

# Role of Customs in International Relations<sup>1</sup>

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Ladies and Gentlemen,

It gives me great pleasure to deliver the inaugural B.N. Banerji Memorial Lecture institutionalized in memory of the first Chairman of the Central Board of Excise and Customs (CBEC). Today's topic, *Role of Customs in International Relations*, is appropriate in commemoration, and in celebration, of operations of the institution of customs in India. We should note that, by its very concept, customs is an international institution in as much as the duty is imposed on the imports, and sometimes exports, of goods. Its operations are therefore also mainly at the geographical borders of an economy. It thus poses especial issues and challenges that policymakers and officials have to encounter when designing customs tariffs and implementing the customs code.

## 1. Concept, rationale and objectives of customs

Let me begin with the concept of customs duty (CD). The rationale for imposing CD is couched in the need to protect domestic industry—typically infant industries—that need to be sheltered from aggressive foreign competition that may occur even before domestic units have had adequate time to catch up with foreign competition. Once the economy develops, the argument for continuation of high customs tariffs cannot be easily maintained. Indeed, over the years, they have been inexorably scaled back in India. The World Trade Organization (WTO) has played a significant role in making economies more competitive through scaling back of customs tariffs.

The operations of a customs department straddle a wide variety of objectives. First, it collects customs duty. Second, it collects some domestic taxes such as the VAT or GST on imports. Note that these are taxes on domestic consumption. The consumption items can be from domestic or international sources and the tax should be the same irrespective of source. Thus VAT or GST is collected at the customs point on incoming goods. In India this is termed countervailing duty in the sense that it countervails—or equalizes—domestic with foreign sourced consumption items of the population. Note therefore the conceptual difference between customs tariffs and countervailing duty. The implication is that while the tariff structure is scaled back to reflect *international* agreements and arrangements, the countervailing duty reflects the *domestic* consumption tax rate.

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<sup>1</sup> First B.N. Banerji Memorial Lecture, June 4, 2012. Mr. B.N. Banerji was the first Chairman of the Central Board of Excise and Customs, 1964-67.

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A second operational objective of customs is to minimize smuggling of demerit goods such as cigarettes and alcoholic beverages across borders since these items are usually highly taxed and their tax rates may also vary significantly across borders. Sometimes the same bill of lading may be used across borders by vehicles to transport several loads of the items and customs checks play an important role in keeping such practices to a minimum. Over the last two decades, money laundering and drugs trafficking have also been assigned to customs organizations over and above border patrols belonging to security departments. For meeting these objectives, cooperation among customs departments across the globe has intensified over the years.

A third operational objective is the collection of statistics. For future policy making, it is important for any economy to keep account of the flow of goods and services to and from the economy in its international trade relations. Increasingly, trade classification has been finessed over the years into more and more digits. This information has to be meticulously noted and entered, a task that is often assigned to the customs department. The more complex a customs tariff structure is—as is the case in India—the greater is the challenge on officers to impose and collect the right tariff on the imported good. It is here that moral hazard can pose a problem if a section of the officers become unscrupulous. Leadership in the customs department is crucial in keeping this problem at bay. To combat this problem many countries have simplified the tariff structure, the most extreme simplification being the case of Chile which has only a single tariff. Thus, if more revenue is needed, that rate is increased and, when revenue needs are less, the rate is scaled back. To avoid tracking the import and export of goods and towards the objective of making the customs department exclusively an operational department, in some countries this function has been passed to the official statistics department.

Let me address selected issues of a policy, operational and administrative nature that are of relevance to the role of customs in international economic relations.

## **2. Revenue generation through customs duty in emerging developing economies (EDEs)**

EDE's, in their nascent period, have depended quite heavily on customs duty not only to protect infant industry but also for a robust source of revenue. However, the revenue growth has reflected the duty structure. Invariably, as duty rates decline, revenue growth tends to get arrested. Of course as a slight caveat, I should note that the lower customs tariff structure's negative effect on customs revenue gets countered somewhat as international trade expands as a result of lower duty rates.

