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Customs Duties: Revenue Significance and Legislative Framework

*M.M. Sury**

ABSTRACT

Customs duties constitute a significant source of revenue for the Central government although its importance has declined over a period of time due to the liberalisation of the economy and the policy of progressively reducing import duties. This paper analyses the trends in import duties since Independence and examines the revenue significance of customs duties among indirect taxes. The paper also discusses the legislative framework with regard to customs duties to understand the various categories of customs duties that are in force in India.

Keywords: *Customs duty; Indirect taxes; Tax revenue; Export duty; GST.*

1.0 Revenue Significance of Customs Duties: An Introduction

The relative contribution of customs revenue in the total tax yield of the Central Government has shown fluctuations due to changes in the foreign exchange situation, domestic production levels, and trends in international trade. For example, in the late 1950s, several restrictions and bans were imposed on imports in view of the difficult foreign exchange position, resulting in fall in revenue from import duties.

During pre-Independence days and even during early post-Independence period, customs duties formed the mainstay of Central tax revenues. However, the relative share of customs duties started declining from early 1950s in view of protective trade policy and dwindling foreign exchange reserves. The share of customs revenue in Centre's total tax collections dropped from 38.9 percent in 1950-51 to as low as 16.3 percent in 1970-71. Since then, customs revenue has maintained an upward swing, accounting for 25.8 percent in 1980-81, and 35.8 percent in 1990-91 (Table 1). This upward trend was attributable to the changed emphasis from physical to fiscal controls to regulate imports.

**Formerly Economic Advisor, Delhi State Finance Commission; Formerly Reader, University of Delhi, Delhi, India. (Email: editorial@journalpresindia.com)*

As the Long Term Fiscal Policy, 1985, maintained, "The basic thrust of customs tariff reforms will be to place increasing reliance on tariffs to regulate imports and progressively reduce the role of quantitative restrictions in this regard. The move in this direction should increase revenues, encourage less import-intensive forms of production, moderate the unjustifiably high protection granted by quantitative restrictions to certain industries and reduce the delays and uncertainties associated with the administration of import licensing".[1]

Table 1: Trends in the Relative Significance of Customs Duties in Gross Tax Revenues* of the Central Government: Selected Years (crore)

Central taxes	1950-51	1960-61	1970-71	1980-81	1990-91	2000-01	2010-11	2015-16
A+B Gross tax revenues	404 (100.0)	888 (100.0)	3,206 (100.0)	13,179 (100.0)	57,576 (100.0)	1,88,603 (100.0)	7,93,072 (100.0)	14,49,490 (100.0)
A. Direct taxes	174 (43.1)	290 (32.6)	870 (27.1)	3,004 (22.8)	11,025 (19.1)	68,306 (36.2)	4,45,962 (56.2)	7,97,995 (55.1)
B. Indirect taxes of which	229 (56.7)	599 (67.5)	2,337 (72.9)	10,175 (77.2)	46,552 (80.9)	1,20,297 (63.8)	3,47,110 (43.8)	6,51,495 (44.9)
Customs duties	157 (38.9)	170 (19.1)	524 (16.3)	3,409 (25.8)	20,644 (35.8)	47,542 (25.2)	1,35,813 (17.1)	2,08,336 (14.4)

Sources: *Government of India, Ministry of Finance, Explanatory Memorandum on the Budget of the Central Government (various years); Receipts Budget (various years); and Budget at a Glance, 2015-16.*
** Before transferring States' share in Central taxes; 2015-16 Budget estimates.*
Figures in parentheses are corresponding percentages of gross tax revenues.

Of late, there has been a decline in the relative importance of customs as a source of revenue. In 2000-01, the share of customs revenue in the total Central tax collections stood at 25.2 percent which further declined to 17.1 percent in 2010-11. It was estimated at 14.4 percent in the budget for 2015-16 (Table 1). This reversal of trend is due to opening up of the economy and the policy of progressively reducing import duties.

Presently, customs revenue is mainly composed of import duties levied on a wide range of commodities. In the budget estimates for 2015-16, import duties accounted for ` 2,01,397 crore (96.7 percent) of total customs revenue of ` 2,08,336 crore (Table 2). Apart from revenue function, import duties act as policy instrument to provide protection to domestic industry, conserve and ration scarce foreign exchange, and frame general international trade policy.

