

FORTY-FOURTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1980-81)

(SEVENTH LOK SABHA)

CUSTOMS RECEIPTS

MINISTRY OF FINANCE

(Department of Revenue)



Presented in Lok Sabha on.....

Laid in Rajya Sabha on.....

LOK SABHA SECRETARIAT
NEW DELHI

April, 1981/Chaitra, 1902 (Saka)

Price : Rs. 4.00

CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE	(iii)
INTRODUCTION	(v)
REPORT	I
APPENDIX I—Statement showing details of cases where exemption of Customs Duty was allowed	65
APPENDIX II—Chronological history of the case	67
APPENDIX III—Circular regarding disposal of drugs/chemicals	70
APPENDIX IV—Conclusions/Recommendations	72

PUBLIC ACCOUNTS COMMITTEE
(1980-81)

CHAIRMAN

Shri Chandrajit Yadav

MEMBERS

Lok Sabha

2. Shri Satish Agarwal
3. Shri Subhash Chandra Bose Alluri
4. Shri Tridib Chaudhuri
5. Shri K. P. Singh Deo
6. Shri V. N. Gadgil
7. Shri Ashok Gehlot
8. Shri Sunil Maitra
9. Shri Gargi Shankar Mishra
10. Shri M. V. Chandrashekara Murthy
11. Shri Ahmed Mohammed Patel
12. Shri Hari Krishna Shastri
13. Shri Satish Prasad Singh
14. Shri Jagdish Tytler
15. Shri K. P. Unnikrishnan,

Rajya Sabha

16. Smt. Purabi Mukhopadhyay
17. Shri N. K. P. Salve
18. Shri Tirath Ram Amla
19. Smt. Maimoona Sultan
20. Shri Patitpaban Pradhan
21. Prof. Rasheeduddin Khan
22. Shri Indradeep Sinha

SECRETARIAT

1. Shri H. C. Paranjpe—*Joint Secretary.*
2. Shri D. C. Pande—*Chief Financial Committee Officer.*
3. Shri T. R. Ghai—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Forty Fourth Report of the Public Accounts Committee (Seventh Lok Sabha) on Paragraph 7.1, 15 and 16 of the Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil) Revenue Receipts, Volume I Indirect Taxes relating to (i) Incorrect application of exemption notification in the case of imported Di-ammonium Phosphate, (ii) Delay in disposal of perishable goods viz. Tetran Cycline Hydrochloride and (iii) objections of the Internal Audit Department.

2. The Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes, was laid on the Table of the House on 1 July, 1980.

3. In this Report the Committee have recommended that the Ministry of Agriculture should evolve suitable arrangement to ensure that the imported Di-ammonium Phosphate conforms to all the technical specifications and that the interests of the farmers are not affected adversely (Paragraph 7.1). The Committee have also desired that Government should review the existing provisions and consider delegation of powers in respect of disposal of perishable goods to the local Customs Units upto an appropriate financial limit. (Paragraph 15) Further, the Committee have expressed their concern over the defective functioning of the Internal Audit Department of Custom Houses and have recommended that the Central Board of Excise and Customs should provide a Central point of co-ordination and control for evaluating effectively the working of the Internal Audit Department (Paragraph 16).

4. The Public Accounts Committee (1980-81) examined Paragraphs 7.1. and 15 at their sitting held on 28 November 1980. Written information was obtained in respect of Paragraph 16. The Committee

*Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in the Parliament Library.

considered and finalised this Report at their sittings held on 28 March and 10 April 1981. The Minutes of sitting of the Committee form Part II* of the Report.

5. A statement containing observations and recommendations of the Committee is appended to this Report (Appendix IV). For facility of reference these have been printed in thick type in the body of the Report.

6. The Committee place on record their appreciation of the assistance rendered to them in the examination of these paragraphs by the Office of the Comptroller and Auditor General of India.

7. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Revenue for the co-operation extended by them in giving information to the Committee.

NEW DELHI;

April 20, 1981

Chaitra 30, 1903 (S).

CHANDRAJIT YADAV,

Chairman,

Public Accounts Committee.

INCORRECT APPLICATION OF EXEMPTION NOTIFICATION

Audit Paragraph

1.1. By a notification issued in August 1973, Di-Ammonium Phosphate conforming to the specifications mentioned therein was exempted from basic Customs duty. The notification *inter alia* specified that the maximum moisture content by weight shall be 1.5 per cent.

1.2. In an outport, a consignment of Di-Ammonium Phosphate imported by Government, which contained moisture of 8 per cent but otherwise conforming to the specifications mentioned in the notification cited, was cleared free of duty, auxiliary duty and additional duty.

1.3. As the goods did not conform in entirety to the specifications prescribed in the notification, Audit pointed out (January 1979) that the goods are not eligible for the concessional assessment and that duty should have been collected at the standard rate of 60 per cent plus auxiliary duty at 15 per cent *ad valorem* plus additional duty at 15 per cent *ad valorem*.

1.4. In reply, it was stated by the department that the concessional assessment was resorted to with reference to the opinion of the Chemical Examiner of the Customs Laboratory in a similar import that the excess percentage of moisture might be condoned and the sample accepted as conforming to the specification in the notification and Government apprised of the fact.

1.5. The short collection in this case is Rs. 1.26 crores for which the department has issued a notice of demand pending a clarification from the Central Board of Excise and Customs.

1.6. While confirming the facts the Ministry of Finance have stated that the decision to extend the benefit of the notification to the consignment in question was taken only after obtaining the opinion of the Chemical Examiner. In the case of a similar import the Chemical Examiner of the Customs laboratory had given the opinion that the excess percentage of moisture might be condoned and the sample accepted as conforming to the specification in the notification and Government apprised of the fact. The Ministry added that the Custom House was conscious of the fact that the moisture contained in the representative sample exceeded the limits stipulated in the notification.

1.7. As the notification is specific about the maximum moisture content and notifications are to be read and applied as such, the application of the exemption notification in this case on the basis of the recommendation of the Chemical Examiner in another case lacks justification.

[Paragraph 7(i) of the Report of the C&AG of India for the year 1978-79—Union Government (Civil) Revenue Receipts, Vol. I—Indirect Taxes.]

1.8. According to Section 25(1) of the Customs Act 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the official gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

1.9. In exercise of these powers the Central Government, by a notification issued in August, 1973 exempted from basic customs duty Di-Ammonium Phosphate imported by the Central Government for use as manure or for the production of complex fertilizers. The notification also provided for an undertaking to be given at the time of importation of Di-Ammonium Phosphate for production of complex fertilizers. According to this undertaking the importer was required to pay on demand in respect of such quantity of Di-Ammonium Phosphate as is not proved to the satisfaction of the Assistant Collector of Customs to have been used for the said purpose, an amount equal to the duty of customs leviable thereon, but for this exemption. According to one of the specifications mentioned in the notification, the maximum moisture content by weight of the Di-Ammonium Phosphate was 1.5 per cent.

1.10. In Vishakhapatnam (Andhra Pradesh) Custom House, 10,000 tonnes of Di-Ammonium Phosphate having a moisture content of 8 per cent but otherwise conforming to the specifications in the exemption notification referred to above, imported in December 1974 by the Ministry of Food and Agriculture of the Government of India was cleared free of duty.

1.11. The Committee wanted to know the rationale for the grant of exemption from basic customs duty in respect of Di-Ammonium Phosphate. The Ministry of Finance (Department of Revenue) have in a written note stated:

"At the relevant time "manures all sorts" and certain chemical manures were assessable free of duty under item 35 of the Indian Customs Tariff; and Urea and Ammonium Phosphate when imported for use as manure were also exempt from the payment of customs duty under item 28 of the Indian Customs Tariff vide notification Nos. 117/63 and 66/68 respectively. However, Di-Ammonium Phosphate (manurial grade) was assessable to duty under item 28 of the ICT at 60 per cent with regulatory duty at 5 per cent. Imports of Di-Ammonium Phosphate (manurial grade) were to be arranged by the Ministry of Agriculture for making good the shortfall in the availability in the country; other fertilisers were exempt; and it was thought necessary to make it available to farmers at reasonable prices; hence it was exempted from the whole of the basic customs duty."

1.12. The Ministry of Finance (Department of Revenue) have in a written note further informed:

"The general exemption was introduced with effect from 11th August, 1973. Prior to this date exemption was granted in respect of each import at the request of the Ministry of Agriculture, on an *ad hoc* basis."

1.13. Subsequently the Ministry of Finance have intimated that subsequent to notification dated 11-8-1973, two more notification Nos. 176-Customs and 144-Customs were issued on 2-8-1976 and 19.7.1980 respectively relating to grant of exemption from customs duty on Di-Ammonium Phosphate.

1.14. Enquired in regard to the practice that obtained prior to issue of notification dated 11-8-73, the Ministry of Finance (Department of Revenue) have informed in a written note:—

"Prior to the issue of the said notification of August, 1973, the practice was to exempt by an order issued under section 25(2) of the Customs Act, 1962, di-ammonium phosphate and ammonium nitro phosphate imported into India from the payment of duty leviable under the First schedule of the Customs Tariff and from the regulatory/auxiliary duty, on receipt of specific request to this effect in each case."

1.15. Asked if the justification for the continuance of the exemption from duty was reviewed at any time, the Ministry of Finance (Department of Revenue) have intimated in a written note:—

“In view of the continuing shortage of fertilisers necessitating imports, the general policy to exempt them from payment of import duties has persisted. In view of this need to review the continuance of the notification was not felt.”

1.16. About the reasons for prescribing the condition in the notification to the effect that exemption from duty would apply only if the moisture per cent by weight did not exceed 1.5 per cent the Ministry of Finance (Department of Revenue) have stated:

“Di-Ammonium Phosphate could be of two grades:—

(a) manurial and (b) industrial;

The intention was to exempt DAP of manurial grade. In consultation with the Ministry of Agriculture, specifications which are based on the specification in respect of Di-Ammonium Phosphate as set out in the Fertiliser (Control) order, were laid down in the notification. In these specifications the upper limit in respect of moisture was fixed at 1.5 per cent by weight.”

1.17. The Committee wanted to know the significance of prescribing the maximum moisture content in the purchase contracts and whether higher moisture content than prescribed could affect the efficiency of the commodity as a manure. The Ministry of Agriculture have in a written note stated as under:

“The significance of prescription of maximum moisture content in the standard specifications being incorporated into the contracts for purchase of various types of fertilisers is to ensure that the keeping quality of fertilisers does not deteriorate during long period of voyage and storage (if it is required to be stored). Long storage of material with higher moisture content may develop lumps or cake and may, therefore, not remain in free flowing condition. However, the higher moisture content in fertilisers does not affect the agronomic efficacy of the nutrients contained in the fertiliser. Maximum moisture content is being prescribed for each type of fertiliser depending on its hygroscopic nature so that it can remain in free flowing condition.”

1.18. Enquired as to the basis for the adoption of this percentage, the Ministry of Agriculture have in a written note explained the position as under:—

“Maximum moisture content has been prescribed through technical advice on the basis of hygroscopic nature of the material. This department has been modifying the percentage of moisture content to be adopted for purchase of various fertilisers on the basis of experience gained from shipments of fertilisers by the suppliers. For example, when this department started purchasing urea in bulk, the maximum moisture content prescribed was 0.14 per cent as against 0.5 per cent maximum prescribed for bagged urea. Later on, this limit of moisture content in urea in bulk has been raised to 0.33 per cent on the basis of experience gained so that adequate fertiliser becomes available for use by the farmers in good condition. Moisture content is related to physical condition of the material and not to its efficacy as manure. Fertilisers, whether imported or indigenously produced, have to conform to the specifications prescribed in the Fertiliser Control Order (which was promulgated under the Essential Commodities Act). These specifications, including that for moisture content, have been prescribed on the basis of views of technical experts in the matter.”

1.19. The Committee wanted to know the specifications of Di-ammonium Phosphate prescribed in the Fertiliser Control Order. In a written note the Ministry of Agriculture have stated as under:—

“Specification of DAP in FCO is as follows:

Di-ammonium Phosphate (18-46-0)

(i) Moisture, percent by weight, maximum	1.0
(ii) Total nitrogen all in ammonial form, per cent by weight, minimum	18.0
(iii) Total phosphate (as P O) per cent by weight, minimum	46.0
(iv) Water soluble phosphate (as P O) per cent by weight	41.0

Tolerance limit in plant nutrients for various fertilisers

For Di-ammonium Phosphate, nitrophosphates, ammonium sulphate, nitrate, urea ammonium phosphate, ammonium phosphate sulphate bonemeal, granulated mixed fertilisers, compound fertilisers. 0.5 individual nutrient subject to the maximum of 2.5 per cent for all combined nutrients.

1.20. Asked for the reasons for prescribing 1.5 per cent moisture content for imported DAP, the Ministry of Agriculture have explained the position in a written note as under:

"In respect of DAP the FCO provides for maximum moisture content of 1 per cent. For imported DAP, the maximum moisture content has been prescribed at 1.5 per cent. This was apparently done to attract sufficient offers from abroad since stipulation of 1 per cent (as provided under the FCO) was considered by the suppliers to be too restrictive. Since indigenous manufacturers have not represented about the need for any relaxation in this, the FCO continues to provide for maximum moisture content of 1 per cent only. To the best of our knowledge, these specifications had, by and large, an empirical base."

1.21. The Audit Para states that the consignment of Di-Ammonium Phosphate imported by Government contained moisture of 8 per cent as against 1.5 percent prescribed in the notification and was cleared free of duty, auxiliary duty and additional duty. In reply, the Department has stated that the concessional assessment was resorted to with reference to the opinion of the Chemical Examiner of the Customs Laboratory in a similar import. The Committee wanted to know the details of the recommendation of the Chemical Examiner in the earlier case. In this connection the contents of the report of the Chemical Examiner dated 19-8-1974 as furnished by the Ministry of Finance (Department of Revenue) are reproduced below:—

"The sample contains 1.00 per cent moisture in excess of the specified maximum limit of 1.5 per cent. All the other values are within the specified limit. Perhaps the excess moisture is due to accidental wetting/defective packing etc. The import is by Ministry of Agriculture, Government of India. It is therefore, felt that the excess percentage of moisture may be condoned and the sample accepted as conforming to the specifications in the notification No. 115/F. No. 355/11/72-Cus. 1 dt. 11-8-73."

1.22. Enquired if the Chemical Examiner was competent to recommend condonation of the moisture in excess of what was prescribed in the notification, the Ministry of Finance (Department of Revenue) has in a written note stated as under:—

"Being a technical authority, there is nothing to prevent the Chemical Examiner from making a recommendation, but:

the ultimate authority to take a decision in such cases is the concerned Collector of Customs."

1.23. On a query whether the Assessing Officer was bound to accept such recommendation of the Chemical Examiner, the Ministry have replied in the negative.

1.24. To a question whether the fertiliser was rendered sub-standard if the moisture content was more than that prescribed, the Ministry of Agriculture have in a note stated:—

"The intention of the FCO is to ensure that the fertiliser contains principal nutrients to the extent prescribed therein; in addition, the fertiliser should not be adulterated by any toxic material nor in a physical condition which makes its application difficult. Moisture content, higher than what has been prescribed in FCO, therefore, is not sufficient by itself to render a fertiliser sub-standard so long nutrient contents remain as per specifications."

1.25. The moisture content in the case of the fertiliser referred to in Audit Paragraph was 8 per cent. Asked whether in such condition the weight of the fertilizers had also relatively increased, the representative of the Ministry of Agriculture stated in evidence:—

"It is time that fertiliser being a hygroscopic highly material, can take up moisture on the way and/or at the time of unloading. When the material started from there, the moisture content was 0.8 per cent. Here, the Customs Chemical Examiner's report which we have seen shows that the moisture content was 8 per cent. In this connection, I would very respectfully submit that our view is that it is very unlikely that the moisture content would be 8 per cent and reasons for this are as follows:

"The moisture content depends upon the method in which we have drawn the sample. We have certain method prescribed by the Customs Authorities, the manner in which the sample is to be drawn and in the Fertiliser Control Order also we have a method by which the sample is to be drawn because the ship carries 10,000 tonnes of material or 2 lakhs of bags of fertiliser and so unless sample has been properly drawn to be truly representative of the entire material, it is quite possible

that the sample would give different results. The fertiliser was probably received during winter rainy season when humidity was higher. Unfortunately, in this country at the time when the specific shipment was being imported, I must confess that we did not have adequate facilities in the country to take samples everywhere and in detail, the type of instruments and that are used for analysing the samples also have a very important bearing on the results of the analysis."

1.26. Asked whether the fertilizer was imported in bags or otherwise the witness deposed:

"This fertiliser was imported in bulk and it was bagged at Visakhapatnam Port. What happens is that this fertiliser comes in the ships. Each ship was four or five holds/hatches carrying 2,000 tonnes of fertilisers each. It is covered with a particular type of covers. While the ship travels for 45 days from the United States of America to India, if it meets with rough weather on the way, some water can seep through the hatch covers and the top layer of the fertiliser can get physically affected. Then, the fertiliser is lifted out of the ship in 1 or 1/2 tonne slings. It is unloaded brought and it is bagged. Now the question is, there is a prescribed method as to how you have to take the sample from 'A' how from different hatches and how from different layers out of which a composite sample will have to be drawn. We are not sure whether this method was followed. Therefore, I have submitted that we tried to see the method prescribed by the Customs Authorities and see exactly how the sample had been drawn. The method prescribed by Customs is too simple and I respectfully submit. Sir, it is not calculated to cover large quantities of the kind that we envisage in this particular product."

1.27. On a query whether the present system of testing for finding out the moisture content was not upto the mark, the witness stated:

"I submit so, Sir."

1.28. The Committee wanted to know the procedure for sampling as followed by the Customs Department. The Member (Customs) stated in evidence:

"Sir, so far the question about procedure for sampling is concerned, we have for our staff detailed instructions given in the Central Appraising Manual of the Appraising Department. The instructions are very detailed, I don't want to bother you with all details of how the samples should be drawn, how it should be sealed and how transported, and with what precautions to prevent substitution of the samples. But what is relevant in this case is the sampling of chemicals. As regards chemicals the Manual says that samples should not be taken from the periphery or from one particular corner of the bag. The samples should be drawn from the centre of the bag or the case.

I have no reason to believe that the sample was taken wrongly. I say this because on the back of the relevant Bill of Entry the officer has stated: 'Inspected the cargo in bulk; samples in duplicate have been drawn.....' In order to avoid possible disputes about the correctness of the samples, we get the endorsement of the importer on the bill of entry. Now I read out what the FCI's representative said: 'The samples have been drawn in duplicate and sealed in our presence and they are true representative samples of the entire consignment' Thereafter it was sent for test and after test it was found that it contained 8 per cent moisture. This is the first time that a question has been raised that the test report is not correct or the samples drawn are wrong. The demands have been issued on the basis that the samples have been drawn correctly. If there are errors, duplicate samples are available....."

