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REPORT 2, CUSTOMS DUTIES, FROM THE 2017 SPRING REPORTS OF THE AUDITOR GENERAL OF CANADA—PART I

Report of the Standing Committee on Public Accounts

The Honourable Kevin Sorenson, Chair

**DECEMBER 2017
42nd PARLIAMENT, 1st SESSION**

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NOTICE TO READER

Reports from committee presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

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THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

has the honour to present its

THIRTY-FOURTH REPORT

Pursuant to its mandate under Standing Order 108(3)(g), the Committee has studied Report 2, Custom Duties, of the Spring 2017 Reports of the Auditor General of Canada and has agreed to report the following:



REPORT 2, CUSTOMS DUTIES, FROM THE 2017 SPRING REPORTS OF THE AUDITOR GENERAL OF CANADA—PART I

INTRODUCTION

According to the Office of the Auditor General (OAG), Canadian importers “are responsible for paying customs duties according to Canada’s Customs Tariff. Customs duties are a way for the federal government to obtain revenue and protect certain sectors of the Canadian economy.”¹

The Customs Tariff also “lists the goods on which a duty is imposed when they are imported into Canada, together with the rates at which such goods are taxed. When setting the amount of duties to charge on imported goods, the government needs to consider the different impacts the duties will have.”²

The OAG added that the federal government “changes its customs duties either by entering into trade agreements or by unilaterally removing duties. ... In 2015, close to 70 [%] of all tariff items were duty-free under the **most-favoured-nation tariff treatment.**” This treatment means that, under World Trade Organization rules, a country cannot offer preferential duty rates to another country unless it is a party to a free trade agreement with that country or it is a much poorer country.³

The OAG describes the various responsibilities of the key import tariff stakeholders as follows:

- **Canada Border Services Agency (CBSA or the Agency)** “administers more than 90 acts, regulations, and international agreements for federal organizations, the provinces, and the territories. It is responsible for assessing the duties and taxes owed to the Government of Canada”;⁴

1 Office of the Auditor General of Canada (OAG), “[Customs Duties](#),” Report 2 in *2017 Spring Reports of the Auditor General of Canada*, para. 2.1.

2 Ibid., para. 2.2.

3 Ibid., para. 2.3.

4 Ibid., para. 2.4.



- **Finance Canada** is responsible for the Customs Tariff and several orders and regulations, as well as analyzing and developing the tariff policy;⁵
- **Global Affairs Canada (GAC)** “is responsible for controlling the import of goods for which Canada requires an import permit, such as beef, chicken, and dairy products”;⁶
- **Importers** are responsible for “correctly classifying and valuing the goods they bring into Canada so that the Canada Border Services Agency can properly assess duties, collect statistics, and determine whether all legal requirements are met.”⁷ They may be assisted by customs brokers. Imports are classified based on 7,403 classes of goods.⁸

The OAG added that the Agency “has a competing mandate—it must ensure the security of the border while facilitating the flow of goods and people.”⁹

The OAG conducted an audit, released in spring 2017, to determine whether Finance Canada, GAC and the Agency “adequately managed customs duties according to their roles and responsibilities.”¹⁰

On 9 November 2017, the House of Commons Standing Committee on Public Accounts (the Committee) held a hearing on this audit. The following witnesses appeared: from the OAG, Michael Ferguson, Auditor General of Canada and Richard Domingue, Principal; from the Agency, John Ossowski, President, and Brad Loynachan, Director, Trade Policy; from the Department of Finance Canada, Rick Stewart, Assistant Deputy Minister, International Trade and Finance Branch, and Scott Winter, Chief, International Trade and Policy Division; and from GAC, Steve Verheul, Assistant Deputy Minister, Trade Policy and Negotiations.¹¹

5 Ibid., para. 2.5.

6 Ibid., para. 2.6.

7 Ibid., para. 2.7.

8 Ibid., para. 2.8.

9 Ibid., para. 2.4.

10 Ibid., para. 2.9.

11 House of Commons Standing Committee on Public Accounts, *Evidence*, 1st Session, 42nd Parliament, 9 November 2017, [Meeting No. 78](#).