Revenue growth also reflects the country's industrial strategy. For example, first, capital goods, intermediate goods and raw materials may need to be taxed at lower rates than final goods. This is because such goods are directly needed in the process of production. Note that, as the share of manufacturing in GDP increases, the share of imports of intermediate

goods *vis a vis* the imports of finished products would tend to increase. This would be the case especially if the growing manufacturing sector is significantly dependent on imported capital and intermediate goods. Thus, if the share of lower-rated to higher-rated imports goes up, that would reduce the growth rate of revenues from customs duties.

Second, if the manufacturing—private or public sector, expands while enjoying exemptions from import duties, as is likely to be the case, the share of exempt imports in total imports also grows. Thus, as industrialization progresses, the automatic growth in customs duty revenue tends to decline. Third, as countries promote export oriented growth, more of the commodity taxes—both domestic and import—have to be refunded to export oriented firms because all attempts are made to enable exports to enter international markets competitively, or without any embedded taxes in their prices.

Third, in fact, this effect of revenue erosion tends to deepen as duty drawback systems tend to be based not on actual duty paid but on somewhat magnified sector-wide formulae for duty drawbacks that are typically used for administrative convenience.

Fourth, discretionary measures also tend to affect the import tax base. Sometimes, customs duty structures shift from *ad valorem* towards specific rates, in pursuit of greater administrative simplicity. Also, as industries mature, the rates of nominal protection are frequently reduced over time as I already mentioned.

Finally, fifth, it is not uncommon to use artificial exchange rates for import duty valuation purposes which further reduces potential revenue. There are, therefore, several factors that stand in the way of a naturally growing revenue base from imports.

It is therefore seen in any cross country comparison that, with economic development, the role of customs duty in revenue generation declines while other roles that I mentioned earlier move forward even as domestic consumption taxes and income taxes become the revenue drivers.

### **3. Changes in customs duty structure: the Indian experience**

In light of the above discussion, in this section, we review the experience of tariff structure changes in India.

#### *a. The context of WTO*

The WTO has made concerted efforts to facilitate trade through reduction /elimination of tariffs as well as by removal of non tariff barriers. Reflecting the low level of reforms in agricultural tariffs, let us focus on trade in non agricultural products. In the first GATT rounds, tariffs were cut on a selective product-by-product basis through requests and offers made between participants. However, subsequently, countries decided to use formulae to

cut tariffs across-the-board. For example, during the Kennedy Round (linear cut formula) and in the Tokyo Round (Swiss formula<sup>3</sup>), developed countries applied formulae, but with several exceptions. In the Uruguay Round, developing and developed participants negotiated their tariff cuts using a variety of methods to reach a reduction average target comparable to that of the Tokyo Round (1/3 cut). In the Doha declarations, the ministers agreed to launch tariff-cutting negotiations on all non-agricultural products. The aim was “to reduce or, as appropriate, eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries”.

The chastened reality is that these negotiations are still going on in the absence of consensus. The negotiations on reductions in tariff on non agricultural products are referred to as NAMA (non agricultural market access) negotiations. NAMA refers to all products not covered by the Agreement on Agriculture. In practice, it includes manufacturing products, fuels and mining products, fish and fish products, and forestry products. Over the years, NAMA products have accounted for almost 90% of the world merchandise exports.

The Uruguay Round produced significant improvements in market access for NAMA products in developed country markets, as tariff averages were reduced from 6.3% to 3.8%. In the case of developing countries, the most important contribution was made in the form of new tariff bindings. Binding coverage for NAMA products in developing countries increased from 21% to 73%, which has considerably increased the predictability of trade.<sup>4</sup>

#### *b. Tariff reforms in industrial goods*

In the mid-1980's, the tariff rates were very high and the structure complex. The government's 1985-86 Long-Term Fiscal Policy (LTFP) emphasized the need to reduce tariffs, apply fewer and more uniform rates, and reduce and eventually eliminate quantitative restrictions on imports. This was applied selectively by rationalising the rates for specific industries such as capital goods, drug intermediates, and electronic goods. However, contrary to the LTFP recommendations, tariffs continued to be raised for revenue reasons, the weighted average rate increasing from 38 percent in 1980–81 to 87 percent in 1989–90. By 1990–91, the tariff structure ranged from 0 to 400 percent. More than 10 percent of imports were subject to tariffs of 120 percent or more. Reflecting the influence of various special interest groups regarding tax policy, wide-ranging exemptions were granted outside the budgetary process, further complicating the system and rendering it ad hoc.