1.29. During evidence it was pointed out by the representative of the Ministry of Agriculture that the sample of the Di-ammonium Phosphate was not taken according to the method prescribed by the Customs Department when asked about procedure prescribed for the drawal of samples and whether the same was followed in all the 15 cases, the Ministry of Finance (Department of Revenue) have stated:

"Procedure for the drawal of Samples was followed in all the 15 cases. Samples were drawn by the Customs in

the presence of the authorised representative of the importer. The latter had also made the appropriate endorsement and signed on the back of the relevant Bills of Entry."

Asked if the Ministry of Agriculture had contested at that time that the samples drawn were wrong, the Member (Customs) replied:

"Not to our knowledge. Some of these demands have been there for two years. To our knowledge this has not been contested. If this contest is not now made, they are not precluded from doing it. It is a matter which can be decided in appeal or in revision and it would be a matter for quasi-judicial determination whether they are wrong or right. In the light of this, a final decision will be taken."

1.31. The Committee wanted to know the steps taken by the Ministry of Agriculture when it came to their knowledge that the procedure was wrong. The representative of that Ministry deposed:

"This shipment relates to the year 1974. This Demand Notice was raised on the 23rd February, 1980. We immediately took up the matter with the Finance Secretary, because there were 7 such cases where Demand Notice has been raised. We have made our submissions to them. There was an inter-Ministerial meeting where we have said that, firstly, it has come so belatedly that we can do nothing about it."

1.32. Asked as to why the Ministry of Agriculture had advised the Ministry of Finance to put the moisture content of 1.5 per cent in the exemption notification the witness replied:

"I accept that this should not have been done. In retrospect we feel that this was a mistake. But since the Ministry of Finance wanted a description of the goods, we have given a description of the fertiliser, which includes the critical elements, the nutrient content plus other details like particle, size and moisture. In fact, the technical details applicable to the fertiliser was supplied. What has happened was that these were included in the notification. Technically, we do not contest the point; so long as ceiling moisture content is prescribed in the notification and if it is clearly established that the moisture

content was beyond 1.5 per cent, the customs duty is payable and we will not contest that at all. But our contention to the Finance Ministry, firstly is that it was not necessary to put this condition in the notification like other fertilisers because, even if the moisture content is 3 or 5 per cent, so long as the nutrient-content remains intact in the product.....it may not be 46 per cent it may not be 46 per cent it may be 40 per cent.....it remains a manure. The only difference is, if the nutrient content goes down, then, under the Fertilizer Control Order it becomes a non-standard fertilizer."

1.33. Enquired that since there was no advantage in prescribing the moisture content, why at all it was so fixed, the witness stated:

"There are reasons. When we want to buy in the international market, we want to buy the best; we want our industry to produce the quality stuff. So, the sole purpose of prescribing the moisture content is fixation of character of the fertilizer, i.e. it should be in a free flowing condition."

1.34. When enquired if in view of 8 per cent moisture content, the imported fertiliser was in a free flowing conditions, the witness replied:

"I submit, Sir, that it is not possible technically. In fact, in the last few days we have simulation trials in our Central Laboratory to see what happens to this fertiliser if the moisture content goes up to 7 or 8 per cent. We have found that if the moisture content is 2 or 3 per cent, lumps are formed but they can be broken with slight pressure. When it is 4 per cent, then loose cakes are formed and the material does not remain in a free-flowing condition. When the moisture content is 6 per cent, it becomes slushy. If the chemical examiner's report is carefully seen, he has said the moisture content is 8 per cent, but everything else is the same. This is a basic contradiction in itself.

The moisture in fertilizer can go up in two ways.....one can be moisture in the granule; the other is from external sources. In this case, the moisture is from the external sources, which means that 100 kg. fertilizer becomes 107.2

kg., because the moisture has come in. In that case, the nutrient contents will be, not 18 and 46 per cent, but something less. But the chemical examiner's report says that all the other characteristics are the same. We have specified the particle size, which can pass through sieves. If it is 6 per cent, it becomes slushy and it cannot pass through certain sieves and rest on another. So, this is a matter which should be further looked into. We have strong reasons to feel that there is some mistake committed somewhere. It cannot be 8 per cent."

1.35. If according to the Ministry of Agriculture the D.A.P. became slushy in the event of its moisture content exceeding 6 per cent, the Committee wanted to know how with 8 per cent moisture content, it was certified as in a free flowing condition by the Chemical Examiner. The Ministry of Finance (Department of Revenue) have in a written note stated as under:

"The Chemical Examiner's certificate was only in regard to the question whether D.A.P. conformed to the specifications prescribed in the relevant notification and did not refer to the condition of the goods or whether it was in free flowing state:"

1.36. The Committee desired to know whether the D.A.P. which was imported with 8 per cent moisture content was sub-standard and if not then what was the significance of prescribing the condition of 1.5 per cent moisture content. The Finance Secretary stated in evidence:

"The main issue with which we should feel concerned is whether we had paid for something which did not conform to the specifications of the material for which we had placed orders. According to the Ministry of Agriculture, this particular consignment had less than 8 per cent moisture content. Actually in this case, it was 9.8 per cent. The introduction of this condition has created this problem. Supposing this moisture content was more than 1.5 per cent, will it be capable of being used as a manure? Importing and supplying fertiliser which contains more than, say, 1.5 per cent moisture content would mean that we supply sub-standard goods and thereby

affecting in the process the interest of the farmer adversely.....what is regarded as nutrient content, i.e. N must be 18 per cent and P 205 should be 46 per cent. If these two conditions, that is, 18 per cent N and 46 per cent P 205 are satisfied, then the agronomic efficacy of the fertiliser is not open to doubt..... From the point of view of revenue what is of significance is whether the commodity is coming in as fertiliser to us is manure and if it is manure, it shall be exempt from duty. But Agriculture Department has to separately look into and see that the stuff they import conforms to the technical specifications. From the point of view of the farmer they must evolve satisfactory arrangements at the other end, before it is loaded and paid for. Subject to this, Sir, from the point of view of customs duty notification I must say that this requirement of moisture content was superfluous and therefore recently we obtained the orders of Government for deleting the condition from the relevant customs duty."

1.37. The Committee wanted to know how the fertiliser referred to in the Audit Paragraph was imported and how its price was settled. The representative of the Ministry of Agriculture stated in evidence:

"This 10,000 tonnes of fertiliser was a small percentage of the total purchase in the year 1973-74. The total consumption was 2.5 million nutrient tonnes out of which about 50 per cent of the fertiliser was imported. In terms of product say, about 20 lakhs tonnes of fertiliser was being imported at that time. The Department of Supply was responsible for making purchases of all the fertilisers except from the East European countries which were handled by MMTC. The Department of Supply had a committee which used to advise in the matter of purchase of fertilisers just as we have a Steering Committee of Secretaries now which goes into every detail. They had their agencies in India Supply Mission in Washington and in London. In these two Missions, there was a regular set up. The Department used to call for tenders, hold negotiations, if necessary, specify the conditions, see those conditions were satisfied and then supplies were made. They are the people who settled the prices."

1.38. Asked in regard to the approximate value of the price of a thousand tonnes of fertiliser the representative of the MMTC stated in evidence:

"It would be at least around 80—100 million rupees f.o.b."

1.39. Enquired as to how was the quality of the product verified and inspection carried out at the port of loading, the Ministry of Agriculture in a written note have stated as under:

"During 1973—75, the import of fertiliser was being arranged by ISM, Washington from USA and Canada and by ISM, London from West European countries. In the case of material coming from West European countries, the material was being checked by the Inspection Wing attached to the ISM, London. In the case of purchases made from USA and Canada, the ISM, Washington appointed Inspection Agencies for checking the quality of fertilisers. No DAP or ANP was imported from other countries.

Before commencement of the loading of the material, the inspection agency was required to certify that the holds of vessels were checked and found to be clean, dry and did not contain any foreign material and was suitable for loading of the fertilisers. During loading, the Inspection Agency was required to draw samples from the material in accordance with contractual provisions and prepare a composite sample. One part of the composite sample was being got analysed at their laboratory and one sample was being kept by the Inspection Agency for six months for reference purpose. Pre-shipment inspection report (including analysis report) is compared with the prescribed specifications.

In addition to the above, the Inspection Agency was required to certify that the entire bulk loading facility was checked and found to be clean and free from contamination. Thereafter the agency would submit a pre-shipment inspection report to the buyer. Preshipment inspection is meant to ensure the quality.

However, no Government of India official was sent out of India to be present during loading of vessels."

1.40. Explaining further the position that obtained after 1975 the Ministry of Agriculture have in a note stated:

"With effect from August, 1975, at a decision of Government of India, the entire work of purchases has been transferred to MMTC who have appointed Inspection Agencies for checking the quality of fertilisers at factory site/loading port. MMTC have appointed inspection agencies in most countries from where they buy fertilisers. However, in certain countries specially in East Europe, suitable inspection agents are not available. Therefore, in such cases and in order to protect Government of India's interest, inspection is arranged at the time of arrival of fertilisers at the Indian Ports. The incidence of excessive moisture content is very uncommon. Where it takes place, it has to be considered in the background of conditions at the time of loading, whether the ship has encountered rough weather on the high seas or whether there have been very unusual conditions at the time of unloading."

1.41. The Committee wanted to know whether the purchase contract provided for a maximum moisture content. The Ministry of Agriculture have replied in the affirmative.

1.42. Enquired whether there was any provision in the purchase contract for payment of damages in respect of deteriorated goods, the Ministry of Agriculture have informed as under:

"The purchase contract does not provide for levy of any specific penalties on the suppliers by Government on account of deviation in moisture content. At the port of loading, the quality of fertiliser is checked by the Inspection Agency appointed by the procuring agency for this purpose. The contract provides that if the fertiliser does not conform to the specifications incorporated into the contract, the inspection agency can reject the material. In the case of bulk material, the suppliers normally guarantee free flowing condition of the same at the port of discharge."

1.43. The Committee wanted to know the action taken after receipt of the material in India to check up whether the inspection report in this case was correct or not. The representative of the Ministry of Agriculture stated in evidence:

"Material arrived on the 17 December, 1974. When the material arrived here it was immediately taken charge of by the

Food Corporation of India who started unloading the material and they did further transshipment. If it was carried in railway wagons it was weighed by a weighing bridge and the material was sent out to different parties."

1.44. Asked whether after having taken delivery of the imported material, any check was made to ensure that it was upto standard specifications, the witness replied:

"We had no arrangement at that time."

1.45. The Committee wanted to know whether any chemical examination of the imported fertiliser was carried out by the Ministry of Agriculture in their laboratories. The witness stated:

"No. Because we had no laboratory in this country at that time. In 1974 one fertiliser control laboratory was set up in the country. Now, we have 27 laboratories in States. We are expanding it. At that time, we had no staff of the type of quality control inspectors which could go to the port, draw samples, take it to the laboratory and get it tested."

1.46. Asked since what period the practice of drawing samples was started, the witness replied:

"Last one year. We are doing it in few cases as test samples only. The Finance Ministry did not agree to the creation of required number of posts for that purpose. Moreover, Sir, suppose, it is found that there is a marginal variation in test results at two places in that case, what do we do? So far as the seller is concerned, his responsibility ceases the moment the fertiliser has crossed the tackle of the ship. Thereafter even if the ship sinks into the sea, it is a loss to the Government of India. We are, really speaking operating not in the buyers' market but we are mostly operating in the seller's market. We are almost the biggest importer of the fertiliser's in the world. So long as the fertiliser's physical appearance is good and so long as the State fertiliser control laboratories say that this fertiliser is not sub-standard we feel that it would not be worthwhile to make much investment and create big parallel infrastructure here."

1.47. Asked about the results of inspections carried out during the last one year, the Ministry of Agriculture have stated in a written note:

"Prior to April, 1980, DAP shipments were not inspected, in the sense of drawal of samples and analysis of the same by the Ministry of Agriculture, at Indian Ports, unless pre-shipment inspection report indicated deviation from the specifications prescribed in the Purchase Contract or during the voyage, the material or the vessel has been damaged due to rough sea, etc. From April, 1980, a beginning has been made to inspect some fertiliser shipments at Indian ports."

1.48. The Committee desired to know that since necessary test facilities were now available in our laboratories, why the quality was not tested before making the final payment. The representative of the MMTC stated in evidence:

"The fertilisers which are available in the world market are not so abundant that we can enforce these conditions on the suppliers. The suppliers' responsibility cases, whether it is f.o.b. or c.i.f. the moment the material passes the bar of the ship. At that point of time, you are entitled to test as much as you want, the quality of the material which is being put on the ship by the supplier. The commodity being a bulk commodity and, sometimes, it being a high-value commodity, no supplier in the world will accept that the payment will be made after the product has moved 10,000 miles and is tested in our country. What do we do to ensure that the product is tested at the load port? The agents are selected and paid by the Government of India/MMTC. These agents have got a world reputation. There are many inspecting companies in the world who do not do any other work except analysis and inspection of such material. We float tenders to such people; we check the qualifications of these analysts; we find out who are the personnel employed by them, what are their qualifications and their registrations in various countries and all that. We entrust the responsibility of testing the product to them as our agents. They are not the agents of the suppliers. They are our agents. We make the payment. Once the material has been certified by our agent, in no way you can hold the supplier responsible."

1.49. Asked whether the sample could be taken and tested before entering into contract for the purchase, the witness replied:

"The fertiliser world is a very small world. The standing of the suppliers is well-known. We are receiving products

from most of the suppliers over the last 15 years. The products of the major suppliers, in the world are well known and, as has been indicated by the Department of Agriculture, they have been tested time and again in this country."

1.50. Asked in regard to the details of the arrangement for inspection of imported fertilisers at Indian Ports the representative of the Ministry of Agriculture stated in evidence:

"We unload fertilisers at 22 ports. We have classified them into fourteen zones and have assigned Inspectors to them. They have started taking samples."

1.51. Enquired if inspections were carried out during 1980 at all the Indian Ports, the witness replied:

"I can certify that such tests, and inspections are made but I may not be able to certify that it is done at every port or that it is done for every ship. But the system has started."

1.52. Enquired if there was any system whereby the Department of Customs sent intimation to the Ministry of Agriculture about the result of their test, the representative of the Ministry of Agriculture stated in evidence:

"Sir, there is no system as yet where the Department of Customs informs us within a reasonable time the result of their test. Sometimes they have taken as much as 108 days to conduct the test and there is no system whereby a copy of the test report is sent to us within a week or 10 days whereas we are required to release the ship in about 10 days and transport the material to different destinations."

1.53 Since the representative of the Ministry of Agriculture was always there on the spot to sign the test report, the Committee wanted to know as to why he could not pursue the matter. The witness replied:

"You are absolutely correct. If the system was that every fertiliser shipment is liable to customs duty and samples are drawn, we would have surely developed a system under which we can see that our staff follows it up. Last year we imported 4 million tonnes of fertilisers out of which half a million tonnes is DAP and the balance is not liable to be checked for specifications. Therefore, no

samples are drawn. We did not know that the samples had been drawn, but we are responsible for it and I said to the Chairman that we are aware of the gravity of the test and therefore, we must see that the sample is tested properly."

1.54 Enquired that if no customs duty was leviable was it not necessary to conduct any check to find out if the imported material was substandard, the witness stated:—

"I would respectfully submit that that is not really the case. We think that the inspection reports which come to us are fairly reliable. We had no method of verifying the same."

1.55 The Committee wanted to know whether the Government had no system of verifying the quality except relying on the inspection report supplied by the foreign agents. The witness replied:

"That is no correct. We have no established system at the ports, but we have a system in the country to test the quality of every fertiliser that goes to the farmers. We have carried out tests for some years. In the Fourth and Fifth Plans over a period of time we have established laboratories, we have persuaded the State Governments to draw samples, we are pursuing the matter to find out how many prosecutions were launched, how many convictions were obtained etc. This has been going on at the State level for the last few years."

1.56 Asked whether the imported fertiliser was tested invariably in all cases, the witness replied:

"No Sir. I have said that the quality control staff of the State Governments makes random check of fertilisers irrespective of source whether indigenous and imported, to determine the quality."

1.57 The Committee wanted to know the number of chemical tests made in respect of imported fertilisers and in how many cases prosecutions were launched when material was found to be substandard. In a written note, the Ministry of agriculture have stated as under:—

"The information available from the States is not given fertilizer-wise nor indicates whether the material is imported"

or indigenously produced. However, according to the information furnished by the State Governments, during 1978 and 1979 the position was as follows:—

	Year	No. of cases detected	No. of prosecution launched	Conviction awarded	Other action taken
1978		302	123	30	72
1979		214	155	42	N.A."

1.58. The Committee desired to know how the present case was brought to the notice of the Customs, the Member (Customs) replied in evidence:

"The internal audit of the Customs House brought to the notice of the Customs House that this consignment should have been charged to duty."

1.59. Enquired as to the date when the internal audit brought it to the notice, the witness stated:

"On 17 October, 1978, the C.R.A. brought it to the notice on 17 January, 1979."

1.60. Asked as to when the demand for payment of duty in this case was issued, the Ministry of Finance have stated:

"A demand for Rs. 1,24,86,504/- was issued in this case when Central Revenue Audit raised the objection and the same was confirmed on 22-2-80."

1.61. Asked whether there were other similar cases also, the witness replied:

"In all, 15 more cases are there. In these, the moisture content was found to be more than 1.5 per cent specified in these 'Exemption Notifications'. With this case, it becomes 16 cases where this moisture content was in excess of what the prescribed limit was. In respect of the remaining 15 cases it was not as if the exemption was granted. It was not so.... These things are imported from abroad in bulk normally. There are certain agencies for clearance. We allow clearance under what is called the 'Provisional Assessment System'. Food Corporation of India

and other Government agencies are there; they deal with it; goods are allowed to be taken away. We keep the sample. Pending test of the sample, the consignments are allowed to be taken away. Whatever duty liability is there, they have to comply with it and that settlement is done subsequently. Therefore, there are 16 cases in all. Clearance was allowed under what is called 'Provisional Assessment System'. This case is however not final until the final adjustment of duty is made."

