

COMMITTEE ON SUBORDINATE LEGISLATION

(EIGHTH LOK SABHA)

SEVENTH REPORT

(Presented on 2 May, 1986)



**LOK SABHA SECRETARIAT
NEW DELHI**

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION.

(1985-86)

1. Shri Mool Chand Daga—*Chairman*
2. Shri D. L. Baitha
3. Shri G. M. Banatwalla
4. Shrimati Usha Choudhari
5. Shri Dharam Pal Singh Malik
6. Shri Syed Masudal Hossain
7. Shri Mohanbhai Patel
- %8. Shri Vakkom Purushothaman
9. Shri I. Rama Rai
- *10. Shri Ram Swarup Ram
11. Shri K. S. Rao
12. Shri Saleem I. Shervani
13. Shri Dharamgaj Singh
14. Shri D. Narayana Swami
- @15. Shri Yogeshwar Prasad Yogesh

Secretariat

1. Shri M. K. Mathur—*Joint Secretary*
2. Shri R. S. Mani—*Senior Legislative Committee Officer*

%Nominated w.e.f. 18 November 1985 *vice* Shri M. Arunachalam ceased to be a member of the Committee on his appointment as Minister of State.

*Nominated w.e.f. 20 August 1985 *vice* Shri H.G. Ramulu resigned.

@Nominated w.e.f. 7 August 1985 *vice* Shri Lalit Maken died.

REPORT

I

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their Seventh Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on 27 November and 2 December, 1982; 15 and 17 January, 20 February, 8 March, 6 and 7 September, 1983; 9 and 10 February, 21 August, 10, 19 and 20 September and 18 October, 1984; 11 September and 25 October, 1985; 27 January, 7 February and 6 March, 1986.

3. The Committee took evidence of the representatives of (i) Ministry of Commerce on 27 November, 1982, 19 and 20 September, 1984; (ii) Ministry of Commerce and Ministry of Law and Justice (Legislative Department) on 15 and 17 January, 1983; (iii) Ministry of Commerce and Ministry of Law and Justice (Department of Legal Affairs) on 8 March, 1983; (iv) Ministry of Law and Justice (Department of Legal Affairs) on 18 October, 1984; and (v) Ministry of Commerce, Ministry of Textiles and Ministry of Law and Justice (Department of Legal Affairs) on 6 March, 1986. The Committee wish to express their thanks to the Officers of the Ministries for appearing before the Committee and furnishing the information desired by them.

4. The Committee also wish to place on record their special thanks to the Attorney General for India for his valuable opinions, which greatly facilitated the deliberations of the Committee, on legal matters arising out of the scrutiny of the Exports (Control) Order, 1977.

5. The Committee considered and adopted this Report at their sitting held on 30 April, 1986. The Minutes of the sittings relevant to this Report are appended to it.

6. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix I to the Report.

THE EXPORTS (CONTROL) ORDER, 1977 (S.O. 254-E of 1977)

7. An anonymous representation dated 19 July, 1982, received by the Chairman, Committee on Subordinate Legislation (1982-83), on the question of excessive delegation of powers under the Exports (Control) Order, 1977, read as under:—

“.....Section 3 of the Imports and Exports (Control) Act, 1947 gives power to the Government to issue orders providing for restrictions, prohibitions or control of import or export of different commodities. It is as follows:—

(1) The Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restricting or otherwise controlling in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the order:—

(a) the import, export carriage coastwise or shipment as ships stores of goods of any specified description.

(b) the bringing into any port or place in India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried.’

In pursuance of the aforesaid provisions the Ministry of Commerce has issued an Export Trade Control Order which is numbered as 1/77-ETC dated 24th March, 1977. Clause 2(d) of this Order defines ‘Licence’. It says that a licence includes a licensing endorsement made on a shipping bill under this Order. Thus according to this provision if an endorsement has been made on a shipping bill, it will amount to a licence. Under the said Order a licence can be given only by a Licensing Authority. The said order also defines a Licensing Authority. According to clause 2(f), Licensing Authority means an authority competent to grant a licence under this Order. Schedule II to the said Order gives a list of officers competent to grant an export licence.

A perusal of the aforesaid provisions would indicate that a licence in term of the said Export Trade Control Order can be granted only by a Licensing Authority as enumerated

in Schedule II. The said licence can be granted even by an endorsement made on a shipping bill. If any endorsement on a shipping bill is made by an authority other than those prescribed in Schedule II to the said Order, it will have two consequences. Either it will not be a valid licence or if it is treated as a valid licence, it will amount to delegation of authority to issue licence to a body not competent to do so, in terms of the said Export Trade Control Order.

Schedule III to the said Order contains the items which are permissible for open general licences. Presently, we are concerned with Open General Licence No. III. In Column 2 of this licence, items which are permissible for export are mentioned. Column 4 mentions the conditions subject to the fulfilment of which the items can be exported. Entry 55 states in Column 2 as export to EEC member states including UK of textiles made from cotton, wool and man-made fibres. In column 4, which prescribes conditions, one of the conditions prescribed is that the aforesaid items can be exported against quota allotment by the Apparels Export Promotion Council for garments by endorsement on shipping bills. The result is that if the Apparels Export Promotion Council makes an endorsement on shipping bills then alone the goods can be exported. Endorsement on shipping bills has been included in the definition of a licence. Thus the endorsement on shipping bills is in the nature of licence. In this column the power to make this endorsement on shipping bill has been given to Apparels Export Promotion Council, which comes to this that the Apparels Export Promotion Council can grant a licence for the export of goods in terms of Export Trade Control Order dated 24th April, 1977. This is in clear violation of the provisions of law. As the Apparels Export Promotion Council has no authority or power to grant licences, the aforesaid Act of Apparels Export Promotion Council either amounts to be illegal or if it is treated as valid, it would amount to excessive delegation of power to the said Apparels Export Promotion Council.

The second point is that under the Import and Export Control Act the Central Government has been given power in section 4A to levy any fees in respect of any application. The

Export Trade Control Order mentioned above issued in exercise of the powers conferred by section 3 of the aforesaid Act prescribes fees in clause 3(a) as Rs. 50 to be accompanied with every application. It appears that the Ministry of Commerce has issued a Public Notice* No. 61(ETC) on 10th August, 1981. In pursuance thereof, the Apparels Export Promotion Council has issued a circular on 25th September, 1981. The said circular provides for Council charges in column 4. It prescribes various fees to be payable at different rates by applicants under different circumstances. The fee ranges from Rs. 20 to Rs. 100 per one thousand pieces depending on the nature of the items exported. This fee is required to be paid by an applicant who approaches the Apparels Export Promotion Council for getting the necessary endorsements made on the shipping bills. Thus the Apparels Export Promotion Council is charging a fee for which there is no authority, under law. The Apparels Export Promotion Council can at the most charge a fee of Rs. 50 as prescribed in clause 3(a) of the Export Trade Control Order dated 24th March, 1977. Any fees charged beyond the aforesaid sum prescribed in the said Order for the purpose of making endorsement on shipping bill, i.e., issuing a licence for the export is not legally sustainable."

On 23 August, 1982, the concerned Ministry of Commerce were asked to furnish their comments on the points raised in the representation. The Ministry were also asked to state whether any Export Promotion Council (other than the Apparels Export Promotion Council) had been given authority to grant a licence though not specified in Schedule II of the Exports (Control) Order, 1977 and whether such a Council was charging excessive fees in violation of clause 3A of the said Order. A reply dated 8 October, 1982 from the Office of the Chief Controller of Imports and Exports stated as under:—

"A detailed note, explaining the position in regard to various points raised in the representation.....is enclosed**.
It will be observed from the perusal of the detailed note enclosed that the points raised in the representation are not well-founded and the action of the Government was well within the ambit of law.

*See Appendix II.

**See Appendix III.

....attention is invited to the names of the agencies.... who have been authorised to allow exports under certain conditions prescribed by the Government. These agencies are not Government agencies and stand on the same footing as Apparels Export Promotion Council.

.....it may be stated at the outset that no excessive fee is being charged. As a matter of fact, there is no application fee for filing an application for export of various commodities under Exports (Control) Order, 1977. However, an application fee of Rs. 50/- was prescribed under Clause 3A of the Exports (Control) Order, 1977, for allotment of quota for garments. Previously, Past Performance Quota allocation was handled by the Office of the OCI&E. Later on, this work relating to arithmetical calculations of the entitlements, was transferred to the A.E.P.C. on the basis of a fixed formula announced by the Government where there is no discretion left to the AEPC. The AEPC is not charging any application fee as such and the Council is charging Rs. 100/- for each exporter, which can be termed at best as 'service charges' for the services rendered by the AEPC to the exporters."

9. On 27 November, 1982, the Secretary (Textiles) appeared before the Committee. On 15 and 17 January, 1983, the Committee also heard the Law Secretary (Legislative Department) in the matter. On 8 March, 1983, the then Additional Secretary of the Ministry of Law (Department of Legal Affairs) tendered evidence before the Committee. Not being fully satisfied with the views expressed by the aforesaid representatives, the Committee desired to elicit the opinion of the Attorney General for India. For this purpose, a list of points was approved by the Committee at their sitting held on 7 September, 1983. The various points raised by the Committee and the opinion dated 23 November, 1983 of the Attorney General for India thereon are reproduced below:—

"In connection with certain representations regarding the Export Control Order, 1977, the Committee on Subordinate Legislation heard the representatives of the Ministry of Commerce and the Ministry of Law, Justice & Company Affairs. It desired to obtain my views on certain legal aspects before finalising their Report. I am setting down below my views on the issues indicated by the Committee.

Query (i)

The definition of the term "Chief Controller" and "Deputy Chief Controller", as given in section 2 of the Imports and Exports (Control) Act, 1947, has been enlarged by clause 2 of the Exports (Control) Order, 1977.

Whether the definition as given in the Act can be altered or enlarged by Order without effecting an amendment in the Act.

Answer:

The Order issued by the Central Government is in the exercise of its powers conferred on it by section 3 of the Import & Export Control Act. Such power has to be exercised in conformity with the Act and cannot conflict with the provisions of the Act. Section 2(c) defines the Chief Controller and section 2(f) defines the Deputy Chief Controller. A subordinate legislating authority has no jurisdiction to enlarge that definition. The statute may confer powers on particular authorities as referred to and defined by it. If the definition is enlarged by a subordinate legislation making authority, it will be conferring on authorities not included in the definition in the Act, powers which the Statute places only in the authorities as included in its definition. I am, therefore, of the view that the definition as given in the Act cannot be altered or enlarged by an Order made under section 3, but can be done only by an appropriate amendment of the Act itself.

Query (ii)

Definition of the term 'Licence' as given in sub-clause (d) (ii) of clause 2 of the Export (Control) Order, 1977 amounts to issue of licence by authorities other than those mentioned in Schedule II to the Order.

Whether this would mean sub-delegation of power to non-statutory bodies and whether a delegate can further delegate the authority without an express provision to that effect in the Act itself.

Answer:

Licence is defined in section 2(1) as meaning a licence granted and includes a customs clearance permit issued, under any

Control Order. The Customs Control Order, 1977 defines licence in clause 2(d) as follows:—

- “(i) a licensing endorsement made on a Shipping Bill under this Order;
- (ii) a quota for the export of goods allocated under this order, whether such allocation is made by a licensing authority or by any agency authorised by the licensing authority in this behalf;

Clause (3) of the Export Control Order provides that “save as otherwise provided in this Order, no person shall export any goods of the description specified in Schedule I except under and in accordance with the licence granted by the Central Government or by an officer specified in Schedule II.”

Therefore, an export can be effected only in accordance with the licence granted either by the Central Government or by an officer specified in Schedule II.

The word ‘licence’ under clause 3 of the Order has, therefore, to be interpreted as defined in clause 2(d) as including a quota for the export of goods allocated under the Order by any agency authorised by the licensing authority. Such quota allocated by an agency authorised by the licensing authority will be a licence. Since both definition of licence in clause 2(d) and the restrictions on export of goods under clause 3 appear in the same Order, they are to be interpreted harmoniously and not to conflict with each other. On such a harmonious construction, an officer specified in Schedule II read with clause 2(f), is empowered to authorise an agency by him in this behalf; this does not, therefore, involve any sub-delegation of power, as the Order empowers delegation. The Import and Export Control Act authorises the Central Government by order to make provision for prohibiting, restricting or otherwise controlling an export and import. In the exercise of such power, even an Order made in the exercise of the power conferred by section 3, a licensing authority can be constituted with a power in him to authorise an agency in that behalf.

Query (iii)

Section 4A of the Act read with clause 3A* of the Order prescribes a fee of Rs. 50/- for application for allotment of quota for export of garments. Under these powers, the Apparels Export Promotion Council—a company registered under the Companies Act, 1956—has been authorised by Government to charge Rs. 100/- from each exporter.

Whether the power to charge fee can be delegated to a non-statutory body under the pretext of service charge amounting to Rs. 100/- without an express authorisation to that effect in the Act or the Order framed thereunder.

Answer:

Section 4A of the Act enacts that the Central Government may levy any fee. It will be open to the Central Government to fix the fee itself and authorise the collection thereof by such authority which it has validly constituted for the purposes of performing services for which services fee will be a *quid pro quo*. It is not a question of the Central Government delegating to a non-statutory body the power to charge fee. It is a case of the Central Government itself charging a fee but authorising the collection to be made by the non-statutory body which the Central Government desires should render the services for the purpose of export.

render

Query (iv)

The Apparels Export Promotion Council has been authorised by the Government to impose penalty on the exporters for non-utilization of allocated quota and retain to themselves the amounts so collected by them.

Whether the delegation of power of levy of penalty to the Apparels Export Promotion Council is permissible through the executive orders without any provision in the Act or the Order framed thereunder to that effect.

Answer:

Be it penalty or damages, the power cannot be delegated to the Apparels Export Promotion Council by means of exe-

*Clause 3A has been deleted vide the Exports (Control) Second Amendment Order, 1983 published in the Gazette of India, Dated 17-1-83 (S.O. 19 of 1983).

cutive order. The Act or the Order framed under the Act must confer such power. A power to ascertain the quantum of damages or to levy penalty is a power which has to be derived from a provision which is legislative in character, namely, an Act or an Order framed thereunder. It cannot be conferred by executive whim.

Query (v)

Under the Public Notice No. 61-ETC(PNS)/81 dated 10 August, 1981, an aggrieved exporter can appeal against the levy of penalty by the Apparels Export Promotion Council to the Textile Commissioner.

Whether the authority to hear appeals from the Exporters can be delegated to the Textile Commissioner through executive Order without any provisions in that behalf either in the Act or in the Order framed thereunder.

Answer:

By an executive Order a power to hear an appeal cannot be delegated to the Textile Commissioner. The right of appeal is a statutory creation. Exercise of power is a quasi-judicial power. A quasi-judicial power cannot be delegated."

10. Simultaneously with the eliciting the opinion of the Attorney General for India on certain legal aspects of the validity of the Exports (Control) Order, 1977, another reference was made to him to ascertain his valuable opinion on the following matter:—

"Normally the Parliamentary Committees do not pursue a matter till the verdict of the Court is announced. But in this case under Rule 317 of the Rules of Procedure it is the function of the Committee on Subordinate Legislation to scrutinise and report to the House whether the powers to make regulations, rules, sub-rules, bye-laws conferred by the Constitution or delegated by the Parliament are being properly exercised within such delegation. As a corollary to this, the Committee has to see that there is no sub-delegation of power by the authority to whom the powers have been delegated. The two issues referred to above which are *inter alia* before the District Judge, Delhi would appear also to fall within the juris-

diction of the Committee's functions. In other words, the jurisdiction of the Committee appears in this case to run parallel to the jurisdiction of the Court in so far as aforesaid two issues are concerned. A question has, therefore, arisen whether the Committee on Subordinate Legislation in this particular case ought to refrain from reporting to the House due to reasons of *sub-judice*."

11. The points referred and the opinion received from the Attorney General on 24 November, 1983 are given below:—

"An exporter of garments made a representation dated 18th July, 1982 before the Committee on Subordinate Legislation contending *inter alia* that Clause 2(d) of the Exports (Control) Order, 1977 which defines the expression "licence" suffers from the vice of excessive delegation since grant of licence by the Apparels Export Promotion Council is not authorised by the Act and that the fees charged by the Apparels Export Promotion Council is not supported by any authority of law and hence such charges could not be legally sustained."

It appears that on the self-same grounds one the exporters filed a suit in the Court of District Judge, Delhi questioning the competency of the Apparels Export Promotion Council to grant licence or quota certificate for export of garments etc. and the said proceedings are still pending in the said Court.

While the Committee was taking evidence of the Additional Secretary, Ministry of Law, the said officer submitted that only that part of evidence which are not *sub-judice* in the aforesaid court proceedings be treated as public.

Question:

Whether the Committee on Subordinate Legislation in this particular case ought to refrain from reporting to the House due to reasons of *sub-judice*?

Answer:

Article 118 of the Constitution empowers Parliament to make rules for regulating its procedure and the conduct of its business. Clause (2) of Article 118 provides that until rules are made under Clause (1), the Rules of Procedure

and Standing Orders in force immediately before the commencement of the Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament, subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker, of the House of the People. Parliament has since framed its Rules governing its procedure and conduct of its business. Under Rule 317 of the Rules of Procedure, it is the function of the Committee on Subordinate Legislation to scrutinise and report to the House whether the powers to make regulations, rules, sub-rules, bylaws conferred by the Constitution delegated by the Parliament are being properly exercised within such delegations. There is, therefore, no doubt that the questions involved in the aforesaid case pending in the Court of the learned District Judge, Delhi also fall clearly for consideration and scrutiny by the Committee on Subordinate Legislation and it is one of the functions of Committee to report to the Houses its views on such questions as have been raised before it.

Article 105 of the Constitution deals with the powers, privileges and immunities of the Houses of Parliament and all the Members and its Committees. Clause (1) of Article 105, provides that subject to the provisions of the Constitution and the Rules and Standing Orders regulating procedure of Parliament there shall be freedom of speech in Parliament. Clause (2) of Article 105 grants immunity to the Members of Parliament from being liable in proceedings in any court of law in respect of anything said or in vote given by him in Parliament or in Committee thereof. Clause (3) of Article 105 of the Constitution provides that in all other respects the powers, privileges and immunities of each House of Parliament and the Members and the Committees of each House shall be as made from time to time be defined by Parliament by law, and until so defined, shall be those of that House and of its members and Committees immediately before the coming into force of Section 15 of the Constitution Forty Fourth (Amendment) Act 1978.

So far Parliament has not legislated in respect of its privileges as provided under Clause (3) of Article 105. he

practice and the procedure of British Parliament seems to be that a subject matter on which a decision or adjudication by a court of law is awaited, should not be brought before the House for a Motion or otherwise including questions. However, subject to the discretion of the Chair, reference is allowed to be made to matters awaiting or under adjudication in the civil courts in so far as they relate to certain ministerial decisions or concern certain issues of national importance. This practice and procedure, however, does not restrict the right of the House to legislate on any matter. British Parliament has passed various resolutions specifying the subject matters and the circumstances when the House would like to debate on aspects which are pending adjudication by a court of law. (*vide* Erskine May on Parliamentary Practice, 19th Edition, pages 333, 368 and 427/20th Edition pages 343, 378, 429).

Although the Indian Parliament did not pass any resolution as yet specifying the areas and circumstances under which the House would like to debate on a subject matter which is pending adjudication by a court of law yet the practice and procedure followed by the British Parliament furnishes good guideline.

If any debate, discussion or report in the House of Parliament or in any of its Committee prejudices or interferes with the due course of any judicial proceedings or interferes with the administration of justice, then the House and its Committees may refrain from so doing on grounds of propriety. This, however, will not preclude the House from legislating on any subject including those pending adjudication before a court of law.

Therefore, if the Committee on Subordinate Legislation has to report to the House on any proposed changes in the law to be made by the House, such report may be placed before the House since such report would be considered to be in aid of the Parliament making a law on the subject. If the Committee, however, does not recommend any such change in law, it may either refrain from reporting to the House its proceedings and its recommendations or if it desires to report to the House, it may do so. However, it is fair that the matter should not be dis-

discussed in the House in view of the questions being sub-judice before a court of law."

12. In the light of the Opinions received from the Attorney General for India, the Committee decided to call for the views of the Ministry of Commerce on certain related points. In their communications dated 29 June/12 September, 1984, the Ministry furnished the requisite information as under:--

1

2

(i) The genesis of deletion of clause 3A of the Exports (Control) Order, 1977 vide Notification dated 17-11-1983.

Clause 3A of the Exports (Control) Order, 1977 provided for levy of a fee of Rs. 50/- for every application for allotment of Export entitlement for garments. This provision was made at the time when the O/o the CCI&E was determining the past performance entitlement of the exporters. Since 1st Jan, 1981 the AEPC had been allotted the work of computation of past performance entitlement of exports of garments within the frame work of the government's guidelines issued from time to time. The AEPC does not levy the application fee in terms of Clause 3A. Since the O/o the CCI&E no more determines the past performance entitlement of Exporters, clause 3A of the Exports (Control) Order, 1977 became redundant and it was decided to delete it vide Notification dated 17th Jan. 1983.

(ii) The specific statutory authority under which the non-statutory body (namely, the Apparels Export Promotion Council) has been empowered by the Govt. to recover a fee, termed as 'service charges'.

The Apparels Export Promotion Council is a company registered under Section 25 of the Companies Act, 1956. The amount charged by AEPC as 'service charges' is for services rendered by the Council to the exporters, subsequent allocation of export entitlement etc. As mentioned in reply to (i) above, the provision for levy of fee under the erstwhile clause 3A of the Export (Control) Order, 1977 was to enable the Office of the CCI&E to levy a fee for determination of past performance entitlement of exporters.

(iii) The difference between the term 'fee' which was leviable under Clause 3A of the Exports (Control) Order, 1977 and the 'service charge' being recovered by the Apparels Export Promotion Council.

(iv) The Attorney General has held the opinion that the definition as given in the Imports and Exports (Control) Act, 1947 can not be enhanced or enlarged by a subordinate legislation authority. In the Light of that opinion—

The Ministry of Commerce is not aware of the opinion given by the Attorney General in this regard. However, it is considered that the definition of the term 'Licence' as given in Clause 2(d) of the Exports (Control) Order, 1977 is not inconsistent with the definition of the term 'licence' as given in Sec. 2(i) of the Imports & Exports (Control) Act, 1947. There is, therefore, no proposal to amend clause 2(d) of the Exports (Control) Order, 1977. It may be clarified that the Apparels Export Promotion Council does not exercise any licensing function and that it collects service charges only for the services rendered by the council to the exporters.

(a) whether the definition of the term 'Licence' as given in section 2(i) of the Imports and Exports (Control) Act, 1947 and in Clause 2(d) of the Export (Control) Order, 1977 made thereunder, is not in contravention of each other inasmuch as the agency entrusted with allotment of quota is given authority to collect service charges; and

(b) Whether the Government proposed to amend Clause 2(d) of the Exports (Control) Order, 1977 so as to conform to the provisions of the definition of the term 'Licence' given in the parent Act.

(v) Whether the matters before the Additional District Judge, Delhi (in the case of M/s General Commerce Ltd., Vs Union of India, etc. have since been adjudicated upon by the Court. If so, copy of the judgement pronounced by the Court may be furnished.

No judgement has yet been pronounced by the Court. During the last hearing on 22nd May, 1984 the plaintiff submitted its replication and prayed for further time to submit further documents to the Court. The Court allowed the time and fixed the next date of hearing on August 7, 1984

13. On 19 and 20 September, 1984, the Committee again examined the representatives of the Ministry of Commerce and the Chief Controller of Imports and Exports with a view to obtain further elucidation in the matter. Subsequently, the Ministry furnished written notes* *vide* their communications dated 4 November|16 December, 1985 on the points raised during the evidence.

14. On 18 October, 1984, the Committee also heard the views of the then Law Secretary (Department of Legal Affairs) on certain legal consequences flowing from the Opinions dated 23 November, 1983 of the learned Attorney General for India. On 4 December, 1985, the Ministry of Law and Justice (Department of Legal Affairs) forwarded detailed written notes** on the points raised during the said evidence after obtaining the Opinion of the learned Attorney General for India on Statement of Case covering various legal issues involved in the matter.