Although at present the share of export duties in customs revenue is very low (3.3 percent in the 2015-16 budget), it was not always so. In the early 1950s, export duties formed a significant proportion of customs revenue, though this situation could not be maintained for long. The yield from export duties reached a peak figure when it formed 29.9 percent of total customs revenue in 1950-51. By 1960-61, export duty revenue had been reduced to 8.2 percent of total customs revenue.

Another upsurge in the relative share of export duties is observed in 1970-71 when they formed 12.0 percent of customs revenue. Since then, the revenue importance of export duties has decreased (Table 2). Like excise levies, the revenue from import duties is also concentrated in a select few commodities including petroleum oils and crude, electrical machinery, organic chemicals, project imports, plastics etc. These are the items which form the bulk of India's imports and hence customs revenue.

Table 2: Trends in the Relative Shares of Import and Export Duties in Total Customs Duties: Selected Years (Crore)

Year	Customs Duties	Import Duties	Export Duties	As Percent	
				Col.3 of Col. 2	Col. 4 of Col. 2
1	2	3	4	5	6
1950-51	157	110	47	70.1	29.9
1955-56	166	128	38	77.1	22.9
1960-61	170	156	14	91.8	8.2
1965-66	539	537	2	99.6	0.4
1970-71	524	461	63	88.0	12.0
1975-76	1,419	1,336	83	94.1	5.9
1980-81	3,409	3,292	117	96.6	3.4
1985-86	9,526	9,443	83	99.1	0.9
1990-91	20,644	20,532	36	99.5	0.5
1995-96	35,757	35,647	110	99.7	0.3
2000-01	47,542	47,400	142	99.7	0.3
2005-06	81,800	81,015	795	99.1	0.9
2010-11	1,35,813	1,32,541	3,272	97.6	2.4
2011-12	1,49,328	1,42,849	6,479	95.7	4.3
2012-13	1,65,346	1,62,496	2,850	98.3	1.7
2013-14	1,72,085	1,64,337	7,748	95.5	4.5
2014-15	1,88,713	1,82,173	6,540	96.5	3.5
2015-16	2,08,336	2,01,397	6,939	96.7	3.3

Sources: *Government of India, Ministry of Finance, Explanatory Memorandum on the Budget of the Central Government (various years); Receipts Budget (various years).*
2014-15 Revised estimates; 2015-16 Budget estimates.

2.0 Legislative Framework

The Constitution of India grants exclusive powers to the Central Government to impose duties of customs. By virtue of entry 83 of List I (Union List) in the Seventh Schedule of the Constitution of India, the Central Government is empowered to impose 'duties of customs including export duties'.

During the British rule, various customs and tariff enactments were passed from time to time, the following two being the main: (a) The Sea Customs Act, 1878, and (b) The Tariff Act, 1934.

After Independence, the Sea Customs Act, 1878 and other allied enactments (Inland Bounded Warehousing Act, 1896 and the Land Customs Act, 1924) were repealed by a consolidating and amending legislation entitled the Customs Act, 1962. Similarly, the Tariff Act of 1934 was repealed by the Customs Tariff Act, 1975.

2.1 Customs act, 1962

This is the main Act which provides, vide section 12, for the levy and collection of customs duty. This power is derived by virtue of entry 83 of List I (Union List) in the Seventh Schedule of the Constitution of India. Besides, the Act provides import/export procedures, prohibition on importation and exportation of goods, offences penalties etc. It stands as a complete code in itself as to the levy and collection of duties on import and export of goods.

A. Rules under Customs Act, 1962: Section 156 of Customs Act empowers the Central Government to make rules, consistent with provisions of the Act, to carry out the purposes of the Act. Thus, the Government has framed various rules some of which are as under:

- Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- Baggage Rules, 1998.

B. Regulations under Customs Act, 1962: Under section 157 of the Customs Act, the Central Board of Indirect Taxes and Customs (CBIC) [Earlier Central Board of Excise and Customs (CBEC)] is empowered to make regulations, consistent with the provisions of the Act, to carry out the purposes of the Act. Different regulations have been framed within the parameters of these powers as, for example, Project Import Regulations, 1986.

