

India releases tighter rules regarding FTA origin compliance

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In brief

On 21 September 2020, new rules in India regarding FTA rules of origin went into effect. These rules, known as the Customs (Administration of Rules of Origin Under Trade Agreements) Rules (CAROTAR), require importers claiming FTA duty benefits to obtain various documents from their vendors and submit at the time of importation. Businesses using FTAs to import into India should work with their vendors as soon as possible to ensure they will be compliant with the CAROTAR.

In detail

In an effort to increase enforcement of FTA rules, the Government of India (GoI) amended the Customs Act, 1962 to introduce new controls on FTA use. The amendment went into effect on 27 March 2020. As a result of the amendment, those importing goods into India under an FTA are responsible for: the accuracy of information on FTA certificates of origin, compliance with value-added requirements, and access to cost data. The amendment also provided for penalties against importers who fail to share requisite information.

Pursuant to this amendment, the GoI has now released a blueprint of the procedural and compliance requirements for importers, and processes and timelines for verification by customs authorities. This is known as the Customs (Administration of Rules of Origin Under Trade Agreements) Rules, or CAROTAR. The CAROTAR went into effect on 21 September 2020.

The following is a summary of the key provisions of the CAROTAR.

- The importer needs to make specified declarations in terms of: goods meeting the rules of origin; particulars of exemptions being claimed; specific details of the certificate of origin such as reference number, date of issuance, originating criteria; and others. These details are to be provided at the time of filing the Bill of Entry to claim preferential benefits.
- The importer also needs to possess the minimum information prescribed under Form I, some of which are as follows:
 - Description of the production process undertaken in the country of origin
 - Manner in which the origin criteria is determined
 - Treatment of packing materials
 - Nature of export
 - Manufactured by the exporter or procured locally from a third party
 - In case of procurement from a third party, the exporter needs to seek confirmation and documentary proof of origin of these goods.
 - Details regarding the application of rules such as Change in Tariff Classification, Regional/Domestic Value Content, Special Process, de minimis, etc. (if any)

- The CAROTAR also prescribes detailed procedures and timelines for verification of FTA claims by the Indian authorities with their counterparts/the issuing authority in the exporting country. In this regard, note that some of India's FTAs already provide for such retrospective verification following the import of the goods into India.
- The customs authorities will outright deny FTA benefits, even without verification, in circumstances such as the following:
 - Incorrect tariff item has been declared for the purposes of claiming FTA benefits in respect of goods that are not otherwise covered by the FTA
 - Incomplete description of goods in the certificate of origin
 - Any unauthorized alteration to the certificate of origin that is not made by the issuing authority in the exporting country
 - Expired certificate of origin
- If it is determined that the imported goods do not meet the origin criteria, Indian Customs may reject other FTA claims on identical goods, filed previously or afterwards, by the importer from the same exporter or producer without any verification.
- Inability to share requisite information with the customs authorities may lead to the following consequences:
 - Temporary suspension of benefits until the completion of verification by the customs authorities. In the interim, the goods can be released provisionally upon furnishing a security in the amount equal to the differential duty.
 - Confiscation of the goods

All claims in such cases, including the failure to exercise due diligence on disclosures, will be subject to verification at the time of assessment until corrective action is taken to the satisfaction of the customs authorities. Benefits will be restored after information and documents have been provided to show that corrective action has been taken by the exporter or producer to meet the origin requirements. There is also the possibility that penalties may be assessed or that violators may be criminally prosecuted.

The takeaways

Businesses currently importing goods into India and claiming benefits under FTAs or planning to use FTAs in the future need to be prepared to provide documentation of regional value content and other requirements under the applicable FTA. Failure to comply with these requirements could have an adverse impact in terms of supply chain disruption, denial of FTA benefits, penal consequences, and more.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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