15. In the meantime, in a letter dated 27 June, 1985, addressed to the Chairman of the Committee on Subordinate Legislation, Shri G. M. Banatwalla, M.P. *inter alia* mentioned that the Export (Control) Order, 1977 involved serious questions of conflict with the Imports and Exports (Control) Act, 1947. The matter was taken up with the Ministry of Commerce for ascertaining their comments. In their communication dated 9 July, 1985, the Ministry furnished their comments on the points raised by the Hon'ble Member as under:—

(a) *The enlarging of definition of the term 'Chief Controller and Deputy Chief Controller' (Ref. Clause 2 of the Order and Section 2 of the Act).*

Section 2 of the Imports and Exports (Control) Act, 1947 states that for the purpose of the Act the definition

*See Appendix IV.

**See Appendix V.

†See Appendix VI.

'Chief Controller' means 'Chief Controller of Imports & Exports' and 'Deputy Chief Controller' means 'Deputy Chief Controller of Imports and Exports'. These definitions are applicable for purpose of the Act only. The Government is free to give a different definition of 'Chief Controller' under the Imports (Control) Order, 1955 and Exports (Control) Order, 1977 for the purpose of operating the respective Orders. The definitions under Section 2(c) and (f) of the Act are for purpose of enforcing the various provisions of Section 4A to 4P of the Act to the extent that the definitions in the respective orders are not violating any of the provisions of the Act.

- (b) *Authorising an authority other than those mentioned in Schedule II to the Order (namely, Apparels Export Promotion Council) to issue 'licence' (Refer Clause 2 (d) (ii) Clause 2 (f) and Schedule II of the Order).*

In respect of items under OGL-3, a licence to export already stands granted in favour of the exporter provided he fulfills the necessary conditions stipulated in OGL-3. For these items no further licensing by way of an export licence or by way of a licensing endorsement is necessary. Endorsement made by AEPC on Shipping Bills is not a licensing endorsement in terms of Clause 2(d) (i) of Exports (Control) Order, 1977 but is merely a certification about the entitlement of specified quantum of the item for exports. As such the endorsement made by AEPC on shipping bills cannot be construed as a licensing endorsement and is therefore not in violation of law. AEPC does not exercise any licensing function. AEPC derives its powers to make such endorsement on shipping bills in compliance of the conditions of OGL-3 and not from Clause 2(d)(i) of the Export (Control) Order, 1977 and therefore, there is also no question of any such delegation of licensing powers to AEPC. The officers indicated in Schedule II are those competent to grant a licence in terms of Clause 3(1) and (2) of E(C) O, 1977 for items not covered under OGL. For items exported under OGL, no further licensing is required. The exports of Textile Products viz. garments fabrics, made-ups etc. are covered under OGL-3 and no further licensing is required under in such cases except fulfilment of terms and conditions specified in the OGL List.

(c) Empowering the Apparels Export Promotion Council to levy penalty on exporters.

Forefeiture of Earnest Money Deposit/Bank Guarantee by Apparel Export Promotion Council cannot be construed as a penalty but is merely in the nature of action taken for non-performance of the contractual obligation on the part of exporters. Provision for forefeiture of bank guarantee had been made in the Public Notice No. 61-ETC (PN)/81 dated 10-8-81. In *Mohan Exports Vs. U.O.I.* in cwp 1690 of 1982, the High Court of Delhi has upheld this provision and held that the restriction is not only reasonable but in the interest of regulating full and proper trade. The Supreme Court also dismissed the SLP against the High Court judgement in SLP No. 8877 of 1983.

(d) Delegation of authority to the Textile Commissioner to hear appeals from the exporter as per executive order.

The provision providing for appeal to the Textile Commissioner, that was made in Public Notice No. 61-ETC (PN)/81 dated 10th August, 1981, relates to forefeiture of Earnest Money Deposit/Bank Guarantee by the Apparels Export Promotion Council for non-performance of the contractual obligation on the part of the exporters. With a view to provide adequate mechanism to redress the grievances against the decisions of AEPC, the Government in exercise of its executive authority, incorporated a provision in the Public Notice authorising the Textile Commissioner, who is a senior functionary of the Government, to consider the representations received and dispose them of treating them as appeals and the authority conferred on the Textile Commissioner is purely administrative in nature.

As regards the allegation regarding allocation of export entitlement for garments by the AEPC, it is stated that the Policy regarding determination of entitlements for export of garments and instructions thereto are issued by the Government. AEPC is only required to certify the shipping bills for export of garments under such Orders/instructions of the Government.

16. On 10 September, 1985, the Chairman of the Committee on Subordinate Legislation held an informal discussion with the

officials of the Ministry of Commerce and impressed upon them to undertake a re-appraisal in order that the whole policy, notices, orders, etc. having a bearing on the imports and exports of the country could be brought within the purview of the law as laid down in the Imports and Exports (Control) Act, 1947 and the various statutory Orders issued thereunder. The Officials of the Ministry also promised to furnish written replies to certain points but sought indulgence of the Committee to allow them enough time as the matters required in-depth consideration and inter-departmental consultations by the Ministry before submitting their final replies. In their communication dated 29 November, 1985, the Ministry furnished their replies to the various points as under:—

Points raised during discussion	Reply
1	2
3	
1. Whether the Exports (Control) Order, 1977 is a piece of subordinate legislation? If so, whether the Order or amendments thereto were being laid on the Table of the House?	The Exports (Control) Order, 1977, and periodical amendments thereto are pieces of subordinate legislation. The said Order and amendments thereto are in exercise of the powers conferred by Section 3 of Imports & Exports (Control) Act, 1947. In terms of the said Act, these are not required to be laid on the Table of the House.
2. Whether the Import and Export Policy for 1985-88 is a statutory documents? Whether the Policy has any sanction/ approval of Parliament? Whether it confers any statutory right/authority on Central Government besides those conferred by the Imports and Export (Control) Act, 1947?	Import and Export Policy 1985-86 Vol. I and Vol. II is a publication announcing the Import and Export Policy for the relevant period and is not a statutory document. The Policy Books are not required to be placed on the Table of the House, as there is no such requirement in terms of the said Act. The Import and Export Policy are formulated in terms of the Imports and Exports (Control) Act, 1947, and the Policy Book only seeks to announce such policy for information/ guidance of the General Public.
3. Whether the public Notices issued from time to time to govern import/export of the country derive authority from the Imports and Exports (Control) Act, 1947 or from the Import/Export Control Orders framed thereunder? What is exactly the authority/sanction for issue of such Notices?	Public Notices issued from time to time are not statutory orders and are therefore not termed as Subordinate Legislation under the Act. The Public Notices are issued as administrative instructions and published in the Gazette of India Extraordinary for information of the general Public.
4. Whether Public Notices are statutory Orders and can be termed as subordinate legislation issued under the Act.	

3. Whether Government have any authority under the Act to sub-delegate the same to non-statutory bodies like AEPC which are not within their control? Under what authority the AEPC etc. have been empowered to act on behalf of Government in matters of supervision of the foreign trade of the country?

There is no sub-delegation of licensing powers to the AEPC. The export of garments is under OGL-3 of the export licensing policy 1985-88. AEPC merely ensures the fulfilment of the OGL-3 conditions in the export licensing policy 1985-88.

6. Whether the Policy or the Act empowers explicitly for giving retrospective effect to any provisions of the Order/Public Notice?

Policy and Amendments thereto come into force from the date of its announcement.

So far as Attorney General's opinions are concerned, it is understood that the Ministry of Law proposes to consult the Attorney General in the matter.

17. On 6 March, 1986, the Committee took oral evidence of the Secretary (Commerce), the Secretary (Textiles), the Law Secretary (Legal Affairs) and the Chief Controller of Imports and Exports and elicited their views on the various matters connected with the Exports (Control) Order, 1977 in the light of the Opinions dated 30 November, 1985 of the Attorney General of India on certain points that were raised in a Statement of Case dated 31 October, 1985 which was prepared by the Ministry of Law (Department of Legal Affairs). During evidence, the representatives expressed their general agreement with the opinion of the learned Attorney General for India and further conceded that that was binding on them.

18. A further communication dated 24 March, 1986 from the Office of the Chief Controller of Imports and Exports stated as under:—

"Pursuant to the evidence tendered on 6th March, 1986 before the Committee on Subordinate Legislation, the following information is furnished, as desired by the Committee:—

(i) Replies* to the Questionnaire given by the Chairman of the Committee.

(ii) Annual Report, 1984 of the Apparels Export Promotion Council.

*See Appendix VII.

The Exports (Control) Order, 1968 was approved by the Ministry of Law (Legislative Deptt.) before notification. However, Export (Control) Order, 1977 was not shown to Ministry of Law as the basic content of the 1968 and 1977 Orders was the same....."

19. Admittedly, the Exports (Control) Order, 1977 is an instrument of subordinate legislation. The 'Order' has been framed in pursuance of the powers conferred upon the Central Government under section 3 of the Imports and Exports (Control) Act, 1947. Section 3 is, however, silent as to the laying of such 'Orders' before Parliament. In this connection, the Committee find that sub-section (3) of section 8 of the said Act explicitly provides for laying of 'every rule made by the Central Government under this Act' before each House of Parliament. In the opinion of the Committee, the provisions in section 8(3) of the Act are sufficient to cover all rules, regulations, bye-laws, orders, etc. that are framed by the Central Government in exercise of the legislative powers conferred by the Act. In this connection, the Committee need hardly stress that the requirement of laying the subordinate legislation by whatever name it might be called e.g. rules, regulations, bye-laws, orders etc., before Parliament cannot be dispensed with in any case. In view of the fact that section 8(3) already contains provisions for laying, the Committee feel the Ministry should have no difficulty in laying the 'Orders' issued under section 3 of the Act before each House of Parliament.

20. Besides the Exports (Control) Order, 1977, the Ministry have notified 'Public Notices' in the Gazette of India to regulate the exports. The Ministry of Commerce have not been able to cite any precise authority in the parent Act vesting the Central Government with powers to issue Public Notices which are said to be in the nature of administrative orders or executive instructions. The Ministry have relied on the powers vested in section 3 of the Act generally. The Ministry have, however, accepted that the 'Orders' issued under section 3 are instruments of subordinate legislation. The Public Notices are essentially intended to regulate import/export trade and are definitely relatable to and derives their ultimate authority from section 3 of the Act of 1947. It flows from it that the so called 'Public Notices' are also in the nature of subordinate legislation. The Committee are therefore, inclined to treat these Public Notices as allied instruments of subordinate legislation and would, therefore, urge upon the Ministry to place them on statutory footing at an early date.

21. In view of the above, the Committee desire the Ministry of Commerce to lay on the Table of the House of Parliament all 'Orders' including Import/Export (Control) Orders, issued under the Act of 1947 and all amendments thereto. The Committee also recommend that the Public Notices should as well be laid before Parliament. If the Government feel it necessary, section 8(3) of the Imports and Exports (Control) Act, 1947 may be amended to make specific provisions for laying of these 'Orders' and Public Notices before Parliament.

22. The Committee observe that the Government has made in clause 2 of the Exports (Control) Order, 1977 unauthorised alteration/enlargement of the definitions of the terms 'Chief Controller' and 'Deputy Chief Controller' as given in section 2 of the Imports and Exports (Control) Act, 1947. During evidence before the Committee, the Secretary (Commerce) agreed that it would have been better and more elegant to have amended the Act itself instead of putting a different definition in the 'Order'. The Committee, therefore, desire the Ministry to bring forth the necessary amending legislation before Parliament at an early date if the definitions of the said terms, as given in the Act, are required to be enhanced, enlarged or otherwise altered in any manner and make consequential changes in the Export (Control) Order, 1977.

23. Sub-clause (3) of clause 3 of the Exports (Control) Order, 1977 lays down that 'goods specified in Schedule III may be exported on fulfilment of the terms and conditions specified therein'. The Committee were given to understand that the item 'garments' was placed under Schedule III (Open General Licence) and the exporter was not required to approach the licensing authority for obtaining any export permit/licence as the 'Open General Licence' itself constituted a 'Licence' issued by the Central Government/Chief Controller of Imports and Exports under the powers vested in the Imports and Exports (Control) Act and the Order. The Committee, however, find that the Apparels Export Promotion Council through whom the exports of garments could alone be routed, has been collecting huge sums of money by way of admission fees, subscription fees, application fees and other service charges generally known as Council Charges from the intending exporters. The admission fees was Rs. 250/- the subscription fee ranged from Rs. 500/- to 1000/- and Council charges from Rs. 20/- to 100/- per thousand pieces of garments depending upon the nature of items of export. Thus the total burden of various charges levied by the Apparels Export Promotion Council on the exporters is of very high magnitude. The Committee are apt to feel that

besides making the Indian exports costlier to the foreign buyer, levy of such amounts by a non-statutory body like the Apparels Export Promotion Council is without due legal authority and contrary to the intention of the legislature.

24. During evidence before the Committee on 6 March, 1986, the Secretary (Textiles) stated that the Apparels Export Promotion Council' had collected a sum of Rs. 4.79 crores representing forfeiture of earnest money deposits/bank guarantees (inclusive of interest), etc. upto 31 December, 1985. To the question of acquiring an effective control over the management of the funds of the Council, the Secretary (Textiles) replied as under:—

"We have asked them not to spend it without our concurrence. . . . There is no statutory backing for this order. . . . They have not spent anything without our direction. We have already asked them to include in their rules and regulations a provision under which they will receive a direction from the Government and still obey it. They have passed that resolution in their Executive Committee in November and it is going before the General Council shortly. Once that statutory cover is there, then we can issue even a directive. To-day, we are not in a position to issue a directive because it is not a part of their rules and regulations."

25. The Committee observe that for a long period, the funds accruing out of forfeiture of earnest money deposits/bank guarantees and levy of penalties by the Apparels Export Promotion Council are lying unutilized for development of export activity. In this connection, the Committee feel that contemplated dependence on the Articles of Association of a non-statutory body like the Apparels Export Promotion Council for issue of directives by the Central Government is not a happy proposition and, in particular, with regard to providing for accountability of the utilization of such funds by the Council. The Committee would also like to refer to the Opinion dated 23 November, 1983 of the Attorney General for India, which reads as under:—

"Be it penalty or damages, the power cannot be delegated to the Apparels Export Promotion Council by means of executive order. The Act or the Order framed under the Act must confer such power. A power to ascertain the quantum of damages or to levy penalty is a power which has to be derived from a provision which is legislative in character,

namely, an Act or an Order framed thereunder. It cannot be conferred by executive action."

The Committee, therefore, urge upon the Ministry to evolve ways and means so as to bring the Council within the statutory control of the Government in accordance with the law laid down in the Imports and Exports (Control) Act, 1947.

26. The Committee note with satisfaction the valuable Opinions dated 23/24 November, 1983 tendered by the learned Attorney General for India when certain points were referred to him by the Secretariat of the Committee and then again on 30 November, 1985 when a Statement of Case dated 31 October, 1985 was referred to him by the Ministry of Law and Justice (Department of Legal Affairs) in connection with the Exports (Control) Order, 1977. During evidence on 6 March, 1986, the Committee further noted that the Secretary (Textiles) and the Secretary (Commerce) were in all agreement with these Opinions. The Committee, therefore, desire the Ministry of Commerce/Textiles to undertake a thorough re-appraisal of the whole matter in the light of the advice of the Attorney General for India in order that the various Control Orders, Public Notices, Annual Import-Export Policies, etc. that have a bearing on the imports and exports of the country, could be brought harmoniously within the parameters of the law as laid down in the Imports and Exports (Control) Act, 1947.

III

CONDITIONS OF LICENCE

27. Clause 4 of the Exports (Control) Order, 1977 read as under:—

4. *Conditions of licence.*— (1) A licensee granted under this Order may contain such conditions, not inconsistent with the Act or this Order, as the licensing authority may deem fit.

(2) It shall be deemed to be a condition of every licence that—

(a) no person shall transfer and no person shall acquire by transfer any licence issued by the licensing authority except under and in accordance with the written permission of the authority which granted the licence or of any other person empowered in this behalf by such authority;

(b) the goods for the export of which the licence is granted shall be the property of the licensee at the time of the export.

(3) The licensee shall comply with all conditions imposed or deemed to be imposed under this clause."

28. Sub-clause (1) of clause 4 of the Order empowered the licensing authority to lay down conditions, as it deemed fit, for grant of a licence for export. In this connection, the Ministry were asked to state if any guidelines had been laid down to obviate probable misuse of the given discretionary powers. A reply dated 24 March, 1986 from the Office of the Chief Controller of Imports and Exports stated as under:—

"The condition for grant of licence is given in Schedule I to the Exports (Control) Order, 1977, itself (Part 'A' List of item export of which is not normally allowed; Part 'B' List of items permitted for export subject to the conditions such as within a limited ceiling, on merits, OGL 3 etc). Necessity for issue of guidelines does not arise as unless the conditions given against each item under the Schedule I are fulfilled no licence can be issued. Powers to grant licence in relaxation of the policy lies only with Govt./CCI&E."

29. The Committee note from the reply of the Ministry that the condition for grant of licence for export of goods is given in Schedule I appended to the Exports (Control) Order, 1977 and the power to grant a licence in relaxation lies with the Government. It flows therefrom that the licensing authority is not expected to put in any further condition for grant of a licence in exercise of the discretionary power conferred upon it by clause 4(1) of the said Order. There is, therefore, no reason in keeping these provisions on the statute book any longer for these do not cater to any practical necessity. Hence, the Committee recommend that clause 4(1) of the Exports (Control) Order be deleted forthwith with a view to obviate any confusion that may arise in the minds of general public in this behalf.

30. On perusal of Schedule I to the Exports (Control) Order, the Committee observe that Part 'A' contains mere description of certain items of goods, export of which is not normally allowed but there is no mention of the probable circumstances in which the export of such items can be permitted. Again, Part 'B' of the Schedule contains mere description of certain items of goods export of which is

allowed on merits or subject to ceiling or other conditions to be specified from time to time. However, the 'merits', the 'ceilings' and the 'other conditions' are nowhere specified in the Order. The Committee have reason to believe that these ceilings and conditions of export are not in the knowledge of the public as they do not seem to have been published or notified. It is necessary that these are spelt out clearly for the guidance of the public in general and exporters in particular. The Committee, therefore, recommend that the Ministry should take urgent steps to specify the conditions governing the export of goods in sufficient detail in the Exports (Control) Order itself with a view to make the rules self-contained and leaving practically no scope for speculation by general public in the vital matters like exports from the country.

31. The Committee further observe that the provisions 'or of any other person empowered in this behalf by such authority' appearing in sub-clause (2)(a) of clause 4 of the Exports (Control) Order authorised the licensing authority to further delegate its power to 'any other person' in the matter of transfer of any licence for export of goods. In this connection, the Committee have time and again emphasized that there should not be any sub-delegation of legislative power without express authorisation in that behalf in the parent statute. The Committee, therefore, urge upon the Ministry to be ever watchful in such matters and to take steps to omit the said phrase from sub-clause (2)(a) of clause 4 forthwith so as to remove the element of sub-delegation of legislative power not intended by the legislature.

IV

REFUSAL OF LICENCE

32. Clause 5 of the Exports (Control) Order, 1977 read as under:—

"5. *Refusal of licence.*—The licensing authority may refuse to grant a licence—

- (a) if the application for the licence does not conform to any provision of this Order;
- (b) if such application contains any false, or fraudulent or misleading statement;
- (c) if the applicant uses in support of the application any document which is false or fabricated or which has been tampered with;

- (d) if the licensing authority considers that the grant of the licence will not be in the interest of the country;
- (e) if the activities of the applicant are prejudicial to the interest of the State;
- (f) if the applicant has, on any occasion committed breach of any law (including any rule, order or regulation) relating to customs or foreign exchange;
- (g) if the applicant on any occasion has tampered with an export licence or has exported goods without a licence or has been a party to any corrupt or fraudulent practice in his commercial dealings or in obtaining any licence or is found to have solicited licences by offering an inducement to the holder of the licence or otherwise;
- (h) if any agent or employee of the applicant has been a party to any corrupt or fraudulent practice in obtaining the licence for the applicant;
- (i) if the application for an export licence is defective and does not conform to the prescribed rules;
- (j) if the applicant contravenes or attempts to contravene or abets the contravention of any order made or deemed to have been made under the Act or any condition of a licence granted under any such order or commits a breach of the Export Trade Control Regulations;
- (k) if the applicant is not eligible for a licence in accordance with the Export Control Regulations;
- (l) if the licensing authority decides to canalize export through special or specialized agencies or channels;
- (m) if the applicant is a partner in a partnership firm, or a whole-time director or managing director of a private limited company which is for the time being subject to any action under clause 7 or clause 8 or clause 9;
- (n) if the applicant is for the time being subject to any action under clause 7 or clause 8 or clause 9;
- (o) if the applicant is a partnership firm or a private limited company, any partner or whole-time director or managing director whereof, as the case may be, is for the time being subject to any action under clause 7 or clause 8 or clause 9;

(p) if any amount demanded from the applicant (under the Customs Act, 1962, or any penalty imposed on him under the said Act has remained unpaid for a period of three months;

(q) if the applicant fails to produce any document that is called for by the Chief Controller of Imports and Exports or the Licensing authority; and

(r) if the applicant fails to pay any penalty finally imposed on him under the Act."

33. This clause empowered the licensing authority to refuse to grant a licence for export under certain circumstances enumerated therein. In this connection, the Ministry of Commerce were asked to state whether the usual precautions like recording of reasons in writing for refusal, conveying the reasons to the party concerned, providing an opportunity of being heard before such refusal and preferring an appeal by the aggrieved party were taken in the matter and necessary provisions existed in the Exports. (Control) Order in this behalf. In their reply dated 24 March, 1966, the Ministry stated as under:—

"The grounds for refusing a licence are usually recorded. Further, in terms of para 147* of the Hand Book of Import and Export Procedures 1965—1966, if an exporter is not satisfied with the decision of the Licensing authority/appellate authority, the exporters can file an appeal/review application against such decision in accordance with the procedures laid down thereon."

*147. (1) Where a person is not satisfied with the decision of a licensing authority/appellate authority, he may prefer an appeal/review application against the said decision in accordance with the provisions hereinafter stated. Requests/representations made to the office of the Chief Controller of Imports & Exports outside the scope of these provisions are liable to be summarily rejected.

(2) Appeal/review applications will be entertained in the following types of cases:—

(a) in respect of an application for import licence;

(b) in case relating to enforcement of legal agreements/export bonds/bank guarantees executed by importers for the fulfilment of export obligations or any other condition applicable to an import licence.

(3) Appeal/review applications will also be entertained in respect of applications for the grant of Export House/Trading House Certificates and in matters relating to registration/deregistration of exporters in accordance with the provisions made in this Chapter.

(4) The procedure herein after contained will apply, mutatis mutandis, to cases in which an exporter being aggrieved with a decision taken on his application, seeks to prefer an appeal/review application.

34. The Committee note from the reply of the Ministry that grounds of refusing a licence are usually recorded and procedures are already laid down in the Hand Book of Import-Export Procedures 1985-1986 to enable the aggrieved exporter to file an appeal/review application against the decision of the Licensing authority. The Committee are of the opinion that since the practice of recording of reasons for refusal of a licence and for appeal/review application by the aggrieved party was already in vogue, the Ministry should have no difficulty in placing the same on a statutory footing. The Committee have already emphasized from time to time that the executive orders or administrative instructions are no substitute to statutory rules. The Committee, therefore, desire the Ministry to suitably amend the Exports (Control) Order so as to provide therein in-built essential safeguards like recording of reasons in writing for refusal of licence, conveying the reasons to the party concerned, affording opportunity of being heard before such refusal and preferring appeal by the aggrieved party, against any arbitrary use of the given powers in the matter of granting licence to the intending exporters.



