

## CAROTAR, 2020: QUESTIONS & ANSWERS FOR EXPORTERS

As you may already know, the [Customs \(Administration of Rules of Origin under Trade Agreements\) Rules, 2020 \(CAROTAR, 2020\)](#) has been notified subsequent to Finance Act, 2020 which inserted a new Section 28DA to the Customs Act, 1962 (**the Act**) specifying a procedure for claiming preferential rate of duty on goods imported under a free trade agreement (**FTA**). The CAROTAR, 2020 comes into force on September 21, 2020.

At the outset, it must be clarified that CAROTAR, 2020 only applies to importers seeking preferential tariff treatment from customs authorities in India and does not specify any requirements for exporters. However, as CAROTAR, 2020 imposes certain onerous obligations in terms of record keeping and documentation on importers, exporters may need to cooperate with importers to ensure that benefit of preferential duty rate as guaranteed under India's FTAs is not denied.

The following questions and answers are catered to address concerns that exporters may have when exporting into India, due to the regulatory changes implemented through the CAROTAR, 2020.

### Questions concerning background and key provisions of CAROTAR, 2020

#### 1. Why has the Indian government introduced Section 28DA and the CAROTAR, 2020?

In the Budget 2020-21 speech, the Minister of Finance noted that imports under FTAs are on the rise and there have been alleged undue claims of FTA benefits by few importers which has posed threat to domestic industry.<sup>1</sup> In this context, the Indian government has introduced Section 28DA of the Act and accordingly, framed CAROTAR, 2020.

#### 2. When does CAROTAR, 2020 apply?

As already explained above, CAROTAR, 2020 applies only when an importer is importing goods claiming preferential rate of duty in accordance with rules of origin (**ROO**) criteria and commitments specified under India's FTA. These include FTAs such as India-ASEAN FTA, India - Asia Pacific Trade Agreement (**APTA**), India-Japan Comprehensive Economic Partnership Agreement (**CEPA**), India-Korea CEPA, India-Malaysia Comprehensive Economic Cooperation Agreement (**CECA**), India-Singapore CECA and India – Thailand FTA. Please refer to this [link](#) for a full list and text of India's FTAs.

#### 3. What changes do Section 28DA of the Act and CAROTAR, 2020 bring in?

Prior to the implementation of Section 28DA and CAROTAR, 2020, importers could claim preferential tariff treatment by submitting a Certificate of Origin (**COO**) in the prescribed form at the time of importation. Although, the customs authorities had the power to seek verification of the COO from the Issuing Authority of the exporting country in accordance with the provisions of the FTA, Section 28DA of the Act and CAROTAR, 2020 has implemented a detailed

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<sup>1</sup> Budget Speech 2020-2021, Available at: [https://www.indiabudget.gov.in/doc/Budget\\_Speech.pdf](https://www.indiabudget.gov.in/doc/Budget_Speech.pdf), Last accessed:7 September 2020, para. 136.

procedure for an importer to claim preferential rate of duty under India's FTAs. The key elements of the procedure incorporated by CAROTAR, 2020 are as follows:

- **Discretionary powers of customs authorities:** Customs authorities are provided discretionary powers to reject an importer's claim for preferential tariff treatment, if he has any reasons to believe that origin criteria as specified in the FTA has not been met. Further, customs authorities also have the power to deny an importer's claim for preferential tariff treatment in certain circumstances, without even conducting a verification from the Issuing Authorities of the exporting country (For further details refer to Q4).
- **Maintenance of records by importers:** Importers are required to maintain records of basic minimum information specified in Form I of the CAROTAR, 2020 and provide such information to customs authorities, if requested.
- **Request for information from importers:** Customs authorities are also empowered to request for any details or documents from importers in addition to the records maintained to verify the authenticity of the preferential tariff treatment claim which if not provided within specified time would lead to denial of claim to the importer.
- **Declaration by importers when filing bill of entry:** The bill of entry format has been modified so that importers can make the necessary declarations and provide the requisite information pertaining to the COO (For more information refer to Q13).

#### 4. What powers do customs authorities have under CAROTAR, 2020?

Under the CAROTAR, 2020 customs authorities are empowered to do the following:

