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Canada: Assessment and Revenue Management – Release 2 expected in October 2023

Introduction

The Canada Border Services Agency's Assessment and Revenue Management (CARM) is a multiyear initiative to modernize the way Canada Border Services Agency (CBSA) assesses imported goods, manages revenue and enforces trade compliance. As of May 2021, a limited-functionality version of the CARM Client Portal (CCP), Release 1, is available for existing importers, Canadian exporters, customs brokers and trade consultants to interact with the CBSA. Release 2, which is currently scheduled for release in October 2023, will expand the functionalities of the CCP. Once fully implemented, CARM will simplify the overall importing process, provide a modern interface for importing into Canada, give importers self-service access to their information, reduce the cost of importing into Canada, and improve consistency of compliance with trade rules.

Importers should start to assess the impact of Release 2 and to start preparing now for its introduction.

Background

Release 0, launched in January 2021, was the first step in the CARM implementation process and involved moving CBSA's existing accounts receivable ledger (ARL) system from its then data center configuration to an SAP S/4HANA system, in preparation for supporting the IT requirements of CARM.

Release 1, launched in May 2021, introduced the CCP, an online self-service tool for importers and customs brokers to interact on a paperless basis with CBSA. The CCP allows importers and customs brokers to tailor the services they need to manage their own accounts with CBSA.

Current functionalities of Release 1 include:

- The ability to grant access to an importer's account to third-party service providers (e.g., customs brokers, trade consultants)
- New secure online payment options
- Tools to help classify goods and estimate duties and taxes payable
- Application program interface (API) to retrieve tariff data
- The ability to electronically request rulings and track their progress

To access the CARM Release 1 functionality, a valid Canada Revenue Agency (CRA)-issued Business Number (BN) and import or export account (RM) identifier, also referred to as a "BN15," are required.

Review of upcoming functions in Release 2

Releases 0 and 1 are the foundations upon which Release 2 is being built. Once Release 2 is introduced, the following functions to the CCP will be enabled:

- Business registration and program enrollment
- Introduction of electronic commercial accounting declarations (CAD), with the ability to execute corrections and adjustments directly in the CCP; the CAD will replace the existing customs coding form (Form B3-3), adjustment request form (Form B2) and related processes
- Changes to Release Prior to Payment (RPP)[1] requirements for bonds
- New harmonized billing cycles
- New offsetting options
- Electronic management for appeals and compliance actions

CBSA will continue to consult with trade chain partners and communicate information regarding Release 2 via CBSA working groups and the CARM website.[2] Therefore, although October 2023 is the latest scheduled go-live date for Release 2, CBSA may postpone the go-live date if needed to address concerns from the trade community or system-related issues with the CCP.

New financial security requirements

Under Release 2, importers will be required to post financial security directly on their accounts to take advantage of RPP privileges. Customs brokers will no longer be able to secure client accounts using their security. To facilitate this, various options will be available, including posting a cash or electronic bond. CBSA will be able, through CCP, to prompt importers and delegated brokers at risk of surpassing financial security levels. This new requirement is designed to reinforce that the importer is liable for their imports, even if they are using a customs broker.

In CARM Release 2, importers will be required to post security with cash or noncash bonds to have access to RPP privileges.

- **For noncash bonds:**
  The security requirement will be to post a bond equal to or greater than 50% of the importer's highest monthly accounts receivable (inclusive of duties and taxes, including goods and services tax (GST)) within the prescribed time.

  A minimum bond of CAD25,000 will be required for RPP privileges.

- **For cash bonds:**
  The security requirement will be to post a bond equal to or greater than 100% of the importer's highest monthly accounts receivable (inclusive of duties and taxes, including GST) within the prescribed period. This can be done by making a deposit through the CCP as of Release 2.

  No minimum bond requirement will exist for cash bonds.

The current time frame for calculating RPP security is from 25 July of the prior year to 24 July of the current year, with updates required by 15 October of each year. For importers without 12 months of history, an estimate will be permitted as it is today.

Financial security bonds will secure all accounts receivable e.g., duties, taxes (including GST), fees, interest, adjustments, and Special Import Measures Act duties. The existing bond cap of CAD10 million will remain. It will be incumbent on the importer to maintain RPP financial security in the amount of their highest monthly accounts receivable.

CARM will enroll sureties via the CCP and provide the ability to establish a direct connection with CBSA. Importers or their delegates will be able to view all security posted, and the CCP will send proactive reminders to increase security or make a payment if an importer's account balance is approaching the amount of security posted.

1 RPP privilege is a privilege that entitles importers and licensed customs brokers who have posted financial security and obtained an account security number to obtain release of goods from CBSA before paying duties and taxes, defer accounting for goods, and defer payment of duties and taxes.

2 "CARM Client Portal: Bulletins," *Government of Canada website*. Find it here.