THE EXPORTS (CONTROL) FIRST AMENDMENT ORDER, 1985 (S.O. 70-E OF 1985)

35. The Exports (Control) First Amendment Order, 1985 (S.O. 70-E of 1985)*, published in the Gazette of India Extraordinary, Part II, Section 3(II), dated 31 January, 1985, sought to add certain entries in Part 'B' of Schedule I to the Exports (Control) Order, 1977. Clause 1 thereof while indicating the short title of the amendment order did not specifically mention that 'it shall come into force from the date of its publication in the Official Gazette'. Normally, a sub-clause in that respect was found in various instruments of subordinate legislation brought out by the Central Government. In the absence of a definite date, it was likely to raise a doubt in the minds of general public as to whether the amendment was intended to take effect from the date of its notification in the Official Gazette or it was an amendment to the principal Order with any retrospective application.

36. The matter was taken up with the then Ministry of Commerce and Supply (Department of Commerce) asking them to state if they had any objection to amend the notification so as to specify the date of its coming into force. In their reply dated 8 May, 1985, the Ministry of Commerce stated as under:—

*See Appendix VIII.

"The Export (Control) Amendment Orders are published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii). The dates of issue of notifications for publication in the Extraordinary Gazette are mentioned at the top of the amendment Orders. Such Orders amend the main Order with effect from the dates of issue of notification for publication in the Gazette Extraordinary. The Export (Control) First Amendment Order, 1985 No. E(C) O, 1977/AM(296) dated 31-1-1985, published in the Official Gazette on 31-1-1985, therefore, came into force with effect from 31-1-1985. The notification relating to these Export (Control) Amendment Orders do not have any retrospective effect. These are only prospective from the date of issue of notification for publication in the Gazette Extraordinary. There is, therefore, no need to amend the First Amendment Order so as to specify any date from which it would come into effect."

37. In this connection, the Committee would like to refer to their earlier observations made, in paragraph 12 of their Second Report (Seventh Lok Sabha), presented to the House on 18 November, 1980, in an identical case pertaining to the Central Excise (Seventh Amendment) Rules, 1978:—

".....The Committee, however, feel that a uniform practice should be followed in this regard i.e. either there should invariably be a sub-rule in all statutory rules, etc. specifically providing that those rules would come into force from the date of their publication in Official Gazette or such sub-rule should not be at all included in any rules, etc., and automatically it should be presumed that they would become operative from the date of their notification in the Official Gazette. As the Committee have found that in the majority of statutory rules already notified such a sub-rule had been included in the rules, the Committee feel that it would be better if the date of coming into force of the rules is notified in all cases through a sub-rule in the rules themselves to obviate any scope of confusion in the minds of persons for whose benefit the rules are framed. Accordingly the Committee recommend that a sub-rule regarding the date of coming into force should always be included in rules in future....."

38. The Committee would like to observe in this connection that it is the Ministry who have decided that the Export (Control) Amend-

ments shall not have retrospective effect and that such orders would come into force with effect from the date of their publication in the Gazette. This fact is not known to the persons affected by these Amendment Orders. The public at large does not know this. The Committee are, therefore, of the opinion that it will be advantageous and helpful if the date of coming into force of the rules is specified through a sub-rule in the rules themselves in all cases on a uniform basis so that the position is clear to all concerned. The Committee, therefore, re-emphasize that the Ministry of Commerce should follow the recommendation of the Committee as contained in paragraph 12 of their Second Report (Seventh Lok Sabha) in letter and spirit and invariably include a sub-rule regarding the date of coming into force in all the Control Orders in future. The Committee would also like the Ministry of Parliamentary Affairs to circulate the contents of their recommendation in this regard, for strict compliance by all Ministries/Departments in future, if not already done so.

VI

IMPORT AND EXPORT POLICY (1985-88)—RETROSPECTIVE DISQUALIFICATIONS

39. In a letter dated 27 June, 1985, Shri G. M. Banatwalla M.P.—a Member of the Committee on Subordinate Legislation of Lok Sabha—raised the following matters arising out of the Import and Export Policy (April 1985—March 1988):—

“The Import and Export Policy is enforced through Public Notices published in the Gazette. The term ‘Order’, as defined in Rule 317, will cover Public Notices issued by the CCI&E under the Import and Export (Control) Act, 1947 and the Import (Control) Order 1955.

The Act does not give any power to the CCI&E/Government to make any order with retrospective effect. However, retrospective disqualification is caused to Merchant Export Houses who have converted themselves into SSI Manufacturing Unit and who have obtained permanent Director of Industries Registration Numbers much before the date mentioned in the Policy, namely, 1-4-1985 [Para 248 (2) (b)] and who have started production and exported their own manufactured products during 1982-83, 1983-84 and 1984-85, as per the following paras:—

- (i) Para 248 (2) (b) states that the average of past three years (i.e. 1982-83, 1983-84 and 1984-85) should be Rs. 75

lakhs and Rs. 3 crores respectively. However, as per para 176(2) (b) of 1984-85 policy, the average for the past three years (i.e. 1981-82, 1982-83 and 1983-84) was required to be Rs. 50 lakhs and Rs. 2 crores respectively.

- (ii) Para 253(iii) does not permit switch over from one category to another by Policy of 1985-88. There are Merchant Export Houses, who having started their own SSI Unit Manufacturing in 1982-83 or later, cannot now apply for renewal because of change of category from a merchant to manufacturer nor can they apply for a fresh Export House certificate in view of disqualification mentioned in para 256. It may also be noted that there is no ban under the Industries (Development and Regulation) Act, 1951 to a 'merchant dealer' to convert itself into a 'manufacturing dealer'."

40. The matters were then taken up with the concerned Ministry of Commerce for eliciting their comments on the points raised by Hon'ble Member. A factual note dated 9 July, 1985, received from the Office of the Chief Controller of Imports and Exports in the matter, read as under:—

"Import and Export (Control) Act, 1947 as amended from time to time is a comprehensive Act which deals with the prohibition and control of Import and Exports and also empowers the Government to make rules for carrying out the provisions of the Act. Section 8 of the said Act deals with powers to make such rules. Rules under that Section constitute Subordinate Legislation which are essentially laid before the Parliament.

Nevertheless the legislature in its wisdom has given adequate powers to the Executive under various provisions of the Act to issue such orders, notifications, policy statements as are considered necessary and expedient in prohibiting or controlling the imports and exports by publication in official Gazette from time to time, keeping in mind the broad perspectives of the Government concerning economic development.

Sections 14 and 21 of the General Clauses Act, 1897 deals with the exercise of the powers conferred on the Central Government from time to time which include powers to issue, add, amend, vary or rescind notifications, orders, etc., under a Central Act. It has been judicially interpreted by

the Supreme Court that the Government, in exercise of such power would not only be free to take such action by executive order or to lay down policy for making of such executive orders as occasion arises, but also to change such orders or the policy itself as often as Government so requires.

The issuance of Import and Export Policy by the Government through a public notice published in the official gazette is such an executive measure considered necessary by the Government keeping in mind the powers given under the provisions of Import and Export (Control) Act, 1947, Import (Control) Order and Export (Control) Order either on annual basis or for a longer period as considered appropriate. The policy being non-statutory in nature, cannot be taken to be covered by the concept of subordinate legislation. The provisions of the policy come into force from the date the policy is announced for such period stated therein which is again subject to change as and when considered essential by the Government.

Under the Import and Export Policy, 1985-88 (Vol. I), the minimum export performance limit for SSI Sector has been raised from Rs. 50 lakhs to Rs. 75 lakhs in the case of export of select products and from Rs. 2 crores to Rs. 3 crores in the case of non-select products for grant of Export House Certificates to small scale units/consortia of small scale units. Considering the increase in value of capital investment for small scale industry from Rs. 25 lakhs to 35 lakhs, the inflationary pattern of the economy and the fact that there had been no revision in the minimum export performance limit for the SSI Sector since 1983-84 policy, the enhancement in value limit is quite justified. It is pointed out that minimum export performance limit for export houses (other than SSI or consortia) had been increased from Rs. 2 crores (Select products) and Rs. 5 crores (non-select products) to Rs. 3 crores (select products) and Rs. 7 crores (non-select products) in the 1984-85 policy. No change in the minimum export performance for the SSI and consortia export houses was made then. In the policy for 1985-88, a provision in para 258 has been introduced under which even after the enhancement of the minimum prescribed value limit, in cases where the Export Houses have achieved the prescribed growth rate but has not achieved the minimum

prescribed limit, the renewal is not to be denied but a period of one year is given to make up the shortfall in the minimum export performance limit prescribed. It will thus be seen that there is no blanket disqualification in any case.

Under the Import and Export Policy, 1985—88, switch over of an export house from a merchant export house to a manufacturer-export house, is not allowed. The Export House Certificate available to SSI units or consortia of SSI units is only for manufacturer-exporters in this category. A switch over of status from a large scale merchant-export house having a higher minimum export performance limit (Rs. 3 crores for select and Rs. 7 crores for non-select products) to that of a SSI export house (as a manufacturer-exporter) having a much lower export performance limit (Rs. 75 lakhs for select and Rs. 2 crores for non-select products) is felt not justified."

41. On 6 March, 1986, the Committee heard the representatives of the Ministry of Commerce and the Chief Controller of Imports and Exports to elicit further information in the matter.

42. On being pointed out that the eligibility criteria for export houses, as now laid down in the Import and Export Policy for 1985—88, to be made applicable from 1 April, 1985, involved not only retrospective application but also caused hardship to the small scale units set up prior to that date when there were no such disqualifications, the representative of the Ministry *inter alia* submitted:—

"The rationale of the policy is not to deprive the small scale manufacturers from obtaining the status of an export house or consortium. What we want to prevent is that a manufacturing exporter who ought to give this performance and a growth rate of 20 per cent over a period of three years, having failed to achieve it, should not enter into other categories, thus bypassing the basic objective of the policy which is that the export houses should undertake certain obligations in return for a number of concessions allowed to them. The criteria for a small scale industries export house are at a lower threshold, whereas for an ordinary exporter or a merchant exporter, the criteria are at a higher threshold. We want to prevent this kind of backslide.

43. The Committee observe that a sudden and steep change in the criteria of past performance is likely to cause hardship to the small scale units and for many such units it may not be possible to bring about the desired progress in the output within the stipulated time-limit. The Committee are of the view that the interests of small scale units should not be allowed to suffer and particularly when such units tend to show greater initiative in their exports as compared to their past performance. The Committee, therefore, desire the Ministry of Commerce to review the matter in entirety so as to mitigate the hardship caused to the small scale units under the Policy of 1985—88 and to provide for easy terms in the matter of conversion from merchant exporter to manufacturing exporter or grant of fresh Export House certificate particularly when there is no ban under the Industries (Development and Regulation) Act, 1951 in this behalf.

44. The Committee also recommend that retrospective disqualification arising out of the Import and Export Policy (1985—88) is not in conformity with the Act and should also be dispensed with.

NEW DELHI;

May 2, 1986.

Vaisakha 12, 1908 (Saka)

MOOL CHAND DAGA,

Chairman,

Committee on Subordinate Legislation.

APPENDICES

APPENDIX I

(Vide Paragraph 6 of the Report)

Consolidated Statement of Recommendations/Observations made by the Committee

Sl. No.	Para No.	Recommendations/Observations
(1)	(2)	(3)
1	19	<p>Admittedly, the Exports (Control) Order, 1977 is an instrument of subordinate legislation. The 'Order' has been framed in pursuance of the powers conferred upon the Central Government under section 3 of the Imports and Exports (Control) Act, 1947. Section 3 is, however, silent as to the laying of such 'Orders' before Parliament. In this connection, the Committee find that sub-section (3) of section 8 of the said Act explicitly provides for laying of <i>'every rule made by the Central Government under this Act'</i> before each House of Parliament. In the opinion of the Committee, the provisions in section 8(3) of the Act are sufficient to cover all rules, regulations, bye-laws, orders, etc. that are framed by the Central Government in exercise of the legislative powers conferred by the Act. In this connection, the Committee need hardly stress that the requirement of laying the subordinate legislation by whatever name it might be called e.g. rules, regulations, bye-laws, orders, etc., before Parliament cannot be dispensed with in any case. In view of the fact that section 8(3) already contains provisions for laying, the Committee feel the Ministry should have no difficulty in laying the 'Orders' issued under section 3 of the Act before each House of Parliament.</p>

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Besides the Exports (Control) Order, 1977, the Ministry have notified 'Public Notices' in the Gazette of India to regulate the exports. The Ministry of Commerce have not been able to cite any precise authority in the parent Act vesting the Central Government with powers to issue Public Notices which are said to be in the nature of administrative orders or executive instructions. The Ministry have relied on the powers vested in section 3 of the Act generally. The Ministry have, however, accepted that the 'Orders' issued under section 3 are instruments of subordinate legislation. The Public Notices are essentially intended to regulate import/export trade and are definitely relatable to and derives their ultimate authority from section 3 of the Act of 1947. It flows from it that the so called 'Public Notices' are also in the nature of subordinate legislation. The Committee are, therefore, inclined to treat these Public Notices as allied instruments of subordinate legislation and would, therefore, urge upon the Ministry to place them on statutory footing at an early date.

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In view of the above, the Committee desire the Ministry of Commerce to lay on the Table of the House of Parliament all 'Orders' including Import/Export (Control) Orders, issued under the Act of 1947 and all amendments thereto. The Committee also recommend that the Public Notices should as well be laid before Parliament. If the Government feel it necessary, section 8(3) of the Imports and Exports (Control) Act, 1947 may be amended to make specific provisions for laying of these 'Orders' and Public Notices before Parliament.

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The Committee observe that the Government has made in clause 2 of the Exports (Control) Order, 1977 unauthorised alteration/enlargement of the definitions of the terms 'Chief

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Controller' and 'Deputy Chief Controller' as given in section 2 of the Imports and Exports (Control) Act, 1947. During evidence before the Committee, the Secretary (Commerce) agreed that it would have been better and more elegant to have amended the Act itself instead of putting a different definition in the 'Order'. The Committee, therefore, desire the Ministry to bring forth the necessary amending legislation before Parliament at an early date if the definitions of the said terms, as given in the Act, are required to be enhanced, enlarged or otherwise altered in any manner and make consequential changes in the Exports (Control) Order, 1977.

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Sub-clause (3) of clause 3 of the Exports (Control) Order, 1977 lays down that 'goods specified in Schedule III may be exported on fulfilment of the terms and conditions specified therein'. The Committee were given to understand that the item 'garments' was placed under Schedule III (Open General Licence) and the exporter was not required to approach the licensing authority for obtaining any export permit/licence as the 'Open General Licence' itself constituted a 'Licence' issued by the Central Government/Chief Controller of Imports and Exports under the powers vested in the Imports and Exports (Control) Act and the Order. The Committee, however, find that the Apparels Export Promotion Council through whom the exports of garments could alone be routed, has been collecting huge sums of money by way of admission fees, subscription fees, application fees and other service charges generally known as Council Charges from the intending exporters. The admission fee was Rs. 250/-, the subscription fee ranged from Rs. 500/- to 1000/- and Council Charges from Rs. 20/- to 100/- per thousand pieces of garments depending upon the nature

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of items of exports. Thus the total burden of various charges levied by the Apparels Export Promotion Council on the exporters is of very high magnitude. The Committee are apt to feel that besides making the Indian exports costlier to the foreign buyer, levy of such amounts by a non-statutory body like the Apparels Export Promotion Council is without due legal authority and contrary to the intention of the legislature.

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During evidence before the Committee on 6 March, 1986, the Secretary (Textiles) stated that the Apparels Export Promotion Council had collected a sum of Rs. 4.79 crores representing forfeiture of earnest money deposits/bank guarantees (inclusive of interest), etc. upto 31 December, 1985. To the question of acquiring an effective control over the management of the funds of the Council, the Secretary (Textiles) replied as under:—

“We have asked them not to spend it without our concurrence.... There is no statutory backing for this order... They have not spent anything without our direction. We have already asked them to include in their rules and regulations a provision under which they will receive a direction from the Government and still obey it. They have passed that resolution in their Executive Committee in November and it is going before the General Council shortly. Once that statutory cover is there, then we can issue even a directive. To-day, we are not in a position to issue a directive because it is not a part of their rules and regulations.”

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The Committee observe that for a long period, the funds accruing out of forfeiture of

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earnest money deposits/bank guarantees and levy of penalties by the Apparels Export Promotion Council are lying unutilized for development of export activity. In this connection, the Committee feel that contemplated dependence on the Articles of Association of a non-statutory body like the Apparels Export Promotion Council for issue of directives by the Central Government is not a happy proposition and, in particular, with regard to providing for accountability of the utilization of such funds by the Council. The Committee would also like to refer to the Opinion dated 23 November, 1983 of the Attorney General for India, which reads as under:—

“Be it penalty or damages, the power cannot be delegated to the Apparels Export Promotion Council by means of executive order. The Act or the Order framed under the Act must confer such power. A power to ascertain the quantum of damages or to levy penalty is a power which has to be derived from a provision which is legislative in character, namely, an Act or an Order framed thereunder. It cannot be conferred by executive whim.”

The Committee, therefore, urge upon the Ministry to evolve ways and means so as to bring the Council within the statutory control of the Government in accordance with the law laid down in the Imports and Exports (Control) Act, 1947.

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The Committee note with satisfaction the valuable Opinions dated 23/24 November, 1983 tendered by the learned Attorney General for India when certain points were referred to him by the Secretariat of the Committee and then

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again on 30 November, 1985 when a Statement of Case dated 31 October, 1985 was referred to him by the Ministry of Law and Justice (Department of Legal Affairs) in connection with the Exports (Control) Order, 1977. During evidence on 6 March, 1986, the Committee further noted that the Secretary (Textiles) and the Secretary (Commerce) were in all agreement with these Opinions. The Committee, therefore, desire the Ministry of Commerce/Textiles to undertake a thorough re-appraisal of the whole matter in the light of the advice of the Attorney General for India in order that the various Control Orders, Public Notices, Annual Import-Export Policies, etc. that have a bearing on the imports and exports of the country, could be brought harmonisouly within the parameters of the law as laid down in the Imports and Exports (Control) Act, 1947.

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The Committee note from the reply of the Ministry that the condition for grant of licence for export of goods is given in Schedule I appended to the Exports (Control) Order, 1977 and the power to grant a licence in relaxation lies with the Government. It flows therefrom that the licensing authority is not expected to put in any further condition for grant of a licence in exercise of the discretionary power conferred upon it by clause 4(1) of the said Order. There is, therefore, no reason in keeping these provisions on the statute book any longer for these do not cater to any practical necessity. Hence the Committee recommend that clause 4(1) of the Exports (Control) Order be deleted forthwith a view to obviate any confusion that may arise in the minds of general public in this behalf.

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On perusal of Schedule I to the Exports (Control) Order, the Committee observe that

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Part 'A' contains mere description of certain items of goods, export of which is not *normally* allowed but there is no mention of the probable circumstances in which the export of such items can be permitted. Again, Part 'B' of the Schedule contains mere description of certain items of goods export of which is *allowed on merits or subject to ceiling or other conditions to be specified from time to time*. However, the 'merits', the 'ceilings' and the 'other conditions' are nowhere specified in the Order. The Committee have reason to believe that these ceilings and conditions of export are not in the knowledge of the public as they do not seem to have been published or notified. It is necessary that these are spelt out clearly for the guidance of the public in general and exporters in particular. The Committee, therefore, recommend that the Ministry should take urgent steps to specify the conditions governing the export of goods in sufficient detail in the Exports (Control) Order itself with a view to make the rules self-contained and leaving practically no scope for speculation by general public in the vital matters like exports from the country.

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The Committee further observe that the provisions '*or of any other person empowered in this behalf by such authority*' appearing in sub-clause (2)(a) of clause 4 of the Exports (Control) Order authorised the licensing authority to further delegate its power to 'any other person' in the matter of transfer of any licence for export of goods. In this connection, the Committee have time and again emphasized that there should not be any sub-delegation of legislative power without express authorisation in that behalf in the parent statute. The Committee, therefore, urge upon the Ministry to be ever watchful in such matters and to

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take steps to omit the said phrase from sub-clause (2) (a) of clause 4 forthwith so as to remove the element of sub-delegation of legislative power not intended by the legislature.

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The Committee note from the reply of the Ministry that grounds of refusing a licence are usually recorded and procedures are already laid down in the Hand Book of Import-Export Procedures 1985-1988 to enable the aggrieved exporter to file an appeal/review application against the decision of the licensing authority. The Committee are of the opinion that since the practice of recording of reasons for refusal of a licence and for appeal/review application by the aggrieved party was already in vogue, the Ministry should have no difficulty in placing the same on a statutory footing. The Committee have already emphasized from time to time that the executive orders or administrative instructions are no substitute to statutory rules. The Committee, therefore, desire the Ministry to suitably amend the Exports (Control) Order so as to provide therein in-built essential safeguards like recording of reasons in writing for refusal of licence, conveying the reasons to the party concerned, affording opportunity of being heard before such refusal and preferring appeal by the aggrieved party, against any arbitrary use of the given powers in the matter of granting licence to the intending exporters.

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The Committee would like to observe in this connection that it is the Ministry who have decided that the Export (Control) Amendment shall not have retrospective effect and that such orders would come into force with effect from the date of their publication in the Gazette. This fact is not known to the persons affected by these

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Amendment Orders. The public at large does not know this. The Committee are, therefore, of the opinion that it will be advantageous and helpful if the date of coming into force of the rules is specified through a sub-rule in the rules themselves in all cases on a uniform basis so that the position is clear to all concerned. The Committee, therefore, re-emphasize that the Ministry of Commerce should follow the recommendation of the Committee as contained in paragraph 12 of their Second Report (Seventh Lok Sabha) in letter and spirit and invariably include a sub-rule regarding the date of coming into force in all the Control Orders in future. The Committee would also like the Ministry of Parliamentary Affairs to circulate the contents of their recommendation in this regard, for strict compliance by all Ministries/Departments in future, if not already done so.

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The Committee observe that a sudden and steep change in the criteria of past performance is likely to cause hardship to the small scale units and for many such units it may not be possible to bring about the desired progress in the output within the stipulated time-limit. The Committee are of the view that the interests of small scale units should not be allowed to suffer and particularly when such units tend to show greater initiative in their exports as compared to their past performance. The Committee, therefore, desire the Ministry of Commerce to review the matter in entirety so as to mitigate the hardship caused to the small scale units under the Policy of 1985-88 and to provide for easy terms in the matter of conversion from merchant exporter to manufacturing exporter or grant of fresh Export House certificate particularly when there is no

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15.	44	<p>ban under the Industries (Development and Regulation) Act, 1951 in this behalf.</p> <p>The Committee also recommend that retrospective disqualification arising out of the Import and Export Policy (1985-88) is not in conformity with the Act and should also be dispensed with.</p>

APPENDIX II

(Vide Paragraph 7 of the Report)

GOVERNMENT OF INDIA MINISTRY OF COMMERCE

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EXPORT TRADE CONTROL

PUBLIC NOTICE NO. 64-ETC (PN) /81

New Delhi, the 10th August, 1981

Sub: Scheme for exports under OGL 3 of Garments and knitwears made from Cotton, Wool, man-made fibres and blends thereof to USA, EEC Member-States, Sweden, Finland and Canada from 1.1.1982 to 31.12.1982.

This scheme relates to the exports of certain ready-made garments and knitwear items of (i) cotton, wool, man-made fibres and blends thereof to USA, EEC Member States (Federal Republic of Germany, France, Italy, Benelux, United Kingdom, Irish Republic, Denmark, and Greece), Sweden, Canada and (ii) cotton and man-made fibres to Finland for the period 1 January, 1982 to 31 December, 1982.

2. Agencies for quota allotment and export certification

The list of categories of textile products covered under the scheme are available with the Apparels Export Promotion Council and the Wool and Woollen Export Promotion Council. Unless otherwise directed, the Apparels Export Promotion Council, New Delhi (AEPC) will allocate quotas and do the necessary certification for all garments and knitwear except that quota allocation for woollen knitwear will be done by the Wool and Woollen EPC, New Delhi (W&WEPC). However, in respect of woollen knitwear, necessary certification will be done by the Apparels Export Promotion Council. Government reserves the right to make changes as considered appropriate with regard to the agencies for quota allocation and certification and with regard to transfer of any part of the work to any other agency.

