



**Mid – Career Training Programme (MCTP) 2016 – 17**

**Phase – IV Group I**

**PROJECT REPORTS**



***National Academy of Customs, Excise & Narcotics (NACEN), Faridabad.***

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**PROJECT REPORT BY GROUP I**

**IMPLEMENTATION OF TRADE FACILITATION AGREEMENT,  
CHALLENGES AND OPPORTUNITIES**

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## **1. Introduction and Background**

**1.1** With liberalization of international trade, the cross-border movement of the goods across the countries in the world increased many fold. This rapid growth of international trade has amplified the need for cutting transaction costs in clearance of the goods during such movement, by the regulatory agencies. Focus has thus shifted to devising methods to simplify and standardize procedures, reduce dwell time etc. All these measures are together referred as “Trade Facilitation”.

**1.2** The main objective of trade facilitation is to simplify the process and minimize the transaction costs in international trade, while maintaining effective levels of government control. While this can involve numerous aspects, the WTO definition specifies it as the ‘simplification and harmonisation of international trade procedures’ covering the ‘activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods, including transit, in international trade.

**1.3** The present Trade Facilitation Agreement (TFA) is multilateral in nature and agreed during the Ninth Ministerial Conference of WTO, held in Bali in December 2013. Subsequently, the General Council of the WTO, on November 27th, 2014 adopted the Protocol, and opened it for acceptance by Members of the WTO. The Protocol shall enter into force for the notified Members upon acceptance by two third of the WTO Members. Till date, ~~94~~ 94 Member countries have ratified the TFA, out of the 109 needed to bring the Agreement into force. Bangladesh is the latest country to ratify the agreement. It is expected to get the required acceptance by December 2016. However, this did not happen overnight. Eighteen years of prolonged negotiations, discussions and persuasions between member countries culminated in the present agreement. To appreciate the efforts that have been put into, in arriving at this agreement, it is essential to mention following significant events.

- Singapore Ministerial Conference held in December 1996, where Members directed the Council for Trade in Goods "to undertake exploratory and analytical work on the simplification of trade procedures in order to assess the scope for WTO rules in this area" (Singapore Ministerial Declaration, paragraph 21). An eighteen year long negotiating history followed this mandate.
- Cancun Ministerial as per the July Package of 2004. After this focus on the following three core issues emerged:
  - (i) GATT Article V (Freedom of Transit), Article Viii (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations) ;
  - (ii) TF needs and priorities of members, particularly of developing and least developed countries;

- (iii) Technical assistance and capacity building.
- Circulation of the first version of the "Draft Consolidated Negotiating Text" in December 2009. It contained around 1700 areas of disagreement. .
- Bali Ministerial Conference in December 2013, where the final text of the Trade Facilitation Agreement was agreed.
- Meeting of the General Council of the WTO, on November 27th, 2014 where the Protocol was adopted and opened it for acceptance by Members.

**1.4.** Studies on the benefits of TFA show reduction of costs of global trade by 12.5%-17%. This will have positive impact both for developed and developing countries. However studies show that the Trade facilitation is particularly important for developing countries, as they are expected to gain the most due to more efficient trade procedures. However achieving it may be more challenging for the developing economies than for the developed world due to requirement of introducing new regulations, making institutional changes and costs likely to be incurred in training, and infrastructure. These aspects are discussed in detail in subsequent chapters.

## **2. Structure of the TFA**

**2.1** Before dealing with the opportunities and the challenges involved for India, it is essential to understand the broad structure of the TFA. Following points describe the broad structure of the agreement.

- The agreement contains 24 Articles divided into 3 Sections.
- **Section I** deals with operative provisions that cast obligations on Members for expediting the movement, release and clearance of goods–It contains Articles 1 to 12 which are mainly Customs centric.
- **Section II** deals with Special and Differential Treatment provisions for developing countries and Least Developed Countries – Articles 13 to 22- pertain to Categorization of commitments as stated below:

### **(i) Category A**

Provisions that the Member will implement by the time the Agreement enters into force . (or in the case of a least-developed country member within one year after entry into force)

### **(ii) Category B**

Provisions that the Member will implement after a transitional period following the entry into force of the Agreement.

### **(iii) Category C**

Provisions that the Member will implement on a date after a transitional period following the entry into force of the Agreement and requiring the acquisition of assistance and support for capacity building.

- **Section III** deals with Institutional mechanism for implementation and monitoring at the WTO and national levels – Articles 23 & 24 of this Section pertain to formation of a national committee to facilitate domestic coordination and implementation of the provisions of the Agreement.

## **1- Articles of TFA and analysis of Important Articles of TFA**

Simplification Standardization and Harmonization are the three pillars on which the Trade facilitation agreement depends. Following are the 24 Articles of the TFA with the brief description of the subject dealt by the respective Article.

### **SECTION –I**

#### **ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION**

#### **ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE, AND CONSULTATIONS**

#### **ARTICLE 3: ADVANCE RULINGS**

#### **ARTICLE 4: PROCEDURES FOR APPEAL OR REVIEW**

#### **ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY**

#### **ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES**

#### **ARTICLE 7: RELEASE AND CLEARANCE OF GOODS**

**ARTICLE 8: BORDER AGENCY COOPERATION**

**ARTICLE 9: MOVEMENT OF GOODS INTENDED FOR IMPORT UNDER CUSTOMS CONTROL**

**ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT**

**ARTICLE 11: FREEDOM OF TRANSIT**

**ARTICLE 12: CUSTOMS COOPERATION**

**SECTION II**

**SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST-DEVELOPED COUNTRY MEMBERS**

**ARTICLE 13: GENERAL PRINCIPLES**

**ARTICLE 14: CATEGORIES OF PROVISIONS (i.e., Category A,B,C)**

**ARTICLE 15: NOTIFICATION AND IMPLEMENTATION OF CATEGORY A**

**ARTICLE 16: NOTIFICATION OF DEFINITIVE DATES FOR IMPLEMENTATION OF CATEGORY B AND CATEGORY C**

**ARTICLE 17: EARLY WARNING MECHANISM: EXTENSION OF IMPLEMENTATION DATES FOR PROVISIONS IN CATEGORIES B AND C**

**ARTICLE 18: IMPLEMENTATION OF CATEGORY B AND CATEGORY C**

**ARTICLE 19: SHIFTING BETWEEN CATEGORIES B AND C**

**ARTICLE 20: GRACE PERIOD FOR THE APPLICATION OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES**

**ARTICLE 21: PROVISION OF ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING**

In the current project the challenges and opportunities in implementing the TFA in general have been dealt. However Out of the 24 Articles in the TFA, 3 Articles require more involvement of Customs

agencies, hence they have been taken for more detailed analysis. ~~in the present project~~ India has declared Category A in major part of these 3 articles. However, highlighted portions of the articles in red are Category B, which need to be complied in due course.

## **Article 1: PUBLICATION AND AVAILABILITY OF INFORMATION**

### **1. PUBLICATION**

1.1 This article mandates that each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them:

- (a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;
- (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- (d) rules for the classification or valuation of products for customs purposes;
- (e) laws, regulations, and administrative rulings of general application relating to rules of origin;
- (f) import, export or transit restrictions or prohibitions;
- (g) penalty provisions for breaches of import, export, or transit formalities;
- (h) procedures for appeal or review;
- (i) agreements or parts thereof with any country or countries relating to importation, exportation, or transit; and
- (j) procedures relating to the administration of tariff quotas.

### **2. Information Available Through Internet**

2.1 This requires each Member to make available, and update to the extent possible and as appropriate, the following through the internet:

- (a) a description of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested parties of the practical steps needed for importation, exportation, and transit;
- (b) the forms and documents required for importation into, exportation from, or transit through the territory of that Member;
- (c) contact information on its enquiry point(s).



2.2 Whenever practicable, the description referred to in subparagraph 2.1(a) shall also be made available in one of the official languages of the WTO.

2.3 Additional information regarding further trade-related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1 may be provided by the Members.

### **3. Enquiry Points**

3.1 This requires each Member to establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested parties on matters covered by paragraph 1.1 and to provide the required forms and documents referred to in subparagraph 1.1(a).

3.2 Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

3.3 Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of their fees and charges to the approximate cost of services rendered.

3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

### **4. Notification**

4.1 This requires each Member to notify the Committee on Trade Facilitation established under paragraph 1.1 of Article 23 of:

- (a) the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published;
- (b) the Uniform Resource Locators of website(s) referred to in paragraph 2.1; and
- (c) the contact information of the enquiry points referred to in paragraph 3.1.

## **Article 7 : RELEASE AND CLEARANCE OF GOODS**

### **1. Pre-arrival Processing**

1.1 This requires each Member to adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

1.2 Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

## **2. Electronic Payment**

2.1 This requires each Member to adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.

## **3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges**

3.1 This envisages each Member to adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

3.2 As a condition for such release, a Member may require:

- (a) payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or
- (b) a guarantee in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.

3.3 Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

3.4 In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5 The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

3.6 Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

#### **4 Risk Management**

4.1 This envisages each Member to adopt or maintain a risk management system for customs control.

4.2 Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

4.3 Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments. A Member also may select, on a random basis, consignments for such controls as part of its risk management.

4.4 Each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

#### **5 Post-clearance Audit**

5.1 With a view to expediting the release of goods, each Member shall adopt or maintain post clearance audit to ensure compliance with customs and other related laws and regulations.

5.2 Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations, and the reasons for the results.

5.3 The information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

5.4 Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

## **6. Establishment and Publication of Average Release Times**

6.1 Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, inter alia, the Time Release Study of the World Customs Organization.

6.2 Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

## **7 Trade Facilitation Measures for Authorized Operators**

7.1 Each Member shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

7.2 The specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures.

(a) Such criteria, which shall be published, may include:

- (i) an appropriate record of compliance with customs and other related laws and regulations;
- (ii) a system of managing records to allow for necessary internal controls;
- (iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and
- (iv) supply chain security.

(b) Such criteria shall not:

- (i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
- (ii) to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3 The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least three of the following measures:

- (a) low documentary and data requirements, as appropriate;
- (b) low rate of physical inspections and examinations, as appropriate;
- (c) rapid release time, as appropriate;

- (d) deferred payment of duties, taxes, fees, and charges;
- (e) use of comprehensive guarantees or reduced guarantees;
- (f) a single customs declaration for all imports or exports in a given period; and
- (g) clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4 Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

7.5 In order to enhance the trade facilitation measures provided to operators, Members shall afford to other Members the possibility of negotiating mutual recognition of authorized operator schemes.

7.6 Members shall exchange relevant information within the Committee about authorized operator schemes in force.

## **8 Expedited Shipments**

8.1 Each Member shall adopt or maintain procedures allowing for the expedited release of at least those goods entered through air cargo facilities to persons who apply for such treatment, while maintaining customs control. If a Member employs criteria limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraph 8.2 to its expedited shipments:

- (a) provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments in cases where the applicant fulfils the Member's requirements for such processing to be performed at a dedicated facility;
- (b) submit in advance of the arrival of an expedited shipment the information necessary for the release;
- (c) be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2;
- (d) maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;
- (e) provide expedited shipment from pick-up to delivery;
- (f) assume liability for payment of all customs duties, taxes, fees, and charges to the customs authority for the goods;
- (g) have a good record of compliance with customs and other related laws and regulations;

- (h) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations, and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2 Subject to paragraphs 8.1 and 8.3, Members shall:

- (a) minimize the documentation required for the release of expedited shipments in accordance with paragraph 1 of Article 10 and, to the extent possible, provide for release based on a single submission of information on certain shipments;
- (b) provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;
- (c) endeavour to apply the treatment in subparagraphs (a) and (b) to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods such as documents; and
- (d) provide, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

8.3 Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

## **9 Perishable Goods**

9.1 With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:

- (a) under normal circumstances within the shortest possible time; and
- (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2 Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3 Each Member shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4 In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

## **ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT**

### **1 Formalities and Documentation Requirements**

1.1 With a view to minimizing the incidence and complexity of import, export, and transit formalities and to decreasing and simplifying import, export, and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Member shall review such formalities and documentation requirements and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements are:

- (a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;
- (b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
- (c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
- (d) not maintained, including parts thereof, if no longer required.

1.2 The Committee shall develop procedures for the sharing by Members of relevant information and best practices, as appropriate.

### **2 Acceptance of Copies**

2.1 Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities.

2.2 Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

2.3 A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.

### **3 Use of International Standards**

3.1 Members are encouraged to use relevant international standards or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement.

3.2 Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.

3.3 The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

### **4 Single Window**

4.1 Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3 Members shall notify the Committee of the details of operation of the single window.



4.4 Members shall, to the extent possible and practicable, use information technology to support the single window.

## **5 Pre-shipment Inspection**

5.1 Members shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.

5.2 Without prejudice to the rights of Members to use other types of preshipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.

## **6 Use of Customs Brokers**

6.1 Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not introduce the mandatory use of customs brokers.

6.2 Each Member shall notify the Committee and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.

6.3 With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

## **7 Common Border Procedures and Uniform Documentation Requirements**

7.1 Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2 Nothing in this Article shall prevent a Member from:

- (a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;
- (b) differentiating its procedures and documentation requirements for goods based on risk management;

- (c) differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;
- (d) applying electronic filing or processing; or
- (e) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on the Application of Sanitary and Phytosanitary Measures.

## **8 Rejected Goods**

8.1 Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

8.2 When such an option under paragraph 8.1 is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

## **9 Temporary Admission of Goods and Inward and Outward Processing**

9.1 Temporary Admission of Goods Each Member shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into its customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

### **9.2 Inward and Outward Processing**

- (a) Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be reimported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations.
- (b) For the purposes of this Article, the term "inward processing" means the customs procedure under which certain goods can be brought into a Member's customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing, or repair and subsequent exportation.
- (c) For the purposes of this Article, the term "outward processing" means the customs procedure under which goods which are in free circulation in a Member's customs territory may be temporarily exported for manufacturing, processing, or repair abroad and then re-imported.

### **Challenge in implementation and Gap Analysis**

1. India has notified its Category A commitments to WTO on 19 March 2016. However there are certain challenges relating to implementation of TFA which are as follows:

- **Customs expected to play a lead role** in setting standards and coordinating with other border management agencies. The National Committee on Trade Facilitation (NCTF) is headed by the Cabinet Secretary with Secretaries to various Departments, Chairman (CBEC), DGFT, trade bodies as its Members. Joint Secretary (Customs) is the Member Secretary to the NCTF. Member (Customs), CBEC is the head of the Steering Committee which has members from various Ministries / Departments such as Ministry of Home Affairs, Ministry of Shipping, Department of Commerce, Agriculture, Animal Husbandry & Fisheries, Land Port Authority of India, and members from trade bodies such as FICCI, FIEO, CII, ASSOCHAM.
- Implementation of requires inter-ministerial coordination amongst a host of agencies. This is both a challenge as well as an opportunity for CBEC to prove its credentials.
- TFA not very prescriptive - so some degree of openness about the standards to be applied
- Policy or legislative changes which the CBEC would handle- but a **substantial part to be done by field formations**
- **Unevenness** in the rigour of implementation across field formations- whether major or minor- would be **unacceptable**
- **Strong degree of commitment** and ownership from the supervisory officers a pre-requisite
- TFA implementation requires **infrastructure creation** not only in Customs, but by other regulatory departments like Plant Quarantine, Phyto sanitary, Health etc. This may be required in even in small customs stations like Petrapol,, etc., which ~~appears is a challenge to be an uphill task.~~

- Creation of an **IT network** for those Departments which can share documentation, images of consignment etc. SWIFT Module by CBEC is major step for sharing information with other agencies. If required need to engage a professional body of consultants for an integrated horizon scan of existing situation as per TFA Articles of all departments can be considered.
- The requirement of **movement of physical samples** to testing lab to ensure regulatory compliances and the dwell time involved may be a major challenge at some Customs Stations.

2. In the above background of general challenges, the gap analysis of important Articles [India has categorized as Category B] where Customs would be required to play a key role are as under:

Relevant Article	Requirement	Present Status	What needs to be done
1.1 (b)	Publication of applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation	<ol style="list-style-type: none"> <li>1. Rates of duties and notifications are published on the cbec website. ICEGATE provides for 'Tax Calculator'</li> <li>2. However, these are in the form of amending notifications.</li> <li>3. Consolidated amended notifications are presently not available from time to time except in the form of private publications which are issued post-Budget.</li> <li>4. Rates of duties are also available on the icegate website.</li> </ol>	<ol style="list-style-type: none"> <li>1. Notifications are issued <u>year round the year</u>. Therefore, the amendments carried out during the year from time to time should update the master notification immediately so that the master notification is updated each time an amending notification is issued.</li> <li>2. Judicial interpretations also need to be compiled and made available.</li> <li>3. Requirements on part of other Departments / Ministries have not been dealt with at present.</li> </ol>
2.1 (c)	Contact information on its enquiry point(s)	<ol style="list-style-type: none"> <li>1. There is no institutional or systematic arrangement of enquiry points.</li> </ol>	<ol style="list-style-type: none"> <li>1. Requires establishing and empowering the enquiry points by putting systems in place.</li> </ol>
3.1	To establish or maintain one or more enquiry points to		

Relevant Article	Requirement	Present Status	What needs to be done
	answer reasonable enquiries of governments, traders, and other interested parties on matters covered by paragraph 1.1 and to provide the required forms and documents referred to in subparagraph 1.1(a).		2. Telephonic or web-based with a dedicated portal for the same.
4.1 (a), (b), (c)	<p>To notify to the Committee on Trade Facilitation</p> <p>(a) the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published;</p> <p>(b) the Uniform Resource Locators of website(s) referred to in paragraph 2.1; and</p> <p>(c) the contact information of the enquiry points referred to in paragraph 3.1.</p>	<p>1. There are various sources of information / enquiry such as cbec website, icegate website, DGFT, etc.</p> <p>2. Thus, information is scattered and not in one place.</p>	<p>1. This requires collation about the information published in various websites and to be put in one place with hyperlinks to such websites.</p>
1.2	Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.	<p>1. Presently, there is a provision to file IGM electronically prior to the arrival of the shipment.</p> <p><u>2.</u> Also, there is a provision for filing of prior bill of entry before arrival of imported goods.</p>	<p>1. This facility may have to be extended to all non-EDI ports also.</p>

Relevant Article	Requirement	Present Status	What needs to be done
		2.3. <a href="#">SWIFT provides such platform</a>	
3.1	This envisages each Member to adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.	<ol style="list-style-type: none"> <li>1. The current legal position is upfront payment of duty and not release of goods on the basis of guarantee.</li> <li>2. However, section 18 of the Customs Act [provisional assessment] provides for release of goods prior to determination of duty.</li> <li>3. In the Budget 2016, a facility has been introduced for deferred payment of customs duties for importers and exporters to certain class of importers and exporters.</li> </ol>	<ol style="list-style-type: none"> <li>1. This requires change in law for implementing proposal for where goods are required to be released prior to final determination of duty or as rapidly as possible on the arrival of goods.</li> </ol>
3.2	<p>As a condition for such release, a Member may require:</p> <ol style="list-style-type: none"> <li>(a) payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or</li> <li>(b) a guarantee in the</li> </ol>		

Relevant Article	Requirement	Present Status	What needs to be done
	<p>form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.</p>		
3.3	<p>Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.</p>		
3.4	<p>In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.</p>		
3.5	<p>The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.</p>		
4.1	<p>This envisages each Member to adopt or maintain a risk management system for customs control.</p>	<ol style="list-style-type: none"> <li>1. We already have a Risk Management Division.</li> <li>2. We have risk based assessment of imports and exports.</li> </ol>	<ol style="list-style-type: none"> <li>1. It is expected that the focus should be on voluntary compliance by trade.</li> <li>2. This requires the facilitation percentage to be higher than the present levels.</li> </ol>
4.2	<p>Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination,</p>	<ol style="list-style-type: none"> <li>3. The risk based selection criteria are based on</li> </ol>	<ol style="list-style-type: none"> <li>3. This calls for very robust</li> </ol>

Relevant Article	Requirement	Present Status	What needs to be done
	or a disguised restriction on international trade.	various parameters such as HS code, nature and description of goods, country of origin, value of goods, nature of importer, etc.	and intelligent risk management systems to collect, collate and analyse data so as to have targeted interventions.
4.3	Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments. A Member also may select, on a random basis, consignments for such controls as part of its risk management.		
4.4	Each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.		
5.4	Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.		



Relevant Article	Requirement	Present Status	What needs to be done
8.2 (a)	Minimize the documentation required for the release of expedited shipments in accordance with paragraph 1 of Article 10 and, to the extent possible, provide for release based on a single submission of information on certain shipments.	<ol style="list-style-type: none"> <li>1. Following the issue of CBEC Circular 10/2016-Cus dated 15.03.2016 regarding implementation of the Single Window "Integrated Declaration" with effect from 1st of April, 2016, the 'Bill of Entry' has been replaced by an 'Integrated Declaration', which covers all information required for import clearance by the other government agencies.</li> <li>2. The Customs Broker or Importer shall submit the "Integrated Declaration" electronically to a single entry point, i.e. the Customs Gateway (ICEGATE).</li> <li>3. Separate application forms (both online and hardcopy) required by different Participating Government Agencies (PGAs) like Drug Controller, AQCS, WCCB, PQIS and FSSAI have been dispensed with.</li> </ol>	<ol style="list-style-type: none"> <li>1. Implementation issues will have to be ironed out as and when these are encountered by the field formations.</li> </ol>
9.4	In cases of significant delay in the release of perishable goods, and upon written request, the importing	<ol style="list-style-type: none"> <li>1. The provision to this effect already exists.</li> </ol>	<ol style="list-style-type: none"> <li>1. The provision to this effect already exists.</li> </ol>

Relevant Article	Requirement	Present Status	What needs to be done
	Member shall, to the extent practicable, provide a communication on the reasons for the delay.		
2.2	Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.	1. This requires an executive action and does not require any legislative change.	1. Can be provided by way of a Circular after inter-ministerial deliberations in the Steering Committee.
4.1	Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.	1. Central Board of Excise and Customs (CBEC) has operationalised the 'Indian Customs Single Window Project' to facilitate trade from 01st April 2016 at all EDI locations throughout India.  2. As a result the importers and exporters electronically lodge their Customs clearance documents at a single point only with the Customs. The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug	1. Requires further harmonisation of procedures, formalities and documentation amongst various agencies concerned.  2. Cost in terms of infrastructure, IT, etc.  3. This also requires maintaining a fine balance between facilitation and enforcement especially in the case of dual use goods, food items, etc.
4.2	In cases where documentation and/or data requirements		

Relevant Article	Requirement	Present Status	What needs to be done
	<p>have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.</p>	<p>Controller, Food Safety and Standards Authority of India, Textile Committee etc. is obtained online without the importer/exporter having to separately approach these agencies.</p>	
4.3	<p>Members shall notify the Committee of the details of operation of the single window.</p>	<p>3. This has been made possible through a common, seamlessly integrated IT systems utilized by all regulatory agencies, logistics service providers and the importers/exporters.</p>	
4.4	<p>Members shall, to the extent possible and practicable, use information technology to support the single window.</p>	<p>4. The Single Window Interface for Trade (SWIFT) thus provides the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.</p> <p>5. Further, CBEC has introduced risk based selectivity criteria into the RMS whereby consignments will be referred to PGAs for NOC based on risk.</p>	

Relevant Article	Requirement	Present Status	What needs to be done
5.2	Without prejudice to the rights of Members to use other types of pre-shipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.	1. Pre-shipment inspection certificates are required in respect of scrap, second hand capital goods, etc.	<p><del>2.1.</del> Instead of pre-shipment certificates other means of certifying the integrity of the import cargo may have to be used.</p> <p><del>3.2.</del> Increased use of scanning for such consignments may be required depending upon the risk associated with such consignments,</p>
8.2	When an option under paragraph 8.1 is given to the importer for re-export of goods rejected on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.	1. This provision is already in place.	1. This provision is already in place.
9.2	<p>Inward and Outward Processing</p> <p>(a) Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for</p>	1. Presently, goods re-imported after repairs abroad are exempt from customs duties to the extent of the value of goods exported provided that the identity of such is established. The value of re-imported goods after repairs are made up of the	1. Provisions already exist.

Relevant Article	Requirement	Present Status	What needs to be done
	<p>outward processing may be reimported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations.</p> <p>(b) For the purposes of this Article, the term "inward processing" means the customs procedure under which certain goods can be brought into a Member's customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing, or repair and subsequent exportation.</p> <p>(c) For the purposes of this Article, the term "outward processing" means the customs procedure under</p>	<p>fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways. Also, export benefits, if any availed of at the time export are required to be paid back [notification No.94/96-Customs].</p> <p>2. Similarly, goods manufactured in India and re-imported for</p> <p>(a) reprocessing; or</p> <p>(b) refining; or</p> <p>(c) re-marking; or</p> <p>(d) subject to any process similar to the processes referred to in clauses (a) to (c), are exempted from customs duties subject to certain specified conditions [notification No.158/95-Customs].</p>	

Relevant Article	Requirement	Present Status	What needs to be done
	<p>which goods which are in free circulation in a Member's customs territory may be temporarily exported for manufacturing, processing, or repair abroad and then re-imported.</p>		

**5. Opportunities / Benefits of TFA**

1. Evaluation of the cost-benefit balance of TFA has been controversial.
2. For businesses the direct and indirect costs of moving goods across borders have assumed significance with progressive liberalization of tariffs estimated at US\$ 2 trillion.
3. It has been claimed that TFA would reduce the costs associated with global trade by about 10% for developed and 13-15.5% for developing. Reduction in such costs in general would reduce the burden of such indirect costs on the consumers.
4. As per the International Chamber of Commerce, TFA would boost world economy by US\$ 1 trillion and create 21 million jobs.
5. Institutional mechanism to exchange information filed with other Customs formations in the form and manner as filed. This may enable to curb frauds related to valuation, country of origin etc.
6. In the Indian context, implementation of the regulatory framework; training of personnel; institutional mechanism and equipment and infrastructure requirements will have associated costs. Thus, the net benefit would depend upon the costs incurred in implementation of the provisions of the

TFA. Considering that major part of the provisions are in Category A, and that quite a few of the provisions in Category B are either partly complied in the required form or require to be reorganized in line with the requirements of TFA, the implementation of the TFA may not entail substantial costs vis-à-vis benefits accruing out of such trade facilitation.

7. The major issue that needs to be addressed will relate to striking a balance between facilitation and enforcement. In order to effectively facilitate genuine trade while simultaneously checking illegal trade would require robust data collection, collation, analysis and scientific methods to identify risk parameters and selection criteria for assessment. This will require collection of data from third party sources also.

### **Conclusion**

The TFA Articles focuses on good governance, transparency and modernization. The National Committee for Trade Facilitation, which has a major role in driving trade facilitation measures across all Ministries would have Member (Customs), CBEC in the Steering Committee. Thus, Customs would play a vital role in unlocking gains form international trade by eliminating all unnecessary elements in procedures and processes, alignment of national procedures, operations and documents with international conventions, along with process of developing internationally developed formats, documents and information. However, the role of effective collaboration and coordination among government agencies and private sector players, in addition to strong institutional framework is at the core of trade facilitation, which would eventually lead to enhanced trade competitiveness. Indian customs has to take up the challenge to facilitate trade while at the same time ensuring compliance with trade and customs regulations.

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**PROJECT REPORT BY GROUP II**

**ADMINISTRATION AND CADRE RE-ORGANIZATION IN CBEC**  
**UNDER GST REGIME**

Mentor: Shri Balesh Kumar

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## Executive Summary

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- The current 3 tier structure at the Commissionerate level appears suitable under the GST regime.
- Any large scale change in the current structure of CBEC handling Central Excise and Service tax is not recommended as it may have a disruptive effect in overall working and may not ensure a smooth transition to the GST regime.
- The number of GST Commissionerates may be reduced from 141 to 120. This would imply an assessee base of 1000 per range.
- Increase in number of Audit Commissionerates from 45 to 60 is recommended.
- There should be no change in number of Commissioners (Appeals)
- Group is not in favor of abolishing LTU on implementation of GST but suggesting a different framework for LTUs under GST
- It is advisable to leave Customs from Central Excise and Service tax under the GST regime.
- Group recommends strengthening of some of the Directorates that are likely to assume importance in wake of implementation of GST. These Directorates include DGCEI, DG(Systems), NACEN etc. Some of the Directorates such as Directorate of Taxpayer Services, Directorate General of Performance Management, and Directorate General of Service Tax may be upgraded and be headed by Principal Commissioner of Customs. Setting up of three (3) new RTIs is proposed in Rajasthan, Orissa and Chandigarh. Also 3 Sub-RTIs headed by JD/ADD at Nagpur, Raipur and Coimbatore may be considered. Two more units of DG (Systems) to be set up for smooth implementation of GST.
- A paradigm shift to more specific functional verticals at the Commissionerate level is not warranted at this juncture but may be considered in the future.
- Commissioners of GST should continue to handle adjudication work, the upper monetary limit of which may be suitably decided by CBEC. This will also ensure enough work for Commissioners of GST to handle in addition to other items of work.
- GST Tribunals are expected to be set up. CESTAT will continue to work for Customs, Current Central Excise and Service tax as well as legacy issues. GST Tribunals should have

office in every state. Office of DR in every state is recommended. A view can be taken that few DR Offices may be headed by Commissioners and other by Additional Commissioners depending upon workload.

- The concept of setting up of a Directorate General of Dispute Resolution (DGDR) is agreeable in principle. However, it is seen that mandate of DGDR is largely overlapping with that of Directorate of Legal Affairs. It is therefore suggested that Directorate of Legal Affairs may be upgraded. A separate DGDR without substantive and clearly laid down objectives/ mandate for dispute resolution may not add additional value.
- Legacy issues may be allowed to be handled by respective GST Commissionerates at least for a period of one year after implementation of GST.
- States having 10 GST Commissionerates each are proposed to have one Zone headed by a Principal Chief Commissioner. States having 10-20 GST Commissionerates are proposed to have two GST Zones-one headed by a Principal Chief Commissioner and the other by a Chief Commissioner. States having more than 20 GST Commissionerates are proposed to have 3 GST Zones- one headed by Pr. Chief Commissioner and other two by Chief Commissioner. All Central Goods & Services Tax Commissionerates proposed to be headed by Commissioners.
- The current organizational structure with modifications suggested in the Report may continue for three years after implementation of GST. The need for reorganization of administrative structure and staffing may be reassessed thereafter. At the same time lessons learnt and difficulties faced in implementation of GST may also be factored into assessment of Structure/ staffing. While a paradigm shift to Functional Vertical at this point may not be feasible for reasons recorded, Functional Vertical model may be considered for adoption by CBEC in next Cadre restructuring in lines with recommendations of Tax Administration Reform Committee (TARC).

## Chapter 1

### GOODS AND SERVICES TAX (GST)

#### 1.1 Introduction

Goods and Services Tax is value added tax levied on the consumption of goods and services. It is an indirect tax on the value addition at each stage of supply of goods or services up to final consumption.

In GST regime, goods and services are not differentiated as it moves through the supply chain. The fundamental feature of GST is the eligibility of the manufacturers and dealers to claim credit for 'input tax' paid at each stage without any limit or the barriers of state boundaries till it reaches the ultimate consumer. In GST structure, different stages of production and distribution are interpreted as a mere pass-through, and the incidence of tax is essentially borne by the final consumer within a taxing jurisdiction. There is no other tax that can be as transparent and simple like GST. The taxpayer, the ultimate consumer and the tax administration are all fully aware of all the details of tax payment. The transparency improves compliance as it becomes difficult to evade taxes successfully at every stage of transaction. A well-designed GST on all goods and services is the most efficient method of taxation to eliminate distortions.

In India, Union government levies and collects CENVAT (Central Value Added Tax) on manufacture of specified goods and Service Tax on provision of taxable services. At state level, VAT replaced State Sales Tax from 2004 in phased manner. At present, there is 2% CST (Central Sales Tax) levied by Union government and collected and retained by originating states on inter-state sales. In addition to the above, various indirect taxes are levied by the Union government or State governments such as education cess, entry tax, entertainment tax, purchase tax, etc.

The present system of domestic indirect taxation in India, due to many reasons like cascading, exemptions, multiplicity of taxes and rates, interferes with the free play of the market forces and competition, causes economic distortions, and entails high costs of compliance and administration. In an effort to have smart tax administration, indirect tax system in India has been undergoing paradigm changes by adopting GST at both union and states level. Goods and services tax (GST) aims to provide for a common, unified indirect tax structure and it is considered to be the most ambitious indirect tax reform after independence.

The Constitution (One Hundred and First Amendment) Act, 2016 that received the assent of the President on the 8th September 2016 enabled the government to constitute GST Council and initiate the due process of law for introduction of GST in India. Upon implementation of GST, the host of central and state indirect taxes will be subsumed in a single unified tax. This will provide seamless credit to goods and services, will remove cascading effect of taxes and will also lead to establishment of common market. What makes GST an important tax reform is that it simplifies the tax structure, increases tax

compliance, increases government revenue and integrates states. The Current tax structure creates borders within borders in the country as the system is unable to provide tax credits for inter-state transactions, and this leads to distortions in the allocation of resources. In this context, one of the most important benefits of implementing the GST is that it would integrate the economy and move for common national markets. Overall impact of better allocation of resources, improving efficiency of domestic production and exports is likely to improve overall growth.

## **1.2 Benefits of GST in India**

The benefits of GST are listed as under:

- (i) GST will replace 17 indirect tax levies and compliance cost will fall.
- (ii) Revenue is expected to get a boost and evasion is set to drop Input tax credit will encourage suppliers to pay taxes.
- (iii) This will ensure a common market as it is currently fragmented along state lines pushing costs upto 20-30%.
- (iv) This will give a boost to investment. For many capital goods, input tax credit is not available. Full input tax credit under GST means a 12-14% drop in the cost of capital goods. This is expected to give a 6% rise in capital investment and an overall rise of 2%.
- (v) GST implementation will be conducive for 'Make In India' Programme as manufacturing will get more competitive as GST addresses cascading of tax, inter-state tax, high logistics cost and fragmented market. It also helps in increased protection from imports as GST provides for appropriate countervailing duty.
- (vi) Manufactured goods could become cheaper on account of lower logistics and tax costs.
- (vii) This will facilitate freeing up online sales as restrictions and levies have complicated ecommerce. Some sellers do not even ship to particular state. All this will end with GST.
- (viii) GDP is expected to get a boost. NCAER projects a growth of 0.9-1.7% owing to elimination of tax cascading.
- (ix) The current 2% inter-state levy discourages effective interstate expansions and production is kept within a state. Under the GST national market, this can be dispersed, creating opportunities for others as well.

