

# **RULES OF ORIGIN SECTION 28DA OF THE CUSTOMS ACT, 1962 CAROTAR, 2020**

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

# Presentation Plan

## POINTS OF DISCUSSION

What has changed?

Preferential Trade Arrangements

The Rules of Origin

What do you need to know?

What do you need to do?

Q & A

- The Customs Acts
  - Once a trade agreement is finalized, CBIC issues notifications for implementing tariff concessions and rules of origin, under section 25 of the Customs Act and section 5 of the Customs Tariff Act respectively, in order to incorporate the commitments undertaken in domestic legislation.
- The Union Budget 2020-21 - <https://www.indiabudget.gov.in/>
  - Chapter VAA and section 28DA of the Customs Act, 1962
  - The Finance Act, 2020 - <http://egazette.nic.in/WriteReadData/2020/218938.pdf>
- **The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020)** - Notification No. 81/2020 - Customs (N.T.) dated the 21st August, 2020 - [https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/formatted-htmls/RevisedCus\(AdminofRules\)Rules2020.pdf](https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/formatted-htmls/RevisedCus(AdminofRules)Rules2020.pdf)
- **Circular No. 38/2020-Customs, dated 21<sup>st</sup> August 2020** - <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-38-2020.pdf>
- Press Release - <https://pib.gov.in/PressReleasePage.aspx?PRID=1656254>
- **CBIC Brochure on CAROTAR**-[https://www.cbic.gov.in/resources//htdocs-cbec/customs/CarotarBrochure\\_8thOct2020.pdf](https://www.cbic.gov.in/resources//htdocs-cbec/customs/CarotarBrochure_8thOct2020.pdf)



# India's Trade Agreements/ Rules of Origin

As in September 2020

Bilateral Agreements		Regional Agreements	
1. India-Sri Lanka FTA (2000)	6. India-Thailand EHS (2004)	1. India-ASEAN (2010)	Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand, Singapore, Vietnam
2. India-Japan CEPA (2011)	7. India-Chile PTA (2007)		
3. India-Korea CEPA (2010)	8. India-Afghanistan (2013)		
4. India-Malaysia CECA (2011)	9. India-Singapore CECA (2005)	2. Asia Pacific Trade Agreement (APTA) (1975)	Thailand, Bangladesh, China, Republic of Korea, Sri Lanka
5. India-Nepal Trade Treaty (1950)	10. India-Bhutan Agreement on Trade & Transit (2016)		
Unilateral DFTP Scheme (34 LDCs) (2008)		3. Agreement of South Asian Free Trade Area (SAFTA) (2006)	Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka, Afghanistan
Afghanistan, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Eritrea, Ethiopia, Gambia, Guinea, Guinea Bissau, Haiti, Lao PDR,	Lesotho, Liberia, Madagascar, Malawi, Mali, Mozambique, Myanmar, Niger, Rwanda, Senegal, Somalia, Sudan, Timor Leste, Togo, Uganda, Tanzania, Yemen, Zambia	4. India-MERCOSUR (2009)	Argentina, Brazil, Paraguay, Uruguay
		5. Global System of Trade Preference (1989)	47 Developing Countries

Table Credits: Ms. Mandeep Sangha, JC ICD CBIC

- Each FTA contains a set of rules of origin, which prescribe the criteria that must be fulfilled for goods to attain 'originating status' in the exporting country. Such criteria are generally based on factors such as domestic value addition and substantial transformation in the course of manufacturing/processing.
  - For instance, the originating criteria finalized under a trade agreement could be domestic value addition of minimum 35% plus substantial transformation through Change in Tariff Sub-Heading (CTSH) – only then will it earn the origin qualification of being 'made in' the partner country
- Operational certification Procedures - OCPs are integral part of Rules Of Origin, and guide the exporters / importers how to claim the benefit of a trade agreement. They also lay down form of COO, manner of issuing it and process of origin verification

# Budget 2020- 21

- **Budget 2020-2021** | [Speech of Ms. Nirmala Sitharaman, Hon'ble Minister of Finance, Government of India](#) | February 1, 2020
- 136. It has been observed that **imports under Free Trade Agreements (FTAs) are on the rise. Undue claims of FTA benefits have posed threat to domestic industry. Such imports require stringent checks.** In this context, suitable provisions are being incorporated in the Customs Act. In the coming months we shall review Rules of Origin requirements, particularly for certain sensitive items, so as ensure that FTAs are aligned to the conscious direction of our policy.
- [Annex to Part B of Budget Speech | Indirect Tax Proposals](#): Legislative Changes in Customs

Chapter VAA and section 28DA were inserted in the Customs Act, 1962, vide clause 110 of Finance Act, 2020 - this provides the enabling provision for administering the **preferential tariff treatment regime under Trade Agreements.**

The new section seeks to specifically provide for certain obligations on importer