3. Systems and quantum of allotment

(i) The systems of quota allotment and the annual quantities allocable under each system are as follows:—

SYSTEM	% TO THE ANNUAL LEVEL 1982
(i) Past performance	45
(ii) FCFS—First Contract Reservation	25
(iii) FCFS—Ready Goods (Small Orders)	20
(iv) Central/State Corporation	5
(v) Manufacturer-Exporters	5
	<hr/> 100 <hr/>

For manufacturer-Exporters, an additional quantity representing 3% of the annual level for 1982 shall be allocable, the additionality being accommodated from the flexibility provisions available in the bilateral textile agreements.

(ii) Government reserves the right to use flexibilities provided in the bilateral agreements as considered appropriate.

4. Division of the Quota year into Quota Periods and Apportionment of Quotas among Periods

(i) For the purpose of quota allocation in FCFS—Firm contract Reservation and FCFS—Ready Goods (Small Orders), the quota year of 1982 will be divided into three periods, viz. (i) January to April, (ii) May to August and (iii) September to December. 50 per cent of the annual quota will be allocated for the first period (January to April). 35% for the second period (May to August) and 15% for the third period (September-December).

(ii) In the case of knitwears (hosiery items) and certain categories of woollen products to be specified by Government, the quota year will have two periods; January to August and September to December. The apportionment of the annual quotas will be : 85% during January to August and 15% during September-December.

(iii) The above percentages may be readjusted from time to time by Government depending upon trends in overseas markets.

(iv) The above divisions of the year and the percentages of allocation will be subject to modifications in regard to the past performance system of allotment as set forth in the following paragraphs.

5. Past Performance System of Allotment

(i) Agency for determination of quota entitlements

The agency for calculation of the entitlement of quota under past performance system in respect of each exporter will be the Apparels Export Promotion Council, New Delhi. Textile Commissioner will lay down procedures in this regard and also supervise the work of the AEPC.

(ii) Base period of Past export performance

The quota entitlement will be determined for each country-category combination on the basis of the average of exports during 1980 and during January to June, 1981, the latter period being counted as full year. The entitlement of an export for 1982 will be determined on the above basis, segment-wise, as indicated in sub-para (iii) below. In case of any subsequent change in the entitlement of an individual exporter, the entire exercise of pro-rate calculation need not be re-opened but suitable adjustments made in the entitlement of the exporter concerned.

(iii) Segment-wise allotment and utilisation of PP quotas

The entitlements of each exporter under the past performance system will be determined on pro-rata basis with reference to his performance in each country-category in particular segments such as knitted, Handlooms, MM/PL.

(iv) Quota period for past performance

The whole year of 1982 will be treated as one period for quota allocation. Surrenders, however, shall have to be made before May 31, 1982. The L/C, performance bond and EMD conditions will be regulated as in para 14 below.

(v) Transferability of quotas:

The entitled quotas under the past performance system are transferable either in full or in part to another registered exporter of garments at any time during the year subject to the following terms and conditions.

(a) Shipments against such transferred quotas will be counted as the exports of the transferee.

(b) The transferred quotas in the hands of the transferee will be subject to the same terms and conditions as those applicable to the transferor.

(c) If a quota is transferred prior to 30th April, 1982 and the transferee retains it beyond that date, he will be obliged to execute bank guarantee etc. for retaining them beyond this date in terms of the policy. Similarly, if a quota is transferred after 30th April, 1982, the transferee will be obliged to execute a bank guarantee in lieu of the transferor so that he becomes responsible for the utilisation of the quota.

(d) An exporter who has transferred his quota in a particular country-category to another exporter will not be eligible for seeking a transfer of quota from any other exporter to himself in the same country-category.

(e) Holders of quotas under the contract Reservation system will not be allowed to transfer their PPQs in the same country-categories.

6. *FCFS Contract Reservation*

Under this system allotments will be made on First Come First served basis against firm contracts backed by Letter of Credit.

7. *Ready Goods (Small Orders)*

Allotment of quotas shall be made only in the case of small orders. Small orders are those where the orders for garment quota items do not exceed specified quantities in different country-categories. An exporter who has got any quota allotment under PPQ or under FCFS Contract Reservation will not be eligible for allotment under this system. Only those exporters who are registered with the Apparels Export Promotion Council on or before 1st August, 1981, will be eligible for quota allotment under this system of allocation. The Textile Commissioner will issue further instructions on this subject.

8. *Central/State Corporation Quota:*

For Corporations under the control of the Central/State/Union Territory governments and Apex Cooperative Handloom Marketing Societies at the Central/State levels, there will be a special allocation not exceeding 5% of the annual level. The allocation will however be made only for direct exports by these Corporations/Apex societies. Guarantees, L/C and penalty provisions will be the same as applicable to private exporters as laid down in this policy. The

Corporations/Apex societies will also be eligible for allotment of quotas under other systems of allotment subject to fulfilment of conditions laid down in the policy. The Textile Commissioner will determine the entitlement of quotas to the Corporations/Apex societies.

9. *Manufacturer-Exporters' Quota:*

Under this system of allotment, quotas to the extent of 8% will be allotted to Manufacturer-Exporters. While 5% of this will be out of the annual quota level for 1982, the remaining 3% will be accommodated out of quantities forthcoming by operating flexibilities in the various bilateral textile agreements. The Textile Commissioner will decide on the eligibility for allotments under this system for which he will issue detailed instructions.

10. *Reservations for Segment-wise quotas*

(i) In the case of country-category quotas where *handloom* and mill-made/powerloom items are combined (i.e. where handloom garments are subject to quantitative restraint the ratio of handloom to MM/PL will be 2 : 1 in the case of USA and 1 : 1 in the case of other countries. An exporter is however, free to utilise his entire quota on handlooms. The above ratio will not be applicable in the case of knitwear (hosiery) items. Government reserves the right to make changes in these ratios depending upon trends in overseas demand and utilisation of quotas.

(ii) For knitweaves (Hosiery items) there shall be a reservation of 10 per cent of the quota in the concerned categories.

(iii) For children's garments, reservation on the terminal date will be 10 per cent of quantities available on that date in all categories.

(iv) For woollen garments, there will be reservation in terms of quantities in specified categories. These will be announced by Government.

11. *Slow-moving items:—*

(i) In line with the practice followed during the current ant year (calendar year 1981) Bank Guarantees and deposits as stipulated in para 14(ii) will be dispensed with in the case of the slow moving items, specially identified for that purpose by the Textile Commissioner. For the identified slow-moving items, nominal deposit, as prescribed by the Textile Commissioner, would only

required. Restriction regarding shipment period will not apply in respect of slow-moving items.

(ii) For identification of slow moving items, performance during the first 4 months of 1981 and performance during 1980 will be taken into account. An item could be termed slow-moving if during the period under reference its exports have not exceeded 60 per cent of the quota ear-marked for the first period of 1981 or during the entire year 1980. Government, however, reserves the right to change the criteria during the course of the quota year if warranted by the demand trend and pace of utilisation of quotas.

12. Minimum Export (Floor) Prices :

There shall be only one floor-price for each category of garments. No separate floor-price will be prescribed for childrens' garments. The Textile Commissioner will prescribe the floor prices. In determining them, he will take into account all relevant factors including the fact whether a particular garment item has been identified as a slow-moving one or not.

13. Cut off-prices:

In the case of FCFS Contract Reservation and FCFS Ready-goods (small orders), a choice among offers may have to be made in the event of applications received for a particular country-category exceeding the available quota level. In such an eventuality, allotments will be made on the basis of unit price, higher unit price being the criterion for allotment.

14. Letter of credit, earnest money deposits, bank guarantee and penalties :

(i) The quota allocation for all garments and knitwears cotton, woollen and man-made will be made in L/C terms. L/Cs should be operative, valid and irrevocable. In the case of FCFS Contract Reservation and Central/State Corporations, L/Cs should be submitted alongwith the application. In the case of past performance, manufacturer—Exporters and Ready-goods quotas, L/Cs should be produced at the time of obtaining quota endorsements.

(ii) Earnest Money Deposits (EMD) covering 10 per cent of the job value of the quota applied for, should be furnished in all systems of allocations except for identified slow-moving items and non-restrained non-sensitive items other than category 641—USA. For this purpose Performance Bond backed by requisite bank guarantee shall be executed in all systems of allotment except Ready-goods. In the

case of Ready-goods, EMD should be through Bank draft. EMD has to be furnished alongwith the application for quota allotment in the case of all systems of allotment except Past Performance. In the case of Past Performance quota, an exporter need not furnish EMD for quantities shipped during the first period i.e. January—April, 1982. However, Performance Bond with bank guarantees shall be furnished at the stipulated rates for the retained quantity. The last date for production of such bank guarantees is May 31, 1982. Shipments effected after April 30, 1982 but before submission of bank guarantees (which should be before May 31, 1982) need not be covered by bank guarantees.

(iii) Quota endorsements shall be valid for 21 days, except in the case of Ready-goods, subject to the conditions that validity of all endorsements shall expire after 10 days of the concerned quota period. In ready-goods all endorsements will be valid for only 10 days.

(iv) An exporter, who exports not less than 90 per cent of the quota allotted to him within the whole year under past-performance or in a particular period under other systems of allotment, will not be liable for payment of penalty. An exporter who performs not less than 75 per cent but less than 90 per cent will have to pay proportionate penalty. If the utilisation of quota allocation is less than 75 per cent, the exporter will be liable for forfeiture of his performance bond/earnest money deposit in full. This will be subject to conditions of force majeure, wherever, they arise.

(v) In case where the utilisation of quota allocation is not less than 75 percent within the validity period, the exporter may be given the option to seek extension for the next allotment period within the quota year. Applications for extension should be filed within one month of the end of relevant quota period. In such cases, the exporter will have to execute a bond, supported by a Bank Guarantee, to the extent of 20 per cent of the f.o.b. value of the balance quantity. In case of his failure to export fully, the Bond and the Bank Guarantee will be liable to be forfeited in full.

(vi) Persons to whom quotas are allotted but who do not utilise them fully would render themselves liable to disqualification from getting quotas in future without prejudice to any other action that may be taken in this behalf.

15. Appeal against forfeiture of EMDs:

For the purpose of giving due consideration to representations made by exporters against levy of penalties for non-utilisation of

allotted quotas, the following procedure was introduced last year. The same procedure will be continued during 1982 also. Upon levy of a penalty by the Apparels Export Promotion Council the exporter concerned can appeal against the levy to the Textile Commissioner, Bombay within 15 days of receipt of the communication conveying such a levy. The Textile Commissioner shall, upon receipt of the representation, give a ruling as early as possible. If, in any case, the exporter is not satisfied with the decision of the Textile Commissioner, he may prefer an appeal against the decision within 15 days of receipt of the communication conveying the decision. The second appeal will be with the Department of Textiles and will be dealt with by an Appellate Committee constituted by Government.

16. Supervision over quota allotment:

The Textile Commissioner, Bombay will continue to exercise day to day supervision over the matters relating to quota administration. A Quota Coordination Committee with the Textile Commissioner as Chairman and with the representatives of the concerned EPCS as members will review the operation of the policy once a month. On matters where there is difference of opinion, the decision of the Textile Commissioner will be final.

17. Clearance by Customs of Products under Quota restraint:

Shipments will be allowed by the Customs authorities at the ports of shipment on the basis of quota endorsement on the original and duplicate of the shipping bills for individual consignments issued by the Apparels Export Promotion Council or any other appropriate agency designated for this purpose. In respect of USA, however, before allowing shipments, the customs authorities would also verify the visa endorsement on the special customs invoice No. 5515 issued by the Apparels EPC or any authorised agency designated for this purpose including their representatives. In respect of exports to EEC Member-States, Canada and Finland, alongwith quota endorsement, the Apparels Export Promotion Council or any other body duly authorised in this behalf will issue export certificate and certificate of categories having individual category limits. In the case of EEC, certificate of origin in respect of categories not having individual category limits will be issued for powerloom/knitted garments.

18. Clearance by Customs of Handloom products:

In so far as exports to U.S.A., EEC and Canada of woven garments made from handloom fabrics falling under categories other than

categories 7, 8, 26 and 27 in respect of EEC and items 2 and 4 in respect of Canada, shipments will be permitted by the Customs on the basis of the certification by the Textile Committee and non-quota endorsement by the Apparels Export Promotion Council or other authorised bodies concerned. In the case of handloom garments falling under categories 336, 340, 341, 347 and 348 for export to USA, certification by the Textiles Committee will be issued on the basis of the quota allotment by the Apparels Export Promotion Council or any other authorised body designated for this purpose.

19. Procedure for India items:

In respect of 'India Items' which are typically Indian traditional folklore textile products, shipments will be permitted by the Customs for exports to USA, EEC and Canada on the basis of appropriate certificates issued by the All India Handicrafts Board or the Textile Committee. For items specified as 'India Items' non-quota endorsement by the Apparels Export Promotion Council or by any other duly authorised body will also be required.

20. Formalities as to Shipping Documents:

Whenever the consignment is ready for shipment, the exporter shall submit the necessary shipping documents (including shipping bills in duplicate) and proforma application in duplicate covering the details of goods under shipment to the Export Promotion Council designated for this purpose or to its up-country port representatives alongwith quota certificate, for obtaining quota endorsement and for issuing the necessary export certificate. Thereafter, the documents shall be submitted to the Customs for completion of the shipping bills and other formalities. In the case of ready goods, the shipping documents including shipping bills will also be submitted to the Export Promotion Council designated for this purpose or its up-country port representatives for quota endorsement before the shipping bills are noted by the Customs at the port of shipment. In all these cases the shippers will be required to inform the Export Promotion Council concerned or its up-country port representatives from whom the quota endorsement is obtained, the number and the date of shipping bills after the same are collected from the Customs.

21. The Export Certificate/visa is meant for the buyer and hence the same after having obtained from the Council has to be forwarded by the Shipper to his buyer alongwith other connected documents.

22. Exports will be allowed from any port in India.

23. Government reserves the right to make amendment to any of the foregoing provisions without giving prior notice.

24. The address of the concerned Export Promotion Council are as follows:—

1. The Apparels Export Promotion Council,
Sahayog Building, 4th Floor,
58, Nehru Place, New Delhi-110019
2. The Wool and Woollens Export Promotion Council,
612/714, Ashoka Estate, 24 Barakhamba Road,
New Delhi-110001.

Sd/- MANI NARAYANSWAMI

Chief Controller of Imports & Exports

(Issued from file No. 2/40/81-EI)

Copy forwarded to:—

1. Ministry of Commerce, Deptt. of Textiles
(Attn: Shri N. K. Sabharwal, Director) (5 spare copies)
2. Ministry of Commerce, Deptt. of Textiles
(EP-T&JI) (10 spare copies)
3. The Textiles Commissioner, Bombay (20 spare copies)
4. Apparels Export Promotion Council, Sahayog Building,
4th Floor, 58, Nehru Place, New Delhi-110019
(10 spare copies)
5. Wool and Woollens Export Promotion Council, 612/714, Ashoka
Estate, 24 Barakhamba Road, New Delhi-110001
(10 spare copies)
6. Garment Quota Section, O/O the CCI&E (10 spare copies)
7. All Collectors of Customs
8. All others as usual

Sd/-

(R. ARUNACHALAM)

Controller of Imports and Exports

For Chief Controller of Imports and Exports

APPENDIX III

(Vide Paragraph 8 of the Report)

Notes on Points raised in the representation dated 19 July, 1982.

Sub : Export of Garments under OGL 3-Role of Apparels Export Promotion Council vis-a-vis Chief Controller of Imports and Exports.

In terms of the Export Policy export of garments and knitwears made from cotton, wool, man-made fibres and blends thereof to USA, EEC Member-States, Sweden, Finland and Canada is allowed under OGL 3 in terms of Public Notice No. 61-ETC(PN)/81 dated the 10th August, 1981. One of the exporters has filed a suit in the Court of District Judge, Delhi, challenging that Apparels Export Promotion Council is not a competent authority to grant a licence or quota certificate for export of garments. A few Parliament Questions have also been put whether the CCI&E has delegated powers of export licensing of garments to Apparels Export Promotion Council, and if so, whether Government had consulted the legal authorities in the matter. Somewhat similar questions are being raised in the Consultative Committee of the Parliament attached to the Ministry of Commerce.

2. In terms of the Exports (Control) Order, 1977 (No. 1/77-ETC, dated the 24th March, 1977), as amended from time to time, "Licence" includes:—

- (i) a licensing endorsements made on a Shipping Bill under this order;
- (ii) a quota for the export of goods allocated under this Order, whether such allocation is made by a licensing authority or by any agency authorised by the licensing authority in this behalf.

Though a 'quota' has been treated as a 'licence' as per the above definition, a quota certificate itself will not constitute a 'Licence'.

3. In terms of Clause 3 of the Exports (Control) Order, "no person shall export any goods of the description specified in Schedule I of the Order, except under and in accordance with a licence granted by the Central Government or by an officer specified in Schedule II." The item "Garments" does not fall within the purview of Schedule I.

Hence, the licensing authorities mentioned in Schedule II do not have any role to play in respect of items which are not covered under Schedule I. In terms of Clause 3(3) of the Order, goods specified in Schedule II may be exported on fulfilment of the terms and conditions specified therein. This clause reads as follows "Notwithstanding anything contained in sub-clauses (1) and (2), goods specified in Schedule III may be exported on fulfilment of the terms and conditions specified therein." Schedule III contains items which are allowed under Open General Licence. As stated above, export of garments is allowed under Open General Licence No. 3 in terms of Public Notice No. 61/81 dated the 10th August, 1981. Therefore, this item falls under Schedule III, and in terms of Clause 3(3), referred to above, exports will be allowed directly by the Customs authorities as per the conditions laid down in the Public Notice referred to above. 'Open General Licence' itself constitutes a 'Licence' issued by the Central Government/Chief Controller of Imports and Exports under the powers vested in the Act and the Exports (Control) Order. The item garments was placed under Schedule III (Open General Licence) vide Exports (Control) Order No. E(C)O, 1977/AM(197) dated 1-4-1981.....A licence thus stands granted by the Central Government itself.

4. In terms of para 9 of the Export Policy, in respect of commodities which have been placed under Open General Licence for export and are exported in accordance with the conditions of the relevant Open General Licence, the exporter will not be required to approach the licensing authority for obtaining any export permit/licence. Hence, in respect of garments, exporters need not go to any licensing authority as the export is covered under O.G.L. issued by the Central Government. Thus, the exporters of garments can export the goods as soon as they have fulfilled the conditions laid down in the Open General Licence. One of the conditions of the Open General Licence in respect of export of garments is that the designated agencies, namely, Apparels. Export Promotion Council, Wool and Woollens Export Promotion Council, etc. will allot the quota in respect of the commodities concerned, with such conditions as are specified in the Public Notice, referred to above. Just because the function of allotment of quota and export certification, namely, endorsement of the Shipping Bills, has been entrusted to these Councils, it does not, *ipso facto*, mean that they are the licensing authorities for these items. As stated above, the 'Licensing Authority' for the 'Open General Licence' is the Central Government/CCI&E, and once a general permission has been given for export under O.G.L. with such conditions as have been announced by the Government,

the question of any other licensing authority coming into the picture for allowing the export, does not arise. There cannot obviously, be two licensing authorities once an item is placed under Open General Licence.

5. In this connection, it is relevant to point out that there are many items whose exports are allowed under O.G.L., where different designated agencies have been brought into the picture to allow the export as per the conditions laid down in each case. As soon as the condition laid down therein is fulfilled, Customs authorities will allow the export. These items appear in Schedule III and they are as follows:—

Name of the Agency	Conditions under which export could be allowed
1. Live Frogs	On productions of recommendation of the Marine Products Export Development Authority, Cochin
2. Meat of Indian Buffalo, including heart, liver, lungs etc.,	On production of certificate issued by or on behalf of the State Director of Veterinary Services of the State from which the meat emanates for export
3. Food grain seeds including wheat seeds	Quality Control Certificate from National Seeds Corporation
4. Potable liquor Indian Made Foreign Liquor (IMFL)	On the basis of pre-shipment inspection of the strength of alcohol done by the Agency
5. Bauxite with alumina content between 40% and 50% with silica content exceeding 5%	On the basis of a certificate from a recognised Public Analyst regarding alumina and silica content.
6. Carbonised lignite Bristles	Against allocation made by the Coal Controller, Calcutta
7. Cinchona Mixed alkaloids and Cinchona salts	Against certificate from Directorate of Tamil Nadu/West Bengal
8. Quindine Sulphate	On production of a 'No Objection Certificate' from the Drugs Controller (India) New Delhi
9. Hard Silk Waste	Certificate from Government Spun Mills at Channarayana (Karnataka)
10. Window, door and ventilator sections	Against the contracts registered with the Engineering Export Promotion Council
11. Nickel cadmium battery scrap	On production of a certificate from a recognised Public Analyst to the effect that scrap conforms to the specifications given under the item.

From the above examples, it will be observed that so many agencies have been designated to deal with items falling under Open General

Licence. It does not and cannot mean that these agencies are licensing Authorities in terms of the Exports (Control) Order.

6. From the facts stated above, it will be clear that no powers have been delegated by the Central Government or the Chief Controller of Imports and Exports to the Apparels Export Promotion Council or to any other Council to act as a licensing authority on its behalf. Export of garments is allowed under Open General Licence issued by the Central Government/CCI&E on the basis of certain conditions laid down in the Exports (Control) Order and the Public Notice referred to above. Hence the issue of this Public Notice is legally in order and does not violate any of the conditions of Imports and Exports (Control) Act, or the Exports (Control) Order.

7. The other question that has been raised is whether the fines and penalties imposed on exporters by the Apparels Export Promotion Council, should be credited to Government. In terms of the Public Notice referred to above, certain provisions have been introduced whereby the exporters can be penalised for non-utilisation of quota and the bank guarantee forfeited on that account. This provision has been introduced in order that the exporters do not corner the quota and fail to achieve the export performance on that basis. The amount of the bank guarantee forfeited should naturally go to the AEPC as it is an agreement between the exporter and the AEPC, in terms of the guidelines laid down by Government. As a matter of fact, for operation of the Scheme in terms of the above Public Notice the AEPC employs a good member of staff which entails lot of expenditure. They do not get any grant from the Government for administration of the quota Scheme. Hence, it is a natural corollary that any amount occurring from the forfeiture of the bank guarantee, etc. should go to the Council, and not to the Government. At the same time, Government have taken precaution to see that any appeal against forfeiture of the bank guarantee is examined by Government. There is a provision that the Textiles Commissioner, Bombay, will hear the 1st Appeal and the 2nd Appeal will be examined by the Department of Textiles and will be dealt with by the Appellate Committee constituted by the Government. There is thus, ample safeguard provided to exporters so that injustice if done by the Council in any case, is rectified by the appropriate authority of the Government. This does not mean that Government have a right over the forfeited amount of the bank guarantee and the question of crediting such amount to the Consolidated Fund of India does not arise on the ground that Government have a supervisory control over such matters.

APPENDIX IV

(Vide Paragraph 13 of the Report)

.....

(i) Moneys collected by Apparels Export Promotion Council by way of Service Charges and forfeiture of Earnest Money Deposits Bank Guarantees

(a) Service Charges:

In accordance with its Articles of Association, the AEPC has been enrolling exporters as members and has been charging an admission fee of Rs 250/- at the time of admission to membership of the Council from exporters and also charging an Annual Subscription of Rs. 500/- every year to keep the exporter's membership live with the Council.

In return, the AEPC renders to its members export promotion services such as providing trade information and information pertaining to Government Policies, organising Seminars and Workshops, Trade Delegations, Buyer-Seller-Meets and participation in Trade Fairs and Exhibitions etc.

The Council also renders services to the exporters in connection with Export Entitlement Distribution Policy. These include circulation of Public Notices and their amendments to the Trade; seeking suggestions for suitable modification of the Policy and procedures and forwarding the same in a consolidated form to the Government; circulation and publishing of information regarding availability of balances for various countries and categories under various systems; processing of applications for entitlements etc. For these services also, the Council charges what is known as 'Council Charges' based on the criteria approved by the Executive Committee of the Council from time to time.

