

DA TAX UPDATE- INDIRECT TAX

An e-Tax update from **Darda Advisors LLP**

Customs - Administration of Country of Origin under FTA – Rules and Guidelines issued

Issue: 02



Customs - Administration of Country of Origin under FTA*

The Government of India recently issued Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 [CAROTAR 2020] read with Chapter VAA and Section 28DA of Customs Act, 1962 for administration of Country of Origin (CoO) compliance under the respective trade agreements (FTA / PTA / CECA / CEPA) and to be applied when the importer makes claim of preferential rate of duty in terms of a trade agreement. The same is effective from **21 September 2020**

Importer Obligation - who claims preferential rate under FTA/PTA/CECA/CEPA

Overall:

- Declaration in the bill of entry (BoE) that the goods qualify preferential rate treatment
- Indicate the respective tariff notification against each item
- Produce CoO covering each item

* [Notification No. 81/2020 – Customs \(N.T\) dated 21 August 2020](#)

Importer Obligation - who claims preferential rate under FTA/PTA/CECA/CEPA

Overall:

- Maintenance of records and sufficient information in Form I for at least 5 years from the date of filing of BoE covering:
 - Country of origin criteria
 - Regional value content
 - Product specific criteria, specified in the Rules of Origin, are satisfied
- Retain all supporting documents related to Form I for at least five years from the date of filing of BoE
- Exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents
- Submit relevant detail including Form I and supporting documents to the proper officer on request

Importer Obligation - who claims preferential rate under FTA/PTA/CECA/CEPA

Declaration in Bill of Entry:

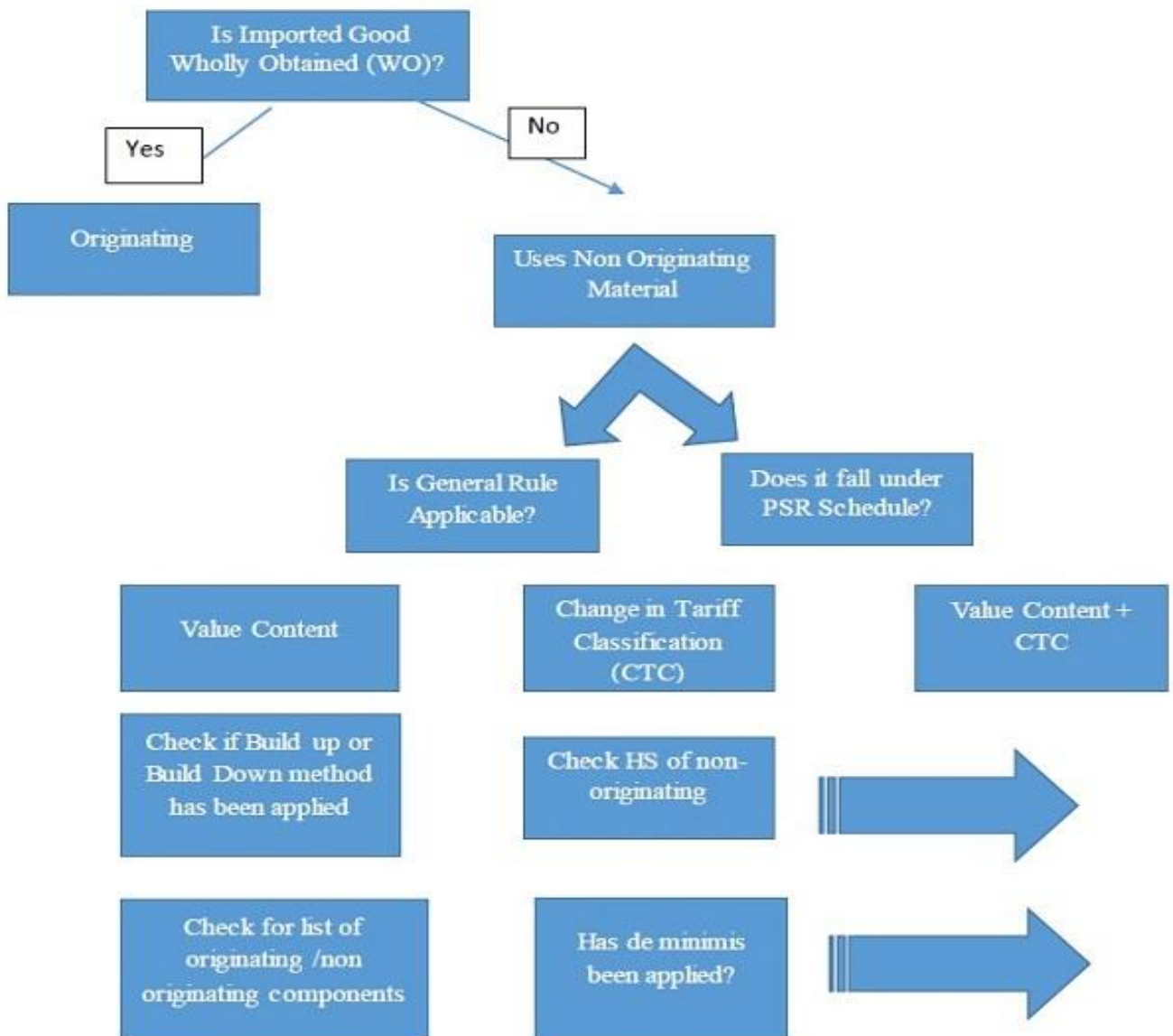
- CoO reference number
- Date of issuance of CoO
- Originating criteria
- Indicate if accumulation/cumulation is applied (As per multi country FTA/PTA/CECA/CEPA)
- Indicate if the CoO is issued by a third country (back-to-back)
- Indicate if goods have been transported directly from CoO

