



Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020)

This flyer contains background information for importers and other stakeholders and seeks to provide guidance on compliance of CAROTAR, 2020, which have come into force w.e.f. 21.09.2020.



1. Free Trade Agreements (FTAs)

1.1 Trade agreements are integral part of a country's trade policy. Countries have been engaged in trade with each other since ages. Traces of traded goods found in excavations across the world have provided useful insights for conceptualizing ancient history. In medieval period, trade was the prime motivating factor for navigators to explore uncharted territories.

1.2 In modern times, particularly after World War-II, countries collaborated and created the General Agreement on Tariffs and Trade (GATT) on a multilateral platform, which even today acts as a guiding document for finalizing trade deals. Art XXIV of GATT enables WTO members to enter into free trade agreements, in which they offer each other tariff and non-tariff concessions on a reciprocal and mutually beneficial basis. As per WTO's statistics, there are 305 regional trade agreements in force as on date, and majority of the world international takes place under these agreements.

1.3 So far, India has entered into 15 free trade agreements, and one unilateral DFTP (Duty Free Tariff Preference) Scheme. The earliest agreement is the treaty on trade with Nepal signed in 1950, which has been subsequently reviewed from time to time. ASEAN-India FTA, Agreement on SAFTA, India-Japan CEPA and India-South Korea CEPA are among the most widely used trade agreements of India.

India's Trade Agreements

| Bilateral Agreements | | Regional Agreements | |
|---|--|--|---|
| 1. India-Sri Lanka FTA (2000) | 6. India-Thailand EHS (2004) | 1. India-ASEAN (2010) Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand, Singapore, Vietnam | |
| 2. India-Japan CEPA (2011) | 7. India-Chile PTA (2007) | | |
| 3. India-Korea CEPA (2010) | 8. India-Afghanistan (2013) | | |
| 4. India-Malaysia CECA (2011) | 9. India-Singapore CECA (2005) | | |
| 5. India-Nepal Trade Treaty (1950) | 10. India-Bhutan Agreement on Trade & Transit (2016) | 2. Asia Pacific Trade Agreement (APTA) (1975) | Thailand, Bangladesh, China, Republic of Korea, Sri Lanka |
| Unilateral DFTP Scheme (34 LDCs) (2008) | | 3. Agreement of South Asian Free Trade Area (SAFTA) (2006) | Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka, Afghanistan |
| Afghanistan, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Eritrea, Ethiopia, Gambia, Guinea, Guinea Bissau, Haiti, Lao PDR, | | 4. India-MERCOSUR (2009) | Argentina, Brazil, Paraguay, Uruguay |
| Lesotho, Liberia, Madagascar, Malawi, Mali, Mozambique, Myanmar, Niger, Rwanda, Senegal, Somalia, Sudan, Timor Leste, Togo, Uganda, Tanzania, Yemen, Zambia | | 5. Global System of Trade Preference (1989) | 47 Developing Countries |

(As on Sept 2020)

1.4 Trade agreements vary in degree of spread and depth, depending upon the nature of markets engaged in negotiations and their respective priorities. While Preferential Trade Agreements (PTAs) could be limited to 'margin of preference', i.e. partial exemption of duties on certain tariff lines, comprehensive agreements go deep into tariff concessions providing almost full exemption of customs duties on majority of tariff lines, in addition to touching upon a host of other areas such as sanitary and phytosanitary measures, technical barriers to trade, quantitative restrictions, import licensing, intellectual property rights, trade facilitation, trade remedies, trade in services, investments etc.

2. Finalization and operationalization of FTAs

2.1 Department of Commerce is the nodal point in the Government of India to negotiate and finalize trade agreements. Line Ministries viz. M/Agriculture, M/Electronics and IT, D/Fertilizers, D/Heavy Industry, D/Telecommunications etc. also participate in the deliberations, depending upon the areas under negotiations. Central Board of Indirect Taxes and Customs (CBIC), being the main implementation body, plays a crucial role in trade negotiations on

issues such as tariff concessions, rules of origin, customs facilitation and IPR.

