

# Chinese imports held up by free trade agreements

**T**he balance of trade continues to be heavily tilted in favour of China. Remedies such as anti-dumping and countervailing duties have been used frequently to curtail the import of Chinese goods. To circumvent such barriers, China is alleged to have routed its goods through countries with whom India has free trade agreements (FTA).



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Intermediate goods are exported from China into these countries, and after undergoing minimal processing are then exported to India under the relevant FTAs. ASEAN countries for instance, have seen an increase in the import of Chinese goods for export to the rest of the world. Subsidies given to Chinese companies also get passed on through these intermediate goods, and the benefit of concessionary duty under the FTAs makes exports from these countries very competitive. Industries have long demanded that remedial action be taken against such imports.

## **New regulations to curb misuse**

To curb misuse, section 28DA of the Customs Act, 1962 (act), and the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR), have introduced stringent measures for the verification of origin of FTA imports. Certificates of origin issued by the exporting countries are no longer sufficient to establish origin, and

importers are now required to provide information to support the independent verification of origin. The certificates of origin issued by the exporting countries are regarded as inconclusive on the issue of origin.

Under the new measures, importers must make declarations as to origin. They have to obtain relevant information from the exporter in support of their claims, and have to exercise reasonable care as to the truth and accuracy of such information. Importers do not usually have direct knowledge of the information furnished nor any means to verify its accuracy. This information is within the possession and knowledge of the foreign exporter. The consequences of providing incorrect or incomplete information will fall on the importer, such as confiscation of goods and penalties.

Under these regulatory amendments it is only where there is cooperation between the exporter and importer, that the concession will be available. The exporter will have to provide to the importer complete information as to how the conditions of origin meet various criteria, such as changes to the Harmonized Commodity Description and Coding System (HSN) at the 4 or 6 digit level, regional or domestic value content, or process rules. For a claim of a heading change, the exporter will have to provide adequate material to the importer to demonstrate that the classification of the inputs is different from that of the final product. For a claim under the domestic value content direct method, the exporter will have to share information of its costs and profits. Under the indirect method, the value of non-originating material, together with its source, will have to be disclosed to the importers. The process details will also have to be shared with the importer.

## **Consequences of amendments**

The amendments to the act and the introduction of CAROTAR are likely to cause most problems for entities in the medium, small and micro sector and for smaller traders who have little clout with foreign exporters. Imports may become concentrated in the hands of a few to the detriment of smaller players.

The new measures create strain and mistrust with India's trading partners, as imports legitimately covered under FTAs could face unnecessary scrutiny. The exporters will have to establish origin once in the exporting country and again on import. Exporters may be reluctant to share commercially sensitive information with their customers. The new rules appear to impose a high burden on importers to obtain sensitive information from exporters. Though well intentioned, the increased regulatory compliance may arrest the pace of international trade and thus the revival of manufacturing and economic growth in India.

## **Conclusion**

While the legislative intent behind CAROTAR is laudable, for the new measures to be trade friendly, India must respect the certificates issued by the exporting country. Only in exceptional cases, where there is reason to doubt the origin, based on credible information, should a second scrutiny be carried out. Enquiries should be focused on certain products or certain regions where misuse has been noticed or where there is a high possibility of diversion of non-originating goods. There is little evidence of diversion of non-originating goods from countries like Japan and Korea. Subjecting all imports under FTAs to the same level of scrutiny, will prevent importers claiming concessional rates of duty properly available to them. The spirit of cooperation which led to the agreements should not be forgotten.

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