Duty Exemption and Remission Schemes

Case for Review

Under a fully WTO-compatible trade regime, to which India is committed, the only weapon available in normal circumstances to check imports which damage domestic industry is flexibility in fixation of customs duties subject to the committed bound rates. But as imports under the export-linked schemes are duty-free, a surge in such imports cannot be arrested through the tariff rate mechanism. It is necessary, therefore, to rationalise the duty exemption and remission schemes in the EXIM Policy 2002-07 to be announced shortly.

TOMS JOSEPH, THARIAN GEORGE K

The EXIM Policy (1997-2002) will become redundant after March 31, 2002, as a new comprehensive EXIM Policy for the next five years (2002-2007) is expected to be announced by the government of India (GOI) shortly. Though annual EXIM policies have been announced intermittently, they were within the broad framework of the five-year EXIM Policy (1997-2002). In this context, it is pertinent to highlight the issues encompassing the prevailing export-linked duty exemption and remission schemes on account of the liberalisation of imports through the phased elimination of quantitative restrictions (QRs) announced till March 31, 2001.

There are three export-linked duty free import schemes, viz, advance licensing scheme (ALS) with duty exemption, duty free replenishment certificate (DFRC) and duty entitlement pass book (DEPB) schemes with duty remission. The ALS is a pre-export duty-free import facility whereas both DEPB and DFRC are post-export duty-free import schemes.

Advance Licensing Scheme: The ALS with actual user (AU) condition facilitates duty-free import of inputs required for export production subject to the fulfilment of a time-bound export obligation. The material inputs and consumables such as oil, fuel, energy, catalysts, etc, used in the production of products destined for exports can be imported against an advance licence without duty. Advance licences can be issued for physical exports, intermediate supplies and deemed exports. Imports against advance licences are exempted from payment of basic customs duty, additional customs duty, anti-dumping duty and safeguard duty. But countervailing duty, if any, has to be paid. The EXIM policy announced for the year 2001-02 has modified the ALS by raising the entitlement in certain cases, fixing new standard input-output norms (SION) for 506 items, coverage of additional ports under the scheme, simplification of the formalities, etc.

Duty-free Replenishment Certificate Scheme: The import under DFRC is exempted from basic customs duty and special additional customs duty. However, additional customs duty is payable but it can be drawn back through CENVAT as far as manufacturer exporters are concerned. Under DFRC, anti-dumping, safeguard and countervailing duties, if any, are payable. Imports of products for which SION have been notified by the Directorate General of Foreign Trade (DGFT) are eligible for DFRC except those for which AU condition is mandatory. The DFRC is also subjected to a minimum value addition of 33.3 per cent in the FOB value of exports. Though nexus (between exported products and imported items) is mandatory, the DFRC and the materials imported against it are freely transferable. The EXIM Policy for 2001-02 has modified DFRC scheme by raising the validity from 12 to 18 months, incorporating the provision for claim of DFRC against advance payment of import duty, coverage of additional ports, split-up facility, automatic calculation of CIF value without reference to international prices of individual inputs, etc.

The exporters can thus opt for either the pre-export licensing route of ALS or post-export licensing route of DFRC to import materials and other consumables used in the production of products for export.

Duty Entitlement Pass Book Scheme: DEPB provides for duty-free imports by exporters without passing through any licensing route. Under the DEPB scheme, the incidence of customs duty payable on the import content of the export product is neutralised by granting duty credit against the export product. The duty credit under the scheme is calculated on the basis of the deemed import content of the concerned export product as per SION, respective basic customs duty and value addition (subject to a minimum of 33.3 per cent) achieved in export. The import under DEPB is exempted from the payment of additional and special additional custom duties. However, anti-dumping, safeguard and countervailing duties, if any, are payable. The DEPB and materials

Removal of QRs in India

Number of tariff lines as on 01/04/1996 at HS 10-digit level	10202
Number of tariff lines without QRs as on 01/04/1996	6161
Number of tariff lines of which QRs were removed during 1996-97	488
Number of tariff lines of which QRs were removed during 1997-98	391
Number of tariff lines of which QRs were removed during 1998-99	894
Number of tariff lines of which QRs were removed during 1999-00	714
Number of tariff lines of which QRs were removed during 2000-01	715

Note: The QRs in respect of 1,429 tariff lines were withdrawn preferentially for imports from SAARC countries with effect from 01/08/1998.

