

5

LOK SABHA

**SELECT COMMITTEE  
ON THE  
CUSTOMS BILL, 1962**

**EVIDENCE**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*November, 1962/Kartika, 1884 (Saka)*

*Price : Rs. 2.10 nP.*

## WITNESSES EXAMINED

Sl. No.	Names of Associations and their spokesmen	Dates of hearing	Page
I	Bharat Chamber of Commerce, Calcutta	30-7-1962	2
	<i>Spokesmen :</i>		
	1. Shri L. R. Das Gupta		
	2. Shri D.P. Kajaria		
	3. Shri R.L. Maheshwari		
II	The Precious Stone Importers' and Exporters' Association, Bombay	30-7-1962	19
	<i>Spokesmen :</i>		
	1. Shri Jaiysukhlal D. Zaveri		
	2. Shri Kirtilal K. Doshi		
	3. Shri Pravin M. Nanavati		
	4. Shri J.R. Gagrati		
III	The Indian Merchants' Chamber, Bombay	31-7-1962	26
	<i>Spokesmen :</i>		
	1. Shri Pravinchandra V. Gandhi		
	2. Shri Ambalal Kilachand		
	3. Shri C. L. Gheewala		
	4. Shri D. S. Pendurkar		
IV	All India Jewellers' Association, New Delhi	31-7-1962	34
	<i>Spokesmen :</i>		
	1. Shri Bhola Nath		
	2. Shri Sultan Singh Backliwal		
	3. Shri Jawaharlal		
	4. Shri V. J. Merchant		
V	Indian Chamber of Commerce, Calcutta	31-7-1962	43
	<i>Spokesmen :</i>		
	1. Shri B. P. Khaitan		
	2. Shri H. R. Sugla		
	3. Shri B. Kalyanasundaram		

Sl. No.	Names of Associations and their spokesmen	Dates of hearing	Page
VI	Federation of Indian Chamber of Commerce and Industry, New Delhi . . . . .	1-8-1962	51
	<i>Spokesmen :</i>		
	1. Shri Bharat Ram		
	2. Shri Anbalil Kilachand		
	3. Shri J. N. Guzler		
	4. Shri P. Chentlal Rao		
	5. Shri G.B. Sundriyal		
VII	The Associated Chambers of Commerce of India, Calcutta . . . . .	1-8-1962	68
	<i>Spokesmen :</i>		
	1. Shri J. L. Puri		
	2. Mr. J. H. Forman		
	3. Mr. R. von Leyden		
VIII	The Bombay Custom House Clearing Agents' Association, Bombay . . . . .	1-8-1962	80
	<i>Spokesmen :</i>		
	1. Shri K. D. Pathak		
	2. Shri M. T. Baidivdekar		
IX	The All India Manufacturers' Organization, Bombay . . . . .	2-8-1962	88
	<i>Spokesmen :</i>		
	1. Shri Prabhu V. Mehta		
	2. Shri Hans Raj Gupta		
	3. Shri D. M. Desai		
X	The Bombay Bullion Association Limited, Bombay . . . . .	2-8-1962	98
	<i>Spokesmen :</i>		
	1. Shri Chandulal Kasturchand		
	2. Shri Mangulal Trikamlal		
	3. Shri Amratlal Sonawala		
	4. Shri Chimanlal C. Shah		
	5. Shri P. Gopalakrishniah		
	6. Shri Jayendra Mehta		
XI	The Madras Jewellers' and Diamond Merchants' Association, Madras . . . . .	2-8-1962	108
	<i>Spokesmen :</i>		
	1. Shri V. Pandurangiah		
	2. Shri Harendra Mehta		
	3. Shri P. Gopalakrishniah		
	4. Shri Kanayalal Mehta		

Sl. No.	Names of Associations and their spokesmen	Dates of hearing	Page
XII	The Bombay Diamond Merchants' Association, Bombay.	11-8-1962	123
	<i>Spokesmen :</i>		
	1. Shri Chandrakant B. Jhaveri		
	2. Shri Ramniklal B. Jhaveri		
	3. Shri Mehendra G. Mehta		
XIII	Andhra Pradesh Gold, Silver, Jewellery and Diamonds Merchants' Association, Rajahmundry	11-8-1962	123
	<i>Spokesmen :</i>		
	1. Shri Sampat Kumar Bang		
	2. Shri Kovilmandi Venkataswarao		
	3. Shri V. L.N. Venkataramayya		
	4. Shri Nimmala Sambasiva Rao		
XIV	Trichy Shroff and Jewellers Association, Tiruchirapalli	11-8-1962	137
	<i>Spokesmen :</i>		
	1. Shri Rajamannar		
	2. Shri R. Mahava Rao		
	3. Shri P. Ramaswami		
	4. Shri M. Veeramani Naidu		
	5. Shri K. P. Lakshminarayana Padayachi		
XV	The Indian National Steamship Owners' Association, Bombay	11-8-1962	140
	<i>Spokesman :</i>		
	Shri K. K. Kothawala		
XVI	Bengal National Chamber of Commerce and Industry, Calcutta	1-9-1962	151
	<i>Spokesmen :</i>		
	1. Shri D. N. Mukerjee		
	2. Shri A. N. Dasg		
	3. Shri B. C. Sen		
	4. Shri A. R. Datta Gupta		
XVII	Shri D. N. Mukerjee, Retired Collector of Central Excise and Customs and Advocate, Calcutta High Court, Calcutta	1-9-1962	160
XVIII	The Bombay Genuine Pearl Dealers Association, Bombay	1-9-1962	164
	<i>Spokesman :</i>		
	Shri Jawahar M. Jhaveri		

S. No.	Names of Associations and their spokesmen	Dates of hearing	Page
XIX	The Pearls Importers and Exporters Association, Bombay <i>Spokesman :</i> Shri Pravin M. Nanavati	1-9-1962	164
XX	The Leading Bullion Merchants, Dealers and Commission Agents of Bombay <i>Spokesmen :</i> 1. Shri Vallimhammed Gulamhusain 2. Shri Amichand Valamji 3. Shri Kantilal Chunilal 4. Shri Dolatram Bherumal 5. Shri P. Gopalakrishniah 6. Shri Kapurchand Chimanlal 7. Shri J.R. Gagrati	1-9-1962	170

SELECT COMMITTEE ON THE CUSTOMS BILL, 1962

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL,  
1962

Monday, the 30th July, 1962, at 14.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—Chairman.

MEMBERS

- |                                    |                                     |
|------------------------------------|-------------------------------------|
| 2. Shri Ramchandra Vithal Bade.    | 15. Shri R. R. Morarka.             |
| 3. Shri G. Basu.                   | 16. Shri Shankarrao Shantaram More. |
| 4. Shri Tridib Kumar Chaudhuri.    | 17. Shrimati Savitri Nigam.         |
| 5. Shri R. Ramanathan Chettiar.    | 18. Shri Ghanshyamlal Oza.          |
| 6. Shri N. T. Das.                 | 19. Shri Prabhat Kar.               |
| 7. Shri Morarji Desai.             | 20. Shri A. V. Raghavan.            |
| 8. Shri B. D. Deshmukh.            | 21. Shri Shivram Rango Rane.        |
| 9. Shri J. N. Hazarika.            | 22. Shri R. V. Reddiar.             |
| 10. Shri Prabhu Dayal Himatsingka. | 23. Shri M. Shankaraiya.            |
| 11. Shri Hari Vishnu Kamath.       | 24. Dr. L. M. Singhvi.              |
| 12. Shri Narendrasingh Mahida.     | 25. Shri Sumat Prasad.              |
| 13. Shri Bakar Ali Mirza.          |                                     |
| 14. Shri Mahesh Dutta Misra.       |                                     |

DRAFTSMEN

1. Shri G. R. Bal, Joint Secretary and Draftsman, Ministry of Law.
2. Shri C. J. Venkatachari, Deputy Draftsman, Ministry of Law.

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, Secretary, Department of Revenue, Ministry of Finance.
2. Shri D. P. Anand, Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.
3. Shri M. G. Abrol, Officer on Special Duty, Ministry of Finance.

SECRETARIAT

Shri A. L. Rai—Deputy Secretary.

WITNESSES EXAMINED

I. BHARAT CHAMBER OF COMMERCE, CALCUTTA

- |                          |                           |
|--------------------------|---------------------------|
| 1. Shri L. R. Das Gupta. | 3. Shri R. L. Maheshwari. |
| 2. Shri D. P. Kajaria.   |                           |

II. THE PRECIOUS STONE IMPORTERS' AND EXPORTERS' ASSOCIATION, BOMBAY

- |                                |                             |
|--------------------------------|-----------------------------|
| 1. Shri Jaiysukhlal D. Zaveri. | 3. Shri Pravin M. Nanavati. |
| 2. Shri Kirtilal K. Doshi.     | 4. Shri J. R. Gagrati.      |

**I. BHARAT CHAMBER OF COMMERCE,  
CALCUTTA**

**Spokesmen**

1. Shri L. R. Das Gupta.
2. Shri D. P. Kajaria.
3. Shri R. L. Maheshwari.

*(Witnesses were called in and they took their seats).*

**Chairman:** Your evidence is to be published. Your memorandum has been distributed to the members and they have all read it. If you have anything more to add, you may do so now.

**Shri Das Gupta:** We can just try to invite your kind attention to some of the more important points in the note that we have already submitted. Shall we go clause by clause and take up the more important clauses from the memorandum that we have submitted where we have expressed our views?

**Shri Morarji Desai:** But please do not repeat many things that you have stated there.

**Shri Das Gupta:** Now, take page 5 of our memorandum. Among the definitions, we have something to say about "market price" and "smuggling". Regarding "market price", we want that the word "cash" should be added. We want that it should be "cash wholesale price" and not only "wholesale price".

**Shri Morarji Desai:** What is the meaning of "cash wholesale price"?

**Shri Das Gupta:** Many people sell with varying credit periods. Instead of showing it separately, they include it within the wholesale price.

**Shri Morarji Desai:** That cannot be helped. It is a well-known term and I do not think it requires any change.

**Shri Das Gupta:** If you see the previous Act you will find that the word "cash" is used there. For computing the wholesale price index the

Ministry of Economic Affairs collect data on the basis of cash wholesale prices. Otherwise, Sir, there is always difference in the same market in the wholesale prices according to the credit period that is given.

**Shri Morarji Desai:** Even in cash prices there will be difference.

**Shri Das Gupta:** There is a ruling cash price on any one day, but not in the wholesale price which includes always the credit period that is allowed. That is one submission for your consideration.

Secondly, the "market price" may be the "market price" in India. We want that it should be the "market price at the place of clearance" because the market price will be varying at any one time in Bombay and in Calcutta.

**Shri Ramanathan Chettiar:** The market price varies from port to port. I do not know what our friend wants.

**Shri Morarji Desai:** He wants that it should be the "market price at the place of clearance". Supposing the clearance is at Madras, he wants that it should be the Madras market price and not the Calcutta market price.

It is possible that for some articles there is no market price at that port. In such cases the market price elsewhere has to be taken. You should leave it to commonsense. If there is injustice, appeal is always there. Everything cannot be fixed by provisions in the law so that there is no scope for any doubt whatsoever. From your side you can always find loopholes. I do not want to give you more loopholes.

**Shri Das Gupta:** I have nothing to add then.

About "smuggling" we feel that the definition itself has been made co-extensive with "confiscation" mentioned in clause 111. Clause 111 provides

many reasons for confiscation including breach of any condition on any import licence. There are many clauses given in clause 111 under which goods may be confiscated. In the definition of the word "smuggling" it has been said that any commodity which is liable to be confiscated under clause 111 is a smuggled commodity. If that be the case, on any import licence if there is any excess in valuation it will be treated as smuggled commodity and the provisions suggested in respect of a smuggled commodity may be attracted.

**Shri Morarji Desai:** Any additional goods that come in are smuggled goods. It does not require any argument.

**Shri Das Gupta:** If you examine clause 111, you will find that there are many grounds on which goods can be confiscated. In sub-clause (o) for example it is said that if certain licences have been issued under any other law under certain conditions and if the party has committed any breach of those conditions, then the provisions contained here will be attracted.

**Shri Morarji Desai:** It means the same thing. When the condition is not observed, it means that the goods have been smuggled.

**Shri Das Gupta:** The condition may be that the raw material imported should be used in a particular manner.

**Shri Morarji Desai:** If it is used in any other manner, it will become smuggled goods for that purpose. Otherwise, how else are you to treat it?

**Shri Das Gupta:** We want to make a distinction between unauthorised imports and smuggled goods. Our idea of 'smuggled goods' is that 'smuggled goods' are those that do not pass through customs.

**Shri Morarji Desai:** No, no. Anything which comes before the customs but which is not authorised is also smuggled goods. People smuggle in various ways. Goods which are brought before the customs under different descriptions also become smuggled

goods when they are found out. Otherwise, it will be very easy for people to smuggle.

**Shri Das Gupta:** Now, under the provisions of this Bill, such goods also become confiscated.

**Shri Morarji Desai:** I think they should be. The law must be so stringent that it becomes unprofitable for people to indulge in smuggling.

**Shri Das Gupta:** It should be very stringent. But we feel that it will make it impossible for the third party to clear manufactured goods.

**Shri Morarji Desai:** That is a very far-fetched argument.

**Shri Das Gupta:** Then those goods which are confiscated are auctioned by customs authorities.

**Shri Morarji Desai:** When we are auctioning such goods, there will be a label put on them. So, under that pretext, nobody would be able to sell them.

**Shri Dehejia:** Then they cease to be smuggled goods and their character will change. Suppose one brought them without licence and subsequently obtained a licence. Then they will cease to be smuggled goods.

**Shri Das Gupta:** We agree that there is a process by which originally unauthorised or smuggled goods can become authorised goods under certain process of law. If the definition of "smuggled goods" remains, the goods which are confiscated under section 111 . . .

**Shri Morarji Desai:** They are not confiscated. Once they are sold after confiscation, they are not smuggled.

**Shri Das Gupta:** Will it follow from the definition?

**Shri Morarji Desai:** Yes, it will follow. A certificate will be given to them. .

**Shri Morarka:** Is it not a fact that the definition that they are suggesting is much wider than the definition



contained in the Bill? According to them, any goods which do not pass through the customs should be treated as smuggled goods. In that case, over and above those qualifications which are mentioned in clauses 111 and 113, those goods which do not pass through the customs barrier should also be treated as smuggled goods.

**Shri Morarji Desai:** How does that save that contingency? After confiscation and sale they will become the same thing. So, their alternative does not save the other category. When they do not pass through the customs, they are confiscated. Is it not? After that, they will be sold by auction. Then what happens? So, theirs also is not a better suggestion.

**Shri Das Gupta:** There may be a genuine case of difficulty in enforcement.

**Shri Morarji Desai:** In the name of a genuine case, I cannot allow contraband to get in.

#### *Clause 13*

**Shri Das Gupta:** Coming to clause 13, page 9 of our memorandum, we feel that there should not be a duty liability on pilfered goods.

**Shri Morarji Desai:** You have been paying it so far?

**Shri Das Gupta:** This has been our complaint before the Badhwar Committee also that that portion of the goods which have been pilfered should not be taxed; that is to say, the tax liability for that portion of the goods should not remain on us. The duty should be realisable from the party in whose custody the goods were at the time of pilferage. If the pilferage has taken place at the Port Commissioners, the Port Commissioners should be held responsible for the duty. If the pilferage has taken place from a bonded warehouse, the bonded warehouse should be held responsible for the duty. Now the importer who has not got the goods is held liable to pay duty on goods not obtained whereas the authorities who were in custody

of the goods at the time of pilferage are not being touched. That is why we say that it can be realisable from the party in the first instance but it should be refundable on its realisation from that party in whose custody the goods were at the time of pilferage.

**Shri Morarji Desai:** The Port Trust have made it very clear that they are not responsible for it. Even if it is necessary, it is the Port Trust Act that has to be amended. I cannot amend this law for that sake.

**Shri Das Gupta:** The main difficulty arises because under the Port Trust Act the liability of the Port Commissioners ceases three days after the landing of any part of the consignment. Now our customs procedures and rules are such that in the majority of cases clearance and assessment take more than three days. Therefore, if any pilferage takes place in the meanwhile, the Port Commissioners always take the plea that their liability ceased three days after the date of landing. At the same time, we cannot get the documents and clear the goods within three days. It is impossible. Therefore, our contention is that the liability should be of the custodian at the time of the pilferage and not of the party who has already lost the goods.

**Shri Ramanathan Chettiar:** Now we are concerned only with the Sea Customs Act, whereas the implementation of the suggestion of our friends mean the amendment of the Port Trusts Act. So, I do not think we can deal with it just at present.

**Shri Morarji Desai:** You can get them insured. When they are pilfered, you have to pay the price to the party from whom you have purchased them. You also pay the freight. So, why not pay the duty also? Also, you can insure them against pilferage.

**Shri Das Gupta:** For insurance claims all sorts of hurdles are there. The insurance companies also take advantage of the position as existing

between the customs law and the port law. So, we feel that our suggestion is the only solution.

**Shri Hari Vishnu Kamath:** Clause 13 of the Bill is a new provision, according to the list supplied to us. And I think the suggestion made by the witness is a reasonable one.

**Shri Morarji Desai:** That will be considered when we consider the amendments.

**Shri Hari Vishnu Kamath:** You said that some other law will have to be amended.

**Shri Morarji Desai:** Let us consider it when we consider the various clauses for amendment.

**Chairman:** Yes, we will take it up later when we take the Bill clause by clause. What is the next point?

#### Clause 14

**Shri Das Gupta:** This relates to valuation. The most important point that we wanted to stress in our memorandum is the basis of valuation of goods in the Bill. About the basis of valuation we do not propose to take much of your time because this has been an issue with us for years not only here but at international levels also. Our experience has convinced us that any other formula except the invoice value evidenced by foreign exchange payment is bound to lead to difficulties. Our submission is that by changing the words to 'normal price' the main cause for our difficulty has remained, in that whenever any transaction is there and if there is any scope to refer to any extraneous factor for deduction of the value, the germ for difference of opinion and controversy remains. Therefore we have suggested 'value evidenced by foreign exchange payment'. Nowadays there are the foreign exchange control and other laws to regulate the foreign exchange part. So, the value should be the actual invoice value that is there in the particular transaction evidenced by the foreign exchange payment at the Port of importation.

Another addition that we have made is regarding forward contracts. Delivery price at the time of importation has been brought into the definition. If there are forward contracts entered, say, three or more months ago at a particular price between two independent merchants and the goods arrive now, the trouble arises if the current price is made the basis. So, we have suggested this definition here. In fact, we have suggested the inclusion of the definition in the definitions clause itself by referring specifically to the basis of quotation. The quotation basis may be either c.i.f. or c. & f. for imports and f.o.b. for exports. Therefore, we have suggested that in the definition c.i.f., c. & f. and f.o.b. should be brought in; otherwise, 'normal price' will remain a matter of judgment or information of the assessing officer. So, to our understanding, the present difficulty on the landed cost basis will continue even with the changed definition.

**Shri Morarji Desai:** All that you say does not take account of the fact that there is a lot of under-invoicing done by many people. How am I to get over it?

**Shri Das Gupta:** We would say that under-invoicing will be a matter of opinion.

**Shri Morarji Desai:** It is not a matter of opinion. I am positive about it. It is only my misfortune that I am not able to find out where it is done. I am therefore thinking of providing some monstrous punishment for this; otherwise, this will not be checked.

**Shri Das Gupta:** We would only suggest that if with all your resources you have not been able to find out the data . . .

**Shri Morarji Desai:** Government can find more resources. We become wiser every day, but you become cleverer.

**Shri Ramanathan Chettiar:** We would like to know what the remedy is to overcome this.

**Shri Das Gupta:** We have thought over this under-invoicing, over-invoicing and forward contracts. Our suggestion is that forward contracts can be registered at the time of entering into them and the contracted price should be accepted when the goods are imported or exported.

**Shri Morarji Desai:** Yes; that is what you should do. When you enter into forward contracts, register them with the customs and the customs should have the right to tell you at that time that it is a false contract and will not be valid.