1.62. The Committee noted that all these cases were brought to the notice prior to Central audit. Asked why it took four years by the internal audit to bring to the notice of the Department right from 1974 onwards upto 1978, the witness replied:

"In these cases, all the assessments were made on a provisional basis. The provisional assessment of the duty, can be adjusted against the final adjustment of it on the final assessment. At that time whatever be the difference in duty is either refunded or adjusted. In the case of these importers, I concede there has been a very long time lag between the dates when the goods were released provisionally and when the provisional assessment was finalised."

1.63. The Committee wanted to know whether demands had been raised within the period of limitation after the finalisation of the provisional assessment. The witness replied:

"So far as the Agriculture Ministry is concerned, that has been done, I won't be able to tell you precisely in respect of all the other cases; There are 16 cases. Out of these exceptions may be there in one or two cases. In the case of others, I should say 'Yes, they are on time'. The exception will not be in more than one or two cases out of these sixteen cases.

I must submit also that the Department of Agriculture is contesting this and so the matter is with the Ministry of Law. The issue before them is: Whether it is in time or not. From my personal experience, I feel that in these cases, one or two exceptions may be there. All the rest are within time."

1.64. The Ministry of Finance have informed the Committee that the Board has sought opinion of the Ministry of Law whether the benefit of the notification could be given to the consignments of Di-

Ammonium Phosphate having moisture content in excess of the limit prescribed in the notification. At the instance of the Committee, the Ministry have furnished a copy of the opinion of the Law Ministry dated 1-12-80 an extract from which is reproduced below:—

“In this case, the first question for consideration is whether in respect of imported consignment of Di-Ammonium Phosphate from which on importation samples were drawn by customs in the prescribed manner and if on testing in the Customs House Laboratory, the relevant samples are found as not conforming to the specifications in respect of moisture as laid down in notification No. 115 dated 11th August, 1973, whether the exemption under the notification would apply to the goods in question. The form in which the above question has been posted to this Ministry is such that the answer is obvious. If any imported goods do not conform to the specifications or conditions prescribed in an exemption notification, it would not be eligible for the benefit of the said notification. As the imported goods do not conform to the specifications laid down in the notification No. 115, obviously, the goods would not be entitled to exemption under the said notification.”

1.65. The Ministry of Finance have further informed the Committee that pursuant to the opinion of the Law Ministry, the Ministry of Agriculture had been requested to honour the demands.

1.66. A statement indicating the quantities of di-ammonium phosphate containing moisture in excess of the permissible limit of 1.5 per cent (i) where exemption in terms of the notification of August, 1973, was allowed in the first instance on the basis of the advice of chemical examiner in other similar cases (ii) where goods were initially assessed provisionally pending receipt of the chemical test report and demands were issued by the Custom Houses on receipt of the Chemical Examiner's report indicating moisture content in excess of 1.5 per cent is at Appendix I. It will be seen from the statement referred to above that the total quantity and total amount of demand involved in 15 cases of both the above categories is of the order of 73,433,938 MT and Rs. 10,23,32,805.69 respectively. Out of this, an amount of Rs. 94,29,026.04 only pertaining to one case has been realised so far and in the rest of the 15 cases the realisation is still pending.

1.67. Asked whether the imported quantity of 10,000 tonnes DAP in this case increased on unloading due to 8 per cent moisture content, the representative of the Ministry of Agriculture replied in evidence:—

“The bill of loading quantity was 10,000 MT and the quantity that we cleared from the port was 10,113.240 MT. It is 1.13 per cent more than the bill of loading quantity.”

1.68. Asked about other cases where due to increase in moisture content there was relative increase in the quantity manifested, the Ministry of Agriculture have in a note stated as under:—

“Custom Authorities, as per analysis reports, reported 5 cases of DAP shipments, where moisture content was more than 1.5 per cent. Out of these, actual weighment reports show that in 2 cases, there was shortage and in 3 cases there was marginal excess as will be seen from the following:

Sl. No.	Name of Ship	Qty. excess landed (in tonnes)	% on account of Excess
1.	Ataios (7/74):	426.038	—1.521%
2.	Vishwa Asha (12/74)	113.260	+1.13 %
3.	Ever Peace (11/74)	15.457	+0.114%
4.	Island Archon (5/75):	—17.416	—0.184%
5.	Hoech Orchid (11/73)	—205.775	—1.616%

1.69. In this context, the Ministry of Agriculture have further stated:

“Fertilisers when received in bags are weighed on the basis of number of bags multiplied by 50Bg. In case, there is shortage, this is decided on the basis of a certificate received from Port authorities. The shortage is made good by the ship-owners/suppliers depending on the contract. As regards bulk material, determination of weight at the loading Port is done by various methods. These include draft survey, machine reading or a certificate from a certified weighing master or from the rail/road company which brings fertilisers. The inspection agency obtains the

weight after generally satisfying himself that the procedure following is reasonably sound. At the unloading port, the weight is ascertained by means of draft survey. This compares well with the weight ascertained at the loading port. However, the weight ascertained by draft survey is an approximation. Actual weighment through weigh-bridge or weighing machine is not feasible because of costs."

1.70 Asked if any concession was given to the consumer in price where moisture content was too high, the Ministry of Agriculture have in a written note replied in the negative.

1.71 The Committee wanted to know whether price charged from the consumer was the same irrespective of the quality of the fertiliser. The representative of the Ministry of Agriculture stated during evidence:—

"No, Sir Mostly we have a fixed statutory price for every product of standard specifications. When the product becomes below standard, for instance, it becomes very lumpy just as in this case, theoretically accepting that 8 per cent moisture was possible it becomes a slush material and we will not be able to sell it to the farmer. We have to send it to the laboratory. Inevitably it will be found that the nutrient content of the fertiliser has gone down. There is a method in the Fertiliser Control Order—I think, Clause 13(b)—which explains how this material will be disposed of. The State Government is involved in it. The State laboratory will test the material; in the presence of their officers, the material will be stamped properly, that it is a sub-standard material, and the price will be reduced in a particular manner, in proportion to the reduction in the nutrient content of the fertiliser, and the fertiliser will be sold. If, even then, it does not find acceptance, it is auctioned. It is generally bought by the granulating agents for whom it does not matter whether the nutrient content is 46 per cent or 40 per cent because they have to granulate and they can adjust the nutrient content. They are the type of people who come and lift it in the auction."

1.72. The Committee wanted to know the indigenous production and the demand of DAP in the country. In a note, the Ministry of Agriculture have furnished the following information:—

"Production, consumption and the gap between consumption and production of phosphate fertilisers during the past three years are indicated below.

(production of Di-ammonium Phosphate in terms of P_2O_5 is also indicated in bracket).

Year	Quantity (in 000/tonnes of P_2O_5)		
	Production	Consumption	Gap
1977-78	670 (89)	867	-197
1978-79	770 (105)	1106	-336
1979-80	757 (120)	1151	-394"

1.73. In a separate note the Ministry of Agriculture have informed that the gap between domestic production and consumption was met through imports to the extent of 1,64,000 tonnes in the year 1977-78, 2,43,000 in the year 1978-79 and 2,37,000 in the year 1979-80.

1.74. Asked about the steps taken to step up the indigenous production, the Ministry of Agriculture have in a note stated:

"The capacity for phosphatic fertilisers, stood at 500,000 tonnes of at the end of 4th Five Year Plan (1973-74) rose to 10,80,000 tonnes of by the year 1978-79. At present the capacity of is 12,82,000 tonnes.

The phosphatic fertiliser projects with a total capacity of 208,000 tonnes of P_2O_5 —Haldia (75,000 tonnes) and Kandla Expansion (133,000 tonnes) are under implementation. These projects are expected to be operational before the end of 1981-82, raising the capacity further to 14.90 lakh tonnes of Besides, a few single super-phosphate schemes are under implementation and they will add a capacity of about 40,000 tonnes of P_2O_5 during the next 2-3 years.

The demand for phosphatic fertilisers is estimated by the Ministry of Agriculture around 23 lakhs tonnes of P_2O_5 by 1984-85. As the production from the operating units and the projects under implementation would not

be adequate to meet the demand for phosphatic fertilisers, the Department of Chemicals & Fertilizers is planning to take up more new phosphatic fertiliser projects/expansion schemes for implementation in a phased manner during the Sixth Five Year Plan so that the gap between demand and indigenous availability is narrowed down.

Details of a new phosphatic fertiliser project with a capacity of about 300,000 tonnes of at Paradeep are likely to be settled soon and the Project is expected to be taken up for implementation in 1981-82."

1.75. Enquired about the price paid to the various suppliers of DAP during the period 1974-75 to 1979-80, the Ministry of Agriculture have furnished the following information:—

S. No.	Name of Supplies	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80
1.	M/s Woodward & Dickerson, USA .	. 115 —117	375.00—380.00	..	144.50	129.50—149.50	..
2.	M/s Phibro Asia, U.S.A.	. 127.75—132.00	230.00—378.00			129.50—149.50	160.00
3.	M/s Transammonia, U.S.A. .	. 116.00	235.00—380.00.			129.50	
4.	M/s Sumitomo, U.S.A. .	. 115.00					
5.	M/s Agri. ;& Ind., U.S.A.	. 114.00—115.00					..
6.	M/s Mitsubishi, U.S.A. .	. 117.00	..			129.50	160.00
7.	M/s International, Ore, U.S.A.	. 115.00 117.00	235.00—380.00	..	..	..	160.00
8.	M/s Agrico Chem., U.S.A.	. 200.00	214.00—380.00	135.00	166.50 (C&F)	123.00—129.50	
9.	M/s Ciech, Poland	. Rs. 3025.00	..			..
10.	M/s I.C.E.C., U.S.A. .		250.00			129.50	
11.	M/s International Minerals, U.S.A.		378.00				
12.	M/s Chemeleoun, U.S.A.		375.00—378.00				
13.	M/s W. R. Grace, U.S.A. .		378.00				
14.	M/s Baker, U.S.A.				144.50	129.50	..
15.	M/s Phoschem, U.S.A. .					129.50	160.00
16.	M/s Mitsui, U.S.A. .	. .	..	..	..	149.50	160.00"

1.76. The Committee find that under section 25(1) of the Customs Act, 1962, the Government issued a notification in August, 1973 whereby di-ammonium phosphate imported for use as manure or for the manufacture of complex fertilisers was exempted from payment of basic customs duty provided the imported goods conformed to the specifications prescribed in the notification. One of the specifications prescribed in the notification required that the moisture content in the imported di-ammonium phosphate should not exceed 1.5 per cent by weight.

1.77. In Visakhapatnam Custom House, a consignment of 10,000 metric tonnes of di-ammonium phosphate having a moisture content of 8 per cent by weight but conforming to other specifications mentioned in the aforesaid notification was imported by the Ministry of Food and Agriculture in the year 1974 and was cleared free of the whole of Customs duty resulting in short collection of about Rs. 1.26 crores. The concessional assessment was resorted to on the basis of the opinion given by the Chemical Examiner of the Madras Custom House on 19-8-74 in the case of an earlier import. In that case the moisture content was only 1 per cent in excess of the stipulated maximum limit of 1.5 per cent and the Chemical Examiner had recommended for the condonation of the excess percentage. The chemical test report on the sample of the goods under reference revealed a moisture content of 8 per cent.

1.78. It would therefore appear that while granting the exemption from customs duty the correct facts and the legal position had not been properly appreciated. The logic of comparing the excess of 6.5 per cent in the present case over the prescribed maximum moisture content of 1.5 per cent with that of 1 per cent in an earlier case is not comprehensible to the Committee. It is also unfortunate that no note was taken of the fact that the Chemical Examiner had specifically recommended for the condonation of excess percentage in the earlier cases whereas no such recommendation was made in the present case. Since the notification was specific about the moisture content and was to be read and applied as such, the exemption was apparently not admissible in this case.

1.79. The Committee were informed that besides this case there are 15 other cases of imports of Di-ammonium Phosphate containing moisture in excess of the prescribed limit of 1.5 per cent by weight during the years 1973—1979, to which the exemption notification was applied. Of these, in 7 cases exemption was allowed on the basis of the advice of the Chemical Examiner in similar other cases and in

the remaining 8 cases assessments were made on provisional basis subject to final assessment on receipt of the report of the Chemical Examiner. The total quantity and amount of duty involved in these cases is of the order of 73,439 M.T. and Rs. 10.23 crores respectively. Out of this an amount of only Rs. 94.29 lakhs pertaining to one case has been realised so far. The amount in balance is still to the tune of more than Rs. 9 crores. Although instructions have been issued by the Board that assessments made provisionally should be finalised expeditiously, the Committee are concerned to note that 7 assessments made provisionally during August 1978—November 1979 have not yet been finalised. The Committee desire that these cases as also the remaining 7 cases pertaining to the years 1974 and 1975 where total exemption from customs duty was allowed, should be finally settled without delay.

1.80. On an earlier recommendation of the Committee the Ministry of Finance had given an assurance that instructions had been issued to the Collectors of Customs to the effect that provisional assessments should be finalised in all cases within a period of one year from the date of import. This assurance was given in August 1976. The Committee are constrained to observe that the assurance given by the Ministry of Finance and the instructions issued by them do not seem to have had any effect and the finalisation of provisional assessments continues to be delayed for years together. The Committee would suggest that the Central Board of Excise and Customs must take stock of the situation, find out all cases in which their instructions have not been complied with, ascertain the reasons for delay and then devise effective measures to monitor compliance with the instructions issued by them to the Collectors of Customs.

1.81. The Committee were told by the Member (Customs) during evidence that "the Internal Audit brought to the notice of the Customs House that this consignment should have been charged to duty." The Member (Customs) had added that the Internal Audit had brought it to notice on 17th October 1978 and the Customs Revenue Audit had pointed it out on 17th January 1979; the demand for Rs. 1,24,86,504 was issued on the basis of the Revenue Audit objection on 22-2-1980. The Committee, however, understand that in the reply sent to Audit in January 1980 the Ministry of Finance had stated, "the Internal Audit Department of the Custom House had raised the same point in October 1978 in a similar consignment." The Committee would like the Ministry of Finance to reconcile the discrepancy in the two statements and enquire specifically whether the Internal Audit Department of the Custom House actually checked

this particular case and if so, when and what exactly was the point raised by them. The Committee would like to be informed of the raised by them. The Committee would like to be informed of the action taken by the Ministry to ensure that such failures and delays do not recur. . . .

1.82. The Ministry of Agriculture had informed the Committee that the imported di-ammonium phosphate referred to in the Audit paragraph contained a moisture content of 0.8 per cent at the time of loading. Its moisture content was however found to be 8 per cent on test of its sample by the Customs Chemical Examiner. The Ministry of Agriculture have contested the result of this test by saying that the method prescribed by the Customs was too simple and was not calculated to cover large quantities of the kind envisaged in this particular product. On the other hand, the Customs Department have stated before the Committee that the sample was not drawn from the periphery or from one particular corner of the hold but from the centre of the hold according to the procedure for sampling laid down in Central Appraising Manual. They have further stated that the authorised representative of the Food Corporation of India who was present at the time had made an endorsement on the bill of entry to the effect that "the samples have been drawn in duplicate and sealed in our presence and they are representative samples of the entire consignment." This finding, the Customs authorities say, has never been challenged by the Ministry of Agriculture earlier. To this, the representative of the Ministry of Agriculture stated in evidence: "I accept that the Food Corporation official who was there when the sample was taken might have been ignorant, since this system of sample drawing was not there earlier." It is only from April 1980 onwards that a beginning has been made by the Ministry of Agriculture to inspect some fertiliser shipments at Indian ports.

1.83. The Committee thus find that the views of the Customs authorities and of the Ministry of Agriculture as regards the method for drawal of sample for testing and the test report of the Chemical Examiners have not been reconciled. When the evidence of officials was being taken by the Committee, the representatives of the Central Board of Excise and Customs, the Ministry of Agriculture and the Indian Council of Agricultural Research were contesting each other's claims regarding the extent of moisture in the DAP and its effect on the quality of the fertiliser for use as manure. The representative of the Ministry of Agriculture stated in evidence that "we have strong reasons to feel that there

is some mistake somewhere. It (moisture content) cannot be 8 per cent". The Committee do not appreciate why opinion on such technical matters could not be sorted out among the officers and experts of the Govt. before they appeared before the Committee to tender evidence. As the demand for payment of customs duty amounting to Rs. 1.26 crores on the above import of DAP is pending realisation from the Ministry of Agriculture, the Committee desire that the matter should be sorted out with the Ministry of Finance and settled early.

1.84. The Committee find that the condition of the maximum moisture content of 1.5 per cent by weight was deleted when a fresh notification granting exemption from customs duty on the import of DAP was issued on 19 July, 1980. With this changed position even though the imported material is not to be tested by Customs Department for purposes of exemption from duty, suitable satisfactory arrangements have to be evolved by the Ministry of Agriculture to ensure that the imported DAP conforms to all the technical specifications and the interests of the farmer who is the ultimate consumer are not affected adversely. The Committee would therefore like to know the details of the measures taken in this direction and whether the same are fool proof against supply of damaged or deteriorated material. In that connection it is important to observe that the deletion of the condition about moisture content from the Exemption Notification for purposes of customs duty does not affect the position under the Fertilizer Control Order according to which DAP containing excess moisture would still be non-standard."

1.85. The Committee were informed that with effect from 1975, the entire work of purchases has been transferred to MMTC who have appointed inspection agencies for checking the quality of fertilizers at factory site/loading port, and that in countries where suitable inspection agents are not available, inspection is arranged at the time of arrival of fertilizers at the Indian ports. The Committee were also informed that the supplier's responsibility ceases the moment the material passes the bar of the ship. This being the case the Committee cannot help but observe that the inspection of the fertilizer on arrival at the Indian port can at best serve only an academic purpose. Any meaningful inspection to protect the country's interests should be at the port of loading. If the present case is any indication the arrangements for such inspection are not altogether satisfactory. Considering the stakes involved the Committee cannot share the Ministry's complacency in this matter based on the so called "world reputation" of the inspection agents.

The Committee would strongly recommend that in the context of the continuing large-scale imports, the Ministry should make effective arrangements, even if it involves the deputation of our own technical people at the exporting end to ensure the efficiency as well as the integrity of the inspection at the loading end.

