

New Procedures for claiming preferential rates as India checks dumping of low quality imports rerouted by misuse of FTAs

To keep check on import of low-quality products, dumping of goods by a third country routed through an FTA1 partner country and misuse of the FTAs, Chapter VAA of the Customs Act, 1962 (“the Customs Act”) containing Section 28DA thereof providing for procedure to be followed for claiming preferential rate has been inserted vide the Finance Act, 2020. The Federal Government notified the CAROTAR to come into effect from September 21, 2020, to supplement operational certification procedures related to implementation of the Rules of Origin prescribed under respective trade agreements such as FTA, PTA, CECA, CEPA2 (“the Rules of Origin”).

Section 28DA of the Customs Act makes it obligatory upon an importer to possess sufficient information of the manner in which country of origin criteria including regional value content and product specific criteria specified in the Rules of Origin are satisfied. For the purpose, the CAROTAR prescribes Form-I which contains list of basic minimum information which an importer is required to obtain while importing goods under claim for preferential rate of duty. Further, importer is required to keep supporting documents relating to such Form-I for at least five years from the date of filing of Bill of Entry.

Submission of Certificate of Origin (“COO”) does not absolve importer of his responsibility to exercise reasonable care of accuracy and truthfulness of information furnished. In terms of the CAROTAR in case importer fails to furnish information and documents required by the Customs Authorities or importer fails to exercise reasonable care to ensure accuracy and truthfulness of information furnished, all subsequent Bills of Entry filed by such importer claiming preferential rate will be compulsorily verified till such importer demonstrates that he has established adequate system of controls to exercise reasonable care.



For claiming preferential rate, importer is required to make declaration and provide specified information in Bill of Entry filed for clearance of imported goods. Further, format of Bill of Entry has also been modified vide the Bill of Entry (Forms) (Amendment) Regulations, 2020 which came into effect from September 21, 2020.

The Proper Officer has powers to deny preferential rate claim of importer if COO is incomplete and not in prescribed format or has alteration not authenticated by Issuing Authority or its validity has expired or is issued for item not eligible for preferential rate of duty under governing trade Agreement.

The Proper Officer may require importer to furnish information and supporting documents in case he has reason to believe that origin criteria has not been met, which may be sought during customs clearance of goods or thereafter i.e. during subsequent investigation or post-clearance audit.

The Proper Officer may request verification of COO from the Verification Authority³ in specified circumstances where importer fails to furnish requisite information or information furnished by such importer is insufficient. Further, request for verification can be made within five years from the date of claim of preferential rate, subject to any other time limit specified in governing Trade Agreement.

Pending verification, preferential treatment to goods may be temporarily suspended with reasons for such suspension being informed to Verification Authority. However, on request of importer such goods may be released on furnishing security equal to difference between duty provisionally assessed and preferential duty claimed.

In case goods originating from an exporter or producer do not meet origin criteria, the Customs Authorities may without further verification reject other claims of preferential rate filed before or after such determination for identical goods imported from same exporter or producer which can be restored with prospective effect after demonstrating that manufacturing and origin related conditions have been modified by such exporter or producer to fulfill origin requirements.

The claim for preferential rate will be disallowed if the same is made by suppression of facts, wilful mis-statement or collusion with the seller or any other person, with an intention to avail undue benefit and the importer will be liable to penal action.

In case of conflict, the Rules of Origin prevail over the CAROTAR. ■

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1 FTA - Free Trade Agreement

2 PTA - Preferential Trade Agreement, CECA - Comprehensive Economic Cooperation Agreement, CEPA - Comprehensive Economic Partnership Agreement

3 Authority in exporting country or country of origin, designated to respond to verification request under trade agreement.

Value proof a must for FTA benefit

The new rules have been implemented particularly to check the unproportioned surge in slatter duty-free import of Chinese goods through some of the 10 countries with which India has liberal trade arrangements under the Association of Southeast Asian Nations (ASEAN) FTA, two officials said requesting anonymity.