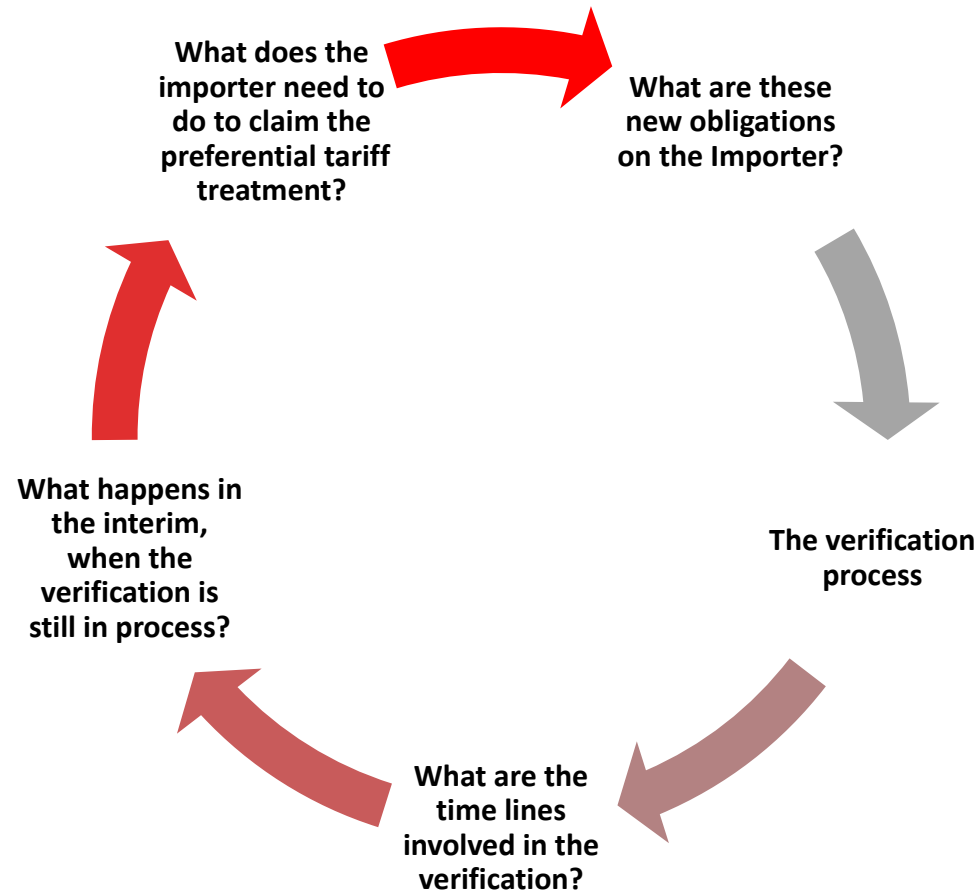
Prescribes a time bound verification from exporting country in case of doubt.

Pending verification preferential tariff treatment shall be suspended and goods shall be cleared only on furnishing security equal to differential duty.

In certain cases, the preferential tariff treatment may be denied without further verification.

- **Notification 81/ 2020- Customs (N.T.), dated 21<sup>st</sup> August 2020 – apprises of that the Government has made Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020**
  - Came into force on 21<sup>st</sup> September 2020
  - CAROTAR, 2020 applies to import of goods into India where the importer makes a claim of preferential rate of duty under a trade agreement – Rule 1(3)
- The importer shall furnish details of Certificate of Origin (CoO) in the bill of entry and make necessary declaration in order to claim preferential rate of duty
  - [Amendments to the Bill of Entry](#) – Notification No.90/2020-Customs (N.T.), dated 17-09-2020
- The importer shall possess information (indicated in Form I) to demonstrate the manner in which the origin criteria is satisfied and maintain all supporting documents for at least five years from the date of filing of bill of entry
  - To be filed when? – CAROTAR, 2020 – Rule 5
- During customs clearance or thereafter, if the proper officer has a **reason to believe** that origin criteria has not been met, he may seek information and documents from the importer
- Verification request can be made before the appropriate authority where proper officer has doubt regarding genuineness or authenticity of CoO or has a reason to believe that the country of origin criterion stated in CoO has not been met or claim of preferential rate is invalid
- Where it is determined that goods originating from an exporter or producer do not meet the origin criteria, other claims of preferential rate of duty filed for identical goods imported from the same person, prior to or after such determination, may be rejected.

