

**Written Submission for the Pre-Budget
Consultations in Advance of the Upcoming
Federal Budget**

By: Livingston International

Recommendation 1: Commence discussions with Canada Border Security Agency and industry stakeholders on introducing legislation that protects customs brokers in the event of importer bankruptcy. The aim of new legislation is to extend protection to brokers who front payment of duties and taxes in good faith on behalf of importers who subsequently enter bankruptcy protection, leaving the broker with significant liability and unsecured claims. Of note: It is anticipated that this will be introduced in the US House as part of a broader COVID stimulus package.

Recommendation 2: Expand options for brokers to withhold payment on bad debts. The Receiver General has vastly superior statutory powers in the event of an Importer of Record's (IOR) bankruptcy and could provide a mechanism where brokers are eligible to file a claim for reimbursement of duty and taxes remitted on behalf of an IOR where they are unable to collect on that debt.

Recommendation 3: Ensure the Canada Revenue Agency provides greater clarity to industry regarding when they will apply leniency in dealing with collection activity. Any collection activity initiated requires a fulsome discussion with Trade Chain Partners to ensure that the brokerage industry does not incur undue hardship because of the government's stimulus package for business.

Recommendation 4: Creating a consistent strategy and transparent policy to deal with IOR defaults is critical. The "case-by-case" treatment of claims creates uncertainty and instability for importers and customs brokers, hindering their ability to operate effectively.

Introduction

As COVID-19 swept across the globe, it demanded fast and bold responses from national governments. Livingston International extends our thanks to Canada's federal government for its significant economic relief efforts during the COVID-19 pandemic. Undoubtedly, this is a difficult environment for businesses, communities, and Canadians, and we respect the quick-response government has taken to date. Indeed, fiscal programs, including the Canada Emergency Response Benefit (CERB), and the Canada Emergency Wage Subsidy (CEWS), among many others, have offered a lifeline to both Canadians and businesses.

While the economic shutdown was critical to slow the spread of the virus, customs brokerage firms like Livingston were rightly deemed an essential service, and continued to work hard to ensure the movement of goods across our borders. Our role in international supply chains has been central in keeping Canadians safe, and businesses afloat.

As we look forward to the months and years to come, we understand that business must evolve to survive. Alongside this evolution incumbent on the private sector, we also believe government must become partners in developing flexible regulations that allow business to manage during these challenging times.

We look forward to participating in this year's pre-budget consultations, beginning with our pre-budget submission. We believe we are uniquely positioned to provide input into this year's submission process, which is seeking input on how the government can restart the economy. Undoubtedly, by ensuring the movement of goods across international borders, customs brokerage firms play a critical role in restarting and stimulating Canada's economy from coast to coast.

On behalf of the Livingston International team, thank you for your work in keeping Canada safe, and keeping our economy strong, and we look forward to working together during this pre-budget period and beyond.

Livingston's role in Canada's economy during COVID-19

Livingston International is a North American provider of customs brokerage, trade consulting and international freight forwarding services to importers and exporters throughout North America and around the globe. Headquartered in Toronto, Livingston employs approximately 2,000 Canadians, has over 3,000 employees located at more than 100 border points, seaports, airports and other locations across North America, Europe and Asia. Livingston is currently Canada's largest customs broker and third-largest in the United States.

For more than 75 years, Livingston has operated in Canada, representing over 30,000 importers on both sides of the border and handling the collection and remittance of over \$3 billion in duties and taxes to the Government of Canada on behalf of those importers.

Livingston plays a critical role in the movement of goods across our borders. Indeed, we have proudly been identified as an essential service throughout the pandemic, which speaks to our role in maintaining supply chains throughout the COVID-19 pandemic.

As Canada's largest customs broker representing approximately 20% of the goods imported into Canada across thousands of importers and a broad range of industry sectors, we have been supporting clients during the COVID-19 pandemic, helping keep supply chains moving smoothly in the wake of an unprecedented global public health response.

Customs brokers are licensed by the federal government and can be considered government's original "trusted traders". Through this pandemic and beyond, customs brokers are a valuable partner in the global supply chain, facilitating trade on behalf of importers and act as the conduit to Canada Border Services Agency. Customs brokers invoice, collect and remit much of the duties and taxes on Canadian imports on behalf of the Importer of Record (IOR). This is done to ensure the smooth operation of importing and movement of goods.