## **1.3 Sector wise Gain or loss expected on account of implementation of GST**

The following four sectors are expected to benefit from GST implementation:

1. Consumption (Warehousing consolidation)
2. Logistics
3. House building materials (lower duties)
4. Industrial manufacturing

Oil and Gas could see negative impact, while cigarettes could see negative impact only if overall tax incidence goes up, the probability of which may be low. The remaining sectors are likely to have a neutral impact.

## 1.4 Genesis

The idea of moving towards GST was first mooted by the then Union Finance Minister in his Budget speech of 2006-07. Initially it was proposed that GST would be introduced from 1.04.2010. The Empowered Committee of State Finance Ministers (EC), which formulated the design of State VAT, was requested to come up with a road map and structures for GST implementation. Joint Working Group of officials having representatives of states as well as the Centre were set up to examine various aspects of GST and draw up reports specially on exemptions and thresholds

To address the issue of concurrent jurisdiction of Centre and State for the levy of GST, the Constitution (115<sup>th</sup> Amendment) Bill was introduced in the Lok Sabha on 22.03.2011. The said Bill lapsed with the dissolution of 15<sup>th</sup> Lok Sabha. The Constitution (122<sup>nd</sup> Amendment) Bill was introduced in 16<sup>th</sup> Lok Sabha on 19.12.2014. The Bill provides for levy of GST on supply of all goods and Services except the specified goods. The tax will be levied as dual GST separately but concurrently by Union (CGST) and State (SGST). The Parliament will have power to levy GST (IGST) on inter-state supply or commerce (including imports) in goods or services. The Central Government would have powers to levy excise duty in addition to GST on tobacco and tobacco products.

A GST Council (GSTC) would be constituted comprising of the Union Finance Minister, the Minister of State (Revenue) and the State Finance Ministers. GST Council will recommend on the GST rates, exemption and threshold taxes to be subsumed and other features. This mechanism would ensure some degree of harmonization in different aspects of GST between State and Centre.

The Constitutional Bill was passed by both Lok Sabha and Rajya Sabha and has got the assent of the President. The GST council has been constituted and has since conducted meetings on 22/23.09.2016 and 30.09.2016 to deliberate on various issues including determination of threshold, exemption and tax rate etc.

Suitable legislation for levy of GST (CGST and SGST) drawing power from the Constitution can be introduced in the Parliament after enactment of Constitution Amendment Bill and on recommendation of GST Council. Unlike the Constitutional Amendment Bill, GST Bills can be passed by simple majority. The levy of the tax can commence only after the GST laws are passed by respective legislatures. Again, unlike the State VAT, the date of commencement of this levy would have to be synchronized across the Centre and the States. This is because the IGST model cannot function unless the Centre and all the States participate simultaneously.

## Chapter 2

### Salient Features of GST in India

1. GST would replace the following taxes currently levied and collected by the Centre
  - (i) Central Excise duty
  - (ii) Duties of Excise (Medical and Toilet Preparation)
  - (iii) Additional duties of excise (Goods of special importance)
  - (iv) Additional duty of Excise (Textile and Textile products)
  - (v) Special duty of Customs (SAD)
  - (vi) Service tax
  - (vii) Cess and surcharge in so far as they relate to supply of goods and services

State taxes that would be subsumed within the GST are:

- (i) State VAT
  - (ii) Central Sales Tax
  - (iii) Purchase Tax
  - (iv) Luxury Tax
  - (v) Entry Tax (All forms)
  - (vi) Entertainment tax (except those levied by the local bodies)
  - (vii) Taxes on advertisements
  - (viii) Taxes on lotteries, betting and gambling
  - (ix) States cess and surcharges in so far as they relate to supply of goods and services
2. It would be dual GST with the Centre and State simultaneously levying it on a common base. The GST to be levied by Centre would be called Central GST (CGST) and that to be levied by states would be called as State GST (SGST). Further an integrated GST would be levied on the inter-state supply (including stock transfer) of goods and services. This would be collected by the Centre so that the credit chain is not disrupted.
3. Import of goods and services would be treated as inter-state supplies and would be subject to IGST in addition to normal customs duties.
4. CGST, SGST and IGST would be levied at rates to be mutually agreed upon by Centre and States under the aegis of GST Council.
5. GST will apply to all goods and services except alcohol for human consumption, Electricity and Real Estate.
6. GST on petroleum products would be applicable from a date to be recommended by GST council.

7. Tobacco and Tobacco products would be subject to GST. In addition, the Centre would continue to levy Central Excise duty.

8. A common threshold will apply to both CGST and SGST. Tax payers with a turn over below it would be exempt from GST. A compounding option (to pay tax at a flat rate without credits) would be available to small tax payers below certain threshold. The threshold exemption and compounding scheme shall be optional.

9. Export to be zero rated.

10. The list of exempted goods and services would be kept to a minimum and it would be harmonized for the Centre and States as far as possible.

11. Credits of CGST paid on inputs may be used only for paying CGST on the output and credit of SGST paid on inputs may be used only for paying SGST. In other words, the two streams of input credits cannot be cross utilized, except in specified circumstances of inter-state supply for payment of IGST. The credit would be permitted to be utilized in the following manner:

- (a) ITC of CGST allowed for payment of CGST
- (b) ITC of SGST allowed for payment of SGST
- (c) ITC of CGST allowed for payment of CGST and IGST in that order
- (d) ITC of SGST allowed for payment of SGST and IGST in that order
- (e) ITC of IGST allowed for payment of IGST, CGST and SGST in that order
- (f) ITC of Additional Tax would not be permitted.

12. Accounts would be settled periodically between the Centre and the States to ensure that the credit of SGST used for payment of IGST is transferred by the exporting State to the Centre. Similarly, the IGST used for payment of SGST would be transferred by the Centre to the importing State.

### Chapter 3

#### Challenges of GST Implementation in India

Following are the major challenges that are required to be addressed adequately subsequent to rolling out of GST.

- Parity issues - Commissioner of VAT in State vs Commissioner of CBEC
- Meaningful role to all officers
- Ensuring efficient and effective delivery

**Other significant issues:**

- RNR, Dual control, Organization restructuring, role assignments
- GST rates
- Valuation
- Mechanism for providing information for apportionment of IGST
- At present centralized registration is quite common and well received. Taxpayers are not willing to give this facility in the GST regime. However, since the GST is consumption based tax, it is not clear whether we can have centralized registrations for central levies. In that case what kind of return and compliance requirements and facilitation are required.
- Anticipating large number of issues on dispute resolution mechanisms:
  - ✓ Adjudication level – whether common or not
  - ✓ Review and revision
  - ✓ Appellate forum
  - ✓ Constitution of Tribunals
- Role of CBEC / TRU in policy making is not clear as GST Council is likely to be tasked with formulating policy and making recommendations to the Council
- HR issues
- Legacy issues



## Chapter 4

### CBEC - Proposed structure of Commissionerates after implementation of GST

Reorganization of CBEC field formations is an important task in order to make them GST ready. The following observations and suggestions are made after long deliberations by the group members.

1. The current three-tier structure of Commissionerate, Division and Range is found to be satisfactory and may continue under GST regime also.
2. The total assessee base estimated at present is 11,20,000
3. At present, there are 23 Central Excise Zones, 4 Service Tax Zones across the country. They consist of 119 Central Excise Commissionerates, 22 Service Tax Commissionerates, 45 Central Excise and Service Tax Audit Commissionerates, and 5 Large Taxpayers Units (LTU).
4. Zone-wise and State-wise distribution of the Central Excise/Service Tax Commissionerates and respective assessee-base are given below:

**Table 4.1: State-wise CBEC field formations and assessee-base**

State	Name of Zone	Number of Commissionerates	Number of CEN Assesseees	Number of ST Assesseees	Total number of Assesseees
Gujarat, Dadra Nagar Haveli, Daman & Diu	Ahmedabad	Central Excise: 6 Service Tax: 1 Audit: 3 Appeal: 3	18374	99440	117814
	Vadodara	Central Excise: 9 Audit: 3 Appeal: 3			
Karnataka	Bangalore	Central Excise: 5 Service Tax: 2 Audit: 2 Appeal: 3	9553	73134	82687
	Mysore	Central Excise: 3 Audit: 1 Appeal: 1			
M.P. & Chhattisgarh	Bhopal	Central Excise: 6 Audit: 2 Appeal: 2	4466	30914	35380
Orissa	Bhubaneswar	Central Excise: 3	1268	16933	18201

		Audit: 1 Appeal: 1			
Punjab, J&K, H.P. and Chandigarh	Chandigarh	Central Excise: 5 Audit: 1 Appeal: 2	5552	37305	42857
Tamil Nadu & Pondicherry	Chennai	Central Excise: 5 Audit: 2 Appeal:2	14736	71942	86678
	Coimbatore	Central Excise: 5 Audit:1 Appeal:2			
	Chennai ST	Service Tax: 3 Audit:1 Appeal:2			
Kerala & Lakshadweep	Cochin	Central Excise: 3 Audit: 1 Appeal:3	2060	22706	24766
Delhi, Haryana	Delhi	Central Excise:9 Audit: 2 Appeal: 2	12647	151200	163847
	Delhi ST	Service Tax: 4 Audit: 2 Appeal: 2			
Andhra Pradesh, Telangana	Hyderabad	Central Excise: 4 Service Tax: 1 Audit:1 Appeal:2	7689	46675	54364
	Vishakhapatnam	Central Excise: 5 Audit: 1 Appeal:2			
Rajasthan	Jaipur	Central Excise: 4 Audit: 1 Appeal:1	4668	36644	41312
West Bengal &Andaman Nicobar	Kolkata	Central Excise: 9 Audit:2 Appeal: 2	9106	57753	66859
	Kolkata ST	Service Tax: 2 Audit:1			

		Appeal: 0			
U.P. & Uttaranchal	Lucknow	Central Excise: 4 Audit: 1 Appeal:2	9087	62256	71343
	Meerut	Central Excise: 6 Service Tax: 1 Audit: 2 Appeal:2			
Maharashtra	Mumbai –I	Central Excise: 4 Audit: 2 Appeal:1	25721	241356	267077
	Mumbai-II	Central Excise: 3 Audit:1 Appeal:1			
	Nagpur	Central Excise: 6 Audit: 2 Appeal: 1			
	Pune	Central Excise: 6 Service Tax: 1 Audit: 3 Appeal: 3			
	Mumbai ST	Service Tax: 7 Audit: 3 Appeal: 2			
Goa	Pune CE	CE: 1	635	5636	6271
Bihar, Jharkhand	Ranchi	Central Excise: 5 Audit: 1 Appeal: 2	2347	25296	27643
North East (Assam, Meghalaya, Nagaland, Manipur, Mizoram, Arunachal Pradesh, Tripura, Sikkim)	Shillong	Central Excise: 3 Audit: 1 Appeal:1	1727	10748	12475
<b>TOTAL</b>			<b>129636</b>	<b>989938</b>	<b>1119574</b>

Source: DG (Audit) and GST Cell, CBEC

Average number of assesseees per division

: 1505 assesseees

Average number of assessees per range : 304 assessees

5. Central Excise, Service Tax and State VAT will be the major taxes to be subsumed in Goods & Services Tax and all the GST assessees will have a common registration, as recommended by the Joint Committee on Business Process for GST on Registration. The tax payer will have the option to pay CGST, IGST, Additional Tax and SGST concurrently using common registration in GSTN Common portal. More details are available in the following link: [https://mygov.in/sites/default/files/mygov\\_1444628250190667.pdf](https://mygov.in/sites/default/files/mygov_1444628250190667.pdf)

6. After the introduction of Goods & Services Tax (GST), Service Tax will cease to be levied. However, Central Excise duties will continue to be levied on Petroleum products as well as Tobacco and its products. In this background, the existing Service Tax Commissionerates and Central Excise Commissionerates will have to be necessarily reorganized by merger with each other to create GST Commissionerates.

7. In the event of implementation of Goods & Services Tax, the number of assessees for CGST is likely to increase exponentially. In this regard, it may be pertinent to note that Dutt-Majumder Committee in their Report estimated that under the GST Regime, the Department will have to handle additional GST Assessees to the tune of more than 50 Lakh. Similarly, Gupta Committee in their Report estimated that in GST Regime, assessee-base may increase 6 times of existing assessee-base of Central Excise and Service Tax.

8. Following table indicates the State-wise GST Assessees base for CGST:-

**Table 4.2: State-wise GST Assessee base for CGST**

Likely Assessees-base in GST Regime (Data Source: DG(Audit)/GST Cell, CBEC)				
Sl. No.	States	Total VAT Assessees	CE & ST Assessees	Total GST Assessees
1-2	ANDHRA PRADESH & TELANGANA	139676	54364	194040
3	BIHAR	86907	10904	97811
4	CHANDIGARH	14501	23346	37847
5	MADHYA PRADESH	43140	24857	67997
6	CHATTISGARH	9154	10523	19677
7	DELHI	274149	133702	407851

8	GOA	11554	6271	17825
9	GUJARAT	446000	114465	560465
10	DADAR & NAGAR HAVELI	2267	3349	5616
11	DAMAN & DIU	3845	*	3845
12	HARYANA	193256	30145	223401
13	HIMACHAL PRADESH	37780	**	37780
14	JAMMU & KASHMIR	49130	661	49791
15	JHARKHAND	52127	16739	68866
16	KARNATAKA	506708	82687	589395
17-18	KERALA& LAKSHDWEEP	195642	24766	220408
19	MAHARASHTRA	718211	267077	985288
20	ASSAM	116449	9530	125979
21	ARUNACHAL PRADESH	1783		
22	MANIPUR	4589		
23	MEGHALAYA	14858		
24	MIZORAM	4099		
25	NAGALAND	1649		
26	TRIPURA	16148		
27	SIKKIM	10000		
<b>21-27</b>	<b>N.E. (7 States)</b>	<b>53126</b>	<b>2945</b>	<b>56071</b>
28	ODISHA	104873	18201	123074
29	PUDUCHERRY	12860	3921	16781
30	PUNJAB	250117	18850	268967
31	RAJASTHAN	434195	41312	475507
32	TAMIL NADU	392533	82757	475290
33	UTTAR PRADESH	#	64055	64055
34	UTTARANCHAL	87864	7288	95152
35-36	WEST BENGAL & ANDMAN NICOBAR	233313	66859	300172
<b>GRAND TOTAL</b>		<b>4469377</b>	<b>1119574@</b>	<b>5588951</b>

# Information about VAT Assesseees in Uttar Pradesh is not available. Therefore, for formulating the proposal, combined assesseees base in GST regime has been taken as 60,00,000 to account for the missing information.

\* Assesseees-base clubbed with Gujarat

\*\* Assesseees-base clubbed with Chandigarh

@ As per CAG Report No. 4 of 2015 (Indirect Taxes-Service Tax), there are 12,76,861 Registered Service Tax Assesseees. Similarly, as per CAG Report No. 7 of 2015, there are 4,35,668 registered Central Excise Assesseees. Thus, there are a total 1712529 registered CE & ST Assesseees.

9. Having regard to the above position, it is expected that the assessee-base in the GST Regime is likely to reach 60 lakhs mark- an increase of about 6 times over the present Assessee-base. To provide efficient and effective taxpayers services to the increased number of assessee, it, thus, becomes necessary to reorganize the existing organizational structure taking into account the expected multifold increase in the assessee-base.

9.1 Considering that the total number of assessee is likely to be around 60 lakhs and an average of nearly 50000 assessee to be handled by one Commissionerate, the total number of Commissionerates would be **120**.

9.2 One GST Commissionerate will have 5 Divisions. One Division may have **10 ranges** for handling CGST and IGST under the GST regime. This implies that the average assessee base for a range would be **1000**. The normative figure currently is 5 divisions and 25 ranges in a Commissionerate.

9.3 Apart from the criteria based upon number of assessee, the other criterion relevant for creation of GST Commissionerate could be likely revenue of the proposed Commissionerate. Revenue of Rs 7000 -7500 Crore thus may be taken as benchmark.

9.4 As implementation of GST is time bound, the re-organization, if any suggested, contingent upon GST roll out should involve minimal additional requirements of infrastructure. As such, the number of additional offices/ units should not exceed 10% of the existing infrastructure/ offices.

9.5 Recommendations are based on premises of minimal dislocation / change of Group B and Group C level officers.

9.6 Creation of 10 ranges for CGST and IGST in a Division should ensure, to the extent, possible presence of office in every district.

9.7 In addition, number of Audit Commissionerates will also be required to be enhanced from existing 45 to 60-**one Commissionerate for each set of two GST Commissionerates-for strengthening of Audit set-up for enhanced assessee-base**. Thus the Department may require nearly 15 more posts of Commissioners for Audit related functions.

10. Out of the total available staff strength in mainstream staff cadre (84875 posts in Group 'A', 'B' and 'C'), 46573 posts are sanctioned to Central Excise Formations (including CE Audit Commissionerates), while 8437 posts are sanctioned to Service Tax formations (including Service Tax Audit Commissionerates). Thus, total 55010 posts in Group 'A', 'B' and 'C' are immediately available with the Department for allocation to GST Commissionerates (including Audit Commissionerates). Following Table indicates the grade-wise break-up of the staff strength allocated to CE & ST.

**Table 4.3: Grade-wise break-up of the staff strength allocated to CE & ST**

<b>Sl. No.</b>	<b>Grade</b>	<b>SS in CE (including LTUs)</b>	<b>SS in ST</b>	<b>Total</b>
1	Principal Chief Commissioner	7	0	7
2	Chief Commissioner	16	4	20
3	Principal Commissioner	26	12	38
4	Commissioner	175	28	203
5	Addl./ Jt. Commissioner	442	88	530
6	Dy. Asst. Commissioner	2119	423	2542
7	Superintendent CE	10485	2024	12509
8	Inspector CE	13963	2565	16528
9	CAO	183	34	217
10	Senior PS	49	16	65
11	PS	175	27	202
12	Steno	930	179	1109
13	AO	1022	205	1227
14	Executive Assistant	2945	506	3451
15	Tax Assistant	3292	626	3918
16	Lower Division Clerk	1048	197	1245
17	Driver	777	125	902
18	Head Havaldar	3598	585	4183
19	Hawaldar	4819	771	5590
20	Others (O.L. cadres, MTS etc.)	502	22	524

**Total** **46573** **8437** **55010**

11. Taking into account the number of proposed GST Commissionerates (120), GST Audit Commissionerates (60) and Commissioner (Appeals) [50], the following staffing norms have been worked out.

**Table 4.4: Proposed staffing norms for GST Commissionerates**

Sl No	Designation	GST Commissionerate	GST (Audit) Commissionerate	Commissioner (Appeals)
1.	Principal Commissioner / Commissioner	01	01	01
2	Additional Commissioner / Joint Commissioner	03	02	0
3	Deputy Commissioner/ Assistant Commissioner	15	12	02
4	Superintendents	80	40	20
5	Inspectors	110	40	20
	<b>Total</b>	<b>209</b>	<b>95</b>	<b>43</b>

12. States having 10 GST Commissionerates each are proposed to have one Zone headed by a Principal Chief Commissioner. States having 10-20 GST Commissionerates are proposed to have two GST Zones-one headed by a Principal Chief Commissioner and the other by a Chief Commissioner. States having more than 20 GST Commissionerates are proposed to have 3 GST Zones- one headed by Pr. Chief Commissioner and other two by Chief Commissioner. All Central Goods & Services Tax Commissionerates proposed to be headed by Commissioners. Existing 38 posts of Principal Commissioners in CE (26 posts) and ST (12 posts) Commissionerates are proposed to be swapped with those of Commissioner in different Directorates in order to strengthen them.

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*The assumption is that three protocols could be considered to ensure that a taxpayer faces only one administration and not the both Centre and State in respect of*

- *Detailed scrutiny of returns*
- *Audit , Enforcement*



- *Certain processes related to rejection / cancellation of registrations. This would require respective of legal cross empowerment of officers of CGST officers under SGST and vice versa.*

*The allocation of units to Centre and States for detailed scrutiny and audit on the basis of protocols and enforcement function for entire tax payer population subject to protocol may be considered . Certain business processes such as remission, refunds and CAG objections may be dealt separately by Centre and States.*

## Chapter 5

### CBEC - Proposed Structure of Directorates after restructuring

We have seen that the assessee-base is expected to increase significantly on account of GST implementation. It is pertinent that reorganization/ structural modification of Directorates currently working under CBEC is also carried out for better coordination and effective working. While some more zonal/regional units of certain Directorates are required to be created, some of the existing units of Directorates need to be strengthened in terms of manpower and logistics for efficient tax administration. Following Directorates working under CBEC need revamping:

- (i) **Directorate General of Central Excise Intelligence(DGCEI):** In the GST regime, the role/ function of DGCEI is going to be enhanced considerably as an apex organization mandated to collect, collate and work upon intelligence to check evasion of GST by unscrupulous trader/ service providers. Further, DGCEI (which may be renamed as DGGSTI) may contribute to handle investigation in respect of high value organized evasion of GST. As the assessee base is bound to increase there should be adequate number of units of Directorates to cope up with increased work relating to investigation and enforcement. It is recommended that Directorate has presence in each State.
- (ii) **DG (Systems):** Directorate General of Systems is a vital wing of CBEC tasked with providing electronic platform to the trade and department officers for the purpose of assessment and payment of Central Excise duty and Service tax. Automation in the Central Excise and Service tax has increased in the recent past with implementation of ACES in Central Excise. For successful implementation of GST (CGST, IGST and SGST) both Centre and States should put in place a robust system of IT infrastructure with interoperability and in built capability to back end and front end integration. DG(Systems)is expected to provide the support to the GSTN, which is a Special Purpose Vehicle designed to take care of information technology infrastructure for implementing GST.

As regards the current structure, only two zonal units headed by the Principal ADGs in addition to Directorates Headquarters are in existence. These Units are located at Mumbai and Chennai. The present arrangement is not adequate to meet the requirements of increased IT related work on account of GST implementation. Two more zonal units, one at Kolkata and other at Bangalore may be set up for better handling of IT related issues. These units may be headed by the Principal Commissioners of Customs level officers. Commensurate Officers/ Staff may be deployed at these units.

(iii) **National Academy of Customs and Central Excise (NACEN):** Capacity building of officers/staff to equip them with the knowledge of procedures and law is a key to successful roll out and implementation of GST. Proper and regular training to large contingent of officers on Model GST law, CGST, IGST and SGST is critical. Since it a new legislation, the importance of timely training to staff cannot be over emphasized. This can be achieved if the adequate training sessions are organized on regular basis across

the country. NACEN through its regional units can play a proactive and meaningful role in this regard. The current number of units may not be sufficient and may require suitable augmentation. It may also be worth mentioning that the training and capacity building to officers of Central Government only may not be enough, rather the State Government Officials who have been hitherto handling VAT matters and are empowered to administer GST are required to be trained about the nuances of the new important legislation.

Three (3) new RTIs being proposed in Rajasthan, Orissa and Chandigarh. Also 3 Sub-RTIs headed by JD/ADD at Nagpur, Raipur and Coimbatore may be considered. Moreover, the post of ADG/ Commissioner should be up graded as Principal ADG/ Principal Commissioner. Commensurate staff and officers may be deployed at these units.

**(iv) Directorate of Taxpayer Services:** Directorate of Tax payer Services is another Directorate that may assume significance after implementation of GST. The mandate of the Directorate is to provide wide publicity to the proposed law etc. Since a large number of hitherto unregistered assesses are expected to fall under the ambit of the GST tax net, it is expected that laws rules and regulations and legal obligations of the assesseees are given wide publicity to trade for efficient working of tax administration. Directorate of Tax Payer Services is likely to play a critical role in this regard. The Directorate of Tax payer Services is currently working with skeleton staff at New Delhi. In the GST Regime, taxpayers' facilitation will be one of the important core areas of the functioning of indirect tax administration. Accordingly, it is proposed to upgrade the only Commissioner level post of this Directorate to Principal Commissioner level.

**(v) Directorate General of Performance Management:** Directorate General of Performance Management (earlier known as DG Inspection) is mandated to inspect the Commissionerates and suggest measures to further enhance the efficiency of the formations and suggest improvements in the business processes. In GST regime, this Directorate will continue to act as the 'Sheet Anchor' of indirect taxes administration. It is proposed to strengthen this Directorate by **upgrading its all three Commissioner headed units to Principal Commissioner headed ones.**

**(vi) Directorate General of GST:** Directorate General of Goods & Service Tax (earlier known as Directorate General of Service Tax) is mandated to monitor and study the indirect taxes assessment and collection, creation of data-base and to suggest measures to increase revenue collections. In GST Regime, this formation needs to be strengthened irrespective of administrative constraints. Accordingly, it is proposed to upgrade the only post of Commissioner in this office as Director General of GST.

**(vii) Chief Commissioner (AR), CESTAT/ Any other Tribunal:** GST regime is likely to throw challenges in the form of more number of assesseees resulting in more number of disputes. Besides, similar transactions would lead to disputes in CGST as well as SGST. In view of this position, CESTAT, or, any other Tribunal which the Government may decide to constitute, will require Benches having state-wise

jurisdiction on the line of High Courts. In view of the Group, there should be a Tribunal Bench at the places where State High Courts are located. This would result in requirement of additional posts of Authorized Representatives in the Tribunal (of the level of Commissioner/Principal Commissioner) in the office of Chief Commissioner (AR), CESTAT or, the new Tribunal. However, it would take time, and would involve consultations with CESTAT/ Tribunal administration. CESTAT will continue to work for Customs, current Central Excise and Service tax. GST Tribunals should have office at every state. An office of Departmental Representative (DR) in every state is recommended. A view can be taken that few DR Offices may be headed by Commissioners and other by Additional Commissioners depending upon workload.

## Chapter 6

### CBEC - Reorganization on the basis of functional verticals

As it has earlier been discussed, the implementation of GST will result in to a large number of assesses under CGST. It is further seen that the GST aims to simplify tax administration and reduce compliance cost besides several other attendant benefits. It is a debatable issue whether existing organizational structure as well as manpower is suitable under the GST regime or an alternative structure to administer GST should be put in place. The possible alternative could be CBEC, its subordinate offices / attached offices and field formations work on functional verticals basis. This proposal will be a deviation from existing set up of Central Excise and Service tax Commissionerates.

The benefit of the Functional Vertical model includes specialized and focused approach to the functions mandated to them with officials/ personnel of domain knowledge. Another benefit which may be attributed to Functional Vertical is that the verticals may ensure uniformity in approach to deal the functions they are entrusted to.

*The Tax Administration Reforms Committee (TARC) its report has mentioned that the field formations are currently organized to handle all key functions in particular geographical region. In order to bring about a functional orientation, field offices need to be restructured along the core functions of tax payer services, compliance, audit, dispute management, enforcement and recovery etc.*

*A functional orientation would promote specialization in the respective are of tax administration. For these reasons specialization should be encouraged by selecting suitable officers and providing them sufficient tenures to develop specialized knowledge in key sectors.*

#### **Functional Vertical**

##### **(a) At state / Regional level ( may be tasked for programme implementation)**

- i) Commissioner TPSO (Tax Payer Service Office): will look after registration, returns, permissions, refund, approvals, tax base/ tax event identification, tax payer services including tax payer education and assistance/outreach, grievance redressal, tax communication survey, preliminary scrutiny etc.
- (ii) Regional wing of Compliance Management vertical may be assigned to look after audit and compliance verification.
- (iii) Regional wing of Compliance Enforcement vertical – will look after tax evasion and related enforcement issues.
- (iv) Regional wing of Dispute Resolution Management including Commissioner (Appeal up to tribunal stage).
- (v) Regional wing of Directorate of Legal Affairs (High Court matters and Supreme Court matters)
- (vi) Regional unit of NACEN for training and capacity building (Change management)

- (vii) Regional wing of System and Data Management Vertical
- (viii) Reorganization of Prosecution Directorate and regional wing of TAR

**(b) At National Level**

(National Programme Concept, design, implementation, evaluation and upgradation for uniformity, consistency, efficiency and effectiveness)

- (i) Tax payer Services Directorate
- (ii) Compliance Management including Audit and RMD
  - (iii) Compliance Enforcement (detection and investigation)
- (iv) Tax Policy and Analysis Division
- (v) Dispute Resolution and Management Directorate (up to Tribunal stage)
- (vi) Directorate of Legal Affairs (High court and Supreme Court cases)  
NACEN (much larger role to play including change management, training, cooperation with state and international bodies)
  - (vii) System and Data Management Directorate ( GST Division)
  - (viii) Directorate of Valuation and Transfer Pricing
  - (ix) Directorate of Tax Recovery Arrears
  - (x) Impact Assessment, Research Analysis and Programme evaluation
  - (xi) HR Directorate
  - (xii) Infrastructure and Logistics Directorate
  - (xiii) GST Council Coordination Directorate
  - (xiv) PR and Communication Division
  - (xv) Directorate of Prosecution

The feasibility and implications of functional vertical model was deliberated in detail amongst members of the Group. The adoption of functional Vertical model, at this juncture, is not recommended on account of the following reasons:

- (i) The implementation of GST is scheduled on 1.04.2016 and is strictly time bound. Any large scale change in organization at this juncture may not be feasible and unwarranted. Keeping in view of the large assessee base and nature of functions under the GST regime, minimal change in current organizational structure would therefore be more suitable. A smooth (and not abrupt) transition from the current system of tax administration to GST regime is required.
- (ii) Full scale Cadre restructuring in CBEC has taken place as late as in 2014 and several new jurisdictions were created and staff was augmented accordingly. Another major reshuffle/ re organization of structure with an altogether different model at this juncture may not be a viable option.
- (iii) Vertical structure in the GST regime may lead to unequal distribution of workload among verticals and may lead to significant dilution of assignments/work to General Commissioner of GST with most of the work shifting to other specialized verticals.

- (iv) Creation of functional verticals may also lead to HR issues.
- (v) Functional verticals within a Commissionerate already exist such as Anti evasion, Legal, Review etc. Officers with domain knowledge and area of specialization/ experience may be deployed in these wings to make it more service oriented and focused. A suitable HR/Rotation Policy may be formulated to address the issue.

## **Chapter 7**

### **Restructuring of CBEC**

Implementation of GST would require not only the reorganization of administration and workforce in respect of field formations, but also of Central Board of Excise and Customs being the nodal agency to implement GST. To begin with, CBEC may be renamed as Central Board of Indirect tax (CBIT) ideally or Central Board of GST and Customs (CBGSTC) once the GST becomes a reality.

The CBEC is the apex body for policy formulation in respect of indirect taxes to be administered by the Centre. However, under the GST regime, the policy related issue for both Centre and State shall be finalized by GST Council. The GST Council will recommend the tax rate and other issues such to the Government. Under the circumstances, the role of CBEC in formulating policies on tariff related issues gets diluted and requires reorientation.

As per the current structure the CBEC is headed by the Chairman and have Members/ Special Secretary to the Government of India looking after functional verticals such as Administration, Customs, Central Excise, Legal etc. Under the GST regime, no significant change in basic structure of Organization is suggested. Following verticals in CBEC headed by Member/ Special Secretary to the Government of India are proposed on implementation of GST:

- (i) Member(GST): will supervise two Commissioners viz. Commissioner –I looking after CGST and Commissioner-II assigned with IGST matters. This will be a substitute to Commissioner (Central Excise) and Commissioner(Service tax) working in CBEC presently.
- (ii) Member (Customs )
- (iii) Member (Administration)
- (iv) Member(Budget): will supervise Tax Research Unit(TRU) including coordination with GST council
- (v) Member (Dispute Resolution/Legal)
- (vi) Member(IT) : to look after Information Technology related issues including GST Division under DG (Systems)

Considering the importance of tax payer services, the work related to Tax Payer Services may either be assigned to a separate Member or given as additional charge to one of the Members of the Board. This will be in sync with the Recommendation of TARC that Board (CBEC) should have a separate Member for Tax Payer Services.



The Tax Research Unit (TRU) may continue in the present form with two Joint Secretaries. JS(TRU-I) may look after Customs and Central Excise while JS (TRU-II) may handle Tariff related issues on GST. TRU may ensure coordination with GST Council as well as Tax Policy Research Unit (TPRU) on tax related issues.

## Chapter 8 Recommendations

After careful consideration of manpower requirements under the proposed GST regime and being mindful of impending implementation of GST with effect from 1.04.2017, any large scale change in the current structure of CBEC handling Central Excise and Service tax is not recommended as it may have disruptive effect and may not ensure smooth transition to GST regime. In this regard, while the total number of Commissionerates may remain same, changes may be warranted in jurisdictions of the Commissionerates in accordance with increased number of assessees under the GST.

1. It is advisable to leave Customs from Central Excise and Service tax under the GST regime. There is possibility of cross - empowerment of State Governments to administer various items of work. For example, if States are empowered to carry out audit, it would also lead auditing IGST related issues. It is felt that the intervention of State Governments in Customs matters should be avoided completely for better efficiency and administration. This would imply that Customs field formations hitherto handled by Central Excise such as ICDs and CFSs are assigned to respective Customs jurisdictions under Principal Commissioner/ Commissioner of Customs. This can be addressed by issuing jurisdictional notification for Customs formation by CBEC.
2. The Group recommends strengthening of some of the Directorates that are likely to assume importance in wake of implementation of GST. These Directorates include DGCEI, DG (Systems), NACEN. Some of the Directorates Directorate of Taxpayer Services, Directorate General of Performance Management, and Directorate General of Service Tax may be upgraded and be headed by Principal Commissioner of Customs. Proposed to set up 3 new RTIs in Rajasthan, Orissa and Chandigarh. Also 3 Sub-RTIs headed by JD/ADD at Nagpur, Raipur and Coimbatore may be considered. 2 more units of DG(Systems) to be set up for smooth implementation of GST.
3. On restructuring a total number of **120** GST Commissionerates are proposed which would essentially mean that nearly 50000 assessees will be handled by a GST Commissionerate. It appears that the assessee base of 50000 is appropriate especially in the context of GST being a new taxation law which may require intensive tax payer interface in the beginning. Since implementation of GST may result in extensive taxpayer interface in the beginning at least, a very large assessee base for GST Commissionerates is not recommended. Another point meriting consideration is no increase in the number of Commissioner (Appeals).It would be premature to anticipate increased number of litigations as result of GST implementation and on account of increased tax payer base. Lot of certainty is being imparted in law making and efforts are being made to frame laws so as to avoid scope for interpretation. In fact, litigations are expected to come down in the GST regime on account of well laid down rules and regulations. Therefore, the Group is of the view that there is not much merit in increasing the

number of posts of Commissioner (Appeals). The Group, however, recommends increasing number of Audit Commissioners to the extent of 15 Commissionerates (from 45 to 60).

