

August 23, 2024

The Right Honourable Justin Trudeau  
Prime Minister of Canada  
80 Wellington Street  
Ottawa, ON K1A 0A2  
Via email: [justin.trudeau@parl.gc.ca](mailto:justin.trudeau@parl.gc.ca)

The Honorable Dominic LeBlanc, P.C., M.P.  
Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs  
191 Laurier Avenue West  
Ottawa ON K1A 0P8  
Via email: [ps.ministerofpublicsafety-ministredelasecuritepublique.sp@ps-sp.gc.ca](mailto:ps.ministerofpublicsafety-ministredelasecuritepublique.sp@ps-sp.gc.ca)

Dear Prime Minister Trudeau and Minister Leblanc,

I am writing on behalf of the members of the Canadian Society of Customs Brokers (CSCB) to register our concerns about guidance provided to importers by the Canada Border Services Agency (CBSA) that could introduce financial vulnerability for Canada's customs brokers in order to facilitate the flow of goods during the implementation of the CBSA Assessment and Revenue Management (CARM) system.

The CSCB has endeavoured to engage the CBSA to register our concerns about the improper shifting of duty and tax liability to customs brokers, most recently in a letter to CBSA Executive Vice-president Ted Gallivan on July 2, 2024 (attached). We have also had several meetings with CBSA officials over the past two years to express our concern about the potential impacts of a *Customs Act* amendment (not yet in force) that would assign liability to any entity identified as the "importer of record."

Our efforts to engage with the CBSA on this matter have been unsuccessful. In fact, over the past five months it has become exceedingly difficult for Canada's trade community to engage with the CBSA at all. Canada's customs broker community is deeply concerned about lingering uncertainty with respect to broker liability, as well as a number of other policy and operational matters that must be clearly communicated to the trade chain community before CARM implementation approximately two months from now.

We seek your assistance in bringing CBSA to the table with trade chain partners to discuss and resolve this and other outstanding policy matters that are intertwined with CARM implementation. Renewed engagement with trade is essential to ensuring that legitimate goods continue to enter Canada without impediment when CARM is implemented in October 2024.

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A renewed commitment by the CBSA to engage with and consult traders would also meet both the spirit and the letter of Recommendation 5 in the Spring 2024 report by the Parliamentary Standing Committee on International Trade (CIIT) on CARM implementation ([Committee Report No. 17 - CIIT \(44-1\) - House of Commons of Canada \(ourcommons.ca\)](#)):

Recommendation 5

That the Government of Canada continue to consult relevant stakeholders concerning, as well as communicate with them about, the CBSA Assessment and Revenue Management system. Consultations and communications should be timely, inclusive and ongoing.

The CSCB is committed to working with the CBSA and other government partners to re-build a trusted, constructive and meaningful consultative process that ensures trade continues to flow and which reduces economic and operational uncertainty for Canadian businesses. We appreciate your assistance in encouraging the CBSA to re-join the consultative process in support of these same goals.

Respectfully,



Janine Harker, President  
Canadian Society of Customs Brokers

Attachment:

1. *July 2, 2024, letter to CBSA Executive Vice-president Ted Gallivan*

July 2, 2024

Ted Gallivan  
Executive Vice-President  
Canada Border Services Agency (CBSA)  
191 Laurier Avenue West  
Ottawa, ON K1A 0L8

Dear Mr. Gallivan,

I am writing on behalf of the members of the Canadian Society of Customs Brokers (CSCB) to register strong concerns about the guidance provided in *Customs Notice 24-18: CARM: Changes to the Registration and Maintenance of Program Accounts for Importers and Exporters (RM)*.