2.2 Once a trade agreement is finalized, CBIC issues notifications for implementing tariff concessions and rules of origin, under section 25 of the Customs Act and section 5 of the Customs Tariff Act respectively, in order to incorporate the commitments undertaken in domestic legislation.

3. Rules of origin and Originating criteria

3.1 Under a trade agreement, duty concessions are required to be extended only to such imported goods which are 'made in' the exporting country. Each FTA contains a set of rules of origin, which prescribe the criteria that must be fulfilled for goods to attain 'originating status' in the exporting country. Such criteria are generally based on factors such as domestic value addition and substantial transformation in the course of manufacturing/processing. For instance, the originating criteria finalized under a trade agreement could be domestic value addition of minimum 35% plus substantial transformation through Change in Tariff Sub-Heading (CTSH).

3.2 The goods imported under a trade agreement are required to be covered under a 'Certificate Of Origin' (COO) issued by the designated authority of the exporting country. The COO contains details of goods covered and originating criterion fulfilled.

Illustration – Different types of originating criterion

| | |
|----------------------------|--|
| ASEAN-India FTA | • 35% + CTSH |
| SAFTA | • $NOM \leq 60\% + CTH, PSR, 10\%$ relaxation to LDC, 5% to SL |
| ISLFTA | • $NOM \leq 65\% + CTH$ |
| India-Malaysia CECA | • [35% + CTSH] or PSR |
| India-Singapore | • [35% + CTSH] or PSR |
| Indo-Nepal | • $NOM \leq 70\% + CTH$ |

CTH: Change in Tariff Heading (4-digit level);
CTSH: Change in Tariff Sub Heading (6-digit level);
NOM: Non-Originating Material;
PSR: Product Specific Rules

Example: Rule – $NOM \leq 65\% + \text{change at 4 digit}$

Aluminum wire rod (CTH 7604) from China can be drawn into Wire (CTH 7605) in Sri Lanka, for export to India under India-Sri Lanka FTA, provided cost of Wire rod is less than 65% of value of final goods.

4. Operational Certification Procedures (OCPs)

4.1 OCPs are integral part of Rules Of Origin, and guide the exporters / importers how to claim the benefit of a trade agreement. They also lay down form of COO, manner of issuing it and process of origin verification. Following procedures are generally found in a trade agreement:

- (i) Countries party to a trade agreement designate one or more authority(ies) for issuing COO.
- (ii) Exporter intending to claim FTA benefit applies for COO to the designated Issuing Authority.
- (iii) Exporter's application for COO should be supported by relevant documents to demonstrate that the originating criteria claimed by him are duly met.

- (iv) The Issuing Authority issues COO in the form and manner prescribed in the trade agreement.
- (v) Exporter sends the original copy of COO to the importer in the importing country. Some FTAs allow use of electronic COO.
- (vi) Importer produces the COO to customs during import clearance of goods.
- (vii) Where customs officer has a doubt on genuineness/authenticity of the COO or on the accuracy of the information contained therein, he sends a verification request to the designated authority in the exporting country through a nodal officer in the importing country.

5. Recent trends and instances of misuse

5.1 Over the years, there has been staggered reduction in preferential duties under existing FTAs along with resultant increase in the preferential trade volumes. Also, frequent instances of misuse have come to notice of the Government in which fraudulent traders have mis-declared country of origin in order to avail undue duty concessions.

5.2 For instance, in 2019 a verification visit by the investigating team from Directorate of Revenue Intelligence unearthed a large-scale fraud wherein areca nut from a third country was being imported into India from an FTA partner country, duly covered by Certificates

of Origin issued by Issuing Authority of that partner country. It was observed that most of the supposed producers did not have any facility to process areca nut and were claiming transit goods of third countries to be originating from their country.

5.3 Misuse of trade agreements not only causes loss to the exchequer but also places the domestic industry at an unfair disadvantage. Experiences gained while implementing the FTAs, has highlighted the need to supplement the existing procedures available in the FTAs, with specific domestic legal provisions to address the gaps.

