

CHAPTER 3

CUSTOMS PROCEDURES AND TRADE FACILITATION : BASIC REFORMS

1. Overview of procedures

1.1 Custom clearance in India has so far been based on physical control where each consignment is examined and assessed to duty, a legacy, no doubt, of the strict import control regime implemented with the purpose of protecting domestic industry. High import tariffs and multiplicity of exemptions and export promotion schemes also contribute in complicating the documentation and procedures resulting in a major gap between the customs import and export procedures at home and the best international practices. The major problems associated with the customs clearance procedures with reference to international best practices are:

- (i) Excessive documentation requirements;
- (ii) Less use of automation and information technology;
- (iii) Lack of transparency; unclear and unspecified import and export requirements;
- (iv) Inadequate procedures; especially a lack of audit-based controls and risk-assessment techniques;
- (v) Lack of modernization of, and cooperation among other governmental agencies, which thwarts efforts to deal effectively with increased trade flows;
- (vi) Procedures are transaction based. Every document has to be checked, double-checked, signed and countersigned and most import and export goods are physically examined, which also breeds corruption;
- (vii) Documentary inspection for all export cargo is intensive though less than in the case of imports; and

- (viii) In spite of computerization, the administrative philosophy remains that of a paper-based system with many opportunities for face-to-face contacts on routine matters.

1.2 In this context the Vision Document published by the C.B.E.C., in 1998, shows that trade facilitation and creating a climate for voluntary compliance have been given the same thrust as realizing revenue and combating duty evasion. Therefore it is clear that there is a need for change and attempts are also being made in this direction. C.B.E.C. has taken a number of steps to put in place procedures at par with the best international practices, as expounded in the Kyoto Convention and other international Conventions. It is particularly heartening to note that a major push is being given to EDI and 'System based appraisal'. The fact that C.B.E.C. has suo moto taken up the exercise of evolving modern and efficient procedures reflects the changed mind-set, which must necessarily lead to trade facilitation in all its facets. At the same time care should be taken to ensure that simplification is not at the cost of compliance and accountability is ensured.

1.3 On the subject of trade facilitation it is worthwhile to take a look at the Green Channel system currently in place. As seen, this is a selective approach to trade facilitation restricted to specific importers (Government, PSUs, EOU/EPZ units, approved research institutes, top 20 importers, and importers of specified goods like pulses, sulphur etc.) at specific ports, Air cargo complexes (at Kandla, Vishakhapatnam, Cochin, Mumbai, Nhava-Sheva, Kolkata, Chennai, Bangalore, Delhi, Sahar) and ICD at Tughlakabad. Further, the system is product specific and does not apply to about 20 items including variety of engineering products, electronic items, plastics, textiles fibres, yarns, fabrics, miscellaneous item like dry fruits, marble, ash/dross of zinc etc. Goods requiring an import licence or execution of a Bond/Bank guarantee are also kept out. To obtain the facility the eligible importer gets registered with the concerned Customs House. Basically, the normal appraisalment procedure is followed except that there is no physical examination of goods unless there are specific doubts about correctness of declaration. The scheme envisages post clearance audit within 48 hours of receipt of Bill of Entry, for which traders are not to dispose of the goods within 3 days including transit time.

1.4 Simply put the Green Channel scheme did not take off in view of its restrictive approach to trade facilitation and complexities which rule out majority of importers. Evidently, the focus on selectivity was mis-directed. Therefore, the present Green Channel has failed to effectively address the twin issues of trade facilitation and ensuring compliance. As a result our clearance time at ports/airports is still far from the best international practices. Delays increase not only the cost of compliance, the other adverse effects are corruption, congestion in the ports etc. Complex assessment procedures, insistence upon bonds and securities are some of the other problems associated with the customs. Thus, there is an urgent need to re-examine the present procedures and identify the critical areas, which may be improved so that we have in place a world class customs administration.