4. The hybrid model of 3 tier jurisdiction and functional verticals may serve the purpose at present as large scale changes in structure are not suggested. However, as recommendation by TARC, creation of functional verticals should be given a serious consideration in next full-fledged Cadre restructuring of CBEC.
5. LTUs were set up to provide a single interface to large tax payer units by extending facility of common registration. As GST is a consumption based tax, separate registrations in States are required. Hence, State Governments may not agree with the proposal of common registration. However, since CBEC will handle CGST and IGST, it would be better to have LTUs for the purpose of CGST and IGST. A common registration for IGST and CGST will provide considerable relief to large tax payer units and will ensure uniformity in approach. This may also provide enhanced leveraging power to Centre vis-à-vis States. Further, common registration for services is recommended. In respect of common registration of goods a view can be taken by CBEC whether or not this facility is extended to large payer units. Therefore, the Group is not in favor of abolishing LTU on implementation of GST. LTUs will also continue to look after legacy issues.
6. The proposed structure of GST Commissionerates, GST Audit Commissionerates and augmented Directorates/ Functional Verticals will ensure presence of field formation in every State and hence would be appropriate in terms of geographical spread and dispersal.
7. Dispute Resolution (DR) has been identified as one of the core areas to provide non adversarial tax administration in the GST regime. In this context, the number of benches of Tribunal as well as number of authorized representatives for Tribunals and Settlement Commission should be increased though no firm estimate is available as yet. The concept of setting up of a Directorate General of Dispute Resolution (DGDR) is **agreeable 'in principle'**. However, mandate/ objectives of proposed DGDR is visualized as under
  - Maintaining data bank of judicial decisions and rulings for dissemination to improve quality of adjudications
  - Analyzing dispute issues for identifying patterns and implications for adjudication proceedings
  - Examining adjudication orders for assessing legal points as to determine fitness for appeals in higher judicial
  - Research and Analysis for providing inputs to Board for systemic and policy solutions

In this context, it is seen that the mandate of DGDR is largely overlapping with that of Directorate of Legal Affairs. It is therefore suggested that Directorate of Legal Affairs may be upgraded. A separate DGDR without substantive and clearly laid down objectives/ mandate for dispute resolution may not add additional value. Further, as per the Model GST Law, there shall be **one Authority** for Advance Ruling

comprising one member CGST and one member SGST. Similarly there will be Appellate Authority for Advance Ruling (AAAR) in **each State** comprising two members namely Chief Commissioner of CGST designated by CBEC and Commissioner of SGST having jurisdiction of the applicant. As regards, seven (7) adjudication Commissionerates currently in existence (both for Central Excise and Customs), the same may continue as rationale for these Commissionerates remains relevant in GST regime. These Commissionerates may continue to handle cases involving jurisdiction of more than one Commissionerates (cases investigated by DGCEI and DRI) and cases where common adjudicating authorities are appointed.

Another debatable point is whether power of adjudication should be delegated up to the level of Additional Commissioners only or not. A possible justification can be that the delegation up to Additional Commissioner will ensure parity vis-a-vis State Governments. However, a study of models of VAT being administered by States and that of Central Excise Act, 1944 and Finance Act reveal that there is a fundamental difference. Under the VAT laws, Commissioner of VAT has revisionary power vis-a-vis adjudication order passed by Joint Commissioner /Additional Commissioner of VAT. There is no such revisionary power available to the Commissioner of Central Excise and Service tax under the extant Central Excise Act or Finance Act. Even the draft GST Model laws does not contemplate any such provision. No meaningful purpose will be served by not assigning adjudication work to Commissioners of Central Excise and Service tax under GST regime. Therefore, the Group is of view that Commissioners of GST should continue to handle adjudication work, the upper monetary limit of which may be decided suitably by CBEC. This will also ensure enough work for Commissioners of GST to handle in addition to other items of work.

8. GST Tribunals are expected to be set up. CESTAT will continue to work for Customs, Current Central Excise and Service tax as well as legacy issues. GST Tribunals should have office at every state. Office of Departmental Representatives (DR) in every State is recommended. A view can be taken that few DR Offices may be headed by Commissioners and other by Additional Commissioners depending upon workload.
9. CBEC may be reorganized with posting of a Member (GST) for GST related work. Member (CX) should continue for Central Excise and legacy issues. As important decisions including GST rates etc. will be deliberated in GST Council, a recommendatory constitutional body, it is imperative that meaningful inputs on policy formulation are given to GST Council. This in turn will require enhanced qualitative role of CBEC. Therefore, one Joint Secretary in TRU should exclusively handle GST policy related work while the other Joint Secretary of TRU may be assigned Customs and Central Excise (including revenue monitoring). Both Joint Secretaries of TRU should report to Member (Budget), CBEC.
10. Legacy issues may be allowed to be handled by respective GST Commissionerates at least for a period of one year after implementation of GST.

11. A paradigm shift from current structure to more specific functional verticals at the Commissionerate level is not warranted at this juncture. However, taking into account the need for enhanced coverage of certain Directorates in the GST regime across the country, augmentation/ strengthening of these Directorates is required in terms of manpower and infrastructure.
12. The Group is of the view that the current organizational structure with modifications suggested may continue for three years after implementation of GST. The need for reorganization of administrative structure and staffing may be reassessed thereafter. At the same time lessons learnt and difficulties faced in implementation of GST may also be factored into assessment of Structure/ staffing. While a paradigm shift to Functional Vertical at this point may not be feasible for reasons recorded, Functional Vertical model may be considered for adoption by CBEC in next Cadre restructuring in lines with recommendations of Tax Administration Reform Committee (TARC).

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## PROJECT REPORT BY GROUP III

### Handling Cross Border E-Commerce:

#### Challenges and Solutions

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### **Handling Cross Border E-commerce – Challenges and Solutions**

#### **1 Introduction: E Commerce**

Electronic commerce, commonly known as E-Commerce, is the trading or facilitation of trading in products or services using computer networks, such as the Internet or online social networks. E-Commerce industry is one of the fastest growing industries.

E-commerce means sale or purchase of goods and services conducted over network of computers or TV channels by methods specifically designed for the purpose. Even though goods and services are ordered electronically, payments or delivery of goods and services need not be conducted online. E-commerce transaction can be between businesses, households, individuals, governments and other public or private organizations. There are numerous types of e-commerce transactions that occur online ranging from sale of clothes, shoes, books etc. to services such as airline tickets or making hotel bookings etc.

#### **E-commerce has been defined by DIPP as:**

*“E-commerce means buying and selling of goods and services including digital products over digital & electronic network.”*

E-Commerce has also been defined by DGFT in Foreign Trade Policy for the purpose of granting MEIS benefits to export of goods through postal or courier mode wherein the buying/selling was conducted using ecommerce channel.

9.17A: “e-commerce means buying and selling of goods and services including digital products, conducted over digital and electronic network. For the purposes of merchandise Exports from India Scheme (MEIS) e-commerce shall mean the export of goods hosted on a website accessible through the internet to a purchaser. While the dispatch of goods shall be made through courier or postal mode as specified under the MEIS the payment for goods purchased on e-commerce platform shall be done through international credit/debit cards and as per the Reserve Bank of India Circular (RBI/2015-16/185) [AP (DIR Series) Circular No. 16 dated September 24 2015] as amended from time to time”

The term has also been defined in Model GST Law as:

*‘electronic commerce’ shall mean the supply or receipt of goods and / or services, or transmitting of funds or data, over an electronic network, primarily the internet, by using any of the applications that rely on the internet, like but not limited to e-mail, instant messaging, shopping carts, Web services, Universal Description, Discovery and Integration (UDDI), File Transfer Protocol (FTP), and Electronic Data Interchange (EDI), whether or not the payment is conducted online and whether or not the ultimate delivery of the goods and/or services is done by the operator.*

## **2 Opportunities:**

E-commerce is a platform which has immense potential for customer service and growth. It provides 24/7 market on a click of mouse and wider choice for consumers who can see all the products online. There are very few or no intermediaries which reduces the cost of transaction. It also supports Micro Small and Medium Enterprises (MSMEs) for overseas growth as these MSMEs can now tap the market outside India.

The transactions done through electronic communication could be between Business to Business (B2B) or between Business to Consumer (B2C). **Business to Business i.e. B2B** is e-commerce between businesses such as between a manufacturer and a wholesaler or between a wholesaler and a retailer. As per the WTO report WT/COMTD/W/193, global B2B transactions comprise 90% of all e-commerce. According to research conducted by USA based International Data Corporation, it is estimated that global B2B commerce, especially among wholesalers and distributors amounted to US\$12.4 trillion at the end of 2012.

The growth in e-commerce is considered as a potential key engine to economic growth. With the proliferation of user-friendly technologies and the wide coverage of the internet, businesses and consumers are finding e-commerce as a very convenient and powerful platform for selling and buying goods with wider choice and efficient delivery. Smart phones and mobile applications have added a new dimension to this in terms of evolving e-commerce into more of a mobile-commerce (**M-Commerce**).

The growth of online shopping, facilitated by improved internet access, has led to a significant and global increase in cross-border purchases of small value goods. Global cross border e-commerce trade was approximately \$300 billion in 2012. With the spread of user friendly technologies and increasing penetration of internet globally, e-commerce is witnessing exponential growth.

E-commerce in recent times has been growing rapidly across the world. According to Report of Digital–Commerce, IAMAI-IMRB (2013), e-commerce industry in India has witnessed a growth of US\$ 3.8 billion in the year 2009 to US\$ 9.5 billion in 2012. By 2013, the market is expected to reach US\$12.6 billion, showing year to year growth of 34%. Industry sources indicate that this growth can be sustained over a longer period of time as e-commerce will continue to reach new geographies and encompass new markets.

Overall, e-commerce including online retail in India constitutes a small fraction of total sales, but is set to grow to a substantial amount owing to a lot of factors such as rising disposable incomes, rapid urbanization, increasing adoption and penetration of technology such as the internet and mobiles, rising youth population as well as increasing cost of running offline stores across the country.

The significance of E-commerce is vividly depicted by this figure. It appears that e-commerce will change the trading habits of the business and there would be switch from traditional trade to e-commerce.

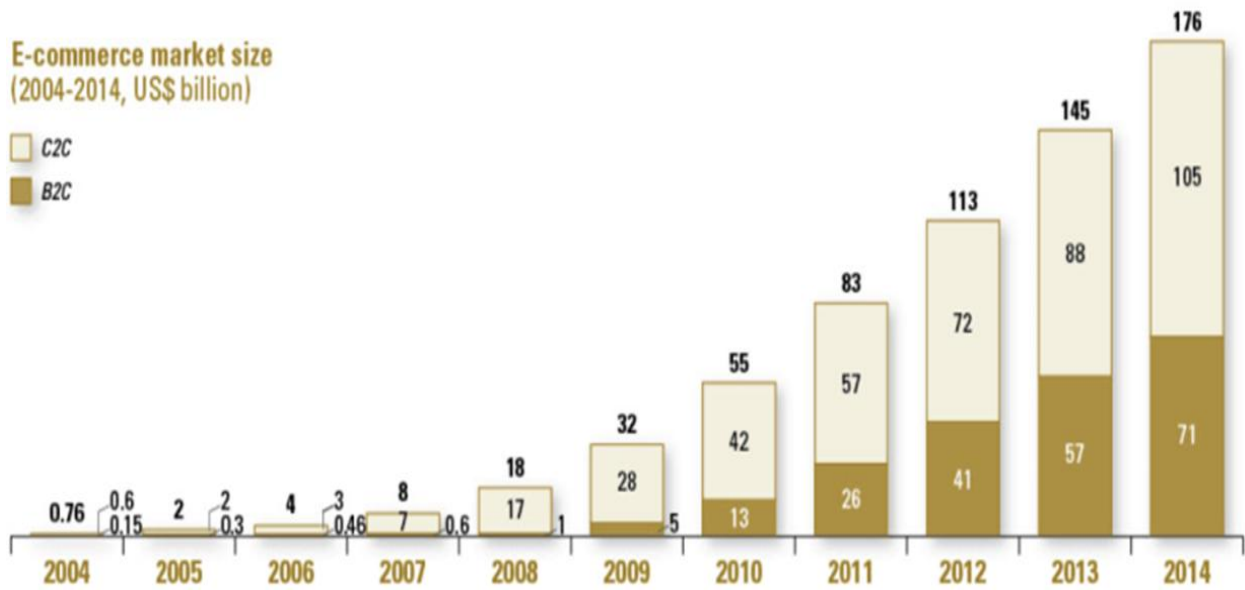




A recent study by Nielson, commissioned by Paypal, looked at cross-border e-commerce across the USA, UK, Brazil, Germany, Australia and China in 2013. These six markets have 93.7m consumers spending around US\$105 billion on overseas websites using both desktop and mobile shopping. By 2018 the consumer population is forecast to grow to 130m with a total spend of around US\$307bn. The worldwide e-commerce market in 2014 has touched US\$176 bn. The year wise e-commerce market size is showing a rapid growth as shown in the chart below:

**E-commerce market size  
(2004-2014, US\$ billion)**

C2C  
 B2C



Sources: iResearch, Analysys International, A.T. Kearney analysis

Note: Figures for 2010-2014 are estimates.

The overall cross border e-commerce market is expected to grow by the compounded annual growth rate of 21%. This not only covers the domestic e-commerce trade but cross border e-commerce trade also. The growth of cross border e-commerce trade is expected to be faster than the domestic e-commerce trade. The growth trends for cross border e-commerce trade are below:

## Global Cross-border Shoppers 2014-2020



### Various Business Models in Ecommerce

#### Direct Sales Model

Direct Sales Model is adopted by entities already doing business through physical stores and, in this model, they sell their goods directly through their portals. In this model, there is no difference in the model adopted in the sale through physical stores and sales through the e-Commerce route.

#### Marketplace Model

Marketplace model is adopted by e-Commerce companies that act as a meeting point between the sellers and buyers. The e-Commerce operator operating the marketplace allows sellers to display their goods on their portal. Buyers can log in, view and place orders for buying those goods. In a pure marketplace model, the e-Commerce operator would not be involved in any activity other than providing sellers a platform to display their goods and buyers to view and place orders to buy those goods.

### **Inventory Model**

In an inventory model, the e-Commerce operator buys the goods from the seller, manages the inventory and sells it to the buyers. The e-Commerce operator, in this model, therefore, owns the inventory and manages the inventory at its premises. When the buyer purchases the goods he purchases them from the e-Commerce operator who has already bought those goods and the goods already in its control. In this model, the e-Commerce operator acts like a mega retailer.

### **Managed Marketplace Model**

While the marketplace model is less capital intensive as compared to the inventory model, it leaves very little control in the hands of the e-Commerce operator. E-Commerce operators working on inventory model can fulfil the supply commitments at their own level of efficiency as they actually own the inventory and already have goods in their possession. In the marketplace model, the supply is dependent on the efficiency of the seller over which the e-Commerce operators do not have direct control. To get the best of both worlds, many e-Commerce operators employ a managed marketplace model where the e-Commerce operator goes a step ahead of simply creating a market place and gets involved in other aspects of the sale contract and handles parts of the goods' supply chain as well.

### **Fulfillment Model**

Fulfillment model is a type of managed marketplace model that most of the important e-Commerce operators are operating today. In this model, the goods are shipped and stored in warehouses of the e-Commerce companies by the sellers even before the sale takes place. As and when the customers place purchase orders, the goods are packed and dispatched by the e-Commerce operator under intimation to the seller. The distinction in this model is that the e-Commerce operator does not own the inventory and does not make payment to the seller. Thus, in this model, the e-Commerce company does not need to invest in inventory but has to invest in storage and transport infrastructure. On the one hand, it cuts down the capital investment requirements while on the other it allows e-Commerce operators to have better control over the supply of goods.

### **Hybrid Models**

For a very large e-Commerce company, it may be difficult to have a single model for all sellers and all commodities. Therefore, large e-commerce operators often adopt a mix of models.

Besides, the platforms can further be categorised like B2B, B2C (Flipkart, Amazon), C2C (OLX), B2G, G2B (GSTN), G2C.

## **3 Challenges in E-Commerce**

### **Faceless traders (seller/buyer):**

E-commerce is witnessing enormous increase in the number of individual transactions and new faceless traders, posing threats to revenue and to the security of the supply chain. The ease of online direct sale/purchases has thrown up many emerging challenges like sale of drugs, counterfeited and pirated goods and paedophilia as well as smuggling of restricted/prohibited goods and high-value dutiable items through this channel. The challenge is how to deal with this new class of sellers and buyers who are joining the international e-commerce chain on daily basis.

The concept of trusted trader/known shippers like Authorized Economic Operator (AEO) does not apply to this category of faceless-traders. Little can be said about their ability to comply with various Customs, civil aviation, security and financial requirements and internal procedures to ensure that packages only contain those items described on the documents. This class of traders may pose a risk to the supply chain.

Data quality (accuracy and completeness of data) is another key issue for risk management, security controls, admissibility checks and other decisions to be taken by border control authorities. Many customers sending international items are occasional shippers and are often not fully conversant with the requirements of data quality. Missing, illegible, incomplete or otherwise incorrect information in a declaration may affect Customs risk analysis, efficient processing, clearance and release of goods.

#### **De minimis and related risks, and enforcement challenges**

With the rapid increase in low-value consignments, postal and express industry often argue that higher *de minimis* levels would promote cross border e-commerce, increase trade and stimulate economic growth and employment. Costs of processing low value consignments both to Governments and businesses could possibly be greater than the overall revenue collected from these consignments.

While, in the past, intermediaries have imported goods in large quantities, e-commerce now enables goods to be ordered directly from the manufacturer/retailer, resulting in smaller consignments which potentially could fall below existing *de minimis* rules.

Risks:

Large volumes of small parcels are also becoming vulnerable for trade in restricted/prohibited goods, undeclared dutiable goods as well as smuggling of narcotics, counterfeited/pirated goods and contraband items.

Considering these vulnerabilities, some Customs administrations are considering to reduce or even remove the threshold for duty and taxation.

#### **Undelivered/unclaimed goods – Goods return service**

The senders' instructions in case of non-delivery usually are on the CP 71 dispatch note and the CP 72, which may include options to return to sender, redirect, or treat as abandoned.

There is another related issue with the returned shipments which is the refund of duties and taxes. The Article 20 of the UPU Convention stipulates that designated operators shall undertake to seek from the competent authorities in their countries cancellation of the fees (including customs duty) in the case of a parcel - returned to sender; redirected to a third country; abandoned by the sender; and lost in their service or destroyed because of total damage of the contents.

Broad principles for repayment of duties and taxes have been laid down in Standards 4.18 to 4.24 of the general Annex of the RKC. The guidelines to the Specific Annex J.2 of the RKC at para 5.2 provides that if a dutiable item was not delivered abroad because the addressee refuses it or for some other reason, the office of destination returns the item along with all accompanying documents, to the postal Customs clearance centre which requests reimbursement of the duty paid to Customs in advance. Para 9.2 of the Guidelines further provides that postal service will normally request that Customs to cancel or repay duties and taxes on items returned to origin, destroyed because of total damage to the contents or redirected to a third country and for postal parcels abandoned by the sender

### **Laws keeping pace fast changing dynamics of the ecommerce industry**

The ever changing global trading landscape with the rapid growth of e-commerce, necessitates Customs and Post/Express to constantly realign and adapt their processes, to provide reliable, predictable and speedy clearance, while ensuring compliance to various regulatory requirements.

**Consumer Protection Issues:** In ecommerce, consumer protection is a major issue as it is easy to deceive the consumer with wrong, misleading information. Recently OECD has also issued guidelines on the subject.

**Privacy issues:** Consumers increasingly acquire “free” goods and services in exchange for their personal data. This also raises the privacy and security issues.

### **Blurring of distinction between different ecommerce channels**

The distinction between an aggregator and e-commerce operator is getting blurred. M/s Flipkart and Amazon Ltd are hybrid models and they supply their own brands, supply goods of other suppliers as well. They sometimes act as aggregators also. The e-commerce operators may not collect any payment from the buyers. The payment may be settled directly between the supplier and the buyer. In such a scenario, it will not be possible for the e-commerce operator to follow the TCS provisions.

The law will have to be dynamic enough to adapt to the fast changing industry and so also to avoid category shopping by unscrupulous operators.

### **Cross Border Transactions in Services in B2C transactions**

In the cross border ecommerce, especially of services and intangibles in B2C transactions, the OECD guidelines prescribe registration of the suppliers in the country of imports if they wish to supply services through the ecommerce channels. If the suppliers are required to register in India, the supplies by these will be taxed and liability to pay will be on the suppliers. In cases where the suppliers are not registered

in India, the consumers, being not registered, may not be able to go through the rigmarole of registering and paying taxes on reverse charge basis, especially in respect of small transactions.

Concept of non-resident taxpayers has been introduced in the model GST Law. The term as been defined in Section 2(69) of the MGL as:

*“non-resident taxable person” means a taxable person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India;*

However, it appears that the suppliers registering under this category will be undertaking supplies occasionally like attending the exhibitions etc. or supplying in specific seasons.

The e-commerce operators operating from outside the country may have to take a regular registration. There are many e-commerce sites like overstock.com which are supplying from overseas. There are apprehensions that e-commerce operators from India will have to deduct TCS putting them at a disadvantage when compared with global players in the same field.

### **Shifting of profits across borders**

The e-commerce operator are having presence in many countries and procuring the goods from different countries or providing platform to the traders of different countries. They are playing on the tax leverages some time and ready to shift their base from one country to another country depending on the tax advantage. Similarly goods traded through these operators may be transported from the country other than the country of origin thereby defying the provisions relating to rules of origin. This has caused the problem with regard to levy of proper customs duty on the goods and in many cases shifting of profit base to avoid income tax.

### **India specific challenges for Cross Border E-Commerce**

Business challenge - Lack of internet penetration in rural areas

Business Challenge – Poor Supply chain system and logistics

Tax infrastructure challenge -Weak FPOs and Courier cells

Tax Infrastructure challenge – Lack of sufficient computerization; Data Quality

Legislative changes to strengthen clearance process and have a clear rule position on returns. Adapt laws to permit faster clearances and mitigate delays

Payment gateways still in infancy and limited use of credit cards and electronic payment methods

Consumer Protection: India has the **Consumer Protection Act 1986**. However, nothing in the Act refers explicitly to e-commerce consumers. It provides for regulation of trade practices, creation of national and state level Consumer Protection Councils, consumer disputes redressal forums at the National, State and District level to redress disputes, class actions and for recognized consumer associations to act on

behalf of the consumers. The Act provides a detailed list of unfair trade practices, but it is not exhaustive. Changes are required to protect E-Commerce consumer rights.

#### **4 WCO Papers and studies**

The WCO adopted the Baku Declaration on e-commerce in the year 2001, calling for the acceptance and implementation the Revised Kyoto Convention (RKC) in order to create a modern, transparent, clear, efficient, rapid and simplified e-Customs environment

The WCO Recommendation on Dematerialization of Supporting Documents, 2012 and Compendium on How to Build Single Window Environment, encourage Members to identify supporting documents that are normally required to accompany the cargo and goods declarations and examine the need thereof with a view to eliminating them.

Some of the key features of WCO Guidelines are:

- i. Dematerialization of supporting documents
- ii. 24 \* 7 – Automated Customs Processing
- iii. Mobile enabled service
- iv. Faceless traders and Micro-Multinationals
- v. Data quality
- vi. De-Minimis
- vii. Interoperability of Systems
- viii. Electronic Data Exchange between Postal / Couriers and Customs
- ix. Undelivered Goods return.

WCO document dated 18.09.2014 discusses in details the issues arising out of increase in e-commerce. During the 203rd / 204th sessions, after detailed discussions the Permanent Technical Committee (PTC) identified e-commerce as one of its high priority topics to be dealt with in more detail. It was decided to keep this topic on the WCO agenda and exchange internationally accepted best practices. The WCO Immediate Release Guidelines support e-commerce and assist both Customs and trade with expediting the clearance of large number of small or negligible value goods across borders that are primarily being carried by express cargo or express mail service providers.



RKC provides for Customs to apply information and communication technologies (ICT) for Customs operations, including the use of e-commerce technologies. In order to promote, facilitate and regulate efficient use of ICT, WCO recommends the establishment of a new or revised national legislation for electronic commerce methods and the right of the Customs to retain information for their own use and, as appropriate, to exchange such information with other Customs administrations and all other legally approved parties by means of electronic commerce techniques. The RKC – ICT Guidelines, which were recently updated, provide details on how Customs can use these technologies to enhance program delivery and plan improvements in their services to clients and trading partners.

The ever changing global trading landscape with the rapid growth of e-commerce necessitates Customs and Post/Express to constantly realign and adapt their processes, to provide reliable, predictable and speedy clearance, while ensuring compliance to various regulatory requirements. This document brings out some of the key issues concerning e-commerce for a discussion and guidance by the PTC. The two sets of issues identified are – one concerning e-commerce industry in general such as e-Freight, dematerialization of supporting documents, growing number of faceless traders and *de minimum* while the other being more specific to postal parcels such as electronic exchange of data between Post and Customs and goods return service.

### **e-Freight and Dematerialization of supporting documents**

With e-commerce growing over 20% per annum largely through air cargo and mail mode, there is a huge opportunity as well as challenge to move towards a paperless environment. IATA's e-freight initiative is an example, which not only saves cost to industry and Customs and enhances efficiency but also leads to improved accuracy of data leading to better risk analysis and Customs control across the supply chain.

The Montreal Convention (1999) provides for the use of electronic Air Waybills (e- AWB) in lieu of paper Air Waybill (AWB). The WCO Recommendation on Dematerialization of Supporting Documents, 2012 and Compendium on 'How to Build Single Window Environment', encourage Members to identify supporting documents that are normally required to accompany the cargo and goods declarations and examine the there need with a view to eliminating them. There is clearly a need to catalyze the process of dematerialization through collaborative efforts of all actors involved as well as through a seamless interface with Customs systems. Besides sound legal framework, mutual agreements between various actors in the supply to accept and transmit documents electronically, a robust IT infrastructure and their inter-operability are the some of the key challenges.

### **Faceless traders (seller/buyer)**

E-commerce is witnessing enormous increase in the number of individual transactions and new faceless traders, posing threats to revenue and to the security of the supply chain. The ease of online direct sale/purchases has thrown up many emerging challenges like sale of drugs, counterfeited and pirated goods as well as smuggling of restricted/prohibited goods and high-value dutiable items through this channel. The **Yemen courier incident** in 2010 has drawn increased focus on postal/express supply chain security. The issue of airport security hit the headlines when it was discovered that two packages with explosive devices were found on cargo planes headed to the United States from Yemen in the Middle

East. The challenge is how to deal with this new class of sellers and buyers who are joining the international e-commerce chain on daily basis.

The concept of trusted trader/known shippers like Authorized Economic Operator (AEO) as well as Regulated Agent (RA)/Known Consignor (KC) do not apply to this category of faceless-traders. Little can be said about their ability to comply with various Customs, civil aviation, security and financial requirements and internal procedures to ensure that packages only contain those items described on the documents. This class of traders may pose a risk to the supply chain.

Data quality (accuracy and completeness of data) is another key issue for risk management, security controls, admissibility checks and other decisions to be taken by border control authorities. Many customers sending international items are occasional shippers and are often not fully conversant with the requirements of data quality. Missing, illegible, incomplete or otherwise incorrect information in a declaration may affect Customs risk analysis, efficient processing, clearance and release of goods.

Co-operation between Customs and the postal/express cargo service providers is of particular importance. For instance, besides seamless exchange of information, postal/express service staffs are usually well placed to bring suspicious postal articles to the attention of Customs.

In this regards, the WCO has developed the 'Postal/Express Consignments' Risk Indicators and Manual', which has been incorporated in the Volume 2 of the WCO Customs Risk Management Compendium.

### ***De minimis***

RKC requires contracting parties to specify in their national legislation a minimum value and/ or a minimum amount of duties and taxes below which no duties and taxes will be collected. This said, the provisions on the methods of calculation and ideal threshold are a matter of national competence.

The *de minimis* threshold could either be based on minimum value or minimum duty and taxes. Minimum duty based *de minimis* creates a variable threshold depending upon the goods and the rate of duty they attract. Some countries have specified thresholds based on value, whereas some others have specified it on the basis of duties and taxes. Additionally, some administrations have different thresholds for Customs duties and domestic taxes such as VAT or GST. Some other administrations even have different thresholds for personal gifts, which are normally higher than that of other goods. There are also several exceptions to the *de minimis* rule such as books, tobacco and alcohol products. As a result, there are a wide range of models and thresholds for the *de minimis* around the world.

With the rapid increase in low-value consignments, postal and express industry often argue that higher *de minimis* levels would promote cross border e-commerce, increase trade and stimulate economic growth and employment. Costs of processing low value consignments both to Governments and businesses could possibly be greater than the overall revenue collected from these consignments.

From a Customs' perspective, the increase in the import of low-value consignments below *de minimis* can have an adverse impact on revenue collection. While, in the past, intermediaries have imported goods in large quantities, e-commerce now enables goods to be ordered directly from the manufacturer/retailer, resulting in smaller consignments which potentially could fall below existing *de minimis* rules. Some Customs administrations are witnessing the growing misuse of *de minimis* facility by way of splitting consignments to keep the value of an individual shipment below the specified threshold for tax avoidance purposes.

Large volumes of small parcels are also becoming vulnerable for trade in restricted/prohibited goods, undeclared dutiable goods as well as smuggling of narcotics, counterfeited/pirated goods and contraband items. While discussing draft revised Immediate Release Guidelines, the WCO also recognized that low value consignments, including postal and express mail items, were increasingly being exploited for illicit trade, as exemplified by the seizures made, during the most recent enforcement operations, of illegal drugs and fake medicines sent *via* these channels.

While a higher threshold may be facilitative to e-commerce, its abuse could have an adverse impact on domestic sales of similar or identical products, where consumption taxes (VAT/GST) are applicable without such *de minimis* rules. It could present a wide distortionary impact on the domestic manufacturers and retailers, especially SMEs, jobs and general economy, besides avoidance/evasion of duties and taxes.

Considering these vulnerabilities, some Customs administrations are considering to reduce or even remove the threshold for duty and taxation. There is no apparently ideal *de minimis* which can be made universally applicable. Each administration must take into account its domestic economy while determining the right level of the thresholds limits, by adopting a balanced approach towards facilitating a large number of bonafide small consignments, while being mindful of their processing costs (both to Customs and consumers), the compliance burden and delivery times. This process needs to be a dynamic one, allowing for regular reviews reflecting new circumstances and opportunities.

### **Electronic exchange of data between Post and Customs**

The WCO lists out '*Promoting electronic pre-advice on postal items based on WCO-UPU Customs/Post EDI messages*' as one of the important tactical activity under the strategic activity - '*Manage and promote Information Technology*'. '*Increasing postal integrity and security and facilitating customs processes as well as stimulating the use of information and communication technologies to improve access and performance*' are some of the key goals of the Postal Strategy.

SAFE Framework of Standards (SAFE FoS) recognizes the value of advance electronic information for risk analysis to secure and facilitate trade supply chain. The SAFE FoS provides for submission of advance information (cargo/goods) 24 hours before loading in case of containerized cargo and 4 hours prior to arrival (long haul) and 'wheels up' (short haul) in case of air cargo, whereas the situation in postal

shipment is that Customs get an opportunity to access the information about the goods, only when it is physically presented and opened.

CN22/CN23 being on paper basis is not sufficient for Customs to evaluate risks in advance or even after they are presented due to increasing volumes and thrust on speedy clearance of such parcels. Electronic information is easier to process and more reliable. It reduces costs and delays all along the supply chain. Since goods cannot travel faster than the information that controls them, speeding up the electronic exchange of information helps Customs in better pre-arrival risk analysis and makes trade more competitive and efficient. Besides, electronic data exchange between Posts and Customs will facilitate tracking and tracing. The whole approach is to shift focus from inspection of the goods to relevant information prior to the arrival of the goods.

The WCO and the UPU have collaborated to jointly develop electronic messages to permit the pre-advice and possible pre-clearance of postal items, which are compliant with WCO Data Model. The WCO Data Model also contains an Information Package explaining how the WCO-UPU Customs Message uses the Data Model. The UPU has recently created a legal basis for the provision of advance electronic data which came into effect from 1 January 2014.

The UPU's Postal Technology Centre has developed an electronic **Customs Declaration System (CDS)** on the basis of the Joint WCO/UPU Customs-Post EDI message. It enables customers to enter data about an item online, and enables the Posts to give Customs advance data about a postal item. It also enables a customs administration to inform a Post about the action to be taken with respect to any given item. However, a lot needs to be done to improve the interface between Posts and Customs in implementing electronic data exchange. There is also a need for sound legal and technological safeguards for data privacy and security, to make the exchange of information process efficient and sustainable.

To further strengthen security of the air cargo supply chain, Customs is moving from 'pre-arrival' to 'pre-loading' advance cargo information (ACI). Some ongoing Pilots on 'Preloading' ACI for security risk analysis are also engaging postal operators. In this context, the WCO Technical Expert group on Air Cargo Security (TEGACS) has developed text for submission of Pre-loading data for air cargo security by various entities in the air cargo supply chain including 'Postal Operators', for inclusion in the SAFE 2015 review.

A virtual Working Group of the interested WCO and UPU members under the WCO-UPU Contact Committee has been set up to examine the existing interfaces and forms of exchange of information between Customs and posts, including experiences in using the UPU Customs Declaration System (CDS) which was developed on the basis of the Joint WCO/UPU Customs-Post EDI message. The Working Group is developing a set of recommendations/guidelines/good practices, with the aim of raising awareness of the existing solutions on this matter and involving more Customs administrations into the process.

#### **Undelivered/unclaimed goods – Goods return service**

The Postal participants in Joint WCO/UPU Customs Workshop held in Johannesburg in August 2012 raised the issue that undelivered or unclaimed postal items were seized/forfeited by Customs administrations in some countries in accordance with their respective national legislation. There could be bonafide situations where the goods covered under the parcel are found not to conform to sample or specification or shipped without the consent of the consignee. It was informed by the UPU that, for parcels, the senders' instructions in case of non-delivery were on the CP 71 dispatch note and the CP 72, which may include options to return to sender, redirect, or treat as abandoned.

There is another related issue with the returned shipments which is the refund of duties and taxes. The Article 20 of the UPU Convention stipulates that designated operators shall undertake to seek from the competent authorities in their countries cancellation of the fees (including customs duty) in the case of a parcel - returned to sender; redirected to a third country; abandoned by the sender; and lost in their service or destroyed because of total damage of the contents.

Broad principles for repayment of duties and taxes provides that if a dutiable item was not delivered abroad because the addressee refuses it or for some other reason, the office of destination returns the item along with all accompanying documents, to the postal Customs clearance centre which requests reimbursement of the duty paid to Customs in advance. Guidelines further provides that postal service will normally request that Customs to cancel or repay duties and taxes on items returned to origin, destroyed because of total damage to the contents or redirected to a third country and for postal parcels abandoned by the sender

Growing volumes in small packets and parcels, calls for consideration of streamlined functions like return in bonafide cases and duty cancellation/refunds on such items to reduce administrative burden and costs. A coordinated approach between Customs and Post may be desirable proposition on the issue. WCO-UPU Guidelines for developing MoU between Customs and Post at national level could provide useful reference in developing the MoU. Such MoUs encourage a greater co-operative effort between the two agencies. Collation and assessment of working experiences and practices of Member Customs administrations in this area including working arrangements with Posts would be useful.

