

Administration of Rules of Origin under Trade Agreement

October 2020



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advisors llp

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Broad framework

- Section 28DA of the Customs Act, 1962 provides for the broad framework of the procedure to be followed by importers for claiming preferential rate of duty sanctioned under Trade Agreements:
 - Provisions place greater onus and obligation on importers in order to ensure that the imported goods satisfy the Rules of Origin criteria and are deserving of preferential rate
 - Authorities have greater powers, with the provisions providing for temporary suspension of the preferential treatment given to goods pending verification, or even disallowance of the claim on the basis of information furnished by the importer, without further verification
 - Power to deny / reject preferential tariff treatment on import of identical goods from the same producer / exporter
 - Request for verification by the Customs authorities can be sent within a period of **five years** from the date of claim of preferential rate of duty.
- The Customs (Administration of Rules of Origin under Trade Agreement) Rules, 2020 ('the Rules') have been notified vide Notification No. 81/2020 – Customs (N.T.), dated 21 August 2020, to prescribe the detailed procedure for claiming the benefit

Procedure to claim preferential tariff

- Importer to make the following declarations on the bill of entry ('BoE'):
 - Goods imported are originating goods
 - The Notification under which the preferential rate is claimed
 - Details of the Country of Origin Certificate – ('CoO') [reference number, date of issuance, originating criteria etc.]
- Prior to imports, importer to be in possession of following details to be maintained in Form I

Production process

Originating criteria

Whether consignment directly shipped from country of origin

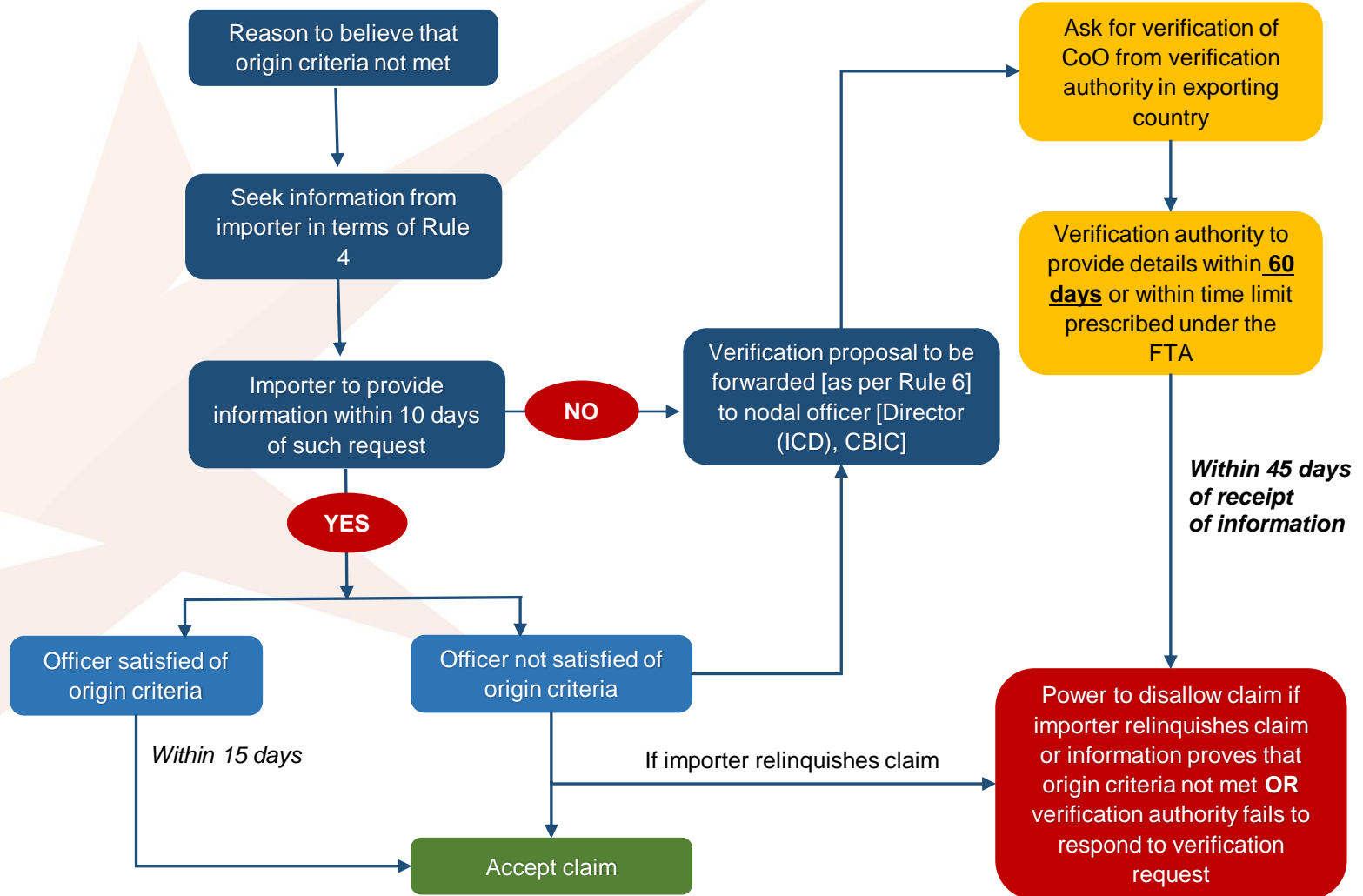
Description of originating materials and components used in production of imported goods