The officials said the new FTA's allow import of most of the items at nil or concessional rates from the 10 Asian countries member of the pact on five members - Indonesia, Myanmar, Thailand, Singapore and Vietnam. However, the rest of the members - Brunei, Cambodia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. The Central Board of Indirect Taxes and Customs (CBIC) on August 21 notified the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 as CAROTAR, 2020 - requiring detailed disclosure by importers to claim concessional duty benefits under trade agreement like FTA. The CAROTAR 2020 will be enforced from September 21, 2020.

The officials said the ASEAN FTA allows import of most of the items at nil or concessional basic customs duty rate from the 10 Asian countries and most of the imports are from five members - Indonesia, Malaysia, Thailand, Singapore and Vietnam. "The benefit of concessional customs duty rate applies only if an ASEAN member country is the 'country of origin' of goods. This means that goods originating from China and routed through these countries will not be eligible for concessional duty concessions under the FTA," one of the officials said.

The country of origin is determined by applying a certain set of conditions with respect to goods other than natural products native to those countries. The required condition is that a value addition of at least 35% of the export value of goods must have been contributed by the ASEAN member country, he said.

"In addition, the goods should undergo some appreciable transformation. But rules are being modified to allow a minimum value addition of 35%," one of the officials said.

Importers to do due diligence for availing duty benefits under FTAs from September 21: Finance ministry

NEW DELHI: Importers will from Monday have to do their due diligence to ensure that imported goods meet the prescribed 'rules of origin' provisions for availing concessional rate of customs under free trade agreements (FTAs), the finance ministry said.

The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) notified on August 21, 2020, shall come into force from September 21, 2020, the ministry said in a statement on Friday.

This follows completion of the 30-day period that was given to importers and other stakeholders to familiarise themselves with new provisions.

"An importer is now required to do due diligence before importing the goods to ensure that they meet the prescribed originating criteria. A list of minimum information which the importer is required to possess has also been provided in the rules along with general guidance."

Customs' scrutiny from Sept 21 to check all Chinese imports

There has been rampant violation of 'rules of origin' that have opened floodgates for dumping of Chinese goods in India through third countries such as Vietnam, Singapore and Indonesia with which New Delhi has free trade agreements (FTAs), two officials said requesting anonymity.

A stringent scrutiny of imported goods will start from September 21 to curb rampant violation of 'rules of origin' that have opened floodgates for dumping of Chinese goods in India through third countries such as Vietnam, Singapore and Indonesia with which New Delhi has free trade agreements (FTAs), two officials said requesting anonymity.

"The Customs are armed with the new mechanism of verification that kicks in from September 21. It gives them full authority to check all FTA imports such as mobile phones, white goods, set-top boxes, incense sticks, cameras and other electronic gadgets more closely," said one of the officials, who works for the Union finance ministry.

The Central Board of Indirect Taxes and Customs (CBIC) on August 21 had notified -- the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, or CAROTAR, 2020 requiring detailed disclosure by importers to claim concessional duty benefits under trade pacts such as FTAs. "The CAROTAR, 2020 shall come into force on September 21, 2020," the CBIC order had said.

Interpreting the Customs' notification, consultancy firm EY India said according to the new rule, importers need to furnish details of certificate of origin (CoO) in the bill of entry and make necessary declaration in a bid to claim preferential rate of duty. "The importer shall possess information to demonstrate the manner in which the origin criteria are satisfied and maintain all supporting documents for at least five years from the date of filing of the bill of entry," it said.

The officials mentioned above said the Customs could also ask for supporting documents and information and when in doubt, deny the benefit of the FTA duty concession or allow it provisionally pending verification.

"The industry has repeatedly represented to the government to review the existing FTAs and take action to put a brake on their misuse," the first official said, quoting finance minister Nirmala Sitharaman's budget announcement this year.