

## India – Law Firms

# Trade Facilitation In India Through System Upgradation

Dharmendra N. Choudhary

GRUNFELD, DESIDERIO, LEBOWITZ,  
SILVERMAN & KLESTADT LLP

Trade facilitation encompasses a variety of activities including import and export procedures. This has become an issue of significant importance in the non-tariff barriers agenda, as tariff rates have declined through successive GATT/WTO rounds and global supply chains have become dominant. According to a study carried out by the OECD, the cost of poor border procedures could vary between 2 to 15 percent of the total transaction value. This highlights the wasteful costs involved considering that the average post-Uruguay tariffs on industrial goods amounts to a mere 3.8 percent. Trade facilitation has been recognized as being significant for several reasons:

1. To mitigate the delay and costs in a complex supply chain.
2. A just-in-time production and just-in-time delivery make just-in-time customs clearance a major issue for business.
3. Customs needs to modernize to manage the exponential growth in volumes of cross-border trade in goods.
4. It is critical for investment decision makers to ensure a reliable, low-cost flow of materials into and out of a manufacturing facility.

Accordingly, efficient customs procedures have assumed a great importance, capable of ensuring competitive advantage to a nation, especially in terms of attracting foreign direct investment. Despite this awareness, the challenges in developing countries is high as there is a greater incidence of customs-related malpractices. Also, governments are often constrained to spend scarce resources on trade facilitation. It is, therefore, no mean achievement for India to have registered significant progress in granting trade facilitation to various stakeholders.

As per WTO stipulations, imports in India were being liberalized every year and Quantitative Restrictions (QRs) were completely lifted on April 1, 2001. Under the import policy notified by the Director General of Foreign Trade (DGFT), all items, except restricted, prohibited and importable through State Trading Enterprises (i.e. canalized items) can be freely imported under Open General License (OGL). Today, very few items are included in the restricted list, which can be imported only against authorization. Secondhand capital goods are freely permitted. The import of secondhand PCs, laptops, air conditioners, DG sets, and photocopiers requires authorization.

The next stage where a slew of liberalization has occurred is in the assessment procedures at the Custom Houses. The Basic Custom duties on all items have been brought below the bounded rate. In order to reduce the endemic classification disputes, an eight-digit classification system has been adopted (in both Custom & Excise). Customs Tariff is fully aligned with HSN. As duty rates for various items falling under a

*Dharmendra N. Choudhary worked as Assistant, Deputy, Joint & Additional Commissioner with Indian Customs & Central Excise Dept. over a period of 13 years, from 1993 to 2006. Subsequently, he did LL.M. in Trade Regulation at NYU and presently is a Trade Consultant at GDSLK LLP.*

given Chapter have been made uniform, there are hardly any classification disputes these days.

The filing and assessments of Bills of Entry (Bs/E) / Shipping Bills (SBs) is taking place electronically at 40 locations in India. During 2007-08, 96.79 percent of Bs/E and 94.72 percent of SBs were processed electronically. Out of those documents processed electronically, 87 percent of Bs/E and 74 percent SBs were filed through the Indian Customs & Excise Gateway (ICEGATE), said Mr. P.C. Jha, chairman, Central Board of Excise & Customs (CBEC). At present, the total number of users registered with ICEGATE is 9,900. Mr. Jha explained that ICEGATE is an infrastructure project through which the department is able to offer a host of services including electronic filing of Bill of Entry (import goods declaration) and Shipping Bills (export goods declaration) and related electronic messages between Customs and the trade. The airlines and shipping agents can file manifests on the internet using this facility. Besides, data flows between Customs and the various regulatory and licensing agencies such as DGFT, Reserve Bank of India (RBI) and DGCIIS. The National Import Database (NIDB) and Export Commodity Database (ECDB) are also being serviced through ICEGATE.

All electronic documents/messages being handled by the ICEGATE are being processed at the customs' end by the Indian Customs EDI System (ICES). ICES has two aspects: Internal Automation of the Custom House for a comprehensive, paperless, fully automated customs clearance system that makes the functioning of Customs clearance transparent and, second, online, real-time electronic interface with the trade, transport and regulatory agencies concerned with customs clearance of import and export cargo. ICES is designed to exchange/transfer customs clearance electronically using Electronic Data Interchange (EDI). A large number of documents that trade, transport and regulatory agencies are required to submit and receive in the process of customs clearance are now being processed online.

ICEGATE relies on a reliable high-speed network called the Indian Customs and Central Excise Network (ICENET). This network links up the 40 customs houses, CBEC and some important Directorates. The ICEGATE runs on software that provides a variety of technological options to the trade with regard to communication and messaging standards. To ensure that all links and equipments are functioning properly on the gateway, software called the Enterprise Management Systems has been installed to centrally manage the facility. The system also provides for helpdesk facility. To ensure secure filing, it is proposed to use digital signatures on the Bill of Entry and other documents/messages to be handled on the gateway. For this purpose, a Certificate Authority is being set up for issuance of digital signature certificates, Mr. Jha promised.