CN 24-18 describes the CBSA's interim process for the registration and maintenance of import-export program (RM) accounts as of May 13, 2024, the date on which the CBSA became responsible for the issuance and maintenance of RM accounts. Paragraph 12 of CN 24-18 indicates:

12. In order to ensure the continued timely release of imported goods during this interim period, the CBSA is offering two options to importers who may be waiting for RM account requests to be processed:

- Contact a customs broker – Customs broker will be permitted to use their BN15 to obtain release of goods. A list of Customs Brokers is available on the CBSA website.
- For importers not using the services of a Customs Broker, please complete B3-3 Canada Customs Coding Form and present to the CBSA customs office of release. Field 1 – “Importer No.” should be left blank. Your local CBSA office will provide the information needed to complete this field once presented to obtain release of goods.

CSCB has heard from its members that CBSA is actively informing importers that customs brokers are permitted to use their own BN15 to obtain release of goods on behalf of importers during the CARM transition. On this basis, and to avoid delay, importing clients are demanding that customs brokers facilitate the process by using their own BN to clear shipments.

It is clear, however, that the importing community is unaware of *Customs Act* amendments on the horizon (though not yet in force) with respect to Importer of Record liability. Most importers do not understand that customs brokers who use their own BN to clear shipments could face extreme liability once the legislative amendments are applied.

Due to the Importer of Record amendments and the repeated warnings issued by CBSA to customs brokers in draft D-memoranda D11-6-11 and D17-2-X, as well as in CBSA presentations and guidance, customs brokers are exceptionally reticent to use their BN out of concern that they may face future duty liability. As I am sure you are aware, many customs brokers justifiably feel they cannot absorb this level of risk given the financial realities of the industry, in which customs brokers receive minimal fees to clear shipments that may be worth millions of dollars, and which will attract a high level of duty liability in the event of a classification, valuation or origin error made by the importer.

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In addition, it is important to recognize that use of a customs broker's BN to secure release of an importer's shipments has GST implications for the broker and attracts liability for compliance with Other Government Department (OGD/PGA) requirements.

The CBSA's advice to importers is frustrating business decisions that customs brokers must make about when and with which clients they choose to expose themselves to this liability. For reference, I have included the comments we received from our members when we asked them about concerns related to using their BN to obtain release of goods for importer clients. The responses to questions 6 and 7 are most telling, although you may also wish to refer to the feedback provided to question 8 to fully understand the breadth and depth of frustrations facing our members.

From a legal perspective, we understand that such duty liability cannot be imposed for any period prior to the coming into force of the amendments, due to established principles against retroactive and retrospective application of statutes. The CBSA appears to have acknowledged this in the now-cancelled CN 24-15, which stated: "if you are an entity that becomes subject to Section 17, solely due to these amendments, your liability will begin on the date the Section 17 amendments come into force."

Consistent with the law, CSCB takes that to mean that if a broker were subject to audit or enforcement in relation to the use of its BN to clear shipments on behalf of an importer, liability would not arise for the customs broker in respect of any entries occurring prior to the coming into force date of the amendments.

However, our community cannot—and should not have to—operate with any uncertainty as to the CBSA's intent to attempt to impose future liability on customs broker for entries made using their BNs during the period prior to the coming into force of the amendments. This sense of uncertainty is exacerbated by the fact that we do not know when the Importer of Record amendments will come into effect and whether this could occur during the transition to CARM. In the interests of consistency and transparency for all in the importing community, we are respectfully requesting that the CBSA provide written confirmation of the following via the issuance of a Customs Notice:

- That, during the CARM transition period, the CBSA will not take steps to initiate the required processes to bring into force "Importer of Record" liability provisions.
- That, consistent with binding law and existing principles against retroactivity and its prior representations, the CBSA will not attempt to enforce the "Importer of Record" liability provisions against any customs broker who used its customs broker BN to clear shipments during the CARM transition period.

CSCB members are seized with this matter, especially given that CARM implementation is less than four months away, and because current BN and RM issuance/maintenance timelines have been significantly impacted by the change in process adopted on May 13, 2024. I look forward to your favourable reply in the coming weeks.

Respectfully,



Janine Harker, President  
Canadian Society of Customs Brokers