Canada's response to COVID-19 and its impact on customs

On March 27th, the Department of Finance announced that businesses could defer customs duties and tax payments until the end of June. While the goal of the announcement – to increase liquidity of Canadian businesses – is commendable, it is also having trickle down effects on the brokerage industry.

The deferral period placed the customs brokerage industry at considerable risk with liability exposure encompassing a four month time frame rather than the traditional one month.

In addition to Livingston's own efforts, our primary industry association, the Canadian Society of Customs Brokers (CSCB), as well as other related industry associations have been in contact with the government since the announcement in March about the unintended consequences of the duty deferral program. Our concerns are directly related to the material cashflow and credit risk burden that have been transferred to the brokerage industry. Existing government regulations were never designed to address the current scenario, nor do they offer appropriate protection to the brokerage industry, considering recent policies and the general economic climate. As a member of key associations such as the CSCB who have expressed their views, we supported the urgent request to the Government of Canada to provide a waiver of liability or a deferral of payments on uncollectable duties and GST after the post June deferral period..

We are certain that members of the committee can appreciate this is still a sizeable credit risk for any business in today's uncertain economic context. Furthermore, we expect that because of the regulated closure of non-essential services and related economic impacts, the risk of non-collection of current or near-term unpaid duties has increased significantly. The impact of this deferral, although not intended by government, has been to place the brokerage community at significant financial risk – despite the critical role we have played throughout the pandemic, ensuring cross border trade continued to flow.

Next steps and recommendations

It is imperative that the brokerage industry remains viable to continue to facilitate trade on behalf of importers. However, current gaps in government regulations, including consistency and clarity, could result in debts being absorbed by customs brokers, which will then impact our ability to move goods across the borders in an efficient and timely manner.

It is the position of Livingston that the government provide waiver of liability sought by the CSCB, which will limit our liability, and allow us to continue to play a critical role in facilitating trade across borders.

It is anticipated that the United States will pass legislation to address this issue by introducing the Customs Business Fairness Act introduced by Rep. Peter King (R-NY), 2019. This bill proposing a technical amendment to Section 507(d) of the Bankruptcy Code that, in effect, would allow subrogation for customs brokers or sureties who have paid duties to the government on behalf of a bankrupt importer. We, alongside our industry partners, look forward to opening a dialogue with the federal government to introduce similar legislation in Canada.

To address the issue of liability in the near and long-term, we recommend the following actions by government in this budget cycle:

Recommendation 1: Commence discussions with Finance Canada and industry stakeholders on introducing legislation that protects customs brokers in the event of importer bankruptcy. The aim of new legislation is to extend protection to brokers who front payment of duties and taxes in good faith on behalf of importers who subsequently enter bankruptcy protection, leaving the broker with significant liability and unsecured claims. Of note: It is anticipated that this will be introduced in the US House as part of a broader COVID stimulus package in August.

Recommendation 2: Expand options for brokers to withhold payment on bad debts. The Receiver General has vast superior statutory powers in the event of an IOR's bankruptcy and could provide a mechanism where brokers were eligible to file a claim for reimbursement of duty and taxes remitted on behalf of an IOR where they are unable to collect on that debt.

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Conclusion

The current environment has placed unprecedented pressures on industry and we anticipate businesses will be further challenged in the coming weeks and months as they try to remain viable during this period of economic uncertainty. Industry analysts and media outlets are expecting the COVID19 crisis to weigh heavily on trade flows, impacting economic activity in both Canada and the US. As the economy continues to be very uncertain, we will continue to be at risk for uncollectable duties and taxes in the months ahead. We also note that our powers to collect on these funds are extremely limited in comparison to the powers which the government and its agencies hold.

As government mandated measures to limit the spread of COVID-19 are introduced, importers have diligently adjusted their practices and workforces to ensure our compliance with these new rules. We would appreciate that government take into consideration the unique challenges facing our industry and – like we have done – make the necessary adjustments to existing regulations to ensure the viability of this industry moving forward.

As the federal government looks to identify means of restarting and stimulating the economy in a safe and responsible manner, the import brokerage industry stands ready to play our role in securing international supply chains and ensuring the efficient trade of goods between nations. We look forward to presenting our concerns to Finance Committee as part of its pre-budget consultations, and working together with members of all parties to ensure that action is taken in a timely manner to address these important issues.