursuant to Standing Order 109, an official Government Response was tabled on April 16, 2018. The Government Response committed to a response to recommendations made by the Public Accounts Committee (PACP) by the prescribed deadline of September 30, 2018, noting that interim reports may be provided if the work being undertaken was still in progress.

In its 34th Report, the committee recommended a broad review of several components related to the customs duties regime in Canada. Of the recommendations falling within the Canada Border Services Agency's (CBSA) purview (recommendations 1-5), the Agency has undertaken the associated reviews, including consulting with industry and key industry associations.

The reviews of the customs broker licensing regime, the penalties regime, and the duties relief program have been completed. The reviews of quota controlled goods, and the period allowed for making corrections to import declarations are on track to be completed in 2019.

The issues raised by the Auditor General (AG) prompted the CBSA to re-think fundamental elements of the customs duty regime. This has resulted in a new vision for the future of trade compliance, the cornerstone of which is robust trade risking and targeted CBSA interventions that are enabled by the CBSA Assessment and Revenue Management (CARM) initiative. Once fully implemented, CARM will streamline and automate business processes and offer online self-service tools to help the trade community do business in Canada. Through innovative technology, CARM's core features include improved accountability through the enhancement of accounting capabilities and internal controls, trade fraud and evasion detection, more efficient service delivery, and business simplification that seeks to reduce trade barriers and costs to importers.

Going forward, the customs duty regime will include increased monetary penalties and an enhanced focus on incorporating compliance performance in program decision-making (e.g. broker licensing). CBSA has engaged industry throughout the individual AG recommended reviews and the development of the trade compliance vision primarily through the Border Commercial Consultative Committee (BCCC). This committee has broad representation, including industry representatives in the retail, oil and gas, manufacturing and service sectors, associations representing the majority of customs brokers in Canada, automotive vehicle and parts manufacturers in Canada and importers and exporters operating in all sectors of the Canadian economy (Annex). For the broker licensing review, this company-level engagement was bolstered by the engagement of the Canadian Society of Customs Brokers (CSCB), the Canadian Association of Importers and Exporters (IE Canada), the Association of International Customs and Border Agencies (AICBA), and the Canadian Federation of Independent Business (CFIB).

RECOMMENDATION 1 – Regarding the customs brokers licensing regime

That, by 30 September 2018, the *Canada Border Services Agency* present to the House of Commons Standing Committee on Public Accounts a report detailing the consultations carried out as part of the review process for the customs brokers licensing regime; those who participated in these consultations; and the findings resulting from these consultations and the changes to be made to the customs brokers licensing regime as a result of these consultations, including periodic broker assessments and shared liability of customs brokers and importers as regards complying with import requirements.

Consultations: The CBSA conducted public and stakeholder consultations on the merits of introducing periodic broker compliance assessments, and the shared liability of customs brokers and importers in complying with import requirements. The Agency used web-based consultations to reach licenced customs brokers, importers, exporters and interested Canadians, held in-person meetings with key industry stakeholder groups, and discussions with the Border Commercial Consultative Committee (BCCC) on business impacts and other industry considerations. All licensed customs brokers were contacted directly by the Agency and invited to participate in the consultations via the CBSA website.

Participation: In total, 33 written responses were received, including four from industry associations: the CSCB, IE Canada, the AICBA, and the CFIB.

Consultation Findings: Stakeholders support incorporating the assessment of broker compliance performance at the time of license renewal. The majority of consultation participants also indicated that the CBSA should maintain authority for the administration of the broker licensing regime. Stakeholder associations indicated that they would like a greater role in the licensing regime, with some indicating that they would like to work with the CBSA to develop an understanding of performance expectations in relation to broker licensing. Others indicated the need for a greater role for associations to provide training and support to brokers and importers, and one indicated that they would like to work with the CBSA to develop a set of professional standards for the broker profession. One association indicated their strong preference for a broader review that included broker regulation in its entirety.

There is widespread opposition to shared liability – including from all four stakeholder associations who participated in the consultations. Some questioned whether introducing shared liability would actually address the AG’s concerns with compliance. Some associations regard shared liability as already being in place to varying extents – one association referred to the fact that brokers in the release prior to payment program (RPP) hold Customs Bonds and are liable for the payment of duties and taxes when payment is not received from importers, while another indicated that some brokers share costs (i.e. of penalties) with their clients as part of their commercial relationship. Concerns raised with shared liability include the following: it is unreasonable to make the broker liable for the accuracy of information when

brokers rely on the information provided by importers to classify goods; a number of associations indicated that the introduction of shared liability may slow trade, as brokers may begin physically inspecting goods to manage their increased liability; and, several associations indicated that introducing shared liability would put the viability of many brokerage companies at risk, as the majority are small businesses and may not have the financial flexibility to cope with frequent AMPS and prolonged delays.