(b) Forfeiture of Earnest Money Deposits (EMDs)/Bank Guarantees (BGs).

The Public Notice which announces the Export Entitlement Distribution Policy of the Government lays down detailed guidelines to be observed by the AEPC while allocating entitlements. One of the guidelines provides for submission of EMDs/BGs to ensure export performance by the exporters. The Policy also pro-

vides for forfeiture of EMDs|BGs in case the performance of an exporter falls short of the entitlement allocated to him.

The Council has collected the following amounts on account of membership subscription and Council Charges:

	1982	1983 (Rs. in lakh)	1984
Membership Subscription for the year	18.16	24.34	38.17
Council Charges for the year	61.97	78.89	82.20

The amount of forfeiture of EMD|BG upto the end of December, 1984 was Rs. 3.12 crores. The amount received on account of membership subscriptions and Council Charges are credited to the respective heads of account with the same names in the books of accounts of the Council and are utilised for meeting the day to day administrative expenses of the Council.

The amount collected by way of forfeitures of EMDs|BGs is shown separately in the Annual accounts of the Council and is kept under a separate accounts under the head of penalties and EMD forfeited'. This amount is designed to be utilised for the purposes of export promotion activities as approved by the Government.

The Government has decided that any expenditure from the forfeiture amount should be cleared by a committee comprising the Joint Secretary (Textiles), a representative of the Finance Division and a representative of the Textile Commissioner. Detailed guidelines on the projects that could be cleared from this fund are being drawn up.

(ii) Statutory backing and Government control over levy and collection of Service Charges and forfeiture of Earnest Money Deposits/Bank Guarantees by Apparels Export Promotion Council

The Council Charges collected by the A.E.P.C. are based on the rates approved by the Executive Committee of the Council from time to time. These charges are collected for the service rendered by the Council to the exporters by way of processing their export applications etc. The Government does not extend any grant to the A.E.P.C. for this purpose.

As regards forfeiture of EMDs|BGs by A.E.P.C., it cannot be construed as pnalty but is merely in the nature of action taken by A.E.P.C. for nonperformance of the contractual obligation on the

part of exporters. Under the Export Entitlement Distribution Policy announced every year, the exporters are required to pay Earnest Money Deposit or execute a Bank Guarantee for utilisation of the entitlements allotted to them. This has been prescribed with a view to ensuring better utilisation of the annual levels of exports given by the importing countries. Unless such compulsion is made on the exporters, it would result in exporters cornering such entitlements without actually exporting. This would result in the country losing the export earnings.

Provision for forfeiture of EMDs/BGs had been made in the Public Notice No. 61-ETC(PN)/81 of 10-8-1981. In the Writ Petition-Bohan Exports V/S Union of India (CWP 1690 of 1982) the High Court of Delhi had upheld this provision and had held that the restriction was not only reasonable but in the interest of regulating full and proper trade. The Supreme Court also dismissed the Special Leave Petition against the High Court judgement in SLP No. 8877 of 1983.

The rates of EMDs/BGs and the conditions under which they are to be forfeited have been laid down in the Public Notices issued by the Government. In the event the exporters feel aggrieved that their EMDs/BGs have not been correctly forfeited, the Public Notices also contain provisions for 'appeal' (which in substance are representations to the Textile Commissioner and finally to the Government) against the said forfeiture. The Government also exercises control over the amounts so collected in that A.E.P.C. cannot spend these amounts as they like but have to do so only with the approval of the Government. The Government has also asked the A.E.P.C. to keep these amounts separately for use for export promotion purposes with Government's approval.

(iii) Delegation of power to Textile Commissioner to hear appeals against forfeiture of Earnest Money Deposits/Bank Guarantees

(iv) Consultations held with Ministry of Law and Justice on various matters

The Department of Textiles held the following view on the delegation of powers to the Textile Commissioner to hear appeals.

The Textile Commissioner is a nominee of the Government on the Executive Committee of the Apparel Export Promotion Council. He has been assigned the function of overseeing and supervising matters relating to allocation of export entitlements under the Public Notices on Export Entitlement Distribution Policy. It is in this context that the Textile Commissioner has been designated under

the Public Notice as an authority to hear representations from the exporters on forfeiture of EMDs/BGs by the AEPC for nonutilisation/under utilisation of allotted export entitlements. Though the Public Notices refer to this function as 'appeal' against forfeiture, this in fact is neither a statutory nor quasi-judicial function within the purview of the Export (Control) Order, 1977 but is purely an administrative arrangement to ensure that the Government's Policy is properly implemented in public interest and that AEPC functions in a proper manner. There has been no delegation of any powers of appeal to the Textile Commissioner under the Export (Control) Order, 1977.

The Department of Textiles have consulted the Department of Legal Affairs. The Department of Legal Affairs has obtained the opinion of the learned Attorney General in the matter. A copy of the said opinion has been separately forwarded to the Lok Sabha Secretariat by that Department. Answer to query (b) in that opinion refers. The learned Counsel has held that if the AEPC is capable of giving a decision affecting the rights of the Parties (Exporters), the authority empowered to hear appeals from the Council must be created by a statute and that the power to hear appeal which is a quasi-judicial one cannot be delegated to the Textile Commissioner by an executive order.

APPENDIX V

(Vide Paragraph 14 of the Report)

.....

MINISTRY OF LAW AND JUSTICE (DEPARTMENT OF LEGAL AFFAIRS)

NOTES ON ISSUES

1. The statutory backing or authority for empowering Apparels Export Promotion Council a non-statutory body to impose conditions and charge fees, levey penalties etc.
2. According to the Attorney General's Opinion (copy enclosed) the power to hear appeals has to be a statutory one and is quasi-judicial. How is the Textile Commissioner authorised by law to hear appeals against decisions by Apparels Export Promotion Council, a non-statutory body which only enters into a contract with exporters?

These issues were referred to the learned Attorney General for India alongwith other relevant issues under considration of the Committee on Subordinate Legislation of Lok Sabha *inter-alia* in the context of the earlier Opinion of the Counsel dated 23rd November, 1983. His latest Opinion is contained in answers to query (a) and query (b) of the Opinion. Copy of the Opinion dated 30.11.1985 is enclosed (Appendix I).

As regards the issue No. 1 above, it would be noticed that the Counsel has held that in so far as charging of the fees by the AEPC, is concerned, it is a case of the Central Government itself charging fees, but authorising the collection to be made by a prescribed non-statutory body which renders the necessary and appropriate services for the purpose of facilitating export. As to the power of the Council to levy penalties, the Counsel's view is that the said power cannot be delegated to the Council by imposition of an executive order and such delegation must clearly be provided for in the Act or in the Order framed under the Act.

As regards the issue No. 2, the learned Counsel is of the view that if the AEPC is capable of giving a decision affecting the rights of parties (exporters), it should be an authority invested with power

appropriate to such an exercise under the Act|Order and that the authority empowered to hear appeals from the Council must be created by a statute.

Advice tendered by the learned Counsel on the other issues as contained in queries (c), (d) and (e), which are as follows, may also be perused:

Query (c)

Whether in fact there has been an unauthorised alteration, or enlargement of the definitions of the terms "Chief Controller" as given in section 2 of the Imports and Exports (Control) Act, 1947 under clause 2 of the Exports (Control) Order, 1977?

Query (d)

Whether the certification of quota entitlement by the AEPC by virtue of the conditions laid down in Schedule III to the Control Order would tantamount to unauthorised sub-delegation of power to a non-statutory body? and

Query (e)

Generally.

In particular, the following conclusions of the Counsel may be mentioned:

- (i) If the Act confers powers only on the Chief Controller and by enlarged definition, those powers are conferred also on the Deputy Chief Controller, the rule will be *ultra vires*. But if such consequences do not flow, the rule can modify or alter the definition of 'Chief Controller' in the Rules by defining that word so as to include also 'Deputy Chief Controller'. [Query (c)]
- (ii) The certification of quota entitlement by the AEPC by virtue of the conditions laid down in Schedule III to the Control Order would not amount to unauthorised sub-delegation of power. It is well settled that the licensing authority not only grants a licence but performs such actions as are necessary to effectuate the licence [Query (d)]
- (iii) It is advisable to confer all such powers as have been Conferred on AEPC by making it a statutory authority with proper guidelines in the Act and with effective control [Query (e)]

3. List of all bodies like Apparels Export Promotion Council with whom exporters were to register their names, though they are not licensing authorities to control export activities.

List of all registering authorities like Apparels Export Promotion Council, with whom exporters were to register their names though they are not licensing authorities to control export activities as ascertained from the Ministry of Commerce may be found at Appendix X-Annexure I (pages 145-146 photo copies enclose)* of the Hand Book on Import-Export Procedures (1982-83). For the period 1985-86, the list of registering authorities may be found at Appendix XIV-A (pages 246-247-photo copies enclosed)* of the Hand Book of Imports and Export Procedures (1985-86).

4. Considered views on the amount collected by Apparels Export Promotion Council from the exporters not being subject to Comptroller and Auditor General's audit and where public funds are involved whether the control of the representatives of the people ought to be there.

Attention is invited to the Note submitted by the Ministry of Commerce to the Lok Sabha Secretariat on the subject "Note on the money collected by the AEPC by way of service charges and forfeitures". In particular, attention may be invited to the following statements in that Note:—

"The amount received on account of membership subscriptions and Council Charges are credited to the respective heads of account with the same names in the books of accounts of the Council and are utilised for meeting the day to day administrative expenses of the Council.

The amount collected by way of forfeitures of EMDs/BGs is shown separately in the Annual accounts of the Council and is kept under a separate account under the head of 'penalties and EMD forfeited'. This amount is designed to be utilised for the purposes of export promotion activities as approved by the Government.

The Government has decided that any expenditure from the forfeiture amount should be cleared by a committee comprising the Joint Secretary (Textiles), a representative of the Finance Division, and a representative of the Textile Commissioner. Detailed guidelines on the projects that could be cleared from this fund are being drawn up."

It may also be relevant to point out to the Statement in the Note of the Ministry of Commerce to the effect "The Government also exercises control over the amounts so collected in that A.E.P.C. cannot spend these amounts as they like but have to do so only with the approval of the Government. The Government has also asked the A.E.P.C. to keep these amounts separately for use for export promotion purposes with Government's approval."

The Apparels Export Promotion Council is a company licensed under Section 25 of the Companies Act, 1956 and the audit of its account does not fall within the purview of Comptroller and Auditor General under the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971. The accounts of the Council are audited by the auditors appointed in accordance with the provisions of the Companies Act. Governmental control over the funds of the Council, as existing on date, has been explained by the Ministry of Commerce in their Note submitted to the Lok Sabha Secretariat.

It may be added that in so far as grants given by the Central Government to the AEPC are concerned, under Section 15(1) of the Comptroller and Auditors General (Duties, Powers and Conditions of Service) Act, 1971, the Comptroller and Auditor General has to scrutinise the procedures by which the sanctioning authority satisfies itself as to the fulfilment of the conditions subject to which grants or loans are given and for that purpose has the access after giving reasonable previous notice to the books and accounts of the AEPC. The aspect of control by the representatives of the people or in other words Parliament is linked up with the suggestion of the learned Attorney General against query (e) extracted at page 3 ante.

5. Whether the procedure has since been streamlined for vetting of public notices in regard to imports/exports.

As per information received from Ministry of Commerce, public notices are issued to inform the public of the decisions taken by the Government to regulate export and import trades as per the laws in force. These public notices are administrative in character and not in the nature of statutory rules or orders. These are published in the Gazette of India for enabling the interested sections of the public to become aware of the pronouncements of the Government policies and details and like procedural and administrative matters. If and when the Administrative Ministry entertains any doubt on any legal issues arising out of the proposed notice, the matter is referred to the Ministry of Law and Justice for legal opinion which is tendered after due examination thereof.

APPENDIX VI

(Vide Paragraph 14 of the Report)

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OPINION DATED 30 NOVEMBER, 1986 OF THE ATTORNEY GENERAL FOR INDIA

A Statement of Case for my opinion has been prepared by Shri P. S. Kaicker, Consultant to the Ministry of Law, dated 31st October, 1985. In the Statement of Case, the factual background and the various queries have been formulated. I have gone through the Statement of Case and the accompanying annexures. My opinion in regard to the various queries is as follows:—

Query (a)

Whether the Apparel Export Promotion Council (AEPC) a non-statutory body can legally impose conditions, charge fees, levy penalties etc., in pursuance of the scheme laid down by the Central Government?

Answer :

The question has two parts—(1) as to whether the Council being a non-statutory body can legally impose conditions and charge fees (2) whether it can impose penalties. Section 4A of the Imports and Exports (Control) Act, 1947 enacts that the Central Government may levy a fee. It would be open to the Central Government to fix a fee by itself and authorise the collection thereof by such prescribed authority which has been validly constituted for the purpose of performing services for which the fee would constitute a valid *quid pro quo*. The fee is being imposed by the Government and not by the AEPC. Hence there is no question of the AEPC charging a fee. In considering the pith and substance of the matter and also the setting of the Act and the Order framed thereunder, it is a case of the Central Government itself charging the fee but authorising the collection to be made by a prescribed non-statutory body which renders the necessary and appropriate services for the purpose of facilitating export. The second part of the question is whether the Council can levy penalties in pursuance of the scheme laid down by the Central Government. The power to levy penalty or damages must always be traceable to a valid power conferred by law. The power to levy penalty or damages cannot be delegated to the Council

by imposition of an executive order. Such delegation must clearly be provided for in the Act or in the order framed under the Act. A power to ascertain the quantum of damages or to levy penalty is a power which must necessarily derive itself from a provision legislative in character, namely, an Act or an Order.

Query (b)

Whether the Textile Commissioner is authorised in law to hear appeals/representations against decisions by AEPC which only enters into a contract with the exporters?

Answer :

In the present Statement of Case, I find that the role of the AEPC has been delineated in paragraph 17. Clause 3, sub-clause (iii) of the Exports (Control) Order, 1977 provides that goods which are specified in Schedule III may be exported on fulfilment of the terms and conditions specified therein. It has been argued in the Statement of Case that an endorsement on the shipping bills by the AEPC or quota certification by them in conformity with the detailed guidelines issued from time to time by the Government cannot be treated as either a licensing endorsement on a shipping bill under the Order or a quota allocation by the licencing authority or by any agency authorised by the licensing authority in that behalf. It is further argued that OGL-3 (which relates to the present case) stands automatically granted by the very terms of sub-clause (3) of Clause 3 of the Order.

Notwithstanding what has been argued in the Statement of Case if the AEPC is capable of giving a *decision* affecting the rights of parties (exporters), it is necessary that it should be an authority invested with power appropriate to such an exercise under the Act/Order. It is further necessary that an authority which is empowered to hear appeals from the Council must be created by a statute. A right of appeal from an order obviously affecting the parties' rights must be created by a statute. The power to hear appeal cannot be delegated to the Textile Commissioner by an executive order. A quasi judicial power cannot be delegated.

Query (c)

Whether in fact there has been an unauthorised alteration, or enlargement of the definitions of the terms "Chief Controller" and "Deputy Chief" Controller" as given in Section 2 of the Imports and Exports (Control) Act, 1947 under clause 2 of the Exports (Control) Order, 1977?

Answer :

It has been argued in the Statement of Case that the expressions "Chief Controller" and "Deputy Chief Controller" used in the Act bear a different connotation in comparison to the expressions occurring in the order. It has been further pointed out that there does not appear to be any conflict between the definitions of the terms given in the Act or under the Order. I am of the view that an order issued by the Central Government, namely Export (Control) Order 1977 is in exercise of the powers conferred by the Government by section 3 of the Import and Export (Control) Order 1947. Such a power has to be exercised in conformity with the Act and cannot contravene or conflict with the provisions of the Act, Section 2(c) of the Act defines the 'Chief Controller' as the Chief Controller of Imports and Exports. Clause 2(b) of the Order by an inclusive definition defines "Chief Controller of Imports and Exports" including Additional Chief Controller of Imports and Exports, Export Commissioner in the office of the Chief Controller of Imports and Exports, a Joint Chief Controller of Imports and Exports, a Deputy Chief Controller of Imports and Exports, Assistant Chief Controller of Imports and Exports and Controller of imports and Exports. Section 2(f) of the Act defines 'Deputy Chief Controller' as Deputy Chief Controller of Imports and Exports. I am of the view that a subordinate legislative authority cannot enlarge the definition. A definition in an Act can be enlarged or amended by an amendment of the Act *alone*. The statute may confer powers upon authorities mentioned and defined under the Act. If the contours of such an authority are enlarged or varied by a subordinate legislation making authority, it would interfere with the substantive definitions contained in the Act. A definition in the Act can only be altered or enlarged by an amendment of the Act and not be recourse to an order framed under the Act. I find no reason to depart from my opinion on this issue dated 24th November, 1983.

In the brief for Opinion, it is pointed out that it is permissible to define the same terms differently for the purposes of the Act and the Subordinate Legislation respectively. It is mentioned that "it would appear to be legally permissible to define the same terms differently in the Act and the Subordinate Legislation for the purposes of the Act and the Subordinate Legislation respectively". Reliance has been placed under section 20 of the General Clauses Act for this purpose. This point made in the brief requires to be answered in some detail. Section 20 of the General Clauses Act does not say that the same terms can be defined differently in the Act and the Rules. It only

says that expressions used in notifications, orders, scheme, etc. made under an Act or Regulation shall have the same respective meaning as in the Act or Regulation conferring the power unless there is anything repugnant in the subject or context. Words may be defined in a statute or rules or may not be defined in the statute or rules. In both situations words have to be interpreted by the sense of the provisions where they occur. They have to be given contextual meaning. For purposes of facility and convenience, it has been a legislative practice that certain words occurring in the statutes are defined in a section which is usually titled as "definitions". But even where a word is defined in the Act that word wherever it occurs in the Act need not necessarily bear the meaning given in the definition section. That is why it is familiar legislative practice that the definitions" section usually say "unless there is anything repugnant in the subject or context". Therefore, even where the words are defined in the Act depending upon the context, it may bear a meaning different from the meaning given to it in the "definitions" section. In fact, the same word may mean different things in different enactments and even in the same Act different meaning in different contexts. It is this principle which is extended by section 20 of the General Clauses Act to words used in rules, notifications, etc., which are made pursuant to powers conferred by an Act or Regulation. Suppose, the same word is used in different senses in the same Act, can it be contemplated that there could be a definition in the Act which will say that such and such a word shall have such and such a meaning in one section and such and such a meaning in another section. This is too artificial. Therefore, when words are defined in the Act that gives some guidance as to the meaning of that word in the various sections of the Act which meaning may no doubt be rendered, modified or altered in certain contexts. Similarly, in the subordinate legislation also in certain context the same word may carry a different meaning than what the definition in the Act is. But on this ground, it cannot be argued that we can have a set of words defined one way in the Act and in another way in the Rules.

Such a practice will create confusion in interpretation in the Act and the Rules. Further, it may also cause other difficulties of the definition in the rule being *ultra vires*. To give an example, supposing an Act confers a power in an authority who is for the purposes of that Act called "Director", suppose the Act also constitutes an authority who is called "Deputy Director", but who is not vested with the powers vested in the Director, if the rules define the Director as including a Deputy Director and if he exercises the powers

of the Director, those powers so exercised will be clearly *ultra vires*. Therefore, when I offer my opinion that the rules cannot define certain words differently from the Act, it should be understood that for a particular context, the rules can say that the word defined in the Act will have an extended meaning or a different meaning. But the rules cannot in the guise of a definition enlarge the scope of the Act or conflict with the scope of the Act. I will also make one comment on the illustrations given in the Note as to certain words being defined differently in the Act and differently in the Rules. In the first illustration given the word 'owner' means two categories of persons under the Act. The rule says it will also include another category of person, namely, the master of a vessel. Here it is not defined differently from the Act. Rules add one more category of person as an owner, namely, the master of the vessel. In situations where the Act confers certain duties on the two categories of persons defined as 'owner' to the extent that rights and obligations thrown on the master under the rules do not conflict with any provisions in the Act, this definition will certainly hold the field. But notwithstanding the definition owner being restricted to two categories in the section in a particular context it can be interpreted even in the Act to mean the master of a vessel that meaning can be given notwithstanding its non-inclusion in the definitions section.

As regards the word 'manufacturer' used in the Central Excise Act and Rules, there is absolutely no conflict or even variation. The definition in section 2(f) is an inclusive definition. Whenever the definition is an inclusive definition in the Act, there is no question of any definition in the Rules conflicting with the Act as the definition in the Act being inclusive definition is not exhaustive of the categories mentioned in the definition. In the illustration given as item 3, namely, 'successor State' defined in the Punjab Reorganisation Act, I see no conflict with Section 2 which defines the word opens by saying "unless the context otherwise requires". The definition of 'successor' State in section 2(m) includes also the transferred territory. Transferred territory is defined in section 2(m) as the territory which on the appointed day is transferred from the existing State of Punjab to the Union Territory of Himachal Pradesh. Therefore, even under the Act, Himachal Pradesh is also one of the successor State. There is no conflict between the Act and the Rules.

My answer to the query that definition in rules cannot conflict with the Act should therefore be understood in its correct sense. If the definition in the Rule which is different from the definition in

the Act has the effect of making some provision in the Rule in its substance conflicting with the Act, the rule will be *ultra vires*. But if the different or extended definition in the Rules does not conflict with the substantive provision of the Act, it will be *intravires* and can be made. However, it would be a sound principle of legislative draftsmanship to maintain the same meaning to the same words both in the Act and the Rules and Notifications whenever resort is made to define those words in the rules when those words are already defined in the Act. However, whether the words are defined or not, the same words can contextually bear even a different meaning from the meaning given to that word in the Act and or in the Rules.

On my above view, if the Act confers powers only on the Chief Controller and by enlarged definition those powers are conferred also on the Deputy Chief Controller, the rule will be *ultra vires*. But if such consequences do not flow the rule can modify or alter the definition of 'Chief Controller' in the Rules by defining that word so as to include also 'Deputy Chief Controller'.

Query (d)

Whether the certification of quota entitlement by the AEPC by virtue of the conditions laid down in Schedule III to the Control Order would tantamount to unauthorised sub-delegation of power to a non-statutory body?

Answer :

The expression 'licence' has been defined in clause 2 sub-clause (d) (ii) of the Export (Control) Order 1977. Licence includes a licensing endorsement made on a shipping Bill under the order and a quota for the export of goods allocated under the order (whether such allocation is made by a licensing authority or by any agency authorised by the licensing authority in this behalf). Clause 3 of the Order imposes certain restrictions on export of goods. Sub-clause (1) provides that no person shall export any goods of the description specified in Schedule I, except under and in accordance with a licence granted by the Central Government or by an officer specified in Schedule II. Sub-clause (2) of the Order provides that no person shall export to Pakistan any goods except under and in accordance with a licence granted by the Central Government or by an officer specified in Schedule II.

This is a clear instance where a statutory provision confers a power upon the Government to specify an officer to grant a licence. Sub-clause (iii) however contains a non-obstante clause. It provides that notwithstanding anything contained in sub-clause (1) and (2)

goods specified in Schedule III may be exported on fulfilment of the terms and conditions specified therein. Clause 2(d) defines a licence under the Order. The word 'licence' under Clause 3 of the Order has to be interpreted as defined in clause 2(d), namely, a quota for export of goods allocated under the order whether such allocation was made by a licensing authority or by any agency authorised by the licensing authority in that behalf. I am of the view that clause 2(d) of the order and clause 3 of the order can be interpreted harmoniously.