FINDINGS AND RECOMMENDATIONS

Assessing Customs Duties

According to the OAG, over the years, the Agency “has conducted random and targeted verifications to assess whether importers have complied with the government’s import rules,” specifically by targeting “imports it believed were at high risk for non-compliance.”¹²

Over the last 15 years, “the Agency’s compliance verifications on specific goods revealed that importers misclassified imported goods more than 20 [%] of the time.” The OAG found that, “despite the high rate of misclassifications, the Agency did not estimate the overall value of errors in the duties importers paid.”¹³ However, in 2015–2016, “the Agency identified that the importers should have paid \$42 million more, of which approximately half was due to misclassification.”¹⁴

The OAG identified two reasons that may have permitted non-compliance:

- ineffective controls due to the incorrect description of goods, missing assessments by individual customs brokers and penalties that are too low for the failure to comply with rules; and
- some importers circumventing the rules.¹⁵

The OAG analyzed “2.5 million import records for the period from January to March 2016” to determine whether “importers assigned a tariff classification number that matched the description of the goods importers gave on import forms.”¹⁶ The OAG found that “the descriptions often indicated that many types of goods were imported, but the importer assigned only one tariff classification number to all of the goods.”¹⁷ Of the forms containing only one description and a single number, 74% of them “did not provide a description that allowed [the OAG] to determine whether the number used was the right one.”¹⁸

12 OAG, “[Customs Duties](#),” Report 2 in *2017 Spring Reports of the Auditor General of Canada*, para. 2.20.

13 *Ibid.*, para. 2.21.

14 *Ibid.*, para. 2.22.

15 *Ibid.*, paras. 2.23 and 2.24.

16 *Ibid.*, para. 2.25.

17 *Ibid.*, para. 2.26.

18 *Ibid.*, para. 2.27.



According to the OAG, “if the Agency does not collect accurate descriptions of the imported goods at the time of import, it is more difficult to know exactly what was imported, and to know whether the right amount of duty was assessed.”¹⁹

A. Customs Brokers

The OAG found that 68% “of import transactions were administered by a broker”²⁰ and that, “despite long-standing compliance issues with the government’s import rules by the importing community, the [Agency] did not evaluate the accuracy of import information provided by individual brokers, nor assess individual broker performance.”²¹

According to Michael Ferguson, Auditor General of Canada, the Agency “did not monitor the performance of customs brokers. The [Agency] has the power to suspend or cancel a broker’s licence; however, it rarely suspended a licence because of concerns about a broker’s overall performance.”²²

Consequently, the OAG recommended that the Canada Border Services Agency should review its customs brokers licensing regime by considering features such as:

- a licensing process that requires periodically assessing a broker’s compliance record, and
- shared liability of licensed customs brokers and importers to comply with import requirements and paying duties and taxes.²³

In response to this recommendation, John Ossowski, President, CBSA, agreed to review the customs licensing regime, “including consideration of a licensing process that requires periodic assessment of a broker’s compliance record, and shared liability between brokers and importers when it comes to compliance with certain requirements. This review will include consultations with impacted stakeholders, including customs brokers. [The Agency] will complete this review by September 2018.”²⁴

19 Ibid., para. 2.28.

20 Ibid., para. 2.29.

21 Ibid., para. 2.30.

22 House of Commons Standing Committee on Public Accounts, *Evidence*, 1st Session, 42nd Parliament, 9 November 2017, [Meeting No. 78](#), 0845.

23 OAG, “[Customs Duties](#),” Report 2 in *2017 Spring Reports of the Auditor General of Canada*, para. 2.32.

24 House of Commons Standing Committee on Public Accounts, *Evidence*, 1st Session, 42nd Parliament, 9 November 2017, [Meeting No. 78](#), 0900.

As a result, the Committee makes the following recommendation:

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.

