

**PUBLIC ACCOUNTS COMMITTEE
(1969-70)**

(FOURTH LOK SABHA)

NINETY-EIGHTH REPORT

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 56th Report (Fourth Lok Sabha) relating to Over-invoicing of value of Imported Hides & Skins]



**LOK SABHA SECRETARIAT
NEW DELHI**

January, 1970/Pausa, 1891 (Saka)

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(1969-70)

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Shri K. Seshadri—*Under Secretary.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this twenty-Eighth Report on the Action Taken by Government on the recommendations of the Public Accounts Committee contained in their Fifty-Sixth Report (Fourth Lok Sabha) on Over-invoicing of Value of Imported Hides and Skins.

2. On 7th June, 1969, an "Action Taken" Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports. The Sub-Committee was constituted with the following Members :

1. Shri N. R. M. Swamy—*Convener*

Members

2. Shri H. N. Mukerjee
3. Shri K. M. Koushik
4. Shri Tayappa Hari Sonavane
5. Prof. Shantu Kothari
6. Shrimati Sushila Rohatgi

3. The draft Report was considered and adopted by the Sub-Committee at their sitting held on the 26th December, 1969 and finally adopted by the Public Accounts Committee on the 22nd January, 1970.

4. For facility of reference the main conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. A statement showing the summary of the main recommendations/observations of the Committee is appended to the Report (Appendix).

(vi)

5. The Committee place on record their appreciation of the assistance rendered to them in this matter by the Comptroller and Auditor General of India.

NEW DELHI;
January 24, 1970.
Magha 4, 1891(S).

ATAUL BIKSHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report deals with action taken by Government on the recommendations contained in the 56th Report of the Public Accounts Committee (Fourth Lok Sabha) relating to Over-Invoicing of Value of Imported Hides and Skins [Para 16(ii) of Audit Report (Civil) on Revenue Receipts, 1968] which was presented to the House on 20th March, 1969.

1.2 The action taken notes/statements on the recommendations of the Committee contained in the Report have been categorised under the following heads :

(i) *Recommendations/observations that have been accepted by Government :*

S. Nos. 1, 6, 7, 8, 9, 11, 12 and 13.

(ii) *Recommendations/observations replies to which have not been accepted by the Committee and which require reiteration:*

S. Nos. 5 and 14.

(iii) *Recommendations/observations in respect of which Government have furnished interim replies :*

S. Nos. 2, 3, 4 and 10.

1.3 The Committee will now deal with action taken by Government on some of the recommendations/observations.

Measures to check Over-invoicing of Imports—Paragraphs 1.44, 1.46, 1.52, 1.53 and 1.55 (S. Nos. 2, 4, 10 11 and 13).

1.4 In their Fifty-Sixth Report (Fourth Lok Sabha), the Committee had dealt with certain cases of frauds involved in the use of Import Licenses issued by Government for import of raw hides and skins under the scheme for Export Promotion of tanned Hides and Skins. Certain parties purchased import entitlements from leather merchants and then arranged to import through their agents abroad worthless stuff at grossly inflated prices. The invoicing which was of the order of 149 times the assessed value resulted in a loss of foreign exchange of Rs. 1.5

crores. These cases were investigated by the Central Bureau of Investigation. The Committee made *inter alia* the following observations in paragraphs 1.44, 1.46, 1.52, 1.53 and 1.55.

"1.44. In the opinion of the Committee, the commission of these frauds had been made possible by loopholes in procedure and by certain lacunae in the Export Promotion Scheme as it subsisted upto 31st May, 1963.* The Committee got an impression during evidence that hardly any check was exercised against over-invoicing at the licensing stage. Even though there was a provision for the indication of the quantity in the import licence, no such indication was given in the case of non-capital goods. Nor was there any check at the foreign exchange releasing stage. All this combined with laxity at the importation stage facilitated the perpetration of the fraud."

"1.46. The Committee are concerned over the performance of the Customs Department in these cases. It appears to them surprising that the appraising staff of the Department who were supposed to keep in constant touch with the market and maintain registers showing the prices of commodities coming from various sources, should not have been able to detect these cases, over-invoicing in some of which was as high as 228 times the assessed values. It was urged in evidence that the appraising staff at minor ports was not high ranking enough. The Committee, however, find that the failure to detect over-invoicing was not confined to minor ports; it was also evident in case of major ports like Calcutta, Bombay and Madras. The Committee would like Government to examine whether there was not a gross neglect of duty on the part of the appraisers concerned. They would also like the Ministry to examine whether some change in the existing system is not called for."

"1.52. The Committee appreciate the difficulties in investigation of cases involving breaches of foreign trade and exchange control laws. They are particularly anxious that persons contravening these laws should not be able to flee to other countries for the purpose of escaping punishment or destroying incriminating evidence against them. While the Committee are anxious that the freedom of the citizens is not impinged upon in any manner, they feel that such freedom should not be allowed to be so used as to prevent the law of the land from having its natural course. The Committee are keen that no person is allowed to contravene the law with impunity. It should

*The date has been indicated in the Report as 31st August, 1963 but should read as 31st May, 1963.

also be examined whether and to what extent the difficulty of obtaining witnesses and documents from foreign countries and apprehending persons involved in economic offences can be got over by enlisting the support of the International Criminal Police Organisation or by amendments to Indian laws."

"1.53. The Committee would also like to observe that the parties involved in cases of the present type are rich and influential and the amounts hoped to be gained large and tempting. They would like the Ministries concerned to examine whether the foreign trade and exchange control laws of this country are implemented strictly to make anti-social elements feel that breaches of law will not and cannot pay."

"1.55. The problem of leakage of foreign exchange through over-invoicing and under-invoicing is an old one. The Committee observe in this regard that the Mathur Study Team on Import and Export Trade Control Organisation had, *inter alia*, recommended the study of the problem of over-invoicing and under-invoicing by a separate Committee. Government have stated in a written note that consequent upon the abolition of the old Export Promotion Schemes and the enforcement of a new import policy for registered exporters with effect from August, 1966, Government felt that there was no need for the appointment of a Committee for the purpose. The Committee are left with an impression that the malpractice of over-invoicing and under-invoicing of exports and imports has not been effectively checked and, therefore, they feel that it would be useful if a small Study Team consisting of the officers of the relevant Ministries and of the Reserve Bank and the Central Bureau of Investigation is appointed to study the problem in all its aspects and suggest remedial measures."

1.5 In their reply dated 15-11-1969 to the recommendations contained in paragraphs 1.44 and 1.45, the Department of Foreign Trade have *inter alia* stated:

'The cases reported by the CBI involved illegal trafficking in import licences. This offence was not the result of any specific feature of the Export promotion Scheme.'

In our opinion, there are certain difficulties in ensuring at the licensing stage that there will be no over-invoicing subsequently. However, this question will be remitted to the Study Team proposed to be appointed in pursuance of the Committee's recommendation at Sl. No. 13 (Para No. 1.55).

It is true that there is a provision for indication of the quantity in an import licence but the effect of mentioning quantity is only to lay down a quantitative limit in addition to the value limit for imports that can be made against the licences. There is nothing to prevent the licence holder from importing a lesser quantity than indicated in the licence. The mention of quantity, therefore, cannot prevent over-invoicing.

Regarding the check at the foreign exchange releasing stage, the Exchange Control Regulations lay down certain precautions which the authorised dealers in foreign exchange have to take if the import documents have been received direct by the importers. If the banks concerned in these cases have failed in observing the rules, their defaults will figure in the report to be submitted by the C.B.I., to the Reserve Bank *vide* the Committee's recommendation at Sl. No. 9. Apart from this, it is possible that there are some lacunae in the Exchange Control Regulations. For example, according to the existing regulations, it appears that the authorised dealers in foreign exchange, in cases where the shipping documents are received by them from the overseas banks, are not required to verify that the remittances they arrange are matched by the value of the goods actually imported. The question whether the Exchange Control Regulations need some tightening, will be examined in depth by the Study Team which is proposed to be appointed in pursuance of the Committee's recommendation at para No. 1.55."

"Import replenishment against exports of hides and skins have since been further reduced to 2 per cent in the case of vegetable tanned leather all sorts, known in the trade as E.I. tanned etc., and 4 per cent in the case of chrometanned leather. The replenishment is meant to be utilised for import of chemicals, since the import of hides and skins is at present under O.G.L.

It may be possible to deal with few selected items on unit value basis, but it would be difficult administratively to deal with all the items on the import list on unit value basis. In our view, the system will be imperfect as any incorrect unit value mentioned in the licence may serve as a legal cover for over-invoicing. However, we are willing to have this question examined by the Study Team proposed to be appointed in pursuance of the Committee's recommendation at Sl. No. 13 (Para 1.55)."

1.6. In regard to the Committee's observations regarding the failures on the part of the appraising staff of the Customs Department, the Ministry of Finance (Department of Revenue) have stated in their reply dated 4-10-1969 :

"The Committee's observation regarding failure to detect cases of over-invoicing in the major ports like Calcutta, Bombay and Madras has been examined. While there have not been any cases of this type in the Bombay and Calcutta Custom Houses, the position of the Madras Custom House could not be examined in the absence of the relevant documents which have been taken over by the Economic Offences Wing of the C.B.I., in connection with prosecution proceedings in the court. The matter will be examined on receipt of the documents."

1.7. The Ministry of Finance have added :

"The recommendation of the Committee has been accepted and a Study Team of the type suggested by the Committee is being constituted."

"As for the recommendations for examining the existing system in the Custom Houses, the Study Team being constituted in pursuance of recommendation No. 13 (Para 1.55) would be asked to study this aspect."

1.8. In a further reply dated 16th December, 1969, on the scope of work of the Study Team, the Ministry of Finance (Department of Revenue) have stated :

"The Team will examine the problems of leakage of foreign exchange through over-invoicing and under-invoicing of imports and exports and will, for this purpose, locate the possible avenues now existing because of organisational deficiencies or policies of various departments particularly in the Customs Department, Directorate of Enforcement, the Reserve Bank of India, Directorate of Export Assistance and suggest suitable changes in organisation, policy and procedures. The Team will also examine the legal and administrative set up relating to imports and exports and the role of the respective agencies in implementation of the relevant procedures for suggesting suitable remedial measures.

The Team will start functioning immediately and will submit its report within a period of four months."

