

TradeWatch

A full-page background image showing a man in a red hard hat, yellow earplugs, and a red safety vest over a blue shirt and jeans. He is holding a tablet and looking upwards. He is standing in front of several stacked shipping containers, some blue and some orange.

EY Global Trade

Issue 2 2023

EY

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Canada: Border Services Agency (CBSA) Assessment and Revenue Management (CARM) Release 2 update

As discussed in [TradeWatch Issue 3 2022](#), the CBSA's CARM project is still expected to be fully implemented in October 2023 (Release 2 or CARM R2). Release 2 is expected to have vast implications for the way importers and their representatives interact with the CBSA, and it may significantly change the way accounting obligations under the Customs Act are effectively carried out in day-to-day operations. In this article, we focus on the procedural implications and potential regulatory developments that will transform the customs accounting process for goods imported into Canada.

Important impacts of the agency's new, digitized revenue management platform include enhancement of CBSA's compliance enforcement capabilities; significant changes to how importers confirm and pay duties and import taxes in accordance with the Customs Act; and new, more frequent and more direct communications between the CBSA and importers. Careful management of this transitional period prior to Release 2 is critical to safeguarding business continuity and reducing disruptions to the overall business.

What is CARM?

The CBSA is the second-largest revenue collector in the Government of Canada. However, as the volume and value of commercial imports into Canada has been increasing over time, Canada's relative world ranking in trade facilitation and border management has declined, leaving a need for a new approach to revenue collection.¹



In 2009, the Office of the Auditor General (OAG) appeared before the Standing Committee on Public Accounts (PACP). The OAG noted that CBSA had difficulty in reconciling information in various reports taken from its tax program systems, which led to unexplained differences at year-end. The Committee was told that this was due to information technology systems not being able to share data, and it would take several years to rectify. As a result, PACP recommended that the CBSA provide the Committee with a detailed plan specifying the steps it would take to improve its tax revenue accounting systems. From this recommendation, the CBSA CARM project was created.²

At its core, CARM is a CBSA business transformation initiative. CARM changes business processes and expands the digital solutions available to the trade community. It incorporates business process transformation initiatives – such as new billing cycles, streamlined post-entry and recourse procedures, and opportunities for importers to interface directly with customs – and deploys new digital solutions. The Commercial Client Portal (CCP), introduced in Release 1 of CARM, and in many ways the central feature of the CARM platform, is the tool that will enable significantly improved customs accounting processes.

¹ "Targeted control audit of CARM business readiness: Introduction, key findings and management response," *Government of Canada website*. [Find it here](#).

² Ibid.

Implications for customs accounting – current state vs. future state

Historically, importers rely heavily on appointed customs brokers to account for import duties and taxes, and in many cases, to remit corresponding payments to the Receiver General for Canada.

Currently, Form B3 Customs Accounting Document submissions made via the Customs Automated Data Exchange (CADEX) or via Customs Declaration (CUSDEC) are tied to the shipment's cargo control number. Customs accounting systems also provide functionality for the transmission of single-record post-accounting adjustments.

The multitude of interconnected electronic data interchange (EDI) solutions that CBSA currently operates and maintains provide the current means for staggered, single-version, serial transmissions that reflect the regulatory milestones of the Customs Act and represent a generation of software and systems that date as far back as the early 2000s.

Formal adjustments (according to sections 32.2 and 74 of the Customs Act) can still be filed in paper form, which, when coupled with a blanket adjustment process that is in essence an outside-the-system workaround to address current systems limitations, often results in import transaction record inconsistencies, highlighting the inability of the CBSA's current state systems to handle versioning of import transaction records.