## Key features of CAROTAR, 2020 - Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020



## Origin Determination – Factors/ Methodologies

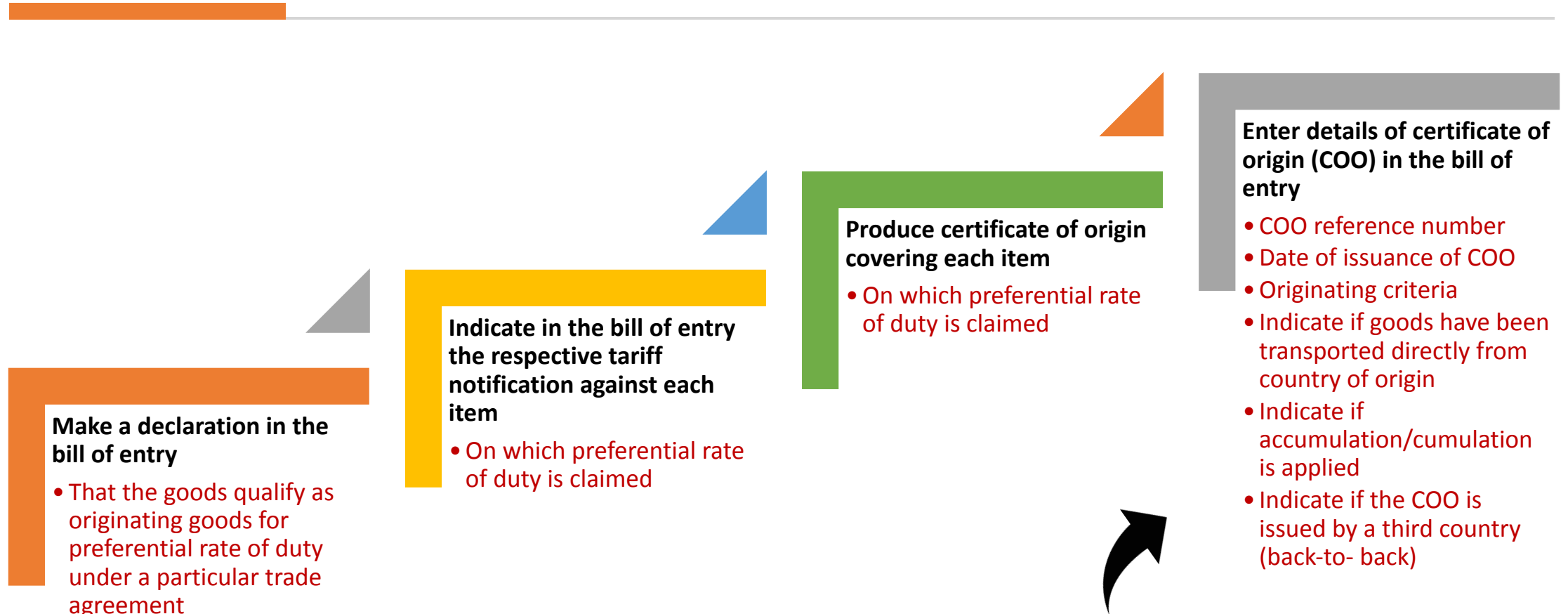
- Goods Wholly Obtained (WO)
- Goods that are produced using non-originating materials - not wholly obtained
- General Rule
- Product Specific Rule (PSR)
- Value Content Method - Build up/ Build Down/ Net cost method
- Change in Tariff Classification (CTC) Method
- Process Rule Method
- De minimis
- Cumulation/ Accumulation
- Indirect/Neutral elements
- Rule on treatment of packages and packing materials for retail sale:
- Direct Consignment

# The specific meanings assigned to certain expressions in terms of the definitions in Rule 2 of CAROTAR, 2020

“Preferential rate of duty”	“Preferential tariff treatment”	“Rules of Origin”	“Tariff notification”	“Verification”	“Verification Authority”
<ul style="list-style-type: none"><li>• Means <b>rate at which customs duty is charged in accordance with a trade agreement</b></li></ul>	<ul style="list-style-type: none"><li>• Means <b>allowing preferential rate of duty to goods imported into India in accordance with a trade agreement</b></li></ul>	<ul style="list-style-type: none"><li>• Means <b>rules notified for a trade agreement in terms of subsection (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975)</b></li></ul>	<ul style="list-style-type: none"><li>• 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</li></ul>	<ul style="list-style-type: none"><li>• Means <b>verifying genuineness of a certificate of origin or correctness of the information contained therein</b> in the manner prescribed by the respective Rules of Origin</li></ul>	<ul style="list-style-type: none"><li>• Means the <b>authority</b> in exporting country or country of origin, <b>designated to respond to verification request</b> under a trade agreement.</li></ul>

# What does the importer or his agent have to do at the time of filing the bill of entry, **to claim preferential rate of duty under a trade agreement?**

[Rule 3 (1) (a)-(d) of CAROTAR, 2020]



These additional fields in the Bill of Entry format are available from 21.09.2020. Likewise, changes have also been incorporated in the manual Bill of Entry format, to cater to customs stations where EDI facility is not available.



# When can the of claim of preferential rate of duty **be denied** by the Proper Officer without verification of the COO ?

[Rule 3(2) of CAROTAR, 2020]



Claim of preferential rate of duty can be denied by the proper officer without verification if the certificate of origin

- Is incomplete and not in accordance with the format as prescribed by the Rules of Origin
- Has any alteration not authenticated by the Issuing Authority
- Is produced after its validity period has expired
- Is issued for an item which is not eligible for preferential tariff treatment under the trade agreement (includes the cases where the goods are not covered in the respective tariff notification or the product specific rule mentioned in the COO is not applicable to the goods)