1.9. In regard to the question of tightening the provisions of the Exchange Control laws, so as to eliminate malpractices, the Ministry of Finance and Department of Foreign Trade have stated in their notes dated 15-11-1969, 28-11-1969 and 16-12-1969 :

"The Government are themselves anxious to see that persons who are suspected to have contravened the fiscal laws and against whom investigations are in progress are not allowed to leave the country in order to escape punishment or to tamper with the evidence against them. However, the exact nature of the statutory provisions to be made in this regard is under examination."

"The Government accept the Committee's recommendation and propose to undertake studies of a fair number of actual cases of contravention of (i) the Exchange Control Regulations and (ii) of the Import and Export Control Regulations, and the punishments awarded to those found guilty in each case, this will give an idea whether the penal provisions in the two Acts are adequate enough to deal with anti-social elements.

The matter has been examined in an inter-Ministerial meeting held in the Ministry of External Affairs on the 9th October, 1969 and as decided in the meeting, the Central Bureau of Investigation and other agencies concerned are examining the question of amendments of the restrictive provisions of the Passports Act, 1967.

The matter is still under examination by the Central Bureau of investigation. The investigation agencies are ascertaining from their field formations the precise difficulties experienced in the matter of examination of witnesses/documents from foreign countries and apprehending persons involved in economic offences. A proposal for inclusion of certain offences against the Foreign Exchange Regulation Act, in the Second Schedule of the Extradition Act, 1962, is also being examined."

1.10. The Estimates Committee of Parliament in their Thirtieth Report (Fourth Lok Sabha) made the following observations about the enforcement of exchange control regulations :

"10.87. The Committee are surprised that although the Foreign Exchange Regulation Act has been amended a number of times it has not been found possible to devise suitable ways and means either for securing re-patriation of foreign exchange held abroad by citizens and residents of India or for preventing the malpractices which result in leakage of foreign exchange. They regret to observe that all

that could and should have been done to make exchange control really effective has not been done. For instance, in Pakistan, under a Martial Law Regulation promulgated in 1958, failure to surrender or declare foreign exchange held in contravention of any law was made punishable with rigorous imprisonment extending to seven years and with confiscation of either whole or part of the property of the offender in Pakistan. In contrast, in India, in spite of the critical foreign exchange position and in spite of the wide powers available to the Government under the emergency, Government have been content with making a few changes in Foreign Exchange Regulation Act which do not touch basic problems, like the non-repatriation of foreign exchange held abroad, at all."

"10.90. As the Commission suggested above might take some time to report, the Committee would like the Government to take urgent measures for removing obvious deficiencies and lacuna in the provisions of the Foreign Exchange Regulation Act relating to penalties and procedure in respect of violations of the Act and rules, directions and orders made thereunder. Some of these shortcomings and the changes, which the Committee consider necessary, are indicated, in general terms, in the paragraphs that follow."

"10.91. At present, the maximum punishment for exchange control offences is two years' imprisonment. The Committee feel that this is not sufficiently deterrent. They recommend that section 23 of the Act may be suitably amended so as to raise the punishment provided for thereunder to five years rigorous imprisonment and also to make it obligatory on the Courts to pass a minimum sentence of one year's imprisonment in cases of serious contraventions. The amended section may also provide for punishment in the form of confiscation either of the whole or a part of the property of the offender in India. The Committee feel that provision on these lines is essential to get over the difficulties faced by the administration in securing repatriation of foreign exchange held abroad."

"10.92. There is no provision in the Act for penalising persons who conspire, or aid, or abet or counsel, or procure any other person, to contravene the restrictions or requirements imposed by or under the Act. This lacuna should be removed by introducing a suitable provision in the Act."

"10.94. The Committee need hardly stress that the very object and purpose of the Foreign Exchange Regulation Act would be defeated unless effective arrangements exist for bringing offenders to

justice. They suggest that offences against the provisions of the Act and rules, directions and orders issued thereunder, should be made cognizable and every Sessions Judge should be declared to be a Tribunal for the trial of such offences. As a corollary, the Director of Enforcement would have to be divested of his judicial functions and a complaint by him would no longer be an essential precondition for the initiation of proceedings in cases of violations of exchange control. The Committee would like the Directorate of Enforcement to function as the main agency for investigation and prosecution of foreign exchange violations. To strengthen intelligence and investigation arrangements in regard to breaches of exchange control the Directorate of Enforcement should work in close cooperation with officers of the Customs Department, Central Excise and Police, particularly the Central Bureau of Investigation. Further, it should be made obligatory on the part of the Directorate of Enforcement to report to the CBI all serious cases of violations of Exchange Control. A duty should also be cast on officers of Enforcement, police officers and such other officers as may be specified in this behalf of the Central Government to launch prosecutions wherever there is a *prima facie* case of contravention of exchange control provisions."

1.11. The Committee observe from the Eighty-Ninth Report of the Estimates Committee (Fourth Lok Sabha) that these recommendations are being acted upon.

1.12. The Committee note that pursuant to their recommendations, Government have appointed a Study Team to go into the problem of over-invoicing of imports and under-invoicing of exports. The Committee hope that the Study Team will examine the problem in all its aspects and that, on the basis of their suggestions, Government would be able to devise effective Checks at the licensing, foreign exchange releasing and importation stages, so as to eliminate the mal-practices connected with over-invoicing and under-invoicing.

1.13. The Committee would like Government to give particular consideration to the following suggestions :

- (i) The Committee understand that the Reserve Bank of India has at present no machinery to check declarations of value of goods by importers and exporters. The Customs Authorities have appraising units and they should be charged with the responsibility for verifying whether the declared values of exports and imports are fair and in accordance with exchange control law and requirements.

- (ii) Valuation of exports|imports is a job which calls for expertise and a knowledge of prevalent market conditions in India and abroad. It will, therefore, be necessary to ensure that adequate market intelligence is made available to the customs officers who do appraisal work.
- (iii) There would be temptations to over-value imports where import licences are issued liberally for essential machinery and plant. A comprehensive scrutiny of imports of the type where there is possibility of over-valuation should therefore be conducted in Customs Houses. Any powers that the customs officers may require for this purpose, such as calling for documents and other evidence, should be provided to them under law. There should likewise be a scrutiny of selected exports, but the procedures for this purpose should be such that they do not delay shipments.
- (iv) The experience in the cases dealt with by the Committee in their Fifty-Sixth Report indicates that prosecutions tend to be drawn out. Delay is likely to vitiate the very purpose of prosecution. It makes establishment of guilt difficult and tones down the deterrent effect of penalties. The Committee would like Government to examine whether a special procedure could be prescribed so that prosecution proceedings could be quickly completed in cases of this type. In dealing with foreign exchange offences, except those which are petty in nature, the emphasis should be on prosecutions rather than adjudication.
- (v) Government have themselves stated that there are some lacunae in Exchange Control Regulations and have mentioned as an instance the fact that the existing regulations do not cast any obligation on authorised dealers in foreign exchange to verify whether remittances arranged on behalf of importers are matched by the value of goods actually imported. Loopholes of this kind should be plugged. The Estimates Committee had also drawn the attention of Government to obvious deficiencies and lacunae in the provisions of the Foreign Exchange Regulation Act and rules and orders etc., thereunder. The law should, therefore, be streamlined so that:
- (a) the onus of proving that a fair value of exports|imports has been declared is on the exporter|importer;
- (b) in case of exports, where payment has not been received, the onus is cast on the exporter to prove that reasonable steps have been taken for realisation;

- (c) persons who conspire or aid or abet or counsel or procure any other person to contravene the exchange control regulations could be penalised under the Act;
- (d) provisions regarding penalties are so framed as to operate as an adequate deterrent to potential offenders;
- (e) offences under the foreign exchange regulations are included in the schedule of offences calling for extradition proceedings, if necessary.

It is, however, not the intention of this Committee that omissions arising out of minor procedural deviations inadvertently committed should be visited with punishment.

1.14. The Committee note that in respect of cases mentioned in the Fifty-Sixth Report, the Customs Department have not been able to examine whether there has been any failure in the Madras Customs House to detect cases of over-invoicing as the relevant documents are with the Central Bureau of Investigation. The Committee suggest that the Central Bureau of Investigation should examine how far there was failure in the Madras Customs House to detect cases of over-invoicing and to what extent there was collusion, if any. Suitable action against delinquents should be taken thereafter.

Review of issue of Import Licences by way of incentives—Paragraph 1.47 (S. No 5).

1.15. In paragraph 1.47 the Committee made the following observations :

“The Committee are pained to observe that at a time when this country was facing a serious shortage of foreign exchange, the Ministry of Commerce should have issued licences worth crores of rupees for the import of raw hides and skins to persons who were not interested in importing these materials. As pointed out by the representative of the Central Bureau of Investigation in evidence, the licensees had perhaps enough materials of their own, with the result that most of them sold their import entitlements at a paltry commission of 2 to 3 per cent and some of them even surrendered their entitlements. This shows how wrong the Export Promotion Council had been in their assessment of the need for imports of these materials. The Committee desire that the Ministry of Commerce should carefully review the issue of import licences which are given by way of incentive for exports to make sure that such abuses do not recur.”

1.16. In their reply dated 15th November, 1969, the Department of Foreign Trade have stated :

“The main purpose of allowing the import of raw hides and skins against import entitlements earned from Export of E.I. Tanned

Leather prior to 15th May, 1964, was to increase the availability of raw hides and skins in the country. It is an essential raw material and was expected to help in increasing the export of processed and finished leather.

Import entitlements against export of E.I. tanned leather prior to 15th May, 1964, was fixed at 75 per cent on the basis of the formula *viz.*, twice the import content subject to a maximum of 75 per cent. In this case, the import content was taken roughly as under :

| Item | Import content | Import entitlement |
|--|----------------|--------------------|
| (a) Hides and skins, wattle extracts and bark. | 32% | 63½%† |
| (b) Chemicals and preservatives. | 6% | 11½% |

Most of the chemical items previously allowed import, such as caustic soda, borax and boric acid, hydro-sulphite of soda, exalic acid *etc.*, have since become available indigenously. Moreover, raw hides and skins and wattle extract bark *etc.*, are now on O.G.L. Accordingly, the import replenishment has been fixed at 2 per cent."

The Committee had desired to be furnished with further information on the following points :

- (i) the principal Export Promotion Schemes under which import entitlements are given by way of incentive for exports;
- (ii) the extent of import entitlement permitted thereunder;
- (iii) the restrictions subject to which import entitlements are transferable;
- (iv) any other checks exercised to ensure that import licences given under these schemes are not misused.

