
ISSUANCE OF CUSTOMS (ADMINISTRATION OF RULES OF ORIGIN UNDER TRADE AGREEMENTS) RULES, 2020

1. Background on Free Trade Agreements (FTAs)

- Free Trade Agreements (**FTAs**) are multilateral international treaties which provide for reduced Exim tariffs to encourage cross-border trade between signatory countries. FTAs function as self-sufficient provisions of law, including prerequisites of rules of origin (**Origin Criteria**), in respect of the matters governed by them.
- Chapter VAA (**Chapter VAA**) had been inserted in the Customs Act, 1962 (**Act**) with effect from 27.03.2020 for allowing administration of the Rules of Origin criteria for all imports under all under all FTAs outside of the framework of the FTA. Correspondingly, now, the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (**CAROTAR, 2020**) have been notified thereunder with effect from **21.09.2020**.

2. Overview of Changes

A. Procedure

- The importer would be required to file a declaration at the time of filing the Bill of Entry (**BoE**) with brief details of the goods being imported. The details of preferential tariff notification and the details of the Certificate of Origin would be indicated on the BoE.
- Where the Customs Officer believes that the Origin Criteria may not be met, he may demand additional information or documents to substantiate the importer's claim for preferential tariff treatment under the relevant FTA. This may be requested at the time of or after the clearance of the goods.
- The importer would be required to submit such information or documents within 10 working days of the demand thereof.
- If the information or documents provided are satisfactory, the Customs Officer may accept the claim for preferential tariff treatment within 15 working days of such information or documents being provided.
- The Customs Officer may further request additional information from the Verification Authority (in the exporting participating country under the FTA) in the following cases –
 - i. There is any doubt in the authenticity of the Certificate of Origin;
 - ii. The importer does not provide the demanded information/documents or provides the same insufficiently; or
 - iii. The import is selected for verification on a random basis.
- The verification is to be concluded within the timeline as provided under the relevant FTA or in the absence thereof, within 45 days of receipt of the information. The latter limit may be extended further at the discretion of the Principal Commissioner/Commissioner of Customs.

B. Grounds of Denial of Preferential Duty Claim

- The Customs Officer may deny the claim for preferential rate without verification, in the event that the Certificate of Origin –
 - i. Is incomplete or in the incorrect format;

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- ii. Has unauthenticated alterations;
 - iii. Is produced beyond its validity period; or
 - iv. Is issued for an ineligible item under the concerned FTA.
 - After approaching the Verification Authority, the Customs Officer may also deny the preferential rate of duty where –
 - i. The Verification Authority does not respond to the Customs Officer's verification request within the prescribed timeline;
 - ii. The Verification Authority does not provide the requested information in the prescribed manner under the FTA; or
 - iii. The information/documents furnished by the Verification Authority sufficiently evidence that the goods do not meet the Origin Criteria.
 - The Principal Commissioner/ Commissioner of Customs may deny the claim for preferential rate without verification, in the event that –
 - i. The importer relinquishes the claim; or
 - ii. The information/documents furnished by the importer sufficiently evidence that the goods do not meet the Origin Criteria
 - The Principal Commissioner/ Commissioner of Customs may also deny the claim for preferential rate in the event that any other imports of identical goods from the same producer/exporter have already been evidenced to be in non-compliance with the Origin Criteria under the FTA. In such a case, the subsequent importer will have to furnish all supporting information/documents to prove that manufacturing, sourcing and all other Origin Criteria have been fulfilled in the case of such producer/exporter.

C. Impact of Verification

- Where verification takes place in the course of import clearance, the following steps may be taken:
 - i. The preferential tariff treatment the goods may be suspended till conclusion of verification by the authorities. The Verification Authority would be informed of such suspension; and
 - ii. At the importer's request, the Customs Officer may provisionally assess and clear the goods, subject to furnishing of security amount equal to the difference between the duty provisionally assessed and the preferential duty claimed by the importer.
- All subsequent BoEs filed with the claim of preferential rate of duty by the importer will be subjected to compulsory verification where –
 - i. Importer fails to provide requisite information and documents by the due date; or
 - ii. Importer has failed to exercise reasonable care to ensure the accuracy and truthfulness of the information furnished by him.
- The claim for preferential duty will be disallowed and penal action may be initiated under the Act or any other law in cases where it is established that the importer has –
 - i. Suppressed the facts;
 - ii. Made wilful mis-statement; or
 - iii. Colluded with the seller or any other person;

with the intention to avail undue benefit of a trade agreement. Penal provisions under the Act provide for imprisonment extending up to 7 years and fine, depending upon the nature of the offence.