1.86. The Committee were informed that in the case referred to in the audit paragraph, 10,000 tonnes of di-ammunium phosphate were imported. The Chemical Examiner's report indicated the moisture content as 8 per cent by weight as against the permissible limit of 1.5 per cent by weight. Considering that the correctness of the sample had been duly verified by the representative of the Ministry of Agriculture, the present explanation of that Ministry to the effect that the moisture content could not really be 8 per cent would seem to be merely an after-thought. If the Ministry's assertion that the moisture content at the time of loading was only 0.8 per cent is accepted the excess moisture of 7.2 per cent should have clearly resulted in an extra weight of 720 tonnes of DAP at the port of un-loading in India. Although the Ministry have stated that no concession in price was given to the farmers, the ultimate consumers of this non-standard fertilizer, they have failed to give any account of this extra 720 tonnes of DAP valuing at least Rs. 7.20 lakhs. In fact there should be similar extra weight in the other cases 73,439 metric tonnes of DAP carrying excess moisture also. The Committee would strongly recommend that the Ministries of Finance and Agriculture should investigate this matter thoroughly and report the correct position to the Committee.

1.87. From the information made available to the Committee, it is seen that the State Governments have a net work of Inspectors who make random checks of warehouses of manufacturers, handling agencies of fertilizers, cooperatives etc., and take samples for testing. In cases where the fertilizers, imported or indigenous, do not conform to prescribed specifications, action is taken against the persons concerned. During the years 1978 and 1979 the number of cases so detected was 302 and 214, the number of cases where prosecutions were launched was 123 and 155 and where convictions were awarded was 30 and 42 respectively. The Committee apprehend that the number of such cases will be very large if a thorough check of the material is carried out. The Committee would therefore like the Central Government to make appropriate arrangements through the State Governments so as to ensure that fertilisers of sub-standard quality do not get distributed to the farmers.

1.88. The Committee find that the indigenous production of phosphate fertilisers is not keeping pace with the consumption in the country and the import is increasing over the years to meet the entire demand. While the quantity imported in the year 1977-78 was 1,64,000 tonnes, it increased to 2,43,000 and 2,37,000 tonnes in the years 1978-79 and 1979-80 respectively. The demand for such fertilisers is estimated around 23 lakhs by 1984-85. As the production from the existing operating units and the projects under implementation is not likely to be adequate to meet the growing demand for such fertilisers, the Department of Chemicals and Fertilizers is planning to take up more new phosphate fertiliser projects/expansion schemes for implementation in a phased manner during the Sixth Five Year Plan. The Committee feel that Govt. should have taken adequate steps well in time to narrow down the gap between the demand and indigenous availability of such fertilisers. They would like that the proposed expansion schemes are implemented according to schedule which would help in conserving foreign exchange so vitally needed by the country.

DELAY IN DISPOSAL OF PERISHABLE GOODS

Audit Paragraph

2.1. Under executive instructions, perishable goods seized under the Customs Act, 1962 can be disposed of even before adjudication of the relevant seizure cases.

2.2. In a minor port, 231 Kgs. of chemical powder valued at Rs. 1,50,150 which was later analysed as "tetra-cycline hydrochloride", were seized in August 1974 and sent to the departmental godown for storage in January 1975. Orders of confiscation of the goods were passed in November, 1975. After obtaining permission from the Court in which prosecution proceedings were launched and after keeping representative samples, orders for disposal of the goods were communicated to the officer-in-charge of the godown in May 1977. The issue regarding potency or otherwise of the chemical was under correspondence between the department and the various officers dealing with drugs. The technical opinion obtained in January 1978 was that the chemical powder was anti-biotic having a life period of 3 years from the date of its manufacture. Since the chemical was seized in 1974, it had outlived its life span and hence orders were passed in July 1978 for destruction of the chemical. The powder was ultimately destroyed in August, 1978 by dumping it into the sea.

2.3. The Ministry of Finance stated in reply that at the time of seizure neither the description nor the date of manufacture of the chemical/drug was available and that it was identified by chemical analysis by the Drug Control authorities when an initial reference was made to them by sending a representative sample. The Ministry added that at the time of adjudication when the order for disposal was sought for the question of date of expiry was raised and that after protracted correspondence with various Drug Control authorities, the drug was reported to have potency of three years only which had elapsed from the date of seizure. The drug had, therefore, to be destroyed.

2.4. The fact, however, remains that the goods were identified by chemical analysis as early as December, 1974 and the question of date of expiry was raised only after adjudication of the case in November, 1975. The loss of revenue in this case can, therefore, be attributed to non-observance of executive instructions referred to above.

[Paragraph 15 of the Report of the C&AG of India for the year 1978-79—Union Government (Civil), Revenue Receipts, Vol. I—Indirect Taxes]

2.5. Section 110(1) of the Customs Act, 1962 empowers the proper officer to seize goods, if he has reason to believe that the goods are liable for confiscation under the Customs Act, 1962. After the seizure, a show cause notice is required to be issued within 6 months of the seizure of the goods. If no show cause notice is issued, the goods are liable to be returned to the owner from whose possession goods were seized. However, provision exists under section 110(2) of the Customs Act, for extension by a period not exceeding 6 months and such extensions are allowed by the Collector of Customs provided sufficient cause is shown.

2.6. Section 126 of the Customs Act provides that on confiscation such goods shall vest in the Central Government.

2.7. In regard to the manner in which seized/confiscated goods are disposed of, the Ministry of Finance (Department of Revenue) have explained the position as under:

“The seized goods do not become ripe for disposal immediately on seizure. They cannot be disposed of unless they are confiscated and the owner of the goods has exhausted the remedial measures by way of appeal and revision available to him under the Customs Act. However, in case of perishable goods, which are likely to deteriorate by storage, they are disposed of even prior to their confiscation. Utmost care is taken to ensure that these goods are, as far as possible, sold for a fair price so that in case of any release of the goods on redemption there would be sufficient balance in the sale proceeds for paying the owner after deducting fine etc. if any.”

2.8. Asked if there were any distinct orders or instructions regarding disposal of perishable goods, Ministry of Finance (Department of Revenue) have stated in a written note:—

“The Central Board of Excise & Customs have from time to time issued orders relating to disposal of perishable goods. In the case of perishable goods, the Custom Houses have been instructed to take steps to dispose of such goods even before adjudication wherever it is felt that such adjudication may take some time. This is to ensure that the perishable goods are not totally lost on account of continued storage and delay in disposal. Besides, other goods that are likely to deteriorate or those, in respect of which the cost of upkeep is disproportionately high, i.e. in the case of animals, or the arrangement for their storage cannot be provided except at a disproportionately high cost, like dangerous goods etc. are immediately disposed of even before adjudication of the case after due intimation to the party. In such of these cases where the decision in

adjudication, appeal or revision is found to be in favour of the party, from whom the goods were seized, such parties are given the sale proceeds of such goods. They are thus not put to any loss."

2.9. The Committee wanted to know as to how the goods commented upon in the Audit Paragraph were seized and why they were lying for a long time in the store particularly when they were of perishable nature. The Member (Anti-smuggling) explained the position during evidence as under:—

"One report was received by the Customs that one vessel was loaded with 20 bags of some chemical which was likely to be smuggled into the country. The investigation showed that part of the consignment had already been landed somewhere or jettisoned. When the customs alert was given, the vessel started going to Dubai. While near a small port of Kalasi, the engine of this vessel failed. Therefore, the vessel could not go forward and was grounded. It, therefore, jettisoned these bags containing what was considered as yellow powder, and these bags, which were jettisoned in the water were washed ashore the port and were lying in shrubs in a half drenched condition. The customs officers, while searching for them, located these 9 bags and issued the panchanama, the receipt. At this stage, this seizure was known as yellow powder and we did not know what type of chemical or drug it would be. It was a minor port and only in a major centre testing facilities could be available."

2.10. Supplementing the Ministry of Finance (Department of Revenue) have in a written note stated:

"The goods in question were seized by an Inspector of Customs on 16-8-1974 acting on prior information.... They did not bear any marks or numbers but some labels bearing the legend 'Superior Quality Muribini Corporation Osaka' were found by their side."

2.11. About the steps taken to identify the goods after seizure, the Ministry of Finance (Department of Revenue) have stated as under:

"After the seizure on 16-8-1974, the Superintendent of Customs having jurisdiction over the area visited the spot on the following day i.e. 17-8-1974 and inspected the contents. As per his advice, the local druggists at Ratnagiri were consulted. However, the druggist at Ratnagiri as per his letter dated 23-8-1974 expressed his inability to identify the contents in the absence of adequate testing facilities.

Thereafter, the matter was referred to the Chemical Examiner of Bombay Customs, Bombay. The Chemical Examiner Bombay as per his letter dated 3-9-1974 expressed his inability to identify the chemical and advised that the matter be referred to the Drug Control Laboratory of the State of Maharashtra through the Drug Inspector, Ratnagiri. The Drug Inspector Ratnagiri drew a sample of the chemical on 13-9-1974 and sent it to the Drug Control Laboratory Bombay where it was received on 11-10-1974. The Drug Control Laboratory as per its report dated 26-12-1974 certified the sample to be that of "Tetracycline Hydrochloride".

2.12. The Committee desired to be apprised of the action taken after the identification of the goods. The Member (Anti-smuggling) stated in evidence:

'After identification on 26-12-74, the goods were deposited in the godown on 21-1-1975. The Supdt. Godown was informed only on 26-2-75 that the goods were tetracycline hydrochloride. He was advised to collect a copy of the test report. There has been an administrative failure on his part in not collecting the report. On 9th of September, 1975 though the Supdt. Godown had not yet received the test report, he requested for orders to dispose of the goods. On 23rd October, 1975, the Supdt. Godown again requested the Supdt. (Adjudication) for Collector's orders. However, on 30th October, 1975, the Supdt. (Adjudication) informed the Supdt. Godown that the case is likely to be adjudicated shortly. In other words, they would like him to wait for the final adjudication. The question is why he has taken 7 months for seeking orders for disposal of the goods. The Supdt. Godown was informed on 26th of February, but he requested for the test report on 26th of June. Therefore, there is a delay of four months on this account because the report was not given to this gentleman in time.'

2.13. When asked in regard to the action taken for the delay, the witness informed as under:

"It is admitted that there has been a delay of 7 months after the goods were identified and test report received, for the Supdt. Incharge of the Godown, in seeking the order of disposal from the Collector. For that necessary action has been taken against him and a warning has been given."

2.14. Since there was a long delay in identification and disposal of the seized goods, the Committee wanted to have a statement showing chronologically the various stages through which the case in

question was handled. In reply the Ministry of Finance (Department of Revenue) have furnished a chronological history of the case which is shown at Appendix II.

2.15. The Committee wanted to know the further action taken after the Godown Supdt. was informed on 30-10-75 that the case was going to be adjudicated shortly and that he should await the results of the adjudication. The Ministry of Finance (Department of Revenue) have in a written note furnished the following information:

"The Godown Superintendent remained the Collector on 23-10-1975 for permission to dispose of the goods. He was informed by Collector's office on 30-10-1975 that the case was going to be adjudicated shortly and he should await the results of adjudication. The case was adjudicated by the Collector, i.e. he confiscated the goods on 19-11-1975. The case was put up to him on 25-11-1975 seeking his orders for disposal of the goods. The Collector raised certain queries on 19-12-1975 regarding the procedure for disposal as also whether a "No Objection Certificate" was required from the Drug Controller. He also wanted to know the date of expiry. Since the goods had been seized without any markings, it was not possible to give the date of expiry. It was accordingly necessary to obtain the advice of the Drug Controller whether the goods were fit for human consumption. Besides the Collector had given sanction for prosecution of the persons concerned in smuggling of these drugs on 13-1-1976 and a complaint was filed in the Court of the Judicial Magistrate First Class, Dapoli in January, 1976. Since prosecution was launched in the case and the goods had to be exhibited in the Court, it was considered desirable that the Court's order be obtained before disposal of the goods. However, as already stated above, the Court by its order dated 10-5-76 confiscated the goods notwithstanding the fact that they had already been confiscated by the Collector as per his order dated 19-11-1975. In view of the Court's order, no orders for disposal of the goods could have been passed. The Department had to take steps to get the order vacated by filing an appeal to the Sessions Court which was done on 24-5-1976. The Sessions Court vacated the order of the Judicial Magistrate but asked the Department to approach the Lower Court for fresh permission to dispose of the goods. The Judicial Magistrate First Class Dapoli finally granted

permission to dispose of the goods on 28-4-1977 and on 13-5-1977, the Collector permitted disposal."

2.16. The Committee drew attention to the instructions issued by the Ministry of Finance (Department of Revenue) which provided that the perishable goods could be disposed of even before adjudication and desired to know as to why these were not followed. The Member (Anti-Smuggling) stated in evidence:—

"There has been some sort of lack of implementation in certain cases. This is one such case...."

2.17. Asked about the action taken against the persons responsible for the delay, the Ministry of Finance (Department of Revenue) have stated in a written note as under:—

"As regards action taken against the officers responsible for the delay, the then Supdt. (Godown) has already been warned for his lapse. No action was possible against other officers as they had already retired from service."

2.18. Enquired about the action taken, if any, to ensure that similar cases do not recur in future, the Ministry of Finance (Department of Revenue) have stated in a written note as under:

"The Board have issued instructions from time to time for expeditious disposal of perishable goods.... After the Audit Para under reference, to ensure that such cases do not recur in the future, the Board issued fresh instructions *vide* letter No. 545|38|79-LC.I dated 27-12-79 (Appendix III)."

2.19. The Committee wanted to know whether lists of perishable items are drawn at each Custom House and whether such lists are reviewed from time to time. The Ministry of Finance (Deptt. of Revenue) have in a written note intimated as follows:

"Lists of perishable items are drawn up for each Custom House. The Board have also *vide* their instructions No. 100|102|55-LC dated 6-12-1955 given examples of perishable goods with the instructions to Collectors to add up to these items if necessary. These lists are reviewed by the Collectors from time to time."

2.20. The Committee desired to know whether confiscated goods which are of a perishable nature were stocked separately in the Custom Houses to ensure their quick disposal. The Ministry of Finance (Department of Revenue) have in a written note stated as under:—

"Perishable goods are stored separately in the Custom Warehouses. As per instructions issued by the Board *vide* letter No. 100|102|55-LC dated 6-12-1955, the warehouse

- register and the case file dealing with the case must show the fact that the goods are of perishable nature. The instructions further state that the Godown Officer will keep a special watch over such goods and take timely action to remind the concerned executive departments regarding their disposal. These instructions have been reiterated to the Collectors to ensure that perishable goods are stocked separately."

Valuation of goods on seizure and disposal

2.21. About the criteria for the valuation of seized goods in various Custom Houses the Ministry of Finance (Department of Revenue) have in a written note stated as under:

"If the goods under seizure are easily identifiable as well-known trade goods, the normal procedure is to ascertain the wholesale market value of the goods. If the goods cannot be easily identified, such as chemicals and drugs, samples are drawn to ascertain by examination the description and value. In such cases, the Panchnama merely shows the physical description of the net weight of the goods. In the case of items like diamonds, precious and semi-precious stones, etc., the assistance of the trade as well as of approved valuers is sought.

The Board have issued instructions from time to time that it is necessary to ensure a correct appraisal of the market value of the goods even at the seizure stage. Instructions have been issued that the value of seized goods should be realistic so that there is no undue disparity between the value of the goods as at the time of seizure and at the time of final disposal.

The goods under seizure are valued immediately after the seizure by the officer who makes the seizure.

Since the basis for valuation is the prevailing market price of goods of like kind and quality, there is bound to be some difference in the values of seized goods at different places on account of local conditions and variations. However, the pattern of valuation is uniform everywhere inasmuch as the valuation at the time of seizure is based on the prevailing market price of the goods of like kind and quality. The value ascertained by the seizing officer is checked by his superior officers immediately when the seizure report is submitted."

The Ministry have further added:

"The valuation of seized goods at the time of disposal is done by the Valuation Committee of the Custom House. The

Committee consists of Assistant Collector|Appraising I, Assistant Collector|Disposal, Administrative Officer|Sales and Superintendent|Customs Warehouse. In all cases where the value is more than Rs. 1000|- files are sent to the concerned Appraising Group dealing in the imports of such goods and their opinion about the market value of the seized goods is taken. Appraiser (Sales) then puts up the value given by the Appraising Group to the Valuation Committee which records its decision. The Committee also considers the discount to be given.

The Board have also issued instructions that the fair price of the goods under disposal should be determined as correctly as possible after taking into consideration the saleable value of the goods in the market, i.e. the price which the goods are expected to fetch when resold in the market by the purchaser in auction, taking into consideration the condition in which they are at the time of sale. The 'Fair price' is the best price at which Customs can sell the goods under normal conditions and this will be somewhat lower than the price at which the goods of the same kind and in the same condition can be sold by the purchaser in the wholesale market, the difference representing the margin of profit which the buyer expects to make on resale. Fair price of the goods under disposal should be fixed by ascertaining the probable sale price of such goods in the market and after subtracting from it a discount which will represent the margin of the buyer at the auction.

However, the valuation of gold and silver to be deposited in the Mint for which no credit is received, is not done at the time of disposal. Also in the case of items like diamonds, precious and semi-precious stones, antiques, etc. the assistance of the trade as well as approved valuers is considered by the Valuation Committee in the Collectorates/Custom Houses."

2.22. Asked whether the pattern of valuation of goods is uniform in all the Custom Houses, the Ministry of Finance (Department of Revenue) have stated

"With a view to achieve uniformity in valuation of goods, both at the time of seizure and at the time of disposal, the Board have issued instructions that prices of goods fixed at Bombay should be circulated to all the Collectorates so as to serve as a guide in fixing the prices of seized goods and goods ripe for disposal."

2.23. The Committee wanted to know how the implementation of the above instructions was watched to ensure uniformity in the fixation of value of seized goods. The Ministry of Finance (Department of Revenue) have in a written note stated as under:

"The Directorate of Inspection and Audit Customs and Central Excise receives periodical reports from the Collectors showing the Bombay prices and the prices fixed by the Collectorates for purposes of comparison. This Directorate also ensures that the prices are uniform. However, there is bound to be some difference in prices due to variation in demand in different places and local market conditions. There are also some general differences in the prices of the goods of same description due to various factors such as make (different manufacturers) type (extent of sophistication) Model (showing year or time of manufacture) size and the condition in which the goods are at the time of valuation. Some of the goods are seized in defective condition or may be old and used or partly damaged. Varying rates of sales-tax are also collected in some States."

2.24. The Committee wanted to know if the Ministry had made any study as to how the valuation at the time of seizure compared with the valuation for disposal and with the actual sale proceeds. The Ministry of Finance (Department of Revenue) have in a written note stated as under:

"The Ministry have not made any study to see as to how the valuation at the time of seizure compares with the valuation at the time of disposal and with the actual sale proceeds. However, the Board have issued instructions from time to time that it is necessary to ensure a correct appraisal of market value of the goods even at the seizure stage. Instructions have also been issued that the value of seized goods should be realistic so that there is no undue disparity between the value of the goods as at the time of seizure and at the time of final disposal. However, since there is a considerable period of time between the seizure of the goods and their disposal due to the processes of investigation, adjudication, appeal, revision, prosecution, etc., there is bound to be some difference in the value of the goods as determined at the time of seizure and at the time of disposal."