6. Insertion of section 28DA in the Customs Act

6.1 It may be recalled that in the Budget Speech 2020, Hon'ble Finance Minister stated that-

"It has been observed that imports under Free Trade Agreements (FTAs) are on the rise. Undue claims of FTA benefits have posed threat to domestic industry. Such imports require stringent checks. In this context, suitable provisions are being incorporated in the Customs Act."

'Section 28DA of the Customs Act 1961, therefore, empowers an importer to possess sufficient origin related information. The first point of query into origin of goods wherein preferential tariff treatment has been sought will now be an importer, shifting from G2G to B2G model.'

6.2 Accordingly, Chapter VAA and section 28DA were inserted in the Customs Act, 1962, vide clause 110 of Finance Act, 2020. The new section *inter alia* provides for a basic level of due diligence on the part of an importer to satisfy himself that the claimed originating criteria have been met, and that mere submission of a Certificate of Origin may not be sufficient. For this purpose, the importer is required to possess sufficient origin related information. The first point of query into origin of goods, in case of doubt, will now be the importer, shifting from G2G to B2G model.

6.3 Section 28DA further provides for verification of origin from foreign authorities, temporary suspension of preferential treatment, and situations under which a claim can be denied or a certificate can be rejected.

7. Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020

7.1 As required in the aforesaid section 28DA, Central Government has also 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, to be implemented from 21st September. Thus 30 days' time has been given to importers and other stake holders to familiarize with the new provisions.

7.2 The said rules aim to supplement the existing operational certification procedures prescribed under different trade agreements. They require an importer to conduct a basic level of due

diligence before importing the goods and satisfy himself that the goods meet the prescribed originating criteria. For this purpose, list of minimum information which the importer is required to possess while importing the goods has been provided in the rules along with general guidance (Form I appended to the rules). This will support the importer to correctly ascertain the country of origin, properly claim the concessional duty and assist customs authorities in ensuring smooth clearance of legitimate imports. The rules further lay down strict timelines for initiating and expeditious conclusions of origin related verification.

7.3 In cases where origin declared in a COO is doubtful, the customs officer, under rule 5, is mandated to ask the importer relevant origin details, before seeking verification from the partner country. The process of cross-border verification of origin is, at present, conducted through the nodal authorities in respective countries and follows timelines prescribed in the respective trade agreements which sometimes extend to months. However, if the importer provides sufficient information to

customs, as and when asked for in terms of CAROTAR, 2020, the verification from partner country will not be initiated and the matter can be concluded quickly.

7.4 As stated above, under rule 5 a customs officer may seek origin related details from the importer where required. Hence, the information in Form 1 is not required to be submitted with every bill of entry and needs to be presented only when an inquiry is made by a customs officer.

8. Information to be filled in the import declaration

8.1 Rule 3 of CAROTAR, 2020 mandates certain origin related details to be entered in the Bill of Entry, as available in the Certificate of Origin:

- (i) certificate of origin reference number;
- (ii) date of issuance of certificate of origin;
- (iii) originating criteria;
- (iv) indicate if accumulation/cumulation is applied;

- (v) indicate if the certificate of origin is issued by a third country (back-to-back); and
- (vi) indicate if goods have been transported directly from country of origin.

8.2 These additional fields in the Bill of Entry format are available from 21.09.2020. Likewise, changes have also been incorporated in the manual Bill of Entry format, to cater to customs stations where EDI facility is not available.

9. Origin related information to be possessed by importer

9.1 Rule 4 requires an importer to possess sufficient information about the origin of goods, where preferential tariff treatment is claimed. To help guide importers and also to indicate the scope of such information, details have been provided in the Form I of CAROTAR, 2020. The form focusses on the process through which a good has attained origin i.e if goods are produced entirely from inputs from that country or also included inputs from third country. A flow chart has been provided to

help importers navigate through the rules of origin and identify the key elements which should be checked with the exporter.

‘To guide the importers, Form 1 of CAROTAR, 2020 focuses on the process through which a good has attained origin.’