The reform of import duties in earnest began in 1991–92 when all duties on non agricultural goods above 150 percent were reduced to this level. This “peak” rate was lowered over the next four years to 50 percent, and then to 40 percent in 1997–98, 30 percent in 2002–03, 25 percent in 2003–04, 20 percent in 2004–05 (January 2004), 15 percent in 2005–06, 12.5% in

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<sup>3</sup>  $t(\text{new}) = (a \times t(\text{old})) / (a + t(\text{old}))$ , where  $t$  is the tariff rate and  $a$  is the coefficient to be negotiated.

<sup>4</sup> The NAMA negotiations are also attempting to address the issue of non tariff barriers to trade, though forward movement on this front has been limited.

2006-07 and finally to 10% in 2007-08 . It is important to note that these reductions were not mandated by any WTO requirements as India's applied rates are considerably below the bound rates. And the duty reductions were made even for unbound items.

Table 1 gives a broad view as to where we stand in terms of tariffs.

Table 1. Cross-Country Tariff Rates  
(not including CVD, countervailing duty)<sup>5</sup>

Country	Average (Agr)	Average (Indy)	Average (All)	TWA (Agr)	TWA (Indy)	TWA (All)	Binding coverage
India	31.8	10.1	13	44.2	5.1	6.9	73.8
Argentina	10.3	12.9	12.6	9.8	12.3	12.2	100
Australia	1.3	3.0	2.8	2.7	4.0	3.9	97.1
Brazil	10.3	14.2	13.7	11	9.9	10	100
Canada	11.3	2.6	3.7	11.2	2.7	3.4	99.7
Indonesia	8.4	6.6	6.8	3.4	2.2	2.4	95.8
Malaysia	10.9	7.6	8.0	14.4	4.3	5.1	84.3
Pakistan	17	13.4	13.9	9.1	9.9	9.8	98.7
Philippines	9.8	5.7	6.3	15.7	3.7	5.1	67
Singapore	0.2	0		1.2	0		100
United States	4.9	3.3	3.5	4.3	2.0	2.1	

Source: WTO world tariff profile 2011. (All figures are in %)

Note:

- i. Average tariff is the simple average of all applied tariff rates at 6 digit level.
- ii. Agr—Agricultural products
- iii. Indy-Non agricultural products
- iv. TWA- Trade weighted average or simply the collection rate which is obtained by dividing the total revenue by the total value of imports. Revenue from basic customs duties alone has been taken into account.

Collection rate is the ratio of revenue collected (all duties collected at customs including basic duty and CVD) to value of all imports (including exempted imports). Figures available in the Economic Survey include all revenue collected at customs including CVD) which explains the difference in the effective tariff rates in the two tables. Table 2 reveals that the customs duty collection rate has declined from 47% in 1990-91, 31% in 1996-97, 27% in 1997-98 and 23% in 1998-99. The rapid continuing decline in further years is depicted in Table 2. Before we end the observations over collection rate, it must be acknowledged that the decline is not just due to lower tariff rates but also a plethora of exemptions that continue to prevail and are even newly introduced.

<sup>5</sup> Note that CVD is the domestic consumption tax CENVAT applicable on imports. Though Indian nomenclature includes this under customs duty, any cross-country comparison should exclude it.

Table 2. India: Change in Effective Tariff Rate  
(including CVD, countervailing duty)

S no	Commodity group	90-91	05-06	06-07	07-08	08-09	09-10	10-11
1.	Food Products	47	32	23	19	4	3	3
2.	POL	34	6	5	6	3	2	6
3.	Chemicals	92	20	22	22	16	14	17
4.	Man made fibre	83	34	28	30	17	22	30
5.	Paper and newsprint	24	9	10	10	8	8	8
6.	Natural fibres	20	13	12	13	6	4	5
7.	Metals	95	25	24	24	17	17	22
8.	Capital goods	60	13	14	16	13	11	13
9.	Others	20	5	6	6	4	4	4
10.	Non Pol	51	12	12	13	9	8	9
11.	Total	47	10	10	10	7	6	8

