

# Preferential tariffs come under further scrutiny

By Shampa Bhattacharya, Kochhar & Co

8 April 2020

🗨️ 0

**D**uring the past decade, there has been a significant increase in the import of goods, much of which has been as the result of free-trade agreements (FTA). Under such agreements, trading partners significantly reduce or eliminate import duties on a range of goods traded between them. Goods imported under an FTA enjoy preferential tariffs if they fulfil the conditions relating to the origin of goods as set out in the rules of origin (ROO). ROOs are agreed between countries that are parties to preferential trade agreements, such as FTAs. ROOs specify criteria for determining the national origin of products. Countries that offer zero or reduced duty on imports from trade partners often set out in ROOs the eligibility of products to receive such preferential access. The justification for these ROOs is to prevent trade deflection. The role of ROOs is to ensure that only goods originating in the participating countries enjoy tariff or other preferences.



*Shampa Bhattacharya*  
Partner  
Kochhar & Co

It is relatively easy to establish the origin of an imported product when it is produced in a single stage or is wholly produced or obtained in the partner country. In other cases where goods are not wholly produced or obtained, the ROOs define how it can be determined that a particular product has undergone sufficient work or processing, or has been subject to substantial transformation within the territory of the free-trade partner, and not that it has merely been trans-shipped from a non-qualifying country or has been subject to minimal processing.

In light of the above, a country that has entered into an FTA with India cannot dump goods from a third country into the market by just affixing a label on them. It has to undertake a prescribed value addition to those products prior to their export. ROOs help to prevent the dumping of goods.

False or misleading claims of FTA benefits have posed a threat to the domestic industry and such imports definitely require stringent checks. Lax implementation of ROOs has been a matter of grave concern for some time. The decline of manufacturing in India coupled with misuse and false claims of treaty benefits on imports from non-FTA countries has led the government to revisit the issue.

To control and monitor imports where the benefits of an FTA are being falsely claimed, new governing rules, Administration of Rules of Origin, are proposed to be introduced in this year's Union Budget. The new rules will implement

a scheme for verifying the country of origin of goods imported under FTAs with different countries. Specific provisions are proposed that would require importers to submit additional information or document verification from the authority issuing a certificate of origin, if it is found to be non-satisfactory.

The purpose of the proposed amendments is to impose stringent obligations on the importers to abide by the ROOs. Such strict monitoring places responsibility on both the importer and the exporter to ensure that they have complied with the additional requirements for claiming preferential duty rates. An importer would have to possess sufficient information relating to determination criteria such as regional value content, and product specific matters, as stipulated in the relevant FTAs. Both the importer and the exporter need to exercise reasonable care as to the accuracy and truthfulness of the information, which could be demanded for any period within five years from the date of claiming the duty benefit. Stringent penalties such as the temporary suspension of preferential treatment, the deposit of security or payment of the difference in duty for the release of goods can be imposed during the verification stage. In the event of any defective, non-authenticated or expired certificate of origin, the preferential tariff could be refused. The preferential tariffs could be withdrawn with the certificate of origin being regarded as inapplicable. This would lead to grave consequences, including the levying of fines and penalties, and the confiscation of goods.

Although the authority to screen the certificates of origin stems from country specific regulations, there are at present significant gaps in the adoption and implementation of corrective measures. The new rules will confer wider powers on the customs authorities to prevent misuse of preferential duties. It remains to be seen how these provisions are implemented, but it may be that claiming and retaining existing preferential treatment will be challenging. India's trading partners may raise concerns about the proposed additional import rules under various FTAs, including the Comprehensive Partnership Agreement with Japan, Korea and other ASEAN countries.

To comply with the changes, importers should examine closely the documentation they receive from exporters in support of new claims and the continuance of existing benefits under FTAs.

*Shampa Bhattacharya is a partner at Kochhar & Co.*



**Kochhar & Co**

New Delhi (head office):

Suite # 1120 -21, 11th Floor, Tower – A

DLF Towers, Jasola District Center

Jasola – 110 025, India

India offices:

New Delhi, Mumbai, Bengaluru, Chennai, Gurugram and Hyderabad

Overseas offices:

Dubai, Singapore, Atlanta and Jeddah

Contact details:

Tel: +91 11 4111 5222, +91 11 4312 9300

Fax: +91 11 4056 3813

Email: delhi@kochhar.com, info@kochhar.com

TAGS

India-Japan Trade & Investment

International trade

Kochhar & Co

Shampa Bhattacharya

No comments

## Leave a comment

You must be [logged in](#) to post a comment.

