

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

**Notification No. 81/2020 - Customs (N.T.) dated** the 21<sup>st</sup> August, 2020

G.S.R. \_\_\_\_\_ (E).- In exercise of the powers conferred by section 156 read with section 28DA of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely:-

**1. Short title, commencement and application.**- (1) These rules may be called the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.

(2) They shall come into force on 21<sup>st</sup> day of September, 2020.

(3) They shall apply to import of goods into India where the importer makes claim of preferential rate of duty in terms of a trade agreement.

**2. Definitions.**- (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Customs Act, 1962 (52 of 1962);

(b) "Preferential rate of duty" means rate at which customs duty is charged in accordance with a trade agreement;

(c) "Preferential tariff treatment" means allowing preferential rate of duty to goods imported into India in accordance with a trade agreement;

(d) "Rules of Origin" means rules notified for a trade agreement in terms of sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975);

(e) "Tariff notification" means notification issued under sub-section (1) of section 25 of the Act specifying preferential rates of customs duty in accordance with a trade agreement;

(f) "Verification" means verifying genuineness of a certificate of origin or correctness of the information contained therein in the manner prescribed by the respective Rules of Origin;

(g) "Verification Authority" means the authority in exporting country or country of origin, designated to respond to verification request under a trade agreement.

(2) The words and expressions used herein and not defined in these rules but defined in the Act shall have the same meanings respectively as assigned to them in the Act.

**3. Preferential tariff claim.**— (1) To claim preferential rate of duty under a trade agreement, the importer or his agent shall, at the time of filing bill of entry,-

(a) make a declaration in the bill of entry that the goods qualify as originating goods for preferential rate of duty under that agreement;

(b) indicate in the bill of entry the respective tariff notification against each item on which preferential rate of duty is claimed;

(c) produce certificate of origin covering each item on which preferential rate of duty is claimed; and

(d) enter details of certificate of origin in the bill of entry, namely:

(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.

(2) Notwithstanding anything contained in these rules, the claim of preferential rate of duty may be denied by the proper officer without verification if the certificate of origin-

(a) is incomplete and not in accordance with the format as prescribed by the Rules of Origin;

(b) has any alteration not authenticated by the Issuing Authority;

(c) is produced after its validity period has expired; or

(d) is issued for an item which is not eligible for preferential tariff treatment under the trade agreement;

and in all such cases, the certificate shall be marked as “INAPPLICABLE”.

*Explanation:* Clause (d) of sub-rule (2) includes the cases where goods are not covered in the respective tariff notification or the product specific rule mentioned in the certificate of origin is not applicable to the goods.

**4. Origin related information to be possessed by importer.-** The importer claiming preferential rate of duty shall-

(a) possess information, as indicated in Form I, to demonstrate 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, and submit the same to the proper officer on request.

(b) keep all supporting documents related to Form I for at least five years from date of filing of bill of entry and submit the same to the proper officer on request.

(c) exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.

**5. Requisition of information from the importer.-** (1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.

(2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.

(3) Where, on the basis of information and documents received, the proper officer is satisfied that the origin criteria prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.

(4) Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.

(5) Notwithstanding anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where:

- (a) the importer relinquishes the claim; or
- (b) the information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

**6. Verification request.**—(1) The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority where:

- (a) there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;
- (b) there is reason to believe that the country of origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of duty made by importer is invalid; or
- (c) verification is being undertaken on random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed:

Provided that a verification request in terms of clause (b) may be made only where the importer fails to provide the requisite information sought under rule 5 by the prescribed due date or the information provided by importer is found to be insufficient. Such a request shall seek specific information from the Verification Authority as may be necessary to determine the origin of goods.

(2) Where information received in terms of sub-rule (1) is incomplete or non-specific, request for additional information or verification visit may be made to the Verification Authority, in such manner as provided in the Rules of Origin of the specific trade agreement, under which the importer has sought preferential tariff treatment.