**Shri Das Gupta:** We are agreeable to that.

**Shri Morarji Desai:** That is what we want you to do. That will save all these things. Then we will agree.

**Shri Das Gupta:** Forward contracts may be registered. But in the case of ready contracts, the valuation problem will remain.

**Shri Morarji Desai:** To ready contracts we will apply our own common-sense.

**Shri Das Gupta:** If you or the CBR Members apply, it is one thing; but there are a few hundred officers who are applying it and we are subject to hundred and one such officers. There is hardly any price collection. There is no guidance. There is no basis of published prices on which the citizen and the assessing officer can rely that that is the correct price. It is a matter of judgment of the particular officer and there are hundreds of officers. Some officer may be assessing the same goods in the same port on different values within three months; even on the same day on different values by different officers.

**Shri Morarji Desai:** Because values also differ on the same day.

**Shri Dehejia:** Can you quote any instance of different value on the same day?

**Shri Das Gupta:** You will remember that when the Italian art silk yarn was coming, their agents were allowing

different discounts to different parties and the Bombay Port started allowing a certain amount of discount and the Calcutta Port a different amount.

**Shri Morarji Desai:** At different ports it may be different. But you said that the same officer was doing it on the same day. I should like to have two instances of that.

**Shri Das Gupta:** If you permit us, from old records we can show that. These differences are bound to be there. Our submission is that none is less risky. Even now the collusion question can go on even between the officers and the staff. *Bona fide* sections of the trade at least do not know that they are all practising over-invoicing and under-invoicing. So, our submission is: Please do not cast reflection on the entire trade.

**Shri Morarji Desai:** I am not doing it.

**Shri Das Gupta:** Then, how will valuation be done?

**Shri Morarji Desai:** Those who are honest will not find any difficulty.

**Shri Das Gupta:** How will 'normal price' be fixed? What will be the basis for it?

**Shri Morarji Desai:** The basis will be the prices which are prevalent.

**Shri Das Gupta:** Where? In the market.

**Shri Morarji Desai:** Yes. Where else?

**Shri Das Gupta:** But the definition does not say 'market price'; it says 'normal price'.

**Shri Dehejia:** It will be normal price at that place. It is not the price in London or in New York that is relevant but the price at Bombay or Calcutta that is relevant.

**Shri Das Gupta:** Normal price will be the price prevailing at the despatching port.

**Shri Morarji Desai:** That will make under-invoicing absolutely legal and beyond any possibility of checking it. I can never accept that.

**Chairman:** The wording of the clause is:

"the normal price at which such or like goods are sold, or offered for sale, for delivery at the time and place of importation or exportation . . ."

**Shri Das Gupta:** Majority of our import licences are going to be actual users' licences for which there is no market price. There is no market for the actual users' licence goods and 95 per cent of many items of imports are against such licences. If there is any particular black market transaction and if that is taken as the market price . . .

**Shri Morarji Desai:** Black market price cannot be called 'normal price'.

**Shri Das Gupta:** But through the definition of normal price decision will be retained in the hands of the assessing officer.

**Shri Dehejia:** We are considering the law. The law here uses the word 'normal' which does not say black market price. When interpreting 'normal price' if somebody says black market price, it should be an argument "Do not take black market price".

**Shri Das Gupta:** What will be the basis?

**Shri Anand:** The basic concept is this. Goods of right kind and quality will have a certain price at which they can be delivered at the time and place of importation. This pre-supposes the independent relationship between the buyer into India and the seller abroad. One party is completely independent of the other. There are no strings attached to it. This is not the price at which the particular person may manage to get the goods, but the price at which goods of the right kind and quality can be obtained in the normal course of business. If there are sole agencies for

anything or if a certain firm has any subsidiary, then, it should come under clause 14 (1) (b) and not under 14 (1) (a). This will be regulated by clause 14 (1) (b).

**Shri Das Gupta:** That is the exact point which we stressed. Here, the price of any particular assessment will not be based upon the contract between the buyer and the seller. The valuation is not a case of contract of purchase or sale, but this is all done at the discretion and judgment of the assessing officer. It is his information or lack of information which will decide what value is to be placed on the imports. The Badhwar Committee went into this aspect to which we have made a reference. We do not for a moment say that our suggestion for the invoice price is all fool-proof. Our suggestion will result in reducing the daily controversies and number of appeals. Valuation should not be left to the arbitrariness of the assessing officers. All the undesirable practices have come because of the discretion and judgment of the officers. There are black-sheeps in the trade and there are blacksheeps on the other side, the official side also. Therefore, we want to place these things without any ambiguity.

We thank you for having given us the opportunity of saying these few words to your Committee, so that the controversy between the general trade and the Government would be set at right by parliamentary legislation.

This is the same stand that we took before the Badhwar Committee. They agreed that the price will be the f.o.b. price for export, and, for import, they also agreed that the invoice price should be the price. They agreed that the actual value should be the basis of valuation. The onus of the burden of proof of a collusion between the buyer and the seller should be on the administration but the importer is called upon to prove that there had been no collusion. There will be a 5 per cent or 10 per cent fluctuation in price in the case

of sole agents. This is not to be then normal price. There is no provision of exempting these sole agents or the sole sellers of the particular commodities. That is one point which we wish to place before your Committee. Forward contracts are being incorporated at the moment. We do not get any advantage by entering into competition in the foreign market and buying at a cheaper price. We are assessed at a higher rate. That is our submission. So, it is our request that the meaning of the words "normal price" should be made more clear.

The language should be made more clear and positive. We pay for certain goods the one duty at Calcutta but some others may get at one-third of it in some other place. It took us three years to standardise these matters in regard to ball-bearings. We want clarity and definiteness in all these matters and we do not want that such matters should be left to the judgment of officers. We want this matter to be stated with all clarity and definiteness and should not be left to be decided on the basis of the information of the different officers.

**Shri Dehejia:** I suppose you have finished your appeal on that point. Would there be a guarantee that all the goods coming into different ports would have the same invoice value? You have said that the price has varied between Bombay and Calcutta etc. Can you assure that all the goods coming at Bombay, Calcutta, Madras and other ports will have the same invoice value?

**Shri Das Gupta:** No. We submit that different invoice values are to be recognised.

**Shri Dehejia:** So, the invoice price will not be uniform throughout the country. We will go to the next point made by you. I have taken your last point first.

I would like to make a reference to the Brussels Convention and the

broad agreements reached by them. This is what they say:

"For the purpose of levying duties of customs, the value of any goods imported for home consumption shall be taken to be the normal price, that is to say, the price which they would fetch at the time when the duty becomes payable on a sale in the open market between buyer and seller independent of each other".

This is the statement of the Brussels Convention, based on GATT.

**Shri Das Gupta:** It should be made with clarity and definiteness.

**Shri Dehejia:** Please also refer to page 27—paragraph 8 of the Badhwar Committee report. This is what they say:

".....The invoice value should be made the sole basis of *ad valorem* assessments to Customs duty, provided only that this value is, in fact, the cost of delivery from an independent seller abroad to an independent buyer in India at the time of importation. Such cost would normally be represented by the foreign exchange to be remitted in payment for goods imported.

"This aspect is controlled under regulations issued by the Reserve Bank of India in terms of invoice values....."

So, the foreign exchange element is already there. Our point is that the Customs people should take cognizance of the trade quotations, trade practices and all that, whether it is c.i.f., c. & f. or f.o.b. as the case may be. 'Normal price' is just an abstract concept. It is for you, Sir, to consider how definiteness and clarity can be brought in. Our only request is, please do something. After all, after so many years you are going in for such a piece of legislation. Kindly do something, at least, to minimise the hardship that has been going on.

**Shrimaati Savitri Nigam:** Have you got any other suggestions to offer?

**Shri Das Gupta:** We have suggested that the normal price shall be the c.i.f., or c. & f. or f.o.b., as the case may be. That will provide the basis to fall back upon.

**Shrimati Savitri Nigam:** Besides the suggestions mentioned on page 10 of your Memorandum, I want to know whether you have any other suggestion to make.

**Shri Das Gupta:** No other suggestion.

Now, I come to Clause 17 in regard to assessments.

**Chairman:** You want the words "not exceeding a week" to be added.

**Shri Das Gupta:** We are only saying that we have tried to put in certain time-limits in various clauses at various stages of assessments, of appeals, of giving notices, of issuing show-cause notices, etc. At present, undue delay is taking place. We suggest that some time-limit should be placed here.

**Shri Morarji Desai:** We are trying to remove the difficulties. But we cannot provide a time-limit here.

**Shri Das Gupta:** There are provisional assessments, but these are burdensome.

**Shri Dehejia:** Clause 18 provides that.

**Shri Das Gupta:** That is provisional assessment.

**Shri Morarji Desai:** We may make a provisional assessment.

**Shri Das Gupta:** It is a costly affair.

**Shri Morarji Desai:** We will make a refund.

**Shri Das Gupta:** The investment is there.

**Shri Morarji Desai:** It is only for a short time.

**Shri Das Gupta:** The moment provisional assessment is done, there will be still more delay and the money will be locked up.

**Shri Morarji Desai:** Then, do not have it.

**Shri Das Gupta:** Even in Income Tax you have provided time-limit this year.

**Shri Morarji Desai:** We have provided a time limit of four years for assessment. You can provide three months here. Then, it will always run in three months, not in two days.

**Shri Das Gupta:** It should be done in seven days.

**Shri Morarji Desai:** I say, it should be done on the same day. How am I to provide for it? I am prepared to say, ordinarily it should be done within seven days.

**Shri Das Gupta:** That will do.

**Shri Morarji Desai:** The word 'ordinarily' will kill the whole thing.

**Shri Das Gupta:** There will be at least some guidance to the officers.

**Shri Morarji Desai:** Whenever there is undue delay, you bring it to my notice and I am prepared to punish the officers concerned. You are also not prepared to cooperate with us. You do not want to complain against the officers. You want to complain against them when it does not suit you. The result is, the Government suffers and the public suffers. If you cooperate with us, I am prepared to see that it is done within two days. But you must also be prepared to suffer hardship. You should not be partners with the officers in the matter of collecting duties.

**Shri Das Gupta:** We can assure our cooperation.

**Shri Morarji Desai:** Please do not think that I am charging you. I am only saying about those who do it.



**Shri Das Gupta:** The administration will admit that we have been trying to cooperate with them.

**Shri Morarji Desai:** I am afraid it is a very difficult thing. I have gone into in one case, about a consignment of goods which was exported. That was done by the Customs. Now the Association represents that this is wrongly done. What am I to do?

**Shri Das Gupta:** I do not know the merits of the case.

**Shri Morarji Desai:** Therefore, it becomes a difficult matter to provide a time-limit like that. Suppose, it does not happen within seven days. Then, what will happen?

**Shri Das Gupta:** We are not saying about the completion of the assessment. The assessment may not be completed. The notice for calling in any document must be issued at least within seven days.

**Shri Morarji Desai:** The notice is issued to you.

**Shri Das Gupta:** But it takes a lot of time.

**Shri Morarji Desai:** Why should that happen? The notice must be given within less than seven days. Why should it take seven days?

**Shri Das Gupta:** We want to put a statutory obligation.

**Shri Morarji Desai:** We must provide it in such a manner that there is less scope for temptation on either side.

**Shri Das Gupta:** Yes, Sir. We certainly agree with you.

**Shri Morarji Desai:** We will consider it.

**Shri Das Gupta:** Then I come to clause 17(3)—calling of various documents in driblets. Sir, the basic documents to be submitted can be listed, that these are the basic documents which every importer must submit, that is, bank draft, bill of

lading, etc. Then, in addition to that, if the officers want to have some other documents, some technical papers, these should be listed all in one notice. What happens now is that the officers call for the papers and say, "Seen this; produce such and such a paper". It goes on like that. There is no end to it.

**Shri Morarji Desai:** I should like to have two or three examples of this nature so that I can punish the officers concerned. This can be prevented only by that way. It cannot be prevented in any other way.

**Shri Dehejia:** You say, this is what is happening in the administration and that it should not happen. That is your point, I suppose.

**Shri Das Gupta:** Our point is that it should be statutorily provided, as is the case in Income Tax, that all relevant papers should be called for at one time, not in driblets.

**Shri Morarji Desai:** That will always be there. Intelligence has no limit and you will not be satisfied like that. Instead, it is better I act by means of issuing circulars and if they are contravened, the officers concerned get punished. That is a better way of doing it.

**Shri Das Gupta:** If you would permit me, I would say, the recommendations of the Badhwar Committee . . .

**Shri Morarji Desai:** The Badhwar Committee is not the final word. Need you go on quoting only Badhwar Committee's recommendations as conclusions? We have accepted many of them.

**Shri Das Gupta:** Some of these recommendations have been accepted.

**Shri Morarji Desai:** They are accepted.

**Shri Das Gupta:** But the things do not improve. That is why we suggest that some statutory obligations should also be imposed.

**Shri Morarji Desai:** The things do not improve because where you should complain, you do not complain and you do not cooperate with the Government in punishing the wrongdoers.

**Shri Himatsingka:** The suggestion is being made that if you bring such things to the notice of the Government, action will be taken against the officers concerned.

**Shri Morarji Desai:** I am prepared to take action against the officers concerned. If I can deal a dozen cases like that, then there will be no trouble.

**Shri Das Gupta:** Complaints have been made in the past to the highest authority. But there is one big snag. If I have to get the information, I have to get it from the traders. We find that very often a particular official is continued in the same post and the life of informants who cooperated with the Chamber was made hell. This happened during the days of Shri Rajaram Rao. For nearly one year a party which cooperated with us was harassed.

**Shri Morarji Desai:** Sometimes these things do happen; yet we receive a lot of information. There are a lot of informers also and their life is not made hell, because nobody knows about it.

**Shri Dehejia:** I think Mr. Rajaram Rao retired in 1955. I suppose these things happened before that?

**Shri Morarji Desai:** Do you mean to say that things have remained like that and there has been no improvement?

**Shri Das Gupta:** There has been a lot of improvement.

**Shri Morarji Desai:** With the law as it is, why is there improvement? Because Government is trying to persuade. I can persuade only so long as you cooperate. If you cooperate with me, I am prepared to persuade.

I am prepared to see that the officers responsible are dismissed, or punished heavily. That is the only way of doing things.

**Shri Das Gupta:** But we have to make one submission that the officer complained against should be removed from the particular post—we do not say removed from service.

**Shri Morarji Desai:** If it becomes necessary, we shall transfer him from there. I am prepared to suspend him if we are satisfied that a *prima facie* case has been made out.

**Shri Das Gupta:** That is a good idea.

#### Clause 23

**Shri Das Gupta:** This clause relates to short-landed goods. I shall, along with this, take also clause 13 which deals with pilfered goods.

**Shri Morarji Desai:** You confine yourself to clause 23. What have you to say about it? There is some point in what you say regarding the goods short-landed, which might not have arrived on the shores. Then there should accordingly be no question of duty at all, according to you.

**Shri Das Gupta:** Our Chamber took up this question with the Customs. The Customs agreed in principle that on short-landed goods which are detected on board the ship, there is no question of duty. But they consider that the duty liability is on the steamer companies. The importers are advised that they should first go to the steamer companies to establish their claim. Our submission is that when it is not the liability of the importer, Government should remit the duty straightway and realise it from the steamer companies.

**Shri Morarji Desai:** But I am told that you are not charged duty on short-landed goods at all.

**Shri Das Gupta:** It is being practically charged, though not technically charged. It is admitted that it is not the liability of the importer, but all



the same he is asked to pay it and claim it from the steamer companies.

**Shri Morarji Desai:** It should not be paid.

**Shri Das Gupta:** It should not be realised.

**Shri Morarji Desai:** If you show it is actually short-landed, then the duty should not be levied from the importer.

**Shri Das Gupta:** At the time of assessment it should be remitted.

**Shri Morarji Desai:** Where is the question of remittance, when I say it should not be levied?

**Shri Morarka:** Please refer to sub-clause (1) of clause 23 which says that duty will not be levied if it is shown to the satisfaction of the officers that the goods have not been imported. What is the definition of imported? If it is short-landed, it is not imported.

**Shri Das Gupta:** We wish to explain our experience. We submit the Bill of Entry and assessment is made on the basis of it. When we go to the port to take delivery we find that there is a short-landing. The duty has already been paid on the basis of the Bill of Entry.

**Shri Morarji Desai:** If it has been levied, it will be remitted. It has been provided for here.

How many more points have you to make? I hope you will please confine yourself to important things, because those who follow you may also be making the same points.

#### Clause 28

**Shri Das Gupta:** With regard to clause 28, our first point is that the liability for short-levies cannot be made indefinite. By the proviso to sub-clause (1) it can be made indefinite on three grounds: firstly, when there is collusion between the officer and the importer; secondly, when there is wilful mis-statement; and, thirdly, when there is suppression of facts. In customs matters this may

refer to assessment or to the catalogue or list of documents; it can be very widely interpreted.

**Shri Morarji Desai:** How can it be? It is suppression of facts, not suppression of catalogue.

**Shri Das Gupta:** It may be something in the bill of entry.

**Shri Morarji Desai:** Bill of entry is a very vital thing. If anything is suppressed in it, then what is to be done?

**Shri Das Gupta:** It can be produced; it has been produced.

**Shri Morarji Desai:** Here "wilful" applies to both—wilful mis-statement or wilful suppression.

**Shri Bade:** What, according to you, is the difference between wilful mis-statement and suppression of facts?

**Shri Das Gupta:** Our apprehension is that the term "suppression of facts" may be very widely interpreted.

**Shri Morarji Desai:** There also it is wilful. It applies to both.

**Shri Das Gupta:** To suppression also?

**Shri Morarji Desai:** Yes.

**Shri Bade:** It won't.

**Shri Morarji Desai:** It is intended that it should apply to both. If it does not, we can make it clear.

**Shri Oza:** The word "wilful" may be repeated.

**Chairman:** The word "wilful" qualifies both.

**Shri Morarji Desai:** After "collusion" we can put a comma, and afterwards no comma is necessary. Or we can use the word "wilful" twice—wilful mis-statement or wilful suppression. We can do that, but that is a matter for consideration by us.

**Shri Das Gupta:** That is our apprehension. If you clarify it, that would be all right.

**Chairman:** Yes, we will consider that point.

**Shri Das Gupta:** Then, this should not be for an unlimited period.

**Shri Morarji Desai:** You said it is all right....

**Shri Das Gupta:** It may be for three or four years, but it should not be for an unlimited period.

**Shri Morarji Desai:** "Unlimited" has not much of a meaning. After ten years, or even after five years nobody is going to take it up.

**Shri Das Gupta:** But if anybody takes it up?

**Shri Morarji Desai:** It is better that it is kept hanging.

**Shri Das Gupta:** Then I want to say something about the service of the notice for re-opening. This should naturally arise by the post-checking assessment of duty and inspection. That should be expedited. These are imported goods. So, the re-opening should be started promptly. And that is why we have suggested that you do it within three months, instead of keeping it for six months for the service of the notice. This is being reopened. It should be reopened within three months, if so desired.

And, secondly, the notice for re-opening should indicate the basis and the reason for reopening it. It should not simply be a notice saying that it is being reopened, but it should also provide the reasons and the basis for the reopening.

**Shri Morarji Desai:** It is six months on both sides. You can ask for a refund also within six months. If you will reduce that period to three months, then I am prepared to consider this. It is six months on both sides.

**Shri Das Gupta:** While reopening the case the basis and the reasons should be given in the notice.

And, the notice should not be only issued but served. Recently there has been a case where the Department said that they had issued it. But the High Court held that it had not been served. Only a record in your book that it was issued will not do. The wording in the clause is "issued". It should be "served", whatever the time.

**Shri Morarji Desai:** Suppose it is issued on the last day of the six-months' period. Then it may not be served for a month. You may avoid the service. What is to be done then?

**Shri Das Gupta:** A registered letter will do.

**Shri Morarji Desai:** Registered letters also get lost. They also are not received.

**Chairman:** The man may pay something to the postman and dodge receiving it.

**Shri Morarji Desai:** If you have not received that notice, Government is bound to find out why you have not received it, and nobody is going to charge you without getting your explanation.