Similarly, CBIC can issue circulars, instructions, directions for the purpose of uniformity in classification of goods and with respect to the levy of duty thereon.

2.1.1 Customs tariff act, 1975

It contains two schedules. Schedule 1 includes various import items in systematic categories—in accordance with the international scheme of classification of internationally-traded goods known as Harmonized System of Commodity Classification—and specifies the rate of import duties thereon, as prescribed by the legislature. Schedule 2 incorporates items that are subject to export duties and the rate of duties thereon. Further, it makes provisions for additional duty (CVD), preferential duty, anti-dumping duty, protective duties etc.

Customs duties are generally levied either on specific or ad valorem basis, but in some cases specific-cum-ad valorem duties are also levied.

2.2 Various types of customs duties

In accordance with the provisions of the Constitution, various types of customs duties are imposed by the Government under different Acts of Parliament.

Goods become liable to import duty when there is import into India. Import is completed only when goods cross the customs barrier. This crossing of customs barrier is the taxable event in the case of imports.

Goods become liable for export duty when there is export from India. Export is completed when goods cross territorial waters of India.[2] Although export duty is collected before the ship leaves the port, it does not mean that taxable event has taken place. One can say that export duty is collected in advance.

Following are the important customs duties levied on goods imported into or exported from India.

2.2.1 Basic customs duty

Under Section 12 of the Customs Act, 1962 (the main enactment), "duties of customs shall be levied at such rates as may be specified under Customs Tariff Act, 1975…on goods imported into, or exported from India.

As per section 2 of the Customs Tariff Act, 1975, the rates at which duties of customs shall be levied are indicated in the First Schedule and the Second Schedule of this Act. First Schedule deals with import tariff and Second Schedule with export tariff.

The duty may be a percentage of the value of the goods or at a specific rate. The Central Government has the power to reduce or exempt any goods from these duties.

2.2.2 Integrated goods and services tax (IGST) on imports

Prior to the introduction of GST on July 1, 2017, Additional (Countervailing) Duty of Customs was leviable—under Section 3 (1) of the Customs Tariff Act, 1975—

on goods imported into India.[3] Moreover, Special Additional Duty (special CVD or SAD) was imposed in lieu of sales tax/VAT. With effect from July 1, 2017, these duties were replaced by IGST.

IGST is applicable by virtue of section 3 (7) of the Customs Tariff Act, 1975. This section was amended with effect from July 1, 2017. The amended version provides that any article which is imported into India shall be liable to IGST at such rate which is leviable under section 5 of IGST Act, 2017 on a like article on its supply in India.

IGST is calculated on the aggregate of the following:

- Assessable value.
- Basic customs duty.
- Social welfare surcharge (10 percent of basic customs duty). Other notable points are as under:

1. IGST is applicable in case of import of goods/services.
2. IGST is not applicable on baggage.
3. Input tax credit pertaining to IGST paid is available.
4. If an exemption is given on inter-State supply under IGST Act, 2017, it is taken into consideration while calculating IGST for the purpose of import.

2.2.3 GST compensation cess

A cess over the peak rate of 28 percent of IGST on certain specified luxury and sin goods like tobacco and tobacco products, pan masala, aerated waters, motor vehicles, is imposed to compensate States for any revenue loss on account of implementation of GST.

2.2.4 Anti-dumping duty

Dumping occurs when one country (say China) exports an article to another country (say India) at a price lower than its normal value. Since this is an unfair trade practice having a disruptive effect on international trade, anti-dumping duty comes in handy as a measure to rectify the situation.

Thus, if an article is exported from outside India to India at less than its normal value, the Central Government can impose anti-dumping duty on such transaction. It can be imposed by issue of a notification under section 9A of the Customs Tariff Act, 1975. However, anti-dumping duty cannot exceed margin of dumping in relation to such article. Margin of dumping means the difference between normal value and export price. Normal value means comparable price in ordinary course in trade, for like article, when destined for consumption in the exporting country. Export price means the price at which goods are exported.