(3) When a verification request is made in terms of this rule, the following timeline for furnishing the response shall be brought to the notice of the Verification Authority while sending the request:

- (a) timeline as prescribed in the respective trade agreement; or
- (b) in absence of such timeline in the agreement, sixty days from the request having been communicated.

(4) Where verification in terms of clause (a) or (b) of sub-rule (1) is initiated during the course of customs clearance of imported goods,

(a) the preferential tariff treatment of such goods may be suspended till conclusion of the verification;

(b) the Verification Authority shall be informed of reasons for suspension of preferential tariff treatment while making request of verification; and

(c) the proper officer may, on the request of the importer, provisionally assess and clear the goods, subject to importer furnishing a security amount equal to the difference between the duty provisionally assessed under section 18 of the Act and the preferential duty claimed.

(5) All requests for verification under this rule shall be made through a nodal office as designated by the Board.

(6) Where the information requested in this rule is received within the prescribed timeline, the proper officer shall conclude the verification within forty five days of receipt of the information, or within such extended period as the Principal Commissioner of Customs or the Commissioner of Customs may allow:

Provided that where a timeline to finalize verification is prescribed in the respective Rules of Origin, the proper officer shall finalize the verification within such timeline.

(7) The proper officer may deny claim of preferential rate of duty without further verification where:

(a) the Verification Authority fails to respond to verification request within prescribed timelines;

(b) the Verification Authority does not provide the requested information in the manner as provided in this rule read with the Rules of Origin; or

(c) the information and documents furnished by the Verification Authority and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

**7. Identical goods.**—(1) Where it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer.

(2) Where a claim on identical goods is rejected under sub-rule (1), the Principal Commissioner of Customs or the Commissioner of Customs shall,

(a) inform the importer the reasons of rejection in writing including the detail of the cases wherein it was established that the identical goods from the same exporter or producer did not satisfy the origin criteria; and

(b) restore preferential tariff treatment on identical goods 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 modified by the exporter or producer so as to fulfill the origin requirement of the Rules of Origin under the trade agreement.

**8. Miscellaneous.** – (1) Where an importer fails to provide requisite information and documents by the due date prescribed under rule 5, or where it is established that he has failed to exercise reasonable care to ensure the accuracy and truthfulness of the information furnished under these rules, the proper officer shall, notwithstanding any other action required to be taken under these rules and the Act, verify assessment of all subsequent bills of entry filed with the claim of preferential rate of duty by the importer, in terms of sub-section (2) of section 17 of the Act, in order to prevent any possible misuse of a trade agreement. The system of compulsory verification of assessment shall be discontinued once the importer demonstrates that he is taking reasonable care, as required under section 28DA of the Act, through adequate record-based controls.

(2) Where it is established that an importer has suppressed the facts, made wilful mis-statement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, his claim of preferential rate of duty shall be disallowed and he shall be liable to penal action under the Act or any other law for the time being in force.

(3) In the event of a conflict between a provision of these rules and a provision of the Rules of Origin, the provision of the Rules of Origin shall prevail to the extent of the conflict.

(4) The Central Government may, by notification in the Official Gazette, relax such provisions of these rules for such class of persons as may be deemed necessary.

### **Form I**

(Please refer to rule 4)

### **Section I**

(Guidance for filing up this Form)

In terms of section 28DA of the Customs Act, 1962, an importer making a claim for preferential rate of duty is required 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 in the trade agreement, are satisfied.

2. For the above purpose, this Form contains a list of basic minimum information which an importer is required to possess while importing the goods.

3. Section 28DA of the Act further requires that the importer shall exercise reasonable care to accuracy and truthfulness of the information supplied and the preferential claim. Hence, any additional information, as deemed fit to ascertain correctness of the country of origin criterion, may also be obtained.

4. Wherever necessary, technical terms used in the Form 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. Importers are, 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.