1.17. The Department of Foreign Trade have furnished a further note prepared by the Chief Controller of Imports and Exports stating :

"All erstwhile Export Promotion Schemes, which were commonly termed as 'incentive schemes', were abolished consequent to the devaluation of Indian Rupee on 6th June, 1966. The Government simultaneously announced the import policy for Regd. Exporters applicable in respect of exports of certain specified products effected on or after 6th June, 1966 to permissible destinations. The policy has been passing through a process of evolution and still continues to be in force. Unlike the erstwhile Export Promotion Schemes, the object

of the import policy for Regd. Exporters is to provide replenishment from the most preferred sources of imported materials, intermediates, components and parts thereof used in the manufacture of the exported products. Naturally the percentage of replenishment, which is based on the concept of single import content, varies from product to product."

"The important and striking aspect of this policy is the A.U. concept. Import licences under this policy are normally issued in favour of manufacturers, who are borne on the books of the concerned technical authorities, viz., DGTD, Textile Commissioner, State Directors of Industries etc., subject to the condition that the goods imported under the licence are utilised in the licenceholders' own factory. However, in the case of certain specified products, which are mainly decentralised on cottage industry basis, option has been allowed to merchant-exporters (even though the Regd. Exporters policy fundamentally applied to manufacturer-exporters) to obtain replenishment licences in their own name provided they got the imported goods used elsewhere on their account and undertake not to sell the goods or otherwise dispose them of. The current import policy for Regd. Exporters is contained in Vol. II of the Import Trade Control Policy for the year April, 1969 March, 1970 and necessary amendments or changes in the said policy have been announced by means of Public Notices issued from time to time."

"Section I of the aforesaid policy-book contains the salient features of the policy and procedure; while Section II contains policy statement indicating the export products and the import replenishment percentage as well as the items that may be allowed for import and the extent to which they are subjected to face value restriction. All the export products covered by the above policy have been brought under a number of product groups such as Engineering Goods, Chemical and Allied products and so on. Within each product group, the export products have been divided into broad categories like Ferrous manufactures, Non-ferrous manufactures, rubber manufactures and so on and into product sub-groups under each sub-category. The exports effected against the product group qualify for grant of replenishment licences under this policy."

"Column 4 of Section II of the current policy book indicates the rate of replenishment against each export product. It also shows the items that may be allowed for import and the extent to which they are subject to face value restriction under this policy".

"Under certain restwhile Export Promotion Schemes both the merchant-exporters and manufacturer-exporters were eligible for

obtaining Export Promotion licences in their own name and the scheme also provided for transfer or sale of the import entitlements to other manufacturers. However, under the present import policy for Regd. Exporters, ordinarily licences are to be issued in the name of Regd. Exporter only if he is the manufacturer of the product exported, except for certain items listed in para 11 of Section I (Volume II) of the current Policy Book wherein licences are issued even to merchant exporters subject to modified Actual Users conditions. Under the import policy for Regd. Exporters, a provision for nomination has been made. Nominations may be made by a merchant-exporter in favour of a manufacturer of the product exported or any product in the product sub-group to which the export belongs. Nomination can also be made in favour of a manufacturer of a part, component or material used in the manufacture of the export product provided that (a) such a part, component or material, if exported, would have qualified for import replenishment under the policy; and (b) unless specifically provided otherwise, it falls within the same product group to which the exported product belongs. It is also open to manufacturer-exporter also not to take the licence in his own name but to ask the licence to be issued in favour of a manufacturer nominated by him. Except for the provision of nomination as stipulated in the import policy for Regd. Exporters, the transfer or sale of entitlements or of the imported material is not allowed and the Actual User Conditions imposed on the replenishment licences provide a built-in safeguard. It may be added that the licensing authorities exercise care and caution in accepting nomination by carrying out careful scrutiny regarding nominee's manufacturing activities in consultation with the concerned technical authorities like D.G.T.D. Textile Commissioner, State Director of Industries etc,"

"The following checks and built-in safeguards have been provided in the present import policy for Regd. Exporters to ensure that import licences issued under this scheme are not misused:

(a) Unlike the erstwhile Export Promotion Schemes, the replenishment is based on single import content.

(b) Import licences or release orders under this policy are issued to manufacturer-exporters duly registered with the concerned technical authorities subject to actual-user conditions. Even in the case of certain specified export products, as given in Para 11(1) of Section I, Volume II of the current policy book, import licences are issued in favour of Regd. Exporters even though they may not be registered as 'manufacturer-exporters'

subject to the condition that such goods are manufactured elsewhere on their account and undertaking not to sell or otherwise dispose of the material allowed to them for import.

(c) In order to keep a watch on the post-importation utilisation of the imported material against the licences issued under this policy, a provision has been made that intimation regarding issue of each licence is simultaneously sent to the concerned technical authorities on whose books the licence is borne as a manufacturer.

(d) The objective of the policy is to allow, in consultation with the technical authorities, only those items of import which constitute direct inputs in the exported product. The policy adopted under the erstwhile E.P. Scheme to allow unconnected items, as an element of incentive, has been discontinued under the present import policy for Regd. Exporters. However, in order to neutralise the incidence of non-refundable local taxes as well as to enable the exporters to compete in the international markets, a scheme to grant cash assistance against certain selected export-products, introduced after devaluation, still continues to be operative.

(e) Except for the provisions of nominations as provided in the policy, no sale or transfer of entitlements of goods imported against the replenishment licences is permitted under the policy."

"Whenever any case of infringement of the actual user condition or misuse of imported material is brought to notice, the case is investigated, wherever necessary, through the agency of the C.B.I., and penal action is taken against the defaulters under the Imports and Exports (Control) Act, 1947, besides deregistration of the party and suspension of grant of licences to them."

"An inter-departmental committee consisting of representatives of the Ministries of Foreign Trade and Finance, D.G.T.D., and C.C.I. & E. has been constituted to screen and decide applications for grant of advance licences. A careful follow-up action is taken to watch the fulfilment of export obligations in such cases."

"Another inter-departmental committee consisting of officers of the Ministries of Foreign Trade and Finance, D.G.T.D. and C.C.I. & E. keeps a close and constant watch on the working of the policy and takes adequate steps to plug any loopholes or any reported misuse of

the provisions of the policy. The Committee carry out periodical review and important changes in the import policy are made as a result of the Committee's decision."

"The replenishment percentage against the exports of Vegetable Tanned Leather, Tanned hides and skins has been constantly under review since the introduction of the policy. The replenishment percentage under the current policy is only 2 per cent of the f.o.b. value against the E.I. Tanned Leather and 4 per cent against the exports of tanned hides and skins, as compared to the high rate of entitlement allowed under the erstwhile Export Promotion Schemes prior to devaluation. In order to prevent misuse of the imported goods, items of import allowed are also subject to face value restriction."

1.18. From the Import-Trade Control Policy for the period April, 1969 March, 1970 announced by Government, the Committee observe that, apart from import replenishment schemes, where the replenishment is related to export performance, there are a number of other schemes providing facilities to export houses. These fall under the following categories:

(i) *Export effort by priority industries*

Industrial units engaged in priority industries will be accorded preferential treatment if they export 10 per cent or more of their production, or if their products are used in exports to this extent. Such preferential treatment will include facilities for expansion and improvement of installed production capacity and for the import of raw materials and components from preferred sources of supply.

(ii) *Imports through Export Houses*

A new scheme has been formulated to enable recognised Export Houses to maintain stocks of industrial raw materials and spare parts for meeting essential requirements of the manufacturing units whose products are marketed by them. Under this scheme, import licences will be issued to merchandising Export Houses recognised on the basis of their exports of non-traditional products. The details of the scheme are being announced separately.

(iii) *Import of capital goods by export-oriented units*

Applications for import of capital goods, equipment, dies, jigs and tools required by exporting units for expansion, modernisation, diversification of production facilities as well as for research and development with a view to accelerating their exports will be given high priority from out of

a special allocation of foreign exchange to be made for this purpose. A provision to this effect has been made in Chapter VI of the Import Trade Control Hand Book of Rules and Procedure, 1969.

(iv) *Strengthening Export Production*

In order to strengthen export production, industrial units with substantial export performance will be given certain facilities by way of (a) expanding their production capacity to enable them to step up their exports; (b) following up the additional capacity licensed for export production by appropriate import licensing for capital goods, spares and raw materials; (c) provision of finance, technical and managerial assistance; and (d) exclusion of the capacity used in export effort from the overall licensed capacity.

(v) *Phased Export Programmes*

The present export effort in industrial fields is confined to a few of many organised units. Government is desirous of assisting all competent concerns to expand and become more efficient in exporting over a period of time, thereby enlarging the number of exporting units. A scheme for phased export programmes has accordingly been evolved which would enable the intending exporters to obtain some or all of the facilities referred to in (iv) above.

1.19. The Committee note that under the Import Trade Control Policy now in operation, exporters are entitled to licences on specified conditions regarding export performances. It is no doubt true, as stated by Government, that the licences are issued to manufacturer-exporters who are duly registered and are subject to "actual-user conditions." However, it will be necessary for Government to devise effective procedures to ensure against misuse of import licences. Powers available to Government to blacklist firms should be effectively and promptly used to stop such abuses. In any case, as export performance is either an implied or explicit condition of the grant of licences, it will be necessary for Government to keep tab on the utilisation of these licences from the larger point of view of export promotion.

Action taken against persons responsible for malpractices—Paragraphs 1.49 and 1.50 (S. Nos. 7 and 8).

1.20. In paragraph 1.49 the Committee recommended that the Ministry of Commerce should consider the question of debarring the persons who had abused their licences in these cases from getting further Import Licences.

1.21. In their reply dated 15th November 1969, the Department of Foreign Trade had stated :

“This would be done. In some of these cases, prosecutions have already been launched and the question of debarring persons concerned would be considered in the light of the Court’s judgment. The remaining cases are still under investigation by the C.B.I. and action under the Imports (Control) Order, in these cases will be initiated as soon as investigation reports are available. The C.B.I. has been requested to indicate whether there are any other cases apart from those which have been so far reported.”

1.22. The Committee had desired to know whether the Central Bureau of Investigation had since indicated any other cases besides those already reported and if so, the amount of foreign exchange involved. The Committee find from a copy of the reference dated 15th December, 1969 received by the Department of Foreign Trade from the Chief Controller of Imports and Exports that the Central Bureau of Investigation have not registered any other case involving allegations of malpractices of licences issued against the export of tanned hides and skins under the erstwhile Export Promotion Scheme, apart from the cases already reported.