Source: Economic Survey 2011-12

#### 4. Benefits of computerization in customs processes as international practice

The use of information technology (IT) is imperative for customs processes. Focusing on Customs and Excise, let me recall my experience at North Block during 2004-08. Two systems integrators were to achieve connectivity of all offices across the country, thereby sharpening tax administration and improving taxpayer services. You are all also aware that already the Indian Customs EDI system or ICEs allows online assessment of import and export documents through electronic data interchange. Thus the document can be filed and assessed by the office through this procedure more easily than earlier. It enables remote control between the customs department and customs agent, so that the custom agent does not have to be physically present in the customs department. Facilitation should also have occurred between the customs department and Reserve Bank of India, the banks and other custodians like the Port Trust and so on. This had functional already in 35 locations and covered about 85 per cent of India's international trade.

Second, the customs e-commerce gateway or ICE gate functioning from 2004 enabled e-filing of import or export goods declarations, filing of manifests by airlines and shipping agents, and exchange of data between customs and agencies such as the Director General of Foreign Trade (DGFT). So you again have all the declarations and filing going through an electronic channel.

Third, and this is extremely important as an advance in management and practice, clearance of customs drawbacks and refunds should also have been speeded up through a risk management system so that the total time for clearance is diminished to a fraction of what it was a few years ago. The risk management techniques identify suspect cargo on a random basis. Today in a world that requires enhanced security, there may be a need to revisit this kind of system reflecting exogenous factors, though I hope that we will be able to carry out and adhere to the risk management system and reduce processing time even more in the future.

Fourth, enhanced computerization is leading to the production of more meaningful statistics and data management so that both on the customs and excise side, the type of data that have been generated can be utilized much better for policy making and for administrative improvements. My question is, is this being done? For example, excise and service tax, apart from customs, depend on a system for excise and revenue monitoring. This enables a buildup of profiles of assesseees and an information database of returns of units that are paying Rs. 1 crore or more in tax. During the period I am referring to, about 5000 units or so tended to file electronically. Now, four to five years later, that number should be much larger.

Fifth, electronic registration of assesseees was also enhanced. I recall that a digital certifying authority enabled electronic transactions using digital signatures. ISAT functioned through five registration authorities in Bangalore, Chennai, Delhi, Kolkata and Mumbai within the customs house premises. I would like to be updated on its progress as of date.

Thus, looking ahead, the future of the customs, central excise and service tax departments lies in further deepening of computerization following international norms. The best way to convince those officers who still have doubt is not to force it on them but to have intensive workshops to train them and to visualize for them the benefits of IT. There must also be a concerted effort in reducing moral hazard through minimizing interface between officers and customs agents. The benefits of a robust and healthy customs service through rapidly increasing the use of IT has to be convincingly conveyed to officers in growing numbers. This remains the greatest challenge for department heads.

I understand that the national data centre is almost completed, it comprises an electronic hardware storage database and facilities management, is linked through a wide area network and local area networks (LAN) in offices across the country. If this is so, I would feel extremely satisfied for the process that we had initiated to have been completed.

I would like to end this section on IT to bring to your attention one international example of its benefits. It comes from the role of customs as a monitoring instrument in international trade and flows. In the international arena, customs plays an important monitoring role in checking the borders for contraband, smuggling and such other non-tax criminal activities. But they may also be tax related. One such instance is what has been termed the “carousel

fraud” problem in the United Kingdom that was detected through electronic monitoring. It pertained to the VAT that is applicable in the European Union at different country-specific rates. In essence it is the practice of errant taxpayers who collect VAT from those to whom they sell but, instead of passing the tax debit – tax credit amount of the authorities, they just pocket it. In fact, it was discovered that the practice is carried out in connivance between the two parties, or, in full knowledge of the buyer who was supposed to have paid VAT to the seller. It was essentially discovered at the customs point as a practice of collusion between an importer (buyer) and exporter (seller)—hence the name “carousel” that was observed by continuous examination of their declared accounts. But essentially it can occur between a domestic buyer and domestic seller as the two colluding parties. The revenue that is not passed on to government can then be shared by the two tax evaders. This is the kind of role that customs officers increasingly take on in developed countries even as their role in collecting revenue from customs tariffs may have diminished as customs tariffs themselves are very low today.