Anti-dumping duty is generally imposed in cases where Indian production units are manufacturing similar articles.

It is noteworthy that section 9B(1)(b) of Customs Tariff Act, 1975 provides restrictions on the power of the Government to impose anti-dumping duty in the case of imports from a WTO member country. In such cases, anti-dumping duty can be imposed only if the Central Government declares that import of such articles in India causes material injury to industry established in India or materially retards the establishment of any industry in India.

2.2.5 Safeguard duty

Central Government can impose safeguard duty under section 8B of the Customs Tariff Act, 1975. This duty can be imposed on specified imported goods if the Government is satisfied that the goods are being imported in such increased quantity and under such conditions that they are causing serious injury to the domestic industry. Safeguard duty is valid for 4 years. The period of 4 years can be extended but the aggregate period cannot be more than 10 years.

2.2.6 Protective duty

It is a duty imposed on imported goods for protection of interests of any industry in India on the recommendation of Tariff Commission. As per sections 6 and 7, protective duty is effective from the date specified in the First Schedule of the Customs Tariff Act, 1975.

2.2.7 Social welfare surcharge

It is levied at the rate of 10 percent of the aggregate duties of Customs, on imported goods, to help provide for social welfare schemes of the Government.

2.2.8 Export duty

Under Section 12 of the Customs Act, 1962, goods exported from India are chargeable to an export duty. The items on which export duty is chargeable and the rate at which the duty is levied are given in the Second Schedule of the Customs Tariff Act, 1975. Under Section 8 of this Act, the Government enjoys emergency powers to increase the existing rate or to levy fresh export duty depending on the circumstances.

2.2.9 Cesses on exports

Certain cesses are leviable on specified articles of export under various enactments of the Government of India. These cesses are collected as duties of customs and handed over to the agencies in-charge of the administration of the commodity concerned. Presently, cesses are imposed on exports of coffee, coir, lac, mica, tobacco (unmanufactured), oil cakes and meal, marine products, cashew kernels, black pepper, cardamom, iron ore, animal feed and turmeric.

2.3 Exemptions from customs duty

Customs duty exemptions are provided through provisions of Customs Act, 1962 and Customs Tariff Act, 1975. Central Government can also grant exemptions by issuing a notification under section 25 of the Customs Act. Exemptions given by notifications may be unconditional or subject to conditions given in the notification. Different exemption notifications have been issues for duty free imports by Ministry of Defence, Indian Navy, Coast Guards and other Central/State organizations.

General exemptions have been granted for imports by privileged organizations like United Nations agencies.

3.0 Concluding Remarks

While the share of customs duty as a source of revenue has declined since liberalisation owing to progressive reduction of tariffs on imports, it still remains an important instrument to not just gather revenue for the Central government but also to deal with unfair trade practices such as dumping. In accordance with the provisions of the Constitution, various types of customs duties are imposed by the Government under different Acts of Parliament. The legal framework with regard to customs duties is robust enough to ensure trade facilitation on one hand and prevention of unfair trade practices on the other.

Endnotes

1. Government of India, *Long Term Fiscal Policy*, 1985, p. 40.
2. Territorial sea, as defined by the 1982 United Nations Convention on the Law of the Sea, is a belt of coastal waters extending at most 12 nautical miles (22.2 km) from the baseline (usually the mean low-water mark) of a coastal state.
3. **Additional (Countervailing) Duty of Customs:** The rate of this duty, popularly known as countervailing duty, was equal to the excise duty on like articles if produced or manufactured in India. If the rate of this duty was on *ad valorem* basis, the value for this purpose was the total of the value of the imported article and the customs duty on it (both basic and auxiliary). The underlying philosophy of a countervailing duty is to ensure that the protection provided by the import duty to domestic industry is not

reduced. Till the early 1960s, countervailing duty was levied on a select basis on products which were considered to erode the margin of protection to the domestic industry on account of the excise duty. In course of time when the number of excisable goods increased, the selective use of countervailing duty was found to be inadequate and complicated. Therefore, the Indian Tariff Act, 1934, was amended in 1963 to insert a new Section 2A to provide for the levy of countervailing duty in all cases where excise duty was leviable on a similar indigenous commodity.