1.23. With regard to the cases filed in Court by the Central Bureau of Investigation and recoupment of foreign exchange, the Committee made the following observations in paragraph 1.50:

“As regards the action taken or to be taken against the persons involved in these cases, the Committee note that some of the cases have already been filed in Court, and the remaining ones are also expected to be filed shortly. They would, therefore, not like to comment on this aspect. They are, however, anxious that the prospects of recoupment of foreign exchange under Section 23(IB) of the Foreign Exchange Regulations Act should be fully explored in all these cases.”

1.24. In their reply dated 28th November, 1969, the Department of Revenue have stated:

“The observations made by the Committee have been noted and these have been brought to the notice of the concerned agencies for necessary action.”

1.25. The Committee desired to be furnished with information regarding (i) the outcome of the efforts made by the concerned agencies for the

recoupment of foreign exchange and (ii) the precise position regarding starting of legal proceedings against all the parties involved. In a note dated 16th December 1969, the Department of Revenue have stated :

“As has been explained in paragraph 1.23 and 1.24 of the Report of the Public Accounts Committee, necessary directions under the Foreign Exchange Regulation Act, 1947 can be issued for repatriation of foreign exchange retained or accumulated abroad unauthorisedly. In the cases which are pending in the court and in the cases where complaints are yet to be filed, the Central Bureau of Investigation and the Enforcement Directorate propose to make a specific prayer to the court that the court may, in exercise of the powers under section 23(IB) of the Foreign Exchange Regulation Act, direct the persons concerned to bring back the foreign exchange holdings into India.”

1.26. The Department of Revenue have also in their note stated the position of legal proceedings in the six cases of over-invoicing of imports of hides and skins which have been referred to in the report. The position is as follows :

“Case No. I: The Customs authorities have already filed a complaint in this case in the court of law. The Enforcement Directorate was contemplating filing of a complaint in the court. However, on the 14th October, 1969, the Supreme Court, in their judgment relating to M/s. Rayala Corporation of Madras ruled that the Directorate cannot file a complaint straightaway without initiating adjudication proceedings. In view of this judgment, the matter is being re-examined by the Enforcement Directorate.”

“Case No. II : The Bombay Custom House have filed complaints in the court of law in April, 1968 for offences under the Customs Act, 1962, A complaint has also been filed by the Enforcement Directorate in the court of Chief Presidency Magistrate, Bombay on the 10th July, 1968. The case has already been heard partly and is pending trial.”

“Case No. III : The Central Bureau of Investigation have completed their investigation in the matter and have sent their investigation report to the Enforcement Directorate. The case is being examined in the light of the judgement of the Supreme Court referred to above.”

“Case No. IV : The Central Bureau of Investigation launched prosecution against the persons concerned in the court of Second Presidency Magistrate, Madras. The persons were

discharged by the court on the 8th May, 1969. The Central Bureau of Investigation have filed a revision petition in the Madras High Court on the 23rd July, 1969."

"The Enforcement Directorate have issued show-cause notices to the holders of import licences, for contravention of section 4(3) of the Foreign Exchange Regulation Act".

"Case No. V:.....The Central Bureau of Investigation had launched prosecution in the court of Second Presidency Magistrate, Madras, for offences under the Indian Penal Code. The court in its judgement dated 7th October, 1969 convicted S|Shri Both these persons have filed appeals in the Madras High Court against their conviction."

* * * * *

"Case No. VI:.....The Central Bureau of Investigation have since completed their investigation in this case and have suggested to the Enforcement Directorate that a complaint for contravention of certain provisions of the Foreign Exchange Regulation Act and also for the charge of conspiracy may be filed in the court. The case is being examined in the light of the judgement of the Supreme Court referred to above."

1.27. The Committee note that out of six cases investigated by the Central Bureau of Investigation/Enforcement Directorate, three cases are pending in courts while the remaining three cases are still under examination in the light of Supreme Court judgment of 14th October, 1969 that Enforcement Directorate cannot file a complaint straightaway without initiating adjudication proceedings. The Committee desire that the examination of the matter should be expedited.

1.28. Necessary steps should also be taken in cases pending in the courts and also those which are yet to be filed to make a specific prayer to the court to direct the persons concerned under Section 23(IB) of the Foreign Exchange Regulation Act to bring back the foreign exchange holdings into India.

1.29. The Committee note that Government has not taken any action to debar the persons who have abused their licences from obtaining further import licences. It has been stated that the question of debarring the persons concerned will be considered in the light of the courts' judgment. The Committee would like it to be examined whether Government are at this stage precluded from initiating such an action by virtue of powers vested in them under the Import and Export (Control) Act.

**Reporting of omissions by authorised banks to the Reserve Bank of India—
Paragraph 1.51 (S. No. 9)**

1.30. In paragraph 1.51, the Committee made the following observation:

“In their note to the Committee, the Central Bureau of Investigation have promised to send to the Reserve Bank a report on the acts of omission and commission of the banks authorised by the Reserve Bank to deal in foreign exchange. The Committee trust that on the receipt of this report, the Reserve Bank will take necessary action against such of the banks as had contravened the Reserve Bank’s instructions in regard to release of foreign exchange.”

1.31. In their reply dated 18th December, 1969, the Department of Economic Affairs have stated :

“Reserve Bank of India have undertaken to take necessary action on receipt of reports from the Central Bureau of Investigation.”

1.32. The Committee had desired to be furnished with information on the following points:

- (i) whether C.B.I. have reported to the Reserve Bank of India regarding acts of omission and commission by the banks involved;
- (ii) the action taken by the Reserve Bank against those banks which had contravened the Reserve Bank’s instructions in regard to release of foreign exchange.

1.33. In their communication dated 29th December, 1969, the Department of Economic Affairs have stated:

“C.B.I. have furnished R.B.I. with information relating to four cases but have advised them not to take action till the same are disposed of by courts.”

1.34. The Committee desire that the Central Bureau of Investigation should report to the Reserve Bank of India all other acts of omission and commission by banks authorised to deal in foreign exchange so that necessary action might be taken against them. The Committee would like to be apprised of the action taken by the Reserve Bank of India in this regard.

Audit of foreign exchange transactions—Paragraph 1.60 (S. No. 14)

1.35. In paragraph 1.56, the Committee had examined a suggestion that there should be a system of periodical review of foreign exchange transactions by an independent authority like the Comptroller and Auditor General. The Committee were then informed that the Ministry of Finance

proposed to consult the Comptroller and Auditor General on the question whether and to what extent the advice of the Comptroller and Auditor General could be usefully drawn upon in laying down appropriate procedure in this regard. The Committee made the following recommendation in paragraph 1.60:

“The Committee would like Government to take an early decision in consultation with the Comptroller and Auditor General so that irregularities in cases where specific obligations are undertaken by the parties concerned may be brought out without delay.”

1.36. Government have stated in their reply dated 18th December, 1969, that “their views have been communicated to the Comptroller and Auditor General along with the information required by him on procedures etc., and the matter is presently under his consideration.” It is understood from Audit that the Ministry of Finance have referred to Comptroller and Auditor General for comments a note setting out the various types of cases where foreign exchange is released as a *quid pro quo* for specific obligations and detailing the procedures which are being followed or are proposed to be followed to watch fulfilment of the obligations. This note does not deal with the question of test-check by Comptroller and Auditor General but Government while forwarding this note to Comptroller and Auditor General have stated that in their view “no test-check by Comptroller and Auditor General is called for, the matter being one of administrative procedures rather than of financial transactions of Government. The draft procedures are under examination of Audit.”

1.37. There are a number of schemes at present which relate import entitlements of parties to export performance. Parliament is entitled to know whether in these and other similar cases the country has derived the expected foreign exchange benefits. The Committee, therefore, feel that there should be some external test-check of these transactions by an independent authority like the Comptroller and Auditor General to ascertain whether import entitlements have been correctly regulated and obligations arising out of grant of import entitlements have been fulfilled. The Committee are not convinced by the argument put forward by Government that the matter is one of “administrative procedures rather than of financial transactions of Government”. It cannot be denied that in the last resort foreign exchange spent or even earned by non-Government entities has a vital impact on the economy of the country and attracts Government’s responsibility. The Foreign Exchange Regulations themselves derive from the basic premise set out in the Foreign Exchange Regulation Act, 1947 that “it is expedient in the economic and financial interests” of the country to regulate all dealings in foreign exchange. In the circumstances, Government should themselves welcome a selective test-check by

the Comptroller and Auditor General of foreign exchange transactions in so far as they involve some form of quid pro quo. The Committee are confident that the Comptroller and Auditor General will exercise his functions in this regard judiciously, without impinging on administrative discretion.

CHAPTER II
RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN
ACCEPTED BY GOVERNMENT

Recommendation

The Committee are shocked to observe that import licences granted by Government with a vowed object of export promotion of tanned hides and skins should have been used to perpetrate frauds entailing heavy loss of foreign exchange to the country. According to the investigation, carried out by the Central Bureau of Investigation, the parties committing the frauds purchased import entitlements for raw hides and skins from leather merchants of Madras and then arranged to import, through their agents abroad, worthless stuff at grossly inflated prices. An idea of the extent of over-valuation can be had from the fact that imported raw hides and skins, both cleared and uncleared, the value of which was estimated at Rs. 1,03,500 were invoiced at Rs. 154,32,438 (i.e. 149 times the assessed value). The Committee note in this regard that, according to the findings of the Central Bureau of Investigation in one case imports were arranged through a firm floated by the partners of the importing firm solely for the purpose of effecting shipments and in another case a remuneration of 3 percent was paid to a foreign firm for allowing the use of their name as shippers.

[(Sd) No. 1, Paragraph 1.43]

Action taken

Government entirely agrees with the Committee.

[*Ministry of Finance (Department of Revenue and Insurance) D.O. F. No. 1/1/69—LC II, dated 15-11-1969.*]

Recommendation

Another disquieting aspect of the matter which has come to the Committee's notice is the lack of coordination between the various Ministries and Departments of Government. During the course of evidence when the Committee desired to know whether any further licences had been given to the firms which had sold the licences in these cases, the representative of the Ministry of Commerce stated categorically that the case had not even been reported to them by any quarter. The Committee are surprised to learn this. They feel that after the cases had come to light, these should have been brought to the notice of the Ministry of Commerce. The Ministry of Commerce should have also been kept fully posted with subse-

quent developments. This was necessary to enable that Ministry to examine the matter in the light of the new situation and initiate such action as they considered necessary. This unfortunately was not done. The Committee trust that necessary steps will be taken to ensure that in all such cases there is close coordination between the Ministries and Departments of Government.