E-COMMERCE was again at the agenda of WCO's PTC Work Programme and a paper was issued in **February 2015** with the following highlights:

A combination of technological developments, shifts in tax frameworks, and reductions in trade barriers have contributed to shifting market behaviours with negative impacts on tax revenue. The growth of online shopping, facilitated by improved internet access, has led to significant and global increase in cross-border purchases of small value goods. Global cross border e-commerce trade was approximately \$300 billion 2012.

From a consumer perspective the growth in e-commerce provides access to international markets, greater product access, improved choice and competitive pricing. However, this change in business and consumer behaviour is impacting on customs services, tax revenue, duties payable and domestic retailers. The potential lost/missed revenue is even greater for jurisdictions with Goods and Services Tax (GST) or Value Add Tax (VAT).

These changes, combined with upward pressure on customs *de minimis* levels and processing speeds, have resulted in a competitive price disadvantage for domestic retailers who are required to charge consumption tax. For Governments, there is a potentially significant loss of duty and consumption tax revenue.

A recent study by Nielson, commissioned by Paypal, looked at cross-border e-commerce across the USA, UK, Brazil, Germany, Australia and China in 2013. These six markets have 93.7 million consumers spending around US\$105 billion on overseas websites using both desktop and mobile shopping. By 2018 the consumer population is forecast to grow to 130m with a total spend of around US\$307bn.

The study also found that the top 5 cross-border categories were:

- Clothes, Shoes, Accessories (US\$12.5bn)
- Health and Beauty Products (US\$7.6bn)
- Personal Electronics (US\$6.0bn)
- Computer Hardware (US\$6.0bn), and
- Jewellery, Gems and Watches (US\$5.8bn)

### **E-commerce by payment method and supplier**

According to the World Payments Report 2014, the number of global e-commerce transactions will be close to 40 bn in 2015. In addition, the latest World Payments Report from the Royal Bank of Scotland, developed in conjunction with Capgemini, highlighted the variety of regulatory and industry initiatives underway in different regions and globally which impact on payments.

Poor or limited information is one of the major challenges jurisdictions face when seeking to increase revenue collection from cross-border, low value, e-commerce.

#### *There is a lack of automation and interoperable systems*

Transfer of information, assessment of tax obligation and invoicing consumers are made more difficult by the plethora of different information systems and data collection standards that exist globally.

There is no universal system for identifying products. Many data capture systems use free character fields for product descriptions, limiting the amount of automatic identification which could be achieved with either universal product description codes or universal electronic coding.

A further complication is the lack of information often provided for postal goods. The Universal Postal Union (UPU) treaty requires that:

- Articles cannot be refused (except prohibitions),
- Service performance targets need to be met, and
- Undeliverable articles are returned to the country of origin at the postal service's expense.

The lack of information often provided by postal customers and the treaty requirements make information improvements challenging and delivery of post the priority.

#### *Different entities have different information and incentives*

When physical parcels are purchased over the phone or on-line and delivered to an end user, the only entities with full knowledge of what the good is are the purchaser and the supplier. Parcels are occasionally sent with the wrong descriptions or wrong value referenced in order to ensure parcels get through customs easily and quickly without further fees for the purchaser. Improving transit times can save significant money; for example, it has been estimated by the shipping industry that the cost of each additional day in transit is equal to half of one percent of the value of goods.

Purchaser is the only entity with full information of the product, its value and where it will be consumed. However, they are only likely to pay the consumption tax if they cannot avoid it or if failing to do so means the product will not be delivered or they risk penalties for not paying tax.

Financial agent is the only entity besides the purchaser that has knowledge of both the value of the product, including postage (the payment transfer), and the location of the purchaser (as stored against the purchaser account or card details). As noted above, a Nielson study of online cross-border trade found that 80% of transactions were through Paypal. However, as with other entities there is no immediate incentive for financial agents to ensure tax is paid.

Supplier and the transport company are likely to have some or all the information on the product and are able to stop the product getting to the end user but their incentives are to provide a low cost, safe, and fast delivery. They have no incentive to collect tax on behalf of countries if doing so will undermine their competitive price advantage.

However, it is Customs, as an agent of a government that is often tasked with collecting the revenue. However, Customs agencies are also the least likely to have accurate information on who purchased the goods and who to invoice for the tax.

#### **International Areas of Focus**

Jurisdictions across the globe are trying to tackle common questions and challenges associated with the rapidly growing level of cross-border trade. *Data collection and pre-clearance* is a major focus for the largest global traders regardless of whether the trade is driven by e-commerce or not. Increased security concerns and the push for more efficient border clearance are driving the need for high quality data collection which can be sent to border and security agencies prior to the arrival of actual goods. The

United States Importer Security Filing (ISP) rule (10+2 rule) is driving increased data capture and pre-clearance standards internationally. The data requirements of the 10+2 rule are:

- i. Manufacturer (or supplier) name and address
- ii. Seller (or owner) name and address
- iii. Buyer (or owner) name and address
- iv. Ship-to name and address
- v. Container consolidation location
- vi. Consolidator name and address
- vii. Importer of record number/foreign trade zone applicant identification number
- viii. Consignee number (s)
- ix. Country of origin
- x. Commodity Harmonized Tariff Code
- xi. Vessel stow plan
- xii. Container status messages

*Identifying the most efficient way to collect tax revenue* is an ongoing focus for many border agencies. Most jurisdictions have adopted the convention of taxing at the point of consumption and are looking to find efficient ways to identify and invoice the recipient. The information captured as part of the new data and security requirements could also be used by customs agencies, in conjunction with their import lodgement data, to help secure value added tax revenue.

The majority of countries use reverse charge approaches for GST/VAT on imported goods with the recipient being liable for any import charges. As items need to either have VAT/GST paid in advance or be held until the recipient pays the tax and duties, there are significant logistical challenges in reverse charge systems. In the absence of simple pre-payment solutions, customs agencies face a trade-off between the cost of storing all items and the foregone tax associated with a *de minimis*.

Other countries have sought to or are seeking to require foreign businesses, who supply goods and services to domestic businesses or consumers, to charge and collect consumption tax and pass the tax to the collection agency of the jurisdiction where the consumption takes place. Although these approaches make it reasonably simple for an offshore company to register, collect and pay consumption tax in a country, it still potentially requires that they register in every country that they trade. This is a significant burden for companies as they could potentially need to register for consumption tax in dozens of countries.



In addition, there is no current mechanism to compel non-resident companies to register or to penalise them for not registering, except perhaps by stopping their goods at the border, providing this does not breach any trade agreements countries may have.

### ***Universal Postal Union***

The UPU Congress passed a resolution in 2012 charging the Postal Operations Council and UPU International Bureau with providing technical assistance to member countries, along with the developing and promoting of electronic and physical addressing standards. UPU is building a more closely interconnected postal network and continuing to modernize lightweight-package delivery and return services.

### ***International Post Corporation – ICP***

The ICP is a cooperative association of 24 postal operators in Asia/Pacific, Europe and North America. The ICP is developing an e-Commerce Interconnect Programme (eCIP). eCIP will support a seamless global postal delivery network through data capture at the source. The programme aims to offer consumers the same shopping and delivery experience when buying online domestically or cross-border.

eCIP is being developed to work with Customs information needs and 31 Postal operators will have access to the eCIP platform.

### **Revenue Collection from e-commerce trade**

The following section sets out a range of possible options or directions of focus for tax revenue collection for cross border, low value, e-commerce trade.

### **Approaches to ensuring accuracy of products**

Taxes and duties are all driven off the type and value of the goods imported. Ensuring the accuracy of data is essential if tax liabilities are to be calculated accurately. Current systems rely on information provided by a seller and are often checked manually by a customs officer to ensure accuracy. It is likely that between the ISP rule, eCIP platforms, OECD guidelines and action plans, and the work of the UPU to increase global interconnectedness of postal services there will be a rich world of data to support tracking and border processing of trade goods. Many jurisdictions are working on ways to ensure the data is accurate and that sellers are not under-valuing or mis-describing goods to lower customer costs.

Despite the improvements underway in product tracking, taxes and duties cannot be levied without product value data. It is crucial for tax revenue collection that border agencies are able to ensure that information systems correctly and clearly capture and identify the value of goods.

#### Declarations of product description

There are a number of comprehensive systems such as the 3CE automated HS classification system that could be used to help ensure accurate information on parcel contents. <http://www.3ceonline.com/>. Adopting a single, global classification system could help to ensure accuracy of product identification.

#### Bar codes

Bar codes provide product identification using optical scanners. There are five main types of 1D bar-codes and 4 main types of 2D barcodes. Although the majority of bar codes align to international standards, there is no universal database of codes which identifies all products or gives price information. However, it may be possible to develop data sharing approaches which would allow customs agencies to scan a barcode and get accurate information on the product.

Utilising barcodes in such a way would require that the barcode be on the outside of the parcel. This opens up the possibility of fraud in the same way as seller identification of product.

#### Radio Frequency Identification

Radio frequency identification (RFID) tags may provide a mechanism for ensuring that any given item passing through a customs point is identified accurately. If an RFID tag is attached to the product during manufacture and read during import, then the customs authority no longer needs to rely on a description from the seller or

importer. There are currently frequency and standard differences across regions that need to be addressed. There also needs to be global agreement on product code to ensure that either different products are not labelled the same in different regions or the same product have two different codes.

If these issues can be addressed, and a number of global standard setting bodies are attempting to address these issues, then RFID may provide a future mechanism for accurately identifying goods without the need to add additional barcodes to the outside of packages.

#### **Possible revenue collection points**

There are seven points of possible revenue collection between the points of purchase and delivery and up to 8 entities which could aid the revenue collection process.

## **Possible revenue collection points Entities**

Purchase Supplier, Financial institution, a third party or potentially customs?

Transport in country of sale Transport firm

Export from country of sale Customs in country of sale

Transport to country of consumption Transport firm

Import into country of consumption Customs in country of consumption

Transport to customer Transport firm

Delivery to customer Transport firm

In order for any of these entities to capture the tax revenue of the country of consumption they need to know the:

- i. price of the good,
- ii. price of the freight to deliver to the consumer,
- iii. location of the consumer, and
- iv. duty and tax rates.

None of the entities have all the information required to easily collect tax revenue. Any collection system will need to integrate or draw on two or more data sets to be able to calculate duty and tax accurately. The institution that is managing the financial transaction is arguably the institution with the most data and therefore it may be the best dataset to use as a base for collection.

## **Approaches to collecting revenue**

### *Reverse charge or pre-payment*

Reverse charging or pre-payment of duties and taxes is the most common form of revenue collection with goods held by customs services until payment is made. This option is unlikely to be practical with low value goods as they often do not require the level of detail necessary to enable charge back to the recipient and would need to be held until such time as someone came to collect the item and pay the tax owing.

*Supplier collects and pays tax and Consumer pays at time of purchase*

A number of jurisdictions have or are putting in place systems or legislation in an effort to get suppliers to charge and collect value added taxes when they make sales to residents. This is an approach that has been adopted in the European Union and which Japan is seeking to adopt. However, it requires that the company selling the goods or services registers for GST/VAT in each country or region in which they trade. Although there are a number of products available which can help a company identify the appropriate tax rate, this approach is likely to put significant transaction costs on businesses.

Suppliers would need to link in with databases of tax and duty rates by location and then transfer funds to the relevant jurisdiction. Compliance costs of this approach for suppliers are likely to be high with little or no real return for them.

For consumers to pay at the time of purchase there needs to be an electronic collection mechanism. This is likely to require support by either, the supplier, the financial institution or a link with the resident customs site which can accept tax and duty payment prior to the purchase being completed or product shipped.

#### *On-line shoppers required to be registered as importers*

Under such an approach, anyone who imports over a specific value of goods in a period of time would need to be registered as an importer and pay tax through an online portal before products can be released. Argentina introduced such a scheme at the start of 2014. Under the Argentinian system, consumers are able to import two US\$25 items per year before they need to become registered as importers and pay a 50% customs duty. Such an approach puts the onus on the consumer and reduces the price advantage of overseas companies. There are large logistical challenges where items need to be held prior to receipt and declaration of item contents and payment by the consumer.

### **Conclusions**

Collecting all tax and duties on electronic cross border imports requires simple, inexpensive ways to identify a transaction, value the goods, invoice the tax payer and collect the tax. All the data to achieve higher rates of revenue collection currently exist, but improved information integration is required in order to be able to tax the appropriate individuals the appropriate amount.

#### *Collecting revenue on-line at the point of sale*

Financial institutions have information that can link an online payment with an individual and their location of residence. This suggests that it may be most cost effective to build on their data and services and to collect tax and duty revenue at the point of sale. However, one of the drivers behind online shopping for individuals is the reduced price. If customers at one financial institution find they are paying tax and duty and losing the price advantage, they are likely to switch financial institution.

As such, an internationally cooperative approach would be needed to seek agreement from as many financial institutions across as many markets as possible for this to be viable. Alternatively, producers/retailers could build in the tax element into their pricing and collect it on behalf of governments. However, the same substitution effect exists, i.e. if one business collects tax, it is likely

that price sensitive consumers will look for competitors who don't collect tax and have a lower price as a result.

### *Collecting revenue through transport*

The other, most likely approach to revenue collection is to target collection through international or domestic transportation agencies who could collect tax on behalf of the importing jurisdiction. It is likely they would build the tax into the cost of transport or bill the consumer directly. As with online revenue collection, this approach would require the major transportation companies in the major economic markets to agree to collect revenue. This could be incentivised by providing priority service at the border and reducing the overall transit time and cost for transport companies who collect revenue on behalf of government. It may be possible to stop products where duty and taxes haven't been collected or paid by a transport firm, provided this didn't breach any international conventions or agreements a country was signed up to. Alternatively, it may be possible to legislate in such a way that requires domestic transport firms to collect tax and duty on imports.

### *Is collecting tax on low value, cross border, business to consumer e-commerce trade worth it?*

It is likely that collection of tax revenue on each and every low value, cross-border, e-commerce driven import is going to be both unrealistic and uneconomical in the immediate future and it is likely that *de minimis* systems will continue. However, with improvements in data, information flow and different approaches to collecting duty and tax, it is likely that customs services will be able to secure a significant portion of the current lost revenue.

## **5 International best practices**

### **Use of intermediaries to collect taxes**

For cross-border B2C e-commerce supplies there are three options:

- Collect directly from the consumer
- Collect directly from the non-resident supplier
- Collect from an intermediary acting on behalf of the supplier

Collecting consumption taxes directly from consumers is not efficient. Collecting directly from the non-resident supplier was recommended in the Ottawa taxation framework conditions, 2001. The supplier faces problems in knowing and following the local laws of the place of customer. In this regard, the intermediaries' understanding of local language and application of rules can provide benefits to both suppliers and tax administrations.

The intermediary must be resident or have a physical presence in the country of taxation.

- There must be a contract between the non-resident supplier and the intermediary. The intermediary might also have to be registered for tax purposes.

- Some countries require the intermediary to have professional or other qualifications.
- Financial security may be required, such as a bank guarantee or other instrument.
- Many countries impose joint and severe liability on the intermediary and the supplier.

The liability rules for intermediaries need to be clearly stipulated in such cases. For cross-border B2C e-commerce supplies a proper balance needs to be struck between unnecessary administrative burdens on suppliers and effective tax collection.

## **China Experience**

### **Existing Policy (before April 2016):**

- There was a negative list of imports for which licensing requirements would apply and thus could not have been imported freely;
- Personal Postal Articles Tax rates would apply. These were 10%, 20%, 30% and 50% depending upon product category. This has since been amended to just three rates of 15%, 30% and 60% notwithstanding the separate announcement of E-Commerce Policy.
- Value of goods imported should have been less than RMB 1000 for these rules to apply.
- If the tax amount was less than a threshold of 50RMB, it was exempted;

### **New Policy (though suspended for one year till May 2017):**

- Threshold of value of goods revised to 2000 RMB per single transaction subject to a maximum of RMB 20,000 RMB per year;
- Customs duty fully exempt and a flat tax of 70% of VAT / GST (typically 17%) and Consumption Tax (varies);
- Tax exemption of upto 50 RMB done away with;
- Negative list for Policy regulations replaced with two positive lists - List 1: 1142 items and List 2 of 151 items. Thus, anything other than these items would require licensing regulations and would need to be treated like commercial goods. However, the lists would be amended from time to time and most goods being imported through e-commerce are covered.
- Duty on certain products to go up and on certain to come down.
- The New Policy to be applicable to only Official E-commerce Platforms and not to others. In other words those platforms that are either connected to Customs systems or those couriers/ carriers / postal offices which provide electronic data to Customs relating to transactions and payments and other details of importer and exporter identities.

- Imports under the Cross-Border Ecommerce to take place through only 10 pilot zones announced in the cities of Hangzhou, Ningbo, Shanghai, Zhengzhou, Chongqin, Tianjin, Fuzhou, Shenzhen, Guangzhou, Pingtan.

### Comparison of Import Tax Policies for Cross-Border E-Commerce Retail Imports

	Personal Postal Articles Tax under Old Policy	Integrated Tax under New Policy
Maximum value of each transaction	Rmb1,000	Rmb2,000
Annual total for each person	Nil	Rmb20,000
Purchase of an inseparable item that exceeds the maximum value for single transactions	Taxed under personal postal articles tax	Taxed in full using the general trade tariff
Applicable tax rates	10%, 20%, 30% and 50%, depending on type of goods	Import tariff: Temporarily set at 0%; VAT (17% x 70%): 11.9%; Consumption tax: Tax rate applicable to type of goods x 70%
Payable duty of Rmb50 or less	Exempted	No exemption

## 6 India's present ecommerce status (both business and regulatory)

### Existing Provisions:

No specific provisions w.r.t e-commerce in the existing VAT, Service Tax and Central Excise legislation.

However, most of the states like Bihar, Uttarakhand, UP and Gujarat have imposed entry tax on all goods entering into their states through ecommerce channels.

For instance Gujarat brought tax on interstate transactions into the state by amending Gujarat *Tax on Entry of Specified Goods into Local Areas Act, 2001* on 1<sup>st</sup> April, 2016. They have amended the definition of 'importer' to include e-commerce companies, and also mandated that e-commerce companies qualifying as 'importer' shall "collect the (entry) tax from the person for whom such facilitation has taken place".

Most such entry tax legislations have been challenged before various courts on the ground that the levy is against the concept of free trade and commerce under Article 301 of the Constitution and does not conform to the conditions set out under Article 304 of the Constitution. The dispute regarding the constitutionality of various State entry tax legislations is currently being heard before the Supreme

Court in SLP (C) No. 33923/2012 titled *M/s Vedanta Aluminum Ltd. v. State of Orissa and Ors* - [2016-TIOL-75-SC-CT-LB](#) . A nine-judge bench will hear all the connected cases.

The Hon'ble Patna High Court has very recently on 27<sup>th</sup> September, 2016 ( [2016-TIOL-2307-HC-PATNA-VAT](#)) has set aside the Bihar Entry Tax. The court has ruled that discrimination in the rate of tax by allowing set off to one class of local dealers of the entry tax paid against the VAT payable and not allowing the benefit of set off to outside dealers violates the article 304 of the Constitution. The court has relied upon the Supreme Court judgment in the case of *M/s Jaiprakash Associates Ltd.*

The Supreme Court has, in *Jaiprakash Associates* case clarified that the principle of "non-discriminatory tax", as provided in Article 304(a) of the Constitution of India, is a sine qua non to free movement of goods between nation/States in several jurisdictions and also in international trade and policy. It was further held that effect of a tax should not be such that two like goods are given discriminatory treatment. The powers given to the State legislature are not unrestricted and are bound to function within limitations stipulated under Article 304(a) of the Constitution of India.

The issue of entry tax will likely be put to rest after the introduction of GST next year.

The Cross border movement of goods and services through E Commerce channels has tremendous scope, especially considering the burgeoning number of consumers and the noticeable benefits of reduction in costs due to lesser players in the supply chain. The electronic platforms in the B2B trade are usually less fancied vis-à-vis the B2C counterparts like Flipkart and Amazon etc, however B2B are much more profitable and growing at a much healthier rate. In B2B trade, the buyers usually use the ecommerce platforms just for the completing the orders and delivery and clearance from Customs are done by the buyers themselves. The traditional channels and delivery terms being used by all importers are sufficient enough to take care of clearances. In B2C trade, the buyer is not registered and do not want to burden himself with the hassles of completing the Customs clearance procedures. The buyer is not registered with Customs, is not having any IEC and is not into business. He is just a consumer and wants the goods at his doorstep. The ecommerce channels have to tie up with the logistics/ courier companies in order to complete the clearance procedures at Customs and the last mile activity of delivering the merchandise to the consumer.

**Imports:** In respect of imports of goods into India (B2C) through ecommerce channels, things are more or less settled. All such imports are cleared through courier and posts. The courier cum logistics companies like M/s DHL Ltd, M/s Aramex etc have agreements with the international as well as domestic ecommerce operators and the imports get nominated to these companies. The import documents are filed on the name of buyers, goods are cleared on the name of the buyers, duties are paid by the courier companies and thereafter the goods are delivered to the buyers. The delivery terms are almost always on DDP (Delivered duty paid). All charges including duty etc are reimbursed to the courier companies from the ecommerce operators.

**Issues in valuation and KYC:** Some issues like calculation of freight (ocean freight and domestic freight), reducing the same along with the duty element from the DDP value in order to arrive at assessable value at the time of imports are there. There are no guidelines or the precedents on the same. It is almost



impossible to determine consignment wise freight element, in view of the aggregation of a large numbers of very small consignments, moving in different directions and to different consumers' places. Besides, the courier companies are also required to follow the KYC norms, while delivering the goods to the consumer which sometimes create problems.

**Exports:** In respect of exports, DGFT has extended the benefits of MEIS (Merchandise exports from India scheme) to exports through the courier/postal route subject to a maximum value per consignment of Rs.25,000/-. The scheme has not able to take off due to complex procedures and high compliance costs for such small consignments. The benefit under the MEIS scheme is up to 5% of the FOB value viz maximum up to Rs.1250/- per consignment.( 5% of Rs.25,000/-) The compliance costs of getting the goods cleared from Customs and then claiming the same from DGFT, for such small consignments, may be a dampener.

**Information Technology Act, 2000** provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies

India has the **Consumer Protection Act 1986**. However, nothing in the Act refers explicitly to e-commerce consumers. It provides for regulation of trade practices, creation of national and state level Consumer Protection Councils, consumer disputes redressal forums at the National, State and District level to redress disputes, class actions and for recognized consumer associations to act on behalf of the consumers. The Act provides a detailed list of unfair trade practices, but it is not exhaustive.

The legal requirements for undertaking e-commerce in India also involve compliance with other laws like Contract Law, Indian Penal Code, etc. Further, online shopping in India also involves compliance with the banking DIPP – Discussion Paper on E-Commerce and financial norms applicable in India. For instance, take the example of PayPal in this regard. If PayPal has to allow online payments receipt and disbursements for its existing or proposed e-commerce activities, it has to take a license from Reserve Bank of India (RBI) in this regard. Further, cyber due diligence for Paypal and other online payment transferors in India is also required to be observed.

### **Import and Export through Post**

The facility for import and export of goods by Post Parcels is provided by the Postal Department at its Foreign Post Offices and sub-Foreign Post Offices. Customs facilities for examination, assessment, clearance etc. are available at these Post Offices.

### **Legal Provisions**

Goods imported through post are classified under Chapter Heading 9804 of the Customs Tariff Act, 1975 and rate of duty applicable thereon is charged on all the goods imported by post. Importantly, Heading

9804 specifically applies to goods permitted for import through post which are exempted from prohibition under Foreign Trade (Development and Regulation) Act, 1992. As per Note 6 to Chapter 98, goods against an import licence or Customs Clearance Permit can also not be imported through post. Further, Note 4 to Chapter 98 states that motor vehicles, alcoholic drinks and goods imported through courier are not covered under Heading 9804.

Goods imported or exported by post are governed by Sections 82, 83 and 84 of the Customs Act, 1962 whereas the procedure for clearance of goods through post is prescribed in Rules regarding Postal Parcels and Letter Packets from Foreign Ports In/Out of India of 1953. [Refer Notification No. 53-Cus, dated 17-6-1950]

In respect of import and exports through post, any label or declaration accompanying the packet or parcel containing details like description, quantity and value of the goods is treated as entry for import or export of the goods and no separate manifest for such goods is required to be filed.

The relevant date for rate of duty and tariff value, if any, applicable in respect of imports through post is the date on which the postal authorities present to the Proper Officer of Customs the list containing details of the goods for assessment. Thus, presentation of said list is equivalent to filing of Bill of Entry so far as assessment of goods imported by post is concerned.

If the post parcels come through a vessel and the said list presented by the postal authorities is presented before arrival of the vessel, the rate of duty and tariff value applicable shall be as on the date of arrival of the vessel i.e. Entry Inward of the vessel.

In respect of export goods, the relevant date for rate of duty and tariff value, if any, applicable, is the date on which the exporter delivers the goods to postal authorities for exportation.

Importability of dutiable items through post:

Import of dutiable goods by letter, packet or parcel posts is prohibited except where such letter or packet bears a declaration stating the nature, weight and value of the contents on the front side or if such a declaration is attached alongside indicating that the letter/packet may be opened for Customs examination. Dutiable goods may also be not imported by post if Customs is not satisfied that the details of nature, weight and value of the contents in declaration as above are correctly stated. [Refer Notification No.78-Cus, dated 2-4-1938]

Items intended for personal use, which are exempt from the prohibitions under the FTP or the Customs Act, 1962, can be imported by postal channel on payment of appropriate duties under Tariff Heading 9804 of the Customs Tariff Act, 1975. Customs duty payable if less than Rs.100/- is exempt. [Refer Notification No. 21/02-Cus, dated 1-3-2002]

Import of gifts through post:

Bonafide gifts up to a value limit of Rs.10,000/-, imported by post, are exempt from Basic and Additional Customs duties in terms Notification No.171/93-Cus, dated 16-9- 1993. Further, only those items can be imported as gifts, which are not prohibited for importation under Foreign Trade (Development and Regulation) Act, 1992.

The sender of the gift may not necessarily be residing in the country from where the goods have been dispatched and any person abroad can send the gifts to relatives, business associates, friends, companies and acquaintances. The gifts have to be for bonafide personal use. The purpose of this stipulation is that the person receives the gift genuinely free and the payment is not made for it through some other means. The quantity and frequency of the gifts should not give rise to the belief that it is used as a route to transfer money. The gifts can be received by individuals, societies, institutions, like schools and colleges and even corporate bodies.

For calculating the value limit of Rs.10,000/- in case of imports of gifts, postal charges or the airfreight is not taken into consideration. The value of Rs.10,000/- is taken as the value of the goods in the country from where these were dispatched.

If the value of the gifts received is more than Rs.10,000/-, the receiver has to pay Customs duty on the whole consignment, even if the goods were received free, unsolicited. In addition, at the discretion of the Assistant/ Deputy Commissioner, if the goods are restricted for import, the receiver has a liability for penalty for such import, even if the goods have been sent unsolicited. The restricted goods are also liable to confiscation and receiver has to pay redemption fine in lieu of confiscation in addition to duty and penalty.

Certain prohibited goods like narcotic drugs, arms, ammunition, obscene films/printed material etc. are liable to absolute confiscation and the receiver is liable to penal action, even if the goods have been sent unsolicited.

Customs duty is chargeable on gifts assessed over Rs.10,000/- by the Customs. In case of post parcel, the customs department assesses the duty payable and the postal department collects the assessed duty from the receiver of the gift and subsequently deposits it with the customs.

## **Import and Export through Courier**

### **Introduction**

At present, the courier clearances are allowed both under manual mode as well as electronic mode. The courier clearances under the manual mode are governed by Courier Imports and Exports (Clearance) Regulations, 1998, and courier clearance under electronic mode are governed by Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. The courier goods are cleared through a fast track basis on observance of simple formalities by courier companies. Examination of parcels is kept to the minimum and clearance is allowed on the basis of selective scrutiny of documents. The duty, where leviable, is paid by the courier company on behalf of importers/exporters before taking delivery of the parcels. The facility of imports and exports through courier mode is allowed to only to

those courier companies which are registered by the Customs. These courier companies are called “Authorized Couriers”. The courier parcels are normally carried by passenger/ cargo aircrafts.

The scheme of Customs clearance of imports and exports by courier mode introduces certain procedural relaxation. Such imports and exports shall, however, continue to be governed by the applicable provisions of the FTP or any other law, for the time being in force.

The following categories of goods are not allowed import through the courier mode:

- (a) Precious and semi precious cargo; (b) Animals and plants; (c) Perishables; (d) Publications containing maps depicting incorrect boundaries of India; (e) Precious and semi precious stones, gold or silver in any form; (f) Goods under Export Promotion Schemes including EOU scheme; (g) Goods exceeding weight limit of 70 kgs. (individual packages) imported through courier under manual mode
- (b) However, under the electronic mode, no such restriction regarding weight has been provided. Clearance of goods under EOU scheme is permitted under the electronic mode.

#### **Categories of goods allowed export through courier**

As in the case of imports, all goods are allowed to be exported through courier except for the following excluded categories:

- (a) Goods attracting any duty on exports;
- (b) Goods exported under export promotion schemes, such as Drawback, DEEC, EPCG etc.;
- (c) Goods where the value of the consignment is above Rs.25,000/- and transaction in foreign exchange is involved (the limit of Rs.25,000/- does not apply where the G.R. waiver or specific permission has been obtained from the RBI).

Import and export of gems and jewellery:

Import of gems and jewellery including samples thereof by EOUs or SEZ units is allowed through courier. Likewise, export of cut and polished diamond, gems and jewellery under any scheme of FTP from EOUs, SEZs or DTA is allowed through courier subject to the condition that the value of each export consignment under such export does not exceed Rs.20 lakhs.

#### **Procedure for clearance of import goods**

For facilitating Customs clearance, the goods imported by courier are divided into the following categories:

- (a) Documents that include any message, information or data recorded on paper, cards or photographs having no commercial value, and which do not attract any duty or subject to any prohibition/restriction on their import or export;

(b) Samples - any bonafide commercial samples and prototypes of goods supplied free of charge of a value not exceeding Rs.50,000/- for exports and Rs.10,000/- for imports which are not subject to any prohibition or restriction on their import or export and which does not involve transfer of foreign exchange.

(c) Free gifts - any bonafide gifts of articles for personal use of a value not exceeding rupees 25,000/- for a consignment in case of exports and Rs.10,000/- for imports which are not subject to any prohibition or restriction on their import or export and which do not involve transfer of foreign exchange.

(d) Low value dutiable or commercial goods - goods having a declared value of upto Rs.1,00,000/-; and

(e) Dutiable or commercial goods - goods having a declared value of more than Rs.1,00,000/-.

Different Customs declaration forms have been prescribed under the Courier Regulations for manual mode and electronic mode. Under the manual mode, simplified Bills of Entry have been specified, as mentioned below, for the clearance of goods. The goods are assessed to duty on merits like any other imported goods, and exemption, wherever available, is allowed to such imports when claimed. (a) Courier Bill of Entry-III for documents, (b) Courier Bill of Entry-IV for samples and free gifts, and (c) Courier Bill of Entry-V for commercial shipments upto a declared value of Rs. one lakh

Under the courier Regulations for the electronic mode the forms prescribed for filing Customs declarations are: (a) Courier Bill of Entry-XI (CBE-XI) for documents in Form B, (b) Courier Bill of Entry-XII (CBE-XII) for free gifts and samples in Form C, (c) Courier Bill of Entry-XIII (CBE-XIII) for low value dutiable consignments in Form D, and (d) Courier Bill of Entry-XIV (CBE-XIV) for other dutiable consignments in Form E for import consignments. 6. Procedural formalities for clearance of export goods: 6.1 In case of export goods, the Authorised Courier files Courier Shipping Bills with the proper officer of Customs at the airport or LCS before departure of flight or other mode of transport, as the case may be.

### **Courier electronic clearance procedure**

#### **Clearance of imported goods shall be affected in the following manner**

(i) The Authorised Courier or his agent shall file with the proper officer, in an electronic form, a manifest for imported goods prior to its arrival viz. Express Cargo Manifest - Import (ECM-I) in Form A; (ii) The courier packages containing the imported goods shall not be dealt with in any manner except as may be directed by the Commissioner of Customs and no person shall, except with the permission of proper officer, open any packages. (iii) The Authorised Courier or his agent shall make entry of goods imported by him, in an electronic declaration, by presenting to the proper officer the Courier Bill of 112 Entry-XI (CBE-XI) for documents in Form B or the Courier Bill of Entry-XII (CBEXII) for free gifts and samples in Form C or the Courier Bill of Entry-XIII (CBE-XIII) for low value dutiable consignments in Form D or the Courier Bill of Entry-XIV (CBE-XIV) for other dutiable consignments in Form E. (iv) The Authorised Courier shall present imported goods for inspection, screening, examination and assessment thereof. (v) Imported goods which are not taken clearance within 30 days of arrival, shall be detained by proper officer and shall be sold or disposed of by the person having custody thereof, after notice to the

Authorised Courier and to the declared importer, if any, and the charges payable for storage and holding of such goods shall be payable by the Authorised Courier.

#### **Clearance of export goods shall be done as follows**

(i) The Authorised Courier or his agent shall, on or after such date as the Board may specify by notification, file in an electronic form, a manifest for export goods before its export with the proper officer viz. Courier Export Manifest (CEM) in Form F.

(ii) The courier packages containing the export goods shall not be dealt with after presentation of documents to the proper officer in any manner except as may be directed by the Commissioner of Customs and no person shall, except with the permission of proper officer, open any package of export goods, brought into the Customs area, to be loaded on a flight. (iii) The Authorized Courier or his agent shall make entry of goods for export, in Courier Shipping Bill-III (CSB-III) for documents in Form G or, as the case may be, in the Courier Shipping Bill-IV (CSB-IV) for goods in Form H, before presenting it to the proper officer. (iv) The Authorized Courier shall present the export goods to the proper officer for inspection, screening, examination and assessment thereof. (v) Any export goods brought into customs area for export purpose and not exported within 7 days or within such extended period as permitted by the proper officer in case of delay beyond the control of the Authorized Courier and declared exporter, may be detained by the proper officer and sold or disposed off by the custodian, after notice to the concerned Authorized Courier and declared exporter. The charges for storage and handling of such goods shall be paid by such Authorized Courier. 15.3 The Authorized Courier or his agent empowered to deal with the imported/export goods shall be required to pass the examination referred to in the Custom Brokers Licensing Regulations, 2013.

