

F.No.15021/18/2020 (ICD)

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

North Block, New Delhi
Dated 21st August, 2020

To,

All Chief Commissioners of Customs/Customs (Prev.)
All Chief Commissioners of GST
All Chief Commissioners of GST and Customs
All Directors General under CBIC

Sir/Madam,

Subject: Guidelines regarding implementation of section 28DA of the Customs Act, 1962 and CAROTAR, 2020 in respect of Rules of Origin under Trade Agreements (FTA/PTA/CECA/CEPA) and verification of Certificates of Origin- reg.

Reference is drawn to Chapter VAA and section 28DA of the Customs Act, 1962, which has been inserted vide clause 110 of Finance Act, 2020, and to Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (hereafter referred to as the CAROTAR, 2020) issued vide Notification No. 81/2020-Customs (N.T.) dated 21st August, 2020.

1.1 The aforementioned section and rules aim to supplement the operational certification procedures related to implementation of the Rules of Origin, as prescribed under the respective trade agreements (FTA/PTA/CECA/CEPA) and notified under the customs notifications issued in terms of section 5 of the Customs Tariff Act, 1975 for each agreement.

1.2 The CAROTAR 2020 shall come into force on 21st September, 2020, to provide sufficient time for transition and to ensure that the prescribed conditions in terms of rule 4 are complied with. Necessary modifications in bill of entry format are being made to allow declaration in terms of rule 3(a) and 3(d) of CAROTAR, 2020.

1.3 This circular aims to provide procedure for sending verification request to the Verification Authorities in exporting countries in terms of trade agreements, section 28DA and CAROTAR, 2020, and further guidelines for implementation of aforementioned section and rules.

2. The CAROTAR, 2020 and Rules of Origin notified for a trade agreement in terms of sub-section (1) of section 5 of the Customs Tariff Act, 1975, broadly provide the following grounds for verification:

a) In case of a doubt regarding the genuineness of the Certificate of Origin (CoO) such as any deficiency in the format of the certificate or mismatch of signatures or seal when compared with specimens on record.

b) In case of a doubt on the accuracy of information regarding origin, i.e. where a doubt arises on whether the product qualifies as an originating good under the relevant Rules of Origin. In other words, these are cases where there is a reasonable belief that a product is not grown or not produced/manufactured in a particular country or required value addition/change in CTH/PSR etc., as the case may be, has not been achieved for the goods to qualify as originating.

c) Verification could also be undertaken on random basis as a measure of due diligence. For this purpose, factors such as the quantum of duty being foregone, the nature of goods vis-à-vis the country of origin, commodities that are prone to mis-declaration of country of origin, compliance record of the importer etc., may be given regard while selecting Certificates of Origin for random verification.

3. The Rules of Origin, by virtue of which a good attains origin of a country, have evolved with subsequent reviews of trade agreements. Most trade agreements have moved from single general rule to specific rule for most of the tariff lines, with inclusion of vast array of processes which can confer origin. Section 28DA makes it incumbent upon an importer 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. For this purpose, CAROTAR, 2020 has provided a form, containing list of basic minimum information which an importer is required to obtain while importing goods under claim of preferential rate of duty. Therefore, in case there is a doubt with regard to origin of goods, information should be first called upon from the importer of the goods, in terms of rule 5 read with rule 4 of CAROTAR, 2020, before initiating verification with the partner country in terms of rule 6.

3.1 Section 28DA of the Act further states that mere submission of a certificate of origin shall not absolve the importer of the responsibility to exercise reasonable care to the accuracy and truthfulness of the information supplied. In case an importer fails to provide information in terms of section 28DA(1) (iii) of the Act and as prescribed under CAROTAR, 2020, or does not exercise reasonable care to ensure the accuracy and truthfulness of the information furnished, this fact should be informed to Risk Management Centre of Customs (RMCC) through written communication for the purposes of enabling compulsory verification of assessment of all subsequent import consignments in terms of rule 8(1) of CAROTAR, 2020. However, the compulsory verification of assessment should

be discontinued once the importer demonstrates that he has established adequate system of controls to exercise reasonable care as required under the Act.

4. Verification request should be forwarded to the Board based upon following standard operating procedures:

(i) In case several certificates pertaining to identical item are under review or scrutiny, only representative certificates should be forwarded to the Board to cause verification along with list of all CoOs to which the field formation aims to apply the result of such verification. Representative CoOs may be selected in such a manner to ensure that they cover each of the exporters, importers and the prescribed originating criteria. For instance, if there are several CoOs issued to a single exporter, but originating criteria are different, then CoOs covering each of the originating criteria may be considered to be forwarded for verification, with specific queries.

(ii) The verification proposal should be complete, keeping in mind all components of the prescribed format of CoO and all relevant aspects of the Rules of Origin, in order to avoid multiple queries to the Verification Authority/exporting country. For instance, in case a CoO has been issued retrospectively, it needs to be seen whether there are provisions in the Rules of Origin to issue retroactive CoO and whether reasons for retroactive issuance need to be provided by the Verification Authority. Similarly, should the proper officer feel the need to verify documents to establish compliance of 'direct consignment' or third-party invoicing, if provided for in the Rules of Origin, then the same should be included in the verification proposal.