**Shri Das Gupta:** It went to the High Court and they said that the notice had not been served. The Department said it had issued the notice. In clause 153, under 'Service of order etc.' if you add the word "registered" before the word "post", that will serve the purpose. There the term is "by post".

**Shri Anand:** "Post" means registered post—that is what the Law Ministry say.

**Shri Morarji Desai:** How can anybody say that "post" means registered post? You better mention "by registered post". There is nothing wrong in it. That we can consider.

All right, you go ahead.

**Shri Das Gupta:** The notice should indicate the basis and the reasons.

**Shri Morarji Desai:** That we will consider doing by means of a circular, not in this. We will issue instructions that in the notice we should let them know. But if that is statutorily provided, even if one thing is not mentioned you will say, "This is not mentioned". So I cannot do it here. But I will certainly do it by means of instructions that the reasons should be given.

**Shri Das Gupta:** Under the rules.

**Shri Maheshwari:** Another thing is that the demand is served on us. Afterwards we do not get any reply from the Customs for years together. Once a demand is made, after that the Authorities remain silent. The matter is never withdrawn.

**Shri Morarji Desai:** Let us know some cases like that. Let us know one or two cases like that, and we will set things right. I can believe many things happening in customs, but unfortunately I am not being helped by you people.

**Shri Maheshwari:** We will give such cases.

**Shri Das Gupta:** Under clauses 44 to 49, that is, the Clearance clauses, our submissions are two. These are not in the note. This is a new point. At present, in practice detention certificates are issued in three circumstances, loss of documents, delay in chemical tests and delay in the scrutiny of import licences. In these three cases, detention certificates are given by the Customs. These are necessary in connection with wharfage and demurrage charges. Our only submission is, add somewhere, in appropriate cases if for one reason or another there is delay in assessment, then also it should be possible to issue detention certificates.

**Shri Morarji Desai:** If the delay in assessment is due to not supplying the facts?

**Shri Das Gupta:** In such cases, the department will not issue the certificate.

**Shri Morarji Desai:** You cannot provide it here that if there is delay, detention certificates should be given.

**Shri Das Gupta:** The officers say that there is no provision for the issue of detention certificates. There is no provision here.

**Shri Dehejia:** What you are stating does not relate to the procedure here but something with reference to the Port Trust.

**Shri Das Gupta:** Clauses 44 to 49 deal with clearance of goods, at different stages of clearance. Nowhere is there any provision for the issue of detention certificates. Our submission is that some provision be made in this group of clauses for the issue of detention certificates.

**Shri Morarji Desai:** That means that the Port Trusts Act will have to be amended. Suppose we issue detention certificates and the Port Trust says, we are not going to honour? They are bound by the Port Trusts Act.

**Shri Das Gupta:** In practice, they honour.

**Shri Morarji Desai:** The two Acts must have proper connection.

**Shri Das Gupta:** You may secure the connection. The question is, there is no provision. We are suggesting, make some provision for the issue of detention certificates.

**Chairman:** Who issues the certificate?

**Shri Morarji Desai:** The Collector of Customs. We will consider what can be done.

**Chairman:** This will be considered.

**Shri Dehejia:** I suppose what you want is a legal provision for the present working arrangement between the Port Trust and the Customs.

**Shri Das Gupta:** No. Some provision here for the issue of detention certificates in appropriate cases.

**Shri Morarji Desai:** We will consider whether it can be done. We do not undertake to do it.

**Shri Das Gupta:** Regarding clause 110, Seizure of goods, documents and things, our only submission is this. In appropriate cases, certainly, seizure of goods and also documents may be necessary. In case the documents are seized, except those which may be directly required in any particular case that may be going on, all other documents should be returned after keeping photostat copies if necessary. At the moment, there is no obligation to return.

**Shri Morarji Desai:** Here it is mentioned:

"Any officer of customs may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act."

That is provided. If useless things are taken, you let me know. There is no remedy in this clause. That is another thing.

**Shri Das Gupta:** The provision for return is not there.

**Shri Morarji Desai:** They must return. Why should they keep them?

**Shri Dehejia:** For seizing anything, authority is required. If there is seizure beyond authority, it is not correct.

**Shri Morarji Desai:** If an officer seizes a document which is not relevant, he is liable for wrong action.

**Shri Das Gupta:** Allow me to submit, documents are taken. If you will only look into the Customs cases before the courts, you will find that people have to go to the court and the court has to order that these documents should be returned.

**Shri Morarji Desai:** Send some cases. I think it is very wrong if we have not taken action in those cases. Let me have some cases.

**Shri Das Gupta:** There are cases in the courts.

**Shri Morarji Desai:** Show me where the courts have said like that. I will take the court's decision.

**Shri Das Gupta:** They are returned after the court's decision.

**Shri Morarji Desai:** We will punish those officers. Give me the cases. It is a wrong action on the part of the officer. The law is correct.

**Shri Das Gupta:** In clauses 112 to 114 taken together, there is reference to financial transaction and personal liability for abetment. If you will kindly see the wording, it has perhaps made the position a little more fluid than intended. It is said that a person knowing or having reason to believe that that man may use it for smuggling, has given financial or other assistance. The financier has lent money to another man who is also an importer doing import business. This includes a bank or financial institution. If for one reason or another, some part of the goods have been considered to be smuggled and confiscated, the financier will be in difficulty on a charge of abetment.

**Shri Dehejia:** The clause says, financial or other assistance for smuggling such goods. It does not merely say, financial or other assistance.

**Shri Das Gupta:** How will it be proved?

**Shri Morarji Desai:** I want to revert to the Registered post provision. From the General Clauses Act, I find that what I said was wrong and what they said was right. Clause 27 says:

"Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing,

pre-paying and posting by registered post, a letter . . ."

It is there. I am sorry I did not know that. That does not require any provision.

**Shri Das Gupta:** A man has lent money to an established importer. The established importer, the merchant is there. He is doing good business. The man has lent money. He takes the money. A part of his goods or a part of his traded goods has become confiscated. The financier cannot be blamed: that out of the money that portion was used for smuggling.

**Shri Morarji Desai:** I want the financiers to be careful not to finance such things.

**Shri Das Gupta:** Will that be possible?

**Shri Morarji Desai:** It will be possible. All of you know who is doing this.

**Shri Das Gupta:** I am referring to the financier.

**Shri Morarka:** Kindly read the clause: 'Any person who, knowing or having reason to believe. . .' This is the qualification.

**Shri Das Gupta:** 'Knowing'—we agree. But 'having reason to believe' is a different thing.

**Shri Morarji Desai:** Suppose the man has been fined once for smuggling. Then he has reason to believe. Otherwise, the prosecution will have to prove that he has reason to believe. We will go further.

#### Clause 120 (2)

**Shri Das Gupta:** The smuggled portion should constitute the major portion of the goods, not a small part.

**Shri Morarji Desai:** Even if it can be separated, I would like to confiscate all the goods. Unless the punishments are monstrous, I am afraid this business of smuggling is not going to end. I do not think the punishment now is sufficiently monstrous. I would like to confiscate all

his property, but Parliament will not allow that.

**Shri Shankaraiya:** The value of the smuggled article will be more than that of the container.

**Shri Morarji Desai:** Sometimes it happens. They profit so much by smuggling that they take the risk of punishment when they are found.

**Shri Oza:** This relates to possession in third party's hands. Suppose the goods are transferred to third parties.

**Shri Morarji Desai:** I would take that step even with regard to the third party, if I can help it, for some time, to put God's fear into these people.

#### Clause 122

**Shri Das Gupta:** The confiscation order should not be by an officer below the rank of Deputy Collector.

**Shri Morarji Desai:** I do not see any necessity.

**Shri Das Gupta:** For smaller amounts, there are still lower officers who can do it.

**Shri Morarji Desai:** It is by a gazetted officer. Gazetted officers must all be allowed to do that. Otherwise, the work will be tremendous. There is nothing objectionable in it. You can always appeal.

**Shri Kajaria:** That is the reverse order.

**Shri Morarji Desai:** Reverse order is better for these things.

#### Clause 128

**Shri Das Gupta:** At least there should be a tribunal.

**Shri Morarji Desai:** I am sorry. One tribunal is enough. I am not able to find judges required for all the tribunals.

**Shri Das Gupta:** Another more important thing is this. The appeal orders that are now issued are not appeal orders. Generally, the CBR

## Clause 129

orders are mostly of the type of 'no cause for intervention'. When appeals are rejected, the reasons for rejection should be stated.

**Shri Morarji Desai:** 'Appeal rejected' is enough. Reasons should be given only if the appeal is allowed, not otherwise.

**Shri Das Gupta:** At the Collectorate level, can there be a separate Deputy Collector for hearing appeals?

**Shri Dehejia:** There is a ruling that the officer who adjudicates should hear the parties.

**Shri Das Gupta:** In case an appeal is filed, at the moment it goes to the Assistant Collector.

**Shri Morarji Desai:** From the lower officer.

**Shri Das Gupta:** Yes, and from the Assistant Collector to the Collector. We were thinking that if Assistant Collectors are also assessing authorities and if there was some appellate officer under the Collector who only hears appeals, it would expedite matters.

**Shri Morarji Desai:** You want two appeals again at that stage. In the case of an officer below the Assistant Collector, you have two appeals—to the Assistant Collector and Collector. Now you want two appeals from the Assistant Collector, that is, to the Deputy Collector and then to the Collector.

**Shri Morarka:** What they want is that the appellate machinery should be separate from the executive machinery, as we have in the Income-tax Act.

**Shri Morarji Desai:** I do not want to turn executive matters into judicial matters. Taxation is not a judicial matter at all. These are financial things. It is only economic justice.

**Shri Das Gupta:** Our submission is that the disputed amount should not be required to be deposited when the appeal is going on.

**Shri Morarji Desai:** Why should it be held in abeyance? It must be deposited.

**Shri Das Gupta:** If the assessment is higher, it becomes very hard for the man to do it, even if he wins the appeal subsequently.

**Shri Morarji Desai:** He should deposit it.

**Shri Das Gupta:** When the assessment has been done, let the portion not disputed be deposited.

**Shri Morarji Desai:** No.

**Shri Das Gupta:** Let it remain up to the first day of the hearing.

**Shri Morarji Desai:** The whole assessment should be deposited.

**Shri Morarka:** A new proviso is there now.

**Shri Morarji Desai:** That is quite enough. That also may get taken away in your asking for more.

**Shri Das Gupta:** Coming to Clause 156(2) dealing with rule-making powers, we want that in respect of the Manual of the Tariff Guide, the rulings of the CBR should be periodically consolidated, because in the last 27 years the Tariff Guide has been revised only five times.

**Shri Morarji Desai:** It will be done. We will publish the Manual, and issue every year additions, and when the additions become too many, we will reprint the whole thing.

**Shri Das Gupta:** Before expressing our grateful thanks to you for hearing us, we would invite your attention to one thing. At the moment permission of a judicial authority is necessary before search and entry into a house by the customs authorities. Under the Bill, Clause 105, that permission is dispensed with. If this is allowed here, the police will say that it is a police matter and

enter premises and search without the permission of the court, on the lines of the customs people.

**Shri Morarji Desai:** The police also have powers to do it. Without taking a warrant, they can enter and search in several cases.

**Shri Das Gupta:** Only in specified cases.

**Shri Morarji Desai:** This is also only in specified cases. It will affect only the smugglers.

**Shri Das Gupta:** It is not mentioned that it is only in the case of smugglers. If customs people enter into houses for customs reasons, police will enter for police reasons, and Central excise people will enter for excise reasons, without taking permission from any judicial authority, and in spite of our having democracy, there will be an administrative Raj.

**Shri Morarji Desai:** The police have the powers to do it; excise officers also have the powers; income-tax and sales tax people also have those powers.

**Shri Das Gupta:** Income-tax and sales tax people require permission and the search is of the assessee.

**Shri Morarji Desai:** Have you ever suffered from it? Has anybody entered your House? When a person has to go to a magistrate and get a warrant, it gets known and everything is finished. It becomes very difficult to find anything there. This is the experience.

**Shri A. V. Raghavan:** The police should record the reason and then forward it to the magistrate.

**Shri Morarji Desai:** It amounts to the same thing. Why should he forward it to the magistrate? He should forward it to his superiors. If we find that his action is wrong, we will take action against the man. Punishment given to the man for wrong action will be a better deterrent than going to the magistrate.

**Shri Morarka:** We have a similar provision in the income-tax law, but there it is confined to the place of business of the assessee only.

**Shri Morarji Desai:** If you do not do it, you will not be able to get at the root of it, because it is so widespread.

**Shri A. V. Raghavan:** The officer searching may take two witnesses.

**Shri Morarji Desai:** When the search is made, there are bound to be two people. No search can be made by the officer without *panches*. *Panches* are bound to be there. The provision in the Criminal Procedure Code will apply to searches here. They cannot make a search without leaving a trace of it, that cannot happen. It is mentioned in the clause.

**Shri Das Gupta:** Here the question is not the man involved; it may be only the relevant man. The necessity of taking permission of the judicial authority has been taken away.

**Shri Morarji Desai:** Deliberately, not through mistake.

**Chairman:** But there is provision for punishment of officers for wrongful search.

**Shri Morarji Desai:** You have sympathy from several hon. Members. Therefore, you need not go further. I will have to meet them, not you. That is why I said I could not get the powers from Parliament; otherwise, in six months I could stop all this. Unless we have these punishments, I do not think we will be able to do it. Even if some people are harassed, I am prepared to take the risk, but the way the racket is going on is a shame for the whole country. We do not know what we should do.

**Shri Das Gupta:** The unfortunate part of it is that perhaps the more you make law stringent, the greater will be the harassment to the honest man, and the more intelligent will still go scot-free, because their buoyancy and flexibility are so much that they can always over-reach.



**Shri Morarji Desai:** The atmosphere now is such that an honest man is considered a stupid man, and therefore nobody wants to remain honest. That atmosphere must be removed.

**Shri Das Gupta:** That is our submission also.

**Shri Morarji Desai:** We are trying to do that. That is why I say where a man is harassed, and wrongly harassed, we will punish the officer harassing him very severely. That is a better deterrent.

**Shri Das Gupta:** We assure you of our co-operation on condition that the administration helps us. Those who run their business honestly and strictly should be encouraged and shown to others as an example.

**Shri Morarji Desai:** I am prepared to trust people like that, but let them deposit with me the proper amount of money. When they are found to go wrong, I will confiscate it. Then I am prepared to trust them.

**Shri Das Gupta:** You are only trying to mobilise money in an indirect way.

**Shri Morarji Desai:** What is wrong with it? I will give you back the interest, so that there is no saving to Government. Is that enough?

**Shri Das Gupta:** Certain proposals were made in the Central Advisory Committee about steps to be taken to secure co-operation between the Federation and Chambers of Commerce on the one side and the local administrations on the other. The Federation has written to us in confidence what those steps are and in what manner it can be done.

**Shri Morarji Desai:** We are trying to do it, but that it not a matter to be discussed here.

**Chairman:** Thank you very much for the evidence you have given.

*(The witnesses then withdrew.)*

## II. THE PRECIOUS STONE IMPORTERS' AND EXPORTERS' ASSOCIATION, BOMBAY

*Spokesmen:*

1. Shri Jaiysukhal D. Zaveri
2. Shri Kirtilal K. Doshi
3. Shri Pravin M. Nanavati
4. Shri J. R. Gagrat

*(Witnesses were called in and they took their seats).*

**Chairman:** We have your memorandum. Have you anything more to say in addition to your memorandum?

**Shri Gagrat:** As mentioned in the memorandum, there are certain provisions of the Bill which have caused serious apprehension in our minds as far as our trade is concerned. We are not here to dispute the purpose of amending the Act; but we want to draw your particular attention to certain sections which have caused great apprehension in our minds.

**Shri Morarji Desai:** How many sections?

**Shri Gagrat:** There are only 4 sections to which we will refer. There is clause 118 which provides:

"Where any smuggled goods are contained in a package, the package and any other goods contained therein shall also be liable to confiscation."

Precious stones are dealt with in the course of our trade. The practice in our trade is that we put the stones in certain paper folders. What we do is this. We collect the previous stones from various sellers. They are sorted out according to the size, type etc. Then, they are put in one package. There would be a package of rubies, emeralds and so on. They are carried on our person.

Supposing, for instance, there is one piece of a precious stone in one package which is alleged to be or found out to be smuggled, then, the whole package is liable to confiscation even though the package may



contain 25 other precious stones which may belong to other sellers who may have been *bona fide* purchasers or whose family property the stones may be. The whole package is liable to confiscation merely because they happen to be put into the packet with one stone which is smuggled or alleged to be smuggled.

**Shri Morarji Desai:** Why was it put in?

**Shri Gagrati:** Then there is clause 123, under which I have to show that a precise stone, which is seized by a customs officer as smuggled, is not smuggled.

**Shri Morarji Desai:** Because it is not covered by any licence. You will grant that there is a lot of smuggling in precious stones. It may also include diamonds.

**Shri Gagrati:** I will make one thing very clear. The precious stones with which our Association, which is now before you, is concerned, are coloured stones; they are emeralds, rubies and sapphires. As far as these three items are concerned, even after 1955 when the provision of Section 178 A was inserted, there has been no single case of confiscation, because of two reasons. Emeralds, rubies and sapphires are produced and mined in India freely since centuries. Their import policy was very liberal and up to 1947 there was no licensing at all of these. Up to 1957, liberal licences were granted and from 1957 *ad hoc* licences are being granted.

As far as these three stones are concerned, there is not much of home consumption but large exports are being effected by us. We get them, polish them and export them. Government had actually put a duty of 5 per cent; and there would not be much incentive for smuggling these things. As far as these three stones are concerned, I would like to point out that there has been not a single instance of smuggling. You can verify that from the customs records.

There have been 4 instances in which the customs have seized these things under section 178A.

**Shri Morarji Desai:** I do not know how to distinguish between these three stones and the other stones.

**Shri Gagrati:** We speak only for these stones, rubies, emeralds and sapphires.

**Shri Morarji Desai:** Do you want to have some exception provided for these?

**Shri Gagrati:** Yes, Sir.

**Shri Morarji Desai:** We will consider what can be done.

**Shri Gagrati:** After 1955 only 4 instances of seizure have taken place. This would cause harassment to the traders.

**Shri Morarji Desai:** We will find out some method whereby we can avoid harassment.

**Shri Gagrati:** In our view, you should exclude these specific stones from sections 118, 120 and 123.

**Shri Morarji Desai:** We will see.

**Shri Gagrati:** That is our first objection. You will appreciate the difficulty. If one stone in a package is found to be smuggled or alleged to be smuggled the whole package is liable to be confiscated.

**Shri Morarji Desai:** In the first place, I am not satisfied why any other piece should be found in that package. It does not come by itself; it is put in.

**Shri Gagrati:** Supposing 7 or 8 people sell to me precious stones in the course of a deal. As far as these are concerned, it is not possible to investigate and find out or even suspect that some of them are smuggled. Supposing customs come to know that A has smuggled certain stones and that those stones have later on come to me, they seize it. But I do not know of it because I put them in one package with the stones of other dealers.

**Shri Morarji Desai:** That means your whole stock will be liable to confiscation.

**Shri Gagrat:** Supposing I have a certain type of rubies in my shop. I go on purchasing different sizes of stone and I sort them and put into one package stones of a certain type. In that package there might be one stone smuggled by A but which I might have purchased *bona fide*. Simply because I have put that in the packet along with others, all the others, will be confiscated.

**Shri Dehejia:** Clause 178A was enacted in 1955. Between 1955 and 1962 have there been any cases of hardship?

**Shri Gagrat:** There have been four cases. I may submit that there is no incentive to smuggle in these stones. Licensing is liberal. In none of these four cases the guilt was proved and the poor traders felt harassed.

**Shri Morarji Desai:** If in none of these cases it could be proved, then that means they were harassed. Did it happen with the same officer or in one place?

**Shri Gagrat:** No, Sir: at different places.

**Shri Morarji Desai:** Anyway, there may have been some information. We will try to consider this. For *bona fide* transactions, we will see what we can do. We shall see if we could find some provision whereby *bona fide* transactions could be covered.