9.2 The importer is guided on the relevant queries that he/she needs to pose to an exporter. For instance, if supplier claims goods to be Wholly Obtained, it is prudent to check the rule on 'Wholly Obtained' and if it is covered. Confirm if inputs like preservatives etc. are also originating. Some Agreements allow certain percentage of use (by value or weight) of non-originating elements even when goods are claimed to be wholly obtained. If a supplier/producer claims that goods have non-originating components but meets the originating criteria, it is advised to check if the claimed originating criteria applies to that specific tariff heading. An importer should ask these questions to ensure that the claim is valid and to diminish chances of erroneous claim.

' Knowledge of this process helps the importer to identify any issue at an early stage. This will enable an importer to independently assess authenticity of the origin claim made by an exporter.'

9.3 Knowledge of this process helps the importer to identify any issue at an early stage and where required, the same could be addressed even before goods are imported. This will, therefore, bring transparency and enable an importer to independently assess authenticity of the origin claim made by an exporter. CAROTAR, 2020 do not require an importer to seek cost details, which may be business confidential.

' In case of identical goods from same exporter, the process of making inquiries with the exporter need not be repeated for each bill of entry, unless there is any change in the process of manufacturing.'

9.4 It is to be noted that in case of identical goods from same exporter, while the compilation of information needs to be done for each bill of entry, the process of making inquiries with the exporter need not be duplicated, unless there is any change in the process of manufacturing.

CAROTAR, 2020- Key Features:

- The extent of information expected to be possessed by an importer is defined.
- Importer is required to keep origin related information specific to each BE for minimum five years from date of filing B/E.
- Mandates inclusion of specific origin related information in B/E.
- Provides for scenario wherein verification from exporting country can be initiated.
- Sets timelines for receiving information from verifying authorities where same is not provided in Trade Agreements.
- Sets timelines for finalising decision based on information received from importer/verifying authorities.
- Action which may be taken on import of identical goods, when it is determined that goods do not meet originating criteria.

10. Impact on customs clearance

- 10.1** As required earlier, an importer needs to seek exemption under an FTA, at the time of filing Bill of Entry. There are some additional basic details which now need to be entered in the Bill of Entry. These details are available in the COO. Hence, CAROTAR does not mandate submission of additional documents at the time of filing Bill of Entry. In case of any doubt about origin, the customs officer will raise a query to the importer before initiating verification with a foreign administration, which takes substantial time. The queries to importer will be based on the Form notified in CAROTAR, 2020. Importer will be provided 10 days' time to submit the information, and within 15 days of receiving response he will be informed about the outcome. In case any additional information is required, the verification route will be followed by the customs with the authorities in exporting country.
- 10.2** Where the importer fails to produce origin related information and documents sought, or it is established that he is not doing due diligence, then in addition to initiating verification with other country, the officer is also required under rule 8(1) to verify the assessment of all subsequent bills of entry. However, as and when, the importer demonstrates that he is taking reasonable care through adequate record-based controls, the compulsory verification of assessment shall be discontinued.
- 10.3** Where it is established that goods from an exporter do not meet the originating criteria, preferential benefit may be rejected to identical goods imported from the same exporter (rule 7). However, preferential benefit shall be restored with prospective effect, after it is demonstrated on the basis of information and documents received, that the manufacturing or other origin related conditions have been suitably modified by the exporter or producer so as to fulfill the origin requirement.

Technical Terms used in Rules of Origin

Wherever necessary, technical terms used pertaining to Rules of Origin have been explained as below for general guidance. Each trade agreement, however, has its own set of Rules of Origin, and precise definition of each of the term listed below may vary. It is, therefore, advised to refer to the respective Rules of Origin also, as notified in terms of sub-section (1) of section 5 of the Customs Tariff Act, 1975.