[S. No. 6, paragraph 1.48]

Action taken

The observations of the Committee have been noted. Steps have been taken to ensure that cases involving breaches of Import Trade Control regulations are reported promptly to the Chief Controller of Imports and Exports for initiating action under the Import Export Control Act, whenever necessary. A copy of the instruction issued to the Collectors of Customs and Central Excise on the subject is enclosed for the information of the Committee.

[*Ministry of Finance (Department of Revenue and Insurance) D.O. F. No. 8/97/69—Cus. VII, dated 18-10-1969.*]

F. No. 8/27/68-Cus. VII
 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 (Department of Revenue and Insurance)

New Delhi, the 13th March, 1968.

From

The Under Secretary to the Government of India.

To

All Collectors of Customs,
 All Collectors of Central Excise.

SUBJECT :—I.T.C.R.— Blacklisting of firms that have contravened customs law and foreign exchange regulations—Circulation of information to ITC authorities and other Ministries—Fortnightly Statements showing particular of unauthorised imports—

Sir,

Please refer to the Ministry of Finance (Deptt. of Revenue) Secret letter No. 8/48/60-Cus. VII, dated 24th June, 1960 wherein you were requested that fortnightly statements of all cases involving breaches of ITC regulations may be reported to the CCI&E (with a copy to the Board) for departmental action under the import/Export Control Act.

2. It has now been decided, in consultation with the CCI & E that only the following types of cases need be reported to him *i.e.*

- (1) where licences are issued for goods to be used in the importer's factory but the goods imported are such as
 - (i) are not ordinarily used in such a factory,
 - (ii) are much in excess of a year's requirements; or
 - (iii) are imported by someone else.
- (2) where the licence is for spares or components, but the goods imported are complete or near complete articles.
- (3) where the margin of profit on the imported goods is over 50 per cent. The last category will include all miscellaneous types of offences for importation of goods with high margin of profit.

3. It has been noticed that these fortnightly statements have not been furnished regularly and promptly. You are requested to ensure that such statements are furnished regularly. If there are no such cases during a specific fortnightly then a 'nil' report may be sent to the CCI & E, New Delhi with a copy to this Ministry.

4. The receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/- M. S. SUBRAMANYAM,
Under Secretary to the Government of India.

Copy forwarded to the CCI & E, New Delhi. His U.O. No. 7|Misc.| HQ. 68|Eng.|930 dated the 19th February, 1968. Copies of fortnightly statements are being endorsed to this Ministry by a number of Collectors. In this connection his office letters 3(1) Stat-I(E)|743 dated 9-6-61, 5(5)|66|Stat.II dated 27-5-66 and 17-8-66 and 296|63|Stat|III|562 dated 29-10-66 have been quoted in such statements. However, the Collectors have been requested once again to ensure that such fortnightly statements are forwarded to his office.

Copy to the Directorate of Enforcement|Directorate of Revenue Intelligence|Directorate of Inspection.

Copy to all sections in the Customs Wing including Land Customs.

Sd/-M. S. SUBRAMANYAM,
Under Secretary to the Government of India.

Recommendation

The Committee would like the Ministry of Commerce to consider the question of debarring the persons who had abused their licences in these cases from getting further import licences.

[S. No. 7, Paragraph 1.49]

Action taken

This would be done. In some of these cases, prosecutions have already been launched and the question of debarring persons concerned would be considered in the light of the Court's judgment. The remaining cases are still under investigation by the C.B.I., and action under the Imports (Control) Order, in these cases will be initiated as soon as investigation reports are available. The C.B.I. has been requested to indicate whether there are any other cases apart from those which have been so far reported.

[Ministry of Finance (Department of Revenue and Insurance) D.O. No. 11169—LC II dated 15th November, 1969.]

Further Information sought by the Action-Taken Sub-Committee

Have the Central Bureau of Investigation since indicated any other cases besides those already reported and if so, the amount of foreign exchange involved?

Government's Reply

The Central Bureau of investigation have informed in their letter No. 15/27/68-EOW dated 12-12-1969 that they have not registered any other case involving allegations of malpractices of licences issued against the export of tanned hides and skins under the erstwhile Export Promotion Scheme, a part from the cases already reported.

[Ministry of Foreign Trade D.O. No. 21168-EP (CAP) dated 16th December, 1969].

Recommendation

As regards the action taken or to be taken against the persons involved in these cases, the Committee note that some of the cases have already been filed in court, and the remaining ones are also expected to be filed shortly. They would, therefore, not like to comment on this aspect. They are, however, anxious that the prospects of recoupment of foreign exchange under section 23(IB) of the Foreign Exchange (Regulations) Act should be fully explored in all these cases.

[S. No. 8, Paragraph 1.50]

Action taken

The observations made by the Committee have been noted and these have been brought to the notice of the concerned agencies for necessary action.

[Ministry of Finance (Department of Revenue and Insurance) O.M. F. No. 11|20|69-Tech. Coord. dated 28-11-69].

Further Information sought by the Action Taken Sub-Committee

Please Indicate—

- (i) the outcome of the efforts made by the concerned agencies for the recoument of foreign exchange;
- (ii) the precise position regarding starting of legal proceedings against all the parties involved.

Government's reply

(i) As has been explained in paragraphs 1.23 and 1.24 of the Report of the Public Accounts Committee, necessary directions under the Foreign Exchange Regulation Act, 1947 can be issued for repatriation of foreign exchange retained or accumulated abroad unauthorisedly. In the cases which are pending in the court and in the cases where complaints are yet to be filed, the Central Bureau of Investigation and the Enforcement Directorate propose to make a specific prayer to the court that the court may, in exercise of the powers under section 23(IB) of the Foreign Exchange Regulation Act, direct the persons concerned to bring back the foreign exchange holdings into India.

(ii) The position of the legal proceedings in the six cases of over-invoicing of imports of hides and skins is as follows:

Case No. I :

The main persons involved in this case are Sarvashri..... of Bombay. The Customs authorities have already filed a complaint in this case in the court of law. The Enforcement Directorate was contemplating filing of a complaint in the court. However, on the 14th October, 1969, the Supreme Court, in their judgment relating to M/s. Rayala Corporation of Madras ruled that the Directorate cannot file a complaint straightaway without initiating adjudication proceedings. In view of this judgment, the matter is being re-examined by the Enforcement Directorate.

Case No. II :

The main persons involved in this case are S|Shri.....The
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Bombay Customs House have filed complaints in the court of law in April, 1968 for offences under the Customs Act, 1962. A complaint has also been filed by the Enforcement Directorate in the court of Chief Presidency Magistrate, Bombay on the 10th July, 1968. The case has already been heard partly and is pending trial.

Case No. III :

The main persons concerned in this case are Shri. of Bombay and Shri. of New Delhi. The Central Bureau of Investigation have completed their investigation in the matter and have sent their investigation report to the Enforcement Directorate. The case is being examined in the light of the judgment of the Supreme Court referred to above.

Case No. IV :

The main persons concerned in this case are Sarvashri The Central Bureau of Investigation launched prosecution against the persons concerned in the court of Second Presidency Magistrate, Madras. The persons were discharged by the court on the 8th May, 1969. The Central Bureau of Investigation have filed a revision petition in the Madras High Court on the 23rd July, 1969.

The Enforcement Directorate have issued show-cause notices to the holders of import licences, for contravention of section 4(3) of the Foreign Exchange Regulation Act.

Case No. V :

The main persons involved in this case are Sarvashri..... The Central Bureau of Investigation had launched prosecution in the court of Second Presidency Magistrate, Madras, for offences under the Indian Penal Code. The court in its judgment dated 7th October, 1969 convicted S|Shri..... and Both these persons have filed appeals in the Madras High Court against their conviction.

The preliminary enquiries in the matter do not reveal any case for action against Shri under the Foreign Exchange Regulation Act. As regards Shri the matter is under examination.

Case No. VI :

The main persons involved in this case are Sarvashri..... The Central Bureau of Investigation have since completed their investigation in this case and have suggested to the Enforcement Directorate that

a complaint for contravention of certain provisions of the Foreign Exchange Regulation Act and also for the charge of conspiracy may be filed in the court. The case is being examined in the light of the judgment of the Supreme Court referred to above.

It is requested that the names of the parties may not be mentioned in the final Report of the Committee.

[*Ministry of Finance (Department of Revenue)*]D.O. No. 11|20|69-*Tech. Coord., dated 17-12-1969*].

Recommendation

In their note to the Committee, the Central Bureau of Investigation have promised to send to the Reserve Bank a report on the acts of omission and commission of the banks authorised by the Reserve Bank to deal in foreign exchange. The Committee trust that on the receipt of this report, the Reserve Bank will take necessary action against such of the banks as had contravened the Reserve Bank's instructions in regard to release of foreign exchange.

(S. No. 9—Paragraph 1.51)

Action taken

Reserve Bank of India have undertaken to take necessary action on receipt of Reports from the Central Bureau of Investigation.

[*Ministry of Finance (Department of Economic Affairs)*] DEA U.O. No. 3/11/69-EP., dated 18-12-1969].

Further Information sought by the Action Table Sub-Committee

Please state—

- (i) whether C.B.I. have reported to the Reserve Bank of India regarding acts of omission and commission by the banks involved;
- (ii) what action has been taken by the Reserve Bank against those banks which had contravened the Reserve Bank's instructions in regard to release of foreign exchange.

Government's Reply

The Central Bureau of Investigation have furnished the Reserve Bank of India with information relating to four cases but have advised them not to take action till the same are disposed of by courts.

[*Ministry of Finance (Department of Economic Affairs)*] communication D.O. No. F. 3/11/69-E.P., dated 29-12-1969].

Recommendation

The Committee would also like to observe that the parties involved in cases of the present type are rich and influential and the amounts hoped to be gained large and tempting. They would like the Ministries concerned to examine whether the foreign trade and exchange control laws of this country are implemented strictly to make anti-social elements feel that breaches of law will not and cannot pay.