**Shri Gagrat:** May I then invite your attention to clauses 118, 120 and 123? It is a corollary to our earlier submission. I will not repeat the facts. They apply to all these clauses.

**Shri Morarji Desai:** We shall consider them.

**Shri Gagrat:** If you exclude these three precious stones from section 123(2) it will be good. It reads:

"This section shall apply to gold, manufactures of gold and precious stones, precious stones. . ."

You may define precious stones like diamonds of other categories of stones.

in which there is material on record to show that smuggling has been going on.

**Shri Morarji Desai:** We will consider all that.

**Shri Gagrat:** I will now come to clauses 191 and 192. When a person believes....

**Shri Morarji Desai:** What else can be done. It says: when he has reason to believe.

**Shri Gagrat:** The grounds are not given. The reasons are not given. It should be made a condition.

**Shri Morarji Desai:** That will be done. Before he searches a person the reasons must be recorded and given to him. We will do that.

**Shri Gagrat:** He may be searched in the presence of two independent witnesses.

**Shri Morarji Desai:** For that the Criminal Procedure Code will apply; that is provided for in clause 105.

**Shri Gagrat:** As the Bill is drafted, it leaves a doubt.

**Shri Morarji Desai:** It will be taken out and put in such a manner as to leave no doubt.

**Shri Gagrat:** He may be arrested in the presence of panchas.

**Shri Morarji Desai:** No arrests are made before panchas. How can we arrest before the panchas. Searches can be made like that but arrests cannot be made necessarily like that.

**Shri Gagrat:** The men arrested should be produced before the Magistrate forthwith.

**Shri Morarji Desai:** Within 24 hours: it cannot be forthwith. There is a provision in the Criminal Procedure Code also like that.

**Shri Hari Vishnu Kamath:** Article 22 of the Constitution gives 24 hours.

**Shri Dehejia:** You are probably thinking in terms of Bombay city. Where are places in the country where it takes much time to reach a magistrate.

**Shri Morarji Desai:** The time for taking a man to the magistrate in some places may be outside 24 hours: in some cases it takes even two days to take a man to the magistrate.

**Shri Gagrati:** There are certain other provisions to which there is no objection as such but healthy suggestions are made from the practical point of view.

Section 13 says that if any imported goods are pilfered after the unloading thereof and before clearance for home consumption or deposit in a warehouse, the importer shall be liable to pay the duty leviable on such goods. Suppose the goods are lost not due to his fault.

**Shri Morarji Desai:** Are there any cases of pilferage of such stones? Why do you want to get covered by it?

**Shri Gagrati:** Clause 14 deals with the real value of the goods.

As far as the precious stones are concerned, there is, I am told, nothing like a fixed market price by which you can evaluate. Every stone depends on the size, shape, weight, etc. We are only suggesting that you might, under this sub-clause, constitute a panel comprising your departmental officers and some of our members of the Association so that as and when importation takes place, that panel may be the arbiters to decide the dispute. Otherwise, the clearance is affected, the export is affected. These are goods that come in different sizes, shapes and forms.

**Shri Morarji Desai:** But there can be under-invoicing and over-invoicing.

**Shri Gagrati:** Not in this trade.

**Shri Morarji Desai:** Why not? I do not think that is not done. It can be done and it is done.

**Shri Dehejia:** Even now, when there is no statutory committee, market enquiries are made from the experts.

**Shri Gagrati:** In this clause, the offer of sales is taken as the basis for determining the price etc.

**Shri Morarji Desai:** It is so because of under-invoicing and over-invoicing.

**Shri Gagrati:** Quotation is never the basis and the sale itself is subject to bargaining by the parties.

**Shri Morarji Desai:** Therefore, it has to be kept as it is.

**Shri Gagrati:** By reason of my bargaining power, for example, I import goods at value X, and when I get the quotation of Y, and still Y is said to be normal price. . .

**Shri Morarji Desai:** There is no harassment in it.

**Shri Gagrati:** The goods are liable to confiscation only on the ground that it is a mis-statement.

**Shri Morarji Desai:** I do not think there will be such a thing if there is only a little difference.

**Shri Gagrati:** Supposing, as a result of my bargaining, I am able to get at price X, and you get a quotation.

**Shri Morarji Desai:** You do anything by bargaining and not by under-invoicing.

**Shri Gagrati:** I can show the correspondence.

**Shri Morarji Desai:** There is always collusion.

**Shri Dehejia:** The question is, this provision applies to every trade and every commodity. I do not suppose it is your contention that is no country is the basis for evaluation different for different commodities.

**Shri Gagrati:** The quotation is never the basis for fixing the normal price.

**Shri Morarji Desai:** You will have to try to regulate it by law.

**Shri Gagrati:** When quotation is taken as the basis for the price....

**Shri Morarji Desai:** We will issue instructions about it.

**Shri Badi:** How can a normal price be fixed, when there is no statutory committee, etc.?

**Shri Zaveri:** It is through experience in the trade. There may be different valuations. For importers, the valuation can be anything from five to ten per cent.

**Shri Morarji Desai:** That is why it is such an expert business.

**Shri Badi:** It is very difficult to fix the price.

**Shri Morarji Desai:** They could find this out from the man who deals with precious stones. It is a very expert business.

**Shri Badi:** Who will fix the normal price?

**Shri Morarji Desai:** We ask somebody who is not in the trade but who knows. He gives the price all right. Generally, the price does not vary much, when you consult independently the people who can say about it. Of course, when there is collusion among the people concerned, they may say something. But you can avoid all this by jumping on them by surprise!

**Shri Gagrati:** The new section 128 provides that in an appeal the Board has powers to enhance the sentence. As you know, the customs officers have been held to be quasi-judicial tribunals; and it is not a normal provision—that the appellate authorities' function is to adjudicate *de novo*.

**Shri Morarji Desai:** When there is a collusion and the officer lets him off with a very small punishment, what is one to do?

**Shri Gagrati:** In such a case, the importer would not file an appeal.

**Shri Morarji Desai:** I think it was in order to prove that they are very honest. It is normally happening. It is not an abnormal thing.

**Shri Gagrati:** If the appellate authority is to adjudicate *de novo*, what happens? This is a hard provision.

**Shri Morarji Desai:** Even when the thing is meticulously provided for, there may be some loopholes through which the man gets acquitted.

**Shri Gagrati:** The alleged shortcoming of the officer....

**Shri Morarji Desai:** It is not shortcoming. It is the position of the other man. He is more responsible than the officer. It is because of the temptations that the administration gets spoiled.

**Shri Gagrati:** A provision may be made to the effect that in the case of any collusion, the appellate authority can act.

**Shri Morarji Desai:** It is not judicial matter. This is absolutely an executive matter.

**Shri Gagrati:** The Supreme Court has held that Custom Authorities are quasi-judicial and not executive authorities.

**Shri Morarji Desai:** One can always go to the Supreme Court. One cannot debar that.

**Shri Ramanathan Chettiar:** We would like to see what rubies, sapphires, etc., are, and how they deal with them.

**Shri Zaveri:** We build our reputation after 40 to 50 years of our activity.

**Shri Morarji Desai:** You can rest assured that nothing is done to injure your reputation. We will see that you maintain your reputation. We do not want to hurt honest people.

**Shri Zaveri:** That reputation will go within a minute if....

**Shri Morarji Desai:** We will see that does not happen. Let us not think of any danger like that. We will issue proper instruction. It can never be provided for by law.

**Shri Gagrati:** We are saying that you are equating us with dealers in other commodities like gold and watch, items which are under-invoiced.

**Shri Morarji Desai:** You cannot claim that there is no under-invoicing here.

**Shri Gagrati:** We will substantially satisfy you. If you put us on a par with other commodities....

**Shri Morarji Desai:** It is difficult to find out whether under-invoicing is going on on a larger scale.

**Shri Gagrati:** You have equated us with gold and watches—items in which there is large scale smuggling. There is no smuggling here. I can assure you.

**Shri Morarji Desai:** I am talking of under-invoicing; not about smuggling. That is why we provide for these things. I will try to see that you are protected against other things.

**Shri Gagrati:** I would request you to see to this: that you put us out of clause 123 which does not apply to us.

**Shri Morarji Desai:** We will see.

**Shri Zaveri:** As regards the appeal not disposed for 4½ years by the board case is dated, 1-1-1958.

**Shri Morarji Desai:** We will look into the case.

**Shri Tridib Kumar Chaudhuri:** I want one clarification. Are the merchants dealing with diamonds and rubies the same, or, are they differ-

ent sets of people for these different items?

**Shri Morarji Desai:** Sometimes they are the same; they are not necessarily different. Therefore they cannot be separated. It is difficult to separate them. Anyway, we will see what can be done.

**Shri Gagrati:** These commodities are separate and distinct from each other. There can be no similarity between diamonds and sapphires.

**Shri Morarji Desai:** Diamond by mistake will not be kept as a sapphire; sapphire by mistake may be kept as a diamond!

**Shri Zaveri:** There are merchants who deal with both diamonds and sapphires.

**Shri Morarji Desai:** We shall see what can be done.

**Shri Doshi:** In the case of gold, there is some marking on it to distinguish it from smuggled gold. But in our case, there is no marking and it can never be distinguished.

**Shri Morarji Desai:** How can smuggled diamond be distinguished from genuine diamond? Smuggled and genuine things cannot be distinguished. These things do not happen by mistake. The person concerned knows it necessarily. But I may assure you that we do not want to cause harassment to anybody. We will see that honest people do not suffer.

**Shri Gagrati:** We are obliged to you for giving us this opportunity.

**Chairman:** Thank you.

*(The witnesses then withdrew)*

*The Committee then adjourned.*

## SELECT COMMITTEE ON THE CUSTOMS BILL, 1962

### MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL, 1962.

*Tuesday, the 31st July, 1962 at 09.01 hours.*

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

- |                                    |  |
|------------------------------------|--|
| 2. Shri Ramchandra Vithal Bade.    | 14. Shri Mahesh Dutta Misra.           |
| 3. Shri G. Basu.                   | 15. Shri R. R. Morarka.                |
| 4. Shri Tridib Kumar Chaudhuri.    | 16. Shri Shankarrao Shantaram<br>More. |
| 5. Shri R. Ramanathan Chettiar.    | 17. Shrimati Savitri Nigam.            |
| 6. Shri N. T. Das.                 | 18. Shri Prabhat Kar.                  |
| 7. Shri Morarji Desai.             | 19. Shri A. V. Raghavan.               |
| 8. Shri B. D. Deshmukh.            | 20. Shri Shivram Rango Rane.           |
| 9. Shri J. N. Hazarika.            | 21. Shri R. V. Reddiar.                |
| 10. Shri Prabhu Dayal Himatsingka. | 22. Shri M. Shankaraiya.               |
| 11. Shri Hari Vishnu Kamath.       | 23. Dr. L. M. Singhvi.                 |
| 12. Shri Narendrasingh Mahida.     | 24. Shri Sumat Prasad.                 |
| 13. Shri Bakar Ali Mirza.          | 25. Shri Bali Ram Bhagat.              |

#### DRAFTSMEN

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

#### REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

#### SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

#### WITNESSES EXAMINED

##### I. THE INDIAN MERCHANTS' CHAMBER, BOMBAY

- |                                  |                          |
|----------------------------------|--------------------------|
| 1. Shri Pravinchandra V. Gandhi. | 3. Shri C. L. Gheevala.  |
| 2. Shri Ambalal Kilachand.       | 4. Shri D. S. Pendurkar. |

## II. ALL INDIA JEWELLERS' ASSOCIATION, NEW DELHI

- |                                 |                         |
|---------------------------------|-------------------------|
| 1. Shri Bhola Nath.             | 3. Shri Jawaharlal.     |
| 2. Shri Sultan Singh Backliwal. | 4. Shri V. J. Merchant. |

## III. INDIAN CHAMBER OF COMMERCE, CALCUTTA

- |                        |                             |
|------------------------|-----------------------------|
| 1. Shri B. P. Khaitan. | 3. Shri B. Kalyanasundaram. |
| 2. Shri H. R. Sugla.   |                             |

### I. THE INDIAN MERCHANTS' CHAMBER, BOMBAY

#### *Spokesmen:*

1. Shri Pravinchandra V. Gandhi.
2. Shri Ambalal Kilachand.
3. Shri C. L. Gheevala.
4. Shri D. S. Pendurkar.

*(Witnesses were called in and they took their seats).*

**Chairman:** Your memorandum has been distributed to members. If you want to add anything to it you may do so now.

**Shri Gandhi:** We are grateful to you for giving us this opportunity of appearing before you in person and discussing with you the points which we have raised in our memorandum. The present law governing customs was enacted about 80 years ago and, as we have stated in our memorandum, codification of the customs law has become very necessary for several reasons. We are glad that it is being done now. It is gratifying that a number of new facilities and concession asked for by the trade and recommended by the Customs Reorganisation Committee are provided in the new Customs Bill. At the same time, we would like to point out that there are some provisions which have far-reaching implications and which, according to us, require slight modifications. We have suggested these modifications in the course of our memorandum.

While we concede that it is necessary to take all possible measures to safeguard the interests of revenue

and to effectively deal with the problem posed by anti-social activities in the sphere of foreign trade such as smuggling, we would, at the same time, stress the need to take care to see that the powers sought to be given to the departmental officers are not very wide and arbitrary as will interfere with the day-to-day functioning of trade and business. For example, the power to search persons and premises without a search warrant issued by a magistrate is an extra-ordinary power. Similarly, there is the power that is sought to be vested in the Customs Officers to require persons to make statements in writing and to sign such statements. There are also the powers which are proposed to be given to the Customs officers to confiscate the entire goods suspected to be inextricably mixed with smuggled goods. These are powers which, we think, are of a very extra-ordinary nature. We have tried to point that out in our memorandum. We have also given our comments on some of the other provisions of the Bill.

If you permit, Sir, we would like to begin by drawing your attention to clause 11 of the Bill. In the initial stages, we have also tried to point out that very little time was given to us, as the copies of the Bill were not available to the Chamber of Commerce till 10th July and the time left was very little for us to circulate the Bill to our members.

Regarding clause 11, we very much welcome the change which is there. Formerly there were no guiding principle. Now the guiding principles have been laid down. But we want-



ed that certain clarifications should be there. We thought that they could come probably under some other statutes. Item (e) relates to conservation of foreign exchange and safeguarding of balance of payments. We thought that this was a purpose which could come under the Foreign Exchange Regulations. We wanted to find out whether it was necessary in the customs Act. Then, item (p) is: "the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;"

**Shri Morarji Desai:** What is the meaning of your saying that conservation of foreign exchange should not be one of the reasons for prohibiting exports or imports?

**Shri Gandhi:** The question is whether it cannot come under the Foreign Exchange Regulations.

**Shri Morarji Desai:** That is only for the breach of foreign exchange regulations. That does not regulate whether foreign exchange should be given. Foreign exchange is regulated by Government under certain rules which they issue. Any breach of those rules is dealt with under the Foreign Exchange Regulations Act. Here imports and exports are regulated on account of requirements of foreign exchange. Therefore, how can it not be put down here? It is a very strange plea. Can imports and exports be allowed irrespective of the foreign exchange position? It is a strange argument that you are raising.

**Shri Gandhi:** We felt that the conservation of foreign exchange will not come within the scope of this Bill.

**Shri Morarji Desai:** That is the main purpose.

**Shri Gandhi:** We entirely agree that conservation of foreign exchange is necessary. Our only point is whether it should come within the scope of the Customs Bill.

**Shri Morarji Desai:** It is one of the purposes of the Customs Bill. I do not know how you are objecting to this kind of thing here.

**Shri Bade:** All that he says is that it is overlapping.

**Shri Morarji Desai:** There is no harm in their overlapping. That will remind these people every now and then that such a provision is there. They now seem to think that foreign exchange is something with which they can play according to their free will.

**Shri Gandhi:** Anyhow, this is our submission. The other point refers to carrying on of foreign trade by the State.

**Shri More:** They have elaborately stated their objections in their memorandum and we are supposed to have studied them. If they have something to say in addition which, by some chance, did not appear in the memorandum, then it will be worthwhile for them to mention them now.

**Shri Gandhi:** It is not our intention to unnecessarily take your time. We just wanted to stress our point.

**Shri Morarji Desai:** You may stress those points which you think are important; not every point, so that we might focuss our attention on those important points.

**Shri Gandhi:** Coming to the duty on pilfered goods, under the present law, if a consignment is to be abandoned by the party because it was pilfered, then no customs duty is leviable on the abandoned goods. But, under the present Bill, even if goods are abandoned complete custom duty will be payable. Here is a case where the party cannot be held responsible at all for the goods which are not cleared by him, because pilferage is not within his control. We would like to stress that the position regarding customs duty in respect of this should be as at present.



**Shri Morarji Desai:** How does the question of payment of duty arise in the case of abandoned goods?

**Shri Gandhi:** If there is a consignment, a part of which is pilfered, if I choose to take delivery of the balance then only I pay customs duty on the whole consignment, under the present Customs Act. But, under the Bill, even if I do not take delivery at all of the consignment, I have to pay customs duty on the whole consignment.

**Shri Morarji Desai:** If you do not take anything, you do not have to pay anything.

**Shri Dehejia:** Under the new Bill they have to pay. I will explain the position....

**Shri Morarji Desai:** No it should not be there. It does not stand to reason. If that is the position under the new Bill, we must change it. We cannot levy any duty on goods which are not taken delivery of.

**Shri Tridib Kumar Chaudhuri:** So far as consignments of imported goods are concerned, the general practice is to have them insured. Suppose they pay duty on pilfered goods, they can recover it from the insurance companies. So, what is the harm in paying customs duty?

**Shri Morarji Desai:** His point is slightly different. Suppose there is a consignment of 100 tons out of which 5 or 10 tons are pilfered. If the remaining portion is taken delivery of, then they pay customs duty on all 100 tons. But if they do not take delivery of the consignment at all, under the present Act, they have not to pay anything. Now, according to them, under the present Bill, if 50 tons out of 100 tons are pilfered, and the party chooses to abandon the balance, even then customs duty will be recovered from the party. How can we levy the duty when they have not taken delivery of the goods? I do not understand it. We will have to consider it later.

**Shri Gandhi:** There are two provisions—one about abandoned goods and the other is about pilfered goods.

**Shri Morarji Desai:** For pilfered goods you have to pay. You can insure them and recover the money from the insurance company.

**Shri Gandhi:** It is not possible to cover the full cost by insurance.

**Shri Morarji Desai:** At any rate, you pay the price and the freight. Why not you pay the duty also?

**Shri Gandhi:** If I may explain, the position is this.

**Shri Morarji Desai:** Anyhow, that is the existing law and we do not propose to change it.

**Shri Gandhi:** You are penalising in the case of pilfered goods.

**Shri Morarji Desai:** Because I have conceded one point, now you are stressing the other. If you persist, I will not consider the other point either.

**Shri Gandhi:** That we leave to your good sense. Then, coming to the valuation of goods, the departmental rules should be made and applied on a realistic basis so that there are no unnecessary complications.

**Shri Prabhat Kar:** May I draw your attention to clause 23(2) which says:

"The owner of any imported goods may at any time before clearance of the goods for home consumption, relinquish his title to the goods if they have not been pilfered and thereupon the Assistant Collector of Customs shall remit the duty thereon and sell the goods."

So, the question of payment is already there.

**Shri Morarji Desai:** That we will consider when we take up the clauses.

**Shri Gandhi:** Coming to clause 18(b), the wording here is:

"binding himself in a sum equal to twice the amount of the excess duty."

Our submission is that instead of being rigid and fixing a certain amount or percentage, would it not be desirable to leave it to the discretion of the officer, to fix it according to the standing of the party, according to the goods, so that he may fix whatever he considers adequate? So, we suggest the substitution of the words "up to twice the amount" instead of "a sum equal to twice the amount", leaving the discretion to the officer to decide what he feels necessary.