B. Penalties

According to the OAG, there “were three levels of penalties for importers that provided inaccurate or incomplete information on permits, certificates, licences, documents, or declarations of imported goods:”²⁵

1. \$150 for the first offence;
2. \$225 for the second offence; and
3. \$450 for third and subsequent offences.²⁶

Also from the OAG, in 2014–2015, “the Agency charged 16,000 penalties – less than one tenth of one percent of the transactions for that year.” The average penalty was \$151.²⁷

With regard to whether importers who have been assessed penalties are subject to more intense scrutiny going forward, Brad Loynachan, Director of Trade Policy, CBSA, stated that the Agency evaluates the risks associated with “all goods entering Canada, and therefore, compliance records are taken into consideration.”²⁸

25 OAG, “[Customs Duties](#),” Report 2 in *2017 Spring Reports of the Auditor General of Canada*, para. 2.33.

26 Ibid.

27 Ibid., para. 2.34.

28 House of Commons Standing Committee on Public Accounts, *Evidence*, 1st Session, 42nd Parliament, 9 November 2017, [Meeting No. 78](#), 1035.



Consequently, the OAG recommended that “Canada Border Services Agency should review its penalties in order to better protect import revenues and ensure compliance with trade programs.”²⁹

In its action plan, the Agency said it would explore “further measures aimed at creating a ‘meaningful deterrent’ to importer non-compliance relating to the evasion of import revenues and ensuring compliance with trade programs.”³⁰ The consultations and implementation should be completed by June 2018.³¹

Therefore, the Committee recommends:

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.

C. Changing Information Provided on Import Forms

According to the OAG, the legislation allows importers “to change the information on their import forms up to four years after the goods were imported, but because the Agency did not collect meaningful information about what was imported at the time the goods crossed the border, it was hard for the Agency to verify whether an importer’s change was appropriate.”³²

The OAG found that, in 2014–2015, “importers initiated about 200,000 adjustments, resulting in the Agency’s paying importers \$136 million in refunds. Conversely, importers made about 20,000 adjustments that resulted in payments of \$55 million to the Agency.”³³

Consequently, the OAG recommended the following:

Unless otherwise specified in a free trade agreement, the Canada Border Services Agency should review the period allowed for retroactive changes on the import form, without compromising the Agency’s ability to conduct compliance verifications.³⁴

29 OAG, “[Customs Duties](#),” Report 2 in *2017 Spring Reports of the Auditor General of Canada*, para. 2.35.

30 Canada Border Services Agency, [Detailed Action Plan](#), p. 1.

31 *Ibid.*, pp. 1-2.

32 OAG, “[Customs Duties](#),” Report 2 in *2017 Spring Reports of the Auditor General of Canada*, para. 2.38.

33 *Ibid.*, para. 2.39.

34 *Ibid.*, para. 2.41.

According to its action plan, the Agency “will develop options to reduce the period allowed for the importer to make corrections while preserving the Agency’s ability to conduct compliance activities. These actions will be completed by December 2019.”³⁵

The long delay until these changes will be implemented seems to stem from possible legislative amendments, which can take a long time to come into force. Therefore, the Committee recommends:

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.

D. Canada Border Services Agency Resources

According to the OAG, an Agency estimate for 2015–2016 was that “each additional compliance officer could have identified unassessed customs duties, taxes, and interest totalling 4 to 11 times their individual salaries. This indicated that the Agency believed it was not at an optimal resourcing level to implement the customs duty system.”³⁶ It should be noted that this finding did not result in a recommendation by the OAG.

Controlling Goods

A. Imports of Quota-Controlled Goods Without a Permit

According to the OAG, quota-controlled goods coming into the country “are specific goods on which Canada applies tariff rate quotas – essentially a two-tier level of customs duty rates – to control the volume of the goods” (e.g., dairy, beef).³⁷ Furthermore, importers “must obtain a permit from Global Affairs Canada to bring these goods into Canada.”³⁸

35 Canada Border Services Agency, [Detailed Action Plan](#), p. 2.

36 OAG, “[Customs Duties](#),” Report 2 in *2017 Spring Reports of the Auditor General of Canada*, para. 2.42.

37 *Ibid.*, para. 2.45.

38 *Ibid.*, para. 2.46.