- Request information and supporting documents from the importer with regard to the claim for preferential tariff benefit during the course of customs clearance or thereafter.
- Request for verification of COO from Verification Authority of the exporting country, in accordance with the provisions of the FTA.
- Declare a COO as inapplicable and reject an importer's claim of preferential tariff treatment without requesting a verification from the Verification Authority of the exporting country in specified circumstances. (detailed in Q4)
- Verify assessment of all subsequent bills of entry filed by an importer claiming preferential duty benefit in case (i) he has failed to provide requisite information and documents by the due date i.e. within 10 days of asking of information, or (ii) where it is established that the importer has failed to exercise reasonable care to ensure the accuracy and truthfulness of the information furnished. This system of compulsory verification would be discontinued only once the importer demonstrates that reasonable care is being taken to maintain adequate records.
- The Principal Commissioner of Customs or the Commissioner of Customs can reject an importers' claim for preferential treatment without verification for the reasons to be recorded in writing, if:
  - The importer relinquishes the claim for preferential treatment; or
  - The information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective ROO.
- Without verification, the Principal Commissioner of Customs or the Commissioner of Customs can reject the claim of preferential duty benefit, after recording reasons in writing, on identical goods imported from the same exporter or producer by any importer where it has been determined by the customs authorities that the criteria of ROO is not met by the exporter or producer. The claim could be restored prospectively if demonstrated by submitting information and details that the exporter or producer have undertaken necessary modifications to meet the ROO criteria.

## Questions facilitating exporters to prepare for the regulatory changes implemented by CAROTAR, 2020

### 5. What information will the exporters have to provide to the importers?

Please see the following illustrious list of information/documents/details that the exporter may need to provide to the importer, so that the importer can comply with the record – keeping obligation:

- 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 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 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.

### 6. Apart from 'basic minimum information' prescribed under Form I, what other documents/details would an exporter need to provide to an importer?

The following documents/details may also be relevant for an exporter to share with the importer:

- An entire set of documents and details submitted by the exporter to the Issuing Authority while obtaining COO.
- Certification by an independent auditor as regards the veracity of list of raw materials and processes involved in manufacture of goods; and
- Certification by an independent auditor that due process has been followed by exporter while obtaining COO from Issuing Authority.

### 7. How often should the exporters provide such details to the importers?

- The COO is issued in relation to every consignment (i.e. all goods covered under a single bill of lading/ airway bill). Therefore, exporters are recommended to provide details to the importer for every consignment entering India, in a format which has been certified as authentic from the exporter/producer.
- However, the exporter could consider an alternate practical approach in case of regular importers. For instance, after sharing the first basic set of information to the importers as specified in Q10 above, the exporter can consider, for all subsequent consignments, providing an undertaking that information on the basis of which the COO was obtained remains the same. Accordingly, the importer could rely on the previous information in case requested for by the customs authorities. In case of any change on the basis of which the COO was obtained (for eg. production process), the exporter would accordingly, intimate the importer and provide the necessary updated information/details.

### 8. What are certain considerations that an exporter must keep in mind when sharing information?

- The completeness of information provided should be ensured – For example, information may be provided only of raw materials, and not of process percentage.



- Certify and authenticate any documents or details shared with the importer.
- Sensitive documents should be clearly marked as confidential. Exporters may also consider redacting any price sensitive information that may not be necessary to establish the origin criteria.
- In the event a document is not available in English, exporter should provide translations of the same to the importer.
- Collation of other details as applicable to the FTA - e.g. HS code details in cases where this is a requirement. For example, details of minimum specific operations in case this is applicable.
- Collation of the entire document trail, especially in case of complicated transaction structures, for instance, where there is a requirement for third party invoicing.
- Collation of other declarations given by exporter to the Issuing Authority in the exporting country while obtaining COO e.g. - declarations given as regards the accuracy of the process.

#### 9. What possible steps can the exporter take to maintain confidentiality of the sensitive information to be shared with the importer in view of the new law?

To ensure that the confidentiality of sensitive information shared with the importer is maintained, the exporter can consider either of the following:

- Provide a report to the importer from an Independent Agency (whether government or otherwise) who can conduct an on-site visit in the exporting country and check the documents based on which the COO has been obtained by the exporter and certify that the criteria of ROO has been met. A supplementary report may also be obtained in case of any change on the basis of which the previous report was obtained.
- Appoint a legal expert/law firm in India who can act as a repository for the exporter for keeping the information/documents/details that is required to be provided to the importers and if the customs authorities request the importer to furnish such documents/details, the importer can contact the law firm to share the requisite information with the customs authorities. This will help maintain confidentiality of the information from the importers are not directly provided the sensitive information of the exporters. However, the importer has an obligation to possess such information under the CAROTAR, 2020 thus, an appropriate arrangement may need to be negotiated with the customs authorities in India.
- Enter into a non-disclosure agreement with the importer or incorporate relevant clauses pertaining to non-disclosure in the contract with the importers.

#### 10. What are possible contractual considerations that may be considered by the exporter to safeguard their interests?

Exporters may consider incorporating following clauses into their contracts to safeguard their interests:

- Clauses obligating an importer to inform the exporter, at the earliest, in the event of rejection of preferential claim for a consignment on account of the COO being declared inapplicable.
- Comprehensive clauses imposing obligations on importer to maintain records in a systematic and confidential manner.