- (i) **Goods Wholly Obtained (WO):** Goods produced or obtained without any non-originating input material incorporated.
- (ii) **Goods that are produced using non-originating materials,** i.e. not Wholly Obtained, are required to undergo substantial transformation in a country for the good to be qualified as originating. This criterion can be met using following method in combination or standalone, depending upon the criteria assigned for a good,-
 - (a) Change in Tariff Classification (CTC);
 - (b) Regional or Domestic Value Content (RVC/DVC); and
 - (c) Process rule.
- (iii) **Value Content Method:** This rule requires that a certain minimum percentage of the good's value originates in a country for

the good to be considered as originating. The components of value and formula for calculating such value addition may vary from agreement to agreement.

- (iv) **Change in Tariff Classification (CTC) Method:** To qualify under this origin criterion, non-originating materials that are used in the production of the good must not have the same HS classification (e.g. Chapter level, Heading level or Sub Heading Level as may be required in the Rules of Origin) as the final good. Depending on the Trade Agreement requirements, the good would have to undergo either a Change in Chapter (CC), Heading (CTH) or Sub Heading level (CTSH) in order to qualify for preferential treatment under the FTA. Producers and/or exporters should know the HS classification of the final good and the non-originating raw materials.
- (v) **Process Rule Method:** This rule requires the good which is being considered as originating, to be produced through specific chemical process in the originating country.

Note: Same good may be assigned different originating criteria in different trade agreements.

(vi) General Rule vs Product Specific Rule

(PSR): Many trade agreements have a single rule for all goods that are produced using non-originating materials. In some agreements, for some or all tariff headings there are Product Specific Rules (PSRs). Depending on the HS classification of the good, it needs to be seen which criteria has been used to claim origin.

(vii) De minimis: This provision allows that non-originating materials that do not satisfy an applicable rule may be disregarded, provided that the totality of such materials does not exceed specific percentages in value or weight of the good. This provision may or may not be there in an agreement and the percentage also varies from agreement to agreement

(viii) Cumulation/ Accumulation: The concept of “accumulation”/“cumulation” allows countries which are part of a preferential trade agreement to share production and jointly comply with the relevant rules of origin provisions, i.e. a producer of one participating country of a trade agreement is allowed to use input materials from another participating country without losing the originating status of that input for the purpose of the applicable rules of origin. Otherwise said, the concept of accumulation/cumulation or cumulative rules of origin allows products of one participating country to be further processed or added to products in another participating