The certification of quota entitlement by the AEPC by virtue of condition laid down in Schedule 3 is clearly traceable to clause 3 sub-clause (iii) itself. On a consideration of the various provisions and functions of the AEPC as detailed in the Statement of Case, it cannot be said categorically that AEPC performs no licensing functions. It is true that the AEPC by itself does not grant a licence. But the endorsement on shipping Bill by AEPC or quota certification in conformity with guidelines issued from time to time by the Government will be construed as 'licence' for the purposes of clause 2(d) of the Order. However, I am of the view that it is open under clause 2(d) (ii) that a quota for export of goods may be allocated either by a licensing authority or by an agency authorised by the licensing authority. In view of the above, I would answer the above said query in the negative. The certification of quota entitlement by the AEPC by virtue of the conditions laid down in Schedule III to the Control Order would not amount to unauthorised sub-delegation of power. It is well settled that the licensing authority not only grants a licence but performs such actions as are necessary to effectuate the licence.

Query (e)

Generally.

Answer:

Considering the powers and duties conferred on the AEPC, I find it difficult to appreciate why they should be so conferred on a non-statutory authority. In such situations, it is always advisable to confer such powers and duties on statutory authorities with effective control and guidelines under the Act.

I have already answered in the negative query (d) posing the question as to whether the certification of quota and entitlement by the AEPC by virtue of conditions laid down in Schedule III to the Control Order, would tantamount to a sub-delegation of power to a non-statutory body. However, a challenge under Article 14 of the

Constitution cannot be ruled out. It has also become difficult to offer a definite opinion on matters which are likely to be challenged under Article 14 in the present state of law. Article 14 now comprehends an attack not only based on classification. An Act, Rule or Notification or even an Executive Order can now be challenged under Article 14 on the ground that it does not satisfy the requirement of "just, fair and right". It has, therefore, become a little indefinite depending upon how the particular judge hearing the matter considers the power granted or the action taken. I would suggest that it is advisable to confer all such powers as have been conferred on AEPC by making it a statutory authority with proper guidelines in the Act and with effective control.

APPENDIX VII

(Vide Paragraph 18 of the Report)

Replies to questionnaire for evidence of Representatives of Ministry of Commerce/Textile on 6 March, 1985

1. Whether Government have carefully considered the various points as raised by the learned Attorney General for India in his opinions dated 30th November, 1985. If so, what remedial measures have been taken or proposed to be taken by the Government in that behalf?

Points (a), (b) and (d) of Attorney General's Opinion are agreed to. On Point (c) the Government propose to take up with Ministry of Law for further consideration. Point (e) is only a suggestion by the Attorney General with which Government is not in agreement.

2. What action the Ministry of Commerce have taken to lay on the Table of the House the various Import and Export Control Orders which are essentially in the nature of subordinate legislation? Whether necessary provisions providing for laying of such orders before Parliament have since been incorporated in the Act viz., the Imports and Exports (Control) Act, 1947.

The Imports (Control) Order, 1955 and Exports (Control) Order, 1977, and periodical amendments thereto are pieces of Subordinate Legislation. The said Orders and amendments thereto are in exercise of the powers conferred by Section 3 of Imports and Exports (Control) Act, 1947. In terms of the said Act, these Orders are not required to be laid on the Table of the House. There is no proposal to amend the Act, in this regard.

3. That Act empowers the Central Government to make provisions for controlling the import and export trade and to make rules for carrying out the provisions of the Act. How far the import and export trade of the country is being regulated through the rules framed under the Act?

Only one Rule has been framed and notified in terms of Section 8 of the Imports and Exports (Control) Act, 1947, namely

S.O. No. 149-E dated 7th March, 1980, published in the Gazette of India Extraordinary in Part II, Sub-Section (ii) of the same date. The said Rule was laid on the Table of the Lok Sabha on 13th June, 1980 and the Rajya Sabha on 10th June, 1980.

4. What action Government have taken to place the various Public Notices regulating import and export trade on the statutory footing?

Public Notices issued from time to time are not statutory Orders and are therefore not termed as Subordinate Legislation under the Act. Public Notices are issued as administrative instructions and published in the Gazette of India Extraordinary for information of the general public.

5. What are precisely the powers conferred on the Central Government under the enabling Act authorising them to issue Public Notices to control the import and export trade?

The Public Notices are not pieces of Subordinate Legislation and are in the nature of executive or administrative instructions. They are issued in the exercise of the executive powers of the Union Government.

6. What are the rules framed by the Government in exercise of the powers conferred by Section 8 of the Imports and Exports (Control) Act, 1947?

Please refer to the Answer against Question No. 3.

7. Whether Government exercise any statutory control over the functioning of the Apparels Export Promotion Council? What remedy is left with the Government in case the Council refuses to act in accordance with Government directives?

AEPC is a Company Registered under Section 25 of Companies Act, 1956. The Government exercises control through four official nominees of Government in the Executive Committee of AEPC. The Chief Executive of the AEPC is appointed by the Government. Textiles Commissioner supervises the day-to-day administration of export entitlement of AEPC.

8. What is the extent of control exercised by the Government in disbursement of the earnings of the Apparels Export Promotion Council? How do Government ensure that the funds are utilised for the intended purposes of export and import activities?

Government has asked AEPC to amend their Articles of Association giving certain powers to Government including the power to give directives to them. This amendment has to be passed in the next Annual General meeting of AEPC. As stated in reply to Q. 7, Government nominees are in the AEPC's Executive Committee and the Chief Executive is a Government nominee.

9. Whether the exporters often suffer huge losses by way of forfeiture of their bank guarantees in their deals with the Apparels Export Promotion Council? What remedial measures Government have proposed to mitigate the plight of exporters on this account?

The quota policy prescribes only around 5-15 per cent of FOB value of the quota as Bank Guarantee which is not considered excessive. If an exporter exports 90 per cent of the total entitlements allotted there is no forfeiture. No forfeiture is made if the exporter proves *force majeure* like strike, fire etc. There are also safeguards by way of appeals to the Textiles Commissioner and Government.

10. Whether Government have thought of ways and means to channelise the huge moneys collected by the Apparels Export Promotion Council under Governmental umbrella, to the national exchequer? What are the considered views of the Ministry in this regard?

The amount of forfeiture and interest thereon are kept by AEPC separately and could be spent only with Government's prior approval for export promotion measures.

11. Whether the Import and Export Policy announced by Government from time to time is under the Imports and Exports (Control) Act and the legislation framed in pursuance of the powers delegated thereunder? What are the provisions under the Act? How the policy is actually implemented bringing the various measures within the ambit of the provisions as laid down in the enabling Act?

As stated earlier, Central Government derive powers under Section 3 of the Act to prohibit, restrict or otherwise control Imports and Exports. Central Government has also powers to make Rules for carrying out provisions of the Act in terms of Section 8 thereof. The orders issued under Imports (Control) Order, 1955 and Exports (Control) Order, 1977 are two pieces of Subordinate Legislation through which the Import and Export of the country is regulated.

However, the Imports and Export Policy is by way of executive and administrative instructions and does not have formal statutory backing.

12. What is the considered opinion of the Ministry with regard to entrusting the functions of the Apparels Export Promotion Council to a statutory body or otherwise with a view to provide adequate public control and participation and to credit the huge moneys to public exchequer which are presently being appropriated by the said AEPC?

Apparel Export Promotion Council is not the only Council exercising such functions. Taking into account the correctives under consideration for amending the Export (Control) Order, 1977 the Government is of the view that making AEPC a statutory body would lead to certain rigidities in its operation which may not be conducive to its efficient functioning.

13. Clause 4 of the Exports (Control) Order, 1977, confers discretion on the licensing authority to prescribe conditions of licence. Whether any guidelines have been laid down to obviate probable misuse of the given discretionary powers?

The condition for grant of licence is given in Schedule I to the Exports (Control) Order, 1977, itself (Part 'A' List of items export of which is not normally allowed; Part 'B' List of items permitted for export subject to be conditions such as within a limited ceiling, on Merits, OGL-3 etc.). Necessity for issue of guidelines does not arise as unless the conditions given against each item under the Schedule I are fulfilled no licence can be issued. Powers to grant licence in relaxation of the policy lies only with Govt. CCI&E.

14. Clause 5 of the Order empowers the licensing authority to refuse to grant a licence under certain circumstances enumerated therein. Whether the usual precautions like recording of reasons in writing for refusal, conveying the reasons to the concerned party, providing an opportunity of being heard before such refusal, and for preferring appeal by the aggrieved party, are taken in the matter? Whether necessary provisions exist in the Order in this behalf? If so, which are these provisions?

The grounds for refusing a licence are usually recorded. Further, in terms of para 147 of the Hand Book of Import and Export Procedure 1985-88, if an exporter is not satisfied with the decision of the licensing authority/appellate authority, the exporters can file

an appeal/review application against such decision in accordance with the procedures laid down therein.

15. The Provisions as contained in Clause 10 of the Exports (Control) Order providing for publicity of the names and other particulars of persons found guilty of acts under Clause 7 or 8 seem to be of substantive nature. Such provisions should essentially flow from the parent Act rather than being provided through the instrument of subordinate legislation. Please state the authority in the parent Act empowering the Government to make such provisions in the Exports (Control) Order.

The Imports and Exports (Control) Act gives wide powers of punishment and imposition of penalties. Although the power of giving publicity is not explicit in the Act, it is implied in the Act and therefore there is no inconsistency between the Act and the Orders issued thereunder in this regard.

16. The phrase 'any other officer authorised in this behalf' appearing in Clause 11 of the Order does not indicate precisely the minimum rank of the officer who can be so authorised for purpose of cancellation of licence. Whether Government have any objection to specify the minimum rank of the officer who can be authorised for purpose of this Clause?

The List of Officers who are competent to grant a licence has been specified in Schedule II of the Exports (Control) Order, 1977. The Officers who are competent to grant the licence are also competent to cancel the licence for the same reasons as mentioned in Clause II. As such there is no need to specify the minimum rank of Officers who are competent to cancel a licence.

APPENDIX VIII

(See Paragraph 35 of the Report)

MINISTRY OF COMMERCE & SUPPLY
(Department of Commerce)
New Delhi, the 31st January, 1985

ORDER EXPORT TRADE CONTROL

S.O. 70(E)|No.E(C)O, 1977|AM(296).—In exercise of the powers conferred by section 3 of the Imports and Exports (Control) Act, 1947, (18 of 1947), the Central Government hereby makes the following Order further to amend the Exports (Control) Order, 1977, namely:—

1. This Order may be called the Exports (Control) First Amendment Order, 1985.
2. In the Exports (Control) Order, 1977 in Schedule I, in Part 'B' after serial number 20 D and the entry relating thereto, the following serial number, letters and items shall be inserted namely:—

“20E — Jowar
20F—Ragi”

[File No. 40(47)/84-EII]

P. C. JAIN, Chief Controller of Imports & Exports

MINUTES

MINUTES OF THE FIFTY-NINTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA) (1982-83)

The Committee met on Saturday, 27 November, 1982 from 11.30 to 13.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri N. E. Horo
5. Shri Ashfaq Husain
6. Shri C. D. Patel
7. Shri Chandrabhan Athare Patil
8. Shri M. Ramanna Rai
9. Shri T. Damodar Reddy
10. Shri Ebrahim Sulaiman Sait
11. Shri M. S. K. Sathiyendran
12. Shri R. S. Sparrow

REPRESENTATIVES OF THE MINISTRY OF COMMERCE

1. Shri A. K. Dutt, Secretary (Textiles).
2. Shri A. K. Mukherjee, Joint Secretary.
3. Shri Takhat Ram, Joint Chief Controller of Imports and Exports.
4. Shri M. E. Thomas, Joint Chief Controller of Imports and Exports.
5. Shri M. P. Singh, Legal Adviser.

SECRETARIAT

Shri S. D. Kaura—*Chief Legislative Committee Officer.*

2. At the outset, the Chairman read out Direction 58 of the Directions by the Speaker, to the witnesses.

3. When asked whether the Exports (Control) Order, 1977 was laid on the Table of the House, the representative of the Ministry of Commerce stated that it was not the practice to lay them on the Table of the House. He also stated that there was nothing in the Act that Orders, issued thereunder, were required to be laid on the Table. When questioned whether the Order was a piece of delegated or subordinate legislation, the Legal Adviser replied that in his opinion it was a delegated legislation. The Secretary (Textiles), however, submitted that none of the representatives of the Ministry was in a position to express any opinion on legal matter since the Ministry of Law were the competent people to pronounce the opinion on the legal points.

4. The Secretary (Textiles) agreed that the Order was a statutory one issued in exercise of the statutory powers conferred by Section 3 of the Imports and Exports Control Act. He further stated that he did not question the right of the Committee to examine the Order whether it was placed on the Table of the House or not, but opined that rule 235 of Rules of Procedure and Conduct of Business in Lok Sabha pre-supposed the all Orders were not necessarily laid on the Table of the House.

5. When asked whether the Ministry, while issuing Order under Section 3, was empowered to extend, enlarge and assume power to change the definition of the expression 'Chief Controller of Imports and Exports' which was limited and prescribed by the Act itself, the Legal Adviser stated that power was given to the Central Government under Section 3 of the Act to issue Orders for the purpose of prohibiting, restricting or otherwise controlling the exports. The definition of "Chief Controller of Imports and Exports" as given in the Act, was not contravened by the Order. When asked as to why, the Act could not be amended for the purpose, the Legal Adviser submitted that the matter would be taken up with the Ministry of Law to see whether the amendment was really called for.

6. When asked whether the definition of the term 'Licence' given in the sub-clause (d) of clause 2 of the Exports (Control) Order, 1977, read with the definition of "Licence" given in the detailed amount to sub-delegation of power and could a delegate sub-delegate the authority, the representative stated that it was not sub-delegation of legislative function. Those were administrative matters. To a question whether any Agency was authorised to make endorsement on the shipping bill, the representative stated

that the specified Agency could allot quota but only the licencing authority could endorse the shipping bill in lieu of licence.

7. When asked to state the authority in the Act for charge of fee of Rs. 50/- on every application for allotment of quota for export of garments under Clause 3A of the Exports (Control) Order, the representative of the Ministry stated that it was not actually a fee but by way of service charge leviable by the Apparels Export Promotion Council for the service rendered. When asked whether the A.E.P.C. was a statutory body, the Secretary (Textiles) replied in the negative. The representative of the Ministry further stated that the export promotion scheme of the Government envisaged different Councils for sounding different commodities. Exporters had to be members of these Councils. In order to ensure that there was proper monitoring on the executive committee of the A.E.P.C., the representatives of the Ministry were there on it to ensure that the Council discharged its functions in terms of the rules and regulations laid down in the Public Order.

8. When asked as to who formulated the quota distribution policy of the garments, the representative of the Ministry replied that the Central Government formulated the policy. When further asked whether the A.E.P.C. was also authorised to levy penalty, the representative stated that it was not a penalty but if the exporter did not comply with the terms of the bond entered into with the Council, the bank guarantee was forfeited and it was payable to the Council.

9. The Secretary (Textiles) then submitted that it would be helpful if the evidence was postponed as they were not prepared for the kind of questions the Committee had put. He stated that there were matters on which they were not entirely competent to pronounce any opinion without the advice of the Ministry of Law. The Committee, therefore, agreed and decided to meet again after a month for hearing further evidence in the matter.

The Committee then adjourned. •

MINUTES OF THE SIXTIETH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA) (1982-83)

The Committee met on Thursday, 2 December, 1982 from 11.30 to 12.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri N. E. Horo
5. Shri Ashfaq Husain
6. Shri Dalbir Singh (Madhya Pradesh)
7. Shri B. Devarajan
8. Shri C. D. Patel
9. Shri Chandrabhan Athare Patil
10. Shri M. Ramanna Rai
11. Shri M. S. K. Sathiyendran
12. Shri R. S. Sparrow

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*
3. Shri T. E. Jagannathan—*Senior Legislative Committee Officer*

2. The Committee took up for consideration the matters arising out of the evidence tendered by the representatives of the Ministry of Commerce on 27 November, 1982 on the various provisions in the Exports (Control) Order, 1977. In that connection, the Chairman observed that during their evidence the representatives of the Ministry had maintained that there were matters on which they were not competent to pronounce any opinion without obtaining the advice of the Ministry of Law and that they would consult the Minis-

try of Law before replying to the Members' questions. The Committee, therefore, might like to fix another date for further evidence. After some discussion, the Committee decided that further evidence might be heard some time in January, 1983 to give sufficient time to the Ministry of Commerce for preparation.

3. The Committee also decided that the representatives of the Ministry of Law might also be invited along with the representatives of the Ministry of Commerce to appear before the Committee.

4. The Committee were of the view that no questionnaire need be supplied to the Ministry in connection with their further evidence. They should come prepared *suo motu* for tendering evidence.

* * *

The Committee then adjourned.

* Omitted portions of the Minutes are not covered by this Report.

**MINUTES OF THE SIXTY-SECOND SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA) (1982-83)**

The Committee met on Saturday, 15 January, 1983 from 11.30 to 13.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Ashfaq Husain
4. Shri C. D. Patel.
5. Shri Satish Prasad Singh
6. Shri R. S. Sparrow

REPRESENTATIVES OF THE MINISTRY OF COMMERCE

1. Shri A. K. Dutt, Secretary (Textiles).
2. Shri C. Venkataraman, Additional Secretary.
3. Shri Mani Narayanswami, Chief Controller of Imports and Exports.

**REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY
AFFAIRS (LEGISLATIVE DEPARTMENT)**

1. Shri R. V. S. Peri Sastri, Secretary.
2. Shri S. Ramalah, Additional Secretary.

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer.*

2. During evidence, the Law Secretary informed the Committee that the Exports (Control) Order, 1977 was a delegated legislation and that it had been so considered by the Supreme Court also.

3. When pointed out that the definitions of the expressions 'Chief Controller' and 'Deputy Chief Controller' given in the Imports and Exports (Control) Act, 1947 had been altered and enlarged by the definition assigned to the term 'Chief Controller' in the Exports (Control) Order, 1977 which tantamount to an amendment of the Act through the Order, the Law Secretary explained that the definition given in the Act was for the purpose of the Act and the definition given in the Order was for the purpose of the Order and there was nothing wrong from the legal point.

4. When asked to state whether the Exports (Control) Order, 1977 was sent to the Ministry of Law for vetting before its publication, the Secretary (Textiles) submitted that the general practice was to send all rules and orders to the Ministry of Law for vetting but he would check up and give the factual position later.

5. Referring to the definition of the 'Licence' as given in the Act and in the Order, when asked as to who would be issuing the Licence, the representative of the Ministry of Commerce explained that where an export was subject to a licence to be granted to individuals, the licence would be issued by the Chief Controller of Imports and Exports or the other authorities that might be prescribed and where the export was on Open General Licence the individual exporter had not to secure a licence from any of the licencing authorities. Explaining further, the representative stated that where export of certain product was restricted, every time a person who wanted to export it, had to secure a licence. Instead of his applying for licence and going through all the procedural formalities, in that particular case the word 'Licence' would include the endorsement made on the back of the shipping bill by the Licensing authority. The next category was the quota allotment under the Order, for example, a quota of not exceeding 2000 per individual or per firm was allowed for export. In that case, a specific licence would not be required. Customs would only check up whether it adhered to the quota which had been specified in the Public Notice.

6. When asked as to whether provision in the Order that 'Licence' included "a quota for the export of goods allocated under this Order, whether such allocation is made by a licensing authority or by any agency authorised by the licensing authority in this behalf", did not amount to sub-delegation of power to non-statutory agency, the Law Secretary explained that Section 3 of the Act which was of very wide amplitude gave to the Executive the power of prohibi-

ting, restricting or otherwise controlling and it had been left to the discretion of the Government according to the exigencies of the situation to exercise control and one of the types of control was by quota. He further stated that although Section 3 was challenged, it was upheld by the Supreme Court.

7. When asked under what section of the Act, Public Notice was issued, the representative of the Ministry stated that the Public Notice was issued under the export policy. They were not issued under the Act or under the Order.

8. When asked whether the Public Notices issued in the matter were laid on the Table of the House, the representative of the Ministry of Commerce replied in the negative. The representative added that when the Export Policy was evolved, it was first laid on the Table. Subsequently, every Order or Public Notice was submitted to Parliament through the Parliament Library.

The Committee then adjourned to meet again on Monday, 17 January, 1983.

**MINUTES OF THE SIXTY-THIRD SITTING OF THE COM-
MITTEE ON SUBORDINATE LEGISLATION,
(SEVENTH LOK SABHA)**

(1982-83)

The Committee met on Monday, 17 January, 1983 from 11.30 to 13.15 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri N. E. Horo
4. Shri Ashfaq Husain
5. Shri B. Devarajan
6. Shri C. D. Patel
7. Shri M. Ramanna Rai
8. Shri T. Damodar Reddy
9. Shri M. S. K. Sathiyendran
10. Shri Satish Prasad Singh
11. Shri R. S. Sparro

I. REPRESENTATIVES OF THE MINISTRY OF COMMERCE

1. Shri A. K. Dutt, Secretary (Textiles).
2. Shri C. Venkataraman, Additional Secretary.
3. Shri Mani Narayanswami, Chief Controller of Imports and Exports.

II. REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri R. V. S. Peri Sastri, Secretary.
2. Shri S. Ramaiah, Additional Secretary.

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*

2. At the outset, the Chairman read out Direction 58 of the Directions by the Speaker, to the witnesses. The Secretary, Legislative Department, submitted that as a case was pending before the court, the entire evidence might be treated as absolutely confidential and published 'till the court proceedings were over. The Chairman told that the Committee would consider that.

3. On being asked, the Secretary (Textiles) informed the Committee that the Exports (Control) Order, 1977 had not been sent to the Ministry of Law for vetting. The Secretary, Legislative Department, stated that it was the function of the Legislative Department to scrutinise all subordinate legislation. As a matter of practice, all such items were being sent to them before they were issued barring some odd cases where it had not been done. He added that the Legislative Department periodically circulate an order indicating the officers who would be dealing with the scrutiny of subordinate legislation emanating from different Ministries.

4. In reply to a question, the Secretary, Legislative Department, informed the Committee that whenever a question of interpretation arose, it was to be dealt with by the Department of Legal Affairs who were incharge of all advice work, opinion, interpretation of a provision, cases coming before the court, etc. The Legislative Department was only in charge of scrutiny of subordinate legislation and vetting of legislation coming before Parliament, etc. He also showed copy of circular issued by the Ministry of Law to all Ministries in the matter. Thereupon, the Chairman observed that it would be better if the Committee heard the evidence of the Secretary, Department of Legal Affairs of the Ministry of Law, as the matters related to legal interpretations.

(The representatives of the Legislative Department then withdrew with the permission of the Chairman)

5. The Chairman was then shown specimen endorsement made by the Controller of Imports and Exports whereby that became a licence. The witness explained that the endorsement made by the apparels Export Promotion Council was not a licensing endorsement at all. It was an endorsement to the effect that the quantity allotted in respect of that particular category was such and such which itself was based on the calculations in accordance with the conditions prescribed under the Open General Licence for allocation of quota. He added that endorsement by the licensing authority which constituted a licence applied only in cases where the export was restricted in one form or the other.

6. When pointed out that the word 'quota' appeared in the definition of the term 'licence', the witness stated that the word 'quota' applied to items where there was a restriction on export, i.e. which were not to be exported without limit. In such cases, a specific quota had to be allowed by the licensing authority but under O.G.L. there was no restriction from the point of view of export. When his attention was drawn to provisions 'against quota allotted by the AEPC for garments in Schedule 3, the representative submitted that Schedule 3 was a Schedule under Open General Licence for which no licence was required and that all those were freely exportable under O.G.L.

7. The witness, however, agreed that the Apparels Export Promotion Council was not a statutory body. He further maintained that the Public Notice too was not a statutory notice but added that the Open General Licence was a statutory notice. When questioned as to how a non-statutory body, empowered by a non-statutory Public Notice, could issue a licence, the witness maintained that they were not issuing a Licence as they had no right to do so. The presumption that a licence was issued could not arise as the item was declared under Open General Licence. According to the witness, the word 'Licence' could apply only in respect of an overall policy of the export item. The Shipping bill which was signed by the AEPC had not been treated as a licence. It was simply a mechanism for monitoring exports in accordance with the conditions laid down in Open General Licence.

8. When asked to state whether the Open General Licence was a licence or a part of licence, the witness stated that it did only mean that there was no restriction on the export of that item. It covered all exports of that commodity and no one else had to seek a further licence.

