

Guidelines on verification of Certificate of Origin under CAROTAR, 2020

Instruction No. 18/2021-Customs dated August 17, 2021

Background:

- Pursuant to the introduction of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('CAROTAR'), detailed guidelines were issued for implementation thereof vide Circular No. 38/2020-Customs dated 21 August 2020.
- The guidelines provided for judicious application of CAROTAR, strict adherence of prescribed timelines and elimination of unnecessary delays or use of arbitrary practices during clearance of goods.
- However, there have been recorded instances of difficulties faced by trade and partner countries regarding implementation of CAROTAR.
- Further, there have been bulk requests for verification of RMS interdicted Certificates of Origin ('CoO') by the authorities, without citing any reason of doubt the CoO or specific information to be sought from the verifying authority.
- At the backdrop of the above, present instruction has been issued by CBIC.

Directions issued:

- Only representative CoOs for identical items to be forwarded for verification in order to reduce administrative burden, enhance speed of verification and improve trade facilitation.
- In case a product of a particular manufacturer/ producer has been duly verified, then subsequent consignments of identical product shall not be re-verified, unless there is a change in manufacturing or other origin related conditions.
- Verification requests initiated by the authorities must indicate the authorities' *reason to believe* as to why goods are not meeting the prescribed origin criteria and enlist *specific information* to be obtained from the verifying authority.
- Interdicting of a consignment by the Risk Management System does not preclude the customs authorities from exercising due diligence and examining the validity of CoO themselves before seeking such verification.
- All verification requests must be communicated to the CBIC within the timelines prescribed under CAROTAR.

Tradewin comments:

- Ever since its inception, there have been lot of issues faced by legitimate importers mainly because the entire verification process has become very subjective and if proper officer is not 'satisfied' or has 'reason to believe' that originating criteria is invalid, he may deny or even suspend the benefit.
- Accordingly, there were inconsistent views between various jurisdictions, unnecessary delay and an expectation of furnishing security in every scenario (including for initiating verification).
- Said issues were emphatically highlighted in the case of M/s Aabis International vs Commissioner of Customs [TS-280-HC-2021].
- In fact, in the said ruling, it was also observed that under Central enactment, authority is expected to adopt consistent views for similar/identical transactions.
- Accordingly, post the said ruling, it was expected that a proper guideline would soon be issued by CBIC. The present instruction, to a large extent, attempts to bring some consistency in dealing with specified issues.

- Also, several instances have been observed where the benefit is denied without passing of a speaking order. Present instruction puts emphasis that officer must clearly indicate his 'reason to believe' as to why CoO is invalid and enlist specific information required from the Verification Authority. This will ensure that benefit is not denied on any arbitrary ground.
- Present instruction was much awaited and if properly applied, would ensure a consistent approach is adopted by the authority which in turn would ensure that the benefits are passed in a timely manner.

TRADEWIN SERVICE OFFERINGS

Customs

- HS Classification
- Free Trade Agreement
- Export Controls (SCOMET)
- Valuation of cross border transactions
- Duty Drawback
- AEO program
- Health checks
- Dispute Resolution

GST

- Advisory
- GST Refund
- Assessment/Audit
- Returns and other compliances
- Health checks
- Advance Ruling
- Dispute resolutions

FTP & allied laws

- STP/EOU/SEZ compliance
- Duty credit script scheme (SEIS / MEIS, etc.)
- Duty exemption schemes
- Duty efficient supply chain structuring
- Advisory / assistance in other fiscal incentives
- BIS and Legal Metrology

ABOUT TRADEWIN

- Professional Trade Consulting Firm
- Subsidiary of Expeditors International
- Presence across Continents
- Over 24 years of Practice
- Professionals from Varied Backgrounds
- Solution Oriented Approach
- Practical Advisory

For further information please reach out to:

Ashutosh Nath (ashutosh.nath@tradewin.net)

Parth S. Shah (parth.shah@tradewin.net)