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New billing cycles

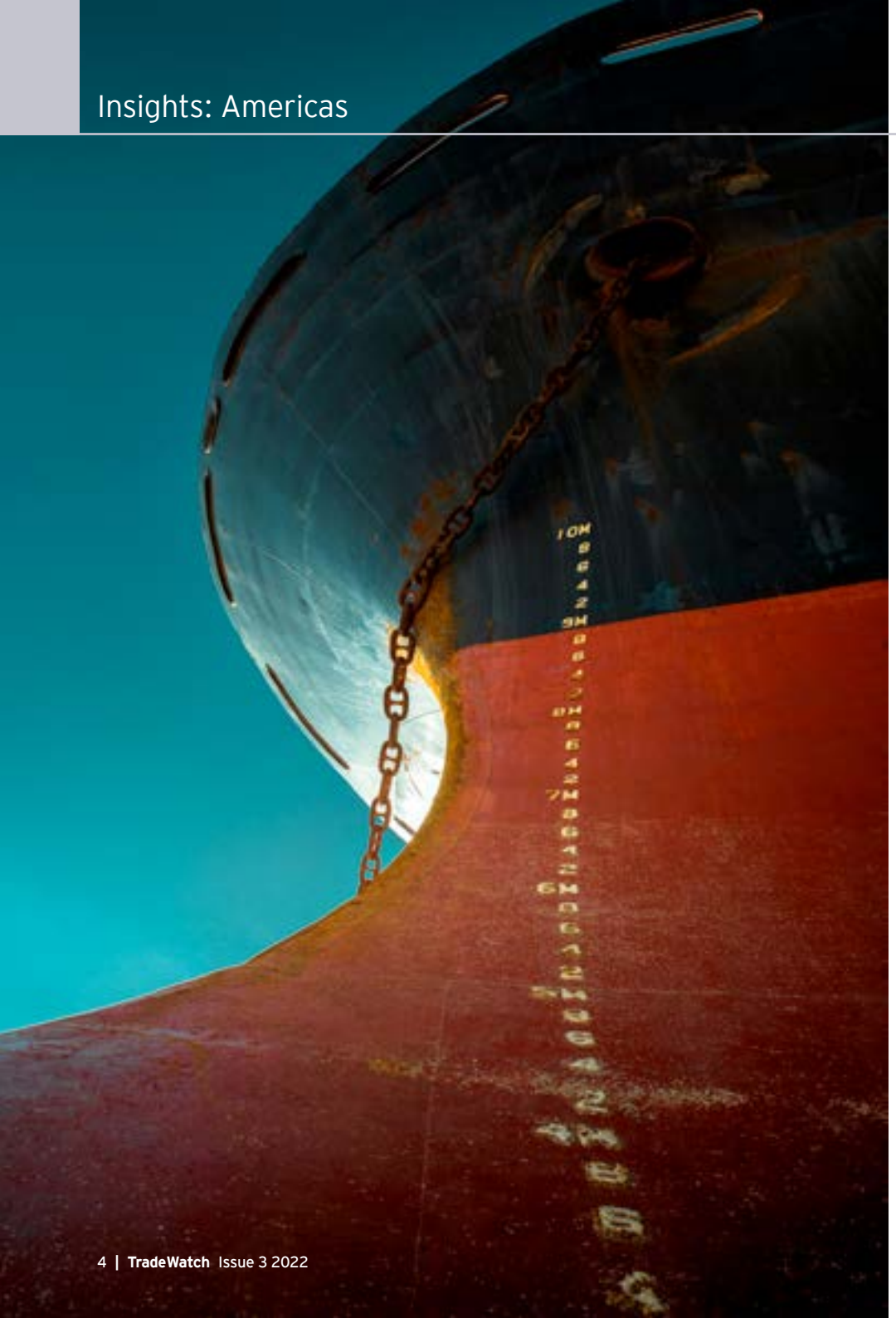
A new billing cycle will be introduced to harmonize payment due dates for all transactions and simplify how accounting information can be corrected or adjusted. The following billing cycles and payment due dates will be affected by CARM:

- High-value shipments and low-value shipments (HVS/LVS)
- Courier low-value shipments (CLVS)
- Continuous transmission commodities (CTC)
- Customs self-assessment program (CSA)
- CBSA commercial invoices in alignment with commercial invoice payment due dates

Timing for	HVS/LVS	CLVS	CSA (Option 1)	CSA (Option 2)	CTC
CAD	5 business days post-release	24th of calendar month 2	Until payment due date	Until payment due date	24th of calendar month 2
SOA	25th of calendar month 2 for all goods released between the 18th of calendar month 1 to the 17th of calendar month 2	25th of calendar month 2 for all goods released in calendar month 1	25th of calendar month 2 for all goods released in calendar month 1	25th of calendar month 2 for all goods released between the 18th of calendar month 1 to the 17th of calendar month 2	25th of calendar month 2 for all goods released in calendar month 1
Payment due date	10 weekdays after the 17th of calendar month 2				
Correction period	From CAD submission date to payment due date				
Adjustment period	From payment due date onward				

Key takeaways for importers

CARM requires a transition plan and change management. Importers are encouraged to be proactive and take steps to prepare for the introduction of CARM Release 2. As discussed above, several high-impact changes have already taken place under Release 1, and more are scheduled to be introduced in Release 2. While the transition to CARM may create disruption for importers, the transition is also an opportune moment for importers to conduct a strategic reassessment of their trade function within the overall business and to modernize and optimize trade operations to comply with the digital analytics-driven CBSA enforcement environment that CARM will create.



Prior to Release 2, importers should develop a go-live plan that assesses the current state of their trade operations and trade compliance program and identifies improvement opportunities. Active monitoring of CBSA updates on CARM will be critical to remain up to date with CARM developments. Further, financial security should be obtained well in advance of the Release 2 go-live date. Importers should also register an account on the CCP to familiarize themselves with the layout and functions of the portal as well as consider individuals or service providers that will have delegated authority for accessing the CCP on the importer's behalf.

