

CAROTAR 2020: Obligations on Exporters

Legislative Changes

Insertion of Chapter VAA

- Chapter VAA of the Customs Act, 1962 ('Customs Act'/'the Act') inserted on March 27, 2020 stipulates a scheme for administering the verification of the country of origin of the goods imported under preferential tariff FTAs with different countries.
- The new Chapter empowers the proper officer to go beyond the mere acceptance of the origin certificate produced by the Importer and undertake verification of such certificate in case the same is found to be insufficient or non- satisfactory, by requiring additional information and documents consistent with the Trade agreement.
- Under Chapter VAA, Section 28DA provides that for claiming the preferential duty rate under the trade agreement, the importer must:
 - Make a declaration that the goods qualify for the preferential duty treatment by virtue of their origin;
 - Possess sufficient information to fulfill determination criteria, viz., regional value content, product specific criteria, etc. stipulated in specified Trade agreement;
 - Furnish such further information, as may be prescribed in the rules.
 - Exercise reasonable care as to the accuracy and truthfulness of the information
- Where the proper officer has reasons to believe that the country of origin criteria prescribed in the Trade agreement has not been met, he may require the importer to furnish further information consistent with the Trade agreement in support of its claim.

Suspension of preferential treatment

- In case where the importer fails to provide the requisite information, the proper officer, for any reasons to be recorded in writing, may carry out his own verification. Pending such verification, the officer may temporarily suspend the preferential tariff treatment to such goods. The Principal Commissioner of Customs or the Commissioner of Customs has been empowered to disallow the preferential rate even without further verification.
- During the suspension period, the goods may be released on the request of the importer on submission of security equivalent to the differential amount of duty under provisional assessment and the preferential duty claimed.
- While the preferential duty claim is under suspension, the officer shall inform the Issuing Authority of the reasons for such suspension and shall seek necessary information with a view to determine the origin of goods within prescribed time.
- Depending upon the provision of information by the issuing authority or its satisfactory nature, the proper officer shall restore or, as the case may be, disallow the preferential treatment giving reasons in writing.
- Such verification may be sought within five years from the date of claim of such preferential duty treatment by the Importer.

- Interestingly, where the verification establishes non-compliance of country of origin criteria, the officer has been entrusted with the powers to reject the preferential tariff treatment to the imports of the identical goods from the same producer or exporter, unless proved otherwise.
- While the new Chapter grants power to the proper officer to reject the preferential treatment to imported goods after due verification, in certain cases the officer may right away refuse such preferential treatment where:
 - The tariff entry itself is not eligible for preferential treatment under the trade agreement
 - The certificate of origin contains in-complete description;
 - The certificate of origin is altered in any way without any authentication by issuing authority, or
 - The certificate of origin is expired.
- Section 111 and Section 156 of the Customs Act have also been amended to respectively authorize the Custom Authorities to confiscate the goods in case of contravention of the provision of this chapter, and to delegate the power to prescribe rules in relation to the specified timelines, circumstances, etc. for the administration of ROO under the Trade agreement to the Government.

Central Government has notified the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 for implementation of Chapter VAA

Pursuant to the insertion of Chapter VAA in the Customs Act, on August 21, 2020, the Central Government had notified the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) [[vide Notification No. 81/2020-Customs \(N.T.\) dated August 21, 2020](#)] and issued [Circular no. 38/2020-Customs dated August 21, 2020](#) prescribing guidelines as regards implementation of the procedures regarding claim of preferential rate of duty on goods imported under a trade agreement. The CAROTAR, 2020 came into force on September 21, 2020 (time from August 21, 2020 to September 20, 2020 was 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 country of origin (**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:

- There is a doubt regarding genuineness or authenticity of the certificate of origin; or
- 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
- 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):

- Is incomplete and not in accordance with the format as prescribed by the ROO;
- Has any alteration not authenticated by the Issuing Authority;
- Is produced after its validity period has expired;

- 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 March 27, 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.

Questions & Answers

Q&A for exporters

While CAROTAR, 2020 only applies to importers seeking preferential tariff treatment from customs authorities in India and does not specify any requirements for exporters, since it 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.¹ 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 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.

¹ Budget Speech 2020-2021, Available at: https://www.indiabudget.gov.in/doc/Budget_Speech.pdf, Last accessed: 7 September 2020, para. 136.

- **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 Q5 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. 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.

Q&A for importers

The following questions and answers are catered to provide comprehensive assistance to importers seeking to claim preferential tariff rate under India’s FTAs in accordance with CAROTAR, 2020 structured to address concerns before, during and after importation.

Questions facilitating importers to prepare for CAROTAR, 2020 prior to importation

1. What records do importers have to maintain?

Same as that which the exporter has to provide to an importer (Refer Q 5 of Q&A for exporters)

2. Apart from ‘basic minimum information’ prescribed under Form I, what other documents details should an importer maintain or collect from the exporter?

Same as that which exporter may be required to share with importer (Refer Q 6 of Q&A for exporters)

3. How can the importer maintain such information?

As is predictable, the information which is required to be maintained and submitted (upon request) by the importer, needs to flow from the exporter/producer. Therefore, it is essential that the importer request for co-operation from the exporter/producer to provide such details in an accurate and timely manner.

To ensure such cooperation, the importer can consider incorporating clauses in its contract with the exporter/producer that imposes obligations upon the party to share such information in the appropriate format and in a timely manner.