The OAG found that “the permitted volume and the actual volume of the imported quota-controlled goods were kept in two different systems and were rarely compared.”³⁹ In addition, “in 2015, importers brought quota-controlled goods into Canada without permits and without paying the right amount of customs duties. ... [The] importers would have paid \$168 million in customs duties [for these goods] if the Canada Border Services Agency had compared the permit information with the import form.”⁴⁰

The OAG therefore recommended that in “collaboration with Global Affairs Canada, the Canada Border Services Agency should better enforce tariff rate quotas by reviewing the process of verifying permits. It should also explore automated means to validate accounting declarations for quota-controlled goods to be charged customs duties at a lower rate.”⁴¹

In its action plan, the Agency committed to completing “a review of the permit verification process” and identifying “gaps and challenges” by March 2019, “and will have explored automated means, including the [CBSA Assessment and Revenue Management – CARM] project and Single Window Initiative, to validate accounting declarations for quota controlled goods, and to address identified process gaps.”⁴² In the meantime, certain verification and review steps should be completed by September 2018.⁴³

In response to this recommendation, Steve Verheul, Assistant Deputy Minister, Trade Policy and Negotiations, GAC, said that “the department has instituted a process by which officials of the Canada Border Services Agency will receive regular breakdowns of all permits issued for agricultural goods subject to import controls under the *Export and Import Permits Act*. This will assist CBSA officials in their post-shipment verification activities and improve the effectiveness of the enforcement of tariff rate quotas.”⁴⁴ This process has been in place since September 2017.⁴⁵

Given the importance of quota-controlled goods in many of Canada’s agricultural regions, the Committee recommends:

39 Ibid., para. 2.53.

40 Ibid., para. 2.48.

41 Ibid., para. 2.55.

42 Canada Border Services Agency, [Detailed Action Plan](#), pp. 2-3.

43 Ibid., p. 2.

44 House of Commons Standing Committee on Public Accounts, *Evidence*, 1st Session, 42nd Parliament, 9 November 2017, [Meeting No. 78](#), 0905.

45 Global Affairs Canada, [Detailed Action Plan](#), p. 1.

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.

B. Control Framework of the Duties Relief Program

According to the OAG, the Agency’s Duties Relief Program “allows participating companies to import goods without paying duties as long as those goods are later exported.”⁴⁶

The OAG found that “[CBSA] had few controls to ensure that goods imported duty-free under the Duties Relief Program were, if not subsequently exported, reported to the Agency and that applicable duties were paid within 90 days of the date of diversion into the Canadian market, as required by the program.”⁴⁷

Furthermore, “the Agency did not use some controls – such as requiring a financial deposit to participate in the program and having renewable licences for importers – to create more incentives for the importers to comply with rules.”⁴⁸

Consequently, the OAG recommended that in “consultation with the Department of Finance Canada, the Canada Border Services Agency should improve the Duties Relief Program’s compliance by considering

- making licences renewable, conditional on an importer’s compliance record; and
- requiring a financial deposit proportionate to the value of duties at risk.”⁴⁹

46 OAG, “[Customs Duties](#),” Report 2 in *2017 Spring Reports of the Auditor General of Canada*, para. 2.47.

47 Ibid., para. 2.56.

48 Ibid., para. 2.61.

49 Ibid., para. 2.63.



The Agency's action plan addressed this recommendation, indicating that it would consult with Finance Canada "in considering these potential improvements to compliance."⁵⁰ These measures are expected to be completed by October 2018.⁵¹

The Committee believes there is a difference between carrying out consultations, considering recommendations and implementing them. Therefore, the Committee recommends:

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.**

Reviewing and Analyzing the Customs Duties Regime

The OAG found that Finance Canada "reviewed the Customs Tariff for certain purposes, including negotiation of trade agreements, consideration of budget implications of customs duties, and other government objectives. However, the Department did not ensure that all tariff items were still needed."⁵² The OAG observed that in 2015, "1,973 tariff items generated less than one half of one percent of customs duty revenues that same year" and that "57 percent of customs duty revenues were generated by just three categories of consumer goods: apparel, footwear, and vehicles and auto parts." The Customs Tariff contains a total of 7,403 tariff items.⁵³

50 Canada Border Services Agency, [Detailed Action Plan](#), p. 3.

51 Ibid.

52 OAG, "[Customs Duties](#)," Report 2 in *2017 Spring Reports of the Auditor General of Canada*, para. 2.68.

53 Ibid., para. 2.73 and Exhibit 2.3.

According to the OAG, “a regular review of the Customs Tariff would be useful – for example, to assess whether all tariff items protect manufacturers.”⁵⁴

Consequently, the OAG recommended that the “Department of Finance Canada should review the Customs Tariff to identify specific tariff items that no longer meet their policy objectives and that could possibly be modified.”⁵⁵

According to its action plan, in fall 2017 Finance Canada would conduct a review of the *Customs Tariff* and would “implement any resulting legislative or regulatory amendments,”⁵⁶ by December 2018.