With a robust go-live plan, importers will be able to manage disruptions to their business with the introduction of Release 2. At this stage, high-impact changes will be introduced: new billing cycles, new declaration formats and mandatory posting of security by the importer. New processes and controls will need to be implemented to adapt to these changes. New trade data analytics opportunities will be available for importers to leverage through real-time access to import data through the CCP – importers can either monitor their data directly or outsource such responsibilities to service providers with delegated authority in the CCP.

Post-Release 2, the foundations should exist for a self-directed, modernized and optimized trade compliance program that is fully integrated with CARM, outsources functions as needed, employs trade data analytics and remains current with CBSA enforcement activities and priorities. ■

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Colombia: Constitutional Court invalidates the customs sanctioning and confiscation regime contained in the Customs Code

On 9 December 2021, the Colombian Constitutional Court issued Ruling No. C-441-21 declaring that one of the articles of the current Customs Framework Law was unconstitutional. This article was the foundation of the Sanctioning and Confiscation Regime contained in the Customs Code (Decree 1165 of 2019). The Constitutional Court established that a new regulation related to this matter must be made before 20 June 2023.

What happened in Colombia?

On 23 April 2021, an individual filed a lawsuit against Article 5 subsection (4) of Law No. 1609 from 2013 claiming, among other things, that the Customs Sanctioning and Confiscation Regime contained in the Customs Code cannot be determined by framework laws or regulated through a decree issued by the Ministry of Finance.[1]

On 9 December 2021, the Colombian Constitutional Court issued Ruling No. C-441-21, in which it declared that the disputed subsection of Law No. 1609 from 2013 was indeed unconstitutional, citing the following arguments:

- Not all aspects of the customs regime are subject to a Framework Law. This means that this is a matter that should be reviewed by the Congress in Colombia and not the Ministry of Finance or the Customs Administration.
- Although the Customs Sanctioning and Confiscation Regime is directly related to customs matters, the government (in this case, the Ministry of Finance) cannot determine it, as it is not its competency.
- One of the reasons that the Customs Sanctioning and Confiscation Regime cannot be determined by the government is because this subject does not require the agility and dynamism typical of matters covered by a framework law. In addition, there are no commercial policy reasons that justify the government regulating customs sanctions; therefore, sanctions must be established in laws and not in administrative decrees.

1 In Colombia, the Customs Administration is part of the Ministry of Finance.

- As will be explained later, the regulation of any sanctioning regime is a task for the legislator; consequently, in the Customs Framework, this responsibility cannot be assigned to the government (Ministry), as it does not have the authority to establish it.

The consequence of this ruling is that the article from the law that was declared to be unconstitutional and the administrative decrees that were based on that article should be excluded from the legal system.

Constitutional background

Framework laws

Colombia's political system has three branches of government: executive, legislative and judicial. These branches have separate functions but collaborate harmoniously to achieve their purposes.

- The Legislative Branch (Congress) is made up of the Senate and the House of Representatives. Congress is responsible for amending the Constitution, enacting laws, and exercising political checks on the government and administration.
- The Executive Branch is run by the president of the republic, who is the head of state, head of government and top administrative authority. The national government comprises the president of the republic, the ministers and the directors of the administrative departments.
- The Judicial Branch (courts and judges) is responsible for the justice administration.

The issuance of laws generally belongs to the Legislative Branch. However, in some special cases, the Colombian Constitution allows Congress to issue framework laws to lay down general obligations and principles but to leave to the governing authorities (Executive Branch) the task of enacting further legislation and other specific measures, as may be required for their operation. Framework laws regulate changing matters that, given their complexity and constant evolution, require collaboration between the Executive and the Legislative branches.

The Customs Framework Law

The Colombian Constitution established in Article No. 150.19 that the government, for commercial policy reasons, can modify the tariffs, customs rates and other provisions concerning the customs regime (provided that they are fast-changing issues that require a quick implementation and that, due to its constant evolution, require rapid handling). This means that Congress can issue a law containing all the general guidelines that the government must follow when issuing the customs regime through an administrative decree (a lower-rank legislative instrument).

In this regard, the Congress issued the Customs Law Framework on 2 January 2013 with Law No. 1609 of 2013, which contains seven articles that deal with facilitation of the development and application of international treaties, the adequacy of the provisions of the customs regime to the commercial policy of the country, the streamlining of foreign trade operations, and the promotion of the use of technology.

In particular, Article 5 of this law states the following:

Article 5. General criteria. The Decrees and other Administrative Acts issued by the National Government to develop the customs framework law must observe the following criteria:

1. *It is the social responsibility of Public Officials and Foreign Trade Operators to tend to prevent, avoid and control behaviors that are contrary to the loyal and correct performance of customs functions and other obligations related to them.*
2. *The State Authorities and the foreign trade operators will periodically evaluate the general operation of the information systems and technologies used in the development of foreign trade operations and will strive for their constant updating, in accordance with the needs and good practices recognized by international law.*
3. *When a provision requires a regulation by a competent authority for its publication, the latter must issue the regulation within a period not exceeding 180 days after its publication in the Official Gazette, which allows effective and real compliance with the provision to regulate. Notwithstanding to the fact*

that the authority must implement a computer systematization model for the fulfillment of customs obligations, in which case it must do so within a period not exceeding twenty-four (24) months with the performance of pilot tests of operation at intervals of six (6) months.

