FTA benefits – increased monitoring and administration

The Union Budget 2020-21 had introduced a new chapter in the (Indian) Customs Act, 1962 to administer, monitor and investigate claims of preferential duty benefits and for administration of Rules of Origin under the relevant Free Trade Agreements. In furtherance thereof, the Government has now introduced Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('CAROTAR 2020') *vide* **Notification No. 81/2020 – Customs (NT) dated August 21, 2020** providing detailed procedural framework for governing preferential duty claims. CBIC has also issued **Circular No. 38/2020 – Customs dated August 21, 2020** clarifying various aspects of CAROTAR 2020.

CAROTAR 2020 imposes significant compliance obligations on importers claiming benefits under Trade Agreements ranging from declarations in Bill of Entry to maintenance of records. Any non-compliances could lead to denial of preferential customs duty rates.

Key features of CAROTAR 2020 are summarized as under:

1. CAROTAR 2020 will come into effect from **September 21, 2020**. Importers need to fulfil many compliance obligations prior to this date.
2. Importers would be required to make additional declarations on Bills of Entry for preferential benefit claimed. Corresponding amendments are being made in the format of Bills of Entry for this purpose. The additional declarations to be made on Bills of Entry are:
   i. Declaration that imported goods qualify as originating goods
   ii. Certificate of Origin ('CoO') reference number and date of its issuance
   iii. Originating criteria
   iv. Application of accumulation / cumulation
   v. Issuance of CoO by third country (back-to-back)
   vi. Transportation of goods directly from country of origin
3. Importers need to maintain sufficient information relating to origin of imported goods in **Form I** before import of goods. This information needs to be maintained for 5 years from date of filing of bill of entry. This information includes:
   i. Production process involved in the manufacturing of imported goods
   ii. If imported goods are claimed to be wholly obtained (produced without any non-originating input material), production process involved in such manufacturing
   iii. If imported goods are not wholly obtained, then:
      a) Production process for each imported good;
      b) Description of input material used in production of imported goods; and
      c) Nature of originating criteria fulfilled.

   Form-I is quite detailed and the importer in India will need to re-look at the 'rules of origin' criteria and extract relevant information, including also from the overseas suppliers. This is an involved exercise as data is required to be maintained commencing from bills of entry dated March 27, 2020 (i.e., from enactment of Finance Act, 2020).

4. CAROTAR 2020 also provides that during customs clearance or thereafter, proper officer can seek information or supporting documents from the importer if he has reasons to believe that

Rules of Origin are not met. Importer is obligated to furnish such information within **10 working days**. Where the proper officer is not satisfied with the information provided by importer, he can cross-check veracity of CoO from Verification Authority (i.e. authority in exporting country designated for responding to verification requests). Proper officer can also deny benefit of preferential duty where importer or Verification Authority fails to respond or provides incomplete information regarding origin of product. This benefit can be denied for all identical goods imported from same exporter / producer.

Our comments and suggested way forward

The introduction of CAROTAR 2020 brings stringent measures in force for importers claiming preferential duty benefits. *With less than a month's time for its implementation, importers availing such benefits will need to step up against time to undertake all compliances prescribed under CAROTAR 2020, especially maintenance of requisite information in the prescribed FORM-I.* Also, electronic and systematic maintenance of records will assume significance as the customs officer will grant time of only 10 working days to furnish the information. Non-submission of satisfactory information could lead to denial of duty benefits and thus directly impact the landed cost of goods into India.

To summarize, key compliances prescribed by CAROTAR 2020, effective September 21, 2020 are:

i. Sourcing information for declarations in bills of entry for claiming preferential rate of customs duty;
ii. Ascertaining appropriateness of 'certificate of origin';
iii. Maintaining detailed information in FORM-I relating to origin of goods, including criteria for regional value content as prescribed under the 'rules of origin';
iv. Maintaining such information along with appropriate documents for at least 5 years from the date of bill of entry;
v. On specific request by the customs officer, furnishing information and documents to demonstrate appropriateness of preferential duty claim

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