[*Sl. No. 11—Paragraph 1.53*]

Action taken

The Government accept the Committee's recommendation and propose to undertake studies of a fair number of actual cases of contravention of (i) the Exchange Control Regulations and (ii) of the Import and Export Control Regulations, and the punishments awarded to those found guilty in each case; this will give an idea whether the penal provisions in the two Acts are adequate enough to deal with anti-social elements.

[*Ministry of Finance (Department of Revenue and Insurance) D.O. F. No. 11169LCII, dated 15-11-1969*]

Further information sought by the Action Taken Sub-Committee

Please furnish the results of the studies proposed to be undertaken to ascertain whether the penal provisions in the (i) Exchange Control Regulations and (ii) Import and Export Control Regulations are adequate enough to deal with anti-social elements.

Government's Reply

The Study is in progress and results thereof will be communicated by the end of December, 1969.

[*Ministry of Foreign Trade D.O. No. 2/11/69-EP(CAP), dated 16th December, 1969*]

Recommendation

The Committee find that a number of enforcement agencies are seized of cases against firms and persons involved in economic offences. In the interest of smooth and swift investigation of such offences, the committee would like to emphasise the imperative need for close coordination among these agencies. The Committee trust that necessary steps will be taken by Government to ensure close coordination between various investigation agencies.

[*Sl. No. 12—Paragraph 1.54*]

Action taken

The question of coordination among the enforcement agencies has been receiving the active consideration of the Government. The position has been kept under constant review with a view to make the enforcement of the fiscal laws as effective as possible.

In order to see that there is no conflict in the functioning of the various agencies, an attempt has been made to define the sphere of activity of each agency. If in the course of working of these agencies, coordination is found lacking in any area, further measures will be taken to ensure that investigations of fiscal offences do not suffer due to want of coordination.

[*Ministry of Finance (Department of Revenue and Insurance) O.M. F. No. 11/20/69-Tech. Dev., dated 28-11-1969*]

Recommendation

The problem of leakage of foreign exchange through over-invoicing and under-invoicing is an old one. The Committee observe in this regard that the Mathur Study Team on Import and Export Trade Control Organisation had, *inter alia*, recommended the study of the problem of over-invoicing and under-invoicing by a separate Committee. Government have stated in a written note that consequent upon the abolition of the old Export Promotion Schemes and the enforcement of a new import policy for registered exporters with effect from August, 1966, Government felt that there was no need for the appointment of a Committee for the purpose. The Committee are left with an impression that the malpractice of over-invoicing and under-invoicing of exports and imports has not been effectively checked and therefore, they feel that it would be useful if a small Study Team consisting of the officers of the relevant Ministries and of the Reserve Bank and the Central Bureau of Investigation is appointed to study the problem in all its aspects and suggest remedial measures.

(S. No. 13—Paragraph 1.55)

Action taken

The recommendation of the Committee has been accepted and a Study Team of the type suggested by the Committee is being constituted.

[*Ministry of Finance (Department of Revenue and Insurance) O.M. F. No. 11/20/69-Tech. Dev., dated 28-11-1969*].

Further Information sought by the Action Taken Sub-Committee

Please state—

- (i) whether the Study Team to go into the problem of over-

invoicing of Imports and under-invoicing of exports has since been constituted; and if so, what their terms of reference are, and by what time they are required to submit report;

- (ii) if not, when the Study Team is proposed to be constituted and how much time is proposed to be allowed to them for submission of Report;
- (iii) please also furnish in the due course a statement showing the main conclusions of the Study Team together with action taken thereon by Government.

Government's Reply

The Team will examine the problems of leakage of foreign exchange through over-invoicing and under-invoicing of imports and exports and will, for this purpose, locate the possible avenues now existing because of organisational deficiencies or policies of various departments particularly in the Customs Department, Directorate of Enforcement, the Reserve Bank of India, Directorate of Export Assistance and suggest suitable changes in organisation, policy and procedures. The Team will also examine the legal and administrative set-up relating to imports and exports and the rôle of the respective agencies in implementation of the relevant procedures for suggesting suitable remedial measures.

The Team will start functioning immediately and will submit its report within a period of four months.

[Ministry of Finance (Dept. of Revenue and Insurance) U.O. No. 8/24/69-Cus.,VI, dated 16-12-1969]

CHAPTER III

**RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE
DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES
BY GOVERNMENT**

—NIL—

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

The Committee are pained to observe that at a time when this country was facing a serious shortage of foreign exchange, the Ministry of Commerce should have issued licences worth crores of rupees for the import of raw hides and skins to persons who were not interested in importing these materials. As pointed out by the representative of the Central Bureau of Investigation in evidence, the licensees had perhaps enough materials of their own, with the result that most of them sold their import entitlements at a paltry commission to 2 to 3 per cent and some of them even surrendered their entitlements. This shows how wrong the Export Promotion Council had been in their assessment of the need for imports of these materials. The Committee desire that the Ministry of Commerce should carefully review the issue of import licences which are given by way of incentive for exports to make sure that such abuses do not recur.

[Sl. No. 5—Paragraph 1.47].

Action taken

The main purpose of allowing the import of raw hides and skins against import entitlements earned from Export of E.I. Tanned Leather prior to 15th May 1964, was to increase the availability of raw hides and skins in the country. It is an essential raw material and was expected to help in increasing the export of processed and finished leather.

Import entitlements against export of E.I. tanned leather prior to 15th May 1964, was fixed at 75 per cent on the basis of the formula, viz., twice the import content subject to a maximum of 75 percent. In this case, the import content was taken roughly as under :—

| Item | Import content | Import entitlement |
|---|----------------|--------------------|
| (a) Hides and skins, wattle extracts and bark : | 32% | 63% |
| (b) Chemical and preservatives : | 6% | 11% |

Most of the Chemical items previously allowed import, such as caustic soda, borax and boric acid, hydro-sulphite of soda, exalic acid etc., have since become available indigenously. Moreover, raw hides and skins and wattle extract bark etc., are now on O.G.L. Accordingly, the import replenishment has been fixed at 2 per cent.

[Ministry of Finance (Department of Revenue and Insurance) D.O.F. No. 1/1/69-LC-II., dated 15th November, 1969].

Further information sought by the Action Taken Sub-Committee

The Committee had desired to be furnished with further information on the following points :

- (i) the principal Export Promotion Schemes under which import entitlements are given by way of incentive for exports;
- (ii) the extent of import entitlements permitted thereunder;
- (iii) the restrictions subject to which import entitlements are transferable;
- (iv) any other checks exercised to ensure that import licences given under these schemes are not misused.

Government's Reply

All erstwhile Export Promotion Schemes, which were commonly termed as 'incentive schemes', were abolished consequent to the devaluation of Indian Rupee on 6th June, 1966. The Government simultaneously announced the import of policy for Regd. Exporters applicable in respect of exports of certain specified products effected on or after 6th June 1966 to permissible destinations. This policy has been passing through a process of evolution and still continues to be in force. Unlike the erstwhile Export Promotion Schemes, the object of the import policy for Regd. Exporters is to provide replenishment from the most preferred sources of imported materials, intermediates, components and parts thereof used in the manufacture of the exported products. Naturally the percentage of replenishment, which is based on the concept of single import content, varies from product to product.

2. The important and striking aspect of this policy is the A.U. concept. Import licences under this policy are normally issued in favour of manufactureres, who are borne on the books of the concerned technical authorities, viz., DGTD, Textile Commissioner, State Directors of Industries, etc.,

subject to the condition that the goods imported under the licence are **utilised** in the licence-holders' own factory. However, in the case of certain **specified** products, which are mainly decentralised on cottage industry basis, **option** has been allowed to merchant-exporters (even though the Regd. Exporters policy fundamentally applied to manufacturer-exporters) to obtain replenishment licences in their own name provided they got the imported goods used elsewhere on their account and undertake not to sell the goods or otherwise dispose them of. The current import policy for Regd. Exporters is contained in Vol. II of the Import Trade Control Policy for the year April, 1969—March, 1970 and necessary amendments or changes in the said policy have been announced by means of Public Notices issued from time to time.

3. Section I of the aforesaid policy-book contains the salient features of the policy and procedure; while Section II contains policy statement indicating the export products and the import replenishment percentage as well as the items that may be allowed for import and the extent to which they are subjected to face value restriction. All the export products covered by the above policy have been brought under a number of product groups such as Engineering Goods, Chemicals and Allied products and so on. Within each product-group, the export products have been divided into broad categories like Ferrous manufactures, Non-ferrous manufactures, rubber manufactures and so on and into product sub-groups under each sub-category. The exports effected against the product groups qualify for grant of replenishment licences under this policy.

4. Column 4 of Section II of the current policy book indicates the rate of replenishment against each export product. It also shows the items that may be allowed for import and the extent to which they are subject to face value restriction under this policy.

5. Under certain erstwhile Export Promotion Schemes both the merchant-exporters and manufacturer-exporters were eligible for obtaining Export Promotion licences in their own name and the scheme also provided for transfer or sale of the import entitlements to other manufacturers. However, under the present import policy for Regd. Exporters, ordinarily licences are to be issued in the name of Regd. Exporter only if he is the manufacturer of the product exported, except for certain items listed in para 11 of Section I (Volume II) of the current Policy Book wherein licences are issued even to merchants exporters subject to modified Actual Users conditions. Under the import policy for Regd. Exporters, a provision for nomination has been made. Nominations may be made by a merchant-exporter in favour of a manufacturer of the product exported or any product in the product sub-group to which the export belongs. Nomination can also be made in favour of a manufacturer of a part, component or material used in the manufacture of the export product provided that (a) such a part, component or material, if exported, would have

qualified for import replenishment under the policy; and (b) unless specifically provided otherwise, it falls within the same product group to which the exported product belongs. It is also open to a manufacturer-exporter also not to take the licence in his own name but to ask the licence to be issued in favour of a manufacturer nominated by him. Except for the provision of nomination as stipulated in the import policy for Regd. Exporters, the transfer or sale of entitlements or of the imported material is not allowed and the Actual User Conditions imposed on the replenishment licences provide a built-in safeguard. It may be added that the licensing authorities exercise care and caution in accepting nomination by carrying out careful scrutiny regarding nominee's manufacturing activities in consultation with the concerned technical authorities like D.G.T.D. Textile Commissioner, State Director of Industries, etc.