Source: GOI, 2001:10

imported against it are freely transferable. The EXIM Policy for 2001-02 has modified the scheme by adding a provision for claiming DEPB against advance payment of import duty, rationalisation of the DEPB rates in line with the changes in customs duty in the budget, coverage of additional ports, etc. It is learnt that the DEPB scheme may not continue in the present form in the forthcoming EXIM policy since certain existing provisions have been identified as incompatible with the relevant provisions of the World Trade Organisation (WTO).

These schemes have been implemented with the main purpose of encouraging the exporters by facilitating duty-free import of quality inputs at international prices. Thus the duty-free imports are expected to enhance the competitiveness in cost and quality of Indian products in the world market. The perceived objectives of the schemes are well-founded against the crucial need to enhance export earnings. However, the range of products that can be imported under these three schemes has been widened over time on account of the phased elimination of QRs and removal of other import restrictions.

Elimination of quantitative restrictions: Under Article XI of the GATT 1994, no prohibitions or restrictions other than duties, taxes or other charges shall be initiated or maintained by any contracting party on importation and exportation of any product. Notwithstanding the provisions under the Article XI, quantity or value based restrictions on imports can be applied to safeguard the external financial and BOP positions of the contracting parties (Articles XII and XVII of the GATT 1994). Again, QRs and other import restrictive measures can be applied on grounds related to the protection of public morals, human life, animal life, plant life, national treasures, etc (Article XX of the GATT 1994) and on national security grounds (Article XXI of the GATT 1994). By 1997, India had successfully negotiated a mutually agreeable solution to phase out QRs taken on BOP grounds over a six-year period ending March 31, 2003. But when the Dispute Settlement Panel and Appellate Body of the WTO ruled against India in a dispute filed by the US, India had to commit the removal of QRs before April 1, 2001. On March 31, 2000, QRs on 714 items were removed followed by the removal of QRs on another 715 items on March 31, 2001. Thus by 2001, QRs on 9,363 tariff lines (at HS 10-digit level) have been dismantled. However, India is still maintaining QRs on around 800 items under Articles XX and XXI of the GATT 1994. Though the elimination of QRs was initiated in the early 1990s, the hue and cry against it has acquired momentum only during recent years. The main reason for the phenomenon was that most of the products for which QRs have been removed during the recent years are widely used consumer goods and sensitive items [Goldar and Mehta 2001: 990-91]. In order to tackle the consequences of the removal of QRs, the EXIM policy announced on March 31, 2001 included the creation of a 'war-room' to track, collate and analyse import data on 300 sensitive items which are of importance to the public and advise the government if situations of massive imports of any items arise [GOI 2001: 13].

Perspectives on Rationalisation of Duty Exemption and Remission Schemes: Under ALS and DFRC, all items with SION and meeting other conditions can be imported but licensing is mandatory. Hence, the authorities in times of exigency have the liberty to restrict imports of certain items on an ad hoc basis though the same is not evidently established in the relevant orders or EXIM policy. But with the liberalisation of imports and elimination of different non-tariff barriers, the chances of a prohibition of the duty-free import of individual items have become remote. Under the DEPB scheme, any item for which QRs do not exist can be imported. Thus the range of items which can be imported under DEPB got widened with each phase of the elimination of QRs. Now, all items except those for which QRs are still operative (numbering around 800) can be imported under DEPB.

Duty-free imports are more detrimental compared to imports under OGL from the angle of the domestic producers. Under a fully WTO-compatible trade regime (which India has committed to design), the only weapon available in normal circumstances to check imports which are injurious to the domestic industry is the flexibility in the fixation of customs duty subject to the committed bound rates. But as import under the export-linked schemes are duty-free, surge in such imports cannot be arrested through the tariff rate mechanism. Hence, it is necessary to rationalise the duty exemption and remission schemes so as to control duty-free import of sensitive and vulnerable items. As imports under the duty exemption and remission schemes are not related to the bound rates committed under Article II of the GATT 1994, GOI has the liberty to restrict the number of items and quantity imported through the duty-free channels. Otherwise, a surge in duty-free imports of sensitive and vulnerable products may signal transfer of investible resources from the respective sectors of the economy leading to eventual dependence on external sources. Moreover, the potential repercussions of the perceived trend may lead to hardship for small and marginal farmers and gradual collapse of inputs and intermediate products manufacturing segments of the industry in the long run. Therefore, relevant provisions have to be clearly spelt out in the new EXIM policy empowering the government to control duty-free import of vulnerable items through duty exemption and remission schemes at times of emergency. In the absence of such relevant provisions, GOI will have serious constraints in countering the surge in imports of sensitive products through duty-free channels. EPW

References

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