4. *The provisions that constitute the Sanctioning Regime and the confiscation of goods in customs matters, as well as the applicable procedure, must be contained in the decrees that the National Government issues in development of the Framework Law.*
5. *The Decrees issued by the National Government to develop the Customs Law Framework and other acts that regulate it, must consider the elements of Legal Security. The administrative actions related to the customs function, in accordance with the Constitution, must be public and permanent, with the exceptions established by law, and substantive law will prevail in them.*

Principles of the Customs Sanctioning Regime

In Colombia, the Constitution establishes that the Customs and Tax Administration can impose sanctions on citizens, companies and public officials when they engage in actions contrary to the legal system. However, even though these sanctions are imposed by the Administration and not by a judge, the procedures and penalties must be based on constitutional principles, such as the "principle of law reserve."

The principle of law reserve

The principle of law reserve states that sanctions and related procedures must be contained in a rule that has the status of being a law. The rationale for this principle is that the sanctions should be found in rules issued by the Congress and not by decrees issued by the government, since the issuance of laws requires certain procedures and is governed by democracy, while the issuance of decrees does not.

The application of the law reserve principle implies, therefore, that customs sanctions, confiscation and related procedures cannot be regulated through an administrative decree and, conversely, must be regulated through a law issued by the Congress.

What is next?

Reflecting on the future challenges inherent in the process of creating new laws, there is an urgent need for Congress to come to an agreement with the Administration on this matter. It is clear that the decision made by the Constitutional Court could create legal uncertainty due to the absence of regulation. However, the Court has stated that the current Sanctioning Regime contained in the Customs Code will continue in force while Congress reviews and approves a new Sanctioning Regime. The deadline for Congress to issue a new law is 20 June 2023.

For Congress, the task in this period will be to issue a sanctioning regime that is fair, legal and proportional to the different situations that could arise for international trade. While this new regulation is presented and discussed by Congress, importers, exporters, customs brokers and all foreign trade actors must continue to use the current regime. Once the new regulation is in place, it must be verified in accordance with the principles established by law, in order to apply it appropriately.

In this sense, it is expected that in the second half of 2023 Colombia will have a new regime that meets the expectations of customs and foreign trade actors, and, above all, that focuses on what is substantial over what is formal. Additionally, the new regime should make sure that the activities that Customs seeks to manage, such as smuggling and noncompliance with the customs regime, are punished proportionally, following due process. ■

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Costa Rica: Business landscape, trade facilitation and amendments to General Customs Law

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Costa Rica is a small country in Central America with a sound democracy, a stable political system and a very well-educated workforce, which is home to more than 300 multinationals. The country has seen strong growth in recent years, with North America the principal destination market for exports, followed by Central America, Europe, Asia and the Caribbean. Recent customs law reforms provide new opportunities for inward investment into the country and measures that facilitate international trade while preventing illicit trading.

Growth drivers

In 2021, the country reported 24% growth in the export of goods, reaching USD14,553 million, surpassing 2020 figures, and 2022 figures are already showing a larger growth, according to the Costa Rican promotion agency Procomer.[1]

Some of this growth is driven by large multinationals operating in the country, with growth in sectors including precision and medical devices, which is the country's leading export sector (growth of 33%); agriculture (+6%); the food industry (+26%); chemical pharmaceuticals (+10%); electrical and electronics (+37%); metalworking (+71%); plastics (+26%); and livestock and fisheries (+13%).[2]

1 'The recovery of Costa Rican goods exports showed a consolidated increase of 24% at the close of 2021' *Procomer Costa Rica website*. Find it here.

2 ibid.

Growth in the agricultural sector has been in staple foods, such as pineapple (+12%), ornamental plants (+31%) and frozen fruits (+42%), and diversified products, such as mango (+65%), coconut (+144%), chayote (+11%), cassava (+5%), tiquisque (cocoyam) (+46%), yams (+145%) and ñampi (taro) (+13%).[3]

Customs reform

In line with the country's strategy of attracting foreign investment and facilitating trade and investment, a new amendment to the general customs law was published on 29 June 2022, the most comprehensive reform in the last 20 years. There is still a six-month period for a regulation to be released, detailing the scope and some of the specific provisions of the law; however, businesses are already capable of taking advantage of some of the benefits introduced by this law, as the administration has adopted and applied the new measures, despite the fact that the regulation has not been published. Therefore, it is important to consider changes introduced by this reform.

Trade facilitation measures

Trade facilitation measures include the option of deferred payments, aimed at supporting businesses by granting a one-month period for the payment of taxes and duties after the import has been carried out.

The accumulated declaration facility allows importers to accumulate the declarations in a specific period, for example, to check for consistency in the declaration with amounts of goods imported. Payment is made at the end of the period when amounts are confirmed.

Advance rulings with binding force have been introduced, in line with the practices in other administrations, such as the US, whereby information on issues such as classification, valuation and customs matters can be made publicly available and the ruling grants legal certainty to businesses.

Combatting illicit trade

The amendment also introduces the obligation for public auxiliaries such as free-trade zones and customs agents to incorporate new technologies for better control and inspection. The objective is to avoid illicit trade and smuggling. Anti-smuggling measures are also at the heart of the reform, with criminal penalties consisting of custodial sentences and fines to those involved in such behaviors.

The reform also changes the amounts of sanctions and fines, and the discounts. Whereas the previous text contained the fine of $500, new sanctions are $1,000 and $4,000 and include business closure and other measures. These changes are of particular relevance to free-trade zones; since they are auxiliaries of the public function, they are subject of some of the increased fines.

Authorized Economic Operator

Special mention should be given to the Authorized Economic Operator (AEO) certification, which an important trade facilitation program for compliant businesses, that Costa Rica is supporting in full. The reform includes some of the benefits for AEO companies, for example, the option for an AEO to nationalize goods not at the point of entry or in a warehouse but in its own facilities. This means that companies with AEO status can benefit from savings, as they are not required to transport goods from the port into a warehouse until duties and taxes are paid.