(iii) Requests for verification must be sent to the Board with the approval of the jurisdictional Principal Commissioner/Commissioner. The reference for verification must contain legible copies of the Certificate of Origin, invoice and the Bill of Lading/Airway Bill. The request should also contain the information listed in the Annex.

(iv) Where verification is being considered for goods not cleared or cleared provisionally on grounds of verification of origin, such requests should be communicated immediately to the Board in case requests are in terms of rule 6(1)(a) or 6(1)(c) of CROTAR 2020; and within 10 days from the date of receipt of requisite information and documents from the importer in case the request is being considered in terms of rule 6(1)(b).

(v) Mechanism should be devised to monitor the requests which have been forwarded for verification, with special focus on cases where the timeline for response from the Verification Authorities is about to expire.

5. For ascertaining correctness of a claim of preferential rate of duty under a trade agreement, information may be sought from the importer during the course of customs

clearance or thereafter (e.g. during subsequent investigations or post-clearance audit). Likewise, a verification request may be made to an exporting country during the course of customs clearance of imported goods or thereafter. While the Act provides that information may be sought within a period of five years from the date of claim of preferential rate of duty by the importer, this time limit is subject to any other time limit as may be specified for this purpose under the trade agreement.

6. The Rules of Origin under various trade agreements lay down the format of the certificate of origin, the period of validity, manner of obtaining the certificate and the procedure for verification of origin. One of the usual conditions for accepting the certificate is that it should be signed by the authorized signatories whose name, signature and seal have been communicated by the partner country through agreed channels. At present, the signatures and seals are received by the Board, either directly from the government of the partner country or through the Department of Commerce.

6.1 The Directorate General of Systems has built an online repository on ICES for storing the signatures/seals to facilitate comparison by the assessing officers. DRI has been tasked with uploading the data in the database.

6.2 For the benefit of non-EDI customs locations, copies of specimen signatures and seals will be circulated by DRI. For other locations, the ICES online repository may be utilized.

6.3 In case the specimen seal/signature is not available in the ICES online repository, the issue may be referred to the Board for verification.

7. In terms of rule 6(5) of CAROTAR, 2020, Board has designated Director (ICD), CBIC as the nodal point for taking up verification of origin with partner countries. Hence all requests for verification should be addressed to:

Director (International Customs Division),
Central Board of Indirect Taxes & Customs,
Department of Revenue, Ministry of Finance,
Room No. 49, North Block,
New Delhi -110001.
011- 2309 3380 (off); 011-2309 3760 (fax.)
Email: ftaroo-cbic@gov.in

7.1 To help reduce time taken in communication of requests for verification of preferential country of Origin, it is advised to email all verification related correspondence to Board on ftaroo-cbic@gov.in. It may be noted that request through nic/icegate email ids will only be accepted. Such emails should include signed copy of the office letter and legible scanned copies of all relevant documents.

7.2 Where the information requested in terms of rule 6 is received, the proper officer should within the prescribed timelines either restore preferential claim or issue notice for denying the claim in terms of section 28DA, read with section 28 of the Act where required, in order to conclude the verification.

7.3 Where a claim for preferential rate of duty is denied, the CoO should be forwarded to the nodal point in the Board for record and onward communication to the exporting country, where required.

8. It is requested to conduct frequent training sessions in the zones to familiarize the officers with provisions of Rules of Origin prescribed under various trade agreements. Verification may also be sought based on data analysis, keeping in mind any change in import trend of a commodity, exporter, importer or any amendments to duty rates. Attention may also be drawn to the fact that where originating criteria claimed is as per product specific rules (PSRs), the HSN (harmonised system of nomenclature) version prescribed in the trade agreement shall apply. The preferential tariff treatment should be extended only in terms of the extant notification. For instance, provision for issuance of Back-to-Back CoO is presently available only under ASEAN-India FTA, and hence Back-to-Back CoO should not be accepted for goods imported under any other trade agreement.

8.1 It is also requested to share policy related feedback with the Board, through International Customs Division, to help analyse provisions of trade agreements which may require policy review.

9. Instruction no. 31/2016 – Customs dated 12.09.2016 stands superseded with the issue of this Circular.

10. Suitable Standing Order may be issued. Difficulties faced, if any, in implementation of this circular, may be immediately brought to the notice of the Board.

11. Hindi version follows.

(Mandeep Sangha)
Joint Commissioner (Customs)
International Customs Division, CBIC

Annex to Circular No. 38/2020 – Customs dated 21st August, 2020

[Please refer Paragraph 4(iii) of this Circular]

1. Name of the Commissionerate:
2. Name of the Free/ Preferential Trade Agreement:
3. Relevant Customs Notifications (Both Tariff and Non-Tariff notifications):
4. Reference No. of the Certificate of Origin:
5. Issuing Authority:
6. Name of the Consignee:
7. Name of the Consignor:
8. Description of goods:
9. Origin criteria as mentioned in the certificate:
10. Revenue involved (forgone):
11. Reason for requesting verification along with supporting documents, if any:

Please enclose:

1. A legible copy of the Certificate of Origin, invoice and Bill of Lading/Airway Bill.
2. Questionnaire for the Verification Authority, where required, with specific queries.