Further, in the event the exporter/producer has concerns regarding confidential nature of the details/documents shared, the importer may consider addressing the same through a non-disclosure agreement or incorporating non-disclosure clauses in their contracts.

4. How often should the importer collect such details from the exporter?

The COO is issued in relation to every consignment (i.e. all goods covered under a single bill of lading/airway bill). Therefore, importers are recommended to obtain details from exporter/producer in a format which has been certified as authentic from the exporter/producer for every consignment entering India.

5. What are certain important considerations for importer while collating data from exporters?

- The completeness of information provided should be ensured – For example, information may be provided only of raw materials, and not of process percentage.
- The details from exporter/producer should be obtained in a format which has been certified as authentic from the exporter/producer.
- In the event the information provided is not in English, translation of the same should be provided by the foreign exporter/producer.
- Collation of other details as applicable to the FTA - e.g. HS code details in cases where this is a requirement. For example, 2 details of minimum specific operations, in case this is applicable as per the provisions of the FTA.
- Collation of entire document trail, especially in case of complicated transaction structure, for instance, where there is third party invoicing.
- Collation of other declarations given by exporter to the exporting country while obtaining COO e.g. - declarations given as regards the accuracy of the process.

6. What steps can the importer consider to ensure compliance with the record keeping requirements of CAROTAR, 2020?

- Importers should consider implementing a recurring systematic and institutional procedure for obtaining details from exporters in relation to every consignment imported on which preferential treatment under FTA claim is made. This will ensure the relevant information is automatically recorded and updated.
- Obtain an undertaking from the exporters before arrival of each consignment that the origin criteria has been met and there is no change in the information/data shared with the importer on the basis of which the COO is obtained.
- Obtain a health check report from the exporters of an independent agency (from exporting country) at regular intervals in terms of the documents/information/data shared with the importer certifying that the criteria of ROO has been met
- Importer 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.

7. What possible contractual amendments may be considered by the importer to safeguard their interests?

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

- Clauses obligating an exporter to share all details, specified as “basic minimum information” and other supporting details along with all supporting evidence, prior to importation of goods for each consignment.
- Clauses mandating the exporter to inform the importer in case of any modification of any details that may impact the claim of preferential tariff treatment.
- Comprehensive clauses seeking indemnification from the exporter in case the FTA claim is disallowed in India on account of rejection of COO.

Questions concerning CAROTAR, 2020 during the process of importation

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

An importer claiming preferential tariff treatment for the import of goods under India's FTAs is required to provide the following information at the time of filing of bill of entry:

- 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.

9. When can customs authorities request for information from the importer? How is an importer supposed to comply?

- Customs authorities can request for information and supporting documents at any time during the course of customs clearance or thereafter (e.g. during subsequent investigations or post-clearance audit).
- An importer is required to furnish the relevant information within 10 working days from the date of such information or documents being sought.

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

Refer Q 13 in Q&A for exporters

11. How can an importer ensure that the confidentiality of the exporter's documents will be protected?

- Importers can consider seeking clarification from the customs authorities on the issue of confidentiality.
- Importers should label each document containing sensitive information as "**CONFIDENTIAL**".

12. What happens if an importer fails to provide the information requested by the customs authorities?

Where the importer fails to provide requisite information and documents within 10 working days of the information being sought or where the information and documents received from the importer is considered to be insufficient by the customs authorities to conclude that the origin criteria prescribed in the respective FTA have been met, the customs officer shall forward a verification proposal to the Director (ICD), CBIC for taking up verification of origin with the exporting country.

Further, the Risk Management Centre of Customs (RMCC) through written communication is informed that an importer has failed to provide necessary documentation and all subsequent import consignments of the importer will be subjected to compulsory assessment of all bills of entry in accordance with Rule 8 of CAROTAR, 2020.

13. When can a verification process be requested?

Although a verification can be requested by customs authorities at any point of time during the course of customs clearance or thereafter. CAROTAR, 2020 specifies that customs authorities should first request information from the importer in case of any doubt regarding the ROO criteria, and if the documents furnished by the importer fails

to establish that the goods comply with the ROO criteria then customs authorities can request for a verification from the Verification Authority of the exporting country.

14. What happens to the goods during the process of verification?

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 form of payment of the security has not been clarified in the CAROTAR, 2020 and the importer may consider requesting customs authorities to accept security in the form of a provisional duty bond or a bank guarantee.

Question concerning way forward in case of rejection of claim for preferential tariff under CAROTAR, 2020

15. What possible remedies are available to the importer in case of rejection of the preferential tariff benefit by the custom authorities?

In the event, the rejection of preferential tariff benefit is by an officer below the rank of the Principal Commissioner of Customs or the Commissioner of Customs importer may appeal to the Commissioner (Appeals) within sixty days from the issuance of the decision in accordance with Section 128 and 128A of the Act.

In case of an order passed by the Principal Commissioner of Customs or the Commissioner of Customs rejecting the claim for preferential tariff benefit the importer may file an appeal before the Appellate Tribunal under Section 129A of the Act within three months from the date of the order.

Further, based on the facts and circumstance of the case, an importer may also approach the High Court by filing a writ petition under Article 226 of the Constitution of India.

It will be interesting to see if any importers challenge the provisions of CAROTAR, 2020 on grounds such as (i) inconsistencies with the letter and spirit of the provisions of the FTA, (ii) imposition of onerous requirements on importers with respect to COO (which is an obligation on part of exporters) and (iii) lack of clarity in the CAROTAR, 2020 regarding COOs that will be granted preferential treatment.

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