3 ibid.

Free-trade zones

Free-trade zone incentives ranging from zero income tax, zero duties and applied taxes to operations within the zones, a new modern customs law, political stability, and education make this a great option to serve other Latin American and North American markets.

Costa Rica: Example tax incentives for certain free-trade zones	
Tax	**Incentive**
Income tax (30% ordinary rate)	0% during first eight years – 15% during following four years for companies operating within the Greater Metropolitan Area (GMA). 0% during the first 12 years – 15% during the following six years for companies operating out of the GMA.
Dividend withholding tax (15% ordinary rate)	0% during first eight years – 7.5% during following four years, for companies operating within the GMA. 0% during the first 12 years – 7.5% during the following six years for companies operating out of the GMA.
Withholding taxes on remittances abroad	Exempt
Tax on net assets, capital, real estate and real estate transfer tax	Exempt for 10 years
Sales tax on goods and services (VAT) (13% ordinary rate)	Exempt
Municipal tax	Exempt for 10 years (with exceptions)
Import duties on raw materials, equipment, machinery, etc.	Exempt

Summary

In line with the country's strategy to be a strong preferred recipient of foreign direct investment in the region, while this reform contains strong penalties for noncompliance, it also has valuable trade facilitation measures and facilities for companies that comply with the law.

For businesses already established in Costa Rica, it is recommended that they check compliance with the new customs law to identify any risks and opportunities.

Businesses looking for expansion or a nearshoring option should consider the opportunities available for facilitated trade and consider that sectors such as advanced manufacturing, pharma and services all receive special incentives.

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US: Uyghur Forced Labor Prevention Act goes into force

In December 2021, United States (US) President Joseph Biden signed into law the Uyghur Forced Labor Prevention Act (UFLPA), passed by the US Congress with bipartisan support.[1] Among the goals of the UFLPA is to enhance existing prohibitions against importing goods into the US made with forced labor.[2] The law, which went into effect on 21 June 2022, impacts companies in a variety of industries that have supply chains directly and indirectly tied to China.

Restrictions on imports of merchandise produced with forced labor is not new to US importers, as US Customs and Border Protection (CBP or Customs) has prohibited imports made with forced labor regularly for the past several years via Withhold Release Orders (WRO), established in 2015 under the Trade Facilitation and Trade Enforcement Act (TFTEA). Prior to TFTEA, US importers were allowed to import goods produced with forced labor, provided the product produced domestically did not meet US consumptive demand.

Under a WRO, CBP may withhold the release of imported goods when information indicates that the goods were produced with forced labor. In those cases, importers must either export the withheld shipments or submit certain documentation demonstrating that the goods were not produced with forced labor. However, based on previous WROs' levels of specificity, the impact to US importers has been relatively limited.

The UFLPA diverges significantly from the previous, more specific WROs. The law creates a rebuttable presumption that goods mined, produced or manufactured (wholly or in part) in China's Xinjiang Uyghur Autonomous Region (XUAR), or goods produced by certain named entities (the Entity List), are produced with forced labor. Goods meeting this description are prohibited from importation into the US.

1 Pub. L. No. 117-78, "An act to ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China do not enter the United States market, and for other purposes."

2 Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) prohibits the import of any product made wholly or in part by forced labor.

Rebutting the presumption

To overcome the rebuttable presumption, importers must provide documentation that clearly demonstrates that the goods were not mined, produced or manufactured wholly or in part by forced labor.

The Department of Homeland Security (DHS), as Chair of the Forced Labor Enforcement Task Force (FLETF), published the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China (UFLPA Strategy) on 21 June 2022 with specific guidance to importers. Example documentation outlined in the strategy is detailed in the chart opposite:

The rebuttable presumption applies to merchandise imported on or after 21 June 2022. Should CBP decide to take enforcement actions on a shipment, the importer will be issued a notice of detention, pursuant to 19 U.S.C. § 1499 and 19 C.F.R. § 151.16. CBP will provide the importer with instructions to submit information for the evidence for their rebuttal. Importers will have 30 days from the date the merchandise is presented for examination to request an exemption.

Category	Example supporting documentation	
Due diligence, supply chain tracing information, information on supply chain management measures	▸ Engagement with suppliers and other stakeholders to assess and address forced labor risk ▸ Mapping of the supply chain and assessment of forced labor risks along the supply chain from raw materials to production of the imported good ▸ Training on forced labor risks for employees and agents who select and interact with suppliers	▸ Remediation of any forced labor conditions identified or termination of the supplier ▸ Relationship if remediation is not possible or is not timely completed ▸ Independent verification of the implementation and effectiveness of the due diligence system

Supply chain tracing information	▸ Evidence pertaining to overall supply chain
	  ▸ e.g., detailed description of supply chain, including imported merchandise and components thereof, including all stages of mining, production or manufacture
		▸ Evidence pertaining to merchandise or any component thereof
		  ▸ e.g., purchase orders, invoices, packing lists
		▸ Evidence pertaining to miner, producer or manufacturer
		  ▸ e.g., production orders, production reports

Information on supply chain management measures	▸ Internal controls to prevent or mitigate forced labor risk and remediate any use of forced labor identified in the mining, production, or manufacture of imported goods	▸ An importer should be able to demonstrate that documents provided are part of an operating system or an accounting system that includes audited financial statements
Evidence that goods were not mined, produced or manufactured wholly or in part in XUAR	▸ Documentation that traces the supply chain of the goods	
Evidence that goods originating in China were not mined, produced or manufactured wholly or in part by forced labor	▸ Supply chain mapping ▸ Information on workers, such as wage payment and production output at entities involved in the production process	▸ Information about the worker recruitment process and internal controls that document how employees are working voluntarily ▸ Credible audits identifying forced labor indicators and, if applicable, remediation

3 "Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China," *US Department of Homeland Security website*. Find it here.