D. Requirement to possess ‘sufficient information’

- Chapter VAA imposed upon the importer a liability to ‘possess sufficient information as regards the manner in which country of Origin Criteria, including the regional value content and product specific criteria, specified in the rules of origin’ are satisfied in the case of the goods being imported. Mere production of a Certificate of Origin from the relevant Issuing Authority would not be adequate discharge of this liability.
- CAROTAR, 2020 elaborates further upon this requirement by setting out certain basic information/documents to be maintained by the importer primarily as under –

Sl. No.	Particulars	Details
1.	The Origin Criteria applicable to the goods under the appropriate FTA	The following are broadly the type of Origin Criteria that may be applicable, depending on the FTA: <ul style="list-style-type: none"> i. <u>Domestic Value Addition (DVA) method or the Regional Value Content (RVC) method</u> – The FTA may require a certain domestic value addition to be undertaken at the country of origin. ii. <u>Change in Tariff Classification (CTC) Method</u> – Alternately, the FTA may require that the non-originating materials used in the production of the goods must not have the same tariff classification as the final goods. This change may have to be at the chapter, heading or sub-heading level, in terms of the FTA. iii. <u>Process Rule Method</u> – The final goods may have to undergo a specified process in the country of origin to fulfill the Origin Criteria under an FTA.
2.	Production process undertaken in respect of the goods	CAROTAR, 2020 requires the following to be specifically sought in respect of originating materials i.e. inputs sourced ‘locally’ under terms of the FTA – <ul style="list-style-type: none"> i. Whether the material is manufactured by the Producer/Exporter of the final goods himself ii. Whether the material is sourced locally from a third party by the Producer/Exporter iii. Whether the Producer/Exporter has sought confirmation of the origin of the material sourced from the third party.
3.	Manner of adherence to FTA provisions	FTAs may provide for a specific method in calculating whether the Origin Criteria have been met for the particular goods. This may include specific provisions for certain products, inclusion or exclusion of certain inputs or processes by deeming fiction, etc. Each FTA may have its own parameters, including broadly – <ul style="list-style-type: none"> i. <u>De minimis Rule</u> – Whereby non-originating materials may be disregarded subject to certain conditions. ii. <u>Accumulation Rule</u> – Whereby input materials from multiple participating countries of that FTA

		<p>may be considered as ‘originating materials’ for the purpose of Origin Criteria.</p> <p>iii. <u>Indirect Elements Rule</u> – Whereby materials not physically incorporated into the final goods (such as fuel, inspection and testing, plant and equipment, etc.) are treated either as originating or non-originating materials.</p> <p>iv. <u>Rule on Packing Materials</u> – Whereby the manner of treatment of packaging and packing materials in considering Origin Criteria is provided.</p> <p>v. <u>Indirect Consignments</u> – Whereby the final goods may be imported from a secondary country, not being the country of origin, if provided by the FTA.</p>
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VA Comments

- Consequent to the above changes, amendments have been made to the BoE templates under the Bill of Entry (Forms) Regulations, 1976. Further, the Deputy Commissioner or Assistant Commissioner of Customs, and the Deputy Director or Assistant Director, Directorate of Revenue Intelligence, have been notified as the proper officers empowered in the respect of the provisions of Chapter VAA and the CAROTAR, 2020.
- The administration of FTAs, intended to be self-sufficient treaties, under domestic law may create conflicts. This was the primary concern at the time of introduction of Chapter VAA. CAROTAR, 2020 specifically provides that in the event of any conflict between the provisions of CAROTAR, 2020 and the Rules of Origin notified for an FTA, the latter shall prevail.
- Further, now that CAROTAR, 2020 has provided clarity on the basic documentation required to be maintained, importers availing benefits under various FTAs may streamline their production/sourcing processes in line with the same. This may entail review of agreements, existing supply chains and SOP to ensure that the required minimum information/documentation is available with the importer in case of verification of the claim by Indian Customs.

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