CARM, through the functionalities provided by the CCP, is expected to address these limitations and reduce or eliminate outright import transaction record inconsistencies. The CCP will provide real-time continuous transmission capabilities and new versioning capabilities for the commercial accounting declaration (CAD) submissions made via the CCP, which will replace EDI B3 transmissions. CCP real-time transmission and CAD versioning make possible a new set of accounting milestones³:

- ▶ **CAD:** This feature will replace the current B3 Declaration and B2 Adjustment documents that are submitted to CBSA via EDI B3 or in paper form. Corrections or adjustments made to a CAD via CCP will be recorded as a new version of the original declaration.
- ▶ **Corrections:** If payment does not become due (and unless the CAD was selected by the CBSA for review), importers should have unlimited opportunities to overwrite the initial CAD with new corrected versions, penalty-free. Akin to the initial CAD submission, corrections are understood to remain a unilateral self-assessment, as no CBSA involvement would be required to confirm the changes.
- ▶ **Adjustments and mass adjustments:** Adjustments can be filed via the CCP to meet section 32.2 obligations with respect to corrections due when the importer has a "reason to believe" that the final CAD version on which payment became due was incorrect. Unlike corrections, the number of adjustments will continue to be limited by the privative clauses under subsection 58(3) or 59(6), and section 62 of the Customs Act, and the process is expected to remain essentially the same with a single redetermination and a single request for further redetermination under each of the three compliance programs: origin, valuation and tariff classification.

The pre-adjustment correction mechanism introduces uncertainty around the interpretation of the expression "interim accounting" under paragraph 32(2)(a) of the Customs Act alongside further pertinent prescriptions made in the Accounting for Imported Goods and Payment of Duties Regulations.⁴ Currently, a single interim accounting is required to allow goods to be released (i.e., Release on Minimum Documentation) before final accounting of duties and taxes owed is specifically or actively acknowledged by filing a final accounting on a B3 Type AB. Under CARM, as the final accounting only truly occurs once payment becomes due on a CAD, it is unclear whether the CAD and all its versions could each be interpreted to be an interim accounting to CBSA.

³ For more information on the expected functionalities of Release 2 of CARM, see "Canada: Assessment and Revenue Management – Release 2 expected in October 2023" from *TradeWatch* Issue 3 2022, page 21. [Find it here.](#)

⁴ SOR/86-1062.

Safeguarding business continuity

The expected efficiencies gained through CARM and the CCP should ideally mean that the operational costs of trade compliance and, consequently, the cost of importing into Canada are reduced. However, CARM will also provide the CBSA with greater visibility and data collection capabilities that will allow the agency to better enforce customs laws and maximize revenue collection.

Therefore, while CARM should ultimately lead to a more efficient importing process, CARM is fundamentally a CBSA tool for improving revenue collection and, by extension, trade compliance. This means importers will need to adapt to operational realities that will require a significant amount of change management to deploy and maintain a technically strong, agile and well-equipped trade compliance function to both capitalize on the efficiencies provided by CARM and keep pace with improved data-driven CBSA compliance enforcement activities in a post-Release 2 environment.

As Release 2 is rapidly approaching, importers may begin deploying measures to reduce potential disruption to the business and to position themselves to take advantage of operational efficiencies provided by CARM:

- ▶ **Adapt to new billing cycles:** Payment due dates under CARM will be harmonized; therefore, importers will need to update their accounts payable procedures to ensure they are up-to-date with CARM-mandated due dates.
- ▶ **Capitalize on new monitoring and reporting opportunities:** CARM will enable importers to view import data and pull reports in near-real time, no longer having to rely on Facilities Information and Resources Management System (FIRM) report requests or broker-generated B3 reports. This will also provide importers with trade data analytics opportunities executed in-house or by third-party service providers.
- ▶ **Manage the transition to CAD:** Importers will need to quickly familiarize themselves with the CAD and the procedure for submitting corrections and adjustments through the CCP. In addition, any applicable EDI and IT programs will need to be configured to ensure data stored and transmitted for customs declaration purposes is compatible with CAD requirements.