Seizure and disposal of confiscated goods

2.25. The total value of the goods seized by Custom Houses at Bombay, Calcutta and Madras during each of the last three years is shown in the following table:

	(Rs. in lakhs)		
	1977-78	1978-79	1979-80
Bombay	516.40	489.80	1,141.86
Calcutta	125.75	147.03	217.57
Madras	38.75	96.82	112.35

(Note: The figures relating to Bombay give the total seizures made by C.C. Bombay and C.C.(P) Bombay.

2.26. The value of goods in storage, ripe for disposal and under the process of Investigation/Appeals/Prosecution etc., in the various Custom Houses as on 31-3-1979 and 31-3-1980, was:

<i>Value of seized confiscated goods in stock</i>	(Figures in crores of Rs.)	
	31-3-1979	31-3-1980
	59.75	75.24

<i>Value of confiscated goods ripe for disposal</i>	(Figures in crores of Rs.)	
	31-3-1979	31-3-1980
	9.53	10.75

<i>Value of goods under the process of investigation/Adjudication/Appeals/Prosecution, etc.</i>	(Figures in crores of Rs.)	
	31-3-1979	31-3-1980
	50.22	64.49

Value of disposals actually made during the last 3 years.

	(Figures in Lakhs of Rupees)		
	1977-78 1,077	1978-79 897	1979-80 968
The position as on 30-6-1980 was as follows:—			
(a) Value of seized/confiscated goods in stock			76.05
(b) Value of goods ripe for disposal			11.51
(c) Value of goods under process of investigation enquiry/process of adjudication, i.e. before final confiscation to Government.			37.32
(d) Value of goods confiscated (including those of goods ripe for disposal)			38.73

2.27. The value of seized goods item-wise in the various Custom Houses as on 31 March, 1980 was as follows:

Name of item	Value
	(in crores of rupees)
1. Gold	11.45
2. Silver	10.16
3. Diamond and precious stones	4.19
4. Currency	2.41 + 200 US \$
5. Watches	8.42
6. Liquor	0.47
7. Electric goods	1.72
8. Synthetic Textiles	7.31
9. Baggage items	10.63
10. Others	18.45
	<u>75.21 + 200 US \$</u>
	75.24 (difference due to rounding of figures)

2.28. The value of seized/confiscated goods in stock as on 31 March, 1980, Port-wise, in the various Custom Houses was as follows:—

(in crores of Rs.)

Name of the Port	Value
Bombay	26.90
Calcutta	5.51
Madras	4.10
Cochin	1.97
Goa	12.83
Visakhapatnam	04.15
Others	31.78
TOTAL	<u>75.24</u>

2.29. In the course of visit of a Study Group of the Committee to the Custom House, Bombay during October 1980, the Collector of

Customs had pointed out a number of difficulties in the expeditious disposal of confiscated goods. Relevant extracts from a note given in this connection are reproduced below:

"At present as on 31-8-1980 the value of total seized and confiscated goods is Rs. 11,73,70,889/- (approx.) inclusive of goods worth Rs. 4 crores approx. which pertains to the R&I Pre 16-11-1977 stock. Out of these, goods totally valued at Rs. 1,97,24.81 approx. are ripe for disposal. In August, 1977 Govt. issued instructions suspending sale of confiscated goods and sale remained suspended till May, 1978, so for nearly about a year there were no disposals. However, the sale was partially resumed from May, 1978 onwards as far as non-notified goods were concerned. However, the sale of these items was restricted to the particular group such as textiles to STC, electronics to Government departments Educational Institutes, watches to HMT and liquor to ITDC etc. At that time there were no instructions regarding the sale of other heterogeneous goods and luxury items. The position was further reviewed by the Government in December 1978 and the sale of luxury items and heterogeneous goods was permitted to the members of public through retail shop. As the sale had remained suspended from August, 1977 to May, 1978 and thereafter it was resumed only partially, substantial stock of goods had accumulated in the various warehouses. The retail sale to public through Retail Shop was very small as compared to the total stock available for sale. The disposal was further liberalised by the Government in June, 1979 and sale of consumer items and luxury goods was permitted to the NCCF and CSD(I) for the use of bonafide consumers and personnel of the Military and Para-Military forces respectively. This liberalisation relaxed the position considerably and the disposal of the goods was comparatively better.

* * * * *

The liquor is to be sold to the Hotels through ITDC against their import quota licences. However, the lifting of stock by Hoteliers has not been very encouraging because as compared to the total stock ripe for disposal, the quota amounts are very small. However, ITDC have been approached to issue maximum number of release orders for the stock held by this Custom House.

The consumer goods and luxury items are to be sold to NCCF for bonafide use of the members of the public. In recent past the disposal through NCCF has shown a downward trend because the NCCF has adopted a policy of buying the goods only if they have a ready customer.

Besides the sale of luxury items and consumer goods to NCCF these goods were also to be sold to CSD(I) for bonafide use of the personnel of Military and Para-Military forces. So far the CSD(I) have not approached the Custom House for purchase of the goods. In fact the Custom House even contacted the CSD(I) authorities requesting them to lift the goods but they have intimated that the terms of existing instructions have not been made applicable to them and they would approach us for buying the goods as and when the matter is finalised. In the circumstances, there has been no sale to CSD(I)."

2.30. Explaining the reasons for time-lag in the disposal of cases under Adjudication/Appeals/prosecution etc., the Ministry of Finance (Department of Revenue) have stated as under:

"It is not possible to indicate the maximum time-lag involving in adjudication and other quasi-judicial or judicial proceedings before the goods become ripe for disposal in customs seizure case. However, under the Customs Act, Show Cause Notice for initiating adjudication proceedings is to be issued within 6 months which is extendable to one year from the date of seizure and for this the party is to be given full opportunity to defend itself.

In most of the cases, the adjudication proceedings take about 1-2 years. After adjudication the party if aggrieved, normally avails of an opportunity to go in for appeal which is to be filed within three months of the adjudication order and further, if aggrieved by the appellate order, the party can go or revision application to the Government of India for which further 6 months after appeal order is available. These proceedings on an average may involve about a year's time.

In cases involving seizures of goods valued over Rs. 10,000/- or being repeated offences by the same party, prosecution proceedings may also be launched by the Department. Normally, the goods are not to be disposed of in such

cases until these proceedings are over. Thus, in cases here prosecution proceedings are launched on an average 2 to 3 years period may elapse before the Court proceedings are finalised. Thus on an average in a normal case involving prosecution, it may take about 5 years period for the goods to become ripe for disposal. Nevertheless, in the cases of baggage, the adjudication proceedings are mostly done on the spot and in these cases, the time taken for the goods becoming ripe for disposal may involve the period of appeal or revision, as the case may be. In these cases, normally, the goods become ripe for disposal within 6—12 months from the date of seizure. In case of unclaimed seizure, the goods become ripe for disposal as soon as adjudication proceedings are over resulting in confiscation of goods. Also in case of seizure involving perishables, disposal of the same need not await finalisation of the aforesaid quasi, judicial or judicial proceedings.”

2.31. During the course of study tour to the Collectorates of Customs and Central Excise at Bombay, Madras, Cochin and Travandrum during October, 1980 the Committee found that there was wide disparity in the prices of confiscated goods of like kind and quality sold from the retail sales counters of the Custom Houses. It was also found that in the Custom Warehouses the storage system was not very systematic and methodical. There were no proper indications about the names of the articles stored. In some goods had been lying for long periods because these could not be disposed of until the owners of the goods had exhausted the remedial measures by way of appeal and revision, available to them under the Customs Act. Particular mention was made about the delay in disposal of liquor and watches at the Custom Houses at Bombay and Madras because under the instructions issued these were first required to be offered for sale to the India Tourism Development Corporation and Hindustan Machine Tools Ltd. respectively. It was stated that these organisations had expressed difficulty in lifting the stocks due to inferior quality or other reasons. It also came to notice that certain trifling items and inexpensive confiscated goods like small toys were put on sale.

2.32. The Government have issued instructions to the Custom Houses from time to time relating to disposal of perishable goods. These instructions clearly provide that perishable goods should be disposed of even before adjudication wherever it is felt that such adjudication may, take some time. This is to ensure that the perishable

goods are not totally lost in value on account of continued storage and delay in disposal. These instructions provide inter alia that "in the case of perishable goods it is not merely permissible but obligatory on the part of the Customs authorities to sell the goods before they deteriorate and keep the sale proceeds with them in order to protect the interest of the importers."

2.33. In the case under examination, the goods were seized in August, 1974 and were indentified as tetracycline hydrochloride in December, 1974. Thereafter there was a delay of 4 months on the part of the Superintendent (Godown) in obtaining the test report, and a further delay of 7 months in seeking the orders for disposal from the Collector. The Committee have been informed that the concerned officer has been warned for causing this delay.

2.34. The Committee are also surprised to find that even though the Supdt. (Godown) had solicited orders of the Collector on 9 September, 1975 and 23 October 1975 for disposal of goods on the ground that they were of a perishable nature, no orders for disposal were issued. Instead, the Supdt. (Godown) was informed that the case was likely to be adjudicated and the former should await adjudication orders. Subsequent events show that emphasis was laid on prosecution of the offenders and no orders were passed about disposal of goods, although the instructions issued by the Ministry of Finance, themselves provide that perishable goods can be disposed of even before adjudication. The Member (Anti-smuggling) conceded during evidence that "there has been some sort of lack of implementation in certain cases. This is one such case." As the time is the essence in the disposal of perishable goods, the Committee would like the Government to review the existing provisions and consider delegation of powers of disposal in such cases to the local Customs Units themselves upto appropriate financial limits.

2.35. Another disquieting feature of the present case is that there was further delay of over one year (June 1977 to June 1978) during which period the Customs authorities consulted the various testing laboratories to first determine the identity of the goods and then for ascertaining its life expectancy. The Committee are now informed that as a result of audit objection, Government have issued instructions on 27 December, 1979 that in cases where the description or the date of manufacture of a seized chemical/drug is not available, utmost care, precaution and expedition should be exercised to ascertain from Drug Control authorities not only the identity, purity and

potency of the drug/chemical at the time of seizure but also the life expectancy of the seized drug/chemical. The Committee expect that these instructions will be scrupulously followed.

2.36. The Committee find that pursuant to the recommendation contained in the PAC report (Paras 3.60 & 3.61 of 219th Report) (5th Lok Sabha) the Government have issued instructions to the effect that the valuation of seized goods should be realistic so that there is no undue disparity between the value of the goods as at the time of seizure and at the time of their final disposal. The pattern of valuation at the time of seizure is based on the prevailing market price of the goods of like kind and quality. The fair price of the goods under disposal is determined after taking into consideration the saleable value of the goods in the market, i.e. the price which the goods can fetch when resold in the market by the purchaser, taking into consideration the condition in which they are at the time of sale. With a view to achieving uniformity in valuation, the Central Board of Excise and Customs have issued instructions that the prices of goods fixed at Bombay should be circulated to all the Collectorate so as to serve as a guide in fixing the prices of seized goods and goods ripe for disposal. The Committee have been informed that the Directorate of Inspection and Audit Customs and Central Excise receives periodical reports from the Collectors showing the Bombay prices and the prices fixed by the other Collectorate for purposes of comparison. The Committee would like to be informed about the specific action taken from time to time by the Directorate of Inspection, Customs and Central Excise and the Board on the reports received from the various Collectors to ensure uniformity in valuation of identical goods.

.. 2.37. The Committee were told by the Ministry of Finance that Government have not made any study to see how the valuation at the time of seizure compares with the valuation at the time of disposal and with the actual sale proceeds. The Committee recommend that a procedure should be evolved whereby such a study could be made at specified intervals to enable the Government to equip themselves with the requisite data essential to take such measures as are warrant to ensure correct appraisal of value of the goods both at the time of seizure and their disposal.

2.38. The Committee find from the information made available to them that the value of seized/confiscated goods in stock in various Custom Houses as on 30 June, 1980 was of the order of Rs. 76 crores. Out of this, goods valued at Rs. 11.51 crores were ripe for disposal on the date. During the course of visit of a Study Group of the

Committee to some of the Custom Warehouses during October, 1980 it was noticed that there was heavy accumulation of confiscated goods. Some of the reasons for such accumulation were stated to be (i) non-disposal due to process of investigation, adjudication appeal and revision and (ii) non-lifting of goods like liquor by ITDC and watches by HMT and (iii) downward trend in the sale of consumer items and luxury goods for the use of bonafide consumers and personnel of the military and para-military forces respectively due to procedural and other difficulties. The Committee also noticed during on-the-spot visit that storage system in the Custom Houses was not very systematic and methodical and there were no proper indications about the names of the articles stored therein. At the retail sales counters of Custom Houses, wide disparity in the prices of confiscated goods of like kind and quality was observed. The Committee are of the view that the existing rules and procedures regarding receipts, storage and disposal of seized and confiscated goods in stock results not only in deterioration in their quality but also casts heavy burden on the Government by way of avoidable expenditure on warehousing and accounting.

In pursuance of an earlier recommendation (Paras 3.57 and 3.58 of their 219th Report—5th Lok Sabha) wherein the Committee had expressed their distress at the large value of goods awaiting disposal, the Government had stated that instructions had been issued to all Collectors of Customs and Excise to take serious efforts towards completion of adjudication proceedings and disposal of confiscated goods. The value of seized/confiscated goods amounting to Rs. 76 crores as on 30 June 1980, however, indicates that the desired results have not been achieved inspite of the instructions issued in the matter. The Committee therefore recommend that the Government should issue suitable instructions to ensure that the disposal of confiscated goods is monitored on quarterly basis. They would also like the Government to evolve some system whereby these and other instructions for disposal of confiscated goods are subjected to review at specified intervals with a view to introduce such changes as are essential in the interest of expeditious disposal of confiscated goods.

2.39. In pursuance of an earlier recommendation made by the Committee in Para 3.59 of their 219th Report (5th Lok Sabha) to quicken the disposal of confiscated goods, the Government had informed that the amendment of the Customs Act, 1962 had been drafted for taking powers for early disposal on confiscated goods. Subsequently, on reconsideration of the matter, the Government

have informed that the amendment has not been incorporated in the Customs Central Excise and Salt and Central Board of Revenue (Amendment) Bill in view of the fact that the proposed amendment to the law would result in deprivation of the goods to the owner. The Government have also intimated that they have taken some administrative measures like augmentation of the strength of the Central Board of Excise and Customs to expedite the disposal of appeals and revisions and are also considering the recommendations of the Jha Committee in regard to the setting up of classification tribunals. The Committee would like to know how far the measures adopted by the Government have helped in achieving the objective of expediting the disposal of the confiscated goods and also of the progress made towards the setting up of the tribunals in question.

OBJECTIONS OF THE INTERNAL AUDIT DEPARTMENT

Audit Paragraph

(a) Not raised within the time prescribed.

3.1. According to the instructions issued by Government in February 1975, on a suggestion from Audit, the original bills of entry should be forwarded to the Customs Revenue Audit for audit purchases well within a maximum period of 120 days from the date of payment of duty. The local formations were also requested to fix certain time limits for movements of the bills of entry through the various processes in different departments and also to devise some checks to ensure that the time limits referred to above were strictly adhered to. This period of 120 days has an added relevance in the light of Section 28 of the Customs Act, 1962 which lays down a period of 6 months within which a notice may be issued for any duty not levied or short levied or erroneously refunded.

3.2. The Internal Audit Department of the Custom House is, a fortiori required to complete their checks well within this period of 120 days so that the chances of any demand becoming time barred are avoided. In the following cases, however, it was seen in audit that the demands were time barred for the reason that the necessary checks were not carried out by the Internal Audit Department well in time.

(i) A consignment of magnetic disc drives and signal cables with accessories imported through a major Custom House in September 1974 was assessed under items 73 and 73(1) of the Indian Customs Tariff and the basic duty of Customs was paid by the importer in November 1974. Additional duty under items 33D and 33B(i) of the Central Excise Tariff respectively, was, however, not levied. The bill of entry was received in the Internal Audit Department of the Custom House in February 1975 which detected non-levy of additional duty only in April 1976. A request for voluntary payment of the short levy was consequently made in August 1976. The importer, however, refused to honour the request on the ground that it was time-barred. This resulted in loss of revenue of Rs. 1,42,685.

The Ministry of Finance have confirmed the facts.

(ii) A consignment of Tractor parts, nuts and bolts, hardware circlips and locking rings imported through a major Custom House was deposited in the bonded warehouse. The goods were cleared for home consumption in January 1972 and were assessed to duty.

The Internal Audit Department of the Custom House pointed out in June 1975 a short levy of duty due to application of incorrect rate of exchange of £5.314 for every Rs. 100/- instead of the correct rate of exchange of £5.239 for every Rs. 100/- prevailing on the date of clearance. A request for voluntary payment representing the difference due to adoption of incorrect rate of exchange and mistake in the working of the duty recovered initially was consequently made in August 1975. The importer rejected it as time barred (January 1978). Thereupon the Custom House closed the case (August 1978).

This resulted loss of revenue of Rs. 35,245.

This Ministry of Finance have confirmed the facts.

(iii) A consignment of 29 drums of "Para Cresidine" imported through a major Custom House (April/May 1974) was assessed to duty by the department under item 28 of the Indian Customs Tariff at 60 per cent plus auxiliary duty at 15 per cent *ad valorem*. Additional duty at 24 per cent under item 14-D of the Central Excise Tariff was not levied. The bill of entry was received in October 1974 in the Internal Audit Department of the Custom House which detected non-levy of the additional duty only in December 1975. A request for voluntary payment, consequently made in May 1976, was refused to be honoured by the importer on the ground that it was time-barred. This resulted in loss of revenue of Rs. 31,736. The Ministry of Finance have confirmed the facts.

(b) Incorrect closure of objections raised within the time limit.

3.3. In the following instances it was noticed that even though the objections were raised by the Internal Audit Department well within the time limit and demands were issued by the department wherever necessary, the Internal Audit Department had dropped the objections incorrectly.

(i) A consignment of "parts of air conditioning equipment" was imported by a Government Department in July 1976 and assessed to basic customs duty at 60 per cent *ad valorem* and auxiliary duty at 15

per cent *ad valorem* under heading 84.12 of the Customs Tariff Act, 1975 without levy of any additional duty. Internal Audit Department pointed out (June 1977) that the description and classification of the goods was not clear.