13. When enquired about charge of a fee for application, the witness stated that Clause 3A of the Exports (Control) Order provided for charge of a fee of Rs. 50 /- for application for allotment of quota for export of garments. Till last year, most of the work for determining quota allotment etc, was done in the Office of the Chief Controller of Imports and Exports and a fee of Rs. 50/- was charged from each exporter for the work involved in calculations etc. Since the time the Government had stopped the evaluation of past performance work in the Chief Controller of Imports and Exports organisation, no application fee was recovered from any exporter. In other words, Clause 3A was inoperative at that moment. Presently, the entire quota for distribution and allotment was handled by the Apparels Export Promotion Council who were making

a service charge of Rs. 100 for the whole year irrespective of the number of applications received from an exporter.

14. When asked as to why the Government had been deprived of the fee, the witness stated that it was due to a specific task of quota entitlement under the Open General Licence which had been given to the Apparel Export Promotion Council.

15. When asked whether the amount charged by the Apparels Export Promotion Council went to the Consolidated Fund of India, the witness stated that the Council could not levy any licence fee though it had been so called till 1981. The Council had since made it clear that that was the service charge for the services rendered.

16. When enquired as to why the exporters were made to go to the Council and pay service charges to them, the witness stated that the Government took administrative decisions as they felt that that would be the best means of determining quota allotment. When asked that the administrative instructions could not be a substitute for law, the Secretary (Textiles) stated that that view of the Committee had been noted by them but they had to act according to certain assumptions which they thought were correct in law. He also stated that they might be mistaken in that but they had administratively to entrust that function to the Council after a lot of discussion with the exporters.

17. With regard to the control exercised by the Government over the Council, the witness stated that the Council had no discretion and it had to function entirely within the instruction laid down in the Public Order

18. When pointed out that the Council collected about rupees one-crore as fine in addition to fee and service charges in the guise of promotion of export and distribution of quota, the witness stated that was entirely between the Council and its members and for that they did not require any Government authorisation in the matter.

19. With regard to provisions in part 4(m) of the Public Notice for appeal to the Textile Commissioner against the decisions of the Council, the witness stated that the appeals did not basically relate to licensing decisions under the Act but to the decisions of the Council relating to non-performance by exporters against quota entitlement. The act of non-performance after getting hold on a quota was a serious matter. He expressed the view that not only the ex-

porter had failed to fulfil his obligation, but he had in fact withheld the quota from somebody else who would have exported. The penalty provisions enabled to proceed against the earnest money deposits made by the exporter in the form of bank guarantee. The details were to be settled by the Council.

20. When pointed out that the Act did not provide for giving power to levy penalty to a third agency, the Secretary (Textiles) stated that the penalty imposed was carried to a fund which was meant for promotion of exports. A legal duty was cast on the Council to take prior approval of the Government for any thing done towards export promotion from the fund. When asked as to how appeals were directed to a statutory authority like the Textile Commissioner under the Public Notice without authorisation in the Act, the witness stated that the appeals were against certain administrative orders whereby penalty was imposed. The system was intended to enable the aggrieved party to go in for appeal.

The Committee then adjourned.

MINUTES OF THE SIXTY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1982-83)

The Committee met on Thursday, 10 February, 1983 from 11.00 to 11.45 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri Ashfaq Husain
5. Shri B. Devarajan
6. Shri M. Ramanna Rai
7. Shri Satish Prasad Singh
8. Shri R. S. Sparrow

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer*
2. Shri T. E. Jagannathan—*Senior Legislative Committee Officer*

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4. The Committee then decided to hear oral evidence of the representatives of the Ministries of Commerce and Law, Justice and Company Affairs (Department of Legal Affairs) regarding the Export (Control) Order, 1977 at 11.00 hours on Tuesday, 8 March, 1983

The Committee then adjourned.

*Omitted portions of the Minutes are not covered by this Report.

MINUTES OF THE SIXTY-EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTH LOK SABHA)

(1982-83)

The Committee met on Tuesday, 8 March, 1983 from 11.00 to 12.15 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri N. E. Horo
5. Shri Ashfaq Husain
6. Shri M. Ramanna Rai
7. Shri R. S. Sparrow

REPRESENTATIVES OF THE MINISTRY OF COMMERCE

1. Shri A. K. Dutt, *Secretary (Textiles)*.
2. Miss Roma Mazumdar, *Chief Controller of Imports and Exports*.
3. Shri A. K. Mukherjee, *Joint Secretary*.

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS)

1. Shri B. S. Sekhon, *Additional Secretary*.

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*

2. At the outset, the Chairman read out Direction 58 of the Directions by the Speaker to the witnesses. The Additional Secretary, Department of Legal Affairs, submitted that only that part of their evidence touching legal issues particularly the issues which were not *sub-judice* in the court might be treated as public. The Chairman observed that the Committee had the right to examine

the rules and regulations which were laid on the Table of the House and that they were not barred from examining that matter. The Secretary, Ministry of Commerce then submitted that the decision to make it public or not rest with the Committee.

3. On being enquired, the representative of the Ministry of Commerce informed the Committee that no written reply was filed by Government. A written reply to the Plaint before the court was to be filed on that day, i.e. on 8 March, 1983 after instructions from the court. That day was fixed for hearing. When the Chairman pointed out that a certified copy of the written reply already filed by Government was available with the Committee, the witnesses pleaded that it might be a certified copy of the reply to the original plaint. Since a revised Plaint had since been put in, Government reply thereto would be filed on 8 March, 1983. When specifically pointed out that one of the witnesses had told the Committee that written reply had not been filed so far, the witness submitted that the reference was understood to be to the amended plaint to which the reply had not been filed. The witness added that all the connected documents and the relevant file had been taken to the court and it would be shown to the Committee subsequently.

4. When told that the Exports (Control) Order, 1977 had been issued under the Import and Export Control Act, 1947 and as such that was a delegated legislation, the representative of the Department of Legal Affairs replied in the affirmative.

5. When asked about the norms of examination of the delegated legislation in the Law Ministry the representative stated that the major and basic approach was to see whether any provision in the delegated legislation was in the nature of excessive legislation or it *ultra vires* the parent Act. He added that sometimes even the parent Act was referred so as to ascertain if the essential legislative policy had been retained by the Act or by virtue of any provision it had been left to the delegates.

6. The Committee pointed out that as per definitions in the Act, 'Chief Controller' meant 'Chief controller of Imports and Exports' and 'Deputy Chief Controller' meant 'Deputy Chief Controller of Imports and Exports' whereas Rule 2(b) of the Order made thereunder defined the 'Chief Controller of Imports and Exports' so as to include 'Additional Chief Controller of Imports and Exports, Export Commissioner in the Office of the Chief Controller of Imports and Exports, Joint Chief Controller of Imports and Exports, Deputy Chief Controller of Imports and Exports, Assistant Chief Controller

of Imports and Exports and the Controller of imports and Exports and thereby it had enlarged the definition, and desired to know the legal opinion in regard to the enlargement of the scope of definition in the 'Order', the representative of the Legal Department relying on Section 20 of the General Clauses Act, Section 11 of the British Interpretation Act, and case law of the Bagalkot City Municipality v. Bagalkot Cement Company (AIR 1968 Supreme Court 771), stated that it was permissible to have a definition in the subordinate legislation different from that contained in the Act, it hardly made any material difference whether it had been enlarged or restricted. The witness particularly referred to paragraph 5 of the judgement stating that it did not accept the contention that the expressions used in bye-laws would have the same meaning as they had in the Act unless there was anything repugnant in the context. The witness added that if the definitions in the Order were inconsistent with the definitions in the Act, Section 20 of the General Clauses Act immediately saved the situation. When pointed out that Section 20 categorically said if it was repugnant it was void, the representative submitted that in the present context if meant repugnancy in the Order but one could take that view.

7. In support of his point, the witness drew attention to the Scheduled Castes and Scheduled Tribes Amendment Order, 1976 made under Articles 341(2) and 342(2) of the Constitution. He stated that the definition of 'State' in the said Order was different from that given in the Constitution. The witness, however, clarified that it was not a piece of subordinate legislation but it bore an analogy in the sense that power had been derived from basic document, i.e. the Constitution.

8. To a question as to why not amend the Act itself instead of putting a different definition in the Order, the witness stated that that would have been better and more elegant but legally it was permissible to have different definitions. With regard to the definition of the expression 'Licence', the witness stated that the same arguments which he had submitted would hold good for the inconsistency in the two definitions appearing in the Order and in the Act. When asked as to whether the Apparels Export Promotion Council was a statutory body, the representative replied in the negative.

(The witnesses then withdrew)

The Committee then adjourned.

*Omitted portions of the Minutes are not covered by this Report.

**MINUTES OF THE EIGHTIETH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA)
(1983-84)**

The Committee met on Tuesday, 6 September, 1983 from 11.00 to 13.00 hours.

PRESENT

Shri R. S. Sparrow—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri A. E. T. Barrow
5. Shri Ashfaq Hussain
6. Shri Dalbir Singh (Madhya Pradesh)
7. Shri Amal Datta
8. Shri B. Devarajan
9. Shri Chandrabhan Athare Patil
10. Shri T. Damodar Reddy
11. Shri Satish Prasad Singh
12. Shri Vijay Kumar Yadav.

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer*
2. Shri R. C. Anand—*Senior Legislative Committee Officer*

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3. The Committee then considered Memoranda Nos. 198 to 210 as follows.

- (i) *Eliciting opinion of the Attorney-General of India on certain issues arising out of the Exports (Control) Order, 1977 (S.O. 254-E of 1977)—(Memorandum No. 198)*

4. The Committee postponed consideration of the above Memorandum to their next sitting fixed for 7 September, 1983.

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The Committee then adjourned.

***Omitted portions of the Minutes are not covered by this Report.**

MINUTES OF THE EIGHTY-FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1983-84)

The Committee met on Wednesday, 7 September, 1983 from 11.00 to 13.00 hours.

PRESENT

Shri R. S. Sparrow—Chairman

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri A. E. T. Barrow
5. Shri Ashfaq Husain
6. Shri Dalbir Singh (Madhya Pradesh)
7. Shri Amal Datta
8. Shri B. Devarajan
9. Shri B. R. Nahata
10. Shri Chandrabhan Athare Patil
11. Shri T. Damodar Reddy
12. Shri Satish Prasad Singh
13. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri S. D. Kaura—*Chief Legislative Committee Officer*
2. Shri R. C. Anand—*Senior Legislative Committee Officer*

The Committee considered Memoranda Nos. 198, 202 and 211 to 219 on the following subjects.

- (1) *Eliciting opinion of the Attorney-General of India on certain issues arising out of the Exports (Control) Order, 1977 (S.O. 254-E of 1977)—(Memo. No. 198)*

3 The Committee considered the above Memorandum in depth and approved the following issues for eliciting opinion of the Attorney-General thereon:—

- “(i) The definition of the terms ‘Chief Controller’ and ‘Deputy Chief Controller’ as given in Section 2 of the Imports and Exports (Control) Act, 1947, has been enlarged by Clause 2 of the Exports (Control) Order, 1977.

Whether the definition as given in the Act can be altered or enlarged by order without effecting an amendment in the Act.

- (ii) Definition of the term ‘Licence’ as given in sub-clause (d) (ii) of clause 2 of the Exports (Control) Order, 1977 amounts to issue of licence by authorities other than those mentioned in Schedule II to the Order.

Whether this would mean sub-delegation of power to non-statutory bodies and whether a delegatee can further delegate the authority without an express provision to that effect in the Act itself.

- (iii) Section 4A of the Act read with clause 3A* of the Order prescribes a fee of Rs. 50/- for application for allotment of quota for export of garments. Under these powers, the Apparels Export Promotion Council—a Company registered under the Companies Act, 1956—has been authorised by Government to charge Rs. 100/- from each exporter.

Whether the power to charge fee can be delegated to a non-statutory body under the pretext of service charges amounting to Rs. 100/- without an express authorisation to that effect in the Act or the Order framed thereunder.

- (iv) The Apparels Export Promotion Council has been authorised by the Government to impose penalty on the exporters for non-utilisation of allocated quota and retain to themselves the amounts so collected by them.

Whether the delegation of power of levy of penalty to the Apparels Export Promotion Council is permissible through the executive orders without any provision in the Act or the order framed thereunder to that effect.

*Clause 3A has been deleted *vide* Exports (Control) Second Amendment Order, 1983 published in the Gazette of India.

- (v) Under the Public Notice No. 61-ETC(PNS)/81 dated 10 August, 1981, an aggrieved exporter can appeal against the levy of penalty by the Textiles Commissioner.

Whether the authority to hear appeals from the Exporters can be delegated to the Textile Commissioner through executive Order without any provision in that behalf either in the Act or in the Order framed thereunder."

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The Committee then adjourned.

**MINUTES OF THE HUNDRED AND EIGHTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH
LOK SABHA) (1984-85)**

The Committee met on Wednesday, 19 September, 1984 from
15.30 to 17.15 hours.

PRESENT

Shri R. S. Sparrow—Chairman

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri Ashfaq Husain
5. Shri A. E. T. Barrow
6. Shri Amal Datta
7. Shri B. Devarajan
8. Shri Braja Mohan Mohanty
9. Shri A. T. Patil
10. Shri Nagina Rai
11. Shri S. B. Sidnal
12. Shri Prabhunarain Tandon
13. Shri Vijay Kumar Yadav

**REPRESENTATIVES OF THE MINISTRY OF COMMERCE
(DEPARTMENT OF TEXTILES)**

1. Shri Harbans Singh, *Secretary (Textiles)*
2. Shri P. C. Jain, *Chief Controller of Imports and Exports*
3. Shri N. K. Sabharwal, *Joint Secretary*
4. Shri S. Kak, *Export Commissioner.*

SECRETARIAT

1. Shri S. P. Gupta—*Joint Secretary*
2. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Chairman apprised the Committee of the message received by him from the Secretary, Ministry of Law, Justice and Company Affairs (Department of Legal Affairs), regretting his inability to appear before the Committee that day owing to his sudden illness. In this connection, the Committee expressed their concern over the fact that no other representative of the Ministry was deputed to appear before the Committee in his absence. The Committee observed that suitable stand-by arrangements should be made by the Ministries to meet such exigencies so that the next senior officer might appear before the Committee.

3. The Committee then directed that the representatives of the Ministry of Commerce (Department of Textiles) might be asked to make their appearance.

[The Witness were then called in]

4. At the outset, the Chairman read out direction 58 of the Directions by the Speaker, to the witnesses. The Committee then heard the representatives of the Ministry of Commerce (Department of Textiles) on matters connected with the Exports (Control) Order, 1977.

5. During evidence, the Secretary (Textiles) stated that the Apparels Export Promotion Council was not a licensing authority to issue licences or make any allocation of quotas. It was an organisation of the exporters of garments to undertake surveys and maintain accounts of the export performance of various exporters and make endorsements on the shipping documents in accord with the policy laid down by Government. The Council only calculated the figures in respect of each exporter and endorsed that figure on the shipping document. Thus, allocation of quota was automatic in terms of policy statement or the Public Notice issued by Government. On their attention being drawn to Public Notice No. 61 dated 11 August, 1981 stating that the Council would allocate quotas and do necessary certification for all garments and knitwear, the Secretary (Textiles) stated that it was perhaps a loose use of the language. He added that the term 'allocation' and 'allotment' meant the same thing. The basis of calculation was contained in the document issued by Government and the Council was in no way free to deviate therefrom.

6. In reply to a question, the Secretary (Textiles) stated that apart from Public Notices issued in 1981, 1982, 1983 and 1984, no other general notice or direction had been given to the Apparels Export Promotion Council. The phrase 'Unless otherwise directed' was only to enable the Government to retain to themselves certain

reserved powers. He conceded that some of the expressions used in the Public Notices required vetting in a better way to render the language more precise. In the latest Notification of 15 September, 1984, some modifications had already been made in that regard.

7. Explaining the system of quota allotment, the representative of the Ministry stated that in the first instance Government decided upon the system under which the entitlements could be distributed. The systems could be either past performance system, the first-come-first-served system or the State Corporations, the Central Corporations or Handloom Apex Society systems, etc. Consistently for the last few years, Government deployed the past performance system. Under this system, quota entitlement would be determined for each exporter country-wise, category-wise on the basis of average of exports during the preceding year or years. The Apparels Export Promotion Council functioned as account keeper of export performance of each exporter. It did all arithmetical calculation on the formula which was in-built in the system. Detailed guidelines for operating the system were throughout laid down in the policy to enable the Council to give a certificate in case of each individual exporter.

8. When pointed out that the Apparels Export Promotion Council functioned like any Government organisation enjoying all the powers but without any responsibility to the Government; it collected huge sums of money and spent in accordance with its own whims, the Secretary (Textiles) promised to furnish a written note to clarify the position.

9. Explaining the role of the apparels Export Promotion Council, the Secretary (Textiles) stated that the Council carried the responsibility of ensuring that the quota allotted for export to certain countries was made full use of. For that purpose, the Council entered into arrangements or contracts with individual exporters and subjected them to penalties if they failed to fulfil their obligations later. It was in the interest of the country to make exports and earn foreign exchange. The Council was not a Government company and did not fall within the jurisdiction of the Comptroller and Auditor General. No grants were given to the Council for its day-to-day functioning. However, grants were being made for certain specific purposes e.g. export promotion activities like a fair in Moscow or sending a delegation abroad, exhibition, seminar or conference or something of the kind.

10. As to the authority in the Act for delegation of powers to any private agencies, the representative stated that the Imports and Exports (Control) Act empowered the Central Government to regulate, prohibit or control imports and exports. Licensing was one mechanism, but the Council had not been delegated or assigned or asked to perform any licensing function as such.

11. To a question as to what was the authority under which the Apparels Export Promotion Council discharged its functions, the representative of the Ministry stated that Government made use of varied agencies for carrying out its licensing policies for import and export, e.g. Banks for verifying or certifying receipts of foreign exchange or export; for registration of contracts for import of capital goods and equipment under OGL Scheme. A number of sponsoring authorities had been prescribed to get certification as to the essentiality or otherwise of the requirements of applicants. Certain technical authorities were also specified to certify the equipment and goods imported, from technical angle, the indigenous clearance, etc. within the parameters laid down in the policy.

12. The representative further stated that OGL-3 was itself a licence and no exporter was required to approach the licensing authority for export of items enlisted thereunder. Still the conditions regarding certification of entitlement of the exporter within the parameters of the agreement were prescribed by means of Public Notice. Thus, services of the Export Promotion Councils, Commodity Boards, Banks and other Associations had been utilised. The Associations were even allowed to make imports of certain items of raw materials for use by their members. Alternatively, Government had to engage its own staff for all that work. Earlier, export of garments on past performance entitlement basis was also worked out by the Department itself.

13. In reply to a question, the representative stated that no money was spent from the Consolidated Fund of India or other Government revenues in utilizing the services of the aforesaid agencies. He added that it was mandatory for the Government to issue Public Notices to make known its policy and the procedures to the general public.

14. On being further asked, the Secretary (Textiles) stated that the Apparels Export Promotion Council was a company registered under section 25 of the Companies Act. There did not exist any separate legislation for that purpose. Like other companies, the Council was governed by its memorandum and articles of association.

The Council had a Board, a governing body, general body and all sorts of other things. The Council formulated its working rules and levied service charges and collected the same from its members. The accounts of the Council were subject to audit. Government maintained a sort of indirect connection and nominated four members on the Board of the Council.

15. The Committee observed that through the instrumentation of the Imports and Exports (Control) Act, the Parliament delegated certain powers to the Central Government with the objective of prohibiting, restricting and controlling the imports and exports of the country. In exercise of those delegated powers, the Exports (Control) Order, 1977 was notified. Besides, Government had also resorted to issue of certain guidelines or administrative instructions known as Public Notices and brought into play many a private institutions like the Apparels Export Promotion Council which collected huge sums of money from exporters by way of service charges and penalties, with almost little or no control of Government on the utilisation of such moneys. The Public Notices though vitally affected the trade, finance and economy of the country, were not subjected to any parliamentary scrutiny or sanction. In that connection, the Secretary (Textiles) promised to furnish a written note to make the position crystal clear before the Committee on the issues raised. He also agreed to clarify the point regarding extent of statutory backing and Government control over the levy and collection of service charges and penalties by the Apparels Export Promotion Council.

[The witnesses then withdrew.]

The Committee then adjourned to meet again on 20 September, 1984 to resume further hearing.

MINUTES OF THE HUNDRED AND NINTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH,
LOK SABHA) (1984-85)

The Committee met on Thursday, 20 September, 1984 from 11.00 to 13.00 hours.

PRESENT

Shri R. S. Sparrow—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri A. E. T. Barrow
4. Shri Amal Datta
5. Shri B. Devarajan
6. Shri Braja Mohan Mohanty
7. Shri A. T. Patil
8. Shri Darul Pullaiah
9. Shri S. B. Sidnal

REPRESENTATIVES OF THE MINISTRY OF COMMERCE

(DEPARTMENT OF TEXTILES)

1. Shri Harbans Singh, Secretary (Textiles)
2. Shri N. K. Sabharwal, Joint Secretary
3. Shri S. Kak, Export Commissioner

SECRETARIAT

1. Shri S. P. Gupta—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*
3. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee resumed further hearing of the representatives of the Ministry of Commerce regarding the Exports (Council) Order, 1977.

3. To the question whether delegation of power to the Apparels Export Promotion Council to levy penalty was permissible through the executive orders without any provision in the Act or Orders

framed thereunder, the Secretary (Textiles) replied that there was no delegation of any power to the Apparels Export Promotion Council. He added that the Exports (Control) Order was issued in exercise of powers contained in Section 3 of the Imports and Exports (Control) Act. Under that Order, the Public Notices had been issued. The Public Notice was in the nature of administrative instruction prescribing the guidelines or the parameters for allocation of export entitlement by the Apparels Export Promotion Council. The Council was not free to deviate from those guidelines.

4. With regard to the provisions for appeal, the Secretary (Textiles) stated that those were not in the sense in which they might be prescribed under a law or by way of regulations. The whole set up was a sort of administrative mechanism under which the Apparels Export Promotion Council performed a certain role in the public interest. The Textile Commissioner had been assigned certain supervisory role to exercise and in that context, the provision for appeal had been made. He mentioned the difficulty that the words used were naturally common and liable to interpretation in different context.

5. On being asked as to what corrective measures had been taken by the Ministry in the light of their evidence before the Committee earlier, the Secretary (Textiles) stated that changes and modifications had been made in the successive Public Notices. He added that the word 'penalty' had since then been changed to the word 'forfeiture' in the event of non-performance of agreement by the exporter.

6. When his attention was drawn to the opinion of the Attorney General of India that be it penalty or damages, the power could not be delegated to the Apparels Export Promotion Council by means of executive order, the Secretary (Textiles) showed his ignorance as to what exactly the opinion was. However, he added that the Delhi High Court had rejected the plea of an exporter, Mohan Exporters, precisely on the same point. The party went in appeal before the Supreme Court who had also rejected its plea.

7. When informed that the Attorney General had held that a power to hear an appeal could not be delegated to the Textiles Commissioner by an executive order as the right of appeal was a statutory creation and a quasi-Judicial power which could not be delegated, the Secretary (Textiles) stated that it would require him to consult the Ministry of Law.

8. On being enquired as to whether any power was conferred on the Apparels Export Promotion Council to levy charges, the Secretary (Textiles) replied in the negative. He maintained that the Council was a Company which could have its own system of raising revenue from its members.

9. The Secretary (Textiles) further stated that the Council performed a variety of functions and levied certain charges for the maintenance of its establishment. The Council had realised more than a lakh of rupees as service charges and accumulated a fund of over a crore of rupees by forfeiting guarantees. The Textile Commissioner laid down the circumstances wherein discretion could be forced.

10. When asked to cite the authority in law empowering the Textiles Commissioner to hear appeals from the aggrieved exporters, the Secretary (Textiles) stated that it was purely an administrative arrangement as distinguished from the provisions of appeal under the Criminal Procedure Code, the Indian Penal Code and other statutes, and was intended to see that the policy regarding export entitlement was properly administered in public interest and the Council functioned in a bonafide manner to protect the interests of the exporters.