[Refer Circulars No. 9/2010-Cus., dated 8-4-2010 and No.4/2015- Cus., dated 20-1-2015] 16.4 Vide Notification No. 62/2015- Cus. (N.T.), dated 17-6-2015 , the export of cargo through Courier mode from the airports of Chennai , Mumbai and Delhi under Merchandise Exports from India Scheme (MEIS) upto FOB value upto Rs.25,000/ - per consignment has been allowed for the goods listed in Appendix 3C of the Foreign Trade Policy 2015-2020 .

Indian Scenario of clearance of e-commerce consignments faces following challenges:

- Manual processing of Postal and Courier shipments;
- Absence of Scanners;
- Lack of RMS;
- Consequential delay in clearances.

#### **Gap analysis and proposed solutions**

Co-operation between Customs and the postal/express cargo service providers is of particular importance. For instance, besides seamless exchange of information, postal/express service staffs are usually well placed to bring suspicious postal articles to the attention of Customs.

### **Proposed Solutions**

- Strengthening of FPOs and Courier Cells
- Legal and procedural changes to allow faster customs clearance, mitigate delays
- Legislative and procedural changes to allow seamless goods return
- Improvement of internet penetration
- Amendments to the Consumer Protection Act, 1986
- Improved KYC methods to tackle the faceless trader syndrome
- Improvement of supply chain and logistics
- Strengthening of Payment systems and encouragement of use of credit cards and electronic payments
- Focus on security along with facilitation

### **7 Proposed Provisions in Model GST Law**

The Model GST Law (MGL) has a separate chapter XIB on E Commerce. All supplies of goods and / or services, whether through e-commerce route or otherwise, are subject to payment of CGST & SGST if the supplies are treated as intra-state supplies or payment of IGST if the supplies are treated as inter-state supplies in terms of section 3 and 3A of the IGST Act respectively. However, the threshold limits available to other suppliers are not available to the suppliers supplying through the ecommerce channels.

Section 19 r/w Schedule-III of the MGL provides that the threshold exemption is not available to *inter alia* following categories of suppliers:

- (i) person supplying goods and / or services, other than branded services, through e-commerce Operator;
- (ii) every electronic commerce Operator;
- (iii) aggregator providing branded services under his brand name or trade name.

The provisions in the Model GST Law endeavour to establish a **compliance mechanism** to ensure that the appropriate taxes are discharged by the actual suppliers supplying goods or services through electronic portals.

Many models are in vogue for making supplies through e-commerce route. Most common models are 'inventory model', 'market place model', 'fulfilment model', 'hybrid model' and 'aggregator model', etc. A distinction has been made between the supplies of goods or services being made under various models.

The GST provisions relating to supplies through e-commerce mode prescribe the obligations for Operators facilitating supplies by actual suppliers; actual supplier supplying goods or services through Operators; Suppliers supplying through e-commerce mode on own account; supplies of branded services by aggregators and powers and obligations of the government under the MGL.

Broadly E Commerce companies are dealt with in the following four ways:

#### **E-Commerce Operator and Tax Collected at Source:**

Section 43B(e) of the MGL defines an Electronic Commerce Operator (Operator) as:

*'electronic commerce operator' shall include every person who, directly or indirectly, owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection there with but shall not include persons engaged in supply of such goods and/or services on their own behalf.*

Thus every person who owns, operates or manages an electronic platform which is engaged in facilitating the supply of any goods and/or services. Also a person providing any information or any other services incidental to or in connection with such supply of goods and services through electronic platform would be considered as an Operator.

For instance, Amazon and Flipkart are Operators because they are facilitating actual suppliers to supply goods through their platform, however, Titan supplying watches and jewels through its own website would not be considered as an Operator for the purposes of this provision.

**Obligations of the operator:** Under Section 43C(1) of the MGL, the Operator is required to collect (i.e. deduct) an amount out of the consideration paid or payable to the actual supplier of goods or services in respect of supplies of goods and / or services made through such Operator. The Government, on the recommendation of the GST Council, would specify the rate for such collection (deduction).

The timings for such collection/deduction are earlier of the two events:

- (i) the time of credit of any amount to the account of the actual supplier of goods or services;
- (ii) the time of payment of any amount in cash or by any other mode.

This provision casts an obligation on the Operator to collect an amount at the given rate out of the proceeds payable to the actual supplier of goods or services making supplies through it.

The amount so collected by the Operator is to be paid to the credit of appropriate government within 10 days after the end of the month in which amount was so collected / deducted. Further, the Operator is



required to file a Statement containing all amounts collected by him for the supplies made through his Portal within 10 days of the end of the calendar month to which such statement pertains. The said statement would contain the names of the supplier(s), details of respective supplies made by them and the amount collected on their behalf. The Form and Manner of the said Statement would be prescribed in the GST Rules.

It may be noted that the Operator is broadly responsible to collect/deduct the specified percentage of amount out of the proceeds payable to the actual suppliers, pay such amount to the government and file a statement containing respective details. The time available to the Operator to deposit the collected amount on behalf of suppliers and to file the respective Statement containing the details of such collection is 10 days after the end of the month to which such collection relates. Further, the Operator is responsible to provide the information sought by the Government relating to the details of the supplies made by the actual suppliers using his Portal.

The Operator is required to furnish any information asked for by an officer not below Joint Commissioner within 5 working days from the date of service of notice asking such information. In case of failure to furnish such information, the penalty could be extended to Rs. 25,000/- .

#### **Role of department**

An officer not below the rank of Joint Commissioner may require the Operator to furnish details relating to:

- (i) supplies of goods / services effected through the Operator during any period;
- (ii) stock of goods held by actual supplier making supplies through such Operator in the godowns or warehouses belonging to the Operator and registered as additional place of business by the actual supplier.

In sum, the e-commerce operators facilitating supplies by actual suppliers would be required to collect TCS on such supplies. Thus as far as e-commerce operators are concerned, no tax liability has been imposed upon them in respect of supplies made by actual suppliers through them except for the liability to discharge tax on the services rendered in relation to such supplies. Their obligation is restricted to provide information to the government regarding the details of supplies made by the actual suppliers and to deduct and deposit a percentage of taxes from the collection payable to the said suppliers.

#### **Actual supplier supplying goods or services through Operators**

The amount collected by the operators (TCS) gets credited to the electronic cash ledger of the actual supplier. The suppliers on whose behalf payments have been made to the Government by the Operator after making deductions out of the amount collected on account of their supply proceeds would be entitled to claim credit of such amount in their respective electronic cash ledger.

The details of supplies contained in the statements submitted by the Operator would be matched with the information contained in the periodical returns submitted by the actual suppliers and the

discrepancy, if any would be notified to both Operator as well as actual supplier. In case of any discrepancy, the actual supplier need to rectify that in the same month in which the discrepancy is communicated, and this should be reflected in the return filed for that month. In case such rectification is not made within the same month, the amount of discrepancy shall be added to the output liability of the actual supplier for the next calendar month in the prescribed manner. The said liability is to be paid by the actual supplier along with interest from the date when such tax was due.

### **Suppliers supplying through e-commerce mode on own account**

A person supplying goods/services on his own account, however, would not be considered as an Operator. For Instance M/s Titan Ltd supplying watches and jewels through its own website would not be considered as an Operator for the purposes of this provision. So M/s Titan Ltd would be considered as normal supplier as in all other cases.

Similarly Amazon and Flipkart will not be treated as Operators in relation to those supplies which they make on their own account.

The actual supplier of goods and / or services and e-commerce operator making supplies of goods and / or services on his own account would be liable to discharge liability of GST in respect of supplies made by them and they are even not eligible for any threshold benefit either. They are liable to comply with all the obligations cast on normal suppliers under MGL / IGST Act like obtaining registration, payment of GST, filing of periodical returns, etc.

Some of the examples of suppliers who supply on their own account could be:

- i. Titan Ltd
- ii. KDDL
- iii. Shoppers Stop Ltd.,
- iv. Infiniti Retail Limited
- v. Croma,
- vi. Raymond Limited

### **Supplies of branded services by aggregators**

A separate category of supplier of branded services has also been provided in the MGL. The aggregator providing a branded service under his brand name or trade name would be responsible for payment of GST instead of the actual supplier of service. Companies like Ola, Uber would get covered under this provision. Section 43(a), 43(c) and 43(b) of the MGL define aggregator, branded services and brand name / trade name as below:

(a) **'aggregator'** means a person, who owns and manages an electronic platform, and by means of the application and a communication device, enables a potential customer to connect with the persons providing service of a particular kind under the brand name or trade name of the said aggregator;

(b) **'brand name or trade name'** means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some other person using the name or mark with or without any indication of the identity of that person;

(c) **'branded Services'** means services which are supplied by an electronic commerce operator under its own brand name or trade name, whether registered or not;

**Compulsory Registration by Aggregator:** As per Schedule III (5)(x), an aggregator who supplies services under his brand name or his trade name, shall be required to be registered irrespective of any threshold limit specified therein.

**Deemed Supplier Status for the aggregator:** As per section 3 (4) of the MGL, the supply of any branded service by an aggregator, as defined in section 43B, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.

Thus the supplier of branded services shall be responsible for paying the taxes by such supplies being considered deemed supplies. Some of the examples of companies/ brands which could be included in this category are:

- i. Olacabs
- ii. Uber Ltd

The companies like taxi aggregators are straight cases and easily fit into the definition of aggregators. However, many other models appear to be hybrid of different models and it may be difficult to categorise them in any one category.

### **B2B market place ecommerce operators**

There are B2B market place ecommerce operators like mjunction services limited (metaljunction, coaljunction, buyjunction, etc.), cloudBuy.com, tolexo.com, industrybuying.com, power2sme.com, Amazonbusiness.com etc. In these cases, both sellers as well as buyers will be registered. There will not be any threshold limit for suppliers or the ecommerce operators in B2B supplies also.

The payment in such cases may be between the supplier and the buyer directly. The ecommerce operators may not be involved in payment to the supplier. In most cases, invoices also would be issued by suppliers. The ecommerce operators will just be acting as marketplace platforms. It would be difficult for the operators to deduct TCS, wherever they would not be involved in the making of payment to the suppliers.

## **8 Summary/ Conclusions**

Nurturing of e-commerce presents a unique opportunity for developing countries to boost manufacturing and export, especially for Micro-Small-Medium Enterprises (MSMEs). The focus of policy-makers must be on facilitating this mode of trade. For development of ecommerce especially in B2C space in developing countries, the cross-border digital trade identified barriers must be reduced. Once the systems are stabilized, there is a potential for earning higher Government revenue from e-commerce and also ensuring supply chain security.

The Indian Foreign Post Offices and Courier terminals are mostly functioning on manual mode. This has potential to delay shipments, make supply chain vulnerable to security threats and is also a risk to the Government revenue. With companies involved in low value consignments trade being more sensitive to trade costs, and e-commerce particularly hinging on efficient delivery, transportation and payment systems, trade costs entailing high fixed cost components and lacking infrastructure can easily make trade uneconomic. The present state of affairs is a challenge but also presents a unique opportunity for a fast developing economy like India.

Digitalisation has enabled the emergence of low value consignments trade and has established a platform for MSMEs in developing countries to participate in global trade. The first important step in India must be to completely remove the manual interface and digitize FPOs and Courier terminals by introducing EDI after examining the work already done in this regard by World Customs Organization (WCO), Universal Postal Union (UPU) and International Post Corporation (ICP) and best international practices.

Agreements must be initiated with UPU, major Courier service providers and partner Governments to ensure data quality. Compliant partner service providers and stakeholders must be incentivized by fast tracking clearance of their consignments. Robust risk rules must be designed to target around 10-15% consignments based on risk analysis while the remaining must be facilitated after basic checks and scanning. Advance electronic information (between Post and Customs) for pre-arrival risk analysis is recommended.

In this effort it is proposed that rules of the regime may be co-created by including the experts from the private sector and other stakeholders. This would ensure creation of a document which incorporates recommendations and concerns of all stakeholders besides the Government.

A functional data exchange Policy must be initiated with major partner countries in e-commerce by entering into bilateral and multilateral instruments. Also, exchange of information between Customs and e-commerce intermediaries such as vendors, e-marketplaces, transporters and financial intermediaries must be put in place. These measures would assist in supply chain security and commercial fraud detection.

The recommended revenue model is to allow the suppliers of e-commerce goods to register in India and discharge tax liabilities based on account-based processing instead of that based on transaction. This would ensure faster clearance, a key factor in growth of e-commerce, while also improving revenue collection and lowering cost of tax collection. There is no “one size fits all” solution to the question of how to better facilitate cross-border B2C e-commerce tax collection. Non-resident suppliers will take into account the options available, assess the impact, and consider how best to arrange their affairs to achieve compliance.

Some of the other critical actions in promoting e-commerce may include:

- deciding *de minimis* thresholds considering cost of revenue collection and also impact on the domestic industry. Preferably *de minimis* must be based on value of consignment and not duty;
- lowering customs document requirements;
- establishing low-cost and efficient transportation,
- delivery services, telecommunications and broadband networks;
- and establishing a legal framework that gives players the confidence to conduct online transactions.

The ecommerce industry is growing exponentially and has tremendous scope. There are multiple models which are reinventing themselves on a very fast lane. The laws and regulations need to keep pace and need be very dynamic so as to change with the requirement of the trade as well as enforcement. The laws, policies, and regulations should be innovation friendly, technology neutral, reasonably flexible. There should be coherence and harmonization between processes and rules in place at FPOs and Courier terminals. Some of these rules and procedures are decades old. These must be revisited and modified based on new developments.

## **PROJECT REPORT BY GROUP IV**

### **Managing Uncertainties:**

### **Where has CBEC defaulted**

**&**

### **Proposed Course of Action**

Mentor : Mr. G. D. Lohani

### **Group Members**

*A K Pandey*

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### **Introduction & Executive Summary:**

The accelerated pace of change in the globalised world, impacts the organizations and its cultures- both private and public. However, in a rapidly globalised environment, the pace with which economic organizations in particular, have to cope with such changes ,is very challenging and at times the very existence and relevance of such organizations is determined by the way it deals with the change management. Successful organizations are those which have been able to redefine their priorities and roles at the quickest possible time and tide over such crises.

Change management requires long term planning and identification of short and long term risks, processes of innovation and continual improvement anticipating the future resource needs. A common trait of all successful organizations which have smoothly adapted to such changes, is a committed human resource base with a high morale to positively contribute towards the success of the organization. Organizational inclusivity is the *sine qua non* of successful organizations.

Successful economic organizations can respond quickly to new paradigms that knock its doors - be it IT based or responding to legal requirements if its organization has a motivated human resource base and open channels of communication. The Central Board of Excise and Customs (CBEC) has been facing

throes of uncertainties over a past few years and it is felt that our response to many of these crises has been below par due to shortcomings in our human resources policy. The key shortcoming of CBEC has not been its inability to respond to challenges, either domestic or international but to carry it forward with vigor due to low organizational morale, lack of inclusivity and belongingness, closed and oft one way communication channels, a top down driven organizational culture and non-identification of the individual motivations with that of the organizational goals.

In view of this, although there are a wide gamut of issues which can be covered with regard to uncertainties faced by the CBEC and its response to such challenges, this group has largely covered the shortcomings felt strongly on the HR front. This aspect gains further significance, considering the biggest tax reform in India, post independence is to take place with advent of GST regime & also while, responding to India's commitment to Trade Facilitation Agreements, many such challenges lie before CBEC. It is felt that the fulcrum of change management in rapidly evolving tax administration is the organization's strategic Human Resources Management and its impact on the functional output of the organization. A general perception of CBEC is that there is an under-assessment of Human Resources and Managerial requirements as also an inability to instill a sense of confidence and motivational climate within the organization. Thus, the focus of the group was to identify some of the HR related issues which ail the organization and to put forward a few thoughts on the ways to deal with the same including borrowing from the international best practices so as to have a 70,000 strong work force with a common vision and a desire to give its best to the organization.

#### **What Ails the CBEC:-**

CBEC is the apex body to implement indirect tax laws of this country and during 53 years of its existence it has undergone metamorphosis, taken up ever enhancing challenges and grappled with the task of liberalisation and now the EASE OF DOING BUSINESS. It has had many laurels to its credit but at the same time it has not been able to tide over certain systemic maladies which have ailed its past and are marring its future.

- **Low Morale and Demotivation**

The critical shortcoming of the organization is, the lack of or very low motivation of the staff to live up to the mission of CBEC and see eye to eye with its vision. The low staff motivation is primarily a result of the non-fulfillment of legitimate career aspirations. While there is no denying the fact that some of the constraints are extraneous in nature, but lack of clear communication channels, depicting the efforts and constraints, result in information gaps and black-outs. This results in a disconnect and even a feeling of mistrust amongst staff members and the end result is anomie and alienation in the service. When the morale of the Group A officers is so low, we can very well imagine the plight of the staff in general, lower down the order. The enthusiasm and positive bend of mind of the last mile connectivity is critical for the image of the organization. If the motivation level of the Group A officers, with three promotions in the two decades of service, is not very high due to lack of timely promotions, we can very well imagine the state of affairs in the subordinate staff, languishing in the field formations for more than two decades either without or with at best one promotion since their joining.

To add to the woes, there is no end to the culture of ad-hocism in the department which results in our service missing out on a number of critical deputations and posts. Our ad hoc Commissioners are in fact regular Deputy Commissioners, thereby undermining the dignity of the very posts itself. We have also not been able to foresee our HR requirements and plan for our job enrichment and job enlargement from recruitment to retirement. A glaring instance is our move from zero IRS batches to two hundred plus IRS batches within a span of couple of years. Such recruitment of large batches and this also holds good for recruitments down the line puts pressure of infrastructure both official and residential and its concomitant adverse impact on the motivation and the value system of the officers and staff needs no elaboration.

We are mired with a plethora of court cases and litigations across cadres and a lot of our valuable time and energy at the policy making level is wasted in fending these issues. This diverts our time, energy and attention from meaningful human resources issues such as specialization, skill upgradation, training etc.

The problem of low motivation is compounded by an organizational work ethos which displays high risk aversion and is also prone to highly defensive attitudes towards work due to fear psychosis. This is a result of the weakening of organizational bonds leading to a sense of mistrust. The obvious fallout of this 'porcupine syndrome' is a total absence of innovation and initiative on the part of the officers and staff. Given this, productive outcomes and outputs are few and far between. Also in point is our very complex Rule making in the past, which confounds the assessee and officer alike. This has created a huge burden of unproductive litigation on the system that most of organizational energy is lost in fighting such legal tangles.

- **Underassessment of Infrastructural and Manpower requirements –**

Another problem which has severely afflicted the momentum of CBEC's performance is the gross underassessment of infrastructural and manpower needs for efficient implementation of the ever changing and complex tax laws which require not only a properly trained manpower but also requisite infrastructure to support.

Training has never been a top priority in CBEC and despite the fact that the service is older than many services being a legitimate heir of the IMPERIAL CUSTOMS SERVICE, no National Academy was put in place till as late as 1998. Till then, the NATIONAL ACADEMY OF CUSTOMS AND CENTRAL EXCISE was running from a decrepit building PUSHP BHAVAN in Delhi in hired premises. NACEN was created in Faridabad but the land fell too short of requirement and there was hardly any space to house various facilities for proper training and Boarding facilities. While the IAS, THE IPS ,THE IRS INCOME TAX ,THE IA&AS, and all other services had created their sprawling fully equipped national training academies, the CBEC was still struggling to create one. Now once more there is shifting proposal and the work of a competent National Academy is just beginning. With an entirely new tax regime to unfold, we have inadequate training facilities to tide over change.

Further, there is lack of proper assessment with regard to HR needs. This has been a major problem all this while especially with SERVICE TAX ADMINISTRATION. Service tax came to CBEC but there was a



move to place its administration with the CBDT. This fact made CBEC so defensive of its stand that it could never drive home the point that the service tax will one day grow so enormously, so as to require adequate manpower and infrastructure for its implementation.

It could never enact a separate Service Tax Statute nor could it ever recruit staff for service tax administration. It was left just as a poor cousin of central excise without any support mechanism. This emerging tax finally grew so big that few haphazard attempts were made to create some exclusive service tax commissionerates which fell woefully short of the need. Number of tax paying units grew by leaps and bound with related statutory complications but CBEC could never provide the requisite support. There were no offices, no housing facilities for the officers and staff .this fact was not limited to service tax alone. The CBEC is severely lacking in infrastructure vis-a-vis other comparable services which are NOT GOOD FOR ORGANISATIONAL HYGIENE (The two-factor theory (also known as Herzberg's motivation-hygiene theory and dual-factor theory) states that there are certain factors in the workplace that cause job satisfaction, while a separate set of factors cause dissatisfaction).

This lack of infrastructure definitely leads to demotivation in staff and they cannot give their best despite the potential as they feel to have been maltreated by the organization.

### **International Best Practices:**

The role, functions and challenges to change management of Customs organizations around the globe is more or less similar in nature. The project thus aims to look at the response of successful experiences of Customs organizations round the globe and in particular from countries which score high in the Trading Across Borders indices and examine whether it can replicated in the Indian context.

The World Customs Organization has very well recognized the critical importance of human resource with a high professional index, in an organization. WCO Framework on Principles and Practices on Customs Professionalism states that “*Human capital is the most valuable asset to keep pace with an ever-changing environment*”. The report further goes on to state that “It is essential that customs administrations invest in their people as a fundamental element of their organizational development and modernization agendas”. The WCO spelt out its key vision an “investing in people” approach and its theme of the 5<sup>th</sup> session of WCO capacity building was aptly titled “Strong people strong organisations.” The WCO has recommended a 7S Model with the following components:-

- Strategy,
- Structure,
- Shared values,
- Systems,

- Skills,
- Staff,
- Style

While importance is given to all the above seven indices, ‘shared values’ forms the key to the 7S strategy and is at the centre of the matrix, interacting with all the other components and reinforcing them. The WCO paradigm recognizes that the changes in Customs throughout the globe can only be successfully implemented if and only if the staff recruited in the customs organizations share the same value systems and have a common agenda. They recognize the new HR role of the Customs top management to be “*employee advocates and change champions*”. The need of the hour for CBEC is to be perceived not as being apathetic to its workforce but be seen as a votary of its employee’s genuine concerns and legitimate demands.

Singapore, which has been at number one or two in the TAB indices, has a Six Step Workforce Gap Analysis for its Customs formations. Senior leaders in Singapore Customs have their finger on the pulse of the organisation – they lead staff to scale greater heights with visionary leadership and strong presence on the ground. The Singapore Customs administration 6 Steps Workforce Gap Analysis involves the following steps -

- Step 1: Review the Customs Administration’s strategic direction and plan.
- Step 2: Scanning of internal and external environment.
- Step 3: Projection of future workforce needs requirements.
- Step 4: Development of workforce gap closing strategies. The Singapore CA, with a continuous improvement frame of mind, also follows up on their gap analysis and gap closing strategies with the following 2 steps:
- Step 5: Implementation of gap closing strategies, including communication with affected stakeholders on the strategies.
- Step 6: Monitoring and Evaluation of the gap closing strategies.

We have, in CBEC, responded to the changes in the environment in a knee-jerk fashion rather than having a clear vision and projection of the future work-force responsibilities and challenges. The need of the hour, more so when the organization is at the cusp of another major paradigm shift, is to have a well-defined roadmap into the future. This roadmap should intricately involve constant two-way communication with the most affected stakeholders, viz. the staff- with a view to take their aspirations on board and assuage their unfounded fears of uncertainties.

The European Union Customs Competency Framework has identified four pillars pertaining to the Customs HRM as under:-

- Professional- Teamwork, problem solving
- Operational- Valuation, risk analysis, enforcement
- Managerial- Supply chain management, planning

Underpinned by a core set of

- Customs Values- Ethics, Integrity, service orientation.

Both the WCO Compendium as also the EU Competency Framework underline the importance of value systems and shared goals as key to the organizational success. The EU framework identifies clear cut goals and career paths for the Customs staff based both on the ability of an individual and the temperament. It is worth exploring whether the CBEC can have a strategic HRM goal on the above lines which delineates the career path progression based on shared values and individual competence and temperament.

The US Internal Revenue Service (IRS) has a WORKFORCE FOR TOMORROW STRATEGY which essentially plans into the future and designs and redesigns its goals and strategies to meet the changing goals of the organization. The key components are as under:-

- ▶ Planning a dynamic people strategy
- ▶ Attracting the best
- ▶ Streamlining hiring
- ▶ Enhancing role of managers
- ▶ Grooming future leaders
- ▶ Valuing and retaining our people

Central to the vision is the individual goals tailored around the organizational goals and the work ethos hemmed around competence and professional pride. The roadmap envisions job enlargement at the middle level and inspiring confidence so that leaders are groomed at the right age to take key policy decisions and lead the organization by example. Similar instances are also available in Canadian revenue and Dutch Customs administrations. It's high time that our future planning should be people focused and people centric to achieve the optimum output.

We need not look just at the developed customs administrations to draw inspiration for shaping up our work ethos. Cases are replete in developing and least developing customs administrations to encourage us to undertake business process reengineering to build a dedicated workforce. In Morocco Customs, for instance senior management involved staff in the design of reform initiatives. They created a new intranet to inform staff of the details of the reform initiatives. Staff attitude was surveyed, and feedback taken and measures undertaken to improve the major areas of concern. In order to manage a smooth transition to new working environment, CBEC can have a Change Management Unit consisting of a team of middle level officers to participate and monitor in the entire process of transition. Even the Least Developed Countries like Zambia and Tanzanian Customs upgraded infrastructure in borders and this helped in boosting morale and performance of staff. The state of our infrastructure- both office and residential is abysmal, to say the least not only in the far flung frontiers of the country but even in the commercial capital Mumbai. Fundamental hygiene factors such as office infrastructure is important for basic job performance.

### **Recommendations:**

Drawing out of our experiences in the past few decades and from the success stories in other Customs formations some basic changes which we can suggest for improving strategic human resource management and thus the morale and motivation of the organization are as under:

The first key reform suggested is “Let specialists handle what is special”. The goal can be achieved with functional autonomy in the CBEC and also with functional specialization within the rank and file of the organization. Committee after committee has called for greater autonomy- both functional and financial of the CBEC in vain. The call for autonomous organization came a decade within the passing of the Central Boards of Revenue Act, 1963. The Choksi Committee (1971) and Wanchoo Committee (1978), had demanded greater role for the Boards in the 1970s. The Raja Chelliah Committee called for the Chairman of the two Boards (CBEC & CBDT) to be given the status of Secretary to the Government of India. Similar recommendations were also made by the Tax Administration Reforms Committee. The Estimates Committee of Parliament, in its 10th report has noted as under *“The Committee wonders why the Chairman of the Board cannot be given the rank and status of Secretary of Government of India.”*

While greater autonomy is a need to have in the CBEC, leaders who can inspire trust and confidence in the subordinates with constant communication and reaching out to the lowest rungs in the organizational hierarchy are equally important. The TARC has also observed that “Members making policy have little policy experience ....and policies, therefore, are often unrepresentative of the best available and experimented policy options from across tax administrations internationally.” The report also notes that “a primary responsibility of the Board is the welfare of and justice to their officers. Yet these officers are subjected to anonymous charges against them that could be ruinous to their careers. Vigilance action against them emanating from such anonymous complaints can drag on for years or be kept in abeyance only to be revived for unrelated future adverse steps that may be taken against them if

the system so desires. It is not surprising that correct, fearless decisions cannot be expected from officers in an environment of such uncertainty. Instead, the safe course of action is to relentlessly follow the “revenue protection” goal that is inculcated in them as the primary motto of operation.” The need to distinguish the bonafide and malafide mistakes and instill in the cadre a sense of confidence and security shall go a long way in boosting the morale of the CBEC workforce.

The TARC also mentions that “HR policies seem to work against the creation of a meritocracy. The promotion, transfer and placement policies do not adequately address the need for recognising merit, developing specialisation and creating a motivated and highly competent and professional work force, which is capable of effectively addressing the emerging challenges and also serving the taxpayers satisfactorily. Nevertheless, there are enough caveats in the policy to accommodate special ‘silver spoon’ cases”. Frequent transfers and postings, oft overnight decisions, adversely affect staff morale which is further let down by the perceived biases in accommodating special cases. A transparent and judicious transfer /posting policy in both letter and spirit should be followed and this should also factor in the postings in the near future so that planning both the professional goals and personal commitments of the officers becomes smooth. There is also an urgent need to group positions in broad bands (clusters) and link it to Career Path Development. Such broad bands could be intelligence and risk management cluster, audit and excise intelligence cluster etc and officers identified based on skill and temperament to choose a Career Path which plays around our hierarchical and pyramidal structures and sensitive and non-sensitive categorization of posts.

In addition, we also need to recruit what we can manage. The promotions of inspectors and superintendents are held back for years together resulting in a demotivated workforce. This also has negative spillovers in terms of defiance to authority, corruption etc. We need to recruit what we can manage both in terms of addressing the career prospects and infrastructural requirements.

Overall there is also need to improve office, residential and training infrastructure by creating additional new and sufficient space to work in conducive environment and feel confident. There is also need to make simpler rules to improve organizational efficiency as we move on to GST regime.

Innovative thinking to deal with uncertainties need to be devised. Social media is a good way to reach out to the staff and provides for open and two way communication channels. We should as an organization aspire for instance to adopt ISO 9004 standards with its focus on quality management approach. To cope with the changing organizational needs post 9/11, many Customs organizations like US, Canada and Australia have separated the border protection/security functions from tax administration. Canada has the Canadian Customs and Revenue Agency and Canadian Border Services. Instances of tax organizations trying to manage change by merging are also many. Nine OECD countries have merged their tax and customs administration to achieve economies of scale and build in synergies. There is no one best way to manage change and cope up with the same. The context and the organizational needs have to be factored in while dealing with the rapid changes and coping with the same. However, the direction we go and the challenges we face shall all be a smooth journey if we keep the workforce satisfied and motivated with rationale and transparent HR policies and open channels of communication.

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**PROJECT REPORT BY GROUP V**

**IMPACT OF CUTOMS REGULATIONS & MARITIME LAWS  
ON EASE OF DOING BUSINESS AND CHANGES NEEDED  
TO REDUCE THE COSTS OF MARITIME TRADE**

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**Executive Summary:**

Government of India is committed to the cause of Trade Facilitation and improving the 'Ease of Doing Business' ranking of the country. Doing Business organization ranked the country at 133<sup>rd</sup> position for 2016 in the area of "Trading Across Borders" based on the studies conducted in Mumbai & Delhi in respect of import and export of particular commodities to particular countries based on elaborate questionnaires to all stake holders and field visits to measure cost and time taken for Border Compliance; Documentary Compliance and; Domestic transport. CBEC is concerned with the aforementioned Border Compliance and Documentary Compliance along with other Government Agencies and stake holders in international trade based on maritime and Customs regulations. Many initiatives have already been taken to reduce the compliance time & therefore cost to the importers and exporters. Some are in the pipeline and the Group authoring this report is expected to come up further ideas in this regard in respect of reducing cost of Maritime trade.

Maritime trade accounts to approximately 80% of India's international trade by volume. While the general measures to improve customs compliance controls impact maritime trade, certain issues specific to maritime trade have to be addressed to bring about further improvement. Inputs have been taken by this Group from the departmental experts and a wide range of stake holders while preparing this report. Best practices being followed at Rotterdam port have been noted. We find that major amount of dwell time of cargo in the ports is on account of the processes involving private players which call for improvement in port infrastructure and streamlining of business practices by Shipping lines, freight forwarders, consol agents etc. Government can of course create appropriate legal framework, improve coordination with transnational agencies by standard setting, curb competition restraining practices etc to reduce time and cost in this segment. In respect of the dwell time accounted to Customs also there

can be improved by aligning the control paradigm to best international practices generally and by addressing issues leading to long lead times for filling Bills of Entry and for document registration specifically. In JNCH, it is observed that the process involving movement of Cargo to CFS & further clearance from there is accounting for substantial cost and time to importers and in spite of Government's efforts only 5% of importers are clearing under the "Direct Port Delivery" scheme mainly due to collusive nexus between the Terminal operators and the Shippers. Legislation to shake this nexus either in maritime or customs regulations is the key to improving DPD which is the single important measure which can reduce the cargo release time and thus improve the Ease of Doing Business ranking of the country. Factors affecting Ease of Doing Business at ports are Automation, Discretion, Procedures and Infrastructure. The group made suggestions in respect of the first three factors based on previous studies as original research by the Group is not possible due to remoteness from the field and time constraints.

## **1**

### **Introduction:**

#### **1.1**

International trade is the cornerstone of the global economy. Exchange of goods amongst countries widens the choice of supply and ensures that production takes place where it is cheapest and best. This is reflected in the intensification of globalization and the fact that world trade is growing faster than the world output. World trade relies on cheap and secure transport. Maritime transport, enabled by, inter alia, technological developments and competitive transport costs, is estimated to handle over 80 % world trade by volume and over 70 % by value. As trade grows, the demand for maritime transport also grows. Technological developments in bulk and container transport have made maritime transport cheaper. Bulk transport involves shipping one homogeneous commodity (e.g. grain, ore etc) at any one time, but in large quantities; in contrast, container transport entails transporting different goods at the same time, but in standard containers that are easy to load and unload. However, the slower growth in world seaborne trade compared to world trade in general reflects that the weight of the goods transported increases at a slower rate than their value due to rising trade in processed goods like electronic items, medicines, apparel, gems and jewellery etc. Besides, greater use of lighter materials and lower material intensity in the manufacturing process has also led to slower increase in weight.

#### **1.2**

India is a major maritime nation by virtue of its long coast line of around 7517 Kms on the western and eastern shelves of the mainland and also along the islands, bejeweled with 13 major and 176 non-major ports; its strategic location on the world's shipping routes; its long tradition of seafaring with a large pool of trained maritime personnel, and; its dynamic and rapidly globalizing economy with a vast potential to expand its participation in trade and development. India has been an emerging and vibrant economy with a huge market, a billion plus population and strong GDP growth rates. India along with China is leading Asia's economic expansion from 2010 onwards.



### 1.3

Ports play a vital role in the overall economic development of the country. About 90% by volume and 70% by value of the country's international trade is carried on through maritime transport. Development of India's ports and trade related infrastructure will continue to be critical to sustain the success of accelerated growth in the Indian economy. Despite record growth rates, the merchandise trade intensity of India's GDP is still below 30 per cent. This indicates that there is still a lot of untapped potential for trade growth, and consequently the demands on the country's ports and trade infrastructure will continue to mount as trade diversifies and grows. Hence, there is a need to expand the country's ports in a timely and efficient manner.