**Shri Morarji Desai:** What is wrong with this? Suppose you agree even to thrice the amount. Even then you are not required to pay one farthing more than what you have otherwise to pay. So, I do not see how this will affect you. Why should discretion be unnecessarily given to officers which will give them different kinds of temptations to take money from you? I do not think any inconvenience is caused to you by this provision. Even if it is thrice, how does it hit you? It is only when it is assessed that you will have to pay, and that too only the assessed amount. I do not feel this requires any change.

**Shri Gandhi:** We would now refer to the second part of clause 23 regarding the destruction of the goods. There are certain cases of genuine hardship and sometimes it is not possible for the importer to destroy the goods.

**Shri Morarji Desai:** In what type of cases?

**Shri Kilachand:** The goods may be of a highly explosive character, say, petrochemicals.

**Shri Morarji Desai:** Why should Government be put to the expenditure of destroying them? You import the goods and for reasons known to yourself you do not take them. Why should then Government be put to the expenditure of destroying

them? You can take them and put them in the sea or somewhere.

**Shri Kilachand:** It is in the interest of the Government that we are suggesting this. Once the goods are abandoned or are to be destroyed, why do you want the party to have anything to do with the goods? Suppose, the goods may not be destroyed. Then the party may bring them through the back door.

**Shri Morarji Desai:** We will not allow them to bring them through the back door. However, if you are prepared to pay the cost of destroying them, Government will undertake it.

**Shri Kilachand:** You can recover the cost from the party.

**Shri Morarji Desai:** I do not mind it, but this will be worse for you. You will find that the cost will be more. Afterwards please do not come to us.

**Shri Kilachand:** My personal experience is that those goods cannot be destroyed by the party without getting the consent of the State Government and authorities concerned with the regulation of explosives. It is very difficult for private parties to destroy them. What has the private party to do?

**Shri Morarji Desai:** As I have told you, I do not mind it if you are prepared to pay the cost. I am prepared to recover the cost and destroy them.

**Shri Gandhi:** The Assistant Collector requires the power only in case the goods are non-saleable.

**Shri Morarji Desai:** It is stated there 'provided the goods are not saleable'. If the goods are not saleable then and then only he 'may' require. It is not that he 'shall' require.

**Shri Ramanathan Chettiar:** But the responsibility will be theirs.

**Shri Morarji Desai:** It is on their behalf that the Government shall destroy them.

**Shri Kilachand:** The option should be given to the owner of the goods.

**Shri Morarji Desai:** Then it would be very difficult. Either it is done this way or it is done that way. It cannot be both ways. You think over it and let us know.

**Shri Kilachand:** I think an option should be given. If you say, "Either you accept this or you accept that", there is no choice and it is very difficult for the trade to accept. I would say that you give the option to the party.

**Shri Morarji Desai:** Then let it remain as it is.

**Shri Gandhi:** Then regarding clause 28 our submission is that there should be some definite and reasonable period, say, one year, within which notice should be issued for recovery of the levies even in cases of collusion.

**Shri Morarji Desai:** When it is collusion, it must be indefinite. We want to make it impossible for them to collude. I know trade and commerce is capable of doing it both in good and bad ways. When it is a bad way you should have no sympathy; otherwise, you lose your reputation.

**Shri Gandhi:** We also do not have any sympathy for them.

**Shri Morarji Desai:** I do not know why you want to side with them when there is suppression of facts or wilful misrepresentation. It must remain indefinite with the sword hanging on their heads all the while. It is deliberately done. It is not done without a purpose. I want this to be as monstrous as I can make it. The evil has become so rampant that I do not know what is to be done except that I become very cruel about it.

**Shri Gandhi:** We have no sympathy with them at all. We are looking to the inconvenience which might be caused by keeping it open indefinitely.

**Shri Morarji Desai:** If there is inconvenience caused to a wrong-doer, let it be so.

**Shri Gandhi:** Even on suspicion?

**Shri Morarji Desai:** It will not be merely on suspicion; it will be when collusion is proved and when a wilful mistake is proved. It cannot be done without that. Unless that is proved it cannot be re-opened.

**Shri Gandhi:** I will now draw your attention to clause 59. Earlier you have not accepted this, so we will not go into this again.

Now we go to clause 101. I would again like to assure you that this Chamber or any Chamber of Commerce would have no sympathy with any smuggling or anti-social activity.

**Shri Morarji Desai:** I readily grant the intention, but I do not grant the implementation.

**Shri Gandhi:** We would like to see that genuine cases do not suffer. That is why we would like to point out the clause which we are now pointing out.

**Shri Morarji Desai:** I can only give you one assurance and that is that if any genuine case is put to hardship, we will deal with the officer also similarly. That is the only remedy for it. There is no other remedy. If loopholes are kept, the remedies will go astray.

**Shri Gandhi:** Here the customs officers are to be empowered without a magistrate's order.

**Shri Morarji Desai:** Why is a magistrate so sacrosanct in this matter? It is so sacrosanct because you always have the possibility of getting away even when you have done the deed.

**Shri Kilachand:** The judiciary and the executive should be separate.

**Shri Morarji Desai:** It is an executive function entirely. It has no relation to any judicial decision. I do not think we should enter into the judicial field at all.

**Shri Kilachand:** There is a provision that it should be done under a magistrate's orders.

**Shri Morarji Desai:** Our experience is that then the information is immediately obtained by the parties concerned. Therefore this has been changed deliberately.

**Shri Gandhi:** We would say 'Assistant Collectors' or higher officers.

**Shri Morarji Desai:** It can be a gazetted officer. It cannot be anybody else.

**Shri Kilachand:** This has to be done by Assistant Collectors, or, in the alternative, by gazetted officers.

**Shri Morarji Desai:** Who is a proper officer who is not a gazetted officer?

**Shri Dehejia:** Here it is the officer authorised in this behalf by the Collector of Customs. In Clause 102, it is a gazetted officer.

**Shri Morarji Desai:** It should be a gazetted officer here also.

**Shri Dehejia:** Clause 102 is confined to particular goods. It is not any person who can do it. Clause 101 is in respect of certain goods. Suppose a man has smuggled certain goods from Pakistan border. Information was received that he is passing through some part of Punjab. At that place Gazetted officer may not be there. These items relate to gold, watches etc. in respect of which he can be searched anywhere.

**Shri Morarji Desai:** There is no frontier without a gazetted officer. You have gazetted officer everywhere.

**Shri Dehejia:** Clause 102 says that the officer of customs shall take him to the nearest gazetted officer of customs or magistrate.

**Shri Morarji Desai:** The provision is as follows:

"102(1) When any officer of customs is about to search any person under the provisions of

section 100 or section 101, the officer of customs shall, if such person so requires, take him to the nearest gazetted officer of Customs or magistrate."

The person shall ask that he may be produced. We will see whether this should be done whether he requires or not.

**Shri Gandhi:** Clause 103 mentions 'without unnecessary delay'. It is very vague. He has to be produced forthwith before the magistrate.

**Shri Morarji Desai:** It is to be done within 24 hours.

**Shri Dehejia:** That means, without unnecessary delay with 24 hours. Even within those 24 hours, there should be no delay whatsoever. That was the point.

**Shri Morarji Desai:** 24 hours is the time within which he has to be taken. There is the Criminal Procedure Code. Clause 103 is all right.

**Shri Gandhi:** In Clause 120, confiscations of goods are inextricably mixed with smuggled goods. This is a new provision. He can take all the goods which cannot be identified in this category. How can a person prove who genuinely purchases something?

**Shri Morarji Desai:** We all know. There is no genuine law-breaker.

**Shri Kilachand:** We should know what are genuine goods and what are smuggled goods. For people who do bona fide transaction, there should be no harassment.

**Shri Morarji Desai:** The proviso says:

"Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods as such part of the goods as is proved by him to have not been smuggled, shall not be liable to confiscation."

**Shri Kilachand:** The option should be given to the owner of the goods.

**Shri Morarji Desai:** Then it would be very difficult. Either it is done this way or it is done that way. It cannot be both ways. You think over it and let us know.

**Shri Kilachand:** I think an option should be given. If you say, "Either you accept this or you accept that", there is no choice and it is very difficult for the trade to accept. I would say that you give the option to the party.

**Shri Morarji Desai:** Then let it remain as it is.

**Shri Gandhi:** Then regarding clause 28 our submission is that there should be some definite and reasonable period, say, one year, within which notice should be issued for recovery of the levies even in cases of collusion.

**Shri Morarji Desai:** When it is collusion, it must be indefinite. We want to make it impossible for them to collude. I know trade and commerce is capable of doing it both in good and bad ways. When it is a bad way you should have no sympathy; otherwise, you lose your reputation.

**Shri Gandhi:** We also do not have any sympathy for them.

**Shri Morarji Desai:** I do not know why you want to side with them when there is suppression of facts or wilful misrepresentation. It must remain indefinite with the sword hanging on their heads all the while. It is deliberately done. It is not done without a purpose. I want this to be as monstrous as I can make it. The evil has become so rampant that I do not know what is to be done except that I become very cruel about it.

**Shri Gandhi:** We have no sympathy with them at all. We are looking to the inconvenience which might be caused by keeping it open indefinitely.

**Shri Morarji Desai:** If there is inconvenience caused to a wrong-doer, let it be so.

**Shri Gandhi:** Even on suspicion?

**Shri Morarji Desai:** It will not be merely on suspicion; it will be when collusion is proved and when a wilful mistake is proved. It cannot be done without that. Unless that is proved it cannot be re-opened.

**Shri Gandhi:** I will now draw your attention to clause 59. Earlier you have not accepted this, so we will not go into this again.

Now we go to clause 101. I would again like to assure you that this Chamber or any Chamber of Commerce would have no sympathy with any smuggling or anti-social activity.

**Shri Morarji Desai:** I readily grant the intention, but I do not grant the implementation.

**Shri Gandhi:** We would like to see that genuine cases do not suffer. That is why we would like to point out the clause which we are now pointing out.

**Shri Morarji Desai:** I can only give you one assurance and that is that if any genuine case is put to hardship, we will deal with the officer also similarly. That is the only remedy for it. There is no other remedy. If loopholes are kept, the remedies will go astray.

**Shri Gandhi:** Here the customs officers are to be empowered without a magistrate's order.

**Shri Morarji Desai:** Why is a magistrate so sacrosanct in this matter? It is so sacrosanct because you always have the possibility of getting away even when you have done the deed.

**Shri Kilachand:** The judiciary and the executive should be separate.

**Shri Morarji Desai:** It is an executive function entirely. It has no relation to any judicial decision. I do not think we should enter into the judicial field at all.

**Shri Kilachand:** There is a provision that it should be done under a magistrate's orders.

**Shri Morarji Desai:** Our experience is that then the information is immediately obtained by the parties concerned. Therefore this has been changed deliberately.

**Shri Gandhi:** We would say 'Assistant Collectors' or higher officers.

**Shri Morarji Desai:** It can be a gazetted officer. It cannot be anybody else.

**Shri Kilachand:** This has to be done by Assistant Collectors, or, in the alternative, by gazetted officers.

**Shri Morarji Desai:** Who is a proper officer who is not a gazetted officer?

**Shri Dehejia:** Here it is the officer authorised in this behalf by the Collector of Customs. In Clause 102, it is a gazetted officer.

**Shri Morarji Desai:** It should be a gazetted officer here also.

**Shri Dehejia:** Clause 102 is confined to particular goods. It is not any person who can do it. Clause 101 is in respect of certain goods. Suppose a man has smuggled certain goods from Pakistan border. Information was received that he is passing through some part of Punjab. At that place Gazetted officer may not be there. These items relate to gold, watches etc. in respect of which he can be searched anywhere.

**Shri Morarji Desai:** There is no frontier without a gazetted officer. You have gazetted officer everywhere.

**Shri Dehejia:** Clause 102 says that the officer of customs shall take him to the nearest gazetted officer of customs or magistrate.

**Shri Morarji Desai:** The provision is as follows:

"102(1) When any officer of customs is about to search any person under the provisions of

section 100 or section 101, the officer of customs shall, if such person so requires, take him to the nearest gazetted officer of Customs or magistrate."

The person shall ask that he may be produced. We will see whether this should be done whether he requires or not.

**Shri Gandhi:** Clause 103 mentions 'without unnecessary delay'. It is very vague. He has to be produced forthwith before the magistrate.

**Shri Morarji Desai:** It is to be done within 24 hours.

**Shri Dehejia:** That means, without unnecessary delay with 24 hours. Even within those 24 hours, there should be no delay whatsoever. That was the point.

**Shri Morarji Desai:** 24 hours is the time within which he has to be taken. There is the Criminal Procedure Code. Clause 103 is all right.

**Shri Gandhi:** In Clause 120, confiscations of goods are inextricably mixed with smuggled goods. This is a new provision. He can take all the goods which cannot be identified in this category. How can a person prove who genuinely purchases something?

**Shri Morarji Desai:** We all know. There is no genuine law-breaker.

**Shri Kilachand:** We should know what are genuine goods and what are smuggled goods. For people who do *bona fide* transaction, there should be no harassment.

**Shri Morarji Desai:** The proviso says:

"Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods as such part of the goods as is proved by him to have not been smuggled, shall not be liable to confiscation."



That is provided here. I do not know what you have got to stress?

**Shri Kilachand:** In Clause 120, the onus of proof is on whom?

**Shri Morarji Desai:** On the defaulter. Otherwise no smuggling will be proved at any time. How is smuggling to be proved at any time?

**Shri Ramanathan Chettiar:** What are the suggestions and methods which our friends would suggest to end this smuggling?

**Shri Morarji Desai:** Can anybody do it? Smuggling is an age-old profession.

**Shri Ramanathan Chettiar:** They can say some ways and methods.

**Shri Morarji Desai:** The only way in which they can help us is not to allow such persons to become Members. They can remove such people. If there are prominent people doing that, how can they remove them? I don't think you can ever do it.

**Shri Kilachand:** If Government is not able to say who is a smuggler and who is not, how can the Chamber of Commerce do it?

**Shri Morarji Desai:** Even if you have a clause, you can't implement it. Don't make impossible provisions.

**Shri Kilachand:** The fact remains that there are certain natural difficulties which a genuine man may have to suffer on account of an officer who may not be in the know of things.

**Shri Morarji Desai:** Dismiss that officer the moment you prove like that. You say, he has done this, he has harassed me, etc. That is what we will do.

**Shri Kilachand:** My point is that damage has been done.

**Shri Morarji Desai:** No body is so genuine. There comes the difficulty. In certain cases he makes up with the officer and he does not want to complain. He does not want to complain against him. What can I do in that

case? The really genuine man will complain about it and I will take action against the officers concerned. Otherwise, I cannot do anything. It is just your own inability to deal with your members.

**Shri Bade:** Do you want that this should be deleted?

**Shri Morarji Desai:** He does not want that.

**Shri Gandhi:** We certainly do not want it to be deleted.

Now, I come to clause 140—Offences by companies. Here it is provided that every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence. This would mean that it would include all the Directors, Managing Directors and other Officers of the company. It will create a lot of hardship.

**Shri Kilachand:** The point is that the Directors who attend meetings of the company once a month or once in two months are also unnecessarily involved here. The person who is really in charge of the company and responsible to the company should be deemed to be guilty of the offence. Otherwise, it would result in a vicarious liability.

**Shri Dehejia:** This provision exists in so many other Acts also.

**Shri Gandhi:** At the time of the Companies Act also, we had pointed out that it would impose a vicarious liability.

**Shri Morarji Desai:** It says:

"...every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence....".

The Director is not held responsible. It is no use saying that the Directors are also brought in. It is only the Chairman or the Managing Director who will come in.

**Shri Bade:** The proviso is there.

**Shri Morarji Desai:** The proviso says:

"Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence."

**Shri Kilachand:** How can the Director prevent the commission of such an offence. The Director is not aware of it.

**Shri Morarji Desai:** That is what you can say immediately. Nobody is going to prosecute the Director.

**Shri Kilachand:** That could be clarified.

**Shri Morarji Desai:** It cannot be clarified. If it is clarified, then the other fellow will go scot-free.

**Shri Kilachand:** It is a very wide provision. It may be construed to mean that anyone of the Officers of the company, even the Director, can be held guilty of the offence.

**Shri Morarji Desai:** The proviso is very wide. The proviso covers every genuine case.

**Shri Kilachand:** It says:

"....if he proves that the offence was committed without his knowledge...."

**Shri Morarji Desai:** He can say that the offence was committed without his knowledge. But if it is proved that the offence was committed with his knowledge, then he shall be deemed to be guilty of the offence.

**Shri Dehejia:** There are various types of instances. There may be a resolution of the Board itself, saying how things should be done and all the Directors may have participated. Then, there may be another instance where the Chairman has given an order to the Secretary and the Secretary has done it. Only the Chairman and the Secretary know about it. In some cases Directors are a party to it and in some cases Directors are not a party to it. It happens like that.

**Shri Morarji Desai:** It will have to be proved. It is stated:

"....it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence...."

It is very clear here. There is no ground for apprehension.

**Shri Gandhi:** Then there is the last point about Appellate Provisions.

**Shri Morarji Desai:** You want a Tribunal. No Tribunal will be given.

**Shri Kilachand:** There are Tribunals provided in similar enactments, under various other laws. Why not also here?

**Shri Morarji Desai:** In Customs, things are so difficult to prove. Once you go into those things, I think, no case will be proved.

**Shri Kilachand:** There should be an independent appellate authority.

**Shri Morarji Desai:** When it is a prosecution, it goes to the magistrate and it goes even to the Supreme Court. When it is an executive fine, it is not a judicial decision and, therefore, it should not go to the judicial authority.

**Shri Kilachand:** The aggrieved party should have some independent body.



**Shri Morarji Desai:** In foreign countries, the fines are levied on the spot by the policemen. There is no question of even an appeal.

**Shri Kilachand:** It is not on the spot. It is only in the case of traffic cases.

**Shri Morarji Desai:** Traffic cases and sanitation and things. This is sanitation of public life.

**Shri Bade:** Does he want that the appellate authority should be just like the one as in Income Tax?

**Shri Kilachand:** That is what we are saying.

**Shri Gandhi:** Sir, we are very grateful to you for giving us this opportunity for expressing our views.

**Shri Morarji Desai:** Thank you for being very brief.

**Mr. Chairman:** Thank you.

*(The witnesses then withdrew.)*

## II. ALL INDIA JEWELLERS' ASSOCIATION NEW DELHI

*Spokesmen:*

1. Shri Bhola Nath
2. Shri Sultan Singh Backliwal
3. Shri Jawaharlal
4. Shri V. J. Merchant

*(Witnesses were called in and they took their seats)*

**Chairman:** Your memorandum has been circulated to the Members of the Committee. Have you anything more to add?

**Shri Merchant:** I shall first deal with the history of the import of precious stones. It has been allowed to be imported without any duty for quite a long time now. Recently a small duty of 5 per cent has been imposed. The result is that quite a considerable quantity of precious stones has already come into the country.

**Shri Morarji Desai:** Are you dealing only with precious stones—excluding diamonds—that is rubies, sapphires and emeralds

**Shri Merchant:** Prior to the partition of Burma quite a large quantity of precious stones has come to India and a good part of these precious stones are in circulation. It is also very easy to import these stones from outside India. They are available in plenty within the country. Therefore, there is no point in smuggling these stones. Our submission is that these three items should be excluded from the purview of the Sea Customs Act.

Then I come to clause 118, which says that "Where any smuggled goods are contained in a package, the package and any other goods contained therein shall also be liable to confiscation." Suppose I have bought some precious stones. I do not know whether they are smuggled or not. Along with my other items of jewellery I go to a safe-deposit vault to keep it in safe custody. At that time the Customs Officer comes and examines the packet. The result would be I would lose the entire lot.

**Shri Morarji Desai:** You have to read the proviso to clause 120 which says:

"Provided that where the owner of such goods proves that he had no knowledge or reasons to believe that they included any smuggled goods, such part of the goods as is proved by him to have not been smuggled, shall not be liable to confiscation."

**Shri Merchant:** That proviso would apply only to clause 120.

**Shri Morarji Desai:** Supposing we make a similar proviso here as well?

**Shri Merchant:** Then we would not mind.

**Shri Morarji Desai:** We had told the other deputation that we shall consider what best could be done

about precious stones. It is not possible to exclude them entirely.