CoO issued retrospectively

Method used for determining the origination criteria for e.g. de minimis, accumulation / cumulation, value content, CTC rule, process rule etc.

The onus of the accuracy and truthfulness of the information is on the importer

Verification process



Key Industry concerns

Key Aspects	Some of the key Industry concerns
Form / Information required	<ul style="list-style-type: none"> Information required in the Form is at a very high level –Will additional data / documents be asked for post submission of the Form? If not asked for, can it be asked subsequently?
Production process / Description of originating materials and components used in production of imported goods	<ul style="list-style-type: none"> Production process covered by IP? Cost details / value content workings and its verification (Cost statement)? - Confidentiality issues The production process may differ from product to product or even for the same product of a different grade / quality? Is this required to be submitted for even a minor change in process?
Originating criteria (As is evident, authorities will not solely rely upon the CoO)	<ul style="list-style-type: none"> What documentary evidence would be sufficient to prove the originating criteria and the methodology (de minimis/accumulation/cumulation provisions), to determine RVC? What other evidence should be investigated other than what has been obtained from the supplier? [e.g. local practice, local certification etc.] What happens if the information submitted is not correct with no fault of the importer - What constitutes Reasonable due diligence in verification of data? Action initiated for another importer – same supplier or same / similar goods from the same country

Key Industry concerns

Key Aspects	Some of the key Industry concerns
Supplier issues	<ul style="list-style-type: none">• At what stage such documents should be obtained from the supplier and how should it be verified. What happens if the supplier is unwilling to provide the requisite documents?• Supplier unwilling to give information, but is agreeable to directly provide the Form to the Customs authorities citing confidentiality? How will importer establish the correctness?• Additional data requirement for consignments in the future• Contractual protection in case of any default by the supplier qua the information provided
Dealing with tax authorities	<ul style="list-style-type: none">• Level of documentation required may differ from authority to authority• Will submission of improper details constitute fraud / suppression by the importer?• Delay by Customs authorities in verification / finalization of the provisional assessment? Duty paid pending assessment and refund?

Way Forward

Next steps?



Identify the information to be sought from the producer / exporter and gain proper knowledge of the goods imported under the trade agreement



Develop the SOP and undertake necessary system changes to capture this information for a minimum period of 5 years



Review of commercial terms with the producers / exporters



Demonstrate to the customs authorities that the origin criteria fulfilled



Representation / Possibility of a filing a writ challenging the amendments



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