Parallel to the consultations, the CBSA sought examples of shared liability in other jurisdictions. The Agency found that shared liability is not practiced by the majority of Canada's major trading partners. Most notably, Canada's largest trading partner – the United States – does not have shared liability and has an approach similar to Canada's in which liability rests squarely with the importer.

Actions to be taken: The Agency agrees that the broker licensing regime has to be strengthened by introducing compliance performance assessment of brokers, including ensuring that brokers have a satisfactory compliance record at the time of licence renewal. Changes will require regulatory amendments.

The Agency will work in partnership with industry – both importers and exporters – in determining compliance performance and due diligence expectations to strengthen both the culture and capacity for enhanced voluntary compliance. It should be noted that the CARM initiative will significantly enhance the Agency's ability to conduct robust revenue related risking and targeted compliance measures. CARM is currently at the design phase.

RECOMMENDATION 2 – Regarding the penalties regime

That, by 30 September 2018, the *Canada Border Services Agency (the Agency)* present to the House of Commons Standing Committee on Public Accounts a report on the consultations carried out by the Agency on the review of its penalties system, changes made in that area and their implementation.

Consultations: The CBSA conducted three stakeholder consultation sessions on changes to AMPS through a working group of interested members from the BCCC.

Findings: Stakeholders overwhelmingly expressed the view that the vast majority of importers work very hard and with the CBSA to assure compliance with their obligation to pay appropriate duties and taxes, and they take these responsibilities seriously. That said, there is widespread recognition that AMPS should be used to deter non-compliance. Moreover, there was recognition that the current penalty levels can be absorbed by some importers as simply the cost of doing business. An important exception to this view was that AMPS have a disproportionately high impact on small business and may serve as a disincentive to trade. Stakeholders noted that while AMPS serve a purpose, other compliance performance and enforcement tools must be used as well. They also noted that compliance enforcement –

including AMPS – needs to reflect the reality that some errors are made in good faith, in contrast to others that can be intentional or recurring. These different situations require differentiated responses. Indeed, some stakeholders highlighted the fact that other measures (e.g. – enforcement that disrupts supply chain efficiency or increases reputational risks for the importer/business if found to be non-compliant) can provide greater incentive to assure compliance and matter more than a monetary penalty.

Actions to be taken: The CBSA agrees with the AG that penalties need to be increased in order to better protect import revenues and deter non-compliance. The Agency will raise AMPS to align with other commercial penalty levels. However, given the adjustments that businesses have had to make to adapt to changes in the current trade environment – including the imposition of surtaxes on targeted imports – increased penalties will not be implemented before spring 2019.

RECOMMENDATION 3 – Regarding the period allowed for making corrections to import declarations

That, by 30 September 2018, the *Canada Border Services Agency (the Agency)* present to the House of Commons Standing Committee on Public Accounts (A) an interim report on the Agency’s review of provisions addressing the period allowed for making corrections to import declarations and on the consultations carried out; and (B) by 31 December 2019, an interim report on the changes made in this area.

Review of provisions: The CBSA’s preliminary analysis of provisions for making corrections to import declarations revealed that for imports occurring in a given year, approximately 80% of corrections to import declarations were filed within 2 years of importation, with the remaining 20% filed during the third and fourth years following importation.

Consultations: To date, CBSA has conducted two in-person BCCC consultation sessions involving industry associations and company representatives. Consultations focused on gaining an understanding of business realities including why and how businesses use the 4-year period and the potential impact on business of reducing that period.

Consultations to date have highlighted that a shorter amendment period will likely generate significant additional appeals of CBSA assessment decisions. Currently, importers use the 4-year timeframe to submit a single appeal, and wait to submit similar amendments to other import declarations if the initial appeal is successful. With a shortened timeframe to submit amendments to import declarations, associations and industry representatives opined that additional appeals would likely be submitted upfront.

Another common theme that has emerged is that industry feels that any reduction in the amount of time importers have to amend declarations should also apply to the amount of time CBSA has to conduct verifications that identify areas of non-compliance and monies owing.