#### **5. Large taxpayer units (LTU’s)**

The quality of tax administration can improve significantly if information on taxes that businesses pay could be considered under one umbrella. Businesses pay corporate income tax, excise, VAT/GST and customs duty. Tax authorities should be able to sit across a business with full information. I understand that, in a pilot experiment in Maharashtra, it has been found that businesses declare different turnover for different taxes. If that is the case then, even at a most rudimentary level, it may be concluded that these taxes should be considered under the same roof so to speak. From a taxpayer’s point of view , their compliance costs should also decline if they are able to clear all taxes at one point.

It is with this objective in mind that 50 countries globally and 20 in Asia have opted for large taxpayer units or LTUs that requires large taxpayers to file all taxes at the same window. In India we initiated the concept in five metropolitan cities, Bangalore, Chennai, Delhi, Kolkata and Mumbai where the objective was to link both income tax on one side, and customs central excise and service tax on the other in one unit. One deficiency of the Indian design was to make LTU’s optional for large businesses to sign on to, the concern being that large taxpayers should not feel that they were being coerced into joining this mechanism of tax payment at least in the initial stage; and we also wanted to observe whether the administration could stand up to the special challenges that LTU operations were expected to pose. As long as 30 large taxpayers opted to sign onto a LTU in a city, we opened the LTU. But, as we all know, the process was slow. I must note that I felt that there was some resistance also from senior officers who felt that both departments have different concerns and objectives. The final outcome of all these views and positions was that the synergy that was expected did not successfully spread equally across LTU’s.



Looking back, LTUs were going to bring the two departments together in terms of operations, exchange of information through computerization, and offer the same taxpayer facilities. In each city for all large taxpayers as defined, it would enable the large taxpayers to take advantage of a single window facility to pay all taxes in a customer friendly environment. The Bangalore operation was initiated on October 3, 2006, followed slowly by the other four. So many countries have them that, after our initial experience, it is time now to intensify the process and make them compulsory as an institution.

Note that in the United Kingdom, for example, the tax administration is organized by Large Business Service (LBS) divided by sector. They are Oil and Gas, Banking, Insurance, Telephone and Telegraph, Autonomous Agencies (municipal corporations, universities and so on), and others. Each department is located in a city and houses specialists in both corporate income tax and VAT in the same department. There is also a trade specialist who is recruited from the private sector for a finite period usually but can also be laterally absorbed into the department later. They are topped by a customer relations manager (CRM) who has the overview of the sector with an overall taxation perspective. Together they have regular consultation meetings with a large business in their sector in a continuous dialogue regarding economic trends, sectoral developments and revenue potential. There is no one-to-one interface in this model.

If we can imagine the sectoral departments as one horizontal line, then supporting the line is the stem that comprises functional departments including Legal, Debt, banking, Risk and Intelligence, Knowledge and Analysis and so on. Sectoral departments have to "buy" staff time from the functional departments for various functions performed. This is how resources get allocated across departments. This T-shaped organization of Her Majesty's Revenue and customs (HMRC) was the result of a committee that produced a report entitled, *A Review of the Revenue Department* (2004) that resulted in the amalgamation of the two departments in 2006 with the type of synergies that I spoke about earlier. Interestingly, therefore, the United Kingdom moved away decidedly from the organization they helped establish in different parts of the globe to one that is sector and function based and has turned out to be more open, transparent and consultation based.<sup>6</sup>

## **6. Customs' balancing role in international economic relations: selective Indian cases**

Almost all the functions of customs have international ramifications since by their very nature, customs deals with imports and exports. In turn, these could have political

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<sup>6</sup> Can India contemplate deep and meaningful changes in a comparable direction? See P. Shome (2012), *Tax Shastra: Administrative Reforms in India, Brazil and the United Kingdom*, Business Standard Publishers, New Delhi.

ramifications. Smoother relations in customs formalities and reasonable restrictions in clearance of goods and persons foster good political relations. Unduly tight control and harassment of customers and delay in clearance of goods at the point of import or export lead to strains in international relations, both economic and political, apart from the usually discussed rise in business costs. All international commercial transactions are enforced at the border by customs. The commerce department designs the policies on licensing, quantitative restrictions, and subsidy to import or export; but such policies are put into effect by customs at the point of import and export. Thus trade facilitation by a customs administration is a significant consideration in promoting good economic and political relations between two countries, and its absence may prove to be a big impediment in those relations.

