CAROTAR, 2020 - challenges for importers

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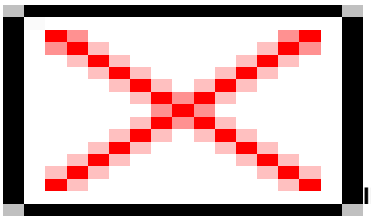 **INDIA** is a signatory to trade agreements with several countries, including Free Trade Agreements (FTAs) with countries like Japan, South Korea, ASEAN members etc. In terms of the FTAs, a preferential tariff treatment is given to originating goods of the exporting country. In this regard, 'Rules of Origin' (RoO) are cardinal principles based on which the source country of import goods is established, and subsequently tariff concessions or applicable duties are determined. Imports under FTA have been on the rise and the undue claims of preferential tariff benefits have been posing a threat to the domestic industry in India. In wake of this, and considering the need to supplement the operational certification procedures related to implementation of the Rules of Origin, there was a requirement of stringent checks.

Thus, recently, the Department of Revenue has notified the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 [hereinafter referred to as ***"CAROTAR, 2020"*** for brevity and convenience]. These Rules have been issued vide Notification no. **81/2020-Customs (N.T.)**
dated 21st August 2020, and will come in effect from 21 st September 2020. They aim to keep a check on imports via the abuse of FTA route, taking advantage of lower tariffs by presentation of documents purporting that goods came from a country with which India has a trade agreement. Issued as a set of guidelines for the enforcement of RoO, CAROTAR, 2020 applies to import of goods into India where the importer makes a claim of preferential rate of duty in terms of a trade agreement.

Broad provisional framework

Conventionally, in order to claim the preferential duty benefit, the importer was required to supply to the customs authority a Certificate of Origin (CoO) issued by a competent body, along with the documents required for importation of goods, i.e. invoice and the bill of entry at the time of clearance of goods. However, with the introduction of CAROTAR, 2020, mere submission of a CoO will not absolve the importer of the responsibility to exercise reasonable care to the accuracy and truthfulness of the information supplied, as now the burden rests upon the importer to possess sufficient information as regards the manner in which country of origin criteria specified in the RoO in the trade agreement are satisfied.

The key features and the provisions of CAROTAR, 2020 can be broadly classified and understood as under:

1. Preferential tariff claim
2. Information to be possessed by importer
3. Requisition of information from the importer
4. Verification of Certificate of Origin
5. Identical goods

6. Discretion of customs authorities

In terms of the provisions of CAROTAR, 2020, an importer, claiming a preferential rate of duty, is required to, inter alia, make a declaration in the Bill of Entry w.r.t. goods qualifying as originating goods, in addition to producing the CoO. The Bill of Entry should also contain certain prescribed details of the CoO. A comprehensive list of information, related to country of origin criteria, including the regional value content and product specific criteria, is given in Form-I annexed to CAROTAR, 2020, which the importer is required to retain for a period of five years, and submit the same to the proper officer on request. However, in case of failure to do so, or if the information and documents are insufficient to conclude that the origin criteria have been met, a verification proposal is forwarded to the nodal officer.

Therefore, in simple words, in terms of CAROTAR, 2020, read with section 28DA of the Customs Act 1962, the onus of demonstrating that the subject goods fulfill the criteria of the RoO falls upon the importer, and in case there is a doubt with regard to origin of goods, information is first sought from the importer before initiating verification with the exporting country. Nevertheless, the customs authorities have been entrusted with a wide array of powers authorizing them to ask importers to substantiate and satisfy with respect to the scrutiny undertaken on the question of origin -

a. The Principal Commissioner has been empowered to reject other claims of preferential rate of duty for identical goods, filed prior to or after such determination, imported from the same exporter, when it is determined that the goods originating from an exporter do not meet the origin criteria.

b. The proper officer has the power deny the claim of preferential rate of duty without verification if CoO - (a) is incomplete and not as per the prescribed format; (b) has alteration not authenticated by Issuing Authority; (c) is produced after expiration of validity; or (d) is issued for an item ineligible for preferential tariff treatment.

c. The Principal Commissioner of Customs may also disallow the claim of preferential rate of duty without verification if the importer relinquishes the claim, or the information and documents furnished by importer prove that goods do not meet the prescribed origin criteria.

Challenge before Importers

Thus, the introduction of the stricter norms of origin loads the importer with additional compliances and liability to not only possess the requisite information and documents, but also to exercise reasonable care to ensure accuracy and truth of the information supplied, to conclude the origin of the imported goods. This, in turn, also poses numerous challenges before importers as the term ***"reasonable care"*** is subjective and vague as there are no defined measures to adopt 'reasonable care'. In addition, the importer may not have full access to the record of price data and other material information of the suppliers as he may not be willing to provide the same in wake of confidentiality. Moreover, in any event of delay or failure to furnish the documentary evidence in support of Country of Origin, the importer faces the possibility of the benefit being denied, which may consequently and substantially influence the liquidity and cash flow.

Conclusion

The apparent motive behind introduction of CAROTAR, 2020 is to curtail the prevalent malpractices in the trade by preventing the dishonest importers from misusing the facility of claiming preferential duty benefit under various Trade Agreements by a mere production of the CoO. The new origin norms primarily cast stern responsibilities on the importers claiming preferential duty benefit to possess and furnish accurate and true information with respect to the country of origin.

[The views expressed are strictly personal.]

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