On receipt of the invoices in July 1978 the Internal Audit Department observed that the Customs House could assess the goods at higher rates and pointed out a short levy of Rs. 3,23,753. Less charge demand for this amount issued in July 1978 was not honoured by the importer on the ground that it was time-barred. Internal Audit Department thereafter closed the objection (April 1979).

Audit pointed out (May 1979) that the closure of the objection was not correct as the objection by the Internal Audit Department calling for clarification in June 1977 with reference to the assessment was issued well within time.

The department admitted the audit objection and recovered the short levy in July 1979.

The Ministry of Finance have confirmed the facts.

(ii) Under a notification issued in 1962 Thermostats and valves are liable to additional duty as parts of Refrigerating and Air conditioning appliances.

In a major Custom House Thermostats and Motorised Valves imported in February 1975 were not subjected to additional duty. At the instance of the Internal Audit Department demand was raised (August 1975) on the importer for a sum of Rs. 72,019 towards additional duty. However, on the ground that the goods would attract additional duty only if they are identifiable as parts of refrigerating and air conditioning appliances by virtue of their special design, the objection was dropped and the demand withdrawn in August 1977.

Audit suggested (November 1978) to the department to reconsider their earlier decision with reference to technical opinion that Thermostats need not have any special design for use in Refrigerators/Air conditioning appliances and on importer's own declaration that they were intended for controlling the room temperature.

The department accepted the objection and stated that the importers expressed their inability to pay the short levy voluntarily after the demand had already been withdrawn.

The Ministry of Finance have confirmed the facts.

[Paragraph 16 of the Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil), Revenue Receipts Vol. I, Indirect Taxes.]

Introductory

3.4. In the scheme of customs administration, the Internal Audit Department serves as the agency for verifying that all customs revenue and other duties leviable under various legislations, enactments are correctly assessed and brought to account. The Internal Audit Department is also responsible for bringing to light any weaknesses or defects in procedure which may, in any way tend to impair the efficiency of administration and thereby affect public revenue. The function of the Internal Audit Department is to audit all documents passed in connection with import and export cargo, pre-audit or refund/drawback payment orders, daily sheet of cash and accounts, overtime claims, bonds and guarantees before they are allowed to be cancelled on the fulfilment of undertakings etc.

3.5. According to Section 28 of Customs Act, 1962 a notice for any non-levy, short-levy or erroneous refund of duty should be issued within a period of six months. Instruction No. 1/75 F. No. 442/2/73-cus. IV issued by Government on 14 February, 1975 requires that all original bills of entry should be forwarded to the Customs Revenue Audit for audit purposes well within a maximum period of 120 days from the date of payment of duty. The Internal Audit Department of the Customs House is therefore required to complete their checks well within this period of 120 days so that the chances of any demand becoming time barred are avoided.

Audit objection

3.6. The Audit in the instant paragraph has pointed out two types of objections concerning Internal Audit Department of Customs House, viz.—

- (i) Cases where the Internal Audit Department failed to raise the objections within the time prescribed and the claims become time barred resulting in loss of revenue.
- (ii) Cases where the Internal Audit Department had raised the objections well within the time limit and demands were issued accordingly by the Department wherever necessary but the objections were subsequently dropped by the Internal Audit Department incorrectly.

Failure to raise objections within the time prescribed

3.7. The Audit has pointed out 3 cases under this category where objections were not raised by the Internal Audit Department within the prescribed time resulting in loss of revenue.

3.8. It is seen that a case of non-levy of additional duty in respect of a bill of entry received in February 1975 was detected by the Internal Audit in April 1976 only. A request made by the department for voluntary payment of short-levy amounting to Rs. 1,42,685 made in August, 1976 was not honoured by the importer on the ground that it was time barred. The Committee desired to know the reasons for the delay in raising the objections by Internal Audit Department. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) have stated:

“Regarding the case cited at para 16(a) (i) Collector of Customs, Bombay has reported that on audit by IAD it was pointed out that the magnetic disc drives had been assessed under item 73 I.C.T. @ 60 per cent—15 per cent and the Air Cargo Unit was asked to amplify the description of the goods or justify assessment under item 73. This objection by the IAD was issued on 5-3-1975. Subsequently, Air Cargo Unit wrote to the importer on 21-7-1975 asking for catalogue and customs attested invoice. These were forwarded by the importer in his letter dated 26-10-1975. This letter was forwarded to IAD on 19-4-1976, whereupon IAD pointed out that the magnetic disc drive appeared from the write up to be a peripheral device of central processing unit and therefore chargeable to c.v. duty under item 33D CET pointing out the less charge of Rs. 1,41,860.77 and that the cables were also leviable to C.V. duty @15 per cent under item 33B(i) of CET pointing out less charge of Rs. 824.51. As such, there was failure on the part of the IAD to categorically point out leviability of countervailing duty right at the beginning in absence of catalogue etc. and also due to the failure of the Air Cargo Unit to get catalogue and Customs attested invoice from the importers in time. Nevertheless, had the less charge demand been issued by the Air Cargo Unit immediately on receipt of the objection from IAD revenue would have been safeguarded.”....

3.9. In the second case pointed out by Audit, the goods were cleared in January, 1972 but a short-levy of duty of Rs. 35,245 was:

pointed out by Internal Audit Department in June, 1975 only. When asked for the reasons for the delay in raising the objection, the Ministry of Finance (Department of Revenue) have in their note stated:

... 'Regarding the case cited at para 16(a) (ii) Collector of Customs, Bombay has reported that bill of entry is of 1971, no records are available to indicate the circumstances under which the audit of the bill of entry was delayed.'

3.10. Yet another case pointed out by Audit related to a bill of entry received by the Internal Audit Department in October, 1974 which detected non-levy of additional duty of Rs. 31,736 only in December, 1975. The Department's request for voluntary payment of duty made in May, 1976 was not honoured by the importer. Explaining the reasons for the failure to raise the objection in time, the Ministry of Finance in a note furnished at the Committee's instance have stated:—

"Regarding the case cited at para 16(a)(iii) Collector of Customs, Bombay has reported that the IAD had failed to point out the leviability of c.v. duty in this case initially but had raised the objection only relating to the port congestion surcharge without apparently going into the question of leviability of c.v. duty. This may be attributable to the error of judgement on the part of the Audit Officer."

3.11. On enquiry the Committee have been informed that the Internal Audit Department of the Custom House watches the receipt of documents through a Key Register maintained by it. They have also been informed that if any document is not received in time in the IAD, the IAD pursues the matter with the concerned Department to get the document.

Incorrect closure of objections raised within the time limit by the Internal Audit Department

3.12. Under this category, the Audit has pointed out two cases where the objections were raised by the Internal Audit Department well within the time limit and demands were issued by the department wherever necessary, but the Internal Audit Department had subsequently dropped the objections incorrectly.

3.13. The Audit para refers to a case where the Internal Audit Department raised certain objections in June, 1977 in respect of consignment assessed and duty paid in January, 1977. On receipt of the invoices in July 1978, the Internal Audit Department pointed

out a short levy of Rs. 3.24 lakhs; a demand was issued in July, 1978, which was not honoured by the importer (a Government Department) on the ground that it was time barred. The Internal Audit Department thereafter closed the objection. The Audit later on pointed out that the closure of the objection was incorrect and the Department thereupon recovered the short levy in July, 1979. The Committee desired to know the reasons for the incorrect closure of the objection. In a note, the Ministry of Finance have stated:—

“With respect to the case of refund in paragraph 16(b) (i) of the Audit Report, the facts of the case are that the I.A.D. of the Bombay Custom House had called for certain clarification in the month of June, 1977 to ascertain the detailed description of the item. As a result, the invoice was called for from the importer. The invoice for the goods was received by the I.A.D. in July, 1978 when the less charge of Rs. 3,23,753.21 was pointed out. Thereafter a request for voluntary payment of this less charged amount was issued on 29-7-78. As the consignment was assessed and duty was paid on 18-1-77, the demand was time barred under section 28 of the Customs Act, 1962. The importers refused to make the payment. Accordingly, the objection was closed. The O.R.A.D. in May, 1979, had objected to the closure of the I.A.D. objection on the ground that I.A.D. had raised objection for re-assessment of goods and called for clarification in June, 1977, which was well within the time limit of 6 months. It may be mentioned in this connection that although the I.A.D. had called for a clarification, they had neither quantified nor even indicated the short-levy. The short levy was discovered when the invoice was received and when the statutory time limit had expired. Later when the O.R.A. raised the objection, renewed efforts were made and the less charge was recovered”...

3.14. In the second case pointed out by Audit at the instance of the Internal Audit Department a demand for Rs. 72,019 was raised in August, 1975 towards additional duty in respect of thermostats and motorised valves imported in February, 1975. However, on the ground that the goods would attract additional duty only if they were identifiable as parts of refrigerating and air conditioning appliances by virtue of their special design, the objection was dropped and the demand withdrawn in August, 1977. On a suggestion by Audit to reconsider the matter with reference to technical opinion, the Department accepted the objection but the importers

expressed their inability to pay the short levy voluntarily as the demand was withdrawn. In a note furnished to the Committee, at the Committee's instance, the Ministry of Finance have stated:

"...Regarding the case referred to in paragraph 16(b)(ii) of the Audit Report Collector of Customs, Madras has reported that the I.A.D. raised the objection on 26-6-1975 that additional duty would be leviable under item 29A(3)-CET on fan coiled thermostat and motorised valves. A demand notice for the short collection was issued by the Appraising Group concerned in time to the importers M/s. Indian Tourism Development Corporation Limited, pending examination of the merits of the I.A.D. objection. A catalogue produced by the importer was perused and there was a difference of opinion between the Appraising Group and the Internal Audit Department on the question of the leviability of the goods to additional duty. The Appraising Group was of the view that only thermostats specially designed as component parts of refrigerating or air-conditioning equipment would be liable to c.v. duty under item 29A(3)-CET. Since there was nothing to show the special design, the then Collector decided on 2-8-1977 that the goods would not fall under item 29A(3)-CET and orderer withdrawal of the demand notice."

3.15. The Committee wanted to know, in this connection, the level at which the objection raised by the Internal Audit Department was closed. In their note, the Ministry of Finance have stated:—

"The objections raised by I.A.D. are closed at the level of the Assistant Collector of Customs (IAD) where the department against whom the objection has been raised accepts the objection. Where there is a difference of opinion between the concerned Department and the Audit Department, the matter is put up to D.C./Collector for final decision."

3.16. In reply to a question, the Ministry of Finance have informed the Committee that Internal Audit Department conducts cent-per-cent audit of documents.

3.17. The Committee enquired about the procedure in vogue to review the pending objections of Internal Audit Department. The Ministry of Finance have in reply stated as under:—

"The IAD is required to keep a record of all pending audit objections, and to prepare a statement on monthly basis.

On the basis of this statement the review of pending objections is required to be made in consultation with the concerned departments. The pendency position is also reviewed by the Director (Audit) of the Directorate of Inspection and Audit (C&CE) through monthly statements from the Collectors."

Evaluation of the Working of the Internal Audit Department.

3.18. The Committee desired to know whether there was an arrangement for the evaluation of the working of the Internal Audit Department of the Custom Houses. The Ministry of Finance have in a note stated:

"All major Custom Houses are publishing monthly Audit Bulletins and circulate these to others. This publication not only proves useful in ensuring against disparate practices but also constitutes a very adequate, regular and periodical evaluation of the working of the Internal Audit Department of the respective Custom House. Further, the points, objections and audit paras raised by the C.R.A. themselves provide an evaluation of the work of the Internal Audit Department."...

Improvement in procedures

3.19. The Committee wanted to know whether during the last five years any improvement or change or introduction of a new procedure etc. were made based on the findings or recommendations of the Internal Audit Department of the Custom Houses. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) have stated:

"The function of the I.A.D. of the Custom House is to ensure correct realisation and accounting of revenue. The main work here will consist in ensuring correct classification of goods and the application of the appropriate duty rates. The Internal Audit Departments of the Custom Houses have done very useful work in this sphere.

As a result of objections raised by I.A.D. in Bombay Custom House alone, a sum of Rs. 696.43 lakh (approx.) was realised during the financial years 1977-78 to 1979-80, and an amount of Rs. 493.12 lakh (Approx.) was refunded during the same period as a result of the I.A.D. vigilance.

The points raised by the I.A.D. circulated amongst the Custom Houses through monthly audit bulletins have resulted in better coordination amongst Custom Houses and uniformity in assessment and classification. There have been a number of cases where classifications of goods were changed due to I.A.D. objections. Whenever there are differences about classification or assessment amongst Collectors (and these get thrown up as a result of I.A.D. objections) these are discussed and resolved at quarterly Tariff Conferences of the Collectors of Customs. In Tariff Conference held in March, 1978 as many as 23 points relating to disputed classifications were taken up for discussion and decisions taken were circulated amongst the staff as well as the trade."

3.20. The main function of the Internal Audit Department of a Custom House in the scheme of Customs administration is to ensure correct realisation and accounting of revenue. The working of the Department had engaged the attention of the Public Accounts Committee on various occasions. Time and again the Committee have emphasised the need to improve the functioning of the Internal Audit Department with a view to ensuring proper realisation and accounting of revenue. They are, however, greatly concerned to note from the Audit Paragraph under examination that despite their persistent exhortations, the Internal Audit Department of the Custom Houses continues to be inhibited by certain deficiencies in its functioning. Some of the glaring shortcomings observed by the Committee during the course of examination are dealt with in the succeeding paragraphs.

3.21. According to an instruction issued by Government on 14 February, 1975 the original bills of entry are required to be forwarded to the Customs Revenue Audit for audit purposes within a period of 120 days after completion of all other formalities including audit by Internal Audit Department. This was done in order to avoid the chances of any demand becoming time barred by the operation of Section 28 of the Customs Act which lays down a period of six months within which a notice may be issued for any non-levy, short-levy or erroneous refund of duty. According to Ministry of Finance, the Internal Audit Department is required to watch the timely receipt of documents through a Key Register maintained by it for this purpose. The Committee note, however, that a test check by the Customs Revenue Audit in a single Custom House revealed three cases in which the documents were not received in the Internal Audit Department within the prescribing

period and the failure of the I.A.D. to raise objections within time resulted in considerable loss of revenue. The Ministry of Finance have not explained the reasons for this delay in the receipt of documents in the I.A.D. in any of these three cases, nor have they indicated how and why the control mechanism of the Key Register maintained in the IAD proved ineffective. The fact that a limited test check in a single Custom House revealed three cases of failure would seem to indicate that the default is fairly widespread. The Committee would, therefore, recommend that the Ministry of Finance should enquire into the reasons for delay in these cases and then devise effective measures to ensure that such delays do not take place and the documents are received in the IAD at the earliest for them to complete their work and furnish the documents to the Customs Revenue Audit within the stipulated period of 120 days.

3.22. In one of the said three cases the Ministry of Finance have merely stated that the records are not available to indicate the circumstances under which the bill of entry was delayed. In the other two cases they have acknowledged that either appropriate objections were not raised by the IAD even belatedly or adequate follow-up action was not taken to raise the less charge demand. In the first case they have stated that the failure on the part of Internal Audit "may be attributable to the error of judgment on the part of audit officer" and in the second case they have stated "had the less charge demand been issued by Air Cargo Unit immediately on receipt of the objection from IAD revenue would have been safeguarded". The Committee are constrained to note that these cases are symptomatic of the defective functioning of Internal Audit mentioned at the outset. The Committee would suggest that all Collectors of Customs should be made to realise that internal audit is an important tool of management control with them and to make a proper use of this tool they must take personal interest in improving the efficiency of Internal Audit and in ensuring adequate and timely follow up action.

3.23. Another disquieting drawback in the functioning of Internal Audit Department noticed by the Committee during the course of examination is that in certain cases objections were raised by the Internal Audit Department well within the time limit and demands were issued wherever necessary but the Internal Audit Department had subsequently dropped the objections incorrectly. The Committee note that in a case in Custom House, Bombay, the Internal Audit Department in June 1977 had pointed out that the

description and classification of the goods was not clear in respect of an import made in July, 1976. After receiving the invoices in July, 1978, the Internal Audit Department pointed out a short-levy of duty amounting to Rs. 3.24 lakhs for which a demand issued was not honoured by the importer on the ground that it was time barred. The Department thereafter treated the objection as closed. The Revenue Audit pointed out that the closure of the objection was incorrect as the objection calling for clarification was raised well in time. The Department admitted the Revenue Audit objection and was able to recover the short levy.

3.24. The Committee note that in a similar case in Custom House, Madras, at the instance of the Internal Audit Department a demand was raised in August, 1975 on an importer for a sum of Rs. 72,019 towards additional duty in respect of thermostats and motorised valves imported in February, 1975. However, on the ground that the goods would attract additional duty only if they are identifiable as parts of refrigerating and air-conditioning appliances as laid down by a notification of 1962, the objection was dropped and the demand withdrawn. On a suggestion by Revenue Audit, the issue was reconsidered and the department accepted the objection, but the importer refused to pay the duty voluntarily as the demand had already been withdrawn. The Ministry of Finance have informed the Committee that the demand was withdrawn under the orders of the Collector after the Internal Audit Department and the Appraising Department had taken contradictory views on the leviability of duty. It is obvious that the checks in vogue in the department for closure of the objections raised by the Internal Audit Department are inadequate. The Committee would suggest that if a difference of opinion arises between the Appraising Department and the Internal Audit Department regarding rate of customs duty leviable on a commodity, in order to safeguard revenue, demand should be raised at the higher rate pending final decision of performance of Internal Audit itself or of the effectiveness of Internal Audit Department.

3.25. "In para 3.22 the Committee have recommended that the Collectors of Customs should make proper use of and also improve the efficiency of the Internal Audit Department. The Committee are also of the view that the present departmental arrangement for evaluating the working of the Internal Audit Department through the monthly Audit Bulletin published by all major Customs Houses and circulated to other is not adequate as no monitoring is done by the Central Board of Excise and Customs, either of the efficiency

of performance of Internal Audit itself or of the effectiveness of the follow up action. Internal Audit is a very important tool of internal control through which the Board can not only keep an effective watch over the standard of performance of their field formations but also bring about substantial improvements through pointing out errors and omissions of common occurrence. For this purpose it is necessary that, apart from the local Collectors taking personal interest in this work, the Board should provide a central point of co-ordination and control. The Committee would suggest that the findings of the Internal Audit Departments through the Monthly Audit Bulletins should simultaneously be reported to the Director of Audit who should also collect data about the progress of internal audit in different collectorates, the numbers and nature of objections taken, the quality of follow-up action and the progress of clearance of objections both of internal audit as well as Customs Revenue Audit. The Director of Audit should prepare a quarterly Audit Bulletin giving an assessment of the working of internal audit and indicating typical errors and omissions having considerable revenue effect. This Bulletin should be circulated to the Collectors for their information and guidance and a copy thereof should be sent to Audit. The Quarterly Bulletin should also be considered by the Board. The Committee would further suggest that the performance of Internal Audit should invariably be a subject for the Collectors Conferences which the Board should arrange on the lines of the conferences of Commissioners of Income-tax."