- ▶ **Post and manage security:** In particular, importers with several import/export program accounts will need to closely monitor their posted security amounts with CBSA to ensure Release Prior to Payment privileges remain in good standing.
- ▶ **Manage customs broker and third-party service provider relationships:** CARM effectively further shifts compliance responsibility to the importer compared to the current state. Prior to Release 2, it is imperative that importers clearly define roles and responsibilities of appointed customs brokers and third-party service providers. Decisions related to outsourcing roles and responsibilities need to match with delegated CCP access rights to ensure that customs brokers, third-party services providers and in-house personnel have the necessary visibility over operations and data to carry out their roles effectively. ■



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Latin America: Maximizing the benefits of nearshoring – a practical guide to Latin America's FTAs

In today's global economy, businesses continually seek strategies to enhance efficiency, reduce costs and maintain a competitive edge. One such strategy growing in relevance is nearshoring, the transfer of business operations to nearby countries. The World Bank has identified nearshoring as a key driver contributing to increased demand for goods and services from Latin America and the Caribbean.¹

Furthermore, the rise of green industry has emerged as another essential catalyst for boosting economic growth in the region, presenting an opportunity for companies to align their nearshoring strategies with environmental sustainability efforts.

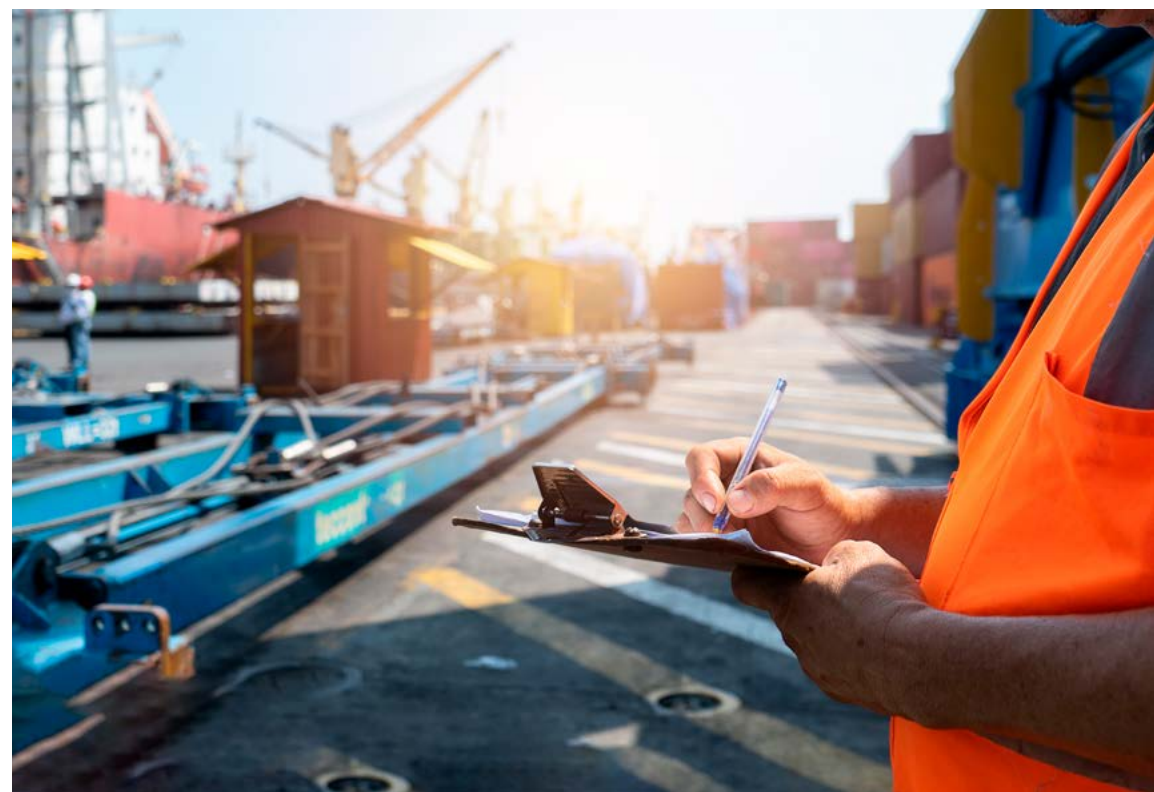
With its robust economic landscape, strategic geographical location and diverse FTAs network, Latin America presents a compelling nearshoring destination for companies worldwide. This article explores the opportunities and strategies for maximizing the benefits of nearshoring in Latin America through the effective use of FTAs.