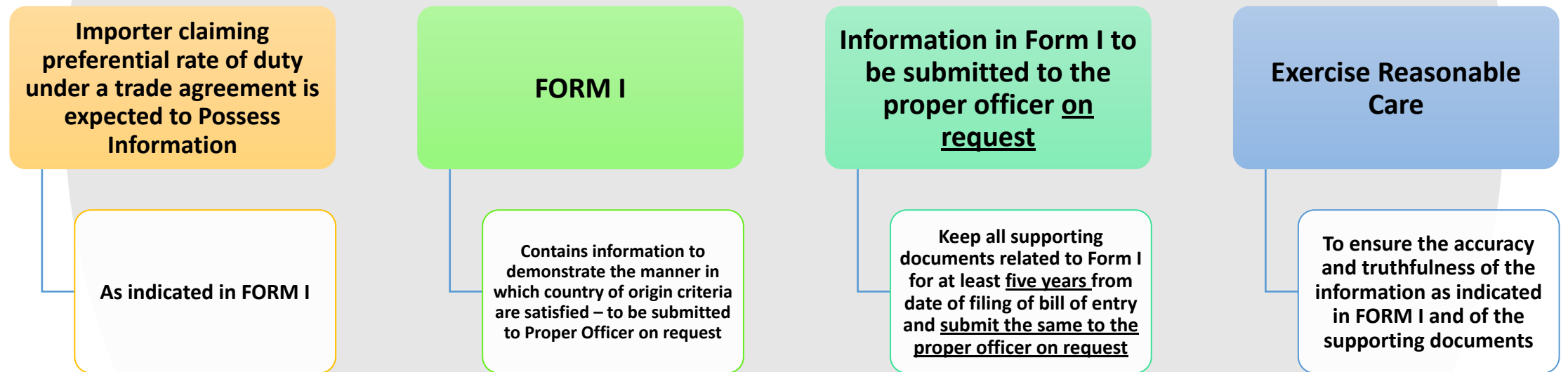
Explanation to Rule 3

The non- obstante clause –rule 3(2) of CAROTAR 2020 - Notwithstanding anything contained in these rules, the claim of preferential rate of duty may be denied ... and in all such cases, the certificate shall be marked as “INAPPLICABLE”.

When else can the claim of preferential rate of duty be disallowed without further verification ?

- In terms of **Rule 5(5) of the CAROTAR,2020** - Notwithstanding anything contained in Rule 5, 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.
- Rule 5 deals with Requisition of information from the importer for the purposes of ascertaining the correctness of the claim of satisfaction of the origin criteria prescribed in the concerned Rules of Origin.

# What Origin related information is to be possessed by the Importer claiming preferential rate of duty? [Rule 4 of the CAROTAR, 2020]



**REASONABLE CARE:** The degree of caution and attention to possible dangers that an ordinarily prudent and rational person would use in similar circumstances.

# Who, When, Why, What of the information that can be requisitioned from the Importer – Rule 5 (1) of the CAROTAR, 2020

Who can requisition the information?

The Proper Officer - generally, it would be the Superintendent / Appraising Officer doing a verification under Section 17 (2) of the Customs Act of the self – assessed duty by the importer entering any imported goods under section 46.

When can this information be requisitioned?

During the course of customs clearance or thereafter

Why is the information requisitioned?

The proper officer has **reason to believe that origin criteria prescribed in the respective rules of origin have not been met**, information and supporting documents, as may be deemed necessary **to ascertain correctness of the claim for preferential rate of duty**

What information can be sought from the importer in such circumstances?

Information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 (of the CAROTAR, 2020) – **the FORM I and supporting documents.**

How much time does the importer from whom the information has been requisitioned by the Proper Officer, have to furnish the information?

