

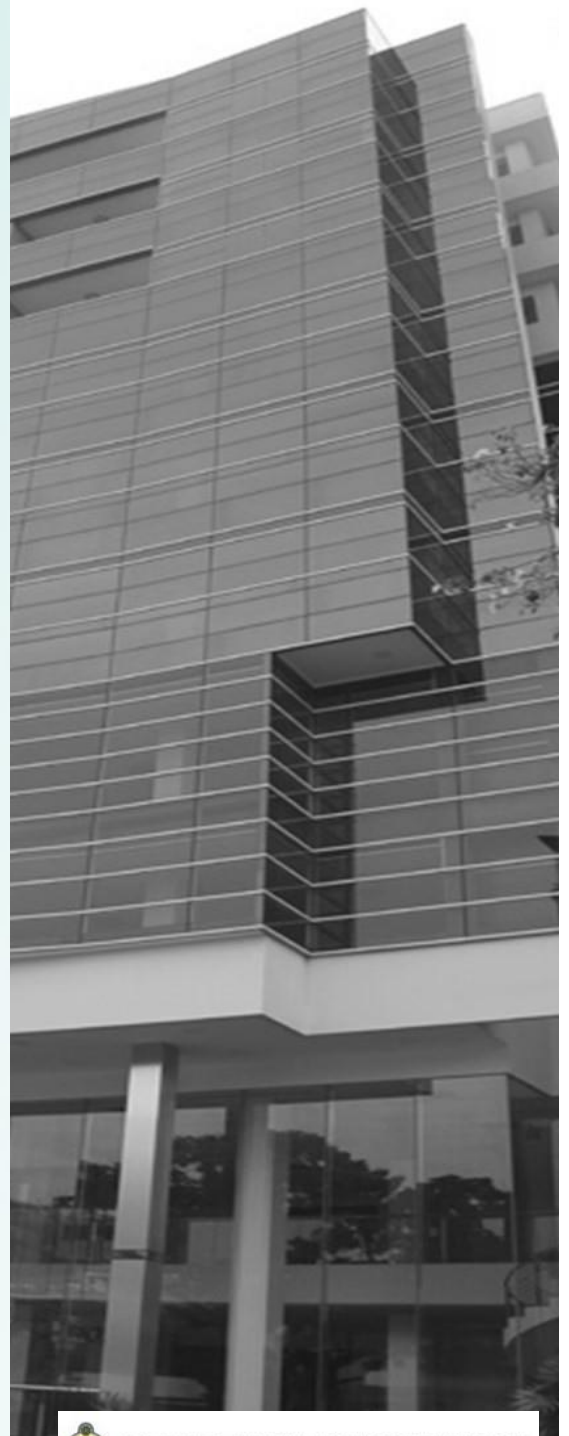


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**“New Rules of Origin (ROO)
Compliance Regulations in India
under FTAs”**

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New Rules of Origin (ROO) Compliance Regulations in India under FTAs

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Background

The Customs Administration of Rules of Origin under Trade Agreements Rules, 2020 (CAROTAR, 2020), was notified under section 28DA of the Customs Act vide Notification No. 81/2020-Customs (N.T.) dated 21st August 2020, by the Central Board of Indirect Taxes and Customs in India, and issued the Circular no. 38/2020-Customs dated August 21, 2020 prescribing guidelines as to implementation of the procedures regarding claim of preferential rate of duty on goods imported under trade agreements, which includes Indo-Sri Lanka FTA.

"The Sri Lankan exporters to India will have to make sure to provide all details required by the respective importers in India under these rules to avoid unnecessary delays of their shipments and claiming of respective tariff preferences under the Indo-Sri Lanka FTA"

CAROTAR 2020 (Rules) which came into force from 21st September 2020 aims to supplement the existing Operational Certification Procedures (OCP), which are prescribed under trade agreements such as Free Trade Agreements (FTAs), Preferential Trade Agreement, Comprehensive Economic Cooperation Agreement and Comprehensive Economic Partnership Agreement.

In the Budget 2020-21 speech, the Minister of Finance noted that imports under FTAs are on the rise and there have been alleged undue claims of FTA benefits by few importers which has posed threat to domestic industry.

In order to curb the manipulation of information and documentation, Section 28DA of the Customs Act, 1962 was inserted by clause 110 of the Finance Act, 2020, which provides for due diligence on the part of an importer to satisfy that the originating criteria' requirements are complied. Thus importer requires having sufficient origin related information on imported goods and merely submission of the Certificate of Origin is not sufficient.

Key Features of CAROTAR 2020

The Rules define the extent of information which is to be possessed by the importer.

- An importer needs to keep the origin related information specific to every Bill of Entry (B/E) for a minimum of five (05) years. The five years period starts from the date of filing the B/E.
- The Rules mandate the inclusion of specific origin related information in B/E.
- It provides for the scenario where verification can be initiated from the exporting country.
- It sets the timeline for receipt of information from the verifying authorities, not provided in Trade Agreements.
- It sets the timeline to finalise decisions based on the information received from the importer or verifying authorities.
- It provides for the action that can be taken on the imported identical goods when the goods do not meet the originating criteria".

Rules under CAROTAR 2020

The rules listed in CAROTAR 2020 vide Circular no. 38/2020-Customs dated August 21, 2020, could be broadly classified under six heading as follows.

Rule 3: Information required for import declaration (Bill of Entry) – These additional fields in the Bill of Entry format are available from 21.09.2020.

The importer or his agent should make a declaration in the bill of entry that they qualify as originating goods to claim the preferential rate of duty under the respective agreement when filing a bill of entry. The importer also requires producing the certificate of origin covering each item claimed under the preferential duty rate.