Unfolding the nearshoring landscape in Latin America

Latin America offers a compelling case for nearshoring, driven by several key factors. Firstly, the region boasts a large, dynamic and educated workforce with an increasing number of university graduates. In addition, Mexico, Brazil, Argentina and Colombia are known for their engineering and technical graduates, providing a skilled yet cost-effective labor force.

Moreover, Latin America shares multiple values and customs with North American businesses, fostering cultural and linguistic alignment that facilitates seamless business interactions and communication.

The similar time zones between Latin America and North America enhance productivity by enabling real-time communication and collaboration. Geographical proximity further supports nearshoring, resulting in lower transportation costs, faster delivery times and more resilient supply chains.



¹ "Global Economy Trends in Nearshoring and Green Industry Can Help Boost Growth in Latin America and the Caribbean," *The World Bank website*, 4 April 2023. [Find it here](#).

The rising star: nearshoring in Mexico

Mexico has recently emerged as one of the top countries for nearshoring, thanks to its strategic position, skilled workforce and participation in significant FTAs. With its proximity to North America, Mexico provides logistical advantages that reduce shipping times and costs, making it an ideal location for businesses aiming to streamline their supply chains.

Mexico's participation in the United States-Mexico-Canada Agreement (USMCA)² and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)³ provides businesses access to large, prosperous markets on preferential terms.

Moreover, Mexico has made significant strides in education, particularly in fields like engineering and technology, producing a substantial number of graduates ready to enter the workforce each year. This abundant skilled labor and relatively low operational costs make Mexico an attractive destination for businesses seeking to nearshore their operations.

The power of FTAs

FTAs serve as the foundation of international trade by minimizing barriers and facilitating the unrestricted flow of goods and services. Understanding the FTAs in place is essential for businesses considering nearshoring to Latin America.

- ▶ **USMCA:** The USMCA replaced the North American FTA (NAFTA)⁴ and maintained tariff-free trade while introducing updated provisions. It acknowledges the rise of the digital economy, enabling free data transfer and eliminating duties on electronic transmissions. The agreement offers attractive opportunities, particularly in the automotive sector, where rules have been revised to increase regional content requirements.

- ▶ **CPTPP:** The CPTPP is a broad trade agreement encompassing multiple sectors. Mexico's participation grants preferential access to significant economies in the Asia-Pacific region, such as Japan, Australia and Canada. The agreement eliminates tariffs on most goods and services; reduces trade costs; and enforces high standards for intellectual property protection, labor rights and environmental practices.
- ▶ **Pacific Alliance⁵:** The Pacific Alliance is a dynamic trade bloc focused on eliminating tariffs, removing visa requirements and integrating stock markets. This seamless trading environment and expanded consumer market present significant advantages for businesses.
- ▶ **MERCOSUR (Southern Common Market)⁶:** MERCOSUR promotes the free transit of goods, services and production factors among its member countries. By establishing production in one member country, businesses can cater to the entire MERCOSUR market without facing internal tariffs.

The four FTAs highlighted above are some of the most impactful in the Latin American region, but they represent only a portion of the region's comprehensive network of trade agreements.

As of 2023, Latin American countries are involved in over 100 FTAs, each providing access to various global markets. These range from bilateral agreements between individual countries to more comprehensive multilateral agreements involving multiple nations.