## 2

### **Ease of Doing Business:**

#### 2.1

Over the 14 years since its inception the *Doing Business* report has become one of the world's most influential policy publications. It is a World Bank funded annual report on the state of health of economies based on detailed diagnostics not of the relatively more visible features (such as growth) and various macroeconomic parameters (such as the public debt) but of underlying and embedded characteristics—such as the regulatory system, the efficacy of the bureaucracy and the nature of business governance. *Doing Business* provides objective measures of business regulation and their enforcement in 189 economies and selected cities at sub national and regional level focusing on small and medium companies. An economy's scores on *Doing Business* indicators have huge long-run implications for an economy's health, performance and growth. Since this year's report presents data for 189 economies and aggregates information from 10 areas of business regulation—starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency—to develop an overall “ease of doing business” ranking. India is ranked 130<sup>th</sup> among 189 countries in the overall score.

#### 2.2

### **Ease of Doing Business In the area of Trading Across Borders:**

The reforms recorded by *Doing Business* in 2014/15 span a wide range—from building or improving hard or soft infrastructure for trade to joining customs unions, digitizing documentation and introducing risk-based inspection systems. These varied endeavors highlight the complexity of international trade. They also speak of the changes introduced this year in the methodology used to measure the time and cost for trading across borders. Under the new methodology *Doing Business* also considers trade over land between neighboring economies, adding a new feature of reform: regional trade facilitation agreements. The *Doing Business* report 2016 highlighted the efforts of certain countries in this regard for emulation by other countries. Brazil is among the economies investing in electronic systems to facilitate

trade. An online platform has minimized bureaucracy and streamlined transactions, reducing customs clearance time for exporters in both São Paulo and Rio de Janeiro in 2014/15. The Bureau of Foreign Trade and Secretariat of the Federal Revenue began implementing the electronic system in April 2014 to link customs, tax and administrative agencies involved in exporting. The system now allows exporters to submit declarations and other related documents electronically rather than in hard copy. Implementing the systems takes time and involves changes in operational practices, in training and, in some cases, in the work habits of staff. Benin successfully implemented an electronic single-window system in 2012. In the past year, however, it considerably expanded the digitization of trade procedures for both exports and imports through the single window. The customs authority is now required to accept only electronic supporting documents for the single invoice and other documents submitted before the customs declaration. This resulted in a substantial reduction of time for customs procedures—three years after the launch of the online platform. Tunisia also improved international trade practices in the past year. The country facilitated trade through the port of Rades by increasing the efficiency of its state-owned port handling company and by investing in port infrastructure. One important structural improvement at the port was the extension of the dock to increase terminal capacity. The improvements in hard and soft infrastructure at the port reduced border compliance time for both exporting and importing, saving traders in Tunisia 48 hours per shipment. Guatemala and Tanzania are among economies that improved soft infrastructure for trade by allowing electronic submission and processing of documents as well as by using online platforms for the exchange of information between agencies involved in international trade. In February 2014, Guatemala launched the “Customs without Paper” program to promote the electronic submission of customs documents through a web portal and to eliminate the submission of hard copies. Online submission of customs declarations for exports and imports has been compulsory for Guatemalan traders since January 2015. Tanzania implemented an online system for processing trade-related documents in July 2014. The Tanzania Customs Integrated System (TANCIS) links several agencies, eliminating the need for traders to visit these agencies in person.

### 2.3

#### **Doing Business & Trading on Time:**

The method adopted by Doing Business determines how time delays affect international trade, on the days it takes to move standard cargo from the factory gate to the ship in 98 countries. They found that *each additional day that a product is delayed prior to being shipped reduces trade by more than one percent. Put differently, each day is equivalent to a country distancing itself from its trade partners by about 70 km on average.* They also find that delays have an even greater impact on exports of time-sensitive goods, such as perishable agricultural products. Their results highlight the *importance of reducing trade costs (as opposed to tariff barriers) to stimulate exports.* Their goal is to estimate whether and how these diverse trade costs affect trade volumes. In the process, they introduce and utilize new data on trade costs. They used data on the average time it takes to get a 20-foot container of an identical good from a factory in the largest business city to a ship in the most accessible port. They used a difference gravity equation to estimate the effect of trade costs on trade. The difference gravity equation evaluates the effect of time delays on the relative exports of countries with similar endowments and geography, and facing the same tariffs in importing countries. Comparing exports from

similar countries to the same importer allows us to difference out importer effects (such as remoteness and tariffs) that are important to trade. The time to move goods from the factory to the ship influences the volume of exports. *Long time delays present a hurdle to exporting, since the exporter must expend capital on the exporting process and storage/transport of the goods during the delay.* The problem is exacerbated for high-value goods, since they are effectively depreciating during the delay. Finally, long time delays are likely to be associated with more uncertainty about delivery times, further depressing exports. These results have important implications for developing countries seeking to expand exports. For the least developed countries, which already have preferential access, the benefits from additional market access are in some cases negative. In contrast, estimates imply that reducing trade costs can have relatively large effects on exports. For example, in Sub-Saharan Africa it takes 48 days on average to get a container from the factory gate loaded on to a ship. *Reducing export times by 10 days is likely to have a bigger impact on exports (expanding them by about 10 percent) of developing countries than any feasible liberalization in Europe or North America.*

### 3

**Workflow of Port Logistics\*:** The general workflow in ports is represented hereunder diagrammatically. As can be seen from the following diagram, a large number of Governmental and other governmental actors are involved in port logistics.

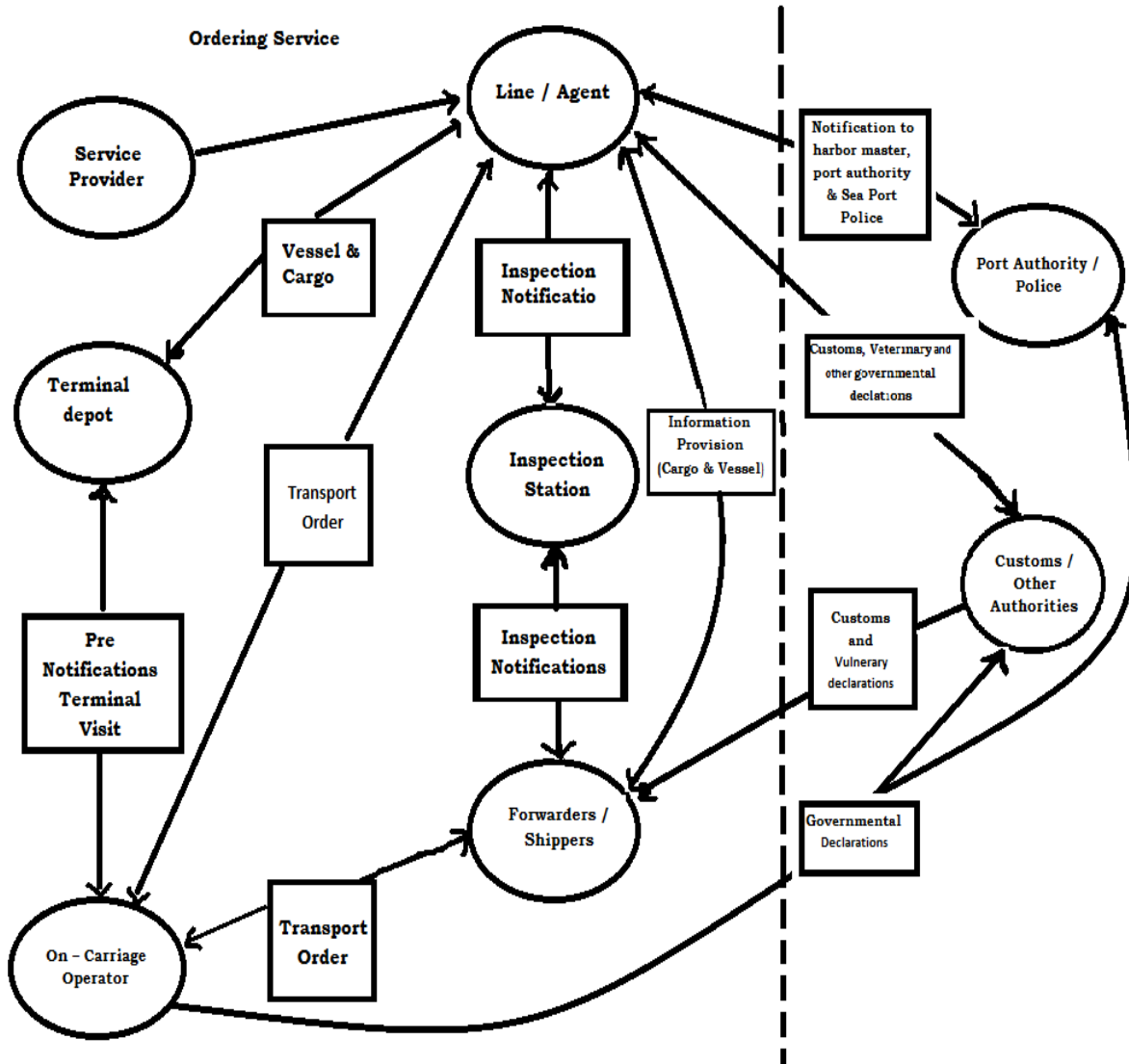


Figure. 4.2.1 9a): Core wokflow of Port Logistics

- Source : Department of Shipping 's Report on Dwell Time dated 20.3.2007

4

#### Impact of Customs & Maritime Regulations on Business:

4.1

Globalization has brought about a dramatic increase in cross border trading. As a result, there has been an equally important focus placed on trade and regulatory processes conducted at the border to ensure that they are optimized and the time required for trade-related procedures reduced where

appropriate. As can be seen from the workflows at the port in general and also at the Indian ports, importing/exporting involves a lot of agencies both governmental and non-governmental. Just-in-time delivery of goods has become important for businesses and brings significant benefits to all parties involved in the supply chain. Maritime Transport costs are affected by port infrastructure, price of oil, time at sea & transit, competition amongst carriers and piracy. We are concerned with time in transit in terms of Customs and maritime processes at the border. Time at sea & transit is affected by maritime regulations in so far as they may lead to multiple change of modes, frequent reloading, coordination problems, requirement of contracting with several transport operators, delays in documentation compliance, different national standards imposing greater compliance costs. Customs regulations may have similar impact though the customs duties are nominal, inefficiency in Customs procedures either due to understaffing, burdensome documentation, poorly designed procedures, requirement of multiple agency approval or corruption.

## **4.2**

In discharging their often complex tasks of revenue collection, security, environmental and health protection and application of trade policy, Customs administrations or Governments need to have direct access to and temporary custody of (if necessary) export and import consignments. The time period for which Customs and/or other border agencies including those enforcing maritime Regulations require the control, thereby halting the overall movement of the goods, has gained great importance for all international traders and their customers. It is now a crucial operational or commercial concern for Governments, just-in-time business operators, intermodal carriers and the cargo industry, as well as providing for a focused opportunity to gain an invaluable insight into standards of Government/Customs efficiency. Governments and the trading community have a powerful common interest in this regard. Therefore, activities that relate to the calculating and recording of the time needed by Government/Customs to release goods can provide pertinent information to guide any necessary process improvements or identify desirable regulatory changes to ensure the effective facilitation of trade. With this in mind also it is highly important to consider Government/Customs role in trade facilitation. Simply put, Trade Facilitation is lowering trade transaction costs and creating standard efficiencies as has been highlighted in the Doha Declaration as "expediting the movement, release and clearance of goods, including goods in transit." This includes the causal relationship of customs procedures and other practices that may add to the cost or time requirements of trade. It is now widely accepted that trade cost is a far greater binding constraint for participating in international trade than tariff and non-tariff barriers. Economic benefits flow to communities from lower logistics costs and the expanded trade enables this. Improving the economic situation at global level depends highly on an effective trading system. This in turn provides for goods and services to be delivered in the most economically and logistically efficient way as possible, which can thereby, benefits the ultimate consumer/public at large.

## **4.3**

The Tax Administrative Reforms Committee in its second report observed that the forces of globalization have transformed manufacturing and led to increased movement of intermediate goods across national

borders. Increasingly, a manufactured item will involve raw materials and components that have moved back and forth among multiple countries before emerging as a final product in one jurisdiction. Supply chain economics have become a key factor in today's manufacturing and trading environment, with emphasis on lowering costs and managing just-in-time inventories and any undue break in the supply chain can have serious consequences on the viability of a business. Unpredictability and delays in border procedures therefore directly affect the investment climate of a country and far greater understanding of the consequences of their actions and a much greater sense of responsibility in the exercise of authority needs to be exhibited by customs officers at all levels. It, therefore, should aim at developing systems, structures and processes that ensure that the response of the CBEC is consistent and uniform across the spread of the organization, whether it is in the area of customer services or enforcement".

#### 4.4

A 1997 World Bank publication documents the beneficial impact of Customs reforms undertaken by Mexico in 1989 on trade. These reforms addressed the maladies of centralization, non-communication of regulatory changes, delay & arbitrariness in adjudication and strict regulation of Brokers. Reform measures saw the Director General of Customs, Mexico decentralizing all its ancillary functions, publication of rights and obligations of trade, targeting enforcement on high risk consignments. Benefits recorded by World Bank included reduction in transit time and attendant reductions in costs of interest, broker fees, storage and transport which in value terms comes to 5% of the total merchandise trade.

#### 5

##### **Dwell Time of Cargo in Indian Ports:**

Dwell time is the measure of the time elapsed from the time the cargo arrives in the port to the time the goods leave the port premises after all permits and clearance have been obtained. Data of dwell time at JNCH & Chennai ports for the month of September, 2016 as per CBEC website is as under:

	<b>Time taken from arrival of cargo to filing of declaration by importer</b>	<b>Time taken by Customs for assessment after filing of declaration</b>	<b>Time taken by importer for payment of customs duty</b>	<b>Time taken from payment of duty registration of documents</b>	<b>Time taken from registration of documents to "out of customs charge"</b>	<b>Total time</b>	<b>Percentage of time taken by customs</b>
JNCH	4 days 20 hours 23 minutes	20 hours 49 minutes	21 hours 50 minutes	2 days 3 hours 56 minutes	6 hours 23 minutes	9 days 1 hour 21 minutes	12.5%

Chennai Customs House	4 days 23 hours 33 minutes	18 hours 52 minutes	15 hours 14 minutes	2 days 2 hours 11 minutes	5 hours 56 minutes	8 days 17 hours 45 minutes	11.8%
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- ⦿ Overall, Customs procedures actually take very little time out of the total dwell time. However, there are no pre-verification of documents/declarations; the release of goods is linked to duty payment; manual filing of documents is well entrenched.
- ⦿ In JNCH, Customs is taking only 12.5% of total dwell time.
- ⦿ Arrival of cargo to filing B/E is taking 4 days 20 hrs, approx 46 to 50% of dwell time.
- ⦿ From payment of duty to registration goods takes 2 days 3 hrs approx 25% of total dwell time.
- ⦿ Substantial dwell time can be reduced by focussing on above two processes.

## 6

### A Comparative analysis of International Port viz-a-viz Indian Major Ports:

**6.1** The MCTP group had the opportunity of visiting Rotterdam port on 14.10.2016 as part of the Overseas Learning component. This port was world No: 1 in terms of throughput volumes till two years back. The infrastructure facilities are beyond compare what with separate warehouses/barges for various shipping companies on a vast area; Auto-guided vehicles and cranes for stacking, different kinds of scanners (mobile, hand, train, container etc), radiation portal monitors; various means of Inspection etc. The Dutch Customs official impressed the participants by explaining their mission & vision as the gatekeepers for European Union highlighting on the aspects of competitiveness and trade facilitation. The average dwell time for cargo is a mere 7 minutes which appears to be accomplished through Preloading information exchange with other ports; Prior verification of declarations; Risk Management system with White/Yellow/red channels for containers and above all the philosophy of integrated Border management standing on the pillars of "Single Window" and "One Stop Shop". It is ascertained that only safety and security examination, if at all, takes place in the port and the Customs examination for revenue purposes, if any in the hinterland. Around 1.4% import containers and 0.3% Export containers get scanned in this port. An analysis of the facilities available Rotterdam, Netherlands vis-a-vis an Indian Port (say JNPT) shows the following major differences:

Sl. No	Facility	Indian Port	Rotterdam Port

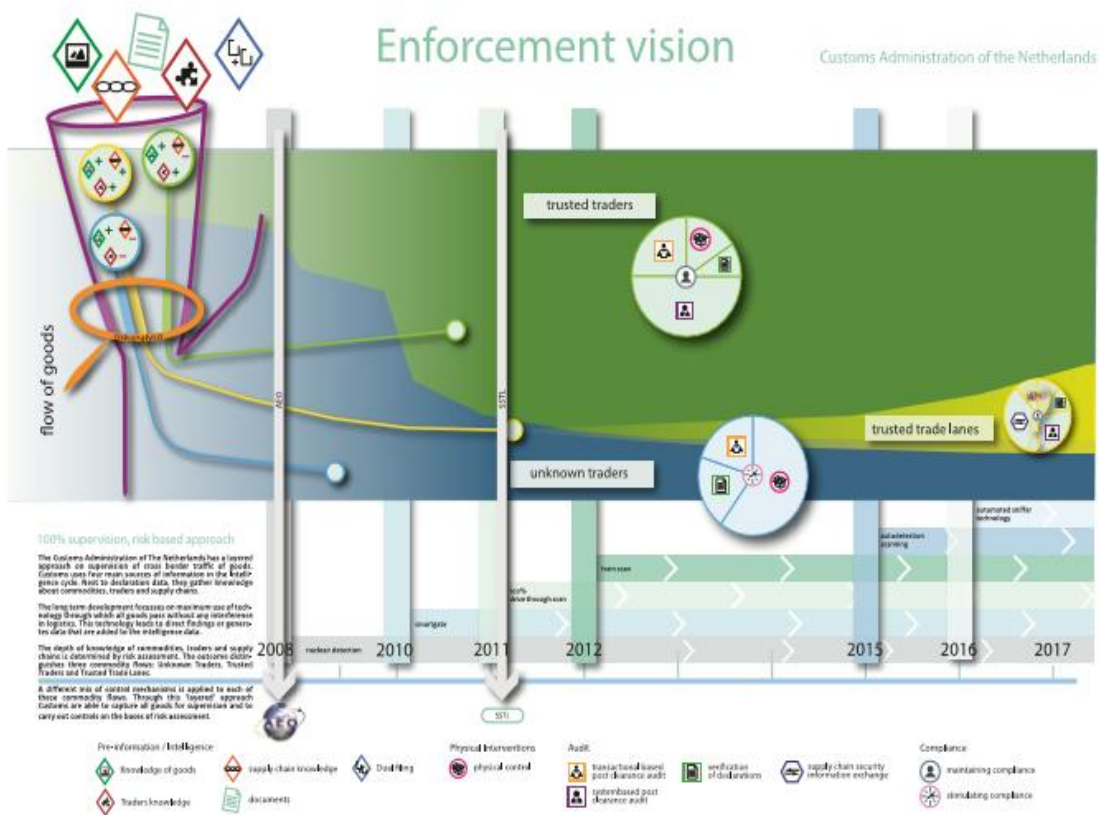
1	Evacuation / Aggregation of cargo	Cargo is predominantly by road and rail only	Most of the bulk cargo and the containers movement through barges accounts for 50-60% transportation because of excellent inland water networking. Intermodal connectivity by rail / road is seamless.
2	Level of Mechanization	The extent of mechanization is less in Indian Major Ports	The level of mechanization is very high with the latest technologies applied in all spheres.
3	Location of Port based Industries	Most of the manufacturing firms are located away from the ports	Most of the manufacturing units are located within the Port, thereby the evacuation is very fast.
4	Availability of storage space	Land is very scarce in Ports. Hence, evacuation has to take place	As so much of land is available at the Rotterdam Port, the more number of days the cargo lies inside the Terminal, the revenue is high to the Terminal Operator.
5	Availability of Resources	Dedicated terminals with less number of berths.	There is no concept of pre-berthing detention as the berths are waiting for ships and they have longer quay lengths.
6	Information Exchange	EDI implementation is partial. Too many human interfaces and manual exchange of documents.	The EDI networking is complete and total and hence, there is no physical movement of paper from any place. Human intervention is almost nil. All payments are also done



			electronically.
7	Custom's regulations for cargo clearance	All Customs formalities have to be completed in the respective port itself	Under the European Union Customs formalities, Customs clearance need not take place at the Port itself, it may be done beyond the port premises.
8.	Work Processes	Work flow is manual and partly computerized and ERP is being envisaged for implementation.	The entire processing is computerized and enterprise resource planning software is implemented years back.

## 6.2

Of particular interest to the MCTP Group is the Enforcement vision of Dutch Customs which is worth emulating. The vision is summarized in the infographic (source: "Pushing Boundaries: The Customs Administration of the Netherlands' point on the horizon for the enforcement on continuously increasing flows of goods" booklet published by the Customs Administration of Netherlands) given hereinafter. This vision is based on the concept of layered approach on enforcement that will be of benefit to both Customs and the bonafide business community. This approach results in fewer and less disruptive interventions in the logistics of reliable business and in more inspections of unknown businesses. Customs monitors 100% of the transports and goods that cross their borders in active collaboration with other Government and non-government agencies within and outside EU through various MOUs. All goods are subject to inspection using various high-tech equipment, mostly while on the move and the scans are examined by the system with reference files for anomaly, if any. Variances detected generate intelligence for appropriate action. Customs thus creates two flows: goods flow and information flow that are both screened in entirety and then compared. Information flow makes sophisticated use of AEO system and the advanced declarations regarding goods before arrival. The infographic represents reliable traders in green which flow becomes wider over years and unknown traders in blue which should become narrow. The third flow in yellow represents Smart and Secure Trade lanes, a concept developed by WCO. In the blue goods flow there are interventions in the logistics at the border based on risk analysis, in the green goods flow observations are made outside logistics flow to verify whether traders are acting correctly and in yellow goods flow entire logistics chain is secure. Optional dual filing by the logistics service providers giving information about their clients or other parties in the chain is greatly aiding the information flow with customs.



7

**Ease Of Doing Business initiatives undertaken by GOI on Customs side:**

**7.1** CBEC has introduced a number of reform measures to improve the dwell times of cargo and to facilitate trade. The same are summarized hereunder:

**7.1.1. Launch of Customs SWIFT clearances (Single Window Interface for Facilitating Trade):**

The Customs SWIFT enables importers/exporters to file a common electronic 'Integrated Declaration' on the ICEGATE portal. The Integrated Declaration takes care of the requirements of Customs, FSSAI, Plant Quarantine, Animal Quarantine, Drug Controller, Wild Life Control Bureau and Textile Committee and it replaces nine separate forms required by the said 6 different agencies including Customs. With the roll-out of the Single Window, CBEC also introduced an Integrated Risk Management facility for Partner Govt. Agencies (PGAs), which will greatly expedite clearances from all concerned, channelize scarce resources and will further improve ease of doing business. The Integrated Risk Management System will ensure that consignments are not selected by agencies routinely for examination and testing but based on the principle of risk management. It will also help participating agencies handle their respective risk

areas (related to human and animal health, bio-safety and environmental safety) more effectively. With this development today, Indian Customs is amongst a few select countries that have functional Single Window clearances, inclusive of multiple PGAs and integrated risk based selection.

**7.1.2.** Filing of declarations by importers, exporters, Customs brokers and manifests by shipping and airlines through digital signatures with effect from 01-01-2016. Wherever the customs documents are digitally signed, the Customs does not require the user to physically sign the said documents. Around 97% of import and export declarations and manifests are being filed electronically with digital signatures. The balance 3% is being filed through Service Centre.

**7.1.3.** Deferred duty payment for select categories of importers and exporters has been introduced in the recent Budget. This provision will enable release of cargo without payment of duty, which shall enable speedier clearance and improved liquidity in hands of the businesses.

**7.1.4.** Documents required for Import/Export - The numbers of documents required for export / import have been reduced to three, namely, electronic declaration, Invoice cum packing list & Bill of Lading

**7.1.5.** Electronic Delivery Orders - Introduction of an electronic messaging system between Shipping lines and Custodians for electronic Delivery Order, instead of a paper based Delivery Order, has been introduced.

**7.1.6.** 24X 7 customs clearance facilities extended to 19 sea ports and 17 Air Cargo complexes

**7.1.7.** WTO Trade Facilitation Agreement approved by Cabinet and ratification underway. Categorization of Articles under the Agreement has been notified to WTO.

**7.1.8.** Customs Clearance Facilitation Committee (CCFC) set up at every major Customs seaport and airport. At Central level, a 'Central Customs Clearance Facilitation Committee' under the chairmanship of Revenue Secretary has been set up to address the issue relating to Customs Clearance and infrastructure impacting clearance of goods.

**7.1.9.** Warehousing: The system of physical control and locking of public and private warehouses by Customs is being dispensed and replaced with record based controls. The period of warehousing to be extended till de-bonding or consumption of goods in respect of EoUs/EHTPs/STPIs/Manufacturing Units under Customs Bond, such as ship building yards which shall reduce transaction costs and burden of documentation..

**7.1.10.** Special Valuation Branches: The procedure for handling related party transactions and those involving special relationships completely revamped. Extra Duty Deposits waived and the provisions for renewal of SVB orders have also been dispensed.

**7.1.11.** The guidelines relating to valuation of second hand machinery revised. In order to achieve nationwide standardization, formats for certification by chartered engineers (Indian & Overseas) devised.

**7.1.12.** Temporary Imports for exhibitions : Exemption notification issued for enabling temporary importation of goods for display/exhibition/demonstration. The requirement of ITPO certification dispensed. The revised process is simplified, predictable and reduces transaction costs.

**7.1.13.** Export Promotion (Drawback)

- 100% disbursement of Drawback electronically.
- Provisional payment of drawback to exporters pending fixation of brand rate.
- Full transferability of duty credit scrips to pay dues under all three indirect taxes.
- Exemption to payment of excise duty in the case of locally procured excisable goods against advance authorization, which shall improve cash flow of exporters.
- Owing to the difficulties faced by the trade in sealing of bulk cargo for exports under Bond, rules amended to grant exemption from self-sealing of bulk cargo for export.
- Electronic monitoring of export proceeds realization, which shall obviate need for submitting documentary evidence by exporters. As a measure of facilitation verification of export obligation discharge certificates limited to 5% cases.
- Installation certificates from private chartered engineers allowed.

## **8**

### **Changes needed to reduce costs of Maritime Trade in India:**

India's container movement was 10.7 mn TEUs in 2013–14 and is estimated to grow to 22 to 25 mn TEUs by 2025. Reducing cost and time for moving containers will be critical for unlocking the potential of export-oriented manufacturing in India. Studies on container movement revealed a high time variability in exporting containers from India. In comparison to China (similar route length) Indian containers can take 1.5-3X more time. Moreover the lead time variability is significantly higher leading to stockpiling inventories near ports.

### **8.1**

## **Maritime/Shipping Regulations :**

### **8.1.1**

#### *Cabotage:*

Cabotage refers to shipping along coastal routes between sea ports within a particular country. Section of 406 and 407 of the Merchant Shipping Act, 1958 regulate cabotage provisions. Of the 10.7 million TEU handled by Indian ports in 2014/15, 2.7 million TEU was transshipped through neighbouring hubs such as Colombo in Sri Lanka, Singapore, Port Klang in Malaysia, and Jebel Ali in Dubai, entailing extra time and costs for India's exporters and importers. Cabotage relaxation can significantly reduce this time. The Government in March 2016 had relaxed cabotage restrictions for ports which transship at least 50% of the container handled by them. The step was taken to enable shipping lines to consolidate Indian EXIM and empty containers at transshipment ports in India for onward transportation to destination ports by main shipping lines.

### **8.1.2**

With the cabotage relaxation, foreign vessels can also transport EXIM and empty containers from any port in India to transshipment port and vice versa, in addition to Indian vessels. It was aimed that the spare capacity of the foreign flag ships which could not be utilized earlier due to cabotage restrictions will now be gainfully utilized enabling them to offer competitive container slot rates to exporters and importers leading to competition led efficiency in container transportation and lower logistic costs for the shippers. The container port seeking cabotage relaxation for transshipment port would have to achieve transshipment of 50% or more of the EXIM and Empty cargo handled in one year. New transshipment ports will have a gestation period of one year and shall have to achieve the stipulated transshipment traffic of 50% of the traffic handled in the second year. If the container port is able to achieve transshipment traffic of 50% of the cargo handled, the cabotage relaxation for such container port will continue. Inability of the port to transship at least 50% of the containers handled in a year shall result in revocation of the said relaxation. The port whose relaxation is revoked shall not be considered for cabotage relaxation for next three years.

### **8.1.3**

The Central Board of Excise and Customs has also issued **Circular No. 14/2016-Cus.**, dated 27-04-2016 prescribing the procedure for movement of coastal and EXIM cargo. However intended objective has not been achieved by the change in policy for following reasons-

- For cabotage relaxation it is up to the port to apply. Suppose a port does not wish to apply for cabotage relaxation, there will be no transshipment from that port. For instance, Jawaharlal Nehru Port Trust, India's biggest container gateway, handled 4.4 million containers in 2014-15, out of which less than 10,000 were transshipment containers. JNPT has shown unwillingness to apply for cabotage relaxation.

- No Indian port is currently handling 50% of their business as transshipment. The whole idea to get the cabotage relaxed is to convert one or two ideally located ports to handle transshipment. If ports already transship 50% of their container volumes, then there is no need to relax cabotage. For example India's only designated international container transshipment terminal (ICTT) at Vallarpadam in Cochin port handled 365,000 containers in the year ended March 2015. Of this, the transshipment containers were only 17,000 containers or less than 5% of the total volumes. The government eased cabotage restrictions for the Vallarpadam facility for a three-year period in September 2012. The relaxation ended in September 2015, but was not extended. To get cabotage relaxation, ICTT will have to handle 182,000 containers (half of 365,000 containers) as transshipment containers.

#### **8.1.4**

To address these hindrances following is suggested-

-Open up Major ports for coastal movement of cargo (Indian as well as foreign registered). Ports need not apply for cabotage relaxation. To regulate this sector it is suggested the ship owners may be asked to have 100% subsidiary/office in India and they should register under the Merchant Shipping Act, 1958 and Registration of Ships Rules, 1960.

-Media reports suggest that Government (Finance and Shipping Ministries) is working on Multi Transshipment law (Business Standard 10.10.2016) with the objective of giving Importers and Exporters complete freedom of movement of goods-operational freedom, transport and transshipment freedom so that the less costly option of sea route for movement from one port in India to other can be exercised by both coastal and foreign vessels.

## **8.2**

### **Customs Processes & Regulations:**

Simplifying Customs procedures could help in reducing the time taken in custom clearances. Initiatives such as the rollout of electronic documentation and introduction of a Risk Management System (RMS) have greatly improved India's perception as a facilitator of international trade. However there is a long way to go in the light of the WCO Trade Facilitation Agreements; Ease of Doing Business ranking etc to be on par with the international best practices in respect of various processes. As per *Doing Business* 2016 statistics, "Distance from Frontier" in respect of Trading Across Borders is still at 56.90. Based on multiple interactions with port authorities, importers, exporters, shipping lines, transporters, freight forwarders, Customs handling agents, former Customs officials and container freight station officials, the following issues have been identified for improvement:

#### **8.2.1**

##### *1. Direct Port Delivery:*

According to the figures provided by the World Bank, India is far more expensive a place for doing business than the counterparts in South East Asia. India is disadvantaged by at least USD 200. "Doing

Business 2016” report divides the costs of import into two parts – Border Compliance costs and documentary compliance costs associated with imports. All costs are per TEU (Twenty feet equivalent container). Cost-wise, the report shows India as comparable to China and the Western European countries, time-wise, these countries are far ahead of the Indian timelines. The Border Compliance costs and Documentary compliance costs together in Nhavasheva are estimated around 695 USD whereas the comparable figure in Laem Chabang port in Thailand is 276 USD. The only area where a sizeable result can be achieved is Direct Port Delivery. As per the recommendation of the Working Group on “Increasing levels of Direct Port Delivery for Faster Clearances and Reduced Time releases” headed by Mr. S.P.Sahu, **there is no other measure that can bring the kind of improvements that are desired.** It is stated in their report dated 7.1.2016 that with DPD, an average of around 200 USD can be saved in Direct Costs and perhaps an estimated 100 USD can be saved in Indirect Costs. To quote from the Report, “Substantial improvements in release times are not possible without a sizeable proportion of containers being released directly to the port. Merely enlarging the levels of facilitation (no appraisal, no examination), it would not be possible to improve rankings by much, as presently, the World Bank Report is largely depends on release times. When compared to Direct Port Delivery model, CFS delivery model is inherently disadvantageous, as it involves additional container handling ‘moves’, additional storage, additional documentation and additional transit time. Further, it opens the process to more rent-seeking opportunities. There is no evidence to suggest that Direct Port Delivery consignments have cost the department more in terms of lost revenue than CFS deliveries. There is also no evidence of rampant misuse of this facility at any port. Port authorities indicate that existing Container Terminals are small and are not equipped with better handling systems to support Direct Port Delivery. The lack of handling facilities can affect the speed of delivery in general, but DPD deliveries need to be only as fast as CFS deliveries.”

### **8.2.2**

Despite Customs allowing DPD to all Accredited Clients, Port Authorities have introduced their own criteria to decide whom to grant the privilege of DPD. Port Authorities do not use Accredited Clients Program (ACP) status as the only criterion. Certain other categories are also being given the facility. In JNPT, the port identified 31 Direct Port Delivery clients out of whom only 19 are active and account for less than 5% of the clearances. Some entities to whom DPD has been extended DPD are not Accredited Clients. Terminal Operators cannot sustain higher levels of DPD, if DPD clearances do not fit into their paradigm of rapid evacuation. It is also learnt that Terminal operators & shippers are resorting to unfair practices to force importers use CFS clearance facility leading to higher costs of imports and the concomitant increase in export costs. This higher cost is pushing Indian manufacturers into a competitive disadvantage. Terminals Operators use two documents to support the advance planning for unloading containers – (i) Advance Import List provided by the Shipping Line and (ii) The Import General Manifest (IGM) provided by Customs. According to the IGM Regulations, Shipping Lines are mandated to submit IGMs in Advance to Customs. Customs processes the IGM and in turn, transmits the IGM electronically to the Terminal Operator upon “Entry Inward”. Entry Inward takes place more or less at the same time as the placement of the vessel alongside the wharf. Presently, the Terminal Operator can afford to ignore the larger IGM but elects to follow the Advance Import List provided by the Shipping

Line. As regards (i) *Sub-manifest Transship Permit* (containing Customs permissions/authorization for rail and road evacuation) and (ii) the *Scan List* of containers, Customs provides a clear order to the Terminal, which it is bound to follow.

### 8.2.3

It is suggested that:

-Customs should generate DPD list of containers as part of manifest.

-The electronically transmitted IGM conveys the Customs decisions to the Terminal Operator in respect all containers brought by the vessel. Technically, all onward movement from the Terminal should be based on directions and clearances given by Customs and contained in the IGM (including SMTP and the Scan lists).

-The delays in the Terminal Operator receiving the IGM (and therefore it has all the excuse to use only the Advance Import List provided by the Shipping Lines) should be avoided.