The importer needs to enter the following details of the certificate of origin in the bill of entry -

1. Reference number of certificates of origin,
2. Originating criteria,
3. Date of issuance of the certificate of origin,
4. Details if a third country issues the certificate of origin,
5. Details if cumulation or accumulation are applied,
6. Details of whether the goods are transported directly from the country of origin.

The claim of the preferential rate of duty can be denied without verification, if the certificate of origin is:

- Incomplete and not in accordance as prescribed by the Rules of Origin,
- Has alteration, which is not authenticated by the Issuing Authority,
- Is given after the expiry of its validity period, or
- Is issued for an item not eligible for preferential tariff treatment under the trade agreement.

Rule 4 : Origin related information to be possessed by the importer

Any importer who wishes to claim preferential rate of duty should possess information as indicated in Form I of the Rules and submit the same, when requested, to the proper officer. Form I provide a list of basic minimum information that the importer should know while claiming the preferential rate of duty for importing goods.

The importer should have all the supporting documents related to Form I for a minimum of five (05) years from filing the bill of entry. He should exercise reasonable care for ensuring the authenticity and accuracy pertaining to the information and documents obtained by him relating to Form I.

["CAROTAR 2020 \(Rules\) which came into force from 21st September 2020 aims to supplement the existing Operational Certification Procedures \(OCP\), which are prescribed under trade agreements"](#)

Rule 5 : Requisition of information from the importer

To ascertain the correctness of the claim, a customs officer may call for information or documents from the importer. He will be under obligation to provide or submit the same within ten working days from the date of such information or documents sought. Upon satisfaction, the customs officer shall communicate his approval of claim to the importer in writing within fifteen working days from the date of receipt of requisite information or documents. In the case of non-satisfaction, the customs officer shall forward a verification proposal to the nodal officer nominated for that purpose. Nevertheless, the Principal Commissioner of Customs or the Commissioner of Customs may, reasons in writing, disallow the claim of preferential rate of duty without further verification, where the importer relinquishes his claim or the information or documents furnished him provides sufficient reasons to prove that goods do not meet the origin criteria.

Rule 6 : Verification request

All requests for verification under this rule are made through a nodal officer as designated by the Board. The Customs officer may request for verification of certificate of origin from the Verification Authority when –

- There is a doubt regarding the authenticity of the certificate of origin, or
- There is reason to believe that the claim by the importer of the preferential rate of duty is invalid, or
- The country-of-origin criterion provided in the certificate of origin is not met, or
- When verification is undertaken on a random basis to verify whether the goods meet the origin criteria for the purpose of due diligence.

When the verification request is initiated during the customs clearance course, the preferential tariff treatment of the imported goods may be suspended until the conclusion of the verification. The customs officer will conclude the verification within forty-five days of the receipt of the information requested.

The proper officer may deny the claim of the preferential rate of duty without further verification. He can deny the claim when –

- Verification Authority does not respond to the verification request within the prescribed time, or
- Verification Authority does not state the requested information in the manner prescribed in the Rules of Origin, or
- The available information and documents provide sufficient evidence that the goods imported do not meet the origin criteria which is prescribed in the respective Rules of Origin.

Rule 7 : Identical goods

If it's determined that goods originating from an exporter or producer do not meet prescribed origin criteria, this outcome will apply to identical goods from the same exporter or producer.

Rule 8 : Verification of all bills of entry

If 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 countries, the officer is also required under rule 8(1) to verify the assessment of all subsequent bills of entry. However, the importer demonstrates that he is taking reasonable care through adequate record-based controls; the compulsory verification of assessment will be discontinued.

“To ascertain the correctness of the claim, a customs officer may call for information or documents from the importer. He will be under obligation to provide or submit the same within ten working days from the date of such information or documents sought”

What information will the exporters have to provide to the importers for compliance with the record keeping obligation:

The production process undertaken in country of origin with respect to production of the imported good and which of the originating criteria prescribed in the Rules of Origin (ROO) has been claimed i.e., Wholly Obtained (WO), Regional Value Content (RVC), Change in Tariff Head (CTH), Change in Tariff Sub-Head (CTSH), Change in Chapter (CC) etc.

- Goods with origin criteria WO, the process through which it is claimed to fall under this category.
- Goods with origin criteria other than WO, the manufacturing/processing undertaken in the country of origin viz. Description of the goods, Production Process, Originating Criterion. Also, the importer would be required to furnish information for each originating material or component used in production of good viz. (i) whether manufactured by producer of final goods; (ii) whether procured by producer locally from a third party and (iii) in case procured from third party, did producer of final goods seek confirmation and documentary proof of origin of these components. If origin of any of the components cannot be ascertained the same will be treated as non-originating. Additional details as regards applicability of other provisions of the ROO which is used to determine the origin criteria i.e. de minimis provision, accumulation/cumulative provision, Value content (% of local value content and components which constitute value addition), application of Change in Tariff Classification (CTC) rule, process rule, whether COO has been issued retrospectively, whether the consignment has been shipped directly from country of origin”.

Benefits of CAROTAR to Importers:

The new Rules will support the importer to correctly ascertain the country of origin, properly claim the concessional duty and assist Customs authorities in the smooth clearance of legitimate imports under FTAs. The new rules would strengthen the hands of the Customs in checking any attempted misuse of the duty concessions under FTAs.

The CAROTAR Rules 2020 can be seen as a motivator for the domestic industry as it aims to cut down on frivolous imports at a preferential rate. It also implicitly boosts the Indian Government agenda of “*Aatmanirbhar Bharat*”. (Making India a self-reliant nation.)

Conclusion

The Sri Lankan exporters to India will have to make sure to provide all details required by the respective importers in India under these rules to avoid unnecessary delays of their shipments and claiming of respective tariff preferences under the Indo-Sri Lanka FTA.

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Acknowledgment of Content Contribution:

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