Note: Customs shall make necessary modifications in the bill of entry format to allow additional declarations

Importer Obligation - who claims preferential rate under FTA/PTA/CECA/CEPA

Form I – Detail to be possessed by Importer:

Section I – Guidelines for filing the form (Refer relevant definitions and below pictorial presentation)



Form I – Detail to be possessed by Importer:

Section II:

- Name of the importer:
- BoE No. and Date:
- Customs Station where BoE was filed:
- Goods on which preferential rate of duty has been claimed

Note: To be filled after filing of Bill of Entry

Section III:

Note: This information should be possessed before import of goods

Part A:

- Production process undertaken in the CoO
- Origin criteria claimed (e.g. wholly obtained or not, regional value content, change in tariff code)

Part B:

- Questionnaire for not wholly obtained goods, description of each originating raw materials /

Form I – Detail to be possessed by Importer:

components with a confirmation if manufactured by producer or procured locally from third party

- Where procured from third party, if producer has sought conformation and documentary proof of origin

Note:

- To be filled if originating criteria is NOT wholly obtained, for each of such good under import
- If origin of any of the components used in manufacture of final good cannot be ascertained, same should be treated as non-originating

Following criteria for each originating material or component used in production of good needs to be maintained:

- When de minimis rule applied, describe the non-originating material and its percentage value / quantity
- When accumulation rule applied, describe the manner and extent of accumulation
- When additional criteria (eg. Indirect / packing materials) applied, describe such criteria with material concerned

Form I – Detail to be possessed by Importer:

- When value content rule applied, provide value addition % and accounted components (e.g. material, profit, labour, overheads)
- When tariff jump rule applied, provide HS of non-originating raw material /components used in production
- When process rule applied, specify such rule
- When CoO issued retrospectively, provide reasons

Implications on importer for non compliance:

- Compulsory verification where:
 - Importer fails to provide requisite information and documents within the prescribed time of 10 days for the bill of entry under verification, or
 - Established that that the importer has failed to exercise reasonable care to ensure accuracy and truthfulness of the information furnished to Customs
 - Identical goods imported from the same exporter or producer may be denied preferential treatment, which may impact all other importers

