

Pandemic Triggered Simplification of Origin Requirements

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Envisaging a New Preferential Trade Regime

The pandemic has toppled governments, exposed systemic shortcomings, created economic imbalances across the globe and reallocated negotiating power among different countries. While a few countries are making way to exploit the situation by proposing arbitrary trade deals, it is high time when the international trade regime should come together and create a seamless process to augment import-export and prevent this pandemic from being labelled as the origin of indiscriminate protectionism.

This article elucidates the existing rules of origin, highlights its impact, identifies the ambiguities and lacuna in the rules and proposes solutions on the basis of experiences during the pandemic.

Requirement to Produce Certificate of Origin

Countries which enter into free trade agreements often permit a preferential rate of duty to the partner countries. This preferential duty is accorded only when goods are imported from one of the partner countries. An importer is eligible to claim concessional duty on the basis of the rules of origin incorporated in a particular free trade agreement. The rules of origin prescribe submission of a certificate of origin (hereinafter, COO) to the customs authority in the importing country. A COO is often issued by the issuing authority based on the self-certification by the manufacturer of the goods along with supporting documents from suppliers / vendors of its raw materials. Conventionally, customs authorities in most of the countries only accepted physical copies of the COOs.

With the sudden hit of an unprecedented pandemic which abruptly transformed the real world into a virtual one and restricted in-person interactions and physical movement of goods, fulfilment of the requirement of physical delivery of COO became almost unattainable. Many countries, including the United States ensured acceptance of soft copies of COOs to facilitate seamless imports.

However, some countries were still skeptical of the soft copies of COOs and therefore, were not willing to permit such a practice. Such conservative view was motivated by a history of fallacious claims of origin by importers. The objective behind providing duty benefits under a free trade agreement exclusively to originating goods was to ensure that only genuine claims on goods exported from the other party were entertained.

Validly so, such countries may choose to permit retrospective issuance of COOs for goods imported during a lockdown, to claim concessional rate of duty. Most free trade agreements permit retrospective issuance of COOs for a period of one year from the date of shipment. COOs can only be issued retrospectively if reasons are provided for it and there cannot be a better reason than a unique pandemic. Thus, importers may be permitted to claim the preferential rate of duty with a leeway of getting a retrospectively issued COO within the stipulated time. This will give sufficient time both to the customs authorities and importers to understand potential solutions and strategies to ensure a better implementation of rules of origin in the post pandemic world.

Verification in the Issuing Country

Normally, when a particular importer failed to furnish requisite documents to substantiate the claim of concessional duty, a verification request would be initiated by the customs authority in the importing country asking the issuing authority to facilitate an investigation into the claim of preferential duty by providing adequate data or by permitting a visit to the issuing country.

The pandemic calls for a departure from this practice citing impracticability, safety and country specific movement restrictions. Covid-19 restrictions are based on real-time live cases in a particular territory and are often very dynamic. Therefore, instead of insisting on a visit or a physical verification, a more practical, yet reliable system has to be devised.

Keeping aside diplomatic stratagems which may be adopted at the country level, importers at the micro level, can choose to insert specific liability clauses in their commercial contracts to safeguard their duty benefits. These clauses must create an obligation to only export goods which adequately and accurately meet the origin criteria set out in the relevant rules of origin under a free trade agreement. Importers may also separately obtain declarations from their exporters to this effect, if the parties to the contract are not willing to immediately revisit the contract. This will prevent casual slipping into the verification stage which requires intervention of the issuing country. Another advantage is that accurate information helps build trust in the eyes of customs authorities upon a preliminary investigation.

Application of the Cumulation Principle

Rules of origin hinge on the concept of production of the goods being imported by one party and exported by the other. For the purposes of determining origin of goods, the concept of production is rather economic than geographic. In other words, origin is determined on the basis of the actual economic activity of value addition as a part of the manufacturing process of the goods to be exported from a particular territory. However, often times, manufacturers procure raw materials from their suppliers situated in other countries, which hypothetically are also a part of the relevant free trade agreement. If the manufacturer is able to prove that the value of raw materials along with other factors qualifies the minimum percentage requirement, the importer is eligible to claim concessional duty.

For example, countries A, B and C are parties to a free trade agreement which accords preferential benefits as per its rules of origin. an importer (Country A) is importing goods from a manufacturer/ exporter (Country B). For the manufacture of final goods, the manufacturer is importing raw materials from its vendors (Country C). As discussed previously, the contractual understanding between the importer and the manufacturer is the primary focus for the purposes of the claims of the importer. However, obligations imposed by the manufacturer on the vendors for import of raw materials also has consequences. Therefore, a customization of contracts of the manufacturers with their vendors may also be required. Due to lack of privity, importers would only be in a position to bring it up on the negotiation table with minimal participation but maximum influence on the basis of the main contract. This might also enable the manufacturer to set a global benchmark of adaptability, resilience and systemic synchronization with importers in countries relying too much on the data furnished by exporters (eg. India).