NEW DELHI;
 April 20, 1981
 Chaitra 30, 1903 (S).

CHANDRAJIT YADAV,
 Chairman,
 Public Accounts Committee.

APPENDIX I

(Vide Para 1.66)

Exemption from Customs duty was initially allowed through the moisture content was in excess of 1.5% and where demand have been issued for recovery of short levy

S. No.	Name of the Customs House	B/E No. & date	Percentage of moisture content	Quantity	Value	Amount of short levy for which demand was issued	Position re- realisation
1	2	3	4	5	6	7	8
1.	Visakhapatnam	011/4-6-75 Ex. Sc. No. 5/ 20-6-75	8.3%	9,446.430MT	3,23,98,698	2,61,25,891.00	Pending realisation
2.	Do.	075/11-7-74 Ex. Sc. No. 3/ 16-4-74	2.5%	500.00MT	8,28,000	6,66,540.00	Do.
3.	Do.	074/11-4-74 Ex. Sc. No. 2/ 15-7-74	4.4%	5,12,111.00MT	8,19,966	6,60,072.00	Do.
4.	Do.	073/11-4-74 Ex. Sc. No. 1/ 12-7-74	2.9%	9,991.019MT	1,61,83,242	1,30,27,599.82	Do.
5.	Do.	076/11-4-74 Ex. Sc. No. 4/ 15-7-74	4.4%	7,000.00 MT	1,15,93,192	93,32,437.26	Do.

1	2	3	4	5	6	7	8
					Rs.	Rs.	
6.	Tuticorin	. 1/5-11-74	5.2%	13,589.715MT	2,92,20,137.21	2,35,22,210.45	Do.
7.	Do.	. 8/20-8-74	4.3%	954.708MT	15,25,886.27	12,28,338.41	Do.
<i>Cases wherein goods were assessed provisionally and demands for short levy was issued by the Custom House after receipt of the Chemical test report indicating moisture content in excess of 1.5%.</i>							
8.	Kakinada	. 4/11-8-78	Does not conform percentage not indicated	2,500MT	33,71,110.20	20,22,666.10	Pending realisation
9.	Do.	. 6/28-8-78	Do.	2,000MT	26,96,888.10	16,18,132.80	Do.
10.	Do.	. 3/24-8-79	2.6%	5,000MT	87,39,998.35	52,43,991.01	Do.
11.	Do.	. 4/14-9-79	2.6%	2,000MT	34,20,890.49	20,52,534.30	Do.
12.	Do.	. 6/20-9-79	2.6%	1,000MT	17,19,445.25	10,26,267.14	Do.
13.	Do.	. 9/29-9-79	2.6%	6,000MT	1,02,62,580.66	61,57,548.39	Do.
14.	Do.	. 4/14-11-79	2.6%	214MT	3,66,034.96	2,19,620.97	Do.
15.	Bhavnagar	. 28/1-11-73	1.9%	12,731MT	1,35,40,620.63	94,29,026.04	realised on 5-9-1979

APPENDIX II

(Vide Para 2-14)

Chronological history of the case

1. 16-8-1974 Date of seizure of goods.
2. 23-8-1974 Local druggist at Ratnagiri was contacted to testify the contents who could not identify for want of testing facility.
3. 3-9-1974 Letter from Chemical Examiner Bombay advising that samples be got tested from Drug Control Laboratory, Maharashtra.
4. 13-9-1974 Sample drawn by Inspector, Food and Drugs, Ratnagiri to be forwarded to Drug Control, Laboratory, Maharashtra, Bombay.
5. 10-10-1974 Sample sent by Inspector, Food and Drugs, Ratnagiri to Drug Control Laboratory, Maharashtra, Bombay.
6. 11-10-1974 Sample received by Drug Control Laboratory, Maharashtra, Bombay.
7. 26-12-1974 Goods certified as 'Tetracycline Hydrochloride' by Drug Control Laboratory, Maharashtra.
8. 13-1-1975 Show-cause Notice issued.
9. 21-1-1975 Goods deposited by Supdt. Malwan at the Central Godown Hqrs. Pune without giving their complete description.
10. 27-1-1975 Case records along with Test Report sent to the Headquarters of Collector.
11. 19-2-1975 Supdt. (Godown) Hqrs. wrote to Asstt. Collector (Customs) Ratnagiri enquiring whether analysis report has been received from Chemical Analyst Calcutta before depositing—if done copy may be sent, and if not, necessary action in the matter may be taken.
12. 26-2-1975 Supdt. Ratnagiri informed Supdt. (Godown) Hqrs. on test goods were found 'Tetracycline Hydrochloride' and was advised to get the report from Collector's Office (Adj. Branch).
13. 26-6-1975 Supdt. (Central Excise-Godown) Hqrs. wrote to Supdt. (Adj.) Hqrs. calling for an analysis report.
14. 9-9-1975 Asked for Test Report.
15. 15-9-1975 Supdt. (CX-Adj.) Hqrs. wrote to Supdt. (CSX-Godown) Hqrs. forwarding a copy of analysis report dated 26-12-1974.
16. 23-10-1975 Supdt. (CX-Godown) Hqrs. wrote to Supdt. (Adj.) Hqrs. pointing out that drug is of perishable nature, Collector's orders may be obtained for disposal before adjudication.

17. 30-10-1975 . . . Supdt. (Adj.) Hqrs. wrote to Supdt. (Godown) that case is likely to be adjudicated shortly and wait adjudication orders.
18. 19-11-1975 . . . Case adjudicated: goods absolutely confiscated.
19. 13-1-1976 . . . Sanction for prosecution given by Collector, Pune.
20. 17-1-1976 . . . Prosecution filed in the court of Judicial Magistrate, Dapoli.
21. 10-5-1976 . . . Court confiscated the goods, notwithstanding its confiscation by Collector Pune on 19-11-75.
22. 24-5-1976 . . . Department filed appeal to the Sessions Court against the order of Judicial Magistrate, Dapoli.
23. 20-9-1976 . . . Sessions Court Ratnagiri vacated the order of the Judicial Magistrate dated 10-5-1976 and asked the Department to approach the lower court for permission to dispose of the goods.
24. 6-12-1976 . . . Fresh application filed before Judicial Magistrate, Dapoli for permission for disposal of the goods.
25. 26-12-1976 . . . Application turned down on technical ground.
26. 16-4-1977 . . . Fresh application filed before Judicial Magistrate, Dapoli for permission for disposing of the goods.
27. 22-4-1977 . . . Court allowed disposal of the goods.
28. 13-5-1977 . . . Collector permitted disposal of the goods.
29. 9-6-1977 . . . A.C. (Prev.) Hqrs. wrote to Asstt. Drug Controller, Bombay forwarding sample for test as the power was in storage for a long time, before the same could be auctioned.
- Asstt. Drug Controller made endorsement on A.C. (Prev.)'s latter that:
- (1) Primary period is 3 years—expiry may be in July, 1977.
 - (2) Consult the Govt. Analyst, Drug Control Laboratory, Maharashtra State.
 - (3) Powder is completely discoloured and formed in lumps, entire goods may be destroyed.
30. 16-6-1977 . . . A.C. (Prev.) wrote to Govt. Analyst Maharashtra State, Bombay forwarding sample and asked for opinion on samples.
31. 21-6-1977 . . . Drug Control Laboratory, Maharashtra State, Bombay Advised A.C. (Prev.) to contact C.D.L., Calcutta.
32. 8-7-1977 . . . Reference from A.C. (Prev.) to Director, C.D.L., Calcutta for testing the sample and advice whether antibiotics should be sold by public auction or to Govt. Undertaking etc.
33. 14-7-1977 . . . Reply of Director C.D.L., Calcutta to A.C. (Prev.) Samples could be accepted if these are sent under the provision of the Act and Rules through A.D.L., Bombay or Dy. Drugs Controller (India).

34. 16-8-1977 . . . Asstt. Collector (Prev.) wrote to ADL, Bombay for forwarding samples and advice about the disposal of the goods. (Inspector took the file and sample to Bombay to contact ADL).
35. 17-8-1977 . . . A.D.L. wrote to A.C. (Prev.) that no useful purpose will be served by testing samples except to keep it in their file for legal purposes—packets are discoloured—also advised to consult the Chemical Examiner of Customs House.
36. 19-8-1977 . . . A.C. (Prev.) wrote to Dy. Chief Chemist—Custom House, Bombay for test and opinion whether consignment could be disposed of in auction or should be destroyed as unfit for human consumption.
37. 20-8-1977 . . . A.C. (Prev.) wrote to Director, C.D.L. Calcutta asking for no objection if samples are tested by private laboratory.
38. 24-8-1977 . . . Reference from Dy. Chief Chemist, Custom House to A.C. (Prev.) advising that powder has deteriorated and advised to consult Hindustan Antibiotic, Pimpri for opinion.
39. 29-8-1977 . . . Dy. Chief Chemist CX Laboratory, Bombay wrote to A.C. (Prev.) that Laboratory does not have the facility of testing the samples, in question.
40. 17-9-1977 . . . Reference from C.D.L., Calcutta to A.C. (Prev.) advising to refer the matter to Drugs Controller (India) New Delhi for opinion.
41. 7-11-1977 . . . A.C. (Prev.) wrote to Drug Controller (India) Delhi giving full history of the case—sending copies of the correspondence with different agencies and asked for advice.
42. 7-1-1978 . . . Reply from Drug Controller (India) Delhi that Chemical is antibiotic—since the goods were seized in 1974—crossed expiry date—not advisable to sell in auction.
43. 30-5-1978 . . . Supdt. (Godown) wrote to Joint Commissioner, Foods and Drugs Pimpri asking whether it is possible to find out the date of manufacture of the drug.
44. 1-6-1978 . . . Reference from Joint Commissioner, Foods and Drugs—not possible to find the date.
45. 7-7-1978 . . . Collector passed orders that the goods may be destroyed.
46. 22-8-1978 . . . Seized goods were destroyed by dumping into the sea.

APPENDIX III

(Vide Para 2.18)

F. No. 545/38/79-LC. I

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

New Delhi, the 27th December, 1979

To

All Collectors of Customs and Central Excise.

SUBJECT:—Disposal—Disposal of Drugs/Chemicals—Regarding.

Sir,

In one of the draft audit paras, the Audit pointed out delay in disposal of certain chemical/drugs, having limited life span, which resulted in the destruction of the goods thus leading to loss to the Government. A careful examination of the case revealed that the said drug/chemical was sent to the Assistant Drug Controller, Bombay by one of the Central Excise Collectorate for ascertaining the identity of the goods only. By the time, looking at the nature of the goods a reference to the Drug Control authorities to ascertain the life expectancy of the drug/chemical was made, the prescribed life period of the chemical, from the date of seizure, had expired. The chemical was, therefore, destroyed subsequently. This was due to the non-availability of the description of the commodity as well as the date of manufacture of the said drug/chemical on the packages. With a view to avoid such situation, I am directed to request you that utmost care and precaution and expedition should be exercised in all cases of seizure of chemical/drug where neither the description and/or the date of manufacture is available, to ascertain from Drug Control Authorities not only the identity, purity and potency of the drug/chemical at the time

of seizure but also the life expectancy of the seized drug/chemical.

The receipt of the letter may please be acknowledged.

Yours faithfully,

Sd/-

(N. Krishnamurthy)

Under Secretary to the Govt. of India

Copy forwarded for information to:—

1. Directorate of Inspection (Customs & Central Excise), New Delhi.
2. Directorate of Revenue Intelligence, New Delhi.
3. Directorate of Preventive Operations, Lok Nayak Building, Khan Market, New Delhi.

Sd/-

(N. Krishnamurthy)

Under Secretary to the Govt. of India

APPENDIX IV

Conclusions and Recommendations

Sl. Para No.	Ministry/Deptt. concerned.	Conclusions/Recommendations
1 2	3	4
1 1.76	Ministry of Finance (Deptt. of Revenue)	<p>The Committee find that under section 25(1) of the Customs Act, 1962, the Government issued a notification in August, 1973 whereby di-ammonium phosphate imported for use as manure of for the manufacture of complex fertilisers was exempted from payment of basic customs duty provided the imported goods conformed to the specifications prescribed in the notification. One of the specifications prescribed in the notification required that the moisture content in the imported di-ammonium phosphate should not exceed 1.5 per cent by weight.</p>
2 1.77	Do.	<p>In Visakhapatnam Custom House, a consignment of 10,000 metric tonnes of di-ammonium phosphate having a moisture content of 8 per cent by weight but conforming to other specifications mentioned in the aforesaid notification was imported by the Ministry of Food and Agriculture in the year 1974 and was cleared free of the whole of Customs duty resulting in short collection of about Rs. 1.26 crores. The concessional assessment was resorted to on the basis of the opinion given by the Chemical Examiner of the</p>

Madras Custom House on 19-8-74 in the case of an earlier import. In that case the moisture content was only 1 per cent in excess of the stipulated maximum limit of 1.5 per cent and the Chemical Examiner had recommended for the condonation of the excess percentage. The chemical test report on the sample of the goods under reference revealed a moisture content of 8 per cent.

3 1.78

Do.

It would, therefore, appear that while granting the exemption from customs duty the correct facts and the legal position had not been properly appreciated. The logic of comparing the excess with that of 6.5 per cent in the present case over the prescribed maximum moisture content of 1.5 per cent of 1 per cent in an earlier case is not comprehensible to the Committee. It is also unfortunate that no note was taken of the fact that the Chemical Examiner had specifically recommended for the condonation of excess percentage in the earlier cases whereas no such recommendation was made in the present case. Since the notification was specific about the moisture content and was to be read and applied as such, the exemption was apparently not admissible in this case.

4 1.79

Do.

The Committee were informed that besides this case there are 15 other cases of imports of di-ammonium Phosphate containing moisture in excess of the prescribed limit of 1.5 per cent by weight during the years 1973—1979, to which the exemption notification was applied. Of these, in 7 cases exemption was allowed on the basis of the advice of the Chemical Examiner in similar other

cases and in the remaining 8 cases assessments were made on provisional basis subject to final assessment on receipt of the report of the Chemical Examiner. The total quantity and amount of duty involved in these cases is of the order of 73,439 M.T. and Rs. 10.23 crores respectively. Out of this an amount of only Rs. 94.29 lakhs pertaining to one case has been realised so far. The amount in balance is still to the tune of more than Rs. 9 crores. Although instructions have been issued by the Board that assessments made provisionally should be finalised expeditiously, the Committee are concerned to note that 7 assessments made provisionally during August 1978—November 1979 have not yet been finalised. The Committee desire that these cases as also the remaining 7 cases pertaining to the years 1974 and 1975 where total exemption from customs duty was allowed, should be finally settled without delay.

74

4 1.80

Ministry of Finance
(Deptt. of Revenue)

On an earlier recommendation of the Committee the Ministry of Finance had given an assurance that instructions had been issued to the Collectors of Customs to the effect that provisional assessments should be finalised in all cases within a period of one year from the date of import. This assurance was given in August 1976. The Committee are constrained to observe that the assurance given by the Ministry of Finance and the instructions issued by them do not seem to have had any effect and the finalisation of provisional assessments continues to be delayed for years together. The

Committee would suggest that the Central Board of Excise and Customs must take stock of the situation, find out all cases in which their instructions have not been complied with, ascertain the reasons for delay and then devise effective measures to monitor compliance with the instructions issued by them to the Collectors of Customs.

6 1.81

Do.

The Committee were told by the Member (Customs) during evidence that "the Internal Audit brought to the notice of the Customs House that this consignment should have been charged to duty." The Member (Customs) had added that the Internal Audit had brought it to notice on 17th October 1978 and the Customs Revenue Audit had pointed it out on 17th January 1979; the demand for Rs. 1,24,86,504 was issued on the basis of the Revenue Audit objection on 22-2-1980. The Committee, however, understand that in the reply sent to Audit in January 1980 the Ministry of Finance had stated, "the Internal Audit Department of the Customs House had raised the same point in October 1978 in a similar consignment." The Committee would like the Ministry of Finance to reconcile the discrepancy in the two statements and enquire specifically whether the Internal Audit Department of the Customs House actually checked this particular case and if so, when and what exactly was the point raised by them. The Committee would like to be informed of the reasons for this failure/delay on the part of Internal Audit and the action taken by the Ministry to ensure that such failures and delays do not recur.

7. 1.82

(i) Ministry of Agriculture
(ii) Ministry of Finance
(Deptt. of Revenue)

The Ministry of Agriculture had informed the Committee that the imported di-ammonium phosphate referred to in the Audit paragraph contained a moisture content of 0.8 per cent at the time of loading. Its moisture content was however found to be 8 per cent on test of its sample by the Customs Chemical Examiner. The Ministry of Agriculture have contested the result of this test by saying that the method prescribed by the Customs was too simple and was not calculated to cover large quantities of the kind envisaged in this particular product. On the other hand, the Customs Department have stated before the Committee that the sample was not drawn from the periphery or from one particular corner of the hold but from the centre of the hold according to the procedure for sampling laid down in Central Appraising Manual. They have further stated that the authorised representative of the Food Corporation of India who was present at the time had made an endorsement on the bill of entry to the effect that "the samples have been drawn in duplicate and sealed in our presence and they are representative samples of the entire consignment." This finding the Customs authorities say, has never been challenged by the Ministry of Agriculture earlier. To this, the representative of the Ministry of Agriculture stated in evidence: "I accept that the Food Corporation official who was there when the sample was taken might have been ignorant, since this system of sample drawing was not there earlier." It is only from April

1980 onwards that a beginning has been made by the Ministry of Agriculture to inspect some fertiliser shipments at Indian ports.

8. 1.83

Do.