**Ten working days** from the date of such information or documents being sought – Rule 5(2) of the CAROTAR, 2020.

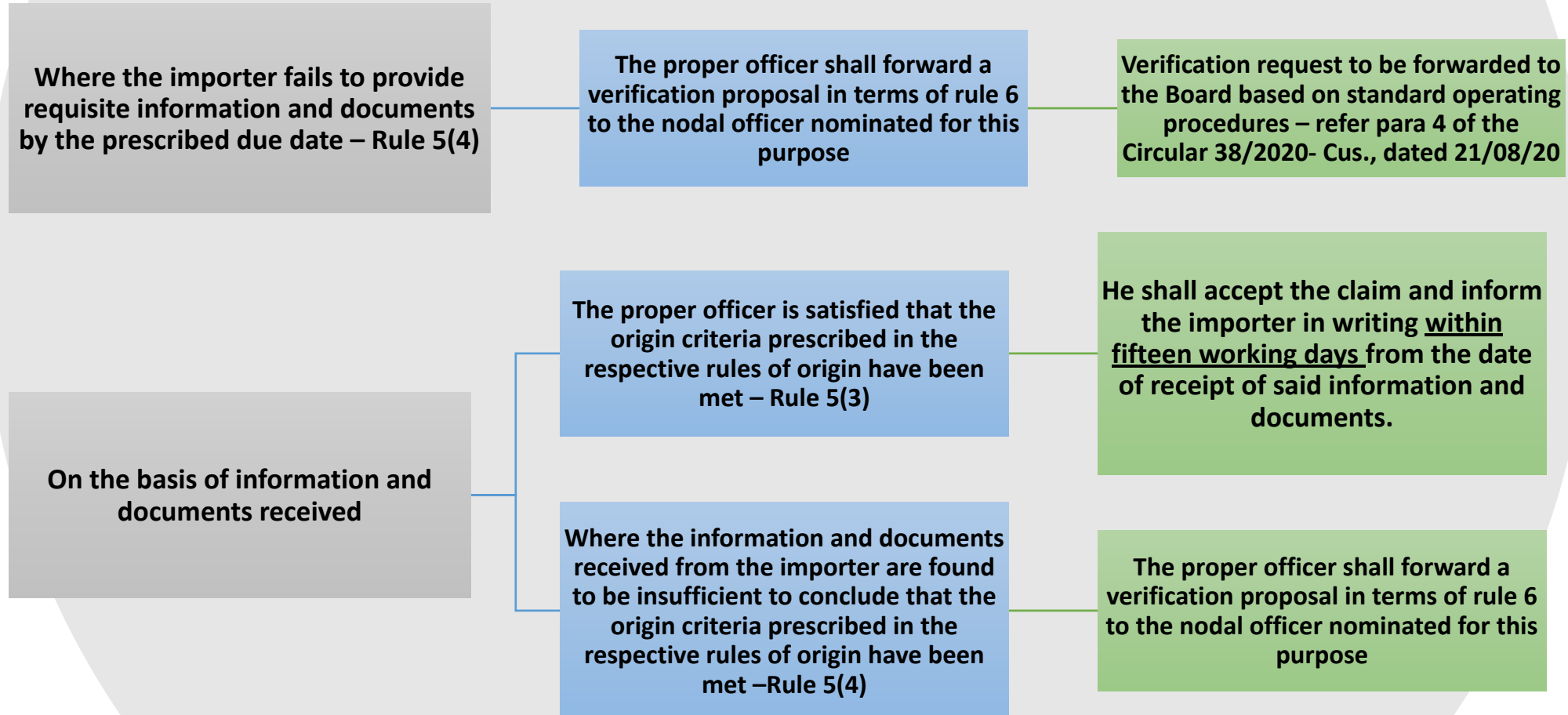


# What next after the requisition of information under Rule 5 (1) of the CAROTAR, 2020?



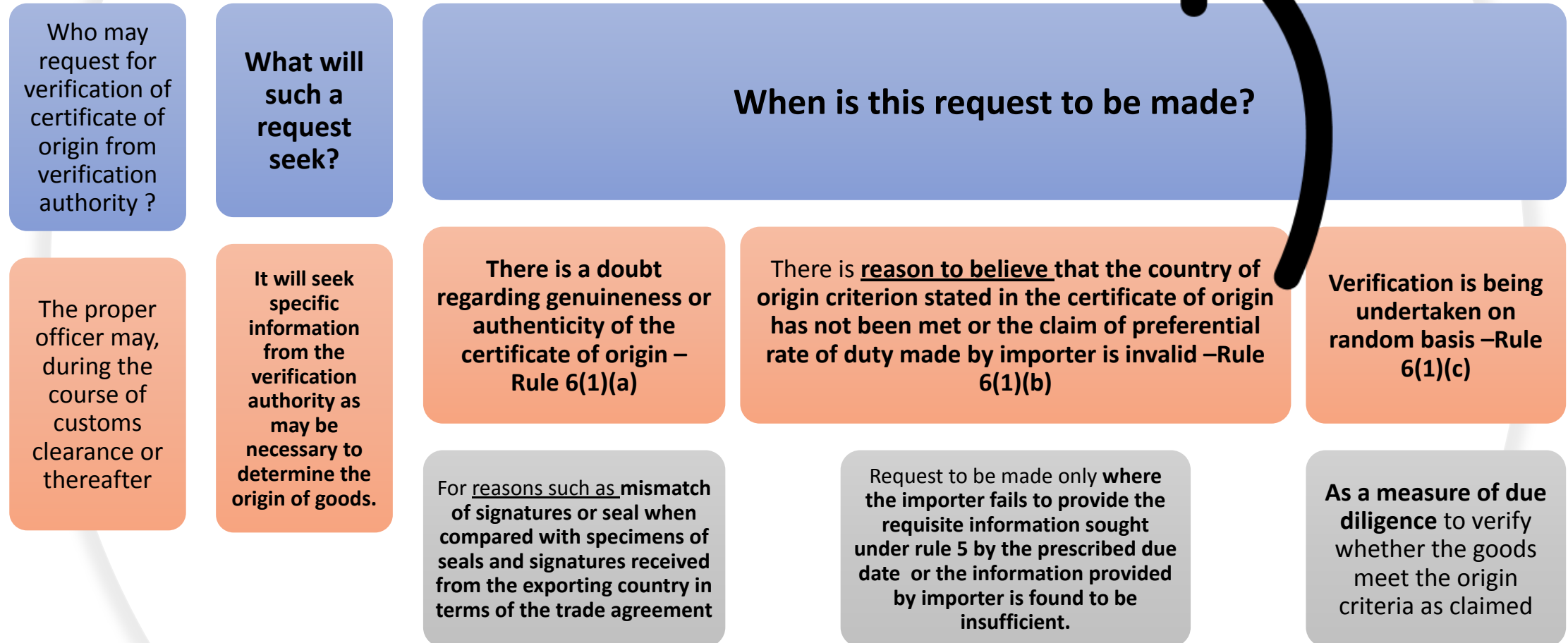
The importer asked to furnish information or documents is to provide the information or documents sought to the proper officer **within ten working days from the date of they have been sought** – Rule 5(2) of the CAROTAR, 2020

# After information is requisitioned in terms of Rule 5(1) of the CAROTAR, 2020



# Verification Request- Rule 6(1) of the CAROTAR, 2020

The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Officer, but a reason held in good faith; one which can stand up to an examination in an appropriate forum of whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief. There has to be a live link or close nexus which should be there between the material before the Officer and the belief which he forms regarding the accuracy of information regarding origin.



# Rule 6(2) & (3) of CAROTAR, 2020



**In case information received from the verification authority is incomplete or nonspecific**

Request for additional information or

Request for a 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 – rule 6(2) of the CAROTAR, 2020



**Rule 6(3) of CAROTAR, 2020 -when a verification request is made in terms of rule 6, the following timeline for furnishing the response is to be brought to the notice of the verification authority at the time of sending the request:**

Timeline as prescribed in the respective trade agreement; or

In absence of such timeline in the agreement, sixty days from the request having been communicated.