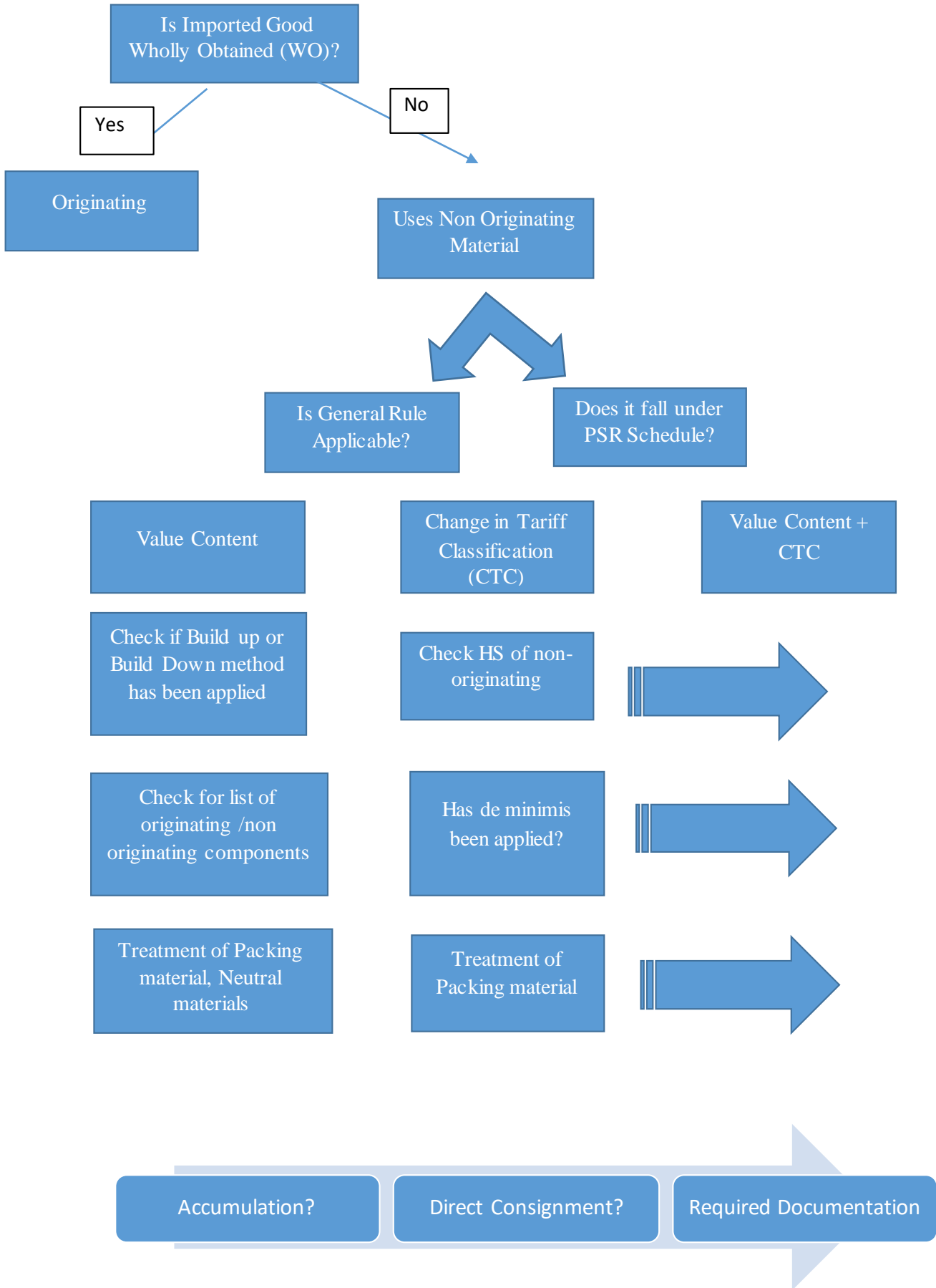
Note: Same good may be assigned different originating criteria in different trade agreements.

- 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.