-The evacuation to ICDs is smooth, thanks to the generation of SMPT messages, which is sent online to the Terminal Operator. It is proposed that along similar lines, Customs can generate a list of lines meant for Direct Port Delivery, which will serve as an “order” to the Terminal Operator to clear on a DPD basis. There are two ways in which this can be accomplished:

(i) The Shipping Line shall indicate *Place of Delivery* as the Container Yard and not a CFS. This could be taken as a request for Direct Port Delivery by marking “DPD” or a similar remark on the IGM where presently the CFS code is shown. This requires the co-operation of the Shipping Line, and depends on whether the importer can weigh-in on the Shipping Line to indicate the correct Place of Delivery.

(ii) In the IGM, in addition to the consignee’s name, the Import Export Code will be made a conditional data element, which a Shipping Line must include in the IGM. Based on the list of DPD importers, the Customs systeman introduce the DPD flag and therefore, a list of manifest lines that can be cleared under DPD. This measure does not require the co-operation of the Shipping Line, if Customs mandates IE code for the Consignee field.

-In addition to a sub-manifest DPD list, ICES can also generate an IGM-wise list of Bills of Entry along with Customs status of goods. This can be generated at various stages – (i) At the first IGM generation stage [24 hours before the expected time of arrival] (ii) At the final IGM generation stage (iii) and at fixed time periods thereafter. [The importer will be able to indicate/confirm his preference for DPD by opting for a new flag in the ICES <PERM> or permission table.] This measure can be implemented by CBEC, which can ask Terminal Operators and Shipping Lines to receive and use the messages for planning purposes.

### 8.2.4

2. *Addressing Issues leading to delay in filing Bills of Entry:*



In JNCH port, 47% of the Bills of Entry are being filed within 24 hours of filing the manifest, while 53% of the Bills of Entry are filed after 24 hours, and out of this, 26% of the Bills of Entry are filed after three days. The reasons for the delay in filing the Bills of Entry are:

- (1) Delay in obtaining documents
- (2) Pressure of work
- (3) Lack of funds

What is clear from the statistics given above is that due to this delay in filing the Bill of Entry, the clearance of cargo is delayed by one day. This is a major contributing factor in slowing down the clearance. Amendments to IGM and B/E to be carried out in ICES itself. Changing statutory provisions regarding relevant date for duty and exchanges rates in case of advance B/E to date of filing of such B/E may greatly help the situation. The electronic data interchange (EDI) system has limited provisions of attaching supporting documents. Still hard copies are required to be filed with IGM. This needs to be changed. The Harbour Master clearance can be taken as the input for the triggering of the events. When the vessel reaches the pilot station, is when the lists can be generated. The Boarding Superintendent should continue to Board the vessel and the formal remarks of "Entry Inward" after boarding formalities. This shift in the "Entry Inward" event will help Customs generate the IGM 5-6 hours before the actual berthing. Further, majority of the manifests have errors. The errors are mainly relating to the cargo details, container numbers, addresses of importers / suppliers etc. Because of the errors, Customs is not able to admit the Bills of Entry pertaining to those entries and therefore the errors have to be rectified before the process of clearance can begin. Error-free manifests are essential for processing the Bills of Entry. Minor errors can be rectified by Steamer Agents within 30 minutes of their detection while major errors take as much as one day. only 33% of the CHAs file Bills of Entry in advance or within 24 hours of the arrival of the consignment at the Port, while 50% of CHAs do so only within 48 hours, in spite of the importers making the required documents available to the CHAs either immediately after arrival of the goods or before that if there is any discrepancy between the entries in the Manifest and the advance Bill of Entry, the Bill of Entry has to be cancelled. When there is difference between the actual cargo carried by the vessel and the corresponding Bill of Lading. This will necessarily result in amendment of the Manifest as well as the Bill of Entry filed in advance the rate of duty and valuation depend on the actual date of entry inwards of the vessel under the proviso to Section 15 of the Customs Act. In case, the importer gets the entire goods assessed under an advance Bill of Entry and pays the duty for entire consignment, there is no procedure to adjust the excess duty paid under the first Bill of Entry towards the duty payable on the second part of the consignment. Therefore the Custom House Agents generally prefer to wait until the errors in the Manifest are corrected so that they are sure that the procedure for noting can be completed without any delay.

### **8.2.5**

*3. Addressing the issue of Delay in registration of documents:*

After payment of duty, the registration of goods for examination is taking 25 to 30% of dwell time. Customs has no role in it and dependent on CHA to approach with docket to customs. Currently documents are captured post facto examination. If documents are captured in ICES at the time of file of B/E, same would be available electronically and this entire process may be dispensed with. However this would be effective only importer is asked to present himself or through authorized person for examination of goods in specified period and failing which fine should be levied without adjudication.

#### **8.2.6**

*4..Manual filing of Import General Manifest/Export General Manifest/SMTP even after electronic filing/generation in ICE GATE and separate submission of documents to different authorities.*

In the current process the IGM form has 84 inputs for completion, including around 30 mandatory fields. It requires manual filing, e.g., eight hard copies need to be submitted at various Customs sections at JNPT. The Sub-Manifest Transshipment Procedure (SMTP), generated automatically at ICE GATE and transmitted automatically to all concerned parties, still needs to be printed and signed by Customs officials and sent by courier to ICD operators by shipping lines. Each vessel has more than 20 hard copies of SMTP. The electronic data interchange (EDI) system has limited provisions of attaching supporting documents. As a result, physical copies of the Bill of Entry along with supporting documents are submitted to multiple parties, including the Customs house, port authority and regulators like FSSAI, leading to delays in the clearance

#### **8.2.7**

The proposed solution:

- Develop a robust Electronic Signature (ES) module at the ICE GATE for submission of documents.
- Activate all modules of ICEGATE especially the generation of rotation number and port clearance.
- Make provisions for submitting documents online with access to all concerned authorities including different ministries, regulators and ICD operators. Eventually move towards a port community system, e.g., the HAROPA system developed by SOGET in France, with integrated access to shipping lines, port authorities, Marine Department and Customs and Traders.
- Ensure qualified and committed manpower and infrastructure with Directorate General Systems in the Central Board for Excise and Customs (CBEC) to ensure robust automation of Customs clearance Procedures.

#### **8.2.8**

*5. Long manual procedure for rectifying errors in filing EGM/IGM:*

In the current process, a physical application (hard copy) along with fee is submitted to the Customs department for any modification required to the EGM/IGM for all fields. Customs needs further verification from the port of landing after which the BoE has to be resubmitted. The proposed solution is

to classify fields into sensitive and non-sensitive, with the provision for modification of non-sensitive fields online without any permission from Customs or the need for resubmission. CBEC has already floated draft circular delegating the powers in this regard to Superintendent for a one-stop-shop like procedure in this regard. This may alleviate the situation to some extent.

### **8.2.9**

#### *6. Submission of Form 13 at port gate:*

Currently, in ports where en-block movement has been identified, e.g., JNPT, Form 13 has to be submitted in the presence of a Container Freight Station agent and Customs officer for gate movement of goods. This leads to a congestion of up to six to eight hours at the gates. The proposed solution is to use OCR technology to avoid paper form submission while still allowing tracking of vehicles and containers in and out of ports.

### **8.2.10**

#### *7. Lack of a specialized clearance system for accredited importers/exporters:*

Accredited importers have to go through the regular method for movement of cargo until it reaches the CFS, after which they are able to clear the cargo immediately through the Customs green channel procedure. Around 200 documents are also required to become an accredited importer/ exporter. The proposed solution is to:

- allocate a separate area within port premises to enable faster delivery of cargo of accredited importers/ exporters.

- Simplify the process of becoming an accredited player, e.g., history of trade, number of containers imported and exported to be taken into account to register for factory stuffing and self-sealing of containers.

- Limited resources not only for scanning the increased quantity of containers but also for providing factory stuffing to accredited importers/exporters. Going forward, ports should supplement the CBEC in providing necessary scanning equipment according to the guidelines issued by the CBEC.

### **8.2.11**

#### *8. Same rules for checking coastal and EXIM cargo:*

In the current process, the Customs treats coastal cargo in the same manner as EXIM cargo which is time consuming. Coastal cargo is given the last preference as Customs considers it to be unimportant cargo. However, India is part of the World Customs Organization whose stipulation is that coastal cargo is not subject to the same clearances as EXIM cargo. The Indian Customs Act also does not force coastal cargo to undergo the same scrutiny as EXIM cargo. Going forward, coastal and EXIM cargo should not be subject to the same rules for scrutiny and preference. The benchmarking should be done

based on international examples, such as the Port of Antwerp, where coastal and EXIM cargo are segregated in a manner similar to airports.

#### **8.2.12**

##### *9. Shift the point of Final IGM generation and scan list*

The Indian Customs EDI System (ICES) artificially coincides several of the vessel-related permissions and events into a single event and calls it “Entry Inward”. These include:

- (i) Permission to unload cargo
- (ii) Generation of the final IGM.
- (iii) Creation of the final copy of the Bill of Entry to account for any change in duty payable.
- (iv) Generation of the scanning list.
- (v) Generation of the sub-manifest transship permit.
- (vi) Updating the BE status for goods registration and Out-of-Charge.

#### **8.2.13**

Entry inwards is a permission granted by the Customs Superintendent at the docks to a vessel after which the master of the vessel permits unloading of the imported goods. Such entry inwards is granted only after master of the vessel delivers import general manifest to the proper officer or the proper officer is satisfied that there was sufficient cause for not delivering it. Grant of Entry inwards by Customs, however, does not come in the way of the allocation of berth by Terminal Operator and for provisioning of services to a vessel’s inward movement and berthing. Besides, ‘Entry Inward’ permission is not required for unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods [Section 31 of the Customs Act, 1962]. Presently, Entry Inward is granted after the mooring of the vessel and boarding by Customs Officer. The event of ‘Entry Inward’ is significant not just as a formal legal process, it is even more so due to the manner in which it has been implemented in the Customs EDI System (ICES).

#### **8.2.14**

It is suggested that:

-Entry Inward should coincide with the grant of permission for berthing by the Harbour Master and the vessel reaches the pilot station. This permission is given finally by the Harbour Master after the necessary clearances related to payments made by Shipping Line for Piloting services (Finance Clearance) and tide related clearances provided from a technical perspective by port authority entities responsible for planning (Planning Clearance). It is proposed the Harbour Master clearance should be taken as the input for the triggering of the events. When the vessel reaches the pilot station, is when the lists can be generated. The Boarding Superintendent should continue to Board the vessel and the formal

remarks of “Entry Inward” after boarding formalities. This shift in the “Entry Inward” event will help Customs generate the IGM 5-6 hours before the actual berthing. This will also help secure the position of the IGM as the definitive document for planning on the part of the Terminal Operator.

### **8.2.15**

#### *10. Removal of difficulties arising from duty difference for Advance & Prior Bills of Entry:*

On assessment, one copy of the Bill of Entry along with three copies of the duty paying challan would be printed. However, the duty would be calculated at this stage on the basis of rates as applicable on the date of assessment taking into account any changes in the rates that may have taken place between the date of filing of the Bill of Entry and the date of its assessment. The importer has now the option either to pay the duty as assessed and indicated in the challan or await the filing of the IGM and finalization of the Bill of Entry before payment of duty. (Interest liability will commence two days after the regularization of the Bill of Entry). In case the importer chooses to pay the duty, the Bill of Entry would be marked to the shed in the System but will not be available for examination of goods or out of charge thereof until the IGM has been filed and the Bill of Entry regularized. When the IGM is entered in the System, it will check for prior or advance Bills of Entry and match the Bill of Lading numbers and the number of packages as entered in the IGM and as declared in the Bill of Entry. Where these parameters match, the Bill of Entry will be updated with reference to the IGM particulars and the date of entry inwards. If however the Bill of Lading number is incorrect in the IGM, the matching process would be carried out only after Bill of Entry, clearance stops until this is corrected. Similarly, if the numbers of package do not match between IGM and this would need to be corrected in the IGM by the Shipping Agent before further processing. If Bill of Lading number has been incorrectly mentioned in the Bill of Entry, the document cannot be processed further and a new Bill of Entry will have to be filed. The errors as mentioned above can be ascertained from the enquiry counter by the CHAs/ importers for necessary action to carry out the corrections. In case there has been a change in the rate of duty or in the text of the notification, the Bill of Entry would be reassessed by the Appraising Officer and a challan for differential duty if any would be generated. If the duty has not been paid on the prior Bill of Entry, the challan would be generated for whole amount of the duty paid. In all of the above cases, clearance gets stuck-up. It is proposed that for DPD clearances, these corrections should be carried out after ascertaining facts and based on records after clearance is given online.

### **8.2.16**

#### *11. Penalty on Terminal Operators and CFSs for not receiving Customs Out-of-Charge*

Customs release is communicated to the Custodian and importer through the Out of Charge message. The Out of Charge message is presently being delivered through the Port Community System (which is the hub for receiving all Customs message through the port). Terminal Operators and CFS largely ignore this message. This acts to the CFSs advantage not to know about the fact that Customs has already cleared a consignment. Instead they would wait for a manual out of charge copy, which may sometimes take a day for the importer to get it signed by the Appraiser and to produce before the CFS. This situation needs to be stopped immediately. Under Regulation 5 (k) of the Handling of Cargo in Customs

Areas Regulations,2009 the Customs Cargo Service provider for custody of imported goods or export goods and for handling of such goods in a customs area shall fulfill the several conditions including the exchange of information between Customs Community partners. For this Customs Cargo Service Providers will have to provide adequate connectivity. Under Regulation 12, the procedure for suspension or revocation of approval and imposition of penalty on the Customs Cargo Service Providers is specified. For inaction on the part of the CFSs, Commissioner of Customs may penalize the CFS operators for not receiving Customs Out of Charge messages and not acting on them.

### **8.2.17**

#### *12. Customs to expedite implementation of other Paperless initiatives:*

The finalized Customs Bill of Entry and Shipping Bill need not be printed any longer, if the same can be sent as digitally signed pdf document. A demo version has been prepared to achieve this and a secure, digitally signed, bar coded, QR Coded and watermarked pdf copy of Bill of Entry/ Shipping Bill can be sent directly to the Customs Broker, who can print it at his will and it can be authenticated anywhere by anybody. The project for submission of digitally signed supporting documents is under testing. The critical pieces namely ICEGATE and Documentum have already been tested. Considering the hardware constraints, it may be implemented for a small category of importers at one location, and complete implementation may be achieved in the medium term.

### **8.2.18**

#### *13. Recommendations (10.5.2015) of Committee on Transshipment to be implemented:*

Despite possessing long coastline located very close to international shipping channels, India has not developed any which caters to the demands of transshipment of international cargo, while countries like Srilanka, Singapore and Malaysia have successfully tapped into this market and gained good returns. One such port has come up near Kochi and more are coming up. Since there are no Customs Regulations under Customs for international transshipment they are working under SEZ scheme. With Sagarmala project Government wants to boost coastal movement of goods. Some of the recommendations of the Committee are summarized hereunder:

### **8.2.19**

Coastal movement of goods is regulated by Bill of Coastal Goods(Forms) Regulations,1976. No specific permission is given to Coastal ships under this to carry EXIM cargo though that happens. At the port where goods are cleared for home consumption, the shipping agent files Cargo manifest in EDI for EXIM

cargo and Bill of Coastal Goods for the rest. There is urgent need to bring Import Manifest (Vessel) Regulations and Export Manifest(Vessels) Regulations in line with this requirement.

#### **8.2.20**

The current provisions with regard to sanction of Drawback promote transshipment through foreign ports in so far as drawback cannot be granted on transshipment to another Indian port for export to a foreign destination except on production of Bond/BG which Shipping lines are generally unwilling to execute.

#### **8.2.21**

Though IGM provides for a column under the head "Cargo Manifest" for declared Cargo being transhipped, it is seen that in most of the cases IGMs are filed without declaring the cargo brought in for International transshipment.IGM/EGM should make provision for:

- a. Separate code for cargo/containers meant for international transshipment.
- b. System generated transshipment permit for such IGMs showing international transshipment cargo.
- c. Separate code for such cargo in EGMs
- d. Corresponding lines in IGM to close automatically as soon as EGM showing such code is filed.

#### **8.2.22**

Further suggestions for promoting coastal shipping are 1. Provision for transshipment on multimodal basis between ports by sea with tracking being done based on contents of Cargo manifests 2. Similar provision for export goods undergoing transshipment through multiple Indian ports by tracking the entire movement through EGM and IGM till the goods leave the country.3. Multiple agencies like the shipping company for sea movement; transporter for road movement are required to file Bonds for movement of cargo in addition to the main line operators submitting bond regarding containers. This should be merged with proper accountability.

#### **8.2.23**

##### *14. Issue regarding treatment of vessel:*

In some Custom Houses Shipping Bill is insisted to be filed on every outward run of a vessel and Bill of Entry for every coastal run treating vessels as "goods". Some Shippers argue that once a vessel is cleared by Customs for domestic run, they should not be subjected to duty/procedures again citing definition of goods/foreign going vessel and some case law. Only IGM/EGM needs to be filed. Matter has also been clarified by Board's circular No 16/2012 dated 18.6.2012. Further, Indian vessels subjected to repairs abroad or routine dry dock run overseas for sea worthiness are sought to be subjected to customs duty in certain quarters when even the Apex court has ruled against it. Uniformity in administration has to be ensured.

#### **8.2.24**

##### **15. Duty payment on Bunkers:**

A vessel on coastal run converts to foreign run by filing EGM in which the ROB fuel is mentioned. This fuel is duty paid. The vessel returns from the foreign run and converts to coastal by filing an IGM in which the ROB fuel is mentioned. This is duty free fuel. However, when levying the duty on the ROB fuel at import, the quantum of ROB fuel at export is not being deducted and the customs duty being charged on the entire ROB at the time of import. As the Indian ships / vessels which will carry the duty paid bunker. Once these vessels touch the high seas and on her return with the same duty paid bunker, customs should not levy duty on total ROB. It is suggested to either offset for foreign leg is given or fuel can be exempted all together as it has very little revenue impact. However this will greatly reduce procedural bottlenecks.

#### **8.2.25**

##### **16. Port restrictions to go:**

Certain commodities like metal scrap or automobiles can be imported and similarly certain goods can be exported only through certain ports. In the current system run environment port restrictions are hardly justified and can be scrapped.

#### **8.2.26**

##### **17. Digital by Default:**

As noted in Chapter VII of the TARC's first report, "ICT needs to be far more deeply embedded in the governance structures and processes in order to reflect the realities of the digital world. A cornerstone of the customs strategy, therefore, will have to be an ambitious plan to become a fully digital enterprise. The importance of this cannot be overemphasized as ICT is the key enabler for the organizational transformation that is needed. The TARC had, in Section VII.6 of that chapter, suggested a roadmap for the journey towards the "digital by default" status. All encompassing website for stake holder/public interface on Korean UNIPASS model and ICEGATE interface through mobile Apps/smartphone use would be the right steps in this direction.

#### **8.2.27**

##### **18. Revamping the core customs clearance process as suggested by TARC:**

The Tax Administrative Reforms Committee in its second report has noted that "customs clearance process in India continues to be in the traditional mould even after the introduction of the self-assessment and risk management system. There are a large number of consignments that are assessed



and examined on arrival, leading to goods taking a relatively longer time for clearance than in many other countries. Data provided by some stakeholders indicates that the time taken for customs clearance in Australia, Germany, Netherlands and Singapore ranges between 1 to 3 hours where cargo is not selected for inspection and 24 to 72 hours where it is selected for inspection. There is far greater reliance on advance submissions of cargo and goods declarations and a much smaller percentage is selected for examination at ports.” The processes in advanced countries are more or less in the following order:

Pre-loading risk assessment based on advance information for security purposes (the admissibility decision) (Separate carrier and/or importer security filing practices). • Pre-arrival goods declarations for the release decision; physical release of goods for import or export. • Post-release filing of all clearance details and clearance, when all duties, taxes, etc., are settled.

To make sure that the ‘at arrival’ is generally paper-free, the following must happen:

- The response to a goods declaration is a release decision, delivered electronically, which can be printed out (like the boarding pass) and may contain a bar code or QR code.
- The supporting documents, where required, are submitted digitally as scanned copies or e-documents. Strict checks are performed on the identity of the vehicles and people involved in the physical delivery.
- Physical inspection of documents or goods is by exception and is primarily designed to confirm the accuracy of declarations.

#### **8.2.28**

TARC further observed that there needs to be a change in the control paradigm of the CBEC to align it with international best practices. As in developed administrations, cargo will need to be stopped primarily to address risks that bear on admissibility issues, such as security, hazardous goods, etc., of the type that require that the cargo needs to be stopped at the border. Ordinarily, there should be no stoppage of cargo for duty related issues that can be handled in a post-clearance environment. The cargo examinations should be targeted, designed primarily to confirm the declarations and with a much more thorough examination of selected cases which should form a much smaller percentage of total consignments (unlike the current situation where a large number of consignments get selected for examination but are subjected to 5 to 10 per cent examination). The facility for examination at the importer’s warehouse should also be extended on a selective basis where the movement of cargo is adequately secured through means such as track and trace technologies. This will decongest ports and airports and enhance their cargo throughput, thus saving wastage of substantial resources. This is what the Netherland Customs have achieved by their layered approach with “pushing Boundaries” motto.

#### **8.2.29**

The following diagram\* depicts the pre and post modernization Customs control paradigm:



- duty differences for Advance & prior Bills of Entry; use of OCR technology for submission of Form 13 at port gate and by penalizing Terminal Operators for not receiving Customs Out of Charge.
- ii. "Entry Inward" can be made to coincide with grant of Berthing permission by the Harbour Master to reduce long dwell time between cargo arrival and filing of Bill of Entry.
  - iii. Capturing of all required documents electronically at the time of filing Bill of Entry saves all parties a lot of time in the Government segment of the port clearance of goods.
  - iv. For better regulation with respect to transshipment and adherence to Government of India schemes, foreign Ship owners can be made to register under Merchant Shipping Act, 1958 & Registration of Ships Rules, 1960 apart from setting up office in India.
  - v. Handling of Cargo in Customs Area Regulations, 2009 may be amended to include Shipping Lines, NVOCCs & Terminal operators.
  - vi. The requirement of Port applying for cabotage relaxation may be dispensed with along with attendant condition of it already having 50% transshipment business as these measures are not serving the purpose of facilitating coastal trade.
  - vii. Import Manifest (Vessels) Regulations and Export Manifest (Vessels) Regulations are to be brought in line with the trade need of coastal ships carrying EXIM cargo specifying different rules of scrutiny for coastal and EXIM cargo.
  - viii. Long manual procedure for IGM/EGM amendment to be remedied by automation, one-stop-shop solution and automatic rectification of certain mistakes.
  - ix. IGM/EGM formats should be amended providing for separate code for cargo meant for international transshipment and system generated permissions, tracking of multimodal transshipment through multiple Indian Ports and reconciliation between IGM & EGM for closure to be provided for.
  - x. Advance submission of cargo/goods declarations can be provided for advance decisions on release based on pre arrival risk assessment. Changing statutory provisions regarding the relevant date for duty calculation and exchange rate application may boost filing of advance Bills of Entry which can be further boosted by improving the IGM format/filing procedures for error free capture of details.
  - xi. Submission of digitally signed supporting documents to be provided for in ICEGATE and an all-encompassing website for trade interface to be developed.
  - xii. Aligning Customs control paradigm/ Risk assessment system with best international practices like in Netherlands for increasing bonafide trade throughput thus reducing costs to maritime trade and improving Ease of Doing Business.

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*(The Group acknowledges with gratitude the guidance and direction given by its mentor Mrs.P.Sahu, ADG, COE, NACEN whose many ideas find mention in the report).*

**PROJECT REPORT BY GROUP VI**

**REVERSAL OF CENVAT CREDIT UNDER RULE 6 OF CENVAT CREDIT RULES, 2004**

**(SPECIALLY IN SUGAR INDUSTRY)**

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1. A manufacturer of final product shall be allowed to take credit of the duty of excise paid on any input or capital goods received in the factory of manufacture of final product or Service Tax paid on any input service received by the manufacturer of the final product (Rule 3 of CCR, 2004).

2. Rule 6 of CCR, 2004 provides certain conditions for availing CENVAT credit. Significant amendments have been made in this Rule vide CENVAT credit (Third amendment) Rules, 2016 w.e.f. 01.04.2016 vide Notification No. 13/2016-CE (NT) dated 01.03.2016. before this amendment, the relevant portion of this rule was as under:

*“Rule 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.-*

*(1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).*

*Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.*

*(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.*

*(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely:-*

*(i) the manufacturer of goods shall pay an amount equal to five per cent. of value of the exempted goods and the provider of output service shall pay an amount equal to six percent. of value of the exempted services; or*

*(ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).*

*Explanation I.- If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.*

*Explanation II.-For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service.*

3. The exempted goods have been defined under Rule 2(d) of the CCR, 2004. Accordingly, exempted goods means excisable goods which are exempt from the whole of the duty of excise leviable thereon and includes goods which are chargeable to NIL rate of duty.

4. With effect from 01.04.2016, the relevant portion of Rule 6 is as under:-

*Rule 6(1): The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be:*

*Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.*

*Explanation 1- For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include nonexcisable goods cleared for a consideration from the factory.*

*Explanation 2- Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under.*

*Explanation 3 – For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a ‘service’ as defined in section 65B(44) of the Finance Act, 1994.*

*Explanation 4 – Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.*

*Rule 6(2): A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.*

*Rule 6 (3) (a) A manufacturer who manufactures two classes of goods, namely :-*

- i. non-exempted goods removed;*
- ii. exempted goods removed; or*

*(b) a provider of output service who provides two classes of services, namely:-*

- (i) non-exempted services;*
- (ii) exempted services,*

*shall follow any one of the following options applicable to him, namely :-*

- i. pay an amount equal to six per cent. of value of the exempted goods and seven per cent. of value of the exempted services subject to a maximum of the total credit available in the account of the assessee at the end of the period to which the payment relates; or*
- ii. pay an amount as determined under sub-rule (3A):*

*Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause*

- i. *: Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be seven per cent. of the value so exempted:*
- ii. *Provided also that in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to two percent of value of the exempted services.*

5. From the above, it is evident that wherein common inputs or input services used in dutiable as well as exempted goods, and the assessee does not maintain separate accounts, they are required to reverse CENVAT credit equal to certain % of value of goods or to pay proportional CENVAT credit relating to exempted goods.

6. In the sugar industry, in the process of manufacture of sugar, sugarcane is crushed, its juice is extracted and Bagasse emerges as a residue/ waste of sugarcane. Bagasse is classified under Chapter sub heading no. 23032000 of the first Schedule to the Central Excise Tariff Act, 1985 and attracts NIL rate of duty. The dispute since long was that since Bagasse is exempted goods, the assessee is required to reverse CENVAT credit as per Rule 6(3) of CCR, 2004.

7. This matter was litigated since long and finally the issue was decided by the Hon'ble Supreme Court in the case of Balrampur Chini Mills Ltd. in Civil Appeal No. 2791/2005 decided on 21.07.2010. Vide this judgement, the Civil Appeal filed by Commissioner of Central Excise, Allahabad against the CESTAT final Order No. 1282/2004-NB dated 22.11.2004 was dismissed observing as under:-

*"In view of the decisions of this Court in Civil Appeal No. D 27628 of 2004 (Commissioner of Central Excise, Meerut II v. M/s. Kichha Sugar Co. Ltd.) dated 20-2-2004 and Civil Appeal No. 4043 of 2004 (Commissioner v. Shakumbari Sugar & Allied Industries Ltd.) dated 22-8-2005, this Appeal is also dismissed."*

*The Appellate Tribunal in its impugned order had held that the appellant was not required to pay 8% of the value of bagasse under Rule 57CC of erstwhile Central Excise Rules, 1944 as bagasse was not final product but wastes.*

8. One of the defence taken by the assessee's was that electric energy is not an excisable goods in Section 2(d) of Central Excise Act, 1944, therefore it is not exempted goods within the meaning of Rule 2(d) of the Cenvat Credit Rules, 2004 but still demand was raised under Rule 6(2) and Rule 6(3) of Cenvat credit Rules 2004 demanding duty in respect of electric energy sold outside the factory. This issue has been decided by Hon'ble Allahabad High Court in case of GulariaChini Mills reported at 2014(34) S.T.R 175(All.) The relevant portion is as under.



**“ 25.** It is not in dispute that petitioners do not avail Cenvat credit on any input and input services used in generation of electricity insofar as this fact has been admitted by the Assistant Commissioner as well as Commissioner, Central Excise, Lucknow vide letters dated 30-1-2013 and 21-2-2013, respectively. In order to become any goods to be an ‘excisable goods’, it has to fulfil the following conditions :

- “(1) Goods must be manufactured;
- (2) Must be specified in the First or Second Schedule of the Central Excise Tariff,
- (3) It must be subjected to tariff.”

**26.** Admittedly, none of these conditions are attracted in the instant case insofar as electrical energy, which is mentioned in Chapter 27 of the Central Excise Tariff Act, covers only those electrical energy which are generated from mineral fuels, mineral oils and products of their distillation, bituminous, substances, mineral waxes, etc. The electrical energy generated from Bagasse is not covered under Chapter 27. Similarly, Chapter 27 does not cover electrical energy produced by solar power, hydro power, wind power or from bagasse. Therefore, we are of the view that electrical energy is not an excisable goods nor it is exempted goods as defined in Rule 2(d) of the 2004 Rules.

**27.** It is also relevant to mention here that Rule 6(1) provides that Cenvat credit shall not allow on such quantity of inputs which is used in the manufacture of exempted goods. For applicability of Rule 2, the following ingredients must exist :-

- (i) where a manufacturer avails Cenvat credit on any input (as defined in Section 2(k)
- (ii) and manufactures such final products which are chargeable to duty and
- (iii) also manufactures such final products which are exempted goods.

**28.** Hence, manufacture is referred to both dutiable/excisable goods and exempted goods, which are final products. Only then, it is necessary for the manufacturer to maintain separate accounts. Rule 6 of the Cenvat Credit Rules, 2004, (which is *parimateria* to the erstwhile Rule 57CC) provides that if Cenvat credit has been taken on the inputs which are used for manufacture of dutiable and exempted final products then the assessee is required to reverse the proportionate credit or pay 10%/5% amount of the value of the exempted final products. Electricity is not excisable goods under Section 2(d) of the Act, hence Rule 6 of the Cenvat Credit Rules, 2004 is not applicable as held by the Apex Court in the case of *Solaris Chemtech Ltd.* (supra).”

8.1 Accordingly on this issue also it was decided by the Hon’ble High Court that no reversal of proportionate credit is required under Rule 6 of CCR 2004.

9. The judgment pronounced by Hon’ble Supreme Court in case of Balrampur Chini Mills Ltd. related to the period before 2008. In the year 2008 there was an amendment in Section 2(d) as well as in

Section 2(f) of the Act which defines 'excisable goods' and 'manufacture' respectively. Section 2(d) with the said amendment reads as under :

*Section 2(d) - "excisable goods" means goods specified in [The First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986 ) as being subject to a duty of excise and includes salt;*

*Explanation - for the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable."*

9.1 As per the aforesaid explanation, "goods" would now include any article, material or substance capable of being bought or sold for consideration and as such goods shall be deemed to be marketable. Thus, it introduces the deeming fiction by which certain kind of goods are treated as marketable and thus excisable.

10. The Hon'ble Supreme Court vide order dated 24.07.2015 in the case of DSCL Sugar Ltd. decided the issue pertaining to the subsequent period. The relevant portion of the judgement is as under:

*"8. However, before the aforesaid fiction is to be applied, it is necessary that the process should fall within the definition of "manufacture" as contained in Section 2(f) of the Act. The relevant portion of amended Section 2(f) reads as under :*

*Section 2(f) - "manufacture" includes any process -*

*(i) incidental or ancillary to be completion of a manufactured product;*

*(ii) which is specified in relation to any goods in the section or Chapter notes of [The First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to [manufacture; or]*

*(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;*

*and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production of manufacture on his own account;"*

9. The Revenue sought to cover the case under sub-clause (ii) as per which the process which is satisfied in relation to any goods in the Section or Chapter notices of the First Schedule to the Central Excise Tariff Act, 1985 would amount to 'manufacture'. Here again, fiction is created by including those goods as amounting to manufacture in respect of which process is specified in the Section or Chapter notices of the First Schedule.

10. *In the present case it could not be pointed out as to whether any process in respect of Bagasse has been specified either in the Section or in the Chapter notice. In the absence thereof this deeming provision cannot be attracted. Otherwise, it is not in dispute that Bagasse is only an agricultural waste and residue, which itself is not the result of any process. Therefore, it cannot be treated as falling within the definition of Section 2(f) of the Act and the absence of manufacture, there cannot be any excise duty.*

11. *Since it is not a manufacture, obviously Rule 6 of the Cenvat Rules, 2004, shall have no application as rightly held by the High Court."*

11. In view of the above, it is settled law that no reversal of CENVAT credit under Rule 6 of CCR, 2004 is required to be made by sugar industries as far as Bagasse or other residue are concerned.

12. In order to overcome the judgment of the apex court, amendment in Rule 6(1) of CCR, 2004 has been made w.e.f. 01.04.2016 by inserting following explanation:

*Explanation 1 – For the purpose of this rule, exempted goods or final products as defined clause (d) and (h) of rule 2 shall include non- excisable goods cleared for consideration from the factory.*

Due to above amendment, now reversal under Rule 6(3) of CCR, 2004 is required to be made in case where common inputs/ common input services used in manufacture of sugar and bagasse or other residue sold outside factory.

13. Another dispute was as to whether the assessee was liable to pay 8% on the price of the final product viz. 'Bio-compost fertiliser' which is a mixture of by products viz. 'Press mud and spent wash' under Rule 57C read with Rule 57CC of the Central Excise Rules or not. During the manufacture of sugar, a waste product called Press mud emerged and during the manufacture of denatured ethyl alcohol, another by product viz. a spent wash emerged. The press mud and spent wash were treated together and out of such treatment, an organic manure viz. Bio- compost fertiliser emerged which was cleared without following the central excise procedure. Hon'ble High Court of Madras in the case of EID Parry (I) Ltd. reported at 2013(293) E.L.T 10(Mad) decided this issue. The relevant paras of the judgement are as under :

" 11. For proper appreciation of the facts, the relevant Rule 57CC of the Central Excise Rules 1944 is extracted hereunder :-

**"Rule 57CC. - Adjustment of Credit on inputs used in exempted final products or maintenance of separate inventory and accounts of inputs by the manufacturer. - (1)** Where a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as in any other final product which is exempt from the whole of the duty of excise leviable there on or is chargeable to nil rate of duty and the manufacturer takes credit of the specified duty on any input (other than inputs used as fuel) which is used or ordinarily used in or in relation to the manufacture of both the aforesaid categories of final products, whether directly or indirectly and whether contained in the said final products or not, the manufacturer shall, unless the provisions of sub-rule (9) are complied with, pay an amount equal to

eight per cent of the price (excluding sales tax and other taxes, if any, payable on such goods) of the second category of final products charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

(2) The amount mentioned in sub-rule (1) shall be paid by the manufacturer by adjustment in the credit account maintained under sub-rule (7) of Rule 57G or in the accounts maintained under Rule 9 or sub-rule (1) of Rule 173G and if such adjustment is not possible for any reason, the amount shall be paid in cash by the manufacturer availing of credit under Rule 57A.”