1.5 The role of customs is both of a facilitator and a regulator. Whereas it must facilitate the honest importer and exporter it has also to ensure the laws of the country are applied strictly. Therefore, there has to be a very fine balancing. While the procedures must provide for expeditious clearance of the goods so that international trade is not delayed, it must also provide for the necessary in-built alert signals to detect cases of infringements of the laws. At the same time it is no longer practical or desirable to develop systems based upon physical checks on consignment to consignment basis. The sheer volume of import and export would not permit this. Naturally there has to be selectivity in checks. There are basically two ways to be selective. Firstly, identify the risk free transactions either in terms of class of importer or exporter or in terms of the nature of goods concerned or both and such identified transactions would either not be subjected to checks or to low level checks on random basis. This class would have the benefit of special procedures whereas all other transactions would be subjected to consignment check and normal procedures would apply. The second method is not to create a special class of trusted or risk free transactions but to treat all at par. This system provides uniformity of procedures for all transactions based upon trust and works on the assumption that risk is uniformly spread. Therefore, in this system modern and efficient procedures are made available to all. At the same time the system provides for confirmation of declarations through a system of risk assessment and post clearance audit. The risk criteria are internalized in the automated system which would pick up transactions for examination on random or advise on selection for purposes of post clearance audit. The net result is that all importers and exporters are treated alike and it

the luck of the draw (system based) which will determine which particular transaction would get picked up for examination or post clearance checks. Of course, customs has the undeniable right to intervention on the basis of specific intelligence and information.

1.6 After careful examination of the international procedures, as enunciated in the Kyoto and other Conventions and also the Green Channel system in place in the country it is the view that selectivity does not work and is also not desirable. Selectivity leads to creation of classes and formation of pressure groups. Furthermore, so long as general procedures are not improved (in terms of filing of manifest, availability of goods etc.) no special benefit is available to the selected class. Accordingly, taking into account all factors it is the view that the bottom line in regard to customs procedures is that these must be based upon trust, which presupposes absence of selectivity. If this is done there would be no routine examination of goods and examination, when warranted, would be either on basis of intelligence or on basis of Risk Assessment criteria. At the same time compliance issues are addressed by adopting modern tools of risk profiling and risk management based upon EDI for pre-clearance and post clearance checks. Such tools help in evolving transparent customs clearance procedures applied uniformly thereby increasing the level of facilitation and satisfaction while also obtaining an increased level of control. However, such a system would deliver results provided there are efficient backward and forward linkage with the other agencies concerned with the clearance of the goods. Customs can not work in isolation and the entire (multi-agency) machinery has to work in a finely tuned and cohesive manner for the ultimate benefit of the importer and exporter.

1.7 Modern best practice calls for a systems approach that relies on self-compliance (through the maintenance of business records by tax payers), risk analysis and management (development of profiles of risky transactions), and supported by periodic post audits of records. This approach reduces delays for legitimate transactions while allowing full scrutiny of high-risk transactions. In this background, systemic changes are recommended. As earlier stated, it is appreciated that the C. B.E.C. is also working in the same general direction.

2. Trust Based System (TBS) : Universal Green Channel

- (i) Customs clearance procedures should be based upon trust and be uniformly applied to all importers and exporters and all goods.**
- (ii) Expand EDI network to all ports/airports and to include all processes in the automation programme by 1st January 2004** – For this C.B.E.C. may make a station-wise chart and identify the requirement of each station in terms of resources required. A dedicated team should be set up to oversee the timely implementation of this work and where warranted customs should not hesitate to outsource the work. **In this direction, one major port and one airport should be made fully EDI operational by 1st April 2003.**
- (iii) The verification of declaration through pre-clearances examination, where necessary, should be based upon Risk Assessment techniques** - As a policy there should be no routine examination of the goods. Examination, where necessary, would be done on the basis of an alert by the system based on risk profiling and risk assessment techniques. Some illustrative risk areas for imported goods could be very high import duty (demerit goods), imports from a country other than the country of manufacture, related party transactions and the like. Detailed profiles of all importers/ exporters are also an input. Importantly, it is the system which would decide the selection of goods (for examination).
- (iv) Increased use of post clearance audit** – This would be increasingly used to confirm the declarations made at the time of clearance of the goods through customs. This mechanism would allow the clearance of a number of transactions under systems appraisal. This audit could be combined with multi-disciplinary audit (say, including central excise audit) at the importers premises.
- (v) Introducing a system of self-assessment of Bill of Entry** – Just as in central excise the importer may be allowed to assess the Bill of Entry and

pay the duty thereon. The system would confirm the assessment and after examination of the goods, if warranted, give a clearance. In the event an additional duty liability is detected the same would be discharged before clearance.