This process of electronic integration is to be taken forward through the ongoing ambitious project under CBEC, the Information Technology Consolidation Programme (ITCP), which seeks to provide quality services to all stakeholders, including taxpayers, by consolidating CBEC's IT infrastructure. The project includes setting up Wide Area Networks (WAN) at 512 locations, Local Area Networks (LAN) at 1,200 buildings and 3 Data Centers (primary, business continuity & disaster recovery). Upon

completion, this will be a single window repository of CBEC data, enabling better tax planning. It will also facilitate rolling out the newly developed Central Excise and Service Tax (ICES) workflow application.

In order to strike an optimal balance between trade facilitation and enforcement, Customs has designed a Risk Management System (RMS). The basic approach is to trust the compliant clients and offer them facilitation while focussing scarce resources towards non-compliant clients and high-risk transactions to ensure effective enforcement. All the Bs/E are forwarded to the local risk server placed at each Customs EDI location, wherein they are filtered through a set of risk corridors for assessing the perceived level of risk and suggest appropriate risk-mitigation treatment. In the context of imports, such risk rules are Importer, Supplier, Commodity (subsuming Classification, Valuation and Other Government Department regulations), Clearing Agent and Carrier. The local risk server is connected to the EDI server through LAN. In addition, a central risk server, connected to EDI as well as local risk servers, is installed at Risk Management Division (RMD), controlled by National Risk Manager.

The Bs/E that are flagged in the risk corridor are generally subjected to physical and/or documentary checks, as per specific RMS directions, which depends on whether the level of risk is low, medium or high. In cases where RMS signals a green channel facility, the transaction is not subjected to any physical or documentary checks.

The Accredited Client Programme (ACP) is a major element of RMS. Herein, high-volume importers who meet the specified criteria and who don't have any cases against them are treated as highly compliant so that the Customs EDI system accepts the declared classification and valuation and assesses the duty on the basis of the importer's self-declaration and without physical examination, subject only to a system-generated random check, a nominal percentage. As the RMS requires a certain minimum level of quality in terms of completeness, accuracy and validity of data, the Accredited Clients must have a corporate commitment to compliance and have in place people, processes and systems that are designed to ensure compliance. Thus, the Accredited Clients are expected to play a more proactive role in supply chain security and take due care in the selection of a Clearing Agent. GDSLK LLP, with its capable in-house attorneys, including those who are well-versed and eligible to practice in both Indian and U.S. courts, is in a unique position to assist the exporters who are planning a foray into the very lucrative Indian market.

The widespread changes, discussed above, have lowered the interface between the officials and importers, leading to lesser harassment. Also, unlike in the past, the

assessment of documents is being monitored by jurisdictional Commissioners online, thereby keeping the assessing officers on their toes. The faster assessments are evidenced by the low average processing times at major ports and customs stations. Thus, at the Kolkata Custom House and Air Cargo, the average time for assessment of documents during peak hours on October 11, 2008 was a meager four minutes! This author was a Deputy Commissioner at Mumbai Customs House during 1999-2001 when EDI was first rolled out. As such, he experienced, firsthand, various problems, including delays of weeks and sometimes months, inherent in a paper-based assessment in contrast with the widespread changes heralded by electronic filing and assessment.

There is a system of e-payment in place too. In addition, there is a multi-banking facility for payment of customs duty. In 2007, the transshipment facility for imported goods in Less than Full Container Load (LCL) has been introduced at approved places. Help Centers are functioning in each Customs, Excise and Service Tax Commissionerate. A proposal to create an all-India toll-free help line is under active consideration, said Mr. Jha. Every Commissionerate has a Grievance Committee, wherein contentious issues are raised and promptly resolved. Under the Right to Information Act, 2005 (RTI), a person is able to query officials about the status of his consignment, which must be mandatorily answered within 30 days.

As regards exports, apart from various promotional schemes already in place, GOI proposed the establishment of China-style Special Economic Zones (SEZ) in 2000. SEZ units are exempt from all taxes like customs duty, excise duty, Central Sales tax, State VAT, and Income Tax. All permissions and approvals required to set up a unit are given under a "Single Window Clearance" scheme. With many sectors of Indian economy opening up to foreign equity investment, SEZ presents an ideal platform for companies planning to invest in Indian manufacturing and service sectors.

A system of Advance Ruling is in place wherein an application can be made before a designated authority by a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident seeking an opinion on a question of law or fact concerning classification, valuation, benefit of exemption notification, admissibility of Cenvat credit, or determination of origin of goods. As the opinion is binding on the concerned Commissioner, it has lowered the commercial risks of a prospective trader.

Thus, it is evident that Indian Customs has been able to deliver significantly in a short period, thereby practically wiping out the indirect transaction costs attributable to delays in Customs offices. As such, the Indian market presents a fertile ground for prospective exporters.

U.S. Customs & Trade Laws Present A Number Of Duty  
Savings Opportunities For Companies  
That Make The Investment To Explore Them.

**Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP**  
Customs & International Trade

399 Park Avenue, 25<sup>th</sup> floor, New York, NY 10022

Tel.: (212) 557-4000 • [www.gdslk.com](http://www.gdslk.com)

New York • Washington, DC • Los Angeles • Boston • Hong Kong

Please email the author at [dchoudhary@gdslk.com](mailto:dchoudhary@gdslk.com) with questions about this article.