CBP will then make a determination on whether to release, exclude or seize the merchandise. Importers whose merchandise is excluded or seized may file a protest or petition, respectively, to request an exception to the rebuttable presumption.

Should CBP reject an importer's exception request and determine the merchandise was produced with forced labor, the importer may face penalties. The Tariff Act of 1930 provides CBP with the authority to issue civil penalties against importers for entering, introducing, or attempting to enter or introduce any merchandise into the commerce of the US contrary to law.

Industry impact

As the XUAR is a region of China that provides raw materials at the start of the supply chain for many types of products, the UFLPA impacts many industries. It expressly targets the production of cotton, tomatoes and polysilicon (a key input in solar panels). As such, the related industries (e.g., apparel and textiles for cotton, solar panel producers) should be particularly diligent regarding Chinese-based material suppliers or sources of supply.

Planning

Importers need to have a thorough understanding of and visibility of their supply chain. CBP's UFLPA detentions and inquiries have only a 30-day response deadline, which is not enough time to undertake the processes of either proving the product is not within scope or rebutting the presumption. Consequently, importers with supply chains that have nexus with China should conduct proactive reviews of their supply chains. The review should map all direct (i.e., tier 1 suppliers) and indirect suppliers (i.e., tier 2 suppliers and beyond), as well as trace each material used in production to assess its origin and risk under the UFLPA. Importers should then develop an appropriate action plan to respond to potential CBP inquiries.

Actions importers can take to develop compliance measures for suppliers and products potentially affected by the UFLPA include:

- Updating trade compliance processes and procedures for supplier selection processes and related due diligence
- Reviewing contract language for current suppliers to assess whether updates to address forced labor risks and compliance are needed
- Ongoing supplier monitoring
- Creating whistleblower and escalation processes ■

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US: Implements new technology export controls on China

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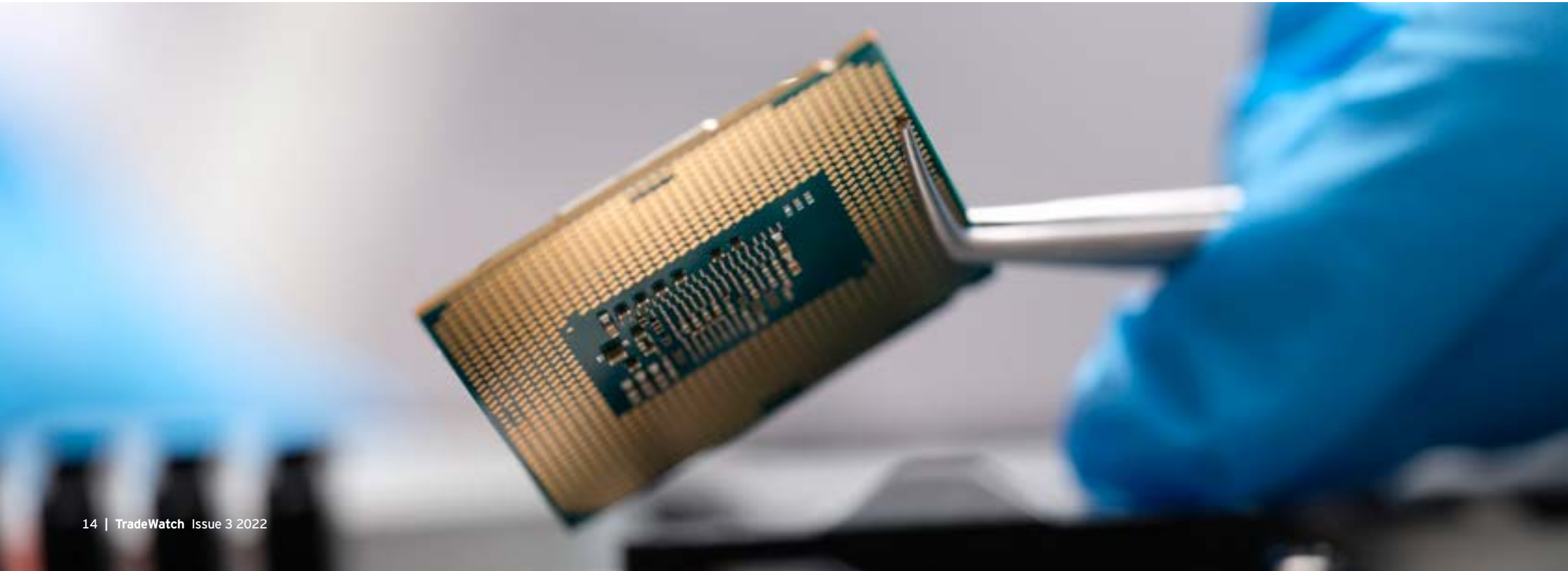
On 7 October 2022, the United States (US) Department of Commerce's Bureau of Industry and Security (BIS) announced sweeping export controls via an Interim Final Rule focused on semiconductors, integrated circuits (ICs), related manufacturing equipment, advanced computing and supercomputers. The new restrictions under the Export Administration Regulations (EAR) are generally focused on activities involving China.[1]

These new export controls are among the broadest and most substantial in recent years. In addition to creating major hurdles for the PRC's domestic chip industry, these changes will affect US and non-US companies in the semiconductor sector and adjacent sectors with business operations in the PRC, as well as companies in any industry that supply items or services to the PRC involving computers, servers or ICs.