#### *a. Customs duty structure*

A high or low customs duty structure not only has an impact on revenue as argued earlier, but it is also an issue in fostering comfortable or tense international economic relations. By raising the customs duty structure very high, import from any country can be effectively blocked. Sometimes it is directed against cheap imports of selected goods from some country against which the indigenous industry cannot compete, which may go well beyond the infant industry argument. Duty on cars in India has been high to protect the car industry. In particular, second hand cars are protected with high duty in addition to receiving protection through licence requirements. High duty on agricultural goods in India also makes agricultural imports unprofitable. And the limit imposed by the WTO in this respect is high enough that has enabled India to keep its duty rates within that limit. Then there was the case of high customs duty on shoes imported by the United States which made export by other countries impracticable.

#### *b. Customs administration and exports*

If export duties are high, the post-tax cost of goods is high and exports become uncompetitive. Duty drawback assumes great importance in such cases. These are usually designed by the commerce department in consonance with the customs department and implemented by the latter. Achieving appropriate design and implementation is a major task in ensuring export competitiveness by removing embedded taxes from exports. Reflecting the complexity of duty drawback, some developing country environments have not been fully cognizant of the need to provide duty drawback or offset for value added tax (VAT) against exports.

I have just returned from Myanmar at the invitation of its government from heading the first international tax reform mission there, as the country opens up to international norms and practices. I found that exports do not receive input tax credit or setoff. Though customs duty on import components of exports are theoretically given drawback, unless the

manufacturing unit is fully export oriented, it is difficult for the business to receive drawback for the portion that is exported reflecting the lack of a formula based on which partial drawback could be given. This is giving rise to tensions among the domestic business community and their international competitors who are being invited to operate in new Special Economic Zones (SEZ's) with full facility of customs duty drawback and input tax credit/offset of commercial taxes paid.<sup>7</sup> Thus administrative practices at customs can have an adverse impact on international economic relations.

### *C. Proper interpretation of licence requirements by customs*

The role of promoting good international relations can be understood more from what adverse impact customs activities could have on international relations. An account is given by an ex-customs officer of how the relations between India and Bangladesh came under severe stress some years back due to the action of customs at the border. It was a religious occasion in Bangladesh when the consumption of onion goes up significantly. Last minute supply of many truckloads of onion from India was held up by customs at the India-Bangladesh border due to non-compliance with some customs formalities by onion exporters at the Indian end. It created almost a crisis situation across the border and led to frantic telephone calls by the diplomatic staff from the Embassy of Bangladesh. Last minute intervention by the senior most customs officer in Kolkata prevented the crisis and saved the day from precipitating an economic and political situation between the two neighbours.

Unduly harsh customs interpretation of licence requirements or regulations had also upset jute trade with Bangladesh. There was an instance when, for apparently insignificant violation of licence given for the purpose of import of raw jute, whole shiploads of raw jute consignments were held up by the customs. It was only after a timely intervention by the higher authorities that such consignments were released, more than once. Thus overtly strict positions by customs on smaller matters should be considered from a realistic perspective for, otherwise, international economic relations would certainly suffer. Customs has to rise to this responsibility over and above attending to its routine calls and tasks.

### *d. Customs and international treaties*

The interplay between customs and an international treaty can be seen in both a theoretical premise and in practice. In theory it is important because at the stage of negotiation of the treaty, the role of customs is to help arrive at desirable rates of duty in relation to existing rates in terms of the impact of the proposed rates on the economy. At the execution stage, the role of customs is perhaps even greater because it has to ensure that the intention of the treaty is achieved in implementation. In the case of treaties with Nepal, for example, it is incumbent on customs to ensure that the goods intended for Nepal do not flow back to

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<sup>7</sup> Myanmar does not yet have a VAT but has a commercial tax against which offset is given for goods tax though not for tax on services.