11. To the suggestion that Government could not have promulgated the Public Notice giving all powers to the Apparels Export Promotion Council, the Secretary (Textiles) stated that the Council exercised only a limited power of certification, of determining quota or the entitlement in accordance with Government's guidelines and endorsing entitlement on the shipping documents. He added that as a general practice over a wide area of import and export, Government had been utilising varied agencies including private individuals, the chartered accountants, trade associations, etc. for certification.

[The Witnesses then withdrew]

* * * * *

The Committee then adjourned.

MINUTES OF THE NINETY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1983-84)

The Committee met on Thursday, 9 February, 1984 from 15.00 to 16.00 hours.

PRESENT

Shri R. S. Sparrow—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Ashfaq Husain
4. Shri Amal Datta
5. Shri Brajamohan Mohanty
6. Shri Chandrabhan Athare Patil
7. Shri T. Damodar Reddy
8. Shri M. S. K. Sathiyendran

SECRETARIAT

1. Shri D. C. Pande—*Joint Secretary*
2. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee took up consideration of Memorandum No. 198 regarding the Exports (Control) Order, 1977 (S.O. 254-E of 1977) and the opinions of the Attorney General of India on certain points arising out of the examination of the said Order as follows.

- (i) *Whether the definitions of the terms 'Chief Controller' and 'Deputy Chief Controller', as given in the Imports and Exports (Control) Act, 1947, could be altered or enlarged by an Order issued thereunder without effecting an amendment in the Act.*

3. The Attorney General opined that a subordinate legislating authority had no jurisdiction to enlarge the definition as given in the Act. If the definition was enlarged by a subordinate legislation making authority, it would be conferring on authorities not included in the definition in the Act, powers which the statute placed only in the authorities as included in its definition. He, therefore, held

that the definition as given in the Act could not be altered or enlarged by an Order made thereunder but could only be done by an appropriate amendment of the Act itself.

(ii) *whether definition of the term 'Licence' as given in Clause 2(d) (ii) of the Exports (Control) Order, 1977 amounted to issue of licence by authorities other than those mentioned in Schedule II to the Order.*

Whether this would mean sub-delegation of power to non-statutory bodies and whether a delegatee could further delegate the authority without an express provision to that effect in the Act itself.

4. According to the Attorney General, Clause 2(d) and Clause 3 of the Order were to be interpreted harmoniously and not to conflict with each other. On such a harmonious construction, an officer specified in Schedule II read with Clause 2(f), was empowered to authorise an agency by him in that behalf. This did not, therefore, involve any sub-delegation of power, as the Order empowered delegation. Even an Order made in the exercise of the power conferred by Section 3 of the Imports and Exports (Control) Act, a licensing authority could be constituted with a power in him to authorise an agency in that behalf.

(iii) *Clause 3A* of the Exports (Control) Order, 1977 prescribed a fee of Rs. 50/- for application for allotment of quota for export of governments. Under these powers, the Apparels Export Promotion Council—a Company registered under the Companies Act, 1956—had been authorised by Government to charge Rs. 100/- from each exporter.*

Whether the power to charge fee could be delegated to a non-statutory body under the pretext of service charge amounting to Rs. 100/- without an express authorisation to that effect in the Act or the Order framed thereunder.

5. The Attorney General stated that Section 4A of the Act enacted that the Central Government might levy any fee. It would be open to the Central Government to fix the fee itself and authorise the collection thereof by such authority which it had validly constituted for the purposes of performing services for which services fee would be a *quid pro quo*. He held that it was a case of the Central Government itself charging a fee but authorising the collection to be made by the non-statutory body which the Central Government desired should render the services for the purpose of export.

*Delegated *vide* Exports (Control) Second Amendment Order, 1983 (S.O. 19 of 1983).

- (iv) *The Apparels Export Promotion Council had been authorised by the Government to impose penalty on the exporters for non-utilisation of allocated quota and retain to themselves the amounts so collected by them.*

Whether the delegation of power to levy of penalty to the Apparels Exports Promotion Council was permissible through the executive orders without any provision in the Act or the Order framed thereunder to that effect.

6. The Attorney General opined that a power to ascertain the quantum of damages or to levy penalty was a power which had to be derived from a provision which was legislative in character, namely, an Act or an Order framed thereunder.

- (v) *Under the Public Notice No. 61-ETC (PNS)/81 dated 10 August, 1981, an aggrieved exporter could appeal against the levy of penalty by the Apparels Export Promotion Council to the Textile Commissioner.*

Whether the authority to hear appeals from the exporters could be delegated to the Textile Commissioner through executive order without any provision in that behalf either in the Act or in the Order framed thereunder.

7. The Attorney General subscribed to the view that the right of appeal was a statutory creation. Exercise of power was a quasi-judicial power. A quasi-judicial power could not be delegated.

8. The Committee noted that opinions of the Attorney General of India on various points arising out of the Exports (Control) Order, 1977. However, with regard to item (iii), the Committee felt that the opinion was based on the presumption that Central Government had itself levied the fee and authorised a non-statutory body for collections to be made. Whereas the facts remained that no fee was actually levied by the Central Government but the non-statutory body had been recovering the dues by way of service charge.

9. The Committee decided to take up the matters again at their next sitting on 10 February, 1984.

The Committee then adjourned.

MINUTES OF THE NINETY-FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1983-84)

The Committee met on Friday, 10 February, 1984 from 11.00 to 12.00 hours.

PRESENT

Shri R. S. Sparrow—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Ashfaq Husain
4. Shri Amal Datta
5. Shri B. Devarajan
6. Shri Brajamohan Mohanty
7. Shri Chandrabhan Athare Patil
8. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri D. C. Pande—*Joint Secretary*
2. Shri S. S. Chawla—*Senior Legislative Committee Officer*
3. Shri R. S. Mani—*Senior Legislative Committee Officer.*

2. The Committee resumed further consideration of Memorandum No. 198 regarding the Exports (Control) Order, 1977 (S.O. 254-E of 1977) and the opinions of the Attorney General of India in that regard. After discussion for some time, the Committee desired to elicit further clarification from the Government on the following points:—

- (i) The genesis of deletion of Clause 3A of the Exports (Control) Order, 1977 *vide* Notification dated 17 January, 1983.
- (ii) The specific statutory authority under which the non-statutory body (namely, the Apparels Export Promotion Council) had been empowered by the Government to recover a fee, termed as 'service charge'.

(iii) The difference between the term 'fee' which was leviable under Clause 3A of the Exports (Control) Order, 1977 and the 'service charge' being recovered by the Apparels Export Promotion Council.

(iv) The Attorney General held the opinion that the definition as given in the Imports and Exports (Control) Act, 1947 could not be enhanced or enlarged by a subordinate legislation authority. In the light of that opinion—

(a) whether the definition of the term 'Licence' as given in Section 2(i) of the Imports and Exports (Control) Act, 1947 and in Clause 2(d) of the Exports (Control) Order, 1977 made thereunder, was not in contravention of each other inasmuch as the agency entrusted with allocation of quota was given authority to collect service charges; and

(b) whether the Government proposed to amend Clause 2(d) of the Exports (Control) Order, 1977 so as to conform to the provisions of the definition of the term 'Licence' given in the parent Act.

(v) whether the matters before the Additional District Judge, Delhi (in the case of M/s. General Commerce Ltd. vs Union of India, etc.) had since been adjudicated upon by the Court. If so, copy of the judgement pronounced by the Court might be furnished.

3. Thereafter, the Committee took up for consideration the question whether the Committee ought to refrain from reporting to the House on matters which were pending for adjudication before a Court of Law. In this connection, the Committee noted the following concluding remarks of the Attorney General of India in the matter:—

"If any debate, discussion or report in the House of Parliament or in any of its Committee prejudices or interferes with the due course of any judicial proceedings or interferes with the administration of justice, then the House and its Committees may refrain from so doing on grounds of propriety. This, however, will not preclude the House from legislating on any subject including those pending adjudication before a court of law.

Therefore, if the Committee on Subordinate Legislation has to report to the House on any proposed changes in the law to be made by the House, such report may be placed before the House since such report would be considered to be in aid of the Parliament making a law on the subject. If the Committee, however, does not recommend any such change in law, it may either refrain from reporting to the House its proceedings and its recommendations or if it desires to report to the House, it may do so. However, it is fair that the matter should not be discussed in the House in view of the questions being *sub-judice* before a court of law."

The Committee then adjourned.

*Omitted portions of the Minutes are not covered by this Report.

**MINUTES OF THE HUNDRED AND SIXTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH
LOK SABHA) (1984-85)**

The Committee met on Tuesday, 21 August, 1984 from 15.30 to 16.00 hours.

PRESENT

Shri R. S. Sparrow—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri Ashfaq Husain
5. Shri A. E. T. Barrow
6. Shri Amal Datta *
7. Shri B. Devarajan
8. Shri Braja Mohan Mohanty
9. Shri A. T. Patil
10. Shri Nagina Rai
11. Shri S. B. Sidnal
12. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri N. N. Mehra—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*
3. Shri R. S. Mani—*Senior Legislative Committee Officer.*

* * *

4. The Committee, thereafter took up for consideration Memorandum No. 275 regarding the Exports (Control) Order, 1977 (S.O 254-E of 1977). After some discussion the Committee decided to postpone its consideration.

* * *

The Committee then adjourned.

*Omitted portions of the Minutes are not covered by this Report.

**MINUTES OF THE HUNDRED AND SEVENTH SITTING OF
THE COMMITTEE ON SUBORDINATE LEGISLATION (SEV-
ENTH LOK SABHA) (1984-85)**

The Committee met on Monday, 10 September, 1984 from 11.30 to 12.30 hours.

PRESENT

Shri R. S. Sparrow—*Chairman*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Xavier Arakal
4. Shri Ashfaq Husain
5. Shri A.E.T. Barrow
6. Shri Amal Datta
7. Shri B. Devarajan
8. Shri Braja Mohan Mohanty
9. Shri A. T. Patil
10. Shri Darur Pullaiah
11. Shri Nagina Rai
12. Shri Prabhunarain Tandon
13. Shri Vijay Kumar Yadav

SECRETARIAT

1. Shri N. N. Mehra—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer*
3. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee took up for consideration Memoranda Nos. 275 to 277 as follows:—

(i) *The Exports (Control) Order, 1977*

(S.O. 254—E of 1977)—(Memorandum No. 275)

The Committee considered the above Memorandum and were unhappy to note that the Ministry of Commerce had not been able

to furnish full facts in respect of certain points referred to them by the Committee despite repeated reminders. The Committee decided to hear the representatives of (i) the Ministry of Commerce, and (ii) the Ministry of Law (Department of Legal Affairs) to further elucidate the matters at their sitting to be held on 19 September, 1984. In that connection, the Committee desired that the representatives should bring with them all relevant papers connected with the matters pending before the Additional District Judge, Delhi for adjudication in the case of M/S General Commerce Ltd. *vs.* Union of India, etc. for perusal of the Chairman of the Committee.

The Committee then adjourned.

*Omitted portions of the Minutes are not covered by this Report.

MINUTES OF THE HUNDRED-TENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SEVENTH LOK SABHA) (1984-85)

The Committee met on Thursday, 18 October, 1984 from 15.00 to 16.15 hours.

PRESENT

Shri Xavier Arakal—*In the Chair.*

MEMBERS

2. Shri Mohammad Asrar Ahmad
3. Shri Ashfaq Husain
4. Shri A. E. T. Barrow
5. Shri B. Devarajan
6. Shri C. T. Dhandapani
7. Shri A. T. Patil
8. Shri Nagina Rai
9. Shri Vijay Kumar Yadav

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS)

1. Shri B. S. Sekhon, *Secretary.*
2. Shri P. S. Kaicher, *Joint Secretary*

SECRETARIAT

1. Shri S. P. Gupta—*Joint Secretary*
2. Shri C. K. Jain—*Chief Examiner of Questions*
3. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. In the absence of the Chairman, Shri Xavier Arakal, M.P. was chosen by the Committee to act as Chairman for the sitting in terms of provision of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

[*The Witnesses were then called in.*]

3. The Chairman then read out direction 58 of the Directions by the Speaker, to the witnesses.

4. The Law Secretary apologised for his inability to appear before the Committee on the previous hearing due to sudden indisposition and regretted the inconvenience caused to the Committee on that account.

5. Regarding the Exports (Control) Order, 1977, the Law Secretary submitted that any expression, as defined in the principal Act, could well be defined differently in a piece of subordinate legislation. He added that he relied on section 20 of the General Clauses Act in the matter.

6. On being asked to state the power or authority or legality of the Apparels Export Promotion Council, the Law Secretary stated that in an unoccupied field, i.e., a field that was not covered either by any Act or statutory order made thereunder, it was permissible for the executive Government to issue administrative guidelines and instructions which were of a binding character. The Law Secretary, however, conceded that such administrative instructions could not be in conflict with the Act or the statutory orders.

7. To the question whether the Apparels Export Promotion Council was a non-statutory body, the Law Secretary replied in the affirmative. When asked as to whether the Government had a right to issue instructions and confer powers upon the non-statutory body, the Law Secretary replied that executive Government was free to issue administrative guidelines/instructions in the unoccupied field. When asked to cite the authority therefor, the Law Secretary stated that the residuary power was with the executive which had also been upheld by the Supreme Court. Under Article 73, the principle laid down was that the executive power of the Union was co-extensive with the legislative power.

8. On being enquired as to how a non-statutory authority could impose conditions, fees and penalties, the Law Secretary replied that the basic concept was that those were the charges for rendering certain services to a class of people in a certain area. When told that prior to 17 January, 1983, the amount was collected by way of fee, the Law Secretary stated that it might be due to the fact that the Notice and the Scheme had not been got vetted properly by any legal draftsman. He expressed the view that the word 'fee' had not been used in the sense in which it was understood in law. He stressed that an essential ingredient was that fees could be levied by an Act or by a subordinate legislation by virtue of the powers derived from the parent Act. Besides, fees were to be credited either to the Consolidated Fund of India or to any other

Public Fund. Even subordinate legislation could not levy fees independent of the Act. The term 'fee' was, therefore, nothing but 'service charges'.

9. The Law Secretary further stated that moneys from the Consolidated Fund of India could be drawn only on the basis of an appropriation made by the Parliament. He, however, showed ignorance as to the Head under which the moneys collected by the Apparels Export Promotion Council were being deposited and pleaded that that was not within the sphere of his Ministry.

10. When asked as to what was the source of power of the Textile Commissioner to sit in judgement upon the act of a private non-statutory body, the Law Secretary stated that on the civil side, the penalty concept was recognised by the law of contract. Therefore, it was on the basis of contractual arrangement that Council had the power to forfeit the money deposits as also bank performance bonds. However, the power of appeal had to flow from the Act or the statute. He pleaded that the expression 'appeal' was again not an appropriate expression specially due to the reason that it pertained to the contractual field and for which the forum should be the courts.

11. When pointed out that the Apparels Export Promotion Council with powers to charge penalty was being imposed on the contractor and a free consent and will did not exist amongst the parties, the Law Secretary stated that the Public Notice could be construed as 'offer' and any individual exporter might accept it. On being asked to mention any similar instance wherein an appeal was being heard by any statutory body upon the act of a non-statutory body like the Apparels Export Promotion Council, the Law Secretary stated that he would have to check it up.

12. It was also stated that the Ministry of Law was concerned with the vetting of the documents received from the Ministries/ Departments of the Central Government and not from the non-statutory bodies like the Apparels Export Promotion Council. With regard to vetting of the Public Notice, the Law Secretary stated that the same did not come to them for vetting.

13. When asked to state his opinion on the nature of relation existing between the Government and the non-statutory body viz., the Apparels Export Promotion Council, Law Secretary stated that that was a form of assistance rendered by the Council for exports,

imports, licences and entitlements on the basis of a Public Notice but it was not a licensing authority as such.

14. Referring to the Civil Writ Petition No. 1690/82 decided on 11 May, 1983 by the Delhi High Court the Law Secretary stated that the Court had upheld that providing of a bank guarantee or penalty clause was not violative of Article 19(1) (g) of the Constitution and the restriction was not only reasonable, but in the interest of regulating full and proper export.

15. When pointed out that the exporter was compelled to register his name with the Apparels Export Promotion Council even though it was not a licensing authority to control export activities, the Law Secretary stated that it was not the only body. The Chairman then observed that a list of all such bodies might be furnished to the Committee. The Law Secretary added that under Open General Licensing Policy, the licence stood granted and the exporters were entitled to export subject to their fulfilment of certain conditions as laid down in Schedule III of the Exports (Control) Order.

16. To the suggestion that the Apparels Export Promotion Council ought to be subjected to audit by the Comptroller and Auditor General as it had collected huge funds besides receiving Government grants, the Law Secretary stated that the Council being a Company registered under section 25 of the Companies Act did not fall within the jurisdiction of the Comptroller and Auditor General. He, however, conceded that if public funds were involved, the control of the representatives of the people ought to be there and the matter could be looked into by the administrative Ministry.

17. The Law Secretary promised to furnish a written note containing his considered views on the various points raised during the evidence.

[The witness then withdrew.]

The Committee then adjourned.

**MINUTES OF THE NINTH SITTING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (EIGHTH LOK SABHA)
(1985-86)**

The Committee met on Wednesday, 11 September, 1985 from 15.00 to 15.45 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri D. L. Baitha
3. Shri G. M. Banatwalla
4. Shri Dharam Pal Singh Malik
5. Shri Mohanbhai Patel
6. Shri I. Ram Rai
7. Shri Ram Swarup Ram
8. Shri K. S. Rao
9. Shri Dharamgaj Singh
10. Shri Yogeshwar Prasad Yogesh

SECRETARIAT

1. Shri S. Balasubramanian—*Chief Legislative Committee Officer*

2. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 22 to 24 as follows:

* * * * *

(ii) (a) *The Import and Export Policy for 1985—88—Question of Retrospective Disqualifications—(Memorandum No. 23).*

(b) *The Exports (Control) Order, 1977 (S.O. 254-E of 1977)—(Memorandum No. 24).*

4. The Chairman informed the Members that he had personally taken up the matters with the concerned officials of the Ministry through informal discussions with them in that regard in his room.

at Parliament House on 10 September, 1985. He added that the authorities concerned had been persuaded to undertake a re-appraisal so that the whole policy, notices, orders, etc. bearing on the imports of the country could be brought within the purview of the law as laid down in the Imports and Exports (Control) Act, 1947 and the statutory 'Orders' issued thereunder and that the authorities concerned had sought the indulgence of the Committee to allow them some more time for the purpose. The Committee accordingly agreed to postpone consideration of the matters to a later date.

The Committee then adjourned.

MINUTES OF THE ELEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA)

The Committee sat on Friday, 25 October, 1985 from 15.15 to 16.15 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri D. L. Baitha
3. Shri G. M. Banatwalla
4. Shri Dharam Pal Singh Malik
5. Shri K. S. Rao

SECRETARIAT

1. Shri M. K. Mathur—*Joint Secretary*
2. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee considered Memoranda Nos. 25 to 29 and took the following decisions:—

- * * * *
- (iv) *The Export (Control) First Amendment Order, 1985 (S.O. 70-E of 1985)—(Memorandum No. 28)*

6. The Committee were not convinced with the reply received from the Ministry of Commerce and Supply (Department of Commerce) and felt that it would be helpful to everybody if the date of coming into force of the rules was notified in all cases through a sub-rule in the Rules themselves. The Committee further stressed that the Ministry should follow the recommendation of the Committee contained in paragraph 12 of their Second Report (Seventh Lok Sabha) in letter and spirit and include a sub-rule regarding the date of coming into force in all the Export (Control) Amendment Orders in future. The Committee also decided to reiterate this recommendation of the Committee in their next Report for strict compliance by all Ministries and Departments.

* * * *

8. The Committee then adjourned.

*Omitted portions of the Minutes are not covered by this Report.

MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA)
(1985-86)

The Committee sat on Monday, 27 January, 1986 from 11.00 to 13.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri D. L. Baitha
3. Shri G. M. Banatwalla
4. Shri Dharam Pal Singh Malik
5. Shri Vakkom Purushothaman
6. Shri I. Rama Rai
7. Shri Ram Swarup Ram
8. Shri K. S. Rao
9. Shri Dharamgaj Singh
10. Shri Yogeshwar Prasad Yogesh

SECRETARIAT

1. Shri M. K. Mathur—*Joint Secretary*
2. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee took up for consideration Memoranda Nos. 38 to 42, 23 and 24 as follows.

* * *

(vi) *Import and Export Policy for 1985-88—Question of Retrospective Disqualifications—(Memorandum No. 23)*

The Committee considered the above Memorandum and were not convinced with the reply of Government. With a view to enquire the facts further, the Committee decided to hear oral evidence of the representatives of the Ministry of Commerce as also to elicit the views of the representatives of the Ministry of Law and Justice (Department of Legal Affairs) on the matters.

(vii) *The Exports (Control) Order, 1977 (S.O. 254-E of 1977)—(Memorandum No. 24).*

The Committee considered the above Memorandum for some time and then postponed its consideration to a subsequent sitting of the Committee.

The Committee then adjourned to meet again on 7 February, 1986.

*Omitted portions of the Minutes are not covered by this Report.

**MINUTES OF THE TWENTIETH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA)
(1985-86)**

The Committee met on Friday, 7 February, 1986 from 15.00 to 16.00 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri G. M. Banatwalla
3. Shrimati Usha Choudhari
4. Shri Dharam Pal Singh Malik
5. Shri Syed Masudal Hossain
6. Shri Vakkom Purushothaman
7. Shri K. S. Rao
8. Shri Dharamgaj Singh
9. Shri Yogeshwar Prasad Yogesh

SECRETARIAT

Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee took up further consideration of Memorandum No. 24 regarding the points raised by Shri G. M. Banatwalla, M.P. that the Exports (Control) Order, 1977 (S.O. 254-E of 1977) involved serious questions of conflict with the Imports and Exports (Control) Act, 1947 and of the functioning of the Apparels Export Promotion Council. In this connection, the Committee noted the opinion dated 30 November, 1985 of the Attorney General for India on certain points raised in a Statement of Case dated 31 October, 1985 which was prepared by the Ministry of Law (Department of Legal Affairs). The Committee then decided to hear the representatives of the concerned Ministry of Commerce to elicit their views on various matters in the light of the opinion tendered by the Attorney General for India.

The Committee then adjourned.

MINUTES OF THE TWENTY-SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (EIGHTH LOK SABHA) (1985-86)

The Committee sat on Wednesday, 30 April, 1986 from 16.00 to 16.30 hours.

PRESENT

Shri Mool Chand Daga—*Chairman*

MEMBERS

2. Shri G. M. Banatwalla
3. Shri Vakkom Purushothaman
4. Shri K. S. Rao
5. Shri Saleem I. Shervani

SECRETARIAT

1. Shri M. K. Mathur—*Joint Secretary*
2. Shri R. S. Mani—*Senior Legislative Committee Officer*

2. The Committee considered their draft Seventh Report and adopted it with the following modifications:—

- (i) In Page 29, para 25, line 11 after the word "Council", insert the following:

"The Committee would also like to refer to the Opinion dated 23 November, 1983 of the Attorney General for India, which reads as under:—

'Be it penalty or damages, the power cannot be delegated to the Apparels Export Promotion Council by means of executive order. The Act or the Order framed under the Act must confer such power. A power to ascertain the quantum of damages or to levy penalty is a power which has to be derived from a provision which is legislative in character, namely, an Act or an Order framed thereunder. It cannot be conferred by executive whim.'

(ii) In page 48, for para 44, substitute the following:—

“44. The Committee also recommend that retrospective disqualification arising out of the Import and Export Policy (1985—88) is not in conformity with the Act and should also be dispensed with.”

3. The Committee authorised the Chairman and, in his absence, Shri Saleem I. Shervani, M.P. to present the Seventh Report to the House on their behalf on 2 May, 1986.

The Committee then adjourned.