**Shri Merchant:** There is no particular mark or anything on the precious stones to find out whether they are imported or are indigenous ones.

**Shri Morarji Desai:** That applies to so many items.

**Shri Backliwal:** But the main factor to be considered is that these stones are available in plenty. The import duty of 5 per cent is almost insignificant. Local consumption of these stones is not much; we export a lot.

**Shri Morarji Desai:** How much do you export from local sources?

**Shri Backliwal:** In India there are crores worth of precious stones which have come from Burma, Ceylon and other countries. The princes and other rich classes have been having these as a form of investment. A good part of these are now being recut and rephased.

**Shri Morarji Desai:** There is perhaps a case for precious stones to be considered. But there are many persons who deal in both. Therefore we have to see how best this can be safeguarded.

**Shri Merchant:** If the precious stones are meant to include these items which we have mentioned, the difficulty will be solved.

**Shri Hari Vishnu Kamath:** Will this difficulty of differentiation between deshi and videshi precious stones applies only to emeralds, rubies and sapphires or also to other precious stones?

**Shri Merchant:** There are also other precious stones. They are mostly semi-precious stones. Some of them are sometimes treated as precious stones. But these are the three most important previous stones.

**Shri Hari Vishnu Kamath:** You say it is difficult to distinguish between deshi and videshi, indigenous

and foreign. Does this difficulty of differentiation apply only to these three kinds or other categories also?

**Shri Merchant:** It also applies to other categories.

**Shri Hari Vishnu Kamath:** For instance?

**Shri Backliwal:** There are about 64 types of precious and semi-precious stones known to the jewellers. To define all of them will be quite difficult.

**Shri Hari Vishnu Kamath:** You are not bothered about those?

**Shri Backliwal:** We are bothered.

**Shri Hari Vishnu Kamath:** You are sticking only to these three.

**Shri Morarji Desai:** They are bothered only about these three, because these three are common and there is no incentive for their smuggling.

**Shri Hari Vishnu Kamath:** Even the uncommon ones are precious stones.

**Shri Morarji Desai:** The uncommon ones are smuggled, but these are not smuggled because they are freely allowed to be imported.

**Shri Backliwal:** The others are not so much in fashion and not so much worn by Indians. Some of it is imported and some are found indigenously, and most of them are exported: for instance the cinnamon-ruby, aquamarine, peridot and many other precious stones.

**Shri Hari Vishnu Kamath:** What about onyx and amethyst?

**Shri Backliwal:** They are also precious stones in which we deal.

**Shri Narendrasingh Mahida:** Is there any difference between the locally produced ruby and the foreign-produced ruby, in the polishing and so on?

**Shri Backliwal:** There is not much difference between them. You cannot distinguish between the two. Once they are cut, and even in the raw form, many of them cannot be distinguished.

**Shri Ramanathan Chettiar:** What about Rangoon diamonds?

**Shri Morarji Desai:** They are artificial stones.

**Shri Backliwal:** We are not dealing with synthetic stones but real ones found naturally. Synthetic and chemical things are different.

**Shri Morarji Desai:** We have said we will consider that.

**Dr. L. M. Singhvi:** If a proviso similar to the proviso to clause 120 is incorporated in clause 118, will their interests be safeguarded?

**Shri Morarji Desai:** They say that. But we will have to see whether only for these three it has to be done.

**Dr. L. M. Singhvi:** That is a matter for us.

**Shri Morarji Desai:** We have to see how best to give them protection. There is a genuine case for giving them protection.

**Shri Merchant:** If a proviso is added, we suggest that it should be on these lines:

"Provided that other goods can only be confiscated provided the owner thereof knowing that any goods are smuggled places other goods with them but not otherwise."

The entire burden is being put on the owner. If he knows that there are smuggled goods in the packet, then it can be confiscated. But if he himself is not aware about it, it should not be confiscated even if it is diamond. Clause 120 goes beyond this. The proviso I am submitting is to the effect that if he knowingly puts a smuggled item in the packet, then it can be confiscated.

**Shri Morarji Desai:** Are you considering this only for precious stones, or are you speaking generally?

**Shri Merchant:** Only for precious stones.

**Shri Morarji Desai:** I have said that we will consider that. You can give that suggestion.

**Shri Bade:** You say that it is impossible to prove the negative in the court.

**Shri Merchant:** Yes.

**Shri Morarji Desai:** You have brought this packet to show all the precious stones? Does anybody want to see these?

**Shri Backliwal:** You will see, Sir, that it is difficult to distinguish them.

**Shri Merchant:** Even if it is smuggled it is very difficult to find out.

**Chairman:** Is there any smuggled stone in it?

**Shri Backliwal:** Not at all, Sir, what I want to submit is this. Pieces like these come to us from princes or other customers, from so many people. What are we to do? We are satisfied after getting the purchase voucher. Suppose they give us that and we buy a thing in good faith. How are we to know at the time of purchase whether one stone out of the whole necklace or the whole set may be such which a Customs Officer may say is a smuggled stone?

**Shri Morarji Desai:** Nobody will be taken to task for that. If you purchase one necklace in a genuine manner, and one stone in it—whether small or big—is found to be smuggled, nobody is going to find fault with you, unless you have put it yourself afterwards.

**Shri Backliwal:** There may be one stone in it on which a Customs Officer may have a doubt.

**Shri Morarji Desai:** Have you been harassed like that?

**Shri Backliwal:** There have been cases, not with us but with some other traders.

**Shri Morarji Desai:** How many? Yesterday we were told that there were only four or five cases since 1955.

**Shri Merchant:** But after the coming into force of the new Customs Act ....

**Shri Morarji Desai:** As I said, we are going to consider this.

**Shri Hari Vishnu Kamath:** May I know whether these three kinds of precious stones are in fashion or in common use because they are used as part of jewellery only, or because they are prescribed by astrologers for their clients; and, if so, whether there are not nine precious stones for nava grahas?

**Shri Morarji Desai:** Nava rathnas.

**Shri Backliwal:** They are used for two purposes in India. Most of the people put their money in jewellery more as an investment rather than merely for the sake of ornament. When one wants to invest a large amount of money—the word 'large' being a relative word—one buys jewellery, emerald, sapphire and ruby; the others will be less costly. Also, many people wear them for beneficial effects of the nava grahas in the zodiac.

**Shri Hari Vishnu Kamath:** So there are nine precious gems. But you are concerned only with three.

**Shri Backliwal:** Some of them are semi-precious, e.g. turquoise or yellow sapphire.

**Shri Prabhat Kar:** Suppose there is a packet of precious stones. While distributing it, you may distribute it one here, one there, etc. So far as this is concerned, this will be one out of a thousand items. They will get distributed at several places.

**Shri Morarji Desai:** What they say is that in respect of these precious

stones there is no incentive for smuggling. That is how they are pleading, and there is something in what they say. There have been very few people found smuggling these. As a matter of fact no case has been proved so far.

**Shri Prabhat Kar:** But this question is raised that if one out of a hundred stones is found to be a smuggled one, then all the other ninety-nine will also be confiscated.

**Shri Morarji Desai:** That should not be done.

**Shri Prabhat Kar:** If it is done in the manner I have described?

**Shri Morarji Desai:** That risk we have to take.

**Shri Prabhat Kar:** I wanted to know whether we will consider that aspect.

**Shri Backliwal:** Reference are sometimes made to under-valuation and over-valuation. But our submission is....

**Shri Morarji Desai:** Under-invoicing and over-invoicing. That we have got to take care of. You are also not free from that, I think.

**Shri Merchant:** It is covered by the Foreign Exchange Control regulations.

**Shri Merchant:** Section 120: we have the same objection.

**Shri Morarji Desai:** The same argument for every clause.

**Shri Merchant:** In clause 121 there is a practical difficulty.

**Dr. L. M. Singhvi:** The same objection that they have to clause 118, they have also for clause 120. To my earlier question, the witness said that if the proviso to clause 120 is incorporated in clause 118, their interests would be safeguarded, and they would have no objection. If there is the same objection to clause 120, it may not remove the difficulty.

**Shri Morarji Desai:** The Committee will consider when we take it clause by clause.

**Dr. L. M. Singhvi:** I would like to know their clarification. What is their position? They said that if this proviso is added there, they would have no objection. They say that clause 120 is objectionable.

**Shri Merchant:** Clause 120 reads like this:

"Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods the whole of the the goods shall be liable to confiscation."

Restricting myself to the three precious stones, in the case of these three stones, it is very difficult to find out whether it is smuggled.

**Shri Morarji Desai:** Once a thing is found to be smuggled, then, it can be separated from all others. What do you mean by saying that they cannot be separated? It is quite a different thing altogether. This may not apply to precious stones. You are imagining something. When does this apply? You have got 100 precious stones. When will confiscation come? When it is proved that a part of it or the whole of it is smuggled. Even if a part is smuggled, we will have to prove that these stones are smuggled. This means that they can be separated. There is no question of confiscating the whole thing. You are not understanding the clause at all.

**Shri Backliwal:** The question was one of proof.

**Shri Morarji Desai:** If it is not proved, nothing will be done. The prosecution will have to prove that it is smuggled. Once it is proved that it is smuggled, you have to prove that it is *bona fide* you had no knowledge. All that comes later.

**Shri Merchant:** Suppose the smuggled one is not identified, the whole is not to be confiscated.

**Shri Morarji Desai:** If I can prove that the whole packet is smuggled, you have no objection left. If, in the packet, I say that something is smuggled, I will have to prove what is smuggled. Otherwise you are not going to be charged.

**Shri Merchant.** It may be said as well by the Customs Officer that they were smuggled.

**Shri Morarji Desai:** He is not a Czar. He will have to work under the law. He will have to prove that the whole is smuggled.

**Shri Backliwal:** It should be provided beyond all suspicion.

**Shri Morarji Desai:** It is impossible if you go on suspecting.

**Shri Merchant:** If out of 100 stones, they say 1 or 2 are smuggled?

**Shri Morarji Desai:** If people who do not know law want to become lawyers, it is impossible.

**Shri Hari Vishnu Kamath:** How would you like to amend it?

**Shri Morarji Desai:** They have suggested that precious stones should be kept out.

**Shri Hari Vishnu Kamath:** That will be considered later.

**Shri Morarji Desai:** That is what I have said.

**Shri Merchant:** Clause 121 says:

"Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods the sale proceeds are liable to confiscation."

**Shri Morarji Desai:** "A person having knowledge or reason to believe": what are you objecting to?

**Shri Merchant:** I am pointing out that it is said that the sale proceeds shall be liable to confiscation. Supposing the sale proceeds are in the form of currency notes, after orders of confiscation are made, they should be confiscated, not before that.

**Shri Morarji Desai:** How can they do before that? How can anything be confiscated before an order is passed? Notes cannot be confiscated before an order is passed. I do not see to what you are objecting.

**Shri Merchant:** Worded as it is, there is power to confiscate.

**Shri Morarji Desai:** How can anything be confiscated before an order is passed? Once the first part is proved, the second part will follow. There is no question of seizing it. Go on further.

**Shri Morarka:** In this clause it is said that the sale proceeds shall be liable to confiscation. They say that this section is very harsh for bona fied purchasers. It is not harsh for the purchasers. The purchaser will not be in possession of the currency notes, i.e. the sale proceeds.

**Shri Morarji Desai:** If you are going to take up unnecessary things, you may lose your main thing.

**Shri Merchant:** It is not a question of bringing in unnecessary things. We have viewed it from our own angle. We are expressing our own views in the matter.

#### *Clause 123*

**Shri Morarji Desai:** What is your objection? Again, precious stones should be removed.

**Shri Merchant:** That is one part. The ratio of the decision of the Supreme Court in A.I.R. 1962 Supreme Court 316 should be incorporated in this clause, about burden of proof.

**Shri Morarji Desai:** Here the burden of proof is deliberately put on the smuggler. You want to reverse that. That will never be done.

**Shri Merchant:** I am only drawing attention to the judgment of the Supreme Court.

**Shri Dehejia:** That judgment is in our favour.

**Shri Bade:** You say that the purchaser who takes the smuggled goods by giving the price and from whom the goods are seized should prove that these goods are not smuggled.

**Shri Merchant:** What I say is that the ratio of the Supreme Court judgment should be incorporated in this. If you wish I will read it out.

**Shri Morarji Desai:** I do not think you need read out everything.

#### *Clauses 101 and others*

**Shri Merchant:** These clauses regarding searches, seizure and arrest are so strongly worded that they give tremendous powers to the customs officers without any pressure from the court of law.

**Shri Morarji Desai:** There will be no court of law brought into this.

**Shri Merchant:** These should be amended in such a way that before action is taken, at least some opportunity should be given to the persons.

**Shri Morarji Desai:** Opportunity cannot be given before seizing it.

**Shri Merchant:** An honest man is liable to be penalised.

**Shri Morarji Desai:** If an honest man is penalised, then the officer will be penalised.

**Shri Merchant:** That is a different question. The clauses as worded give tremendous powers.

**Shri Morarji Desai:** Nobody denies that.

**Shri Backliwal:** The point is that in the jewellery trade unlike other trades where goods are sold and bought, it is the confidence of the customers on the trader that is most important.

**Shri Morarji Desai:** In the case of precious stones, you yourself admitted that there have been only four cases from 1955 till now. Four cases are not many cases.

**Shri Backliwal:** They are major cases. There have been many other cases of harassment.

**Shri Morarji Desai:** You give a list of those cases. We will go into each one of them.

**Shri Backliwal:** I will.

**Shri Hari Vishnu Kamath:** What is the nature and kind of harassments to which you are subjected?

**Shri Backliwal:** Suppose on the slightest suspicion....

**Shri Morarji Desai:** Why suppose? Give concrete cases.

**Shri Backliwal:** There is a firm in Delhi—Ivory Palace. They had a packet of diamonds....

**Shri Morarji Desai:** I thought you were not concerned with diamonds. There are many smugglers of diamonds in this country. We have to act even on suspicion about these people.

**Shri Backliwal:** He had also rubies.

There was one firm in Chandni Chowk. The Customs people had suspected that the ruby package that he had was smuggled. Actually, that person was taken to task.

His business was lost. Many of the jewellers have ceased to have any trading or association with him.

**Shri Dehejia:** Could you kindly give a list of people who have gone out of business as a result of harassments?

**Shri Backliwal:** I did not bring it. We will submit it.

**Shri Morarji Desai:** Names of people who have been harassed and how they have been harassed.

**Shri Hari Vishnu Kamath:** Those who have been forced out of business.

**Shri Backliwal:** We will

The point I wanted to make is that this is the only trade in the world where all sales are done on the confidence of the trader. The average customer does not know the worth and value of the ornament he is buying. Jewellers run their business for generations on this confidence. Suppose a jeweller is harassed; he loses his reputation.

**Shri Morarji Desai:** If anybody is harassed, we will take action against the officer.

**Shri Backliwal:** But the reputation of the jeweller is gone.

**Shri Morarji Desai:** We will punish the officer and publish the fact that he has been wrongly harassed.

**Shri Hari Vishnu Kamath:** You never publish it. It has never been published.

**Shri Merchant:** We feel that these provisions are very harsh.

**Shri Morarji Desai:** They have to be harsh, because the profession of smuggling requires to be rooted out. That cannot be done unless there is heavy punishment.

**Shri Merchant:** The honest citizen is liable to suffer in the process.

**Shri Morarji Desai:** If an honest citizen suffers, we will dismiss the officer.

**Shri Merchant:** The officer will always say that he had reason to believe and so on.

**Shri Morarji Desai:** Can you guarantee that no precious stones will be smuggled by anybody?

**Shri Merchant:** How can anyone give that guarantee?

**Shri Hari Vishnu Kamath:** Can you formulate a code of conduct for your own fraternity and take action according to the code, even boycotting any members of your fraternity



who are proved to have smuggled goods?

Shri Morarji Desai: They can never do that.

Shri Hari Vishnu Kamath: Let the answer come from them.

Shri Morarji Desai: I know human affairs as they are taking place.

Shri Backliwal: There is no written code of conduct. But there is a hereditary code of conduct which is inherent in every jeweller all over India and all over the world.

Shri Morarji Desai: Have not jewellers gone wrong? Have they not smuggled goods? Have they not been punished? There is no section for which you can give a guarantee that there will be no wrong done by it.

\* \* \* \*

Shrimati Savitri Nigam: The witness was referring to the case of a firm in Chandni Chowk. Could he give us a synopsis of the case?

Shri Morarji Desai: It cannot be given vaguely. He will give it in writing.

Shrimati Savitri Nigam: If he could give it in a minute or two, we can know what happened.

Shri Backliwal: I will give you some concrete examples of cases which occurred.

The particular jeweller, whom I referred to, was taken to the police station on the pretext of mere suspicion that he was associated with smugglers. He had in the past gone to Burma two or three times and had stayed there. That was about 20 years ago. On that slightest idea, all his goods were confiscated, though finally they were returned to him. He was marched through the streets. Every jeweller was seeing this because this was in the centre of Chandni Chowk.

Shri Morarji Desai: When did this happen?

Shri Backliwal: 2½ years ago. I gave just one example. But such a stray example will never come to notice.

Chairman: Did you bring this to the notice of the Finance Ministry?

Shri Backliwal: No.

Shri Morarji Desai: Why not?

Shri Backliwal: This question has arisen just now. That jeweller must have taken steps to redress his own grievance. I do not know in what way he did.

Shri Morarji Desai: I have not heard about it.

Shri Backliwal: Every jeweller was very much pained at this. The whole trade was very much pained at this.

Chairman: Parliament is sitting here. You could easily have brought it to our notice.

Shri Morarji Desai: You give us the details now. I will make inquiries.

Shri Backliwal: We will do that. But his reputation once lost cannot be regained.

Shri Morarji Desai: The reputation of every citizen is precious, not only of jewellers.

Shri Backliwal: Yes.

### Clause 13

Shri Merchant: Here before clearance, he will have to pay the duty.

Shri Morarji Desai: He has to pay. The goods are insured. They have been paying so far.

Shri Merchant: But now it is after he has taken it for home consumption.

Shri Dehejia: Has there been any case of pilferage of precious stones?

Shri Merchant: This is general.

Shri Morarji Desai: Precious stones are seldom received through ports.

**Shri Merchant:** In Clause 14, we suggest that the words "offered for sale" may be removed, as the price may be brought down by negotiation by the time the goods are sold.

**Shri Hari Vishnu Kamath:** Can you tell us what the position is in countries like the U.K., and U.S.A., in regard to pilferage?

**Shri Merchant:** I cannot enlighten you.

What is the exact meaning of the expression "normal price". We suggest there should be assessors or a panel of valuers to determine the normal price.

**Shri Morarji Desai:** That is a matter for executive instruction. In the section there cannot be mention of a panel. There are assessors and valuers.

**Shri Merchant:** But a representative of the Association may be there.

**Shri Morarji Desai:** Not necessarily always. Where they do not know, they will take advice.

**Shri Merchant:** But that is not done in all the cases. So, it should be in the statute itself.

**Shri Bade:** Can you give a definition of "normal price"?

**Shri Merchant:** Such price which may be ascertained looking at the circumstances of the case.

**Shri Morarji Desai:** That is what it says here.

**Shri Backliwal:** Prices are governed by many factors.

**Shri Morarji Desai:** Therefore, it cannot be defined in a precise manner.

**Shri Backliwal:** So, we want an expert from the Association to be associated.

**Shri Morarji Desai:** That can be done only by rules.

**Shri Merchant:** Then I come to Clause 111(1) and (m) and Clause 113 (h) and (i).

It should be clarified that if there is a mistake in the bill of entry by oversight, this provision will not be attracted. The words "wilfully or knowingly" may be added to make this clear, as otherwise people may be unnecessarily harassed.

**Shri Morarji Desai:** How can it be an oversight or accidental? These are all methods of smuggling, and we cannot leave loopholes in this. The actual experience is that an import is shown as 100 tons, and actually 110 tons are brought in.

