

## CAROTAR, 2020 – A regime shift for importers regarding compliance under Rules of Origin

Chapter VAA and Section 28DA of the Customs Act, 1962 (**the Act**) was inserted *vide* clause 110 of the Finance Act, 2020 to provide for enabling provision for administration of rules of origin (**ROO**) under a free trade agreement (**FTA**) and to lay down procedure regarding claim of preferential rate of duty on goods imported under a trade agreement.

On August 21, 2020, the Central Government has notified the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (**CAROTAR, 2020**) [[vide Notification No. 81/2020-Customs \(N.T.\) dated 21st August, 2020](#)] and issued [Circular no. 38/2020-Customs dated 21st August, 2020](#) prescribing guidelines as regards implementation of the same. The CAROTAR, 2020 shall come into force on September 21, 2020 (time is given for transition and to ensure that conditions under the rules are complied with).

The key features of the CAROTAR, 2020 are summarized below:

### Importers' declaration

Importers claiming a preferential rate of duty are required to make a declaration in the Bill of Entry that the goods qualify as originating goods for preferential rate of duty under the relevant FTA. The Bill of Entry should also contain certain prescribed details of the COO.

### Importers' obligations

The Rules further oblige an importer claiming preferential rate of duty to possess documents/information indicated in Form I as detailed below before import of goods, which is to be produced on request by the customs officer. The importer is required to exercise "reasonable care" to ensure the accuracy and truthfulness of the said documents/information and is required to maintain it for at least 5 years from date of filing of bill of entry:

- the production process undertaken in country of origin with respect to production of the imported good and which of the originating criteria prescribed in the Rules of Origin (ROO) has been claimed i.e. Wholly Obtained (WO), Regional Value Content (RVC), Change in Tariff Head (CTH), Change in Tariff Sub-Head (CTSH), Change in Chapter (CC) etc.
- in case of goods with origin criteria WO, the importer must mention the process through which it is claimed to fall under this category
- in case of goods with origin criteria other than WO, the manufacturing/processing undertaken in the country of origin must be ascertained by the importer viz. Description of the goods, Production Process, Originating Criterion. Also, the importer would be required to furnish information for each originating material or component used in production of good viz. i) whether manufactured by producer of final goods; ii) whether procured by producer locally from a third party and iii) in case procured from third party, did producer of final goods seek confirmation and documentary proof of origin of these components. If origin of any of the components cannot be ascertained the same will be treated as non-originating.
- Additional details as regards applicability of other provisions of the ROO which is used to determine the origin criteria i.e. de minimis provision, accumulation/ cumulative provision, Value content (% of local value content and components which constitute value addition), application of Change in Tariff Classification (CTC) rule, process rule, whether COO has been issued retrospectively, whether the consignment has been shipped directly from country of origin.

### Requisition of information from the importer

During the course of customs clearance or thereafter, if a proper officer has reason to believe that origin criteria prescribed in the respective ROO have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer to ascertain correctness of the claim.

If, on the basis of these documents, the goods are found not to meet the requirements, the Principal Commissioner of Customs or the Commissioner of Customs may disallow the claim of preferential rate of duty without further verification.

### Verification of Certificates of Origin

The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from the corresponding authority in the exporting country, designated to respond to verification requests as per the concerned trade agreement (**Verification Authority**) where:

- (a) there is a doubt regarding genuineness or authenticity of the certificate of origin; or
- (b) there is reason to believe that the country of origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of duty made by importer is invalid; or
- (c) verification is being undertaken on a random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed.

On initiation of verification process, the preferential tariff treatment of such goods may be suspended till conclusion of the verification. However, importer may be allowed to provisionally assess and clear the goods on payment of security amount equal to the difference between the duty provisionally assessed under Section 18 of the Act and the preferential duty claimed.

The claim of preferential rate of duty will be denied in case Verifying Authority fails to respond within the timeline, does not provide the requested information or the information so provided by the Verifying Authority prove that the goods do not meet the origin criteria as per ROO. For denying the claim, the customs officer should issue notice for denying the claim in terms of section 28DA, read with section 28 of the Act where required, in order to conclude the verification.