Implications on importer for non compliance:

- Notice to the importer demanding differential duty with interest
- Penalty as applicable
- Confiscation of imported goods and prosecution of the importer under Customs Act

Power of Proper Officer/Customs authority:

- Verify the importer's claim of preferential rate of duty
- Obtain information and supporting documents from importer in terms of Form I either during customs clearance or thereafter.
- In case, information is not submitted by an importer within the prescribed time or the information received is found insufficient to conclude on origin of imported goods, request for further verification by the exporting country's Verification Authority
- Pending verification, Proper Officer/Customs authority may
 - Suspend preferential treatment to the imported goods

Power of Proper Officer/Customs authority:

- Permit provisional assessment of goods on importer's request where the importer furnishes appropriate security amount
- Instead of security, require the importer to deposit differential duty amount in the ledger maintained
- Proper Officer may deny claim of preferential rate of duty without verification where:
 - CoO is incomplete and not in accordance with the format prescribed under the Rules of Origin under the respective trade agreement, or
 - Any alteration not authenticated by the Issuing Authority of the exporting country, or
 - Produced after its validity period has expired, or
 - Issued for an item which is not eligible for preferential tariff treatment
- The Principal Commissioner / Commissioner may also disallow the claim of preferential duty without verification for reasons to be recorded in writing, where –
 - the importer relinquishes the claim of preferential duty, or
 - the information and documents furnished by the importer and available on record provide sufficient evidence to prove that the imported goods do not meet origin criteria

Action Plan for importers claiming preferential rate treatment under various FTA/PTA/CECA/CEPA

- Evaluate all imports where preferential rate benefit is claimed when exported by:
 - Related party
 - Un-related party
- Assessment of present classification and claims made under various Trade Agreements
- Inform the respective exporters about the requirements to be complied in India under CAROTAR 2020
- Deliberation with CHA/Customs broker for process currently followed and new procedure to be followed considering CAROTAR 2020
- Periodical diagnostic review of compliance under various FTA and CAROTAR 2020
- Highlight the risk involved to the management in advance and step plan in case not complied with CAROTAR 2020

Relevant Provisions

- [Chapter VAA of Customs Act, 1962](#)
- [Section 28DA of Customs Act, 1962](#)
- [CAROTAR 2020](#)
- [Circular No. 38/2020](#)

About Darda Advisors LLP

Darda Advisors LLP offers a wide range of services in the tax and regulatory space to clients in India with professionals having extensive consulting experience. Our service offerings are:

- Goods and Service Tax (GST) Services
- Other Indirect Tax Services
- SEZ/EOU Incorporation and Compliance
- Foreign Trade Policy (FTP) Assistance
- Company Secretarial Services
- Due Diligence
- Incentives (Central and State) Assistance
- Valuation Services
- Virtual Tax Head Services
- Corporate Tax and International Tax Services
- Certification and Attestation

Key Professionals

D. Vineet Suman [FCA, CS, CMA(I)] – Strategic Management and Tax Expert
Vineet has over 15 years of consulting experience in leadership role in Indirect tax including GST (around 13 years in Big 4)

Mitu Surana [B.Com, ACA] – Litigation and Tax Expert
Mitu has experience of over 16 years in Indirect tax including GST (around 10 yrs in Big 4)

Contact Us

☎ +91 99529 26239 ☎ 040 2340 6239 ✉ vineetdarda@dardaadvisors.com

Our Locations

Hyderabad - 6-3-1086, 5th Floor, Vista Grand Towers, Raj Bhavan Road, Somajiguda, Hyderabad – 500082

Chennai - 13, T.K. Mudali Street, Choolai, Chennai - 600112

Delhi-NCR - N93, Ground floor, Mayfield garden Sector 51 Gurgaon, Haryana, 122018

Bhilwara - Moti Chambers, 62&63, Sancheti Colony, Lane beside KK Tower, Pur Road. Bhilwara - 311001



Ping 'Hi' for regular updates on **+91 99529 26239**

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