**Shri Backliwal:** Here it is only carats and cents. For instance, 0.20 cents is like a few human hairs.

**Shri Morarji Desai:** Nobody is going to bother about it. Does it ever happen? This is not a new provision at all.

**Shri Backliwal:** But viewed in the light of the other provisions, this is harsh.

**Shri Morarji Desai:** It should be harsh. I am not bothered.

**Shri Dehejia:** Is it your contention that exporters are always honest?

**Shri Merchant:** No one can say that, but there may be an oversight.

**Shri Morarji Desai:** There cannot be any oversight in this matter.

**Shri Merchant:** Coming to Clause 128, I submit that the appellate authority should have only power to lessen the penalty, not to increase it, as this leads to taking of fresh evidence.

**Shri Morarji Desai:** When it suits you, you want to go into more evidence so that you may be acquitted, but you do not want to go into more evidence if it brings you in. If there is collusion between you and the other people, why should not the appellate authority set it right?

**Shri Bade:** Probably what he wants to say is that the appellate authority is not the original court, and therefore, it has no authority to enhance the punishment, it can only lessen it.

**Shri Morarji Desai:** Is it not provided in any other law? High Courts have powers of enhancement, the Supreme Court has got. How is it against the law of jurisprudence?

**Shri Merchant:** They take the evidence from the facts which are on record, but this leads to taking of fresh evidence.

**Shri Morarji Desai:** That will be better so that it is more sure.

**Shri Merchant:** Then it will take four, five years to dispose of.

**Shri Backliwal:** In Bombay, in a case goods were confiscated and it has been going on for the last three years. The goods are worth about Rs. 20,000.

**Shri Morarji Desai:** Please let me know so that we can go into it. I will deal with the persons concerned. That should not happen at any time.

**Shri Backliwal:** We shall let you know the details.

**Shri Merchant:** About clause 129, I would say that demanding the deposit would act as a hardship because there may be many people who may not go on appeal because the amount has to be deposited.

**Shri Morarji Desai:** Otherwise how is it to be recovered?

**Shri Merchant:** The goods are there in custody.

**Shri Morarji Desai:** But the goods might deteriorate in value.

**Chairman:** There is the proviso which provides for the discretion to dispense with the deposit. It says:

"Provided that where in any particular case the appellate authority is of opinion that the deposit of duty or penalty levied will cause undue hardship to the appellant, it may in its discretion dispense with such deposit, either unconditionally or subject to such conditions as it may deem fit."

**Shri Merchant:** Clause 131 is the last one. Opportunity should be given for the person to be heard.

**Shri Morarji Desai:** I do hear many people; but I cannot hear everybody. It becomes impossible; it is not necessary to hear every time. You may place the facts in writing.

*(The witnesses then withdrew)*

### III. INDIAN CHAMBER OF COMMERCE, CALCUTTA

*Spokesmen:*

1. Shri B. P. Khaitan
2. Shri H. R. Sugla
3. Shri B. Kalyanasundaram.

*(Witnesses were called in and they took their seats)*

**Chairman:** Your memorandum has been circulated to all our members. Do you want to add anything to it or clarify anything?

**Shri Khaitan:** There are two points about which I would like to emphasise and to supplement the memorandum because they are not covered by the memorandum.

The first is clause 120 of the Bill.

**Shri Morarji Desai:** If you concentrate on the most important points it would be better, instead of touching every point.

**Shri Khaitan:** That is exactly what I am going to do. There seems to be a drafting mistake in the proviso to 120(2). The latter part is a negation of the former part. The idea is that if a person proves that he is a bona fide purchaser, he satisfies the condition. But the latter part seems to imply that he will have to prove that those are not smuggled goods. I do not think it was the intention.

**Shri Dehejia:** The first part says that all goods are liable to confiscation. Then, there is the proviso. It provides for the exception. That is the purpose of a proviso.

Shri Khaitan: If the owner proves that he is a *bona fide* purchaser, then, the goods will not be confiscated. But then you have put an additional burden.

Shri Morarji Desai: What is the negation?

Shri Khaitan: If I prove that I am an innocent purchaser I need not prove that the goods are not smuggled.

Shri Morarji Desai: You have to prove that you did not know that the goods were smuggled. It is proved that part of what you have got is smuggled goods. So, you must prove after that that you did not know that it was smuggled. I do not see any negation. I am prepared to take away the proviso if it is redundant.

Shri Khaitan: The proviso is important; I want a similar proviso in clause 123.

Shri Dehejia: Would you suggest an alternative draft?

Shri Khaitan: I will give the suggestion for an alternate draft.

The next clause I would like to deal with is 123. Under the clause if I purchase the goods in the open market, or how long I have been in possession of these goods it does not matter, even if any customs officer chooses to take action and seizes the goods, then I have to prove that they are not smuggled. The goods might have passed several hands even.

Shri Morarji Desai: Does this not apply to stolen goods? Is there any time-limit provided for stolen goods?

Shri Khaitan: If you put it on the same level as stolen goods I will accept that. That protects *bona fide* purchasers; it does not hit them hard. We know the habits of our people. Every family has got some amount of jewellery. The clause as it is capable of causing serious difficulties.

Shri Morarji Desai: Has anybody been taken in like that?

Shri Khaitan: I can show one or two instances where it took one year or more to get the ornaments released.

Possibly customs people went there to search some other goods and some papers. They found none of them but found some ladies' ornaments and they took them away. It took me one year to get them back.

Shri Morarji Desai: When did this happen? Can you send me full details of this case?

Shri Khaitan: I can send you full details about this case. In this connection, with reference to this clause, it should be modified so that if anybody shows that he has purchased the goods *bona fide* or that he has been in possession of them for a considerable period, then he should not be adversely affected.

Shri Morarji Desai: That is the burden of proof. If they prove they are not smuggled goods, the matter ends there.

Shri Khaitan: The burden of proof should be that I am a *bona fide* purchaser.

Shri Dehejia: There are two things one in respect of goods and the other in respect of persons. Smuggled goods even if they have changed hands remain smuggled. So, the goods have to be confiscated.

Shri Khaitan: How can there be proof that this watch is not smuggled? It may have passed ten hands before it was purchased.

Shri Dehejia: A smuggler sells the goods to some person. Now, what is to be done?

Shri Khaitan: You can guard against dealers but you must protect *bona fide* people, knowing as you do the general habits, especially in the case of ornaments and jewellery which are in their possession for over 10 or 15 years.

**Shri Morarji Desai:** If he says that he possessed it for ten years who will prove it is smuggled? There must be reasonable belief. You can say that the reasons must be given in writing.

**Shri Hari Vishnu Kamath:** There is a provision for reasons to be recorded in writing. Are you satisfied with that?

**Shri Khaitan:** If it says 'for reasons to be recorded in writing', that will do.

**Shri Morarji Desai:** We will find out the best method; we will see how best it can be put in.

**Shri Khaitan:** Then clause 127 goes against the principles of our Constitution. A man has been punished by the customs officers; his goods have been confiscated; and a penalty has been imposed for matters forming part of the same offence of smuggling.

But he can again be prosecuted. You can have a deterrent punishment if you like but a man should not be prosecuted if he has been penalised.

**Shri Morarji Desai:** Confiscation is not prosecution.

**Shri Khaitan:** It is a punishment; there should not be double penalties.

**Shri Morarji Desai:** There can be two punishments; there is nothing wrong such persons should be punished several times. There are circumstances in which there are bound to be two punishments. Supposing an officer is prosecuted for corruption, he is dismissed and he is also sent to jail. There are two punishments.

**Shri Prabhat Kar:** The Supreme Court has said that it is not a contravention of the provisions of the Constitution.

**Shri Khaitan:** May I submit that many times laws are enacted to set right what the Supreme Court has done because we think that the law should be different.

**Shri Morarji Desai:** But nothing prevents them from saying that it is against natural laws.

**Shri Khaitan:** The Supreme Court has not expressed any opinion about the ethics of the thing.

**Shri Prabhat Kar:** They examined whether this particular clause contravenes the articles of the Constitution, it was held that it was not *ultra vires* the Constitution.

**Shri Morarji Desai:** It has always been found that when the Supreme Court is helpless against a provision of law which is constitutional, which is legal, but which they think is not in accordance with the natural law of justice, they also register an *obiter dicta* saying that even though the thing is justified in law, it ought to be remedied. That is what they say.

**Shri Hari Vishnu Kamath:** Equity and justice.

**Shri Morarji Desai:** In this case they have said nothing of the sort.

**Shri Khaitan:** I have never said that the original Act is against the Constitution. But my submission is that this is a hardship which should be removed.

**Shri Morarji Desai:** The hardship is deliberately kept.

**Shri Khaitan:** In regard to clause 128 which deals with appeals, my humble submission is this. I suggest that there should be a tribunal as under the Income-tax Act or an appellate board as in the Foreign Exchange Regulations Act.

**Shri Morarji Desai:** The Board of Revenue is an appellate Board.

**Shri Khaitan:** There is a difference. The customs officers, many times when there is a case of importance, take interest in the case from top to bottom.

**Shri Morarji Desai:** From top to bottom?

**Shri Khaitan:** I mean the senior and other officers come to know of the case and they even go up to Calcutta or Bombay and give guidance and so they take an interest. What is the use of appealing to them afterwards, when there is decision under their directions?

**Shri Morarji Desai:** They never go like that. If their advice is asked for, something is given.

**Shri Dehejia:** Sometimes at the instance of the party itself.

**Shri Khaitan:** In a recent case, what happened was that while the case was pending, other innocent affected party came to Delhi and made representations and naturally the whole thing was judged in the light of what happened higher up.

**Shri Morarji Desai:** These are all executive matters. They do not require any judicial handling.

**Shri Khaitan:** The remedy at the appellate stage should be a real one; it should give a real sense of feeling that justice is being done.

**Shri Morarji Desai:** There is no sense of feeling of justice unless a person is acquitted!

**Shri Dehejia:** If the Board members have taken interest, and there is a failure of justice, a writ lies in the matter.

**Shri Khaitan:** If the Board has already made up its mind that this punishment should be given, what happens of the appeal?

**Shri Dehejia:** In the case you referred to, such a thing has not happened.

**Shri Khaitan:** Things happen in secret files.

**Shri Hari Vishnu Kamath:** Before the present tribunal, what is the proportion of appeals that have succeeded and what is the proportion that has not succeeded?

**Shri Khaitan:** If the departmental figures are made available to me, this

information is possible. Unless the departmental files are made available to me, it is not possible for me to give these figures.

**Shri Morarji Desai:** I myself have reversed the orders in several cases.

**Shri Dehejia:** We can give the figures to the hon. Member, if necessary.

**Shri Morarji Desai:** I have also interfered and reversed the orders.

**Shri Hari Vishnu Kamath:** Yes, please give those figures including the cases in which the hon. Minister has reversed the orders.

**Shri Morarji Desai:** It will be roughly about ten per cent.

**Shri Khaitan:** Then I refer to clause 129. Though this is some improvement over the existing provision, in my humble opinion the deposit of the fine should not be a condition precedent to the filing of appeal.

**Shri Morarji Desai:** There is a discretion given.

**Shri Khaitan:** The discretion should be like this. The person should be allowed to file an appeal as a matter of right, as a matter of course. That may not operate as a stay till the realisation of fine, unless the appellate court orders. Otherwise, it becomes a wrong trial.

**Shri Morarji Desai:** I am sorry. I cannot revise it.

**Shri Khaitan:** That is the view which we express and which we bring to your notice; that is what other people and we also think. It is for you to consider what should be done.

Then, I come to clause 138. This clause provides that the magistrate may try the cases or the offences under this chapter summarily. What I suggest is, you should lay down the terms and conditions which should govern the magistrate; you must mention the cases in which the magistrate may try summarily and cases in which the magistrate may not try

summarily. Otherwise, the word "may" will create difficulty and it may be against the Constitution.

Chairman: It exists in the old Act also.

Shri Morarji Desai: We have left the discretion to the magistrate.

Shri Khaitan: Some hon. Members just now referred to the Supreme Court. I may point out that the Supreme Court has held that this unfettered discretion is against the Constitution.

Shri Morarji Desai: If the discretion is fettered against the Constitution, then it is wrong. That is what they have said, I think.

Dr. L. M. Singhvi: If it is unfettered discretion it is against the Constitution, because there is no reasonable criterion prescribed.

Shri Hari Vishnu Kamath: Are you against the summary procedure or against the clause itself as a whole?

Shri Khaitan: If you give absolute discretion to the magistrate, you should lay down the conditions under which summary procedure may be followed.

Shri Dehejia: Under the Criminal Procedure Code, a summary procedure case can also be tried as a full procedure case, so that there also the discretion comes in.

Shri Khaitan: I mean discretion in the sense that the magistrate should go by the facts and circumstances of the case.

Shri Morarji Desai: Perhaps you could add "if he so thinks fit" or something like that. But this is the same as in the existing provision. It is not a new provision. It has stood the test of time and the law.

Shri Khaitan: I am only trying to bring to your notice the lacuna.

Shri Morarji Desai: You could add "if he deems fit" or something like that.

Shri Ramanathan Chettiar: The provision says that the magistrate "may" try the case summarily. The discretion is left to him.

Shri Morarji Desai: That is why he says that it is completely unfettered. If it is "shall", there is no discretion. Unfettered discretion is not within the Constitution. That is what the Supreme Court has said. He says that some criteria should be laid down for trying the cases summarily. He says that the magistrate "may" do it if he thinks proper. But in that case also, there is discretion.

Shri Ramanathan Chettiar: The representatives of the Chambers of Commerce have already been objecting to any other person trying the cases except the magistrates. But here is a case where the magistrate is trying the case.

Shri Morarji Desai: He is referring to the summary trial.

Shri Khaitan: Then, in the proviso to clause 140, in the last but one sentence, the word "and" should be "or". It is on line 15.

Shri Dehejia: We shall look into it.

Shri Morarji Desai: It should be "or".

Shri Khaitan: The vicarious liability clauses are standardised now.

Shri Morarji Desai: I think it is a mistake in printing. It should be 'or'.

Shri Morarka: Both are contradictory. If it is without his knowledge, how can he exercise due diligence?

Shri Hari Vishnu Kamath: With all due diligence, we will discuss it later on.

Shri Khaitan: These are the clauses to which I wanted to draw your attention. I would submit that while you can make as rigorous provisions as you like, provisions of double punishment, denying right of appeal, etc. are very onerous and I request that they should be amended.



**Shri Morarji Desai:** You must also know that smuggling is a disease which is prevalent very much and if we want to root it out, we will have to take very rigorous measures. Rigorous measures consist of very harsh punishment. Unless it is made very deterrent, I do not think things will improve. You are right in saying that you are making an appeal, but I make a statement that I should like to make it as monstrous as I can, provided the Parliament agrees.

**Shri Hari Vishnu Kamath:** May I know whether there is any impediment in the way of your formulating a rigid code of conduct for your own fraternity and strictly enforcing it?

**Shri Morarji Desai:** His fraternity is law.

**Shri Hari Vishnu Kamath:** I mean the fraternity of commerce and trade.

**Shri Khaitan:** I would say that there is no fraternity which is immune from this, whether they are diplomats, officials, etc. I have seen under my very nose customs officials allowing smuggled goods to pass. All that is happening.

**Shri Hari Vishnu Kamath:** Those who are engaged in any trade are a fraternity. Try to follow what I say and do not try to be smart with me here. Answer the Question put to you. You are a witness here, Mr. Chairman, I seek your protection. I have put a question. He may or may not answer it, but this is not the way to deal with the Members of the Committee.

**Shri Khaitan:** I am very sorry if I have hurt you in any way. All that I wanted to say was that there is no fraternity which is immune from this.

**Shri Hari Vishnu Kamath:** If you do not know the meaning of the word 'fraternity', take up the English Dictionary and find out the meaning. We talk of the legal fraternity and so on. We say that in Parliament. If you do not want to answer the question, you may say so.

**Shri Khaitan:** I have come here to give evidence on the Bill. I submit that the question is not relevant to the Bill.

**Shri Hari Vishnu Kamath:** You have not understood the question even now. I am sorry for your attention. The question is, has the trade and commerce fraternity at all thought of evolving a code of conduct for their profession and if they have not done so, what is the impediment in the way?

**Shri Khaitan:** Not to my knowledge.

**Shri Ramanathan Chettiar:** If there are any erring members in your chamber, what remedial measures are there? That is why my colleague, Shri Kamath, wanted to know. You seem to have taken objection to the word 'fraternity'.

**Shri Morarji Desai:** We know the reply to the question. It is not possible for anybody to suggest remedies.

**Shri Khaitan:** No instance has been brought to the notice of the committee of the Chamber.

**Shri Morarji Desai:** I am afraid that is very far-fetched. You must be knowing some members of the Chamber who err.

**Shri Khaitan:** We have come to give evidence on the Bill.

**Shri Prabhat Kar:** All these attempts are for amending the clauses for the fulfilment of the object of the Bill. We want to take the assistance and suggestions of the Chamber in order to fulfil the objects of the Bill.

**Shri Morarji Desai:** The question is put for the purpose that if we can do without rigorous law, it is much better. If we can provide for us a self-regulating conduct, such legislation may not be necessary. You were objecting to harsh treatment and that is why he tried to ask you whether this has been done. It is not a kind of reflection on anybody.

**Shri Bade:** In your note, you have not said anything about clauses 13 and 14. Have you got no objection to

those clauses? May we take it that you agree to those clauses?

**Shri Morarji Desai:** Why do you ask him to object? This is a very novel procedure.

**Chairman:** They have referred to it in their note. On page 2, they have said:

"The committee are glad to find that in many directions the Customs Bill, 1962 has made a great

improvement on the old Sea Customs Act, particularly in regard to... valuation of goods for purposes of export duty (Section 14)..." etc.

This is there in their note.

Thank you very much.

**Shri Khaitan:** Thank you.

*(The witnesses then withdrew).*

*The Committee then adjourned.*

## SELECT COMMITTEE ON THE CUSTOMS BILL, 1962

### MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE OF THE CUSTOMS BILL, 1962

*Wednesday, the 1st August, 1962 at 14.00 hours.*

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

- |                                    |  |
|------------------------------------|--|
| 2. Shri Ramchandra Vithal Bade.    | 13. Shri R. R. Morarka.                |
| 3. Shri G. Basu.                   | 14. Shri Shankarrao Shantaram<br>More. |
| 4. Shri Tridib Kumar Chaudhuri.    | 15. Shri Prabhat Kar.                  |
| 5. Shri R. Ramanathan Chettiar.    | 16. Shri A. V. Raghavan.               |
| 6. Shri N. T. Das.                 | 17. Shri Shivram Rango Rane.           |
| 7. Shri Morarji Desai.             | 18. Shri R. V. Reddiar.                |
| 8. Shri B. D. Deshmukh.            | 19. Shri M. Shankaraiya.               |
| 9. Shri J. N. Hazarika.            | 20. Dr. L. M. Singhvi.                 |
| 10. Shri Prabhu Dayal Himatsingka. | 21. Shri Sumat Prasad.                 |
| 11. Shri Narendrasingh Mahida.     | 22. Shri Bali Ram Bhagat.              |
| 12. Shri Bakar Ali Mirza.          |  |

#### DRAFTSMEN

1. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

#### REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

#### SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

#### WITNESSES EXAMINED

##### I. FEDERATION OF INDIAN CHAMBER OF COMMERCE AND INDUSTRY, NEW DELHI

- |                            |                          |
|----------------------------|--------------------------|
| 1. Shri Bharat Ram.        | 4. Shri P. Chentsal Rao. |
| 2. Shri Ambalal Kilachand. | 5. Shri G. B. Sundriyal. |
| 3. Shri J. N. Guzder.      |                          |

## II. THE ASSOCIATED CHAMBERS OF COMMERCE OF INDIA, CALCUTTA

1. Shri J. L. Puri.

2. Mr. J. H. Forman.

3. Mr. R. Von Leyden.

## III. THE BOMBAY CUSTOM HOUSE CLEARING AGENTS' ASSOCIATION, BOMBAY

1. Shri K. D. Pathak.

2. Shri M. T. Bandivdekar.

## I. FEDERATION OF INDIAN CHAMBER OF COMMERCE AND INDUSTRY, NEW DELHI

### Spokesmen:

1. Shri Bharat Ram.

2. Shri Ambalal Kilachand.

3. Shri J. N. Guzder.

4. Shri P. Chentsal Rao.

5. Shri G. B. Sundriyal.

*(Witnesses were called in and they took their seats).*

**Chairman:** We have got your memorandum. If you have got anything to add or supplement, you may kindly do so.

**Shri Bharat Ram:** Thank you, Mr. Chairman, and members of the Committee for giving the Federation the opportunity to appear before you for giving evidence on this important matter.