Once a claim is denied for an importer, this fact should be informed to Risk Management Centre of Customs (RMCC) through written communication for the purpose of enabling compulsory verification of assessment (under Section 17(2) of the Act) for all subsequent bills of entry with a preferential duty claim. However, the compulsory verification of assessment should be discontinued once the importer demonstrates that he has established adequate system of controls to exercise reasonable care as required under the Act.

### Discretion of the Customs Authorities

The claim of preferential rate of duty may be denied by the proper officer without verification, by marking the COO 'INAPPLICABLE' in the following circumstances (reiterated as per Section 28DA):

- (i) is incomplete and not in accordance with the format as prescribed by the ROO;
- (ii) has any alteration not authenticated by the Issuing Authority;
- (iii) is produced after its validity period has expired;
- (iv) is issued for an item which is not eligible for preferential tariff treatment under the FTA.

Further, the Principal Commissioner of Customs or the Commissioner of Customs, in case where it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the ROO, may, without further verification, reject other claims of preferential rate of duty filed prior to or after such determination, for identical goods imported from the same exporter or producer. The importer will be provided the reasons of rejection in writing including the detail of the cases wherein it was established that the identical goods from the same exporter or producer did not satisfy the origin criteria.

**ELP Comments:**

While Section 28DA was inserted by Finance Act, 2020 (which received presidential assent on 27th March, 2020), there existed ambiguity as regards the exact manner in which the said Section and the new regime of administration of ROO would be implemented. The CAROTAR, 2020 clarifies certain aspects such as the nature of the 'basic minimum information' i.e. relevant details (contained in Form I) which are required to be maintained by the importer claiming a preferential tariff. However, the said rules still fall short of clarifying on certain aspects such as the exact nature of supporting documents to evidence/ substantiate details (prescribed under Form I), the parameters on which the Indian customs can determine if the importer has taken "reasonable care" to ensure truth and accuracy of the information and documents maintained, the remedies available to the importers in case of rejection of a claim of preferential tariff and whether sensitive information provided by the importers will be treated as confidential by the customs department.

Considering CAROTAR, 2020 comes into force w.e.f. 21.09.2020, importers seeking benefit of preferential rate of duty should be prepared with the information prescribed in Form I before this deadline. The information sought for in Form I include details regarding production process, components used in manufacture/production, which are sensitive information and therefore the exporters/producers may hesitate in sharing this data with the importers, which can pose a challenge.

Further, importers may have to be alert while undertaking imports to check in the event an investigation/verification has been initiated in some other case against imports from a specific exporter/producer, since such identical goods may also be denied the benefit of preferential rate of duty, without any verification. Importers may also have to seek indemnity from exporters to cover future exposures under the CAROTAR, 2020.

Pursuant to the amendment in the Act, the provisions under CAROTAR, 2020 may act as a deterrent for the importers in the country to obtain benefits under FTAs considering the additional administrative hurdles and costs that may need to be incurred by the importers. For instance, costs related to maintaining the said information/documents, payment of security amount during provisional assessment (including for all subsequent imports), administrative hurdles that may be faced when seeking to clear imported goods at different ports and any potential litigation costs for challenging a rejection of a claim of receiving preferential duty rate.

Overall, Chapter VAA of the Act and CAROTAR, 2020 impose stricter obligations on importers seeking to benefit from India's FTA and places significant discretionary powers with customs officials that may have the effect of further restricting imports from FTA countries. It appears to be the latest among a series of measures in line with the Government's recent policies to restrict imports.

In the event, importers or exporters would like to raise concerns or seek clarifications regarding CAROTAR, 2020, a multifaceted approach of seeking clarifications from the government, challenging the application of the rules before domestic courts, engaging with the governments of India's FTA partners to seek consultations with the Government of India under the mechanisms developed under the FTA and even raising concerns at the multilateral level before the World Trade Organization, may be considered.

The way forward and a critical analysis of the CAROTAR, 2020 from different perspectives will be shared with you shortly.

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