## Section II

(To be filled after filing of Bill of Entry)

(a) **Name of the importer:**

(b) **Bill of Entry (B/E)No. and Date:**

(c) **Customs Station where B/E was filed:**

(d) **Goods on which preferential rate of duty has been claimed:**

S.no.	Description	Classification (8 digit)

## Section III

(This information should be possessed before import of goods)

### Part A:

1. Briefly describe the production process undertaken in country of origin with respect to production of the imported good. Also, state which of the originating criteria prescribed in the Rules of Origin has been claimed. For example, WO, RVC + CTH/CTSH or CTH or CC or RVC, etc.

[WO: Wholly Obtained; RVC: Regional Value Content; CTH: Change in Tariff Head; CTSH: Change in Tariff Sub-Head; CC: Change in Chapter]

**Note 1:** Where the good is claimed to be “Wholly Obtained”, mention the process through which it is claimed to fall under this category. Each trade agreement lists out such processes under a specific rule and may vary from agreement to agreement.

Examples:

- *goods obtained by hunting or trapping within the land territory, or fishing or aquaculture conducted within the internal waters or within the territorial sea of the Party;*
- *goods produced on board factory ships from the goods referred to in preceding paragraph, provided that such factory ships are registered or recorded with a Party and fly its flag.*

**Note 2:** If the goods are not wholly obtained, the manufacturing/processing undertaken in country of origin must be ascertained.

<b>Description of goods</b>	<b>Production process</b>	<b>Originating Criterion</b>
1.		
2.		

**Part B:**

(To be filled if originating criteria is NOT wholly obtained, for each of such good under import, on separate sheets)

1. State the following information for each originating material or component used in production of good subject to this request. If no originating material/components were used, same should be indicated as “None”.

**Description of good under import and its classification (8 digit):**

<b>Description of the originating Materials or Component</b>	<b>Whether manufactured by producer of final good</b>	<b>Whether procured by producer locally from a third party</b>	<b>In case procured from third party, did producer of final good seek conformation and documentary proof of origin of these component?</b>
	<b>(Yes/No)</b>	<b>(Yes/No)</b>	<b>(Yes/No)</b>
1.			
2.			

Note: If origin of any of the components used in manufacture of final good cannot be ascertained, same should be treated as non-originating.

2.

a.	Is the de minimis provision used to determine whether the good subject to this request qualifies as an originating good?	<input type="radio"/> Yes <input type="radio"/> No If yes, describe such material and the percentage value or quantity as applicable.
b.	Is the accumulation/cumulation provision applied to determine whether the good subject to this request qualifies as an originating good?	<input type="radio"/> Yes <input type="radio"/> No If yes, describe the manner and extent of cumulation.
c.	Has any other additional criteria such as indirect/neutral materials, packing materials, etc. used in ascertaining whether the good qualifies as an originating good.	<input type="radio"/> Yes <input type="radio"/> No If yes, provide the criteria used:  Describe the material concerned:
d.	Is the originating criteria based on value content?	<input type="radio"/> Yes <input type="radio"/> No If yes, provide the following:  (i) percentage of local value content:  (ii) components which constitute value addition  (e.g. material, profit, labour, overhead cost, etc.):
e.	Has CTC rule been applied for meeting originating criteria?	<input type="radio"/> Yes <input type="radio"/> No If yes, provide HS of non-originating material/components used in production of good:
f.	Has process rule been applied in ascertaining origin of good subject to this request?	<input type="radio"/> Yes <input type="radio"/> No If yes, provide the rule applied:
g.	Has the CoO been issued retrospectively?	<input type="radio"/> Yes <input type="radio"/> No If yes, provide reasons for same:

h.	Has the consignment in question been directly shipped from country of origin?	<ul style="list-style-type: none"><li>○ Yes</li><li>○ No</li></ul> If not, then has it been ascertained that same is as per provisions of the concerned agreement?  How has it been ascertained that goods have met the prescribed conditions of Direct Shipment?
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