**12.** Rule 57CC contemplates that a manufacturer, who takes credit of specified duty on any inputs which are used or ordinarily used in or in relation to the manufacture of both the dutiable and exempted final products shall pay an amount equal to 8% of the price of final product charged by the manufacturer for sale of such goods at the time of their clearance from the factory. To put it simply, if the manufacturer uses any inputs in or in relation to the manufacture of both the dutiable and exempted final products and when he had taken credit of specified duty on such inputs, he has to pay 8% on the price of such final product. Therefore, what is mandatory is that the credit taken inputs should have been used by the manufacturer in or in relation to the manufacture of both dutiable and exempted final products. If this requirement is satisfied without any doubt or ambiguity, then application of Rule 57CC is attracted to such goods.

**13.** Keeping in mind the above mandatory requirement to invoke Rule 57CC, let us consider the facts of the present case to find out as to whether the demand made by the Revenue is sustainable or not. Admittedly, the first respondent-assessee is the manufacturer of sugar, molasses and Denatured Ethyl Alcohol, which are all dutiable final products and the cenvated credit inputs were used only one time by the first respondent-assessee at the time of manufacturing of sugar. It is also seen that “press mud” and “spent wash” emerged as wastes during the course of manufacturing of sugar and Denatured Ethyl Alcohol. It is also admitted by the Revenue that those two products viz., “spent wash” and “press mud” were treated together to manufacture the bio-compost fertiliser. It is not the case of the Revenue that after the emergence of these two wastes viz., spent wash and press mud, further cenvated inputs or chemicals have been added or used by the manufacturer into those two wastes to manufacture bio-compost fertiliser. On the other hand, it is their contention, based on the lab report, that spent wash contained certain chemicals such as chlorides, sulphides, di-phosphates, potassium, sodium and nitrogen. Consequently, it is their case that the final product viz., bio-compost fertiliser which is sold under the name of “Farm boon” and “Garden bloom” also contained those chemicals. Thus, based on such lab report, the Revenue sought to project its case as though the exempted final product viz., bio-compost fertiliser was also manufactured by using the cenvated credit inputs or chemicals.

**14.** Repudiating such contention of the Revenue, the first respondent would submit that they have not used any credit availed inputs while manufacturing bio-compost fertiliser and on the other hand those inputs were brought into factory and used in the manufacture of sugar only. It is also their case that sugar cane itself contained various chemicals such as potassium, Fluoride Calcium, Magnesium, Phosphorous, Phosphatic, Iron, Carbonite Ash etc., and therefore the characteristics of press mud or

spent wash are relatable to sugar cane only and not to any of the modvated inputs, which were used in the manufacture of sugar.

**Findings :**

**15.** We find force in the submission made by the first respondent-assessee. Certainly, the cenvated inputs were brought into the factory by the assessee for using it in the manufacture of their final products viz., sugar, molasses, Denatured Ethyl Alcohol. Once they use those cenvated inputs at the initial stage and obtain certain final products as well as wastes such as press mud and spent wash, there was no further application or usage of those inputs either in or in relation to the manufacture of final products once again. In other words, the commencement of journey of those cenvated inputs used either in or in relation to the manufacturer of final products ends with the emergence of those final products along with inevitable wastes. Their usage cannot be traced beyond the first degree. The same inputs cannot be considered to have been utilized or used even indirectly in the manufacture of disputed item viz., bio-compost fertiliser, especially under the factual circumstances that the same came to be manufactured only by adding those two waste materials together. May be those two waste materials contained the trace of certain chemicals with the characteristics of original inputs. That itself cannot be taken to mean that the product emerged out of those wastes was also manufactured by using those cenvated credit inputs.

**16.** As rightly contended by the learned counsel for the assessee, the characteristic of sugarcane containing various chemicals cannot be stopped or prevented by the manufacturer to pass on even to the wastes, as it is undoubtedly a natural flow of in born character from one stage to another. Only when there is a further addition of inputs or chemicals with similar characteristics externally by the manufacturer, the Revenue can invoke Rule 57CC. In other words, when spent wash and press mud had emerged as inevitable wastes during the process of manufacturing of final products viz., sugar and Denatured Ethyl Alcohol and the said wastes are combined and treated together to form another final product viz., bio-compost, the said final product cannot be brought under Rule 57CC.

**17.** We are conscious of the fact that what is in dispute is not the question as to whether bio-compost fertiliser is a final product or not, but on the other hand the question is as to whether such final product is liable to be brought under Rule 57CC of the Central Excise Rules or not. Press mud is an unavoidable and inevitable waste which arises when the cane juice obtained after crushing the sugarcane is further processed for manufacture of sugar. Press mud is nothing but impurities present in the cane juice. Likewise, spent wash is an inevitable waste product when molasses is treated to bring out ethyl alcohol or denatured spirit. Both press mud and spent wash are exempted from duty by virtue of certain notifications. Bio-compost is the mixture of two waste products viz., press-mud and spent wash and is marketed by the assessee. What is to be seen is as to whether such final product had emerged by using any cenvated inputs either in or in relation to such manufacture of final product. As we have already found that no cenvated inputs or chemicals were used either in or in relation to the manufacture of such

exempted final product viz., bio-compost fertiliser, we are of the view that demand made by the Revenue is unsustainable.”

13.1. In view of the above it was held by the Hon’ble Madras High Court that provisions of erstwhile Rule 57CC of Central Excise Rules 1944 are not applicable in case of clearance of bio-compost fertiliser.

### **PROJECT REPORT BY GROUP VII**

### **EFFECTIVE DECISION-MAKING IN THE DEPARTMENT**

Mentor : Mr. A. K. Singh

#### **Group Members**

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## Decision Making Process

Organizations operate by people making decisions. Managers are constantly called upon to make decisions in order to solve problems. Decision making and problem solving are ongoing processes of evaluating situations or problems, considering alternatives, making choices, and following them up with the necessary actions. A manager plans, organizes, staffs, leads, and controls his team by executing decisions. The effectiveness and quality of those decisions determine how successful a manager will be.

To define, Decision-making is regarded as the [cognitive process](#) resulting in the selection of a belief or a course of action among several alternative possibilities. Every decision-making process produces a final choice; it may or may not prompt action. Decision-making is the process of identifying and choosing alternatives based on the values and preferences of the decision-maker. The process could be more or less rational or irrational and can be based on tacit or explicit knowledge.

Two cognitive models of decision making are:

- Rational model- the decision maker attempts to use optimising and selecting the best possible alternative.
- Bounded Rationality model- The decision maker uses selecting the first alternative that meets the minimal criteria for solving the problem.

### 1.0 What is involved in decision making process

#### 1.1 Orientation and Understanding of the problem

**Defining the problem:** The decision-making process begins when a manager identifies the real problem. The accurate definition of the problem affects all the steps that follow; if the problem is inaccurately defined, every step in the decision-making process will be based on an incorrect starting point.

It is important to differentiate between problem analysis and decision-making. Traditionally, it is argued that problem analysis must be done first, so that the information gathered in that process may be used

towards decision-making. There are several characteristics of problem analysis. Analyze performance, what should the results be against what they actually are. Problems are merely deviations from performance standards. Problems must be precisely identified and described. Problems are caused by a change from a distinctive feature. Something can always be used to distinguish between what has and hasn't been affected by a cause. The cause of problems can be deduced from relevant changes found in analyzing the problem. Most likely cause of a problem is the one that explains all the facts.

**Identifying the Stake Holders and the resources:**All managers want to make the best decisions. To do so, managers need to have the ideal resources — information, time, personnel, equipment, and supplies — and identify any limiting factors. Realistically, managers operate in an environment that normally doesn't provide ideal resources. For example, they may lack the proper budget or may not have the most accurate information or any extra time. So, they must choose to satisfy — to make the best decision possible with the information, resources, and time available.

**1.2 Discussion:** Time pressures frequently cause a manager to move forward after considering only the first or most obvious answers. However, successful problem solving requires thorough examination of the challenge, and a quick answer may not result in a permanent solution. Thus, a manager should think through and investigate several alternative solutions to a single problem before making a quick decision.

One of the best known methods for developing alternatives is through brainstorming, where a group works together to generate ideas and alternative solutions. The assumption behind brainstorming is that the group dynamic stimulates thinking — one person's ideas, no matter how outrageous, can generate ideas from the others in the group. Ideally, this spawning of ideas is contagious, and before long, lots of suggestions and ideas flow. Brainstorming usually requires 30 minutes to an hour. The following specific rules should be followed during brainstorming sessions:

**Concentrate on the problem at hand.** This rule keeps the discussion very specific and avoids the group's tendency to address the events leading up to the current problem.

**Entertain all ideas.** In fact, the more ideas that come up, the better. In other words, there are no bad ideas. Encouragement of the group to freely offer all thoughts on the subject is important. Participants should be encouraged to present ideas no matter how ridiculous they seem, because such ideas may spark a creative thought on the part of someone else.

**Refrain from allowing members to evaluate others' ideas on the spot.** All judgments should be deferred until all thoughts are presented, and the group concurs on the best ideas.

Although brainstorming is the most common technique to develop alternative solutions, managers can use several other ways to help develop solutions. Here are some examples:

**Nominal group technique.** This method involves the use of a highly structured meeting, complete with an agenda, and restricts discussion or interpersonal communication during the decision-making process. This technique is useful because it ensures that every group member has equal input in the decision-making process. It also avoids some of the pitfalls, such as pressure to conform, group



dominance, hostility, and conflict, that can plague a more interactive, spontaneous, unstructured forum such as brainstorming.

**Delphi technique.** With this technique, participants never meet, but a group leader uses written questionnaires to conduct the decision making.

No matter what technique is used, group decision making has clear advantages and disadvantages when compared with individual decision making. The following are among the advantages:

- Groups provide a broader perspective.
- Employees are more likely to be satisfied and to support the final decision.
- Opportunities for discussion help to answer questions and reduce uncertainties for the decision makers.

These points are among the disadvantages:

- This method can be more time-consuming than one individual making the decision on his own.
- The decision reached could be a compromise rather than the optimal solution.
- Individuals become *guilty of groupthink* — the tendency of members of a group to conform to the prevailing opinions of the group.
- Groups may have difficulty performing tasks because the group, rather than a single individual, makes the decision, resulting in confusion when it comes time to implement and evaluate the decision.

The results of dozens of individual-versus-group performance studies indicate that groups not only tend to make better decisions than a person acting alone, but also that groups tend to inspire star performers to even higher levels of productivity.

So, are two (or more) heads better than one? The answer depends on several factors, such as the nature of the task, the abilities of the group members, and the form of interaction. Because a manager often has a choice between making a decision independently or including others in the decision making, she needs to understand the advantages and disadvantages of group decision making.

The purpose of this step is to decide the relative merits of each idea. Managers must identify the advantages and disadvantages of each alternative solution before making a final decision.

### **1.3 Effectiveness Analysis of the proposed alternatives**

Major part of decision-making involves the analysis of a finite set of alternatives described in terms of evaluative criteria. Then the task might be to rank these alternatives in terms of how attractive they are to the decision-maker(s) when all the criteria are considered simultaneously. Another task might be to find the best alternative or to determine the relative total priority of each alternative (for instance, if

alternatives represent projects competing for funds) when all the criteria are considered simultaneously. Solving such problems is the focus of multiple-criteria decision analysis (MCDA). This area of decision-making, although very old, has attracted the interest of many researchers and practitioners and is still highly debated as there are many MCDA methods which may yield very different results when they are applied on exactly the same data. This leads to the formulation of a decision-making paradox.

Logical decision-making is an important part of all science-based professions, where specialists apply their knowledge in a given area to make informed decisions. For example, medical decision-making often involves a diagnosis and the selection of appropriate treatment.

But naturalistic decision-making research shows that in situations with higher time pressure, higher stakes, or increased ambiguities, experts may use intuitive decision-making rather than structured approaches. They may follow a recognition primed decision that fits their experience and arrive at a course of action without weighing alternatives.

The decision-maker's environment can play a part in the decision-making process. For example, environmental complexity is a factor that influences cognitive function. A complex environment is an environment with a large number of different possible states which come and go over time. Studies done at the University of Colorado have shown that more complex environments correlate with higher cognitive function, which means that a decision can be influenced by the location. One experiment measured complexity in a room by the number of small objects and appliances present; a simple room had less of those things. Cognitive function was greatly affected by the higher measure of environmental complexity making it easier to think about the situation and make a better decision.

Regardless of the method used, a bureaucrat or manager needs to evaluate each alternative in terms of its

**Feasibility** — Can it be done?

**Effectiveness** — How well does it resolve the problem situation?

**Consequences** — What will be its costs (financial and nonfinancial) to the organization?

#### **1.4 Decision and implementation**

After analyzing all the alternatives, one must decide on the best one. The best alternative is the one that produces the most advantages and the fewest serious disadvantages. Sometimes, the selection process can be fairly straightforward, such as the alternative with the most pros and fewest cons. Other times, the optimal solution is a combination of several alternatives.

Sometimes, though, the best alternative may not be obvious. That's when it must be decided which alternative is the most feasible and effective, coupled with which carries the lowest costs to the organization. (See the preceding section.) Probability estimates, where analysis of each alternative's chances of success takes place, often come into play at this point in the decision-making process. In those cases, one simply selects the alternative with the highest probability of success.

People are paid to make decisions, but they are also paid to get results from these decisions. Positive results must follow decisions. Everyone involved with the decision must know his or her role in ensuring a successful outcome. To make certain that employees understand their roles, one must thoughtfully devise programs, procedures, rules, or policies to help aid them in the problem-solving process.

Ongoing actions need to be monitored. An evaluation system should provide feedback on how well the decision is being implemented, what the results are, and what adjustments are necessary to get the results that were intended when the solution was chosen.

In order to evaluate the effectiveness of decision, one needs to gather information and feedback. Was the original problem resolved? If not, is one closer to the desired situation than he was at the beginning of the decision-making process?

If the plan hasn't resolved the problem, one needs to figure out what went wrong. A bureaucrat or manager may accomplish this by asking the following questions:

**Was the wrong alternative selected?** If so, one of the other alternatives generated in the decision-making process may be a wiser choice.

**Was the correct alternative selected, but implemented improperly?** If so, one should focus attention solely on the implementation step to ensure that the chosen alternative is implemented successfully.

**Was the original problem identified incorrectly?** If so, the decision-making process needs to begin again, starting with a revised identification step.

**Has the implemented alternative been given enough time to be successful?** If not, one should give the process more time and re-evaluate at a later date.

## 2.0 Why decisions are not taken

*"To do nothing is within the power of all men."*

*Samuel Johnson*

Maintaining status quo is employed mainly by parties involved in difficult public policy disputes (though it can be used in other contexts) who do not want changes made. If a group is part of the decision-making process but does not want change, the slower the process, the better. If they do not have a say in the design of the process, then they can deliberately delay it by stalling on their involvement.

Most real decisions have a status quo alternative – that is doing nothing or maintaining one's current or previous decision. A Series of decision-making experiments shows that individuals disproportionately stick with the status quo. Data on the selections of health plans and retirement programs reveal that the status quo bias is substantial in important real decisions. Economics, psychology and decision theory provide possible explanations for this bias.

Status quo effect also influences policymaking within organizations, both public and private. Once made policies frequently persist and become codified implicitly or explicitly in the form of decision-making rules of thumb, company policy, standard operating procedures and the like.

In choosing among alternatives individuals display a bias toward sticking with the status quo. Survey results using questionnaires confirm findings derived from observing economic phenomenon and the tabulations of actual choices on retirement and health plans. Rational explanation can be provided for the status quo bias.

In many democratic governments, there are many mandated procedures that must be followed in formulating and implementing public policies. In the interest of democratic governmental legitimacy, it is possible for a large number of different parties to use the executive, legislative, and judicial systems to have a say in any decision-making process. For example, when the Environmental ministry proposes a new regulation, it is possible for various groups to challenge the proposed regulation. First the challenge is within the Environment ministry, and if that doesn't work, in court. If that doesn't work they can lobby the legislature to change the law in their favor. Without getting into the details of official procedures, it is sufficient to say that the desire for openness in the process of government has also led to some problems. Because so many interests are involved in the policy making process, it can take a very long time to reach and implement decisions.

Parties who see delay as an advantage and do not want a certain rule made or law passed have figured out ways to manipulate the system in order to delay decisions, or even kill a proposal. The filibuster is a classic delay tactic used in the U.S. Senate when one political party opposes a bill introduced by the other party. Filibusters are attempts to delay passage of a bill by debating it at length. Oftentimes, a Senator will simply give an extraordinarily long speech about whatever he pleases. The idea is to hold the floor as long as possible to delay voting on an issue until the appropriate time has passed and it is no longer possible, or until the advocates withdraw the bill, realizing that it will never get past the filibuster.

Our country, which is the largest democracy of the world, can't be exception to the above phenomenon of delay in decision making or not taking decision at all i.e. maintaining status quo. Be it any part of governance, there are always many factor at play which are placed at crossroads to each other. Not many years ago, IT major Wipro's chairman Azim Premji said "complete absence of decision making" in the government is the biggest concern for the country and warned that growth would suffer if prompt corrective action is not taken."I think the biggest concerns are governance issues... complete absence of decision-making among leaders in the government...", he said.

Our department, engaged in the collection of indirect revenue of the Central Government, also faces similar problems and many times authorities avoid decision taking. Main reasons for this situation appears to be following:

**2.1 Various interpretations of law:** This appears to be the most important reason for not taking decision in department. On many issues there are contradictory pronouncements from different appellate forums. Unless the issue is decided by Supreme Courts, which usually takes 10-15 years, contradictory view remains.. In some cases where recent changes have been made in the law, there

remains confusion and it takes time for appropriate authorities in clarifying confusion. Hence many a times officers avoid taking decision.

**2.2 Too many hierarchal positions:** Entire executive set up is having large number of hierarchal positions. This gives rise to natural delay in decision making due to movement of records. Further, if there any one officer in the chain who wants to avoid decision making, he would use various tactics for the same. Consequently on many issues decisions are either not taken or badly delayed.

**2.3 Delay in closure of vigilance cases:** This is classic example of vicious circle. Mostly vigilance cases are initiated due to some past decision of accused officers. As there is tendency in avoiding the decision, the decision on such vigilance cases also takes long time, during which period the accused officer is not given any significant assignments and it also works as a stigma on the officer. Such state of affairs creates a kind of apprehension among officers and they avoid taking decisions.

**2.4 Opportunities for avoiding of responsibilities:** The transfer policy of the department at all level of officers, along with its all positive benefits, also gives chance to officers to avoid decisions. If they find some issue contentious, they tend to avoid decisions knowing well that they would be transferred after some time and thus they can avoid decisions.

**2.5 Lack of infrastructure:** Lack of infrastructure, especially IT infrastructure, also sometimes cause delay as they don't have latest developments on some issues.

### **3.0 Why Bad Decisions Are Made in Government ?**

It is stated that certain 'barriers' are preventing effective government decision making process which result in poor decisions taken by Governments on critical issues. Why? Because government leaders have certain biases that distort decision making.

**3.1 At political level,** some of the barriers to good decision making in government are:

- Do no harm.
- Opposition's gain is our loss.
- Competition is always good.
- Support our Party/group.
- Live for the moment.
- No pain for us, no gain for them.

Each politician expresses a view on a single position and promises to do "everything possible" to enact it. None of them mentions the possible tradeoffs or costs related to each new policy. Nor do they discuss how their proposed policy would interact with other policies and issues. The fact is, increased spending on medical care, defense, education and so on guarantees that fewer taxpayer money and government resources will be available for other initiatives. It may also mean that the national debt will

increase, imposing a heavy burden on future generations. Candidates/Parties who promise to do "everything possible" to enact a specific policy are neglecting the tradeoffs inherent in all political decisions.

When people engage in political discussions, they typically focus on specific issues, such as those mentioned in the campaign promises. They then evaluate politicians based on how well the politicians' positions match their preferences on these key issues. In other words, they focus more on goals than on results. Yet when evaluating business leaders, most people judge them primarily by results: profitability, return to shareholders, innovation and so on. This is the more rational measure of effectiveness.

The core objective of any government should be enlarging the pool of resources that society has available to distribute. This is done by identifying 'wise tradeoffs' for society as a whole.

Yet few citizens judge their leaders according to this key attribute. By focusing on vivid issues covered widely in the media, they ignore one of the most important issues: Valuable resources are often misused, squandered and ignored. These resources are vast and diverse, ranging from tax money and the time of government bureaucrats and officials to national resources such as forests and mineral deposits. All these commodities are finite, and all have been squandered in nations across the globe as a result of inefficient government decisions. These are the many realms in which we miss the opportunities to increase the resources available to society.

Example: People who die in automobile accidents are often cremated/buried with their healthy organs intact. Meanwhile, thousands die because of the lack of organ donors. Most of us would be willing to trade our organs upon our deaths in exchange for access to organs if we needed them. This mutually beneficial trade occurs far too rarely.

Example: Environmentalists want to strengthen legislation to better protect biodiversity. Land developers do not want "Govt" telling them what they can and cannot do with their property. Both sides battle for increased or decreased control /legislation while ignoring possibilities for wiser regulation through joint problem solving.

Long-term thinking about intergenerational issues is lacking in this and many other public decision-making arenas. Another reason is the human tendency to resist any policy change that leads to harm as well as benefit.

These are complex issues. Politicians and activists have been trying to solve some of them for decades; but these same politicians and activists have consistently ignored others.

Social change must occur at two levels: How citizens think, and how the government creates policy. It will not suffice if only those who work in government learn to incorporate these principles. Citizens, too, need to become more familiar with the decision making process in government.

As citizens broaden their mindsets, they will influence other voters and special interest groups, and pressure the government to create wiser legislation.

Ideological, moral or religious debates may seem to resist the type of tradeoffs. Parties who view the opposite side as morally wrong will often refuse to yield the slightest bit from their positions.

Another problem with government is its incentive structure. That is, when spending people's money, the spenders--government officials, most of them unelected--have little incentive to be judicious and may spend the money according to the interests of their own bureaucracies instead of the taxpayer. Thus, many government decisions turn out to be bad ideas.

Government politicians and bureaucrats seem to be especially unconstrained to make good decisions in foreign and defense policy, because the public has a greater familiarity with things that affect them on a day-to-day basis--such as schools, roads, and the environment--than they do with faraway countries.

### **3.2 Decision making by Bureaucrats.**

Govt. employees are often stereotyped as "faceless bureaucrats" – impersonal and interchangeable.

The decision making is affected by:

- more concern about one's job and budget than about serving clients
- competitiveness, distrust and buck-passing among departments
- loss of motivation and caring — the faceless, heartless, lazy bureaucrat
- refusal to take initiative to provide better service because failure may hurt one's reputation and limit opportunities for advancement.
- language (bafflegab, fuzzification) and statistics that hold the bureaucracy's work in an attempt to mask its failure
- refusal to respond to sudden changes or crises
- reports, years in the making, whose recommendations are never acted upon
- lack of communication (incoherent procedures, excessive paperwork, duplication of services)
- delays in decision-making and action while issues make their way from one department or level of management to another

## **4.0 Measures to improve decision making :**

### **4.1 Checks and balances:**

Senior functionaries will stop taking even routine decisions if they are seen with suspicion by Vigilance authorities. Wrong-doing must be punished. But the suspicion of wrong-doing should not hang over officers like a Damocles' sword. In some areas like adjudication, pro revenue decisions are taken to avoid any suspicion or vigilance action which results in unnecessary litigation.

#### **4.2 Market-Linked Salaries a Must**

To encourage efficiency in work and decision making, to reduce corruption and to motivate officers, top level managers/ bureaucrats should be paid market-linked salaries just as their peers in the private sector.

**4.3 Better infrastructure and IT enabled services:** Electronic database enables easy availability of data and statistical analysis which is sine qua non for good decision making. It helps in identifying bottlenecks, distortions and actionable points, thus increasing the effectiveness of decision making.

**4.4 Guidelines, circulars, clarifications:** Contentious issues must be clarified at appropriate times through issuance of clarifications and circulars to enable uniform and correct decision making.

**4.5 Training in leadership:** Management courses, training to improve leadership skills, exposure to decision making processes, emphasizing the importance of value addition to work through effective decisions shall go a long way in improving the effectiveness of decision making.

### **5.0 Measurement of Efficiency and Effectiveness of Decisions**

#### **Historical Perspective**

##### **5.1 Position of the Decision Maker for Decisions based on consultations (18-19<sup>th</sup> Century)**

- The measurement of decisions in 18<sup>th</sup> and 19<sup>th</sup> century was based on how highly positioned and politically or religiously renowned the decision maker was. Aarts et al (1998) argued that decisions then were based on the ability to predict behaviour from actions in the past. Devine (1989) believes when a behaviour is performed many times, there is every tendency that future decisions will be guided by habits rather than being based on evaluative explanations.

##### **5.2 Self Confidence for Decisions based on Intuition (19-20<sup>th</sup> Century)**

- At the end of 19th century and the early 20th another paradigm emerged of making decisions intuitively. When managers make decisions based on logic alone, they rely on someone else's theories, processes, and models. This perhaps implies that making intuitive decisions somehow satisfies manager's ego, feeling that it is him or her who is making the decision in the doing and not subject to other authorities. In making intuitive decisions one doesn't worry whether they have adequate information, whether they possess the required know how or education. The measurement here is based on self confidence.

##### **5.3 Actionable Measurement for Decisions based on Quantitative and Qualitative Proofs (21<sup>st</sup> Century)**



- In the 21st century however, organizations expand, challenges become enormous and the world become a global village sort of with approaches to organizational decisions and activities in variably changing. Managers are now called strategic managers with a big task of coping with the environment as well as working very hard to achieving effective decision making and creativity. Bill and Melinda (2011) designed a frame work for decision measurement they believe decisions need to be measured to be able to gauge the results of the work to improve upon what was done and, ultimately, to improve more people’s lives that are going to be affected by the decisions “Actionable measurement” they call it.
- You may have found a problem that needs resolving, but upon closer analysis, you've identified an underlying situation needing to be addressed. For example, if a customer complains about inadequate service, it may not be the fault of your employee but rather the poor implementation of a company policy.
- **Efficiency = Quantity**
  - Efficiency is a productivity metrics meaning how fast something is done. Hence Testing efficiency metric can be done quantitatively.
  - Efficiency is all about time, money and effort.
  - Efficiency is defined as the extent to which an organization maintains a particular level of production with fewer resources or increases the level of goods or services it produces with a less than proportionate increase in the resources used.
- **Effectiveness = Quality**
  - Effectiveness on the other hand, is a quality metrics meaning how good something is at testing. Hence Testing effectiveness metrics can be done qualitatively.
  - Effectiveness could be best explained using the concepts of accuracy, reliability and ease of use.

Period	Basis of Decisions	Measurement of Effectiveness
18 <sup>th</sup> to 19 <sup>th</sup> Century	Consultation	Position of Decision Maker
19 <sup>th</sup> to 20 <sup>th</sup> Century	Intuition	Self Confidence
21 <sup>st</sup> Century	Qualitative and Quantitative Proofs	Actionable Measurement

#### 5.4 Some Examples of Mathematical Models for Measurement of Effectiveness of Decisions

- **Nonlinear Programming** : Murtagh (2010) pointed out that, nonlinear programming could be used from the quantitative angle to measure organizational decisions in many respects; ranging from decisions risk measurement; to decision rate of return, to success of asset allocation implementation.
- **Structural Equation Modeling (SEM)** :Structural Equation Modeling (SEM) is a statistical technique for testing and estimating causal relations using a combination of statistical data and qualitative causal assumptions. SEM allows both confirmatory and exploratory modeling, meaning they are suited to both theory testing and theory development. Ghasemi (2009) pointed that latent variables could be used in structural equations as dependent or independent variables. If a latent variable in a SEM, it is usually modeled using two or more observed variables called “indicator” variables
- **Tools: 1) Benchmarking 2) Economic Value Added – EVA** Decision making measurement viewed from the perspective of profit maximization and resource minimization.

#### 5.5 Measurement of effectiveness of Decisions in Government/CBEC involves following dimensions:

- Qualitative Aspects
  - Decision (**Policy**) Quality
  - Decision Yield in government is **not always in terms of revenue but quality of service and public goods.**
- Quantitative Aspects
  - Time Taken and **Process of Decision Making**
  - Effort and **Implementation of Decision**
- Although the effectiveness of decisions in the department can also be measured on the basis of above 4 dimensions yet due to hierarchical structure of department, the process of decision making and its measurement may not always be free from position of decision maker in official hierarchy.
- Meetings should be effective forums for discussing or making decisions, but often they are not. Holding meetings is a routine process for decision making in government and the department. However, meetings may not always result in democratised and broad-based decisions but in a tendency spreading of risk and delayed or no decision. So performance may be improved by making a point of decision-focused agendas, beginning meetings by specifying the decisions to be made and who is accountable for them, ensuring that committees have clear decision charters, and so on.

## 6.0 Summing up

To sum up, decision making process involves the process of orientation and understanding of the problem, discussion, decision and implementation of the decision. After implementation, the effectiveness of the decision should be measured for the purpose of feedback. A good decision would involve the following steps:

- Collect data, information and perform analysis . Check the legal position of the decision.
- Subject the decision to public scrutiny. Example-putting up the draft circulars on website for comments.
- Conduct analysis of the alternative course of action.
- Assess the correctness of the decision. Example- the interpretation of law or the correct classification, whether the order is sustainable in Apex court etc.
- Assess the impact of the decision. For instance, whether it is a trade friendly measure, how much is the likely impact on revenue collection .
- After implementation, measure the effectiveness of decision and take feedback from stakeholders which is important inputs for policy decision in future .

## Case Study

### Measurement of Effectiveness of Decision about 'Automation of Processes of Refunds/Brand-Rate-DBK' at JNCH

#### Problems

- Receipt of about 100 Refunds Claims (SAD + Other) per day having on an average about 200 documents.
- Receipt of about 100 Brand Rate Drawback Claims per day having on an average about 200 documents.
- Regular CPGRAM and other complains about 1) Delays 2) Non Tracing of files 3) Development of Vested Interests
- Huge Pendency
- Non-issue of Deficiency Memos
- Iteration of Same Process

### **Decision: Local Level Automation of Refunds, SAD Refunds and Brand Rate of DBK**

- 1) Production and Support of Web Based Software Utility for Digitisation& Receipt of Refunds and Drawback Applications at JNCH.
- 2) Automation of Refunds and Drawback Business Processes at JNCH. (1 and 2 will be collectively called as 'eRefund n DBKbrand'.
- 3) The new initiative will allow the submitting of their Refund and Brand rate Drawback Applications in following manners:
  - Hard Copy (Manually) at Specially created Service Centre
  - Softcopy (Online) after scanning at Service Centre
  - Softcopy at Service Centre
  - Scanning and submitting softcopy at Service Centre on payment of a nominal fees
  - The records will always remain in soft form and vested interests will not be able tamper/control the record to control/delay the refunds/Brand Rate DBK.
  - It will also allow to know the status of their refunds and Brand Rate Drawback
  - It will allow remote online uploading of deficient documents
  - It will allow online reply of queries
  - It will generate eReceipts, eDeficiency, eOrders for Applicants
  - It will generate Auto-Mails w.r.t. each event and send to Applicants
- 4) The new utility will automatically generate Deficiency Memos
- 5) The utility will assist Refund/DBK Authorities by automatically generating editable Draft Orders
- 6) The New utility will allow raising and reply of queries
- 7) The Prospective Vendor will run the Service Centre for Scanning and Receipts of Refunds and Drawback Applications

### **Events**

- Problem briefed to Chief Commissioner – August 8<sup>th</sup>, 2016
- Above decision of Automation of Refund/Brand Rate DBK taken by CC in a informal meeting with Additional Commissioner – August 12<sup>th</sup> 2106

- Meeting with a vendor - August 17<sup>th</sup>, 2016
- Vendor submits a Blue Print - August 27<sup>th</sup>, 2016
- Preparation and Approval of Final Proposal containing Business Requirements – September 7<sup>th</sup>, 2016
- Preparation and 'In Principal Approval' of RFP - September 12<sup>th</sup>, 2016

**Estimates and Effort**

- Financial Resources required – Rs. 40 Lakh
- About 300-400 sq feet space for Service Centre
- Time for RFP Process- 1-2 months
- Time for Development and Implementation- 6-8 months
- Fees for scanning and submitting – Rs. 200/-
- Fees for submitting ready softcopy and deficient documents – Rs. 15/-
- JNCH will have to provide constant support to Prospective Vendor in all areas.

**Survey for measurement of effectiveness of decision about 'Automation of Refund/Brand-Rate-DBK' at JNCH**

Employee surveys are the best gauge of performance on each dimension, since no one knows better than the people involved how good the organization really is. Therefore, you are required to rate the above decision on quality, speed, yield and effort using a 1-to-4 point scale. This will also allow you create a database/benchmark of scores for future comparisons . The results will show you where your decision strengths and weaknesses lie, and what you need to do to improve performance.

Sl. No.	Effectiveness Dimension	Range of Score				Score
1	<b>Decision Quality</b>					
( A)	<b>Official Users-</b>					
	Process Standardisation					
	Accountability					
	Disposal Speed					

	Ease for Official Users					
(B)	<b>Trade-</b>					
	Ease of Doing Business					
	User Interface					
	Transparency					
	Time and Cost yield and effort					
(C)	<b>CBEC</b>					
	Image					
	Efficiency and Effectiveness					
2	<b>2) Process and Speed of Decision Making</b>					
	Decision based on Position					
	Decision based on Intuition					
	Decision based on Qualitative and Quantitative Proofs					
	Time taken in Decision					
	Effectiveness of meeting between CC and Additional Commissioner					
	Time taken in Preparation of Proposal					
	Time taken in Preparation of RFP					
3	<b>Yield</b>					
(A)	<b>Official Users-</b>					
	Process Standardisation					
	Accountability					
	Disposal Speed					
	Ease for Official Users					
(B)	<b>Trade-</b>					

	Ease of Doing Business					
	User Interface					
	Transparency					
	Time and Cost yield and effort					
<b>(C)</b>	<b>CBEC</b>					
	Image					
	Efficiency and Effectiveness					
4	<b>4) Effort</b>					
	Financial Resources					
	Human Resources					
	Development and Implementation					