Notably, these export controls can impact operations throughout the semiconductor supply chain, including elements not based in the US or performed by US companies.

1 See 87 Fed. Reg. 62,186 (13 October 2022), *Federal register website*. Find it here.



Key aspects of the new restrictions include:

- New and amended Export Control Classification Numbers (ECCN) on the EAR's Commerce Control List (CCL) requiring a license for China, focused on semiconductor manufacturing equipment and advanced ICs
- Expansion of the EAR's jurisdiction over items made outside the US, with respect to China and advanced computing and ICs
- New EAR end-use rules with respect to China, semiconductor manufacturing and supercomputers
- New and significant restrictions on activities performed by US persons involving China -based IC development and production
- Revisions to the EAR's Unverified List, a restricted-party list

New and amended ECCNs

Among the changes in the Interim Final Rule are new and amended ECCNs. The associated licensing requirements for exports, re-exports, and in-country transfers to or within China are based on the EAR's Regional Stability (RS) licensing reasons, although limited to China only. Anti-Terrorism (AT) licensing reasons for embargoed countries apply as well.

New ECCNs are listed below, and certain associated ECCNs are also revised or impacted.

- **ECCN 3A090**
  - Effective 21 October 2022
  - Controls certain advanced ICs (i.e., ICs that have or are programmable to have an aggregate bidirectional transfer rate over all inputs and outputs of 600 gigabytes or more to or from ICs other than volatile memories (and other characteristics in the ECCN))
- **ECCN 3B090**
  - Effective 7 October 2022
  - Controls certain semiconductor manufacturing equipment and related items
- **ECCN 4A090**
  - Effective 21 October 2022
  - Controls certain computers, electronic assemblies and components containing ICs that exceed the limit in 3A090.a
- **ECCN 4D090**
  - Effective 21 October 2022
  - Controls software specially designed or modified for the development or production of the items controlled under ECCN 4A090

Generally, export license applications related to China for items under these ECCNs will be reviewed by BIS under a presumption of denial.

License applications will be reviewed on a case-by-case basis for items destined to end users in China that are headquartered in the US or a country in EAR Country Group A:5 or A:6. Use of license exceptions for these ECCNs is limited.

Expanded scope of EAR jurisdiction

Generally, the EAR's Foreign Direct Product Rule (FDPR) expands the EAR's jurisdiction to foreign-produced items outside the US that are a direct product of specified technology or software or are produced by a plant or major component of a plant that itself is a direct product of specified technology or software.

Effective 21 October 2022, BIS is adding three new FDPRs to further extend EAR jurisdiction to items produced outside the US. As a result, US and non-US companies will face challenges with supplying semiconductor and supercomputer-related hardware and software to China when the supply chain contains US software, technology or commodities.

Each of the FDPRs is complex, with extensive detail, and should be read carefully in full.

To summarize, the FDPRs include:

- **Entity List FDPR**, covering items destined to 28 China-based entities already listed on the BIS Entity List, now designated with new Entity List Footnote 4. Generally, companies face license requirements for exports, re-exports and in-country transfers to entities on the Entity List; however, this new FDPR expands what types of transactions involving items made outside the US would be considered subject to the EAR and, accordingly, incur these license requirements.

- **Advanced Computing FDPR**, covering certain advanced ICs, commodities containing such ICs, or related technology when there is knowledge that the items are either (i) destined for China or incorporation into a non-EAR99 item destined for China or (ii) technology developed by a China-based entity for the production of certain related items.
- **Supercomputer End-Use FDPR**, covering items to be used in development, production or other services with a supercomputer located in or destined for China, or to be incorporated into or used in the development or production of certain items to be used in a supercomputer located in or destined for China.

End-use restrictions

Among the mechanisms in the EAR for export controls are restrictions on end use for items that are exported, re-exported or transferred.

The Interim Final Rule adds new provisions on end use, requiring an export license for various commodities, software and technology where the exporter has "knowledge" at the time of export, re-export or in-country transfer that the item will be used, whether directly or indirectly, for certain end uses related to supercomputers or semiconductor manufacturing. These new Interim Final Rule provisions also provide a detailed technical definition of supercomputers.

These end-use restrictions are specific to certain technical parameters and circumstances, and companies should review the restrictions in full.

License exceptions are not available for these end-use restrictions. BIS will review license applications under a presumption of denial, except in some cases for end users in China that are headquartered in the US or in countries under Country Groups A:5 or A:6, along with certain other conditions.

Restrictions on US person activities

Effective 12 October 2022, a BIS license is required before US persons (US citizens, permanent residents and limited other residency statuses) can provide certain support for the development or production of certain ICs produced at a semiconductor fabrication facility located in China. BIS will review these license applications under a presumption of denial, except for a more general review policy related to end users in China that are headquartered in the US or in EAR Country Groups A:5 or A:6.

The term "support" encompasses a number of activities. More specifically, the following types of support incur the license requirement:

- Shipping, transmitting, or transferring, or facilitating such movement, to or withinChina, or servicing any item not subject to the EAR (i.e., outside of EAR jurisdiction) with knowledge that the item will be used in the development or production of ICs at a semiconductor fabrication facility in China that produces certain advanced ICs described in these provisions.