- (vi) **Release on minimum documentation:** For certain importers of good track record of compliance, a release order could be given on the basis of certain specified minimum information (not documents) to be provided before the import. This minimum information would be name of consignee, name of consignor, country of origin, total assessable value, total quantity, description and H.S.Code. The goods would be released with or without examination as the case may be and on payment of duty. The assessment could be done subsequently after receipt of all other documents within a specified time period.
- (vii) **Enhanced Systems Appraisal:** System Appraisal i.e. the process of automated verification of import declaration based on systems/ directory information to determine duty liability without human intervention would be progressively extended. Compliance would be ensured through Risk Management techniques.
- (viii) **Release of goods in offence cases** - Even where an offence has been detected, the Customs should release the goods before adjudication provided the goods are not liable to absolute confiscation. In this case the importer/ exporter would pay the duties and furnishes security to ensure collection of any additional duty or payment of penalty.
- (ix) **Amendments to Bill of Entry** – Amendment of documents, if required, (other than having revenue impact) should be settled at the service centre itself rather than first being sent to the concerned senior officer for 'No Objection'. This would speed up processing and expedite the clearances.

- (x) **On-line filing of documents** – Filing of electronic declarations on internet etc. for release of import/export goods from any Customs location should be encouraged.

- (xi) **Storage of import goods** - Section 45 of the Customs Act, 1962 lays down that all imported goods unloaded in a Customs area shall remain under the charge of a Custodian approved by the Commissioner of Customs till such time they are cleared for home consumption/warehoused or transshipped. It is the finding that one of the major reasons for delay clearance of the goods is the multiplicity of handling between the carrier and the custodian. This also results in demurrage and increase in transaction costs. In the event the import cargo is directly transferred from the vessels/ aircrafts to warehouses (owned by carriers) set up in the Port/ Airport the delays would come down. Accordingly, it is recommended that **the custodians (IAAI/Port Trust Authorities etc.) should encourage establishment of warehouses by shipping airlines/airlines/couriers/ freight forwarders and consolidators within the port/airport for reducing dwell time.**

- (xii) **Filing of Import Manifest** - Internationally, the practice appears to be to allow the filing of advance Import General Manifest before the arrival of the vessel/aircraft. Also other forwarders file cargo declarations pertaining to their own containers directly with the Customs. It is considered essential for effecting quicker clearances that the Manifest is made available to customs without delay, and in fact before the vessel arrives/flight lands. Accordingly, **the following recommendations are made :**
 - (a) **A complete Import general manifest (IGM) with house level details must be filed with the Customs before the arrival of the vessel/ aircraft.**

- (b) **The carrier/ steamer agents should file the IGM at Master level and the consol/ forwarding/ break-bulk agents should file the House level details.**
 - (c) **The carrier/ steamer agents shall alone be responsible for correct and proper filing of complete IGM (including House level details) with the Customs.**
- (xiii) **Permanent Trade Facilitation Committee - Constitution of multi-agency** framework at ports/airports (port trust, shipping companies, custodian, etc.) is a necessary requirement for a long term solution to the day to day problems associated with the clearance of import and export goods. This is since customs clearance procedures are not the sole cause of delay in the import and export of goods - inefficient port and airport logistics play an equally important role. Since delay by any one agency is invariably viewed as a delay in clearance through customs, the multi agency framework should be placed under Commissioner of Customs. Accordingly, **it is recommended that :**
 - (a) **A High level Inter-Ministerial Committee may be set up under the Chairmanship of Chairman, CBEC to resolve inter-agency issues to ensure a steady progress of clearance of import and export goods with reference to international norms.** The Committee should meet quarterly.
 - (b) **A Permanent Trade Facilitation Committee should be constituted at each Port/airport/ICD/CFS comprising senior representatives of all agencies including Custom House Agents (CHAs) under the chairmanship of the Commissioner of Customs.** The Committee should meet once a month to resolve all clearance related issues.
- (xiv) **Customs should lay down a time limit within which an import or an export document shall be processed.** This could be implemented

through executive instructions which should be made known to public. Such action would bind the department to certain performance standards and enhance confidence of the importers/exporters.