# Verification Request- Rule 6(4) of the CAROTAR, 2020

Where verification is initiated  
**during the course of customs  
clearance of imported goods**

In a situation of a doubt regarding genuineness or authenticity of the certificate of origin (deficiency in the format/ mismatch of signatures or seals with specimens) OR

There being a 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

---

The preferential tariff treatment of such goods may be suspended till conclusion of the verification

---

The verification authority shall be informed of reasons for suspension of preferential tariff treatment while making request of verification

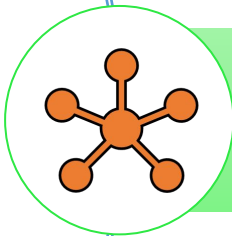
---

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.

# Verification Request- Rule 6(5) of the CAROTAR, 2020



All requests for verification under rule 6 are to be made through a nodal office as designated by the Board.



Paragraph 7 of **Circular No. 38/2020-Customs**, dated 21<sup>st</sup> August, 2020 has specified that 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.**



All verification related correspondence to Board is to be emailed to [ftaroo-cbic@gov.in](mailto:ftaroo-cbic@gov.in)

- Request through NIC/icegate email ids will only be accepted.
- Emails should include signed copy of the office letter and legible scanned copies of all relevant documents.

# Rule 6(6) of the CAROTAR, 2020

Where the information asked for in request for verification of certificate of origin from verification authority is received

- Within the timeline as prescribed in the respective trade agreement; or
- In absence of such timeline in the agreement, sixty days from the request having been communicated

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.

# Rule 6(6) of the CAROTAR, 2020

**Information requested is received** from verification authority is received within the prescribed timeline

The timeline as prescribed in the respective trade agreement; or in absence of such timeline in the agreement, **sixty days** from the request having been communicated

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

Where a timeline to finalize verification is prescribed in the respective rules of origin, the proper officer shall finalize the verification within such timeline.



# Denial of claim of preferential rate of duty – Rule 6(7) of the CAROTAR, 2020

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

- The verification authority fails to respond to verification request within **prescribed timelines**;
- The **verification authority does not provide the requested information in the manner as provided in this rule read with the rules of origin**; or
- **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.**

# The Case of Identical Goods – Rule 7 of the CAROTAR, 2020

- 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.
- Where a claim on identical goods is rejected under rule 7 (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.

# Key Concepts/ Definitions

## Customs Valuation (Determination of Value of Imported Goods) Rules, 2007- [Notification No. 94/2007-Cus. (N.T.), dated 13-9-2007]

- Rule 2
  - (d) “identical goods” means imported goods –
    - (i) **which are same in all respects**, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods,
    - (ii) produced in the country in which the goods being valued were produced, and
    - (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,
      - but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

## CHAPTER VAA - ADMINISTRATION OF RULES OF ORIGIN UNDER TRADE AGREEMENT - SECTION 28DA.

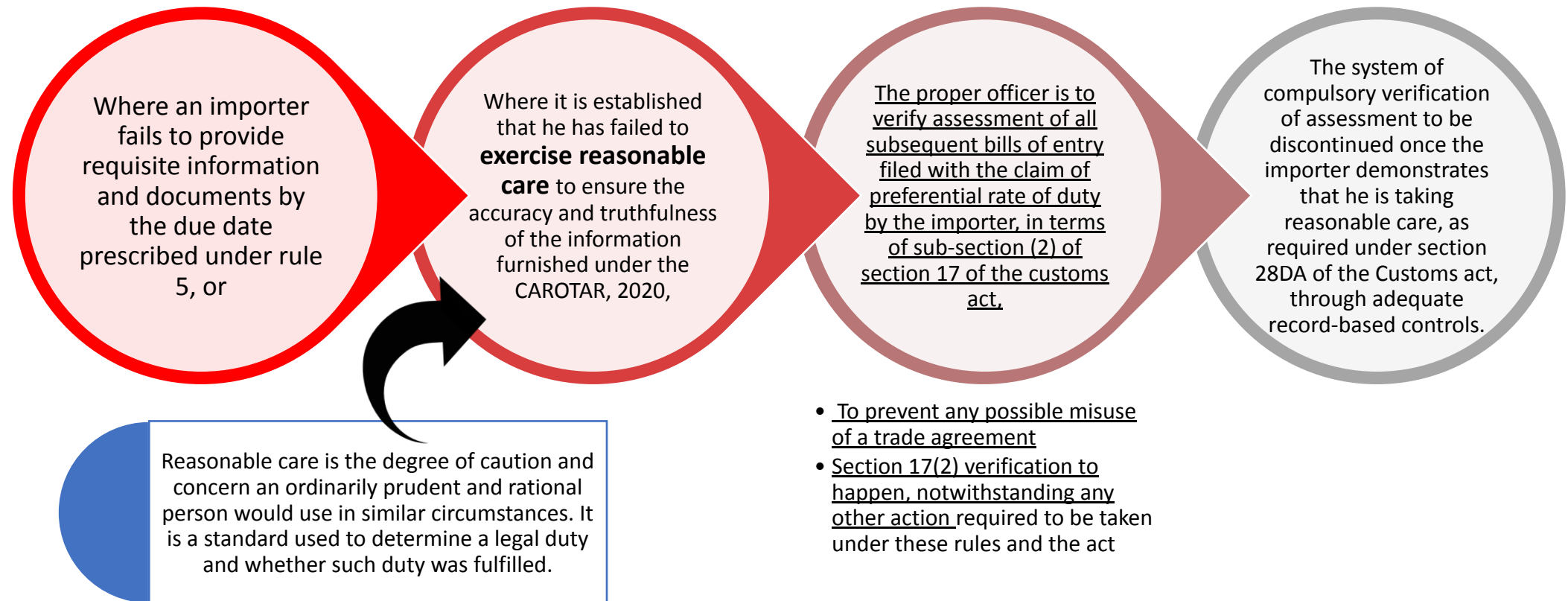
- Explanation. — For the purposes of this Chapter, -
- (a) **“certificate of origin”** means a certificate issued in accordance with a trade agreement certifying that the goods fulfill the country of origin criteria and other requirements specified in the said agreement;
- (b) **“identical goods”** means goods that are same in all respects with reference to the country of origin criteria under the trade agreement;
- (c) **“Issuing Authority”** means any authority designated for the purposes of issuing certificate of origin under a trade agreement;
- (d) **“trade agreement”** means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.