Harnessing the benefits: practical strategies for success

- ▶ **Use data analytics to identify opportunities:** Embrace advanced data analytics to gain a competitive edge in the market. Harness the power of predictive analytics to generate deep insights into the FTA landscape. Analyzing historical data, market trends and tariff codes allows you to identify lucrative opportunities within the FTA framework and make data-driven strategic decisions.

² "United States-Mexico-Canada Agreement," *International Trade Administration website*, accessed 7 June 2023. [Find it here.](#)

³ "Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)," *Australia government website*, accessed 7 June 2023. [Find it here.](#)

⁴ "North American Free Trade Agreement (NAFTA)," *International Trade Administration website*, accessed 7 June 2023. [Find it here.](#)

⁵ *Pacific Alliance website*, accessed 7 June 2023. [Find it here.](#)

⁶ *MERCOSUR official website*, accessed 7 June 2023. [Find it here.](#)

- ▶ **Explore supplier development in FTA-partnered countries:** Take an active approach to developing relationships with suppliers in FTA-partnered countries. Leverage the FTAs to negotiate better terms, ensure the quality of products and secure preferential tariff rates. Furthermore, consider diversifying your supplier base across multiple FTA-partnered countries to manage risks and enhance supply chain resilience.
- ▶ **Conduct a comprehensive review of origin qualification:** Implement a rigorous review process to ensure the qualification of products for preferential origin under FTAs. This involves closely scrutinizing the components, raw materials and manufacturing processes to verify conformity to FTA origin criteria. Regularly update this process in response to changes in FTA rules or business operations.
- ▶ **Review the use of Harmonized Tariff Schedule (HTS) codes:** A thorough and regular review of HTS codes can identify potential errors or opportunities for tariff savings. Engage trade experts or use trade management software to ensure the accurate classification of goods, which is crucial for benefiting from FTA tariff reductions and avoiding penalties.
- ▶ **Strengthen internal compliance and documentation processes:** Prioritize establishing robust internal compliance procedures and documentation protocols. Train your team to maintain accurate records of product origins, supplier declarations and necessary certifications. This helps to prevent disruptions to FTA benefits due to noncompliance and readies your company for potential audits.
- ▶ **Foster cross-functional collaboration:** Promote an inclusive FTA strategy that involves cross-functional collaboration within your company. Engage teams from sourcing, logistics, compliance and finance departments in regular dialogues and brainstorming sessions. This will allow for the sharing of expertise, identification of potential opportunities and efficient implementation of FTA strategies.



- ▶ **Stay informed and continuously adapt:** Keep a close eye on changes in FTA developments, new agreements, and tax and customs regulation modifications. To stay informed, consider subscribing to trade newsletters, joining industry associations and consulting with trade experts. A proactive approach to staying updated ensures your business is always ready to leverage new opportunities and adapt its strategies to the dynamic nearshoring environment.

Enhancing the benefits of nearshoring in Latin America involves a comprehensive understanding of FTAs, strategic decision-making and effective implementation of practical strategies.

By leveraging the power of FTAs, companies can access markets, reduce costs, improve operations and enhance competitiveness. The dynamic economic landscape, geographical proximity and extensive network of FTAs make Latin America an attractive nearshoring destination. ■

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US: Section 301 update

The United States Court of International Trade (CIT) has issued several significant decisions recently, including a decision addressing the Section 301 tariffs.¹

The legal clash over the Section 301 tariffs resulted in a win for the US government on 17 March 2023. A three-judge panel ruled that the Office of the United States Trade Representative (USTR) adequately complied with the law governing the process by which federal agencies develop and issue regulations when it imposed tariffs on List 3 and List 4A goods from China.² This decision means that the tariffs will remain in place for now. However, litigation to challenge the punitive duties and

potentially recover refunds continues. The case is currently undergoing the appeal process before the US Court of Appeals for the Federal Circuit.³

As discussed in TradeWatch Issue 3 2020 in the article “Trade actions continue to be in the spotlight,”⁴ a lawsuit filed on 10 September 2020 in the CIT challenged the legitimacy of the List 3 and List 4A tariffs. The plaintiffs alleged that the USTR exceeded its statutory authority and violated the Administrative Procedure Act (APA) when it promulgated the List 3 and List 4A tariffs.

