

Recent Clarification on implementation of Foreign Trade Agreements (FTAs)

The Government has recently issued a much-awaited clarification *vide* Instruction No. 19/2022-Custom dated 17.08.2022 (**the clarification**) clarifying that the revenue authorities ought to apply Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR Rules) in uniformity with the provisions of the relevant FTA. Also, any requisition of information or verification must be consistent with the FTA provisions. The clarification seems to be in response to a spate of investigations and its untoward consequences on India's relations with its trading nations.

India is signatory to 19 FTAs, including various multilateral and bilateral agreements. If the subject goods satisfy all the relevant criteria *qua* the preferential tariff treatment, the goods are subjected to a lower/concessional rate of Basic Customs duty (BCD).

The chief requirement has been to possess a valid Certificate of Origin (COO) from relevant government authority(ies) of the originating country to substantiate the originating criteria. The Indian Courts have consistently considered the production of COO as sacrosanct and there could be no denial of the benefit under an FTA *de hors* the verification process which has been agreed upon between the two countries under the respective FTA.

Apprehending mis-use of the benefits provided under FTAs, the Government of India w.e.f. September 21, 2020 introduced Section 28DA in the Customs Act, 1962 and CAROTAR Rules to cast greater responsibility on the importer to substantiate the originating criteria. Now, an importer is mandated to possess information to demonstrate the fulfilment of originating criteria in addition to production of a valid COO. Revenue authorities are empowered to question the validity of COO if they have "reasons to believe" that the goods do not meet the originating criteria.

Promulgation of CAROTAR Rules has coincided with a flurry of investigations whereby the revenue authorities are questioning the veracity of COO and subjecting clearances to provisional assessments. This has not only adversely impacted the Indian importers

but has also been seen not in spirit of India's commitments to its FTAs. Interestingly, the constitutionality is yet to be tested.

Be that as it may, the clarification is a much-needed respite as it reiterates the fundamental aspect of FTAs viz. that in case of conflict, the provisions of FTA/Rules of Origin shall prevail.

It also reiterates that while applying CAROTAR Rules, the revenue authorities have to be "sensitive" so as to maintain consistency with the provisions of relevant FTAs and Rules of Origin.

Draft policy on General Authorization for export of Drones / UAVs and corresponding proposed amendments in Category 5B of the Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) List

A draft policy on General Authorization for Export of Drones (GAED) has been issued providing for issuance of a one-time authorization (valid for three years) for export or re-export of Unmanned Aerial Vehicles (UAV) including drones, remotely piloted air vehicles, etc. which are:

- Not covered under specified SCOMET entries
- Capable of a range equal to or less than 5 kilometres
- Delivering a payload of not more than 5 kilograms

The draft policy also specifies the proposed procedure for obtaining a GAED *inter-alia* including submission of forms, End-User Certificates (EUC) for all entities in the supply chain, undertaking in specified format, etc. The proposed GAED would be subject to a quarterly basis post-export reporting in a specified manner.

The GAED would not be issued in case of items to be used to design, develop, transport weapons, missiles, etc.

Along with the draft policy on GAED, various corresponding amendments have also been proposed in the Category 5B of the SCOMET list. The amendments *inter-alia* provide that the drones, etc. eligible for GAED would not be covered under the SCOMET list (subject to general licensing procedure as per GAED policy).

The DGFT has also invited comments of stakeholders on the proposed GAED policy and procedure.

Amendments to Plastic Waste Management Rules, 2016 (PWM Rules)

The Plastic Waste Management (Second Amendment) Rules, 2022 have been issued to make further amendments to the PWM Rules as amended from time to time.

Certain amendments have also been introduced as regards marking and labelling requirements for carry bags, plastic packaging and multi-layered packaging. These amendments *inter-alia* seek to impose additional obligations on the importer, producer or brand-owner of imported carry bags, multi-layered packaging or plastic packaging alone or along with the products.



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