The Committee thus find that the views of the Customs authorities and of the Ministry of Agriculture as regards the method for drawal of sample for testing and the test report of the Chemical Examiners have not been reconciled. When the evidence of officials was being taken by the Committee, the representatives of the Central Board of Excise and Customs, the Ministry of Agriculture and the Indian Council of Agricultural Research were contesting each other's claims regarding the extent of moisture in the DAP and its effect on the quality of the fertiliser for use as manure. The representative of the Ministry of Agriculture stated in evidence that "we have strong reasons to feel that there is some mistake somewhere. It (moisture content) cannot be 8 per cent". The Committee do not appreciate why opinion on such technical matters could not be sorted out among the officers and experts of the Government before they appeared before the Committee to tender evidence. As the demand for payment of customs duty amounting to Rs. 1.26 crores on the above import of DAP is pending realisation from the Ministry of Agriculture, the Committee desire that the matter should be sorted out with the Ministry of Finance and settled early.

Ministry of Agriculture

9. 1.84

The Committee find that the condition of the maximum moisture content of 1.5 per cent by weight was deleted when a fresh notification granting exemption from customs duty on the import

of DAP was issued on 19 July, 1980. With this changed position even though the imported material is not to be tested by Customs Department for purposes of exemption from duty, suitable satisfactory arrangements have to be evolved by the Ministry of Agriculture to ensure that the imported DAP conforms to all the technical specifications and the interests of the farmer who is the ultimate consumer are not affected adversely. The Committee would therefore like to know the details of the measures taken in this direction and whether the same are fool proof against supply of damaged or deteriorated material. In this connection it is important to observe that the deletion of the condition about moisture content from the Exemption Notification for purposes of customs duty does not affect the position under the Fertilizer Control Order according to which DAP containing excess moisture would still be non-standard.

10 1.85 Ministry of Agriculture

The Committee were informed that with effect from 1975, the entire work of purchases has been transferred to MMTC who have appointed Inspection Agencies for checking the quality of fertilizers at factory site/loading port, and that in countries where suitable inspection agents are not available, inspection is arranged at the time of arrival of fertilizers at the Indian ports. The Committee were also informed that the supplier's responsibility ceases the moment the material passes the bar of the ship. This being the case the Committee cannot help but observe that the inspection of the fertilizer on

arrival at the Indian port can at best serve only an academic purpose. Any meaningful inspection to protect the country's interests should be at the port of loading. If the present case is any indication the arrangements for such inspection are not altogether satisfactory. Considering the stakes involved the Committee cannot share the Ministry's complacency in this matter based on the so called "world reputation" of the inspection agents. The Committee would strongly recommend that in the context of the continuing large-scale imports, the Ministry should make effective arrangements, even if it involves the deputation of our own technical people at the exporting end to ensure the efficiency as well as the integrity of the inspection at the loading end.

Do.

11 1.86

The Committee were informed that in the case referred to in the audit paragraph, 10,000 tonnes of di-ammonium phosphate were imported. The Chemical Examiner's report indicated the moisture content as 8 per cent by weight as against the permissible limit of 1.5 per cent by weight. Considering that the correctness of the sample had been duly verified by the representative of the Ministry of Agriculture, the present explanation of that Ministry to the effect that the moisture content could not really be 8 per cent would seem to be merely an after-thought. If the Ministry's assertion that the moisture content at the time of loading was only 0.8 per cent is accepted the excess moisture of 7.2 per cent should have clearly resulted in an extra weight of 720 tonnes of DAP at the port of unloading in India. Although the Ministry have stated that no concession in price was given to the farmers, the ultimate consumers of

this non-standard fertilizer, they have failed to give any account of this extra 720 tonnes of DAP valuing atleast Rs. 7.20 lakhs. In fact there should be similar extra weight in the other cases 73,439 metric tonnes of DAP carrying excess moisture also. The Committee would strongly recommend that the Ministries of Finance and Agriculture should investigate this matter thoroughly and report the correct position to the Committee.

12 1.87

Ministry of Agriculture

From the information made available to the Committee, it is seen that the State Governments have a network of Inspectors who made random checks of warehouses of manufacturers, handling agencies of fertilisers, cooperatives etc., and take samples for testing. In cases where the fertilisers, imported or indigenous, do not conform to prescribed specifications, action is taken against the persons concerned. During the years 1978 and 1979 the number of cases so detected was 302 and 214, the number of cases where prosecutions were launched was 123 and 155 and where convictions were awarded was 30 and 42 respectively. The Committee apprehend that the number of such cases will be very large if a thorough check of the material is carried out. The Committee would therefore like the Central Government to make appropriate arrangements through the State Governments so as to ensure that fertilisers of sub-standard quality do not get distributed to the farmers.

The Committee find that the indigenous production of phosphate fertilisers is not keeping pace with the consumption in the country and the import is increasing over the years to meet the entire demand. While the quantity imported in the year 1977-78 was 1,64,000 tonnes, it increased to 2,43,000 and 2,37,000 tonnes in the years 1978-79 and 1979-80 respectively. The demand for such fertilisers is estimated around 23 lakhs by 1984-85. As the production from the existing operating units and the projects under implementation is not likely to be adequate to meet the growing demand for such fertilisers, the Department of Chemicals and Fertilisers is planning to take up more new phosphate fertiliser projects/expansion schemes for implementation in a phased manner during the Sixth Five Year Plan. The Committee feel that Government should have taken adequate steps well in time to narrow down the gap between the demand and indigenous availability of such fertilisers. They would like that the proposed expansion schemes are implemented according to schedule which would help in conserving foreign exchange so vitally needed by the country.

The Government have issued instructions to the Custom Houses from time to time relating to disposal of perishable goods. These instructions clearly provide that perishable goods should be disposed of even before adjudication wherever it is felt that such adjudication may take some time. This is to ensure that the perishable goods are not totally lost in value on account of continued storage and delay in disposal. These instructions provide *inter alia* that "in the case of

perishable goods it is not merely permissible but obligatory on the part of the Customs authorities to sell the goods before they deteriorate and keep the sale proceeds with them in order to protect the interest of the importers."

15 2.33

Ministry of Finance
(Deptt. of Revenue)

In the case under examination, the goods were seized in August, 1974 and were identified as tetracycline hydrochloride in December, 1974. Thereafter there was a delay of 4 months on the part of the Superintendent (Godown) in obtaining the test report and a further delay of 7 months in seeking the orders for disposal from the Collector. The Committee have been informed that the concerned officer has been warned for causing this delay.

16 2.34

Do.

The Committee are surprised to find that even though the Supdt. (Godown) had solicited orders of the Collector on 9 September, 1975 and 23 October, 1975 for disposal of goods on the ground that they were of a perishable nature, no orders for disposal were issued. Instead, the Supdt. (Godown), was informed that the case was likely to be adjudicated and the former should await adjudication orders. Subsequent events show that emphasis was laid on prosecution of the offenders and no orders were passed about disposal of goods, although the instructions issued by the Ministry of Finance, themselves provide that perishable goods can be disposed of even before adjudication. The Member (Anti-smuggling) conceded during evidence that "there has been some sort of lack of imple-

mentation in certain cases. This is one such case." As the time is the essence in the disposal of perishable goods, the Committee would like the Government to review the existing provisions and consider delegation of powers of disposal in such cases to the local Customs Units themselves upto appropriate financial limits.

17 2.35

Do.

Another disquieting feature of the present case is that there was further delay of over one year (June 1977 to June 1978) during which period the Customs authorities consulted the various testing laboratories to first determine the identity of the goods and then for ascertaining its life expectancy. The Committee are now informed that as a result of audit objection, Government has issued instructions on 27 December, 1979 that in cases where the description or the date of manufacture of a seized chemical drug is not available, utmost care, precaution and expedition should be exercised to ascertain from Drug Control authorities not only the identity, purity and potency of the drug chemical at the time of seizure but also the life expectancy of the seized drug chemical. The Committee expect that these instructions will be scrupulously followed.

18 2.36

Do.

The Committee find that pursuant to the recommendation contained in the PAC report (Paras 3.60 & 3.61 of 219th Report) (5th Lok Sabha) the Government have issued instructions to the effect that the valuation of seized goods should be realistic so that there is no undue disparity between the value of the goods as at the time of seizure and at the time of their final disposal. The pattern of valua-

tion at the time of seizure is based on the prevailing market price of the goods of like kind and quality. The fair price of the goods under disposal is determined after taking into consideration the saleable value of the goods in the market, i.e. the price which the goods can fetch when resold in the market by the purchaser, taking into consideration the condition in which they are at the time of sale. With a view to achieving uniformity in valuation, the Central Board of Excise and Customs have issued instructions that the prices of goods fixed at Bombay should be circulated to all the Collectors so as to serve as a guide in fixing the prices of seized goods and goods ripe for disposal. The Committee have been informed that the Directorate of Inspection and Audit Customs and Central Excise receives periodical reports from the Collectors showing the Bombay prices and the prices fixed by the other Collectors for purposes of comparison. The Committee would like to be informed about the specific action taken from time to time by the Directorate of Inspection, Customs and Central Excise and the Board on the reports received from the various Collectors to ensure uniformity in valuation of identical goods.

19 2.37 Ministry of Finance
(Deptt. of Revenue)

The Committee were told by the Ministry of Finance that Government have not made any study to see how the valuation at the time of seizure compares with the valuation at the time of disposal and with the actual sale proceeds. The Committee recommend that a procedure should be evolved whereby such a study could be made

at specified intervals to enable the Government to equip themselves with the requisite data essential to take such measures as are warranted to ensure correct appraisal of value of the goods both at the time of seizure and their disposal.

20 2.38

Do.

The Committee find from the information made available to them that the value of seized|confiscated goods in stock in various Custom Houses as on 30 June, 1980 was of the order of Rs. 76 crores. Out of this, goods valued at Rs. 11.51 crores were ripe for disposal on that date. During the course of visit of a Study Group of the Committee to some of the Custom Warehouses during October, 1980 it was noticed that there was heavy accumulation of confiscated goods. Some of the reasons for such accumulation were stated to be: (i) non-disposal due to process of investigation, adjudication appeal and revision and (ii) non-lifting of goods like liquor by ITDC and watches by H.M.T. and (iii) downward trend in the sale of consumer items and luxury goods for the use of bonafide consumers and personnel of the military and para-military forces respectively due to procedural and other difficulties. The Committee also noticed during on-the-spot visits that storage system in the Custom Houses was not very systematic and methodical and there were no proper indications about the names of the articles stored therein. At the retail sales counters of Custom Houses, wide disparity in the prices of confiscated goods of like kind and quality was observed. The Committee are of the view that the existing rules and procedures regarding receipts, storage and disposal of seized

and confiscated goods in stock results not only in deterioration in their quality but also casts heavy burden on the Government by way of avoidable expenditure on warehousing and accounting.

In pursuance of an earlier recommendation (Para 3.57 and 3.58 of their 219th Report—5th Lok Sabha) wherein the Committee had expressed their distress at the large value of goods awaiting disposal, the Government had stated that instructions had been issued to all Collectors of Customs and Excise to make serious efforts towards completion of adjudication proceedings and disposal of confiscated goods. The value of seized|confiscated goods amounting to Rs. 76 crores as on 30 June, 1980, however, indicates that the desired results have not been achieved in spite of the instructions issued in the matter. The Committee, therefore, recommend that the Government should issue suitable instructions to ensure that the disposal of confiscated goods is monitored on quarterly basis. They would also like the Government to evolve some system whereby these and other instructions for disposal of confiscated goods are subjected to review at specified intervals with a view to introduce such changes as are essential in the interest of expeditious disposal of confiscated goods.

Ministry of Finance
(Deptt. of Revenue)

In pursuance of an earlier recommendation made by the Committee in Para 3.59 of their 219th Report (5th Lok Sabha) to quicken the disposal of confiscated goods, the Government had informed

that the amendment of the Customs Act, 1962 had been drafted for taking powers for early disposal of confiscated goods. Subsequently, on reconsideration of the matter, the Government have informed that the amendment has not been incorporated in the Customs, Central Excise and Salt and Central Board of Revenue (Amendment) Bill in view of the fact that the proposed amendment to the law would result in deprivation of the goods to the owner. The Government have also intimated that they have taken some administrative measures like augmentation of the strength of the Central Board of Excise and Customs to expedite the disposal of appeals and revisions and are also considering the recommendations of the Jha Committee in regard to the setting up of classification tribunals. The Committee would like to know how far the measures adopted by the Government have helped in achieving the objective of expediting the disposal of the confiscated goods and also of the progress made towards the setting up of the tribunals in question.

The main function of the Internal Audit Department of a Custom House in the scheme of Customs administration is to ensure correct realisation and accounting of revenue. The working of the Department had engaged the attention of the Public Accounts Committee on various occasions. Time and again, the Committee have emphasised the need to improve the functioning of the Internal Audit Department with a view to ensuring proper realisation and accounting of revenue. They are, however, greatly concerned to note from the Audit Paragraph under examination that despite their persistent

exhortations, the Internal Audit Department of the Custom Houses continues to be inhibited by certain deficiencies in its functioning. Some of the glaring shortcomings observed by the Committee during the course of examination are dealt with in the succeeding paragraphs.

23 3.21 Ministry of Finance
(Deptt. of Revenue)

According to an instruction issued by Government on 14 February, 1975 the original bills of entry are required to be forwarded to the Customs Revenue Audit for audit purposes within a period of 120 days after completion of all other formalities including audit by Internal Audit Department. This was done in order to avoid the chances of any demand becoming time barred by the operation of Section 28 of the Customs Act which lays down a period of six months within which a notice may be issued for any non-levy, short-levy or erroneous refund of duty. According to Ministry of Finance, the Internal Audit Department is required to watch the timely receipt of documents through a Key Register maintained by it for this purpose. The Committee note, however, that a test check by the Customs Revenue Audit in a single Custom House revealed three cases in which the documents were not received in the Internal Audit Department within the prescribed period and the failure of the I.A.D. to raise objections within time resulted in considerable loss of revenue. The Ministry of Finance have not explained the reasons for this delay in the receipt of documents in the I.A.D. in any of these three cases, nor have they indicated how and why the control mechanism of the

Key Register maintained in the I.A.D. proved ineffective. The fact that a limited test check in a single Custom House revealed three cases of failure would seem to indicate that the default is fairly widespread. The Committee would, therefore, recommend that the Ministry of Finance should enquire into the reasons for delay in these cases and then devise effective measures to ensure that such delays do not take place and the documents are received in the I.A.D. at the earliest for them to complete their work and furnish the documents to the Customs. Revenue Audit within the stipulated period of 120 days.

Do.

24 3.22

In one of the said three cases the Ministry of Finance have merely stated that the records are not available to indicate the circumstances under which the bill of entry was delayed. In the other two cases they have acknowledged that either appropriate objections were not raised by the I.A.D. even belatedly or adequate follow-up action was not taken to raise the less charge demand. In the first case they have stated that the failure on the part of Internal Audit "may be attributable to the error of judgement on the part of audit officer" and in the second case they have stated "had the less charge demand been issued by Air Cargo Unit immediately on receipt of the objection from I.A.D., revenue would have been safeguarded". The Committee are constrained to note that these cases are symptomatic of the defective functioning of Internal Audit mentioned at the outset. The Committee would suggest that all Collectors of Customs should be made to realise that internal audit is an important tool of management control with them and to make

a proper use of this tool they must take personal interest in improving the efficiency of Internal Audit and in ensuring adequate and timely follow-up action.

25 3-23 Ministry of Finance
(Deptt. of Revenue)

Another disquieting drawback in the functioning of Internal Audit Department noticed by the Committee during the course of examination is that in certain cases objections were raised by the Internal Audit Department well within the time limit and demands were issued wherever necessary but the Internal Audit Department had subsequently dropped the objections incorrectly. The Committee note that in a case in Custom House, Bombay, the Internal Audit Department in June 1977 had pointed out that the description and classification of the goods was not clear in respect of an import made in July, 1976. After receiving the invoices in July, 1978, the Internal Audit Department pointed out a short-levy of duty amounting to Rs. 3.24 lakhs for which a demand issued was not honoured by the importer on the ground that it was time barred. The Department thereafter treated the objection as closed. The Revenue Audit pointed out that the closure of the objection was incorrect as the objection calling for clarification was raised well in time. The Department admitted the Revenue Audit objection and was able to recover the short levy.

Do.

The Committee note that in a similar case in Custom House, Madras, at the instance of the Internal Audit Department a demand

26 3-24

was raised in August, 1975 on an importer for a sum of Rs. 72,019 towards additional duty in respect of thermostats and motorised valves imported in February, 1975. However, on the ground that the goods would attract additional duty only if they are identifiable as parts of refrigerating and air-conditioning appliances as laid down by a notification of 1962, the objection was dropped and the demand withdrawn. On a suggestion by Revenue Audit, the issue was reconsidered and the department accepted the objection, but the importer refused to pay the duty voluntarily as the demand had already been withdrawn. The Ministry of Finance have informed the Committee that the demand was withdrawn under the orders of the Collector after the Internal Audit Department and the Appraising Department had taken contradictory views on the leviability of duty. It is obvious that the checks in vogue in the department for closure of the objections raised by the Internal Audit Department are inadequate. The Committee would suggest that if a difference of opinion arises between the Appraising Department and the Internal Audit Department regarding rate of customs duty leviable on a commodity, in order to safeguard revenue, demand should be raised at the higher rate pending final decision of the competent superior authority on the objection raised by Internal Audit Department.

27 3-55

De.

In para 3.22 the Committee have recommended that the Collectors of Customs should make proper use of and also improve the efficiency of the Internal Audit Department. The Committee are also of the view that the present departmental arrangement for evaluat-

ing the working of the Internal Audit Department through the monthly Audit Bulletin published by all major Custom Houses and circulated to other is not adequate as no monitoring is done by the Central Board of Excise and Customs, either of the efficiency of performance of Internal Audit itself or of the effectiveness of the follow up action. Internal Audit is a very important tool of internal control through which the Board can not only keep an effective watch over the standard of performance of their field formations but also bring about substantial improvements through pointing out errors and omissions of common occurrence. For this purpose it is necessary that, apart from the local Collectors taking personal interest in this work, the Board should provide a central point of coordination and control. The Committee would suggest that the findings of the Internal Audit Departments through the Monthly Audit Bulletins should simultaneously be reported to the Director of Audit who should also collect data about the progress of internal audit in different collectorates, the numbers and nature of objections taken, the quality of follow-up action and the progress of clearance of objections both of internal audit as well as Customs Revenue Audit. The Director of Audit should prepare a quarterly Audit Bulletin giving an assessment of the working of internal audit and indicating typical errors and omissions having considerable revenue effect. This Bulletin should be circulated to the Collectors for

their information and guidance and a copy thereof should be sent to Audit. The Quarterly Bulletin should also be considered by the Board. The Committee would further suggest that the performance of Internal Audit should invariably be a subject for the Collectors Conferences which the Board should arrange on the lines of the Conferences of Commissioners of Income-Tax.