6. The following checks and built-in safeguards have been provided in the present import policy for Regd. Exporters to ensure that import licences issued under this scheme are not misused :

- (a) Unlike the erstwhile Export Promotion Schemes, the replenishment is based on single import content.
- (b) Import licences or release orders under this policy are issued to manufacturer-exporters duly registered with the concerned technical authorities subject to actual-user conditions. Even in the case of certain specified export product, as given in Para 11(1) of Section I, Volume II of the current policy book, import licences are issued in favour of Regd. Exporters even though they may not be registered as 'manufacturer-exporters' subject to the condition that such goods are manufactured elsewhere on their account and undertaking not to sell or otherwise dispose of the material allowed to them for import.
- (c) In order to keep a watch on the post-importation utilisation of the imported material against the licences issued under this policy, a provision has been made that intimation regarding issue of each licence is simultaneously sent to the concerned technical authorities on whose books the licence is borne as a manufacturer.
- (d) The objective of the policy is to allow, in consultation with the technical authorities, only those items of import which constitute direct inputs in the exported product. The policy adopted under the erstwhile E.P. Schemes to allow unconnected items, as an element of incentive, has been discontinued under the present import policy for Regd. Exporters. However, in order to neutralise the incidence of non-refundable local taxes

as well as to enable the exporters to compete in the international markets, a scheme to grant cash assistance against certain selected export-products, introduced after devaluation, still continues to be operative.

- (e) Except for the provisions of nominations as provided in the policy, no sale or transfer of entitlements or goods imported against the replenishment licences is permitted under the policy.

7. Whenever any case of infringement of the actual user condition or misuse of imported material is brought to notice, the case is investigated, wherever necessary, through the agency of the C.B.I., and penal action is taken against the defaulters under the Imports and Exports (Control) Act, 1947, besides deregistration of the party and suspension of grant of licences to them.

8. An inter-departmental committee consisting of representatives of the Ministries of Foreign Trade and Finance, D.G.T.D., and C.C.I. & E. has been constituted to screen and decide applications for grant of advance licences. A careful follow-up action is taken to watch the fulfilment of export obligations in such cases.

9. Another inter-departmental committee consisting of officers of the Ministries of Foreign Trade and Finance, D.G.T.D. and C.C.I. & E. keeps a close and constant watch on the working of the policy and takes adequate steps to plug any loopholes or any reported misuse of the provisions of the policy. The Committee carry out periodical review and important changes in the import policy are made as a result of the Committee's decision.

10. The replenishment percentage against the exports of Vegetable Tanned Leather, Tanned hides and skins has been constantly under review since the introduction of the policy. The replenishment percentage under the current policy is only 2 per cent of the *f.o.b.*, value against the E.I. Tanned leather and 4 per cent against the exports of tanned hides and skins, as compared to the high rate of entitlement allowed under the erst-while Export Promotion Scheme prior to devaluation. In order to prevent mis-use of the imported goods, items of import allowed are also subject to face value restriction.

11. 5 copies of the I.T.C. Policy Book Vol. II for 1969-70 containing the import policy for Regd. Exporters are placed below. The set of Public Notices issued from 1st April, 1969 to date notifying the changes in the aforesaid policy is also enclosed in quintuplicate. (Not printed).

[Ministry of Foreign Trade D.O. No. 2/11/69-EP (CAP dated 16th December, 1969)].

ANNEXURE

- (i) A. Engineering Goods.
- (ii) B. Chemicals and Allied Products.
- (iii) C. Plastics.
- (iv) D. Leather and Leather Goods and other Animal Products.
- (v) E. Sports Goods.
- (vi) F. Fish and Fish Products.
- (vii) G. Processed Foods.
- (viii) H. Handicrafts.
- (ix) I. Cashew Kernels.
- (x) J. Tobacco and Tobacco Products.
- (xi) K. Woollen Carpets, Rugs and Druggets.
- (xii) L. Wollen Textiles, Hosiery and Mixed Fabrics.
- (xiii) M. Coir Products.
- (xiv) N. Cotton Textiles.
- (xv) O. Ready-made Garments (other than Ready-made Garments of Natural Silk).
- (xvi) P. Natural Silk Fabrics, Garments.
- (xvii) Q. Stainless Steel Products.
- (xix) S. Gem and Jewellery.
- (xx) T. Cinematograph Films (exposed)
- (xxi) U. Natural Fibre Products.
- (xxii) V. Nylon Products.
- (xxiii) W. Cellulosic Products.
- (xxiv) X. Bended Products form Mixture of Korton|Celluloec, Fibre or Yarn|Nylon|Polyester or Yarn.

Recommendation

The Committee would like Government to take an early decision in consultation with the Comptroller and Auditor General so that irregularities in cases where specific obligations are undertaken by the parties concerned may be brought out without delay.

[S. No. 14—Paragraph 1.60].

Action taken

Government's views have been communicated to the Comptroller and Auditor General, along with the information required by him on procedures etc. The matter is presently under his consideration.

[*Ministry of Finance (Department of Economic Affairs) U.O. No. 3|11|69-EP dated 18th December, 1969*].

CHAPTER V

RECOMMENDATIONS; OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

In the opinion of the Committee, the commission of these frauds had been made possible by loopholes in procedure and by certain lacunae in the Export Promotion Scheme as it subsisted up to 31st August,* 1963. The Committee got an impression during evidence that hardly any check was exercised against over-invoicing at the licensing stage. Even though there was a provision for the indication of the quantity in the import licence, no such indication was given in the case of non-capital goods. Nor was there any check at the foreign exchange releasing stage. All this combined with laxity at the importation stage facilitated the perpetration of the fraud.

[Sl. No. 2—Paragraph 1.44].

Action taken

(i) It is not clear how 31st August, 1963 has been mentioned in the recommendation. The position is that prior to 1st June, 1963, import entitlements earned against exports of E.I. tanned leather could be utilised without any particular restrictions. From 1st June, 1963, restrictions were imposed on the utilisation of imported materials and the Scheme allowed the articles imported against the entitlement:—

- (a) to be used in the exporter's own factory; or
- (b) to be sold to any other manufacturer who manufactured products covered by the Scheme and who exported a part of his products.
- (c) In cases where the exporter wanted to transfer or sell his import entitlement to any other manufacturer, an application for import licence could be made by such manufacturer, provided such manufacturer satisfied the conditions mentioned at paras (a) and (b) above. Alternatively, an exporter getting import

*The date has been indicated in the Report as 31st August, 1963 but should read as 31st May, 1963.

licence in his own name was eligible to obtain a letter of Authority in favour of any manufacturer who could satisfy the conditions mentioned at (a) and (b) above.

- (d) Details of sales of the imported materials to any person in accordance with (a), (b) and (c) above were to be reported by the exporter within a fortnight, to the concerned Export Promotion Council.

From 15th May, 1964, the import entitlement was reduced from 75 per cent to 19 per cent with the same restrictions on utilisation as mentioned above.

It will thus be seen that while the imported material was allowed to be transferred, such transfer was subject to certain conditions. Sale or transfer of import licences was not allowed. The cases reported by the CBI involved illegal trafficking in import licences. This offence was not the result of any specific feature of the E.P. Scheme.

(ii) In our opinion, there are certain difficulties in ensuring at the licensing stage that there will be no over-invoicing subsequently. However, this question will be remitted to the Study Team proposed to be appointed in pursuance of the Committee's recommendation at Sl. No. 13 (Para No. 1.55).

(iii) It is true that there is a provision for indication of the quantity in an import licence but the effect of mentioning quantity is only to lay down a quantitative limit in addition to the value limit for imports that can be made against the licences. There is nothing to prevent the licence holder from importing a lesser quantity than indicated in the licence. The mention of quantity, therefore, cannot prevent over-invoicing.

(iv) Regarding the check at the foreign exchange releasing stage, the Exchange Control Regulations lay down certain precautions which the authorised dealers in foreign exchange have to take if the import documents have been received direct by the importers. If the banks concerned in these cases have failed in observing the rules, their defaults will figure in the report to be submitted by the C.B.I. to the Reserve Bank vide the Committee's recommendation at Sl. No. 9. Apart from this, it is possible that there are some lacunae in the Exchange Control Regulations. For example according to the existing regulations, it appears that the authorised dealers in foreign exchange, in cases where the shipping documents are received by them from the overseas banks, are not required to verify that the remittances they arrange are matched by the value of the goods actually imported.

The question whether the Exchange Control Regulations need some tightening, will be examined in depth by the Study Team which is proposed to be appointed in pursuance of the Committee's recommendation at Para No. 1.55.

[*Ministry of Finance (Department of Revenue and Insurance) D.O.F. No. 1|1|69—LC II dated 15th November, 1969*].

Recommendation

The Committee note that the Export Promotion Scheme has since been modified; and the import entitlement is now restricted to 19 per cent, instead of 75 per cent as before. Restrictions have also been placed on the sale/transfer of import entitlements. The Committee would like the Ministry of Commerce to examine the feasibility of indicating in the licence the fair unit values of the commodities to be imported on the basis of ruling international prices.

[*Sl. No. 3—Paragraph 1.45*].

Action taken

(i) Import replenishment against exports of hides and skins have since been further reduced to 2 per cent in the case of vegetable tanned leather all sorts, known in the trade as E.I. tanned etc., and 4 per cent in the case of chrometanned leather. The replenishment is meant to be utilised for import of chemicals, since the import of hides and skins is at present under O.G.L.

(ii) It may be possible to deal with few selected items on unit value basis, but it would be difficult administratively to deal with all the items on the import list on unit value basis. In our view, the system will be imperfect as any incorrect unit value mentioned in the licence may serve as a legal cover for over-invoicing. However, we are willing to have this question examined by the Study Team proposed to be appointed in pursuance of the Committee's recommendation at Sl. No. 13 (Para 1.55).

[*Ministry of Finance (Department of Revenue and Insurance) D.O.F. No. 1|1|69—LC II dated 15th November, 1969*].

Recommendation

The Committee are concerned over the performance of the Customs Deptt. in these cases. It appears to them surprising that the appraising staff of the Deptt. who were supposed to keep in constant touch with the market and maintain registers showing the prices of commodities coming from various sources should not have been able to detect these cases over-invoicing in some of which was as high as 228 times the assessed values.

It was urged in evidence that the appraising staff at minor ports was not high ranking enough. The Committee, however, find that the failure to detect over-invoicing was not confined to minor ports, it was also evident in case of major ports like Calcutta, Bombay and Madras. The Committee would like Government to examine whether there was not a gross neglect of duty on the part of the appraisers concerned. They would also like the Ministry to examine whether some change in the existing system is not called for.