#### 11. What steps will enhance the level of preparedness of the exporter for CAROTAR, 2020?

- Exporters can consider implementing a recurring systematic and institutional process for obtaining details from importers in relation to every consignment imported on which preferential treatment under FTA claim is made.
- Exporters wishing to benefit from preferential tariff rate under India's FTAs can consider simplifying transactional structures so that it is easier to justify compliance of origin conditions (which becomes essential since FTA claims are bound to be subject to incremental scrutiny under the new regime). For e.g. APTA does not clearly allow for third party invoicing, hence it would be preferable to have a direct agreement with manufacturer located in APTA country.



## 12. How can exporters approach concerns or seek clarification regarding CAROTAR, 2020?

Exporters can consider reaching out to the relevant government departments in their respective countries so that their government can bilaterally engage with Indian government officials to receive clarity on or raise concerns regarding CAROTAR, 2020. Certain FTAs provide specific mechanisms to enable such communication, some of which are elaborated as follows:

- **India – Japan CEPA:** Article 41 of the India – Japan CEPA establishes a specific Sub-Committee on Rules of Origin for the effective implementation and operation of ROO between the two states. As regards Japan, the relevant authority is the Ministry of Economy, Trade and Industry and for India it is the Department of Commerce, Ministry of Commerce. Exporter can approach the relevant governmental department to bilaterally raise concerns and clarification from India with respect to CAROTAR, 2020.
- **India – ASEAN FTA:** India – ASEAN FTA includes a detailed agreement on dispute settlement mechanism, which establishes a liaison office for each party. The liaison office for India is Department of Commerce, Ministry of Commerce & Industry. With respect to the ASEAN Member states, we recommend raising the issue with trade department of the respective Member state, in order to seek clarifications or flag concerns regarding CAROTAR, 2020 bilaterally with India.
- **India – Malaysia FTA:** Article 15.2 of this FTA establishes a Sub-Committee on Trade in Goods to consider matters relating to the implementation of the ROO Chapter. Further, Annex 3-3 on Operational Certification Procedures also includes a provision for consultation in case of a dispute concerning determination of ROO. The relevant authorities in case of Malaysia is the Royal Malaysian Customs and in case of India is Central Board of Indirect Taxes and Customs.

## Questions concerning seeking preferential treatment under the CAROTAR, 2020

### 13. How can an importer claim preferential rate of duty under India's FTAs in accordance with CAROTAR, 2020?

The following declaration and additional details are required to be furnished at the time of filing Bill of Entry by the importer claiming preferential duty benefit:

- A declaration in the bill of entry that the goods qualify as originating goods for preferential rate of duty under the relevant FTA;
- Indicate in the bill of entry the respective tariff notification against each item on which preferential rate of duty is claimed;
- Produce COO covering each item on which preferential rate of duty is claimed; and
- Enter the following details of the COO in the bill of entry:
  - COO reference number;
  - date of issuance of COO;
  - originating criteria;
  - indicate if accumulation/cumulation is applied;
  - indicate if the COO is issued by a third country (back-to-back); and
  - indicate if goods have been transported directly from country of origin.

Please see [link](#) to the updated Bill of Entry format for your reference.

### 14. Under what circumstances can customs authorities declare the COO 'INAPPLICABLE' without verification of COO from Verification Authority of the exporting country?

The Indian customs authorities can reject an importers' claim for preferential treatment and declare the COO as 'INAPPLICABLE', if the COO:



- Is incomplete and not in accordance with the format as prescribed by the ROO;
- Has any alteration not authenticated by the Issuing Authority of the exporting country;
- Is produced after its validity period has expired;
- Is issued for an item which is not eligible for preferential tariff treatment under the FTA.

Exporters should ensure that the COO does not suffer from the above deficiencies.

#### 15. Under what circumstances can the custom authorities undertake verification process?

Under India's FTAs, the relevant authority of the importing country can request for verification of the COO from the corresponding authority in the exporting country i.e. Verification Authority. Under Rule 6 of the CAROTAR, 2020 the Indian customs authorities (subject to approvals) can request for such verification during the course of customs clearance or thereafter, where:

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

The Verification Authority of the exporting country must respond to the request of the Indian customs authority, within the timeline specified under the FTA or within 60 days in the event no timelines are specified in the FTA. The claim of preferential rate of duty will be denied in case Verification Authority fails to respond within the timeline specified in the FTA, or if the Verification Authority does not provide the requested information or the information so provided by the Verification Authority proves that the goods do not meet the origin criteria as per ROO.

#### 16. What type of documents/details are likely to raise red flags for the customs department?

- Bill of Material/cost structure where all components have identical values.
- Bill of material/cost structure not depicting all details of production e.g. details of processes undertaken in the country of origin and the profit margin not provided (if direct method of computing regional value addition is adopted)
- Originating processes depicted to be only 'minimal operations or processes' (e.g. simple packaging operations, washing, painting, affixing of marks etc)
- Non-synchronization and incoherence between different transactional documents - e.g. while COO certifies country of origin as China, the purchase order or invoice depicts the country of origin to be Vietnam.

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