- (xv) **Increased reliance on Pre-shipment Inspections** – At times the clearance of goods is held up on account of inspections from point of view of health and safety considerations, such as in case of food stuff. In such cases increased reliance on certification prior to shipment by internationally recognized inspection firms, a common practice internationally would considerably speed up the pace of clearance. Accordingly, an endeavour should be made to identify the situations requiring certification before customs clearance and explore the possibility of granting the clearance on the basis of pre-shipment certification. However, this exercise should be consistent with the requirements of the other laws of the land being enforced by customs.

3. Other measures for improved Customs administration

- (i) **The Intelligence, Investigation and Audit Sections of the Custom House may be suitably strengthened** – This is necessitated on account of the recommendation to increase the use of risk assessment techniques in customs clearance procedures.
- (ii) **Functioning of Special Valuation Branch** - One issue which was raised at many forums was the working of the Special Valuation Branches of the Custom houses. The common refrain was that cases are registered on flimsy grounds and the importers are asked to make numerous visits for submission of documents and information. Besides it was contended that even in cases where the matter has been finally settled in favour of the importer the refund of the amount pre-deposit is a time consuming and often unproductive exercise as the Department tries to hold on to the amount. It was also informed that the pre-deposit amount is so nominal (1% of the value) that it does not really safeguard the duty. Yet, it leads to harassment as the Department tries to incorrectly adjust this amount in

the final duty determined or delays in grant of refund. Accordingly, the functioning of the SVB was examined in the context of the instructions of C.B.E.C. As seen, an attempt has been made to ensure against routine registration of cases for investigation by SVB by providing for approval of Commissioner and periodic reviews. However, it is also a fact that cases once registered are not finalized early. Furthermore, the instructions provide that if no decision has given within 4 months of the registration of the case, the obtaining of extra duty deposit should be discontinued. Considering that discontinuance of the duty deposit is provided for a view may be taken that extra duty deposit is not a safeguard for the revenue and is not warranted. It is also a fact that so long as this nominal duty deposit is taken the importers would be anxious to get the case finalized at the earliest. Thus, it appears that the duty deposit is basically being used as an instrument to obtain the cooperation of the importers. It is the view that this is not desirable and there is a case for doing away with the duty deposit. In any case, the department has sufficient legal methods to obtain the required documents and information from the importers. **Accordingly, it is recommended that the instructions on the functioning of the Special Valuation Branch should be reviewed to provide for time bound finalization of cases in practice. Further, pre-deposit of duty should be dispensed with.**

- (iii) **Sharing of Merchant Overtime Fee for activities done in Customs area** – On principle once the goods enter the customs area any activity therein should be done during the office hours. However, at times certain activities such as examination of the goods are required to be done after office hours. This facility is extended by customs subject to the payment of overtime fees by the importer or exporter, as the case may be. It also happens that at times there are more than one importer or exporter who ask for the said facility at the same time. The present practice is to charge each importer/exporter individually to make the payment of the overtime fee even though the work of all may be done during the time limit fixed for one. Since overtime fee adds to the cost of the importer or exporter it appears desirable that wherever a customs officer undertakes

work for more than importer or exporter during the same time period, the overtime charges should be equally apportioned between the parties concerned, thereby reducing the burden to the individual.

- (iv) **Export valuation rules for export promotion schemes** – Customs Valuation Rules, 1988 apply only to valuation of imported goods. For valuation of export goods, there are no valuation rules. Whereas there appears to be no need for valuation rules for export goods in general, cases of over-valuation can not be ruled out in respect of goods entered for export under an export incentive scheme. At present, in the absence of standardized rules, each Custom House resorts to valuation of such export goods in its own way resulting in non-uniformity and subjectivity, which in turn gives rise to disputes and litigation on many occasions. A clear cut set of rules on export valuation will bring down the number of disputes on the area of export valuation of the goods. This would also ensure transparency and certainty in export valuation matters. Thus, there is a need to have in place valuation rules for determination of value of goods entered for export under an export incentive/promotion scheme.
- (v) **Customs to allow abandonment of warehoused goods** - Presently, under the Customs laws, imported goods which have been warehoused are not allowed to be abandoned. This right should be available to the importers, as is the case in respect of other imported goods.
- (vi) **Customs duty payment may be through cheques** – Facility of payment of customs duty through cheques would facilitate the genuine importers. It is seen that similar practice is followed in respect of payment of Income Tax. However, the stakes are considerably higher on the customs side as the acceptance of the cheque would entitle the importer to take away the imported goods. Accordingly, while recognizing that the facility needs to be extended, as a safeguard this may be first made available to importers who are registered with the Central Excise department.