In 2022, the Court held that the USTR had proper statutory authority to impose the tariffs under the Trade Act of 1974 and remanded the case for the USTR to comply with the APA requirement to respond to public comments. In response, the USTR filed a remand redetermination, providing an additional explanation for removing or retaining certain tariff subheadings from List 3 and List 4A and answering previously unaddressed public comments.

Again, the plaintiffs challenged the remand determination. They asserted that the government engaged in impermissible after-the-fact reasoning⁵



¹ Trade Act of 1974, 19 U.S.C. §§ 2411-2420.

² Slip Op. 23-35, In Re Section 301 cases, US Court of International Trade, 17 March 2023. [Find it here.](#)

³ Plaintiff's Notice of Appeal, In Re Section 301 Cases, US Court of International Trade, 12 May 2023. [Find it here.](#)

⁴ “Trade actions continue to be in the spotlight,” *TradeWatch* Issue 3 2020, page 19, *EY website*. [Find it here.](#)

⁵ *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020).



and failed to respond to the comments adequately. The plaintiffs argued that the USTR undertook a new review and analysis of the comments on remand, while precedent limits the agency to elaborating on a prior response to the comments. Separately, the plaintiffs argued that the USTR's reliance on presidential direction to explain its rationale was legally insufficient.

In its opinion, the Court held that the USTR's response to the comments did not constitute after-the-fact reasoning and did satisfy the statutory APA requirement. The CIT found that the remand determination provided an "amplified articulation" of the USTR's rationale and did not constitute new agency notice and comment rulemaking. The CIT also concluded that the USTR only needed to address significant issues raised in the comments and need not discuss every alternative course of action.

Importers affected by the 301 tariffs should continue to monitor the legal proceedings and understand the impact to their business. ■

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Americas

Argentina

- ▶ Argentine tax authorities suspend the validity of exemption certificates for income tax and VAT withholdings on imports of goods (10 April 2023)

Brazil

- ▶ Brazil Senate approves Provisional Measure addressing new transfer pricing rule, enforceable from 1 January 2024 (12 May 2023)

Canada

- ▶ Canada enacts 2023 Budget implementation bill no. 1 (28 June 2023)
- ▶ Canada's proposed regulations amend valuation for duty rules for imported goods (19 June 2023)
- ▶ Federal budget 2023/24: A made-in-Canada plan (04 April 2023)
- ▶ Québec issues budget 2023/24 (03 April 2023)

Costa Rica

- ▶ Executive Branch publishes Regulations to the General Customs Law (19 June 2023)
- ▶ Free Trade Commission eliminates customs duties for certain products from China (15 May 2023)
- ▶ Costa Rica establishes new inspection procedures for goods at Nicaragua border (09 May 2023)
- ▶ Costa Rican Executive Branch publishes regulations to law aimed at attracting film investment to Costa Rica (18 April 2023)

Dominican Republic

- ▶ Dominican Republic Executive Branch enacts law implementing mandatory electronic invoicing (01 June 2023)

El Salvador

- ▶ El Salvador's Bill for the Promotion of Innovation and Technological Manufacturing encourages investment in tech companies, includes tax benefits (18 April 2023)

Global

- ▶ Geostrategic Analysis: July 2023 (10 July 2023)

Nicaragua

- ▶ Nicaragua National Assembly approves creation of Foreign Trade Platform (18 April 2023)

Uruguay

- ▶ Uruguay temporarily reduces VAT and IMESI rate for mineral and sparkling waters (26 June 2023)

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EYG no. 007113-23Gbl
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