- Shipping, transmitting, or transferring, or facilitating such movement, to or withinChina, or servicing any item (if meeting the parameters of any ECCN in CCL Category 3 Product Groups B, C, D or E) not subject to the EAR with knowledge that the item will be used in the development or production of ICs at a semiconductor fabrication facility in Chinawhere the US person does not have knowledge of whether the facility produces ICs meeting the above technical criteria.
- Shipping, transmitting, or transferring, or facilitating such movement, to or within China, or servicing any item not subject to the EAR and meeting the parameters of certain ECCNs regardless of the end use or end user.

Temporary General License

In addition to a limited-duration savings clause for certain activities, BIS issued a Temporary General License (TGL) in an effort to mitigate disruption to supply chains, effective 21 October 2022 through 7 April 2023. The TGL authorizes shipment to Chinaby companies not headquartered in certain otherwise restricted countries to engage in limited activities otherwise restricted by the Interim Final Rule.

Updates to Entity List determination criteria and Unverified List

On 7 October 2022, BIS released a separate Federal Register Notice with new criteria for adding a party to the BIS Entity List, including a sustained lack of cooperation by the host government (e.g., the government of the country in which an end-use check is to be performed) that effectively prevents BIS from determining compliance with the EAR. The expected result of this change is that more companies and institutions in China will later be added to the Entity List.

In addition, BIS designated 31 entities in China to the BIS Unverified List (UVL), a restricted-party list identifying parties for which BIS has been unable to confirm their bona fides. Generally, license exceptions may not be used for transactions with parties on the UVL, and certain written statements must be acquired from the UVL party in advance, in addition to other requirements imposed by a UVL listing.[2]

Actions for businesses

The impact of these changes on the semiconductor industry is significant and the greatest impact will be felt by companies with business in China involving semiconductor manufacturing, advanced computing and supercomputers. However, companies in any industry that ship to or use computers or ICs in the PRC will need to review these new restrictions.

The restrictions on US persons will also create exceptional challenges for companies involved in engineering or technical work with China -based semiconductor or advanced computing companies.

Companies in the semiconductor and advanced computing spaces should consider the following immediate actions:

- Identify any products or service offerings involving China , including technology and software, that may be captured under the new ECCNs related to semiconductor manufacturing equipment, ICs and items containing ICs.
- Regarding the FDPRs and the EAR's jurisdiction over items made outside the US, review operations and shipment activity originating outside the US and involving the PRC with respect to advanced computing and supercomputers.
- Review global shipments and operations related to China -based IC fabrication or supercomputers, with respect to end-use restrictions.
- Review the activities of personnel supporting engineering or technical work for China companies in the semiconductor, advanced computing or supercomputer fields. ■

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2 See 87 Fed. Reg. 61,971 (October 13, 2022).

Americas

Canada

- Government of Canada announces withdrawal of Most-Favored-Nation tariff benefit on goods originating in Russia and Belarus *(17.11.2022)*

Columbia

- Colombian Congress approves tax reform bill *(22.11.2022)*
- Colombia's modified tax reform bill approved in first debate *(19.10.2022)*

Global

- OECD/G20 Inclusive Framework holds 14th plenary meeting and publishes 6th annual progress report *(24.10.2022)*
- G20 Finance Ministers welcome progress made on BEPS 2.0 and call for swift implementation *(21.10.2022)*
- OECD releases public consultation document on administration and tax certainty aspects of Amount A of Pillar One *(21.10.2022)*
- OECD and UN: Tax Inspectors Without Borders publish Annual Report 2022 *(20.10.2022)*

United States

- US implements new technology export controls on China *(20.10.2022)*
- USTR announces next steps in statutory four-year review of China 301 tariffs *(20.10.2022)*

Uruguay

- Uruguay establishes conditions for employees to work remotely under Free Trade Zone regime 30.11.2022)

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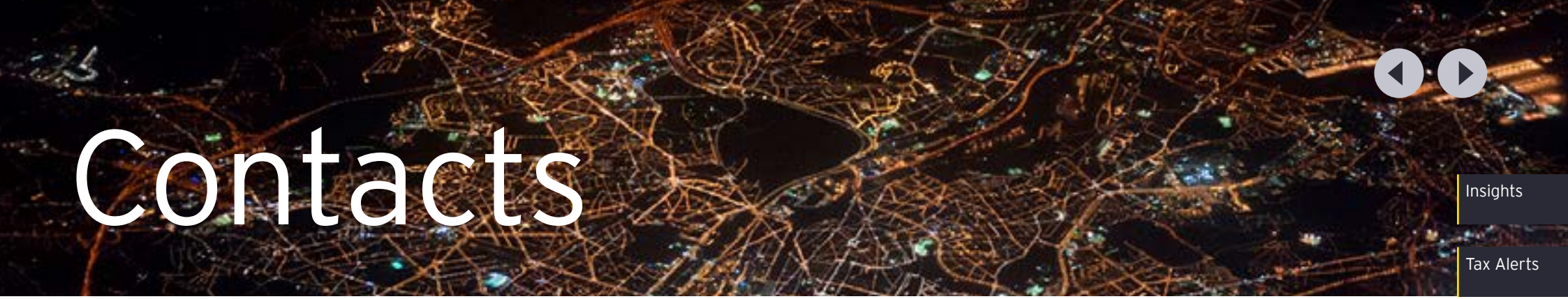

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