India. Nepal, being a land locked country, has the right to import via India and there are treaties to enforce this right. However, often it is noticed that Nepal's imports are of a kind that are not needed in Nepal at all. For example, enormous amounts of zip fasteners and machinery are imported which cannot be absorbed there in practical terms. It is the duty of customs to maintain a balance between needed measures to check the apparent attempts to import goods into Nepal for clandestinely exporting them back to India and the need to maintain friendly relations with an important neighbor in both geo-political and socio-political terms. No excessive measure can be taken that might tilt the balance in an unwarranted direction. Thus the nuanced role expected of customs in enforcing international treaties in a fine quantitative and qualitative balance cannot be exaggerated.

*e. Anti-dumping duty on imports*

Anti-dumping duty is imposed by countries to protect their industries from unjustified competition that does not reflect market forces. It is leviable under Section 9A of the Customs Tariff Act, 1975 read with the Rules which are framed under Section 9A(6). It is imposed and collected by customs. The customs department has to make the initial enquiry about valuation of the imported goods. It has to be satisfied that the undervaluation, if so found, is a pure case of declaring less value in comparison with same or similar products, or that it is a case of dumping. Dumping needs to be proved by demonstrating that the price declared is less than the cost of manufacturing in the country of origin. The role of customs is in assisting the commerce ministry through investigation and detection, to come to a conclusion as to whether any dumping has taken place and, if it has, how much of it is really to be compensated through anti-dumping duty. This has to be determined by investigations carried out by customs and commerce ministry. At the implementation stage, it is the role of customs which is paramount not only in charging the duty but also in enforcing other related laws.

Thus, if the customs department uses the anti dumping instrument within appropriate limits, the international economic and political relations are not disturbed. If there are too many anti-dumping cases, where they should not be imposed, or if there are cases of undervaluation of imports where, instead, allegations of dumping are made, then clearly international economic relations between the concerned countries suffer. It erodes the benefits of globalized trade. Such examples are not rare. Countries accuse others of imposing anti-dumping duty in too many cases. For example, India has been similarly accused. But it is not only in India but also in advanced countries such as the United States that these situations have arisen.

In reality, what has made the pitch look more like a battlefield is the by and large over-enthusiastic use of this potent protectionist weapon even by developed economies to protect economically inefficient but politically sensitive sectors. Taking one example, Indian steel has always found it difficult to export to the United States due to anti-dumping duty

on some varieties of steel. Even Europe felt the barrier and threatened to take counter measures against the US anti-dumping duty on steel. The WTO viewed the Byrd Amendment, the US law that allowed cash receipts from foreign exporters (to the US) to be distributed to affected domestic industry as protectionist and declared as illegal. Subsequently the law was repealed by the Congress but the repeal took effect from October 2007. In the meantime, the law was used by the US to collect cash from the foreign exporters of shrimps.

This action of the US on the anti dumping front had been to prevent the import of shrimps from China, Thailand, India, Brazil, Ecuador and Vietnam. The attempt to protect the domestic producer of shrimps from foreign competition did not even succeed after imposing 5 – 10% anti dumping duty because exports from these countries nevertheless remained profitable for them. Not satisfied with this, the Southern Shrimp Alliance representing US shrimpers and processors, wanted an upward review of the duty. Though looking into the books of accounts of hundreds of small exporters could not be feasible, yet they were asked to comply. And, if they did not reply or co-operate, they would have to pay nearly 50% anti-dumping duty. To avoid such a reprisal, the foreign exporters agreed for a pay up to 2% of the value of the goods, which could be legally collected as settlement money and distributed to the Southern Shipping Alliance.

Another recent example is the case of high anti-dumping duty levied by the current US administration against the import of Chinese tyres which were feared to be dumped in the country. That led to an angry reaction from China and it had to be settled by diplomatic efforts at the highest level. It must be said that the EU also uses barriers that may not be so apparent but through non-tariff avenues such as environmental or labour conditions that tend to have similar adverse ramifications for exports from EDE's.