As a result, the Committee recommends:

RECOMMENDATION 6 – On the review of the Customs Tariff

That, by 28 February 2018, the *Department of Finance Canada* present to the House of Commons Standing Committee on Public Accounts a report on the methods selected to eliminate or maintain some tariff items and on how many of these items will be combined or eliminated.

CONCLUSION

The OAG concluded that “the Canada Border Services Agency could not ensure that all customs duties owed to the government were assessed.” In addition, it found that “Global Affairs Canada and the Canada Border Services Agency could not ensure that the tariff rate quotas were respected”⁵⁷ and that “the Department of Finance Canada suitably fulfilled its responsibilities in regard to customs duties, but needed to further review the relevance of tariff items to ensure that they met government objectives.”⁵⁸ The Committee agrees with these conclusions and has made six recommendations to improve the management of customs duties and the risk of fraud of goods imported to Canada, without compromising Canada’s capacity to import goods.

54 Ibid.

55 Ibid., para. 2.74.

56 Department of Finance Canada, [Detailed Action Plan](#), p. 1.

57 Ibid., para. 2.86.

58 Ibid., para. 2.87.



SUMMARY OF RECOMMENDED MEASURES AND TIMELINES

Table 1 – Summary of Recommended Measures and Timelines

Recommendation	Recommended Measure	Timeline
Recommendation 1	The <i>Canada Border Services Agency</i> needs to present to the Committee a report on the consultations carried out as part of the review process for the customs brokers licensing regime, those who participated in these consultations, the findings resulting from these consultations and the changes to be made as a result.	30 September 2018
Recommendation 2	The <i>Canada Border Services Agency</i> needs to present to the Committee 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.	30 September 2018
Recommendation 3	The <i>Canada Border Services Agency</i> needs to present to the Committee: (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) an interim report on the changes made in this area.	A) 30 September 2018 B) 31 December 2019
Recommendation 4	The <i>Canada Border Services Agency</i> needs to present to the Committee 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.	30 September 2018 and the fall of 2018
Recommendation 5	The <i>Canada Border Services Agency</i> needs to present to the Committee a report providing an update on the consultations about making import licences renewable and requiring a deposit when at-risk goods are imported; If no changes are made in these areas, <i>Finance Canada</i> needs to present to the Committee a report outlining the reasons for this decision.	30 September 2018

REPORT 2, CUSTOMS DUTIES, FROM THE 2017 SPRING REPORTS
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Recommendation	Recommended Measure	Timeline
Recommendation 6	<i>Finance Canada</i> needs to present to the Committee a report on the methods selected to eliminate or maintain some tariff items and on how many of these items will be combined or eliminated.	28 February 2018

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Canada Border Services Agency</p> <p>Brad Loynachan, Director Trade Policy</p> <p>John Ossowski, President</p> <p>Department of Finance</p> <p>Rick Stewart, Assistant Deputy Minister International Trade and Finance Branch</p> <p>Scott Winter, Chief International Trade Policy Division, Trade and Tariff Policy, International Trade and Finance Branch</p> <p>Department of Foreign Affairs, Trade and Development</p> <p>Steve Verheul, Assistant Deputy Minister Trade Policy and Negotiations</p> <p>Office of the Auditor General</p> <p>Michael Ferguson, Auditor General of Canada</p> <p>Richard Domingue, Principal</p>	<p>2017/11/09</p>	<p>78</p>

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 78 and 83](#)) is tabled.

Respectfully submitted,

Hon. Kevin Sorenson, P.C., M.P.
Chair