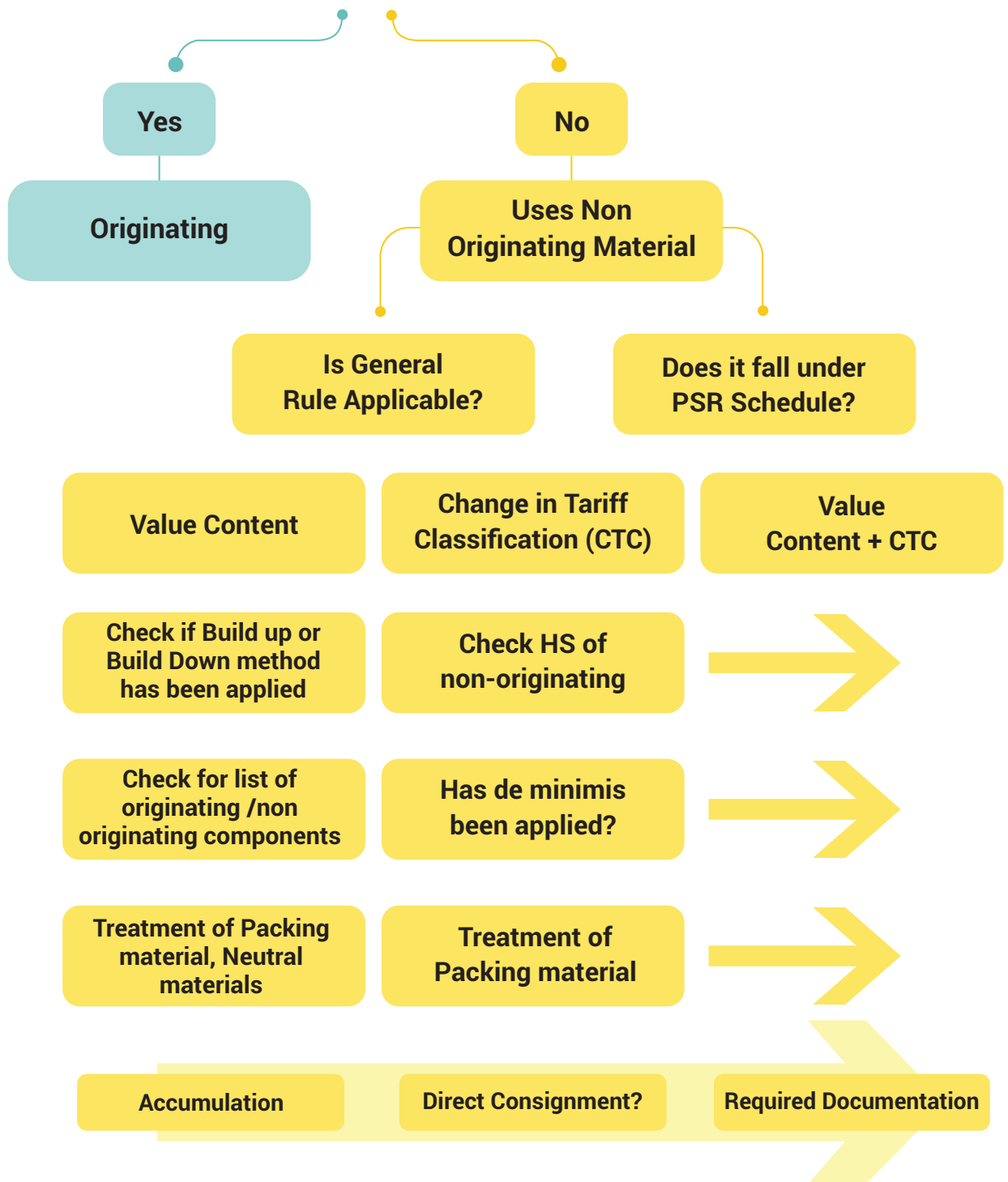
country of that agreement. The nature and extent of such cumulation is defined in an agreement and may vary from agreement to agreement. Cumulation can be bilateral, regional, diagonal, etc.

(ix) Indirect/Neutral elements: refer to material used in the production, testing or inspection of goods but not physically incorporated into the goods, or material used in the maintenance of buildings or the operation of equipment associated with the production of goods. For example, energy and fuel, plant and equipment, goods which do not enter into the final composition of the product, etc. Depending upon the trade agreement, these elements may be treated as originating or non-originating.

(x) Rule on treatment of packages and packing materials for retail sale: Such rule provides the manner in which such material will be treated while calculating qualifying value content or tariff shift.

(xi) Direct Consignment: Most agreements lay down the condition that good claiming originating status of a country should be directly transported from that country to the importing country. Certain relaxation may be provided in a trade agreement, subject to presentation of certain documents.

Is Imported Good Wholly Obtained (WO)?



Navigating through originating criteria

Frequently Asked Questions: CAROTAR, 2020

Q:1 Is the Form-I, appended with the Rules, required to be submitted at the time of import?

A:1 Section 28DA of the Customs Act requires an importer to possess sufficient information about origin of imports, where preferential tariff treatment has been claimed. Form-I helps guide and assist an importer in assessing origin of goods. An importer is NOT required to submit this Form at time of filing customs declaration.

However, when there is a doubt on the declared country of origin, the customs officer may ask origin-related details from the importer, in which case the importer would have to submit the Form along with supporting documents.

Q:2 My firm files multiple number of Bills of Entry (B/E) and filling Form-I for each B/E will be very voluminous. Can I be exempted from submitting it?

A:2 The details as required in terms of Form-I focus on process and thus would remain same for identical shipments, provided the production process does not alter. Therefore, the same set of information can be utilised in filling up Form-I for identical shipments, unless there is any change in the production process or manner of processing. Further, it is re-iterated that Form-I is not required to be submitted to Customs while filing Bill of Entry.