- (vii) **Confiscation provisions in respect of export goods** - Section 113 of the Customs Act, 1962 deals with the confiscation of export goods on account of mis-declaration, only if the goods are dutiable or prohibited or entered for export under claim of Drawback. Thus, when the goods under export are neither dutiable nor covered by Drawback and there is mis-declaration no action can be taken under the said section. Examples are exports under DEPB, DEEC, or other export promotion schemes or when the goods are covered by a White Shipping Bills i.e. where no benefit is claimed. Accordingly, it appears necessary that there should be no legal lacunae and customs should be empowered to take action even in case of such exports. For this suitable amendment would be necessary to the said section.
- (viii) **Acceptance of Export Obligation Discharge Certificate (EODC)** - EODC Certificates invariably are issued by DGFT without affixing “seal” which is, however, insisted upon by Customs while accepting EODC, which causes delays. It is recommended that ideally DGFT and customs should develop an EDI link so that messages can be exchanged without loss of time. Even otherwise customs should accept the EODC produced by the exporter. In case of doubt the post-facto verification may be done from DGFT.
- (ix) **Customs officers may be empowered to enforce IPR** – custom officers are not empowered to enforce the law on Intellectual Property Rights which is not in keeping with the international practice. No specific reasons could be ascertained for this deviation. At present, the IPR violations are to be first determined by the Registrar of Copyrights or Registrar of Trade and Merchandise Marks, and thereafter a notification is required to be issued under Section 11 of the Customs Act, 1962 whereupon the goods become liable to action (under the Customs Act). However, under TRIPS the border enforcement requires a mechanism such that a holder of IPR informs customs of a violation and requests it to suspend clearance in respect of counterfeit or pirated goods. Present law does not provide such an authority to customs. Incidentally, the same

goods may also be liable to action under TRIPS as well as Customs provisions and it is desirable that a common authority viz. customs adjudicate the matter. Accordingly, it is recommended that the customs should be authorized to enforce IPR, by a suitable amendment to the Trade and Merchandise Marks Act and the Copyrights Act.

4. Custom House Agents (CHAs)

4.1 Customs House Agent's Licensing Regulations, 1984 govern the functioning of the Customs House Agents. Whereas the CHAs provide an important role in facilitating both department and the importing and exporting community, at times complaints are also received against them. Further, it is seen that though the Commissioner of Customs is required to call for fresh applications each year this is not done regularly. Moreover there is a complex procedure for obtaining a CHA license and new entry becomes difficult. It is also found that a CHA registered for operation at one port can not easily do his work at other places. Finally, the charges for customs clearance work by CHAs were fixed long back in 1989 and since then, cost of all services, such as, documentation, warehousing and transport, etc. have gone up manifold. In fact, cases of double billing by CHAs have been noticed where they maintain one set of books in accordance with the prescribed rates while in reality, they had charged their clients at higher rates. Thus, there is a need to identify the areas of improvement so that the CHA community can perform in a professional manner for the benefit of the trade and industry. In this direction **the following recommendations are made :**

- (i) CHAs should be licensed through an All India entrance examination to be conducted by Directorate General of Inspection, C.B.E.C. once a year at Delhi and at its Zonal Units for licensing of CHAs.**
- (ii) CHAs once licensed should be allowed to operate at any Custom House/Port/Inland Container Depot anywhere in the country subject to simple registration of the business premises with the jurisdictional Commissioner of Customs.**

- (iii) Once a CHA licence is issued it should be valid for all time unless the CHA comes to adverse notice of Customs on account of misconduct, delay, etc. for which penal provisions, including suspension/revocation of Licence may be applicable.**
- (iv) Rates for CHA work should be determined by market forces, which will induce a healthy competition amongst CHAs resulting in competitive rates and better service and accountability towards the clients.**
- (v) There should be a review of the technical qualifications of the CHAs to include knowledge of computer, Prevention of Corruption Act, etc.**