## Customs Valuation (Determination of Value of Imported Goods) Rules, 2007- [Notification No. 94/2007-Cus. (N.T.), dated 13-9-2007]

- Rule 2
- (f) “similar goods” means imported goods -
  - (i) which although **not alike in all respects**, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
  - (ii) produced in the country in which the goods being valued were produced; and
  - (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,
    - but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;



# Miscellaneous Provisions in CAROTAR, 2020 – Rule 8(1)



# Miscellaneous provisions in the CAROTAR, 2020

- 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 appended to the CAROTAR, 2020

## Form I (refer to rule 4)

- Section I (Guidance for filing up this Form)
- Section II (To be filled after filing of Bill of Entry)
- 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.
    - Note 2: If the goods are not wholly obtained, the manufacturing/processing undertaken in country of origin must be ascertained.
  - Part B: (To be filled if originating criteria is NOT wholly obtained, for each of such good under import, on separate sheets)

# TIMELINE CHECK

10

- (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.

15

## Rule 6. Verification request

- (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.
- (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**

60

45

# TIMELINE CHECK

## Paragraph 4 (iv) of Circular 38/2020- Cus., dated 21<sup>st</sup> August, 2020

- (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).

**PRIORITY**

**10**

---

# What does an importer need to do?

---



# Self-Assessment

**Self-Assessment"**  
in **Customs** has been  
implemented w.e.f. 8.4.  
2011 vide **Finance Act,**  
**2011**

Section 17 of the Customs  
Act was amended to  
provide for  
self-assessment, the  
amended law as it stands  
today is as:

Proviso to Section 17(2):

- Suitable **changes** made to Sections 17, 18, 46 and 50 of the **Customs Act, 1962.**
- **Self-Assessment** interalia requires importers / exporters to correctly declare value, classification, description of goods, exemption notifications etc.
- **SECTION 17. Assessment of duty.** — (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, **self-assess the duty**, if any, leviable on such goods.
- (2) The proper officer may verify [the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary :
- “ **Provided** that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.” ....

# What the importer has to do?

The importer needs to seek exemption under an FTA, at the time of filing Bill of Entry.

Rule 4 requires an importer to possess sufficient information about the origin of goods, where preferential tariff treatment is claimed.

- There are some additional basic details which now need to be entered in the Bill of Entry
- **These details to be entered in the B/E are available in the COO.**

- To help guide importers and also to indicate the scope of such information, details have been provided in **the Form I of CAROTAR, 2020.**
- **The form focusses on the process through which a good has attained origin** i.e. if goods are produced entirely from inputs from that country or also included inputs from third country.
- A **flow chart** has also been provided to help importers navigate through the rules of origin and identify the key elements which should be checked with the exporter.

# What the importer has to do?

1

If the importer provides sufficient information to customs, as and when asked for in terms of CAROTAR, 2020, the verification from partner country will not be initiated and **the matter can be concluded quickly.**

2

Under rule 5 a customs officer may seek origin related details from the importer where required. Hence, **the information in form 1 is not required to be submitted with every bill of entry and needs to be presented only when an inquiry is made by a customs officer.**

3

Notification No.90/2020-Customs (N.T.), dated 17<sup>th</sup> September, 2020 - Bill of Entry (Forms) (Amendment) Regulations, 2020 – these regulations further amend the Bill of Entry(Forms) Regulations, 1976 – by substituting for Form I, Form II and Form III –the formats for Bill of Entry for Home Consumption, Warehousing and Ex-bond clearance.

4

**Please have a look items 9(a)# and 9(b)# in each of the forms.**

•Rule 3 of CAROTAR, 2020 mandates certain origin related details to be entered in the Bill of Entry, as available in the Certificate of Origin – the additional fields in the Bill of Entry format are available from 21.09.2020.

5

**Do please fill out these details completely and accurately.**

# What an importer has to do...

Rule 4 requires an importer to possess sufficient information about the origin of goods, where preferential tariff treatment is claimed.

Some Agreements allow certain percentage of use (by value or weight) of non-originating elements even when goods are claimed to be wholly obtained.

The form focusses on the process through which a good has attained origin -if goods are produced entirely from inputs from that country or also included inputs from third country.

Please familiarize yourself with the Form I and check for the information on the key elements with the exporter

CAROTAR, 2020 do not require an importer to seek costing details.

- To help guide importers and also to indicate the scope of such information, details have been provided in the Form I of CAROTAR, 2020.
- The importer gets an indication of the relevant queries that he/she needs to pose to an exporter.
- For instance, if supplier claims goods to be Wholly Obtained, it is prudent to check the rule on 'Wholly Obtained' in the concerned Trade Agreement and if it is covered.
- Confirm if inputs like preservatives etc. are also originating.