Skirmishes on the anti-dumping front have become as widespread as globalization itself. The attempt by the WTO to thwart such protectionist tendencies could succeed only if greater power were to be given to it in order to make its finding immediately effective and not after two years or so as in the case of the Byrd Amendment. The US effort to continue with either anti-dumping duty or collect protectionist cash is perceived as a reversal of its avowed allegiance to globalization. Anti-dumping duty is anti-globalization at a higher dose of duty but its absence again may allow the domestic industry to suffer injury. So it is a matter of balance which has to be struck by customs and commerce departments.

#### *f. Containing money laundering and terrorism*

There is a clear role of customs in the borders with neighbouring countries. For India, the borders with Pakistan, Bangladesh, Nepal and Myanmar are important not only in respect of the military but also in respect of cross border smuggling. The work of collecting customs

duty and checking for contraband are important international aspects that customs officers have to perform.

These days, customs offenses have superseded those related to mere customs duty evasion, having transcended to money laundering, narcotics, terrorism, and narco-terrorism. Hence the customs have to be in close touch with Interpol which is the international nodal agency for coordination and execution of anti-terrorism activities. Simply put, a rationally structured and effective customs organization is needed for containing the occurrence of international terrorism.

## **7. International customs organisations**

The establishment and functioning of multilateral customs organisations have had a restraining and smoothening effect on the stresses and strains that can and do erupt in international trade relations.

### *a. World Customs Organisation (WCO)*

The WCO is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of member customs administrations. The WCO was originally established as the Customs Co-operation Council (CCC) in 1952. The CCC adopted the name World Customs Organisation in 1994 in order to reflect its transition to a truly global intergovernmental institution. It has two wings, valuation and classification. It is headquartered in Brussels. With its worldwide membership, the WCO is recognized as the voice of the global customs community. It is particularly noted for its work in areas covering the development of international conventions, instruments, and tools on topics such as commodity classification, valuation, rules of origin, collection of customs revenue, international trade facilitation, customs enforcement activities, combating counterfeiting in support of Intellectual Property Rights (IPR), and so on.

The WCO maintains the international Harmonised System (HS) which is a nomenclature for goods, and administers the technical aspects of the World Trade Organisation (WTO) Agreements on Customs Valuation and Rules of Origin. The same nomenclature for goods and the same system of valuation of goods are followed all over the world as almost all countries have joined the WCO. Trade has thus become very smooth since the meaning of the goods is clear once a particular nomenclature is used. If a good is described as 5402 20 10 in the invoice of the manufacturing country, wherever it is sold anywhere in the world, it will be taken as synthetic filament yarn of terylene dacron. There will be no need to test the goods chemically unless the customs has any specific information to the effect that the goods have been misdeclared. This has made customs clearance, maintenance of statistics and all other related activities transparent and seamless.

*b. World Trade Organisation (WTO)*

The WTO is responsible for a large part of work pertaining to customs. This organisation keeps a check on the activity of customs in individual countries in case they go beyond international interests. In this capacity it does not allow countries to impose very high protective customs duty or anti-dumping duty when there is no justification for them. It prevents trade war arising from customs duty or quantitative restrictions on import or export.

*c. European Customs Union (ECU)*

The ECU, as a part of the European Union (EU), performs the job of smooth customs regulations within the EU. That the EU has a separate organisation within its fold exclusively for the purpose of customs activities, underlines the importance that customs plays in international trade and economic relations within the EU in particular, and with the global economic community in general.

**8. Concluding remarks**

To sum up, the role of customs in international economic relations is all pervasive and growing. Over the years, internationally, customs duty structures have been scaled back and narrowed so that their application has become far easier. At the same time, other means such as anti dumping duty have been used to indulge in unfair competition. Multilateral organizations such as the WCO and WTO have played an important role in bringing down customs duty rates internationally as well as in monitoring of unfair competition. The responsibilities of customs administrations have moved forward from monitoring only whether the right customs duty is applied to more sophisticated responsibilities and challenges that cover matters of international money laundering and terrorism. The use of informational technology in both traditional and newly emerging functions cannot be over emphasized. The Indian customs faces increasingly complex demands as various case examples we discussed revealed. An ever vigilant customs administration should be able to deliver on those international objectives and help assist in furthering India's international economic relations.