As the Agency's review continues, analysis will examine the implications of changes to the amendment period given that the United States also has a 4-year period for submitting amendments. This is partly in response to the observation from industry that for those companies that operate in an integrated North American market, mis-alignment of timeframes for re-assessment could increase complexity and costs.

Consultations will continue over the coming months on the merits, risks and limitations of reducing the 4-year period to make adjustments to import declarations.

RECOMMENDATION 4 – Regarding the import of quota-controlled goods

That, by 30 September 2018, the Canada Border Services Agency present to the House of Commons Standing Committee on Public Accounts with A) an interim report on the verification and operation processes for quota-controlled goods and an in-person briefing in the fall of 2018; and B) a report on all new measures taken to better control the import of quota-controlled goods.

Action taken: The AG identified weaknesses in the ability of departments and agencies to reconcile import permits with duties and taxes being self-assessed by importers. In response to the AG's observations and with Global Affairs Canada (GAC), the CBSA has closed the data gap that was identified.

The Agency is conducting verifications of all Duties Relief Program (DRP) participants that import supply managed goods (SMGs). The completion of 25 verifications has resulted in assessments of approximately \$177M and the suspension of 14 licences. The CBSA has also taken action to address non-compliance of importations of broiler chicken that is being incorrectly classified as spent fowl, which is charged a much lower rate of duty than broiler chicken. To date, 35 audits have been completed; an additional 33 are underway. These audits have collectively resulted in the assessment of \$701K in duties owing. Finally, the CBSA continues to have a national verification priority on supply managed goods. Over 130 reviews of importers of supply managed goods have been completed, with an additional 43 underway. These reviews have collectively resulted in the assessment of \$263K in duties owing.

RECOMMENDATION 5 – Regarding controls for goods to be re-exported

A) That, by 30 September 2018, the *Canada Border Services Agency* present to the House of Commons Standing Committee on Public Accounts an interim report providing an update on the consultations about making import licences renewable and requiring a deposit when at-risk goods are imported, and

B) That, if no changes are made in these areas, by 30 October 2018, the *Department of Finance Canada* present to the House of Commons Standing Committee on Public Accounts a report outlining the reasons for this decision.

Consultations: The Department of Finance is the policy holder for the DRP, and along with GAC is consulting importers of supply managed goods (SMGs) on potential changes to the program. In response to the AG recommendation, CBSA launched additional consultations with non-SMG program participants representing 85% of non-SMG related duties. Consultation participants were asked for their views on making licences renewable conditional on an importer's compliance record, and requiring a financial deposit proportionate to the value of duties at risk. Program participants were also canvassed for additional ideas to improve the CBSA's DRP control framework to better manage risk.

Findings: Consultation participants indicated support for making licences renewable conditional upon an importer's compliance record, and opposition to a financial deposit on the grounds that it would pose a disproportionately heavy burden on SME participants in the DRP.

Action taken: The CBSA has shared consultation findings with Finance Canada. The Agency is also recommending that an assessment of compliance performance be incorporated into the licensing process, and that financial controls be strengthened. Options to strengthen financial controls can best be explored in the context of the government's ongoing broader program review of the DRP and the import for re-export program, led by Finance Canada and Global Affairs Canada.

As noted, the CBSA has completed 25 verifications between July 2016 and May 2018 of DRP participants importing SMGs. Twenty companies were found to be non-compliant, resulting in 14 DRP licence suspensions or cancellations, with total duty assessments issued in the amount of approximately \$177 million. An additional 15 verifications are expected to be completed before the end of 2018.

The CBSA will implement a number of improvements to the DRP program to improve compliance, including: collecting comprehensive information on DRP applicants to improve program screening; and, enhanced training for CBSA program staff.

Annex – BCCC Industry Representation during Review Sessions*

ABC Customs Brokers
ArcelorMittal Dofasco
Blakes, Cassels & Graydon LLP
Cole International
DHL Global Forwarding (Canada)
Enbridge
General Mills
International Business Machines
Livingston International
Magna International
Nexans
Petro Canada
Walmart

Associations

Association of International Customs and Border Agencies
Automotive Parts Manufacturers' Association
Canadian Association of Importers and Exporters
Canadian Manufacturers and Exporters
Canadian Society of Customs Brokers
Canadian Vehicle Manufacturers Association

*All BCCC members were invited to participate on reviews. Not all members were present at all engagement sessions.