- If a supplier/producer claims that goods have non-originating components but meets the originating criteria, it is advised to check if the claimed originating criteria applies to that specific tariff heading. **An importer should ask these questions to ensure that the claim is valid and to diminish chances of erroneous claim.**

- A flow chart has been provided to help importers navigate through the rules of origin and identify the **key elements which should be checked with the exporter.**

- Knowledge of the process through which the Origin has been attributed to the goods – **will helps the importer to identify any issue at an early stage and where required, the same could be addressed even before goods are imported.** This will, therefore, bring transparency and enable an importer to independently assess authenticity of the origin claim made by an exporter.

(iv)

# What the importer needs to know..

In case of identical goods from same exporter, while the compilation of information needs to be done for each bill of entry, the process of making inquiries with the exporter need not be duplicated, unless there is any change in the process of manufacturing - Identical Goods have been defined in the **explanation appended to Section 28DA** of the Customs Act – as [(b) “identical goods” means goods that are same in all respects with reference to the country of origin criteria under the trade agreement]

CAROTAR does not mandate submission of additional documents at the time of filing Bill of Entry.

In case of any doubt about origin, the customs officer will raise a query to the importer before initiating verification with a foreign administration, which takes substantial time.

The queries to importer will be based on the Form notified in CAROTAR, 2020.

The information you furnish to Customs is held from disclosure, ordinarily - **Section 136 (3) of the Customs Act specifically prohibits and makes it a punishable offence for any officer of customs, acting except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, to disclose any particulars learnt by him in his official capacity in respect of any goods.**

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).

# What the importer needs to know...

- Importer will be provided 10 days' time to submit the information, and within 15 days of receiving response he will be informed about the outcome.
- In case any additional information is required, the verification route will be followed by the customs with the authorities in exporting country.
- You have
- Where it is established that goods from an exporter do not meet the originating criteria, preferential benefit may be rejected to **identical goods** imported from the same exporter (rule 7).
  - However, preferential benefit shall be restored 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 suitably modified by the exporter or producer so as to fulfill the origin requirement.
- Where the importer fails to produce origin related information and documents sought, or it is established that he is not doing due diligence, then in addition to initiating verification with other country, the officer is also required under rule 8(1) to verify the assessment of all subsequent bills of entry.
  - However, as and when, the importer demonstrates that he is taking reasonable care through adequate record-based controls, the compulsory verification of assessment shall be discontinued.
  - **Non-possession of origin-related information does not prohibit an importer to import. However, it may lead to overseas verification in case there is a doubt on declared origin of goods. Also, subsequent imports of the importer will not be facilitated by the risk management system of customs.**



# What the importer needs to know...

The CAROTAR, 2020 aim to supplement the existing operational certification procedures prescribed under different trade agreements.

Importer is required to conduct a basic level of due diligence before importing the goods and satisfy himself that the goods meet the prescribed originating criteria.

- For this purpose, list of minimum information which the importer is required to possess while importing the goods has been provided in the rules along with general guidance. This will support the importer to correctly ascertain the country of origin, properly claim the concessional duty and assist customs authorities in ensuring smooth clearance of legitimate imports
- Form I appended to the CAROTAR, 2020

In cases where origin declared in a COO is doubtful, the customs officer, under rule 5, is mandated to ask the importer relevant origin details, before seeking verification from the partner country.

The process of cross-border verification of origin is to be conducted through the nodal authorities in respective countries and follows timelines prescribed in the respective trade agreements which sometimes extend to months.

# Circulars

- India-Australia Economic Co-operation and Trade Agreement - Implementation of Rules of Origin (ROO) and Operational Certification Procedures (OCP) - Clarification - 10/2023-Cus. (Instruction) dated 10-03-23
- Rules of Origin under Relevant Trade Agreement - Applying CAROTAR maintaining consistency with the provisions - 19/2022-Cus. (Instruction) dated 17-08-22
- Authorised Economic Operator (AEO) - Relaxation in furnishing of Bank Guarantee - Clarification - 2/2022-Cus. dated 19-01-22
- Provisional Assessment under Customs Section 18 - Principal Commissioners/Commissioners of Customs to decide the amount of security in certain cases of Provisional Amendments - Guidelines of Circular No. 38/2016-Cus. Amended - 19/2021-Cus. dated 16-08-21
- Preferential Certificates of Origin - Difficulties being faced by Trade in implementation of CAROTAR, 2020 - Instruction - 18/2021-Cus. (Instruction) dated 17-08-21
- Preferential Certificates of Origin - Third Party Invoicing issued in terms of DFTP for "wholly obtained goods" - 53/2020-Cus. dated 08-12-20
- Provisional Assessment under Customs Section 18 - Guidelines for Circular No. 38/2016-Cus. amended - 42/2020- Cus. dated 29-09-20
- Rules of Origin - Implementation of Section 28DA of the Customs Act, 1962 and the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 - Guidelines - 38/2020-Cus. dated 21-08-20
- Rules of Origin - Preferential Certificates of Origin in terms of CAROTAR Rules, 2020 - Verification of - 20/2020-Cus. (Instruction) dated 17-12-20
- Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 - Implementation w.e.f. 21-9-2020 - 6/2020 (Press Release) dated 18-09-20
- Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) - C.B.I. & C. Website dated -----20

# Notifications



- Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020- Notification No. 81/2020-Cus. (N.T.), dated 21-8-2020]