Q:3 I am unable to receive all information as prescribed under the Rules. Can I still import goods, claiming preferential tariff treatment?

A:3 Yes. However, in such cases, the origin-related information may be sought by Indian customs from the verification authorities in the exporting country, where timelines are relatively lengthier.

Q:4 What will happen if I am unable to receive all information from the exporter?

A:4 Where a customs officer requisitions information in terms of rule 5, but the importer is unable to produce it, the officer shall-

- (i) initiate overseas verification in terms of rule 6. In such cases, the preferential tariff treatment may be suspended till conclusion of verification, and goods may be assessed provisionally with bond and security as stated in the rules.
- (ii) verify assessment of all subsequent bills of entry filed by the importer with the claim of preferential duty as stated in rule 8(1).

It may thus be noted that non-possession of origin-related information does not prohibit an importer to import. However, it may lead to overseas verification in case there is a

doubt on declared origin of goods. Also, subsequent imports of the importer will not be facilitated by the Risk Management System of customs.

Therefore, an importer is expected to observe due diligence to best of his abilities, and possess origin-related information before importing the goods. It is expected that the same would be incorporated into the overall business process and necessary checks are done at the time of making a decision to procure the goods.

Q:5 Do I need to provide business confidential details like cost break-up of goods?

A:5 The rules do not mandatorily seek the information on cost break-up or proprietary production process. It should be submitted if available. With regard to requirement to know “components which constitute value addition” [Section III, Part B, Entry 2(d) of the Form], the importer is not expected to know exact figures. Only the description of major components that have been taken into calculation of domestic value addition, e.g. material, labour, profit etc., need to be stated. For example, there can be instances where the value addition is majorly on account of value of originating material OR on account of profit. In case further details are required, customs will contact the Verification Authority of exporting country.

Q:6 Form-I (Section III) requires the production process to be recorded. The “production process” can be very elaborate going into intricate technical details. Alternatively, it can also be described briefly. In what manner the production process is required to be recorded in Form-I?

A:6 An importer should know the originating criteria based upon which a non-originating good has undergone the required transformation. For example, if the prescribed transformation requires change at sub-tariff heading level (CTSH), importer should know if same was met through process of distillation/assembly of components/stamping/cutting etc. Thus, the production process can be recorded in a brief manner, clearly incorporating the way it meets the prescribed originating norms.

Q:7 What kind of supporting documents am I supposed to procure, in terms of rule 4?

A:7 The rules do not lay down any specific standard for same. It could range from an email communication from exporter, informing the various origin-related details, to photographs of the production site, demonstrating the process which a good undergoes in an exporting party.

Q:8 What is meant by identical goods in terms of rule 7?

A:8 Where it is determined that goods originating from an exporter or producer do not meet prescribed origin criteria, this outcome shall apply on identical goods from the same exporter or producer. For example, if producer X manufactures televisions and refrigerators in country A and verification reveals that the production process undertaken by X is unable to meet the required originating criteria for the refrigerators, then this result will be applicable to subsequent imports of refrigerators from country A, produced by X.

Verification result shall not apply to televisions manufactured by producer X or refrigerators manufactured by other producers in country A.

Q:9 Can tariff treatment be denied on identical goods when previous consignment was denied preferential tariff in terms of rule 3?

A:9 No. Attention is drawn to the scenarios under rule 3, where preferential tariff treatment can be denied without verification of origin on account of non-compliance of procedures or conditions laid out in the Agreement itself, such as expired validity period of COO or incomplete COO. On the other hand, rule 7 (identical goods) can be invoked only when it is determined that origin criteria have not been met.

Q:10 What action will be taken in case there is a conflict between the Trade Agreement and CAROTAR 2020?

A:10 The obligation on importer flows from the domestic law and not from the trade agreements. However, origin-related provisions of the trade agreements have been incorporated in the domestic law by way of notifying rules of origin of each trade agreement under section 5 of the Customs Tariff Act. In this regard, rule 8(3) of CAROTAR clearly states that in the event of a conflict, the provision of rules of origin shall prevail to the extent of conflict.



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