[Serial No. 4—Paragraph 1.49]

Action taken

The Committee's observations regarding failure to detect cases of over-invoicing in the major ports like Calcutta, Bombay and Madras has been examined. While there have not been any cases of this type in the Bombay and Calcutta Custom Houses, the position of the Madras Custom House could not be examined in the absence of the relevant documents, which have been taken over by the Economic Offences Wing of the C.B.I. in connection with prosecution proceedings in the court. The matter will be examined on receipt of the documents.

As for the recommendations for examining the existing system in the Custom Houses, the Study Team being constituted in pursuance of recommendation No. 13 (Para 1.55) would be asked to study this aspect.

[Ministry of Finance (Department of Revenue and Insurance) F. No. 18/6/69—cus. VI dated 4th October, 1969].

Recommendation

The Committee appreciate the difficulties in investigation of cases involving breaches of foreign trade and exchange control laws. They are particularly anxious that persons contravening these laws should not be able to flee to other countries for the purpose of escaping punishment or destroying incriminating evidence against them. While the Committee are anxious that the freedom of the citizen is not impinged upon in any manner, they feel that such freedom should not be allowed to be so used as to prevent the law of the land from having its natural course. The Committee are keen that no person is allowed to contravene the law with impunity. It should also be examined whether and to what extent the difficulty of obtaining witnesses and documents from foreign countries and apprehending persons involved in economic offences can be got over by enlisting the support of the Inter-national Criminal Police Organisation or by amendments to Indian laws.

[Serial No. 10—Paragraph 1.52]

Action taken

The Committee's recommendation has been noted. The Government are themselves anxious to see that persons, who are suspected to have contravened the fiscal laws and against whom investigations are in progress are not allowed to leave the country in order to escape punishment or to tamper with the evidence against them. However, the exact nature of the statutory provisions to be made in this regard is under examination.

[Ministry of Finance (Deptt. of Revenue and Insurance) O.M. F. No. 11/20/69-Tech. Coord. dated 28-11-69].

Further information sought by the Action-Taken Sub-Committee

Please state

(i) Whether Government have since come to a decision regarding the exact nature of the statutory provisions to be made to ensure that persons suspected of contravention of fiscal laws against whom investigations are in progress are not allowed to leave the Country in order to escape punishment or to tamper with evidence against them;

(ii) Whether Government have examined whether and to what extent the difficulty of obtaining witnesses and documents from foreign countries and apprehending persons involved in economic offences can be got over by enlisting the support of the ICPO or by amendments to Indian laws.

Government's Reply

(i) The matter has been examined in an inter-Ministerial meeting held in the Ministry of External Affairs on the 9th October, 1969 and as decided in the meeting, the Central Bureau of Investigation and other agencies concerned are examining the question of amendments of the restrictive provisions of the Passports Act, 1967.

(ii) The matter is still under examination by the Central Bureau of Investigation. The investigation agencies are ascertaining from their field formations the precise difficulties experienced in the matter of examination

of witnesses|documents from foreign countries and apprehending persons involved in economic offences. A proposal for inclusion of certain offences against the Foreign Exchange Regulation Act, in the Second Schedule of the Extradition Act, 1962 is also being examined.

[D.O. No. 11|20|69-Tech. Coord. dated 17th December, 1969].

New Delhi;

January

January 24, 1970.

a 4, 1891(S).

ATAL BIHARI VAJPAYEE
Chairman,
Public Accounts Committee.

APPENDIX

Summary of Main Conclusions/Recommendations

| S. No. | Para No. of Report | Ministry/Department concerned | Conclusions/Recommendations |
|--------|--------------------|---|---|
| 1 | 2 | 3 | 4 |
| 1 | 1.12 | Finance <u>Foreign Trade</u> | The Committee note that, pursuant to their recommendations, Government have appointed a Study Team to go into the problem of over-invoicing of imports and under-invoicing of exports. The Committee hope that the Study Team will examine the problem in all its aspects and that, on the basis of their suggestions, Government would be able to devise effective checks at the licensing, foreign exchange releasing and importation stages, so as to eliminate the mal-practices connected with over-invoicing and under-invoicing. |
| 2 | 1.13 | Finance <u>Foreign Trade</u> Home Affairs | The Committee would like Government to give particular consideration to the following suggestions : (i) The Committee understand that the Reserve Bank of India has at present no machinery to check declarations of value of goods by importers and exporters. The Customs Authorities have appraising units and they should be charged with the responsibility for verifying whether the declared values of exports and imports are fair and in accordance with exchange control law and requirements. |

- (ii) Valuation of exports|imports is a job which calls for expertise and a knowledge of prevalent market conditions in India and abroad. It will, therefore, be necessary to ensure that adequate market intelligence is made available to the customs officers who do appraisal work.
- (iii) There would be temptations to over-value imports where import licences are issued liberally for essential machinery and plant. A comprehensive scrutiny of imports of the type where there is possibility of over-valuation should therefore be conducted in Customs Houses. Any powers that the customs officer may require for this purpose, such as calling for documents and other evidence, should be provided to them under law. There should likewise be a scrutiny of selected exports, but the procedures for this purpose should be such that they do not delay shipments.
- (iv) The experience in the cases dealt with by the Committee in their Fifty-Sixth Report indicates that prosecutions tend to be drawn out. Delay is likely to vitiate the very purpose of prosecution. It makes establishment of guilt difficult and tones down the deterrent effect of penalties. The Committee would like Government to examine whether a special procedure could be prescribed so that prosecution proceedings could be quickly completed in cases of this type. In dealing with foreign exchange

offences, except those which are petty in nature, the emphasis should be on prosecutions rather than adjudication.

- (v) Government have themselves stated that there are some lacunae in Exchange Control Regulations and have mentioned as an instance the fact that the existing regulations do not cast any obligation on authorised dealers in foreign exchange to verify whether remittances arranged on behalf of importers are matched by the value of goods actually imported. Loopholes of this kind should be plugged. The Estimates Committee had also drawn the attention of Government to obvious deficiencies and lacunae in the provisions of the Foreign Exchange Regulation Act and rules and orders etc., thereunder. The law should therefore, be streamlined so that:

- (a) the onus of proving that a fair value of exports|imports has been declared is on the exporter|importer;
- (b) in case of exports, where payment has not been received, the onus is cast on the exporter to prove that reasonable steps have been taken for realisation;
- (c) persons who conspire or aid or abet or counsel or procure any other person to contravene the exchange control regulations could be penalised under the Act.
- (d) provisions regarding penalties are so framed as to operate as an adequate deterrent to potential offenders;
- (e) offences under the foreign exchange regulations are included in the schedule of offences calling for extradition proceedings, if necessary.

| 1 | 2 | 3 | 4 |
|---|---|---|---|
|---|---|---|---|

It is, however, not the intention of this Committee that omission arising out of minor procedural deviations inadvertently committed should be visited with punishment.

3 1.14 Finance

The Committee note that in respect of cases mentioned in the Fifty-Sixth Report, the Customs Department have not been able to examine whether there has been any failure in the Madras Customs House to detect cases of over-invoicing as the relevant documents are with the Central Bureau of Investigation. The Committee suggest that the Central Bureau of Investigation should examine how far there was failure in the Madras Customs House to detect cases of over-invoicing and to what extent there was collusion, if any. Suitable action against delinquents should be taken thereafter.

4 1.19 Foreign Trade

The Committee note that under the Import Trade Control Policy now in operation, exporters are entitled to licences on specified conditions regarding export performances. It is no doubt true, as stated by Government, that the licences are issued to manufacturer-exporters who are duly registered and are subject to "actual-user conditions." However, it will be necessary for Government to devise effective procedures to ensure against misuse of import licences. Powers available to Government to blacklist firms should be effectively and promptly used to stop such abuses. In any case, as export performance is either an implied or explicit condition of the grant of licences, it will be necessary for Government to keep

tab on the utilisation of these licences from the larger point of view of export promotion.

5 1.27 Finance
Home Affairs

The Committee note that out of six cases investigated by the Central Bureau of Investigation|Enforcement Directorate, three cases are pending in courts while the remaining three cases are still under examination in the light of Supreme Court judgment of 14th October, 1969 that Enforcement Directorate cannot file a complaint straightaway without initiating adjudication proceedings. The Committee desire that the examination of the matter should be expedited.

6 1.28 Finance
Home Affairs

Necessary steps should also be taken in cases pending in the courts and also those which are yet to be filed to make a specific prayer to the court to direct the persons concerned under Section 23(IB) of the Foreign Exchange Regulation Act to bring back the foreign exchange holdings into India.

7 1.29 Foreign Trade

The Committee note that Government has not taken any action to debar the persons who have abused their licences from obtaining further import licences. It has been stated that the question of debarring the persons concerned will be considered in the light of the courts' judgment. The Committee would like it to be examined whether Government are at this stage precluded from initiating such an action by virtue of powers vested in them under the Import and Export (Control) Act.

8 1.34 Home Affairs
Finance

The Committee desire that the Central Bureau of Investigation should report to the Reserve Bank of India all other acts of omission and

commission by banks authorised to deal in foreign exchange so that necessary action might be taken against them. The Committee would like to be apprised of the action taken by the Reserve Bank of India in this regard.

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Finance

There are a number of schemes at present which relate import entitlements of parties to export performance. Parliament is entitled to know whether in these and other similar cases the country has derived the expected foreign exchange benefits. The Committee, therefore, feel that there should be some external test-check of these transactions by an independent authority like the Comptroller and Auditor General to ascertain whether import entitlements have been correctly regulated and obligations arising out of grant of import entitlements have been fulfilled. The Committee are not convinced by the argument put forward by Government that the matter is one of "administrative procedures rather than of financial transactions of Government". It cannot be denied that in the last resort foreign exchange spent or even earned by non-Government entities has a vital impact on the economy of the country and attracts Government's responsibility. The Foreign Exchange Regulations themselves derive from the basic premise set out in the Foreign Exchange Regulation Act, 1947 that "it is expedient in the economic and financial interests" of the country to regulate all dealings in foreign exchange. In the circumstances, Government should themselves welcome a selective test-check by the Comptroller and Auditor General of foreign exchange transactions in

so far as they involve some form of *quid pro quo*. The Committee are confident that the Comptroller and Auditor General will exercise his functions in this regard judiciously, without impinging on administrative discretion.

GMGPEND-3142 (All) LS-LS I-26-2-70-1390.