[Previous article](#)

IBC: Intent continues to prevail over form

## RELATED ARTICLES

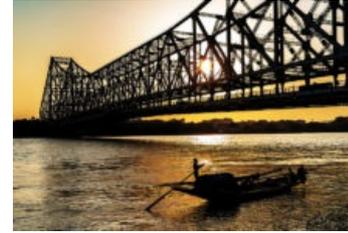


Jingtian & Gongcheng bolsters maritime, shipping



Cases for third-party price verification

By Zhan Guohong, Dentons



Bridges not barriers

Was walking away from RCEP negotiations a mistake?



## MOST POPULAR



### Law firm billing rates survey 2019

Rising fees and falling margins  
19 November 2019



### The A-List 2019

India Business Law Journal reveals the country's top lawyers and legal icons  
13 November 2019



### Framing a future

Succession planning at India's iconic law firms  
13 November 2019

## MARKET PULSE



### News in Brief

2 April 2020



### New India head at Simmons & Simmons

1 April 2020



### Trust Legal opens Ahmedabad office

1 April 2020

## CORRESPONDENTS



### Draft framework for retail payment systems operators

By Sawant Singh and Aditya Bhargava, Phoenix Legal

17 March 2020



### When the appointment of a sole arbitrator is invalid

By Karthik Somasundram and Sneha Jaisingh, Bharucha & Partners

12 March 2020



### Revisions to framework for imposing monetary penalties

By Sawant Singh and Aditya Bhargava, Phoenix Legal

10 February 2020

## FEATURES

---



### A new dawn

Waking up to the legal challenges posed by the pandemic

27 March 2020



### Deals of the Year 2019

Revealing the most significant deals and disputes, and the lawyers who guided them

26 February 2020



### Securing the family silver

Why many wealthy Indians are shifting capital overseas

28 February 2020

## PRACTITIONER'S PERSPECTIVES

---



### How Colgate defended its brand

By Pravin Anand and Achuthan Sreekumar, Anand and Anand

27 February 2020



### When should companies recoup pension fund losses?

By Paras Parekh and Hitesh Jain, Parinam Law Associates

24 December 2019



### Multiple dimensions of mediation

By Shaneen Parikh and Shalaka Patil, Cyril Amarchand Mangaldas

24 December 2019

## VANTAGE POINT

---



### The risk-reward conundrum

GCs should focus on what's right, not just what's legal

11 March 2020

## JOBS

---



### Debt Capital Markets Associate (4-6 PQE) – 15668/VTA

20 March 2020



### Legal Associate (0-3 PQE) – Dunzo

25 February 2020



Established in 2006, Vantage Asia is an independent business-to-business publisher based in Hong Kong. We publish three of the region's leading legal magazines – *Asia Business Law Journal*, *China Business Law Journal* and *India Business Law Journal* – and produce [vantageasia.com](http://vantageasia.com), a leading digital resource for in-house counsel, lawyers in private practice and other legal and business professionals with an interest in the Asia-Pacific region. We also publish *China Lexicon*, a unique fully bilingual hard-back book covering the complexities and nuances of translating legal terms and definitions between English and Chinese, and organize events – including the *CBLJ Forum* – for senior Asia-focused business and legal professionals.

[Contact us](#)

## LATEST ON VANTAGE ASIA



### Preferential tariffs come under further scrutiny

By Shampa Bhattacharya, Kochhar & Co

8 April 2020



### IBC: Intent continues to prevail over form

By Charanya Lakshmikumaran and Puneeth Ganapathy, Lakshmikumaran & Sridharan

7 April 2020



### Jaypee judgment creates a conundrum for lenders

By Soumyajit Mitra and Mohit Yadav, SNG & Partners

7 April 2020



### Compliance risk management under Cybersecurity Law

By Sharon Shi and Shin Feng, AllBright Law Offices

7 April 2020

## EDITOR'S PICKS



### Malaysia's top 100 lawyers 2020

Asia Business Law Journal reveals Malaysia's best private practice lawyers

18 March 2020



### A new dawn

Waking up to the legal challenges posed by the pandemic

27 March 2020



### Flight of the black swan

A dark year ahead for China legal, but there are positives

27 March 2020

### The International A-List 2020

India Business Law Journal reveals the top India experts at foreign law firms



24 March 2020

Please send any press releases, deal announcements, details of new hires, newsletters and any other news items to:  
[news@vantageasia.com](mailto:news@vantageasia.com)

[Policy on advertising & sponsorship](#) [Terms & conditions of use](#) [Privacy Policy](#)

© Copyright © 2019 Vantage Asia Publishing Limited. All rights reserved. Imagined by [DOOD Website Design](#)