We have already submitted our memorandum, and I would like to say that we have been guided by three main principles, the principles being that as far as possible there should be uniformity in procedure, where malpractices are supposed to be checked it should not cause unnecessary harassment to the innocent and the non-guilty.

I would like to make one or two general observations before we go to the general clauses where we may have to say something. Firstly, we have a little complaint that while this Bill was placed before the Parliament on 15th June and the Extraordinary Gazette which reproduced the Bill had the same date line, it was not available to us, I think, till the 9th July. We wish that on an

important matter like this more time is given for study.

**Shri Morarji Desai:** You have such a large establishment that even three days are enough for you to study this. This has become a normal practice of saying that enough time has not been given. Is not the period from 9th July till now enough time for you to study the Bill?

**Shri Bharat Ram:** We would not say that the time is not enough.

**Shri Morarji Desai:** It is not quite a new provision that is sprung on you. The whole Bill is based on the old Act and it contains the old provisions. There are some new provisions, and I am sure you could study them easily in the time available to you.

**Shri Bharat Ram:** Now, Sir, I would ask my friends here to take up the clauses.

**Shri Kilachand:** About clause 13 of the Bill, Sir, I would like to expand the idea which I put forth yesterday, and that is in connection with the pilfered goods where the duty is liable to be paid by the importer. Having submitted our memorandum, there are a couple of points on which we would like to draw your attention and the attention of the members here. First of all, the figures that I have collected from the Bombay Port Trust show that the revenue loss to the Government is very small and, at the same time, to my mind it seems that if this proviso is put into the Act it might result in a sort of laxity on the part of the authorities who have got the custody of the goods, and they are the Bombay Port Trust. If I may quote the figures of the Bombay Port Trust, in 1960-61 the

reported cases of pilferage amounted to 458 and the amount involved was Rs. 4,73,000. The recovery which was done was Rs. 3,60,000. So there was only about a lakh of rupees worth of pilfered goods or goods not found. In 1961-62 the number of reported cases was 443 and the amount involved was Rs. 4,30,000. The recoveries were of the order of Rs. 3,41,000. That means it was even less than Rs 90,000.

**Shri Morarji Desai:** What is the duty on Rs. 90,000.

**Shri Kilachand:** Even if it is 50 per cent—let us take the maximum—it will be Rs. 45,000. Considering the quantum of loss of revenue, which is very small, and the unfortunate position in which we are putting the importers for having to suffer this, to my mind, even administratively, if I may say so, this is going to create a certain amount of difficulty. How are they to establish that the goods were taken at a certain point of time, that they were taken before the goods were taken to the warehouse or after they were taken to the warehouse etc.? I would like the Committee to consider this. Our recommendation is that just as in the case of damaged goods where the question of duty does not arise, in the case of pilfered goods also duty is not leviable. If this recommendation is accepted, a consequential change will have to be effected in clause 23.

**Shri Dehejia:** I think the Federation must have compared the provisions of the existing law and the provisions in this Bill. Even at present when a consignment has arrived and it is cleared though a part of the consignment is pilfered, duty is payable on the entire consignment. So, even under the existing law when the goods are part pilfered duty has to be paid on the entire consignment.

**Shri Morarji Desai:** That is no argument. They are saying that they have been objecting to it for a long time.

**Shri Dahejia:** I am coming to it stage by stage.

The real difficulty arises when the goods are part pilfered and the rest of the goods are abandoned. When the goods are abandoned no duty is payable. That is under the existing law. Under the present Bill when the goods are pilfered and the rest of the consignment is abandoned, on the part that is abandoned no duty is payable; but by not excluding the pilfered goods in clause 23 duty is payable on goods which are pilfered. So, the effect is that when goods are abandoned, on what in fact remains physically behind no duty is payable even under the new provision, but on goods which are actually pilfered duty is now sought to be levied.

**Shri Morarji Desai:** How can it be levied? Is it justifiable? To my mind it is not understandable as to how we can levy any duty on goods which have been pilfered not on account of their fault but on account of the fault of the Port Trust. When no duty is leviable on goods which are abandoned, that is, when they do not take their goods, why have they to pay duty on goods which they cannot take? It seems something fantastic.

**Shri Dahejia:** I am putting it to them because they are the people who have cleared goods for several years so that the Committee which is not associated with the day-to-day procedure of the customs may be acquainted with what is happening.

**Shri Morarji Desai:** They will submit to many laws of Government. What else can they do? That does not mean that because something has gone on for 500 years there is justification for a levy. The whole question is whether the levy is justifiable.

**Shri Dehejia:** We either take that the Committee is familiar with what happens when goods are imported or we get the facts from witnesses who are used to it from day to day. I think the experience of Shri Guzder goes back to three generations.

**Shri Morarji Desai:** This is justifiable only on one ground, namely,

that there is collusion between those who pilfer and those who import. That ground does not apply to everybody.

**Shri Kilachand:** I accept that. But when the collusion is between the Customs Officer and the pilferer, why should the importer pay the duty?

**Shri Morarji Desai:** Not the Customs Officer but the Port Trust Officer, the importer and the pilferer.

**Shri Kilachand:** The importer is not in the picture.

**Shri Morarji Desai:** Without the importer it does not happen. He knows what is to be pilfered.

**Shri Kilachand:** Pilfered goods are always the goods which have got a high value in the local selling market.

**Shri Morarji Desai:** Therefore it is known to the importer.

**Shri Kilachand:** It is known to the Port officers and the pilferers.

**Shri Morarji Desai:** Not always.

**Shri Guzder:** The steamer manifest in which the description of the entire cargo of the steamer is in the hands of the Port Trust officials and usually there is a certain amount of collusion between the people in whose custody the goods are and the pilferers. From the statistics you will find that the kind of goods that are pilfered are usually ball bearings, bicycle parts and those parts of machinery which are in great demand in this country and which fetch a very high price in the outside market. Normally, these parts which are imported are imported by firms and manufacturers of considerable standing including the Government of India and the State Governments. Therefore it is not exactly right to say that in most cases there is collusion between the pilferer and the importer.

**Shri Morarji Desai:** How much of the Government goods have been pilfered. It will be interesting to find

that out. If no amount of Government goods are pilfered then I am to draw an inference that there is collusion between the importer and these people who pilfer the goods.

**Shri Guzder:** I have had the privilege of being the clearing agent at the Port of Bombay for the Government of India and I find that consignments which are imported for Hindustan Aircraft.

**Shri Morarji Desai:** Importers including clearing agents also.

**Shri Guzder:** Then I have nothing to say.

**Shri Morarji Desai:** In some cases clearing agents are also responsible. It is not a matter where one can say that anybody is not responsible. All are not responsible but there are a few only who are responsible.

**Shri Guzder:** But you made a very important point, namely, that if goods which are not in the custody of the importer and over which he has no control are pilfered while in the custody of another authority, how can you, with any justice, make the importer liable to pay the duty?

**Shri Morarji Desai:** That is a matter for the Committee to consider.

**Shri Morarka:** You have given some figures about the goods which had been pilfered and were recovered. Would you kindly give also the figures of goods abandoned during those two years?

**Shri Kilachand:** I am sorry that I do not have those figures with me at the moment but I can ask the officer of the Federation to send round to the Members of the Committee those figures if you want.

**Shri Morarji Desai:** Yes, if you can get them soon.

**Shri Kilachand:** We will do so.

**Shri Dehejia:** As an ex-Port Trustee Shri Kilachand will be knowing that a large quantity of goods abandoned have to be auctioned and at almost every meeting there is a list of goods

to be auctioned by the Port Trust which runs into three or four pages.

**Shri Morarji Desai:** As the ex-Chairman of the Port Trust who is there. Why do you ask the ex-trustee?

**Shri Kilachand:** He is aware of it more than I am.

Our next point is about clause 14. That is in connection with 'normal price.' We would like to mention that as far as exports are concerned, 'normal price' should be on the f.o.b. basis and as far as the imports are concerned, it should be on the c.i.f. and c & f value, that is, the invoice value. I do not know but I think it is for the rules which may be issued later on; but it is our submission that when the rules are issued this may be taken into consideration. Then again, it also happens that a certain amount of imports are taking place on the basis of forward contracts. The question arises as to what will be the value which is termed normal price at the time when the export or import takes place. Our submission is this. These export or import contracts are done on the basis of long-term arrangements and extends to a period of three months or four months and naturally these contracts are on a firm basis. A person has to export on those lines or import on those lines. He has to calculate his proforma on those lines. Here, there is no interest between the buyer and the seller. In my opinion, it would be fair that the actual invoice value ought to be the value which is termed normal price.

Coming to section 14(b), what is stated here is as follows:

"Where the normal price is not ascertainable, the nearest ascertainable equivalent of such price determined in accordance with the rules made in this behalf".

We say that when rules are issued, this should be put on a more realistic basis. There should be no hardship on the trade dealing in any par-

ticular commodity. That is our submission.

**Shri Bade:** I want to ask a question. If we want to define 'normal price' in the definition of clause 14(b), what should be the definition of 'normal price'?

**Shri Kilachand:** In forward contracts, the normal price ought to be the invoice value. It may be the contract price of the invoice value, whatever you may call.

**Dr. L. M. Singhvi:** I wish to put one question in this connection and I hope you will give the answer for it. It has been pointed out before us that there is a lot of over-invoicing and under-invoicing. Naturally, we wish to avoid any such large-scale over-invoicing or under-invoicing. What have you to suggest in this regard, to remedy this State of affairs? What are your suggestions to get over this difficulty and to satisfy the interests of the trade?

**Shri Kilachand:** So far as this aspect is concerned, the Customs are very vigilant on this score. If a commodity is exported, they see whether it comes under the license issued to them. They do check this aspect at the time of exporting. Of course, there may be a slight variation, maybe, 5 per cent. or 10 per cent. difference. But, by and large, I think the customs people are quite vigilant on that score.

**Shri Morarji Desai:** Have you said everything that you wanted to say on this particular point?

**Shri Kilachand:** No. I have not yet finished. The point I was making was this. There is, I think, sufficient machinery within the Government to check and to control this under-invoicing or over-invoicing of prices.

**Shri Morarji Desai:** What is the machinery you are thinking of?

**Shri Kilachand:** You have got the Foreign Exchange Regulations. You



have got the Reserve Bank of India which looks into this. You check up from their import licence.

**Shri Morarji Desai:** But, does the import licence prescribe the price and the value? That is done in respect of total value only. What is the machinery for checking it?

**Shri Kilachand:** There is enough machinery.

**Shri Morarji Desai:** Show me what the machinery is.

**Shri Kilachand:** The Reserve Bank gets all the invoices.

**Shri Morarji Desai:** The machinery can be Customs.

**Shri Kilachand:** There is check today.

**Shri Morarji Desai:** Give a proper definition. If the invoice price is to be taken then, invoice price will always be there. But, if it is under-invoice, then, that price will be less than what it should be. Now, if it is not to be checked and if that price only is to be taken, what is the check over it?

**Shri Kilachand:** The check that can be done is in terms of the Exchange Regulations by the Reserve Bank and by the Customs.

**Shri Morarji Desai:** Show me how. I will do it.

**Shri Bharat Ram:** May I suggest something?

**Shri Morarji Desai:** Yes. We are trying to find out the remedy. You may place your point of view before the Committee.

**Shri Bharat Ram:** As has already been stated, the determination of price is left to the judgment of the customs authorities, but we should see that they should try to be as fair as possible.

There were several cases, as my friend mentioned, where there were forward contracts of either exporters or importers. Now, one check can

be exercised in this manner. Suppose a contract was made three months ago. The proper authorities can check what was the price of that article in the market three months ago, when the contract was made. Although the price given for the export today may appear to be lower than the existing price, if he has made the contract three months ago, then, that price is to be taken into account.

**Shri Morarji Desai:** Provided the forward contracts were registered at the time they were made. Any forward contract can be presented in a bogus way. There can be collusion there also. If that is registered, then, it will be relevant to say that that price should be taken and not the price today.

**Shri Kilachand:** If you provide that they should be registered, they can be registered.

**Shri Morarji Desai:** How can I provide it?

**Shri Himatsingka:** If you go by the c.i.f. value or invoice value, how do you lose? The price sometimes goes down. The price may be lower today than the price on the day of exportation or importation. The price should be the price at the time of importation or exportation. You may have entered into contract at a very high price or lower price. It is not that you will lose in each case. You may be a gainer also.

**Shri Kilachand:** Normally the importer and the exporter does this on a *bona fide* basis. Any exporter or importer buys or sells with minimum profits or commission. By doing *bona fide* transaction, he earns a commission. Why should he take the stand that when goods arrive at lower price or higher price he will lose or benefit by the duty?

**Shri Dehejia:** Section 30 of the Sea Customs Act provides for duty on the basis of wholesale price. The customs people make enquiries. The reference here is to price, to be ascer-

tained in the manner provided in the present Sea Customs Act. Now, I would like to state in this connection that this very question was agitated before the Taxation Enquiry Commission and I do not know whether you have got its Report with you. They went in detail into the question of whole-sale price and invoice price. Even in a completely bonafide transaction the invoice price of the goods imported may be lower or very much lower than that of all other imports. That is quite possible under a variety of circumstances. So, the price here, is to be taken as the price in India. One may purchase from country X. Another may purchase from country Y. When the duty is *ad valorem*, it is on the value of the goods. I think you will accept that. That is what the Taxation Commission has said.

**Shri Kilachand:** In the case of export or import, one has to be a little more careful in arriving at the value of the goods at the time of arrival or at the time of export. Between the time you have contracted goods for sale and the time when you are making shipment, there may be changes for no rhyme or reason. I want Government to consider these things when they frame rules.

**Shri Morarji Desai:** Government should not and does not want to take anything more than the duty which can be charged on the actual amount paid or would have been paid for the goods concerned and not for any notional value, that is, for any value which may be in the air, either more or less. We are not interested in taking more duty than we are entitled to on the actual cost. The difficulty arises only in the case of under-invoicing and over-invoicing. How is that to be dealt with? You cannot deny that this is done and done not on a small scale but on a fairly large scale. It may not be done in a majority of cases—when I say it is done on a large scale, it does not mean that it is done on a majority scale—but the number of instances are fairly large, not a few. How is this to be overcome? That is the main ques-

tion. That is why we are struggling with the definition under which we can put a fear in the minds of the people. After all, that is our intention. If you try to play any trick, you will have to pay much more. You cannot run away with it. But it also causes harassment to the *bona fide* persons because there may be cases in which, as it was pointed out, two importers of the same goods will buy goods at different prices even in the same country. It depends on the bargaining capacity of the person concerned. What has to be done? That is the main thing which is worrying us also. The problem has become so acute now on account of under-invoicing and over-invoicing because it affects our foreign exchange balances a great deal. We have got to find out a remedy. It is in order to do that that has been put. I do want and all the Members of this Committee would also want to see that we do not harass anybody. We do not want to harass anybody. How is this to be met? If you have any suggestion to make, certainly we should like to pay great attention to it.

There is just one thing—I do not know whether it is practicable—which has struck my mind. I have not talked about it with my officers yet. I have just thought of it. Suppose we provide in the rule that the duty will be charged on the invoice value and then we also have a provision that if it is found in any case that it is under-invoiced or over-invoiced, then a penalty equal to the value of the goods will be charged and the person concerned will be liable to pay that and it will be recovered from him by all means at the disposal of the Government. Would you be amenable to that?

**Shri Kilachand:** I think your suggestion is a good one. I may only point out a snag there also. How would you establish that it was under-invoiced or over-invoiced?

**Shri Morarji Desai:** It will have to be established. Otherwise, nobody

can be charged. I do not know whether it is practicable. Therefore, I want to ask my officers whether it is practicable or not.

**Shri Dehejia:** May I point out the type of cases in which it may not be practicable? For example, there may be a company in Switzerland which has a manufacturing contract in India and the agreement is that the Swiss company will supply goods at any price it likes but when the goods are manufactured into something else, they will be sold to a subsidiary of the Swiss company at the import price plus so much percentage. In a case like that, the invoice may be a fictitious one.

**Shri Kilachand:** That is correct.

**Shri Dehejia:** I may give you another instance. There may be a foreign company which has a subsidiary in India. The profits of the subsidiary company can be sent to the parent company at any time. If the invoices of the parent company are at a lower figure, the subsidiary company in India makes a higher profit. As a result of that, it is also able to send out more money in foreign exchange and our country stands to lose.

**Shri Kilachand:** Quite true.

**Shri Dehejia:** There are so many collaboration agreements these days. These things can arise in a number of ways. These are the sort of cases which have to be taken care of. We are not thinking in terms of 'X' person or 'Y' person.

**Shri Morarji Desai:** But even there under-invoicing or over-invoicing may take place.

**Shri Dehejia:** Even then, though there may be *bona fide* cases on all sides where there is no under hand dealing, there can be a special relationship between an exporter and an importer. These cases have to be taken care of.

The other point is that import and export is an international affair because goods go from one country to another. In such international trans-

sactions, it is desirable to have a fairly common basic concept acceptable to most of the countries. For that purpose, there is such a thing known as the International Trade Agreement. There is the GATT which has tried to work out how the valuation—forget about the price—should be done. This is for *ad valorem* duty. Sometimes the goods are assessed by weight also. The very idea of having *ad valorem* duty is that as the prices vary the duty also may vary so that it is necessary to find the exact valuation of the goods at a given time. I suppose that is accepted.

**Shri Kilachand:** Yes.

**Shri Morarji Desai:** I have seen it myself at free ports, where people buy goods, the seller asks the purchaser, "Shall I put down less value in the bill?". I have seen that. What am I to do with this? That is the main question. If these things pass untouched, then it is an encouragement to all these practices and they will do it more freely.

**Shri Kilachand:** I entirely agree with you, Sir. At the moment, I have not got anything to suggest.

**Shri Morarji Desai:** Therefore, it will be equitable if some people have to pay a little more even if it is unjustified.

**Shri Kilachand:** If that is your intention, Sir. . . .

**Shri Morarji Desai:** But it will be a check.

**Shri Ramanathan Ohettiar:** Mr. Chairman, Sir, this over-invoicing and under-invoicing has now become the order of the day. Here are the representatives of the Federation of the Indian Chamber of Commerce and Industry. Have they formulated a code of conduct at least among their member bodies to see that this evil is put an end to? I would like to know the reaction of the representatives of the Federation of the Indian Chamber of Commerce and Industry to this.

**Shri Morarji Desai:** It is beyond their capacity.

**Shri Ramanathan Chettiar:** Let them answer this. I would like to know whether they have any concrete suggestions to offer in this respect. Have they at least given a thought to bringing in a code of conduct at least among their member bodies?

**Shri Guzder:** Sir, I am not saying anything on this particular clause as such. But I would like to make a remark arising out of the question of the hon. Member that we should make suggestions as to what can be done in this regard. I have been thinking on the subject and I want to say a few words which must be subject to the approval of my colleagues here. As far as the import is concerned, there is a certain amount of check inasmuch as the new Act provides that they can check the wholesale price, etc. What happens in the case of exports is that there is no such check because there is no export duty. In fact, 99 per cent of the commodities which are exported today have no export duty and because there is no export duty, the Customs officers rightly in the discharge of their duties do not pay any specific attention to the value of the shipping bills. What happens is this. At the time of export, you present shipping bills and you also present GRF 4 which has got to be sent to the Reserve Bank, that you have exported 'X' quantity of 'Y' value and that the amount will be remitted or has been remitted. There again there is no check on the veracity of the value of the consignment exported. Therefore, I would like to suggest, if it is at all feasible, that these shipping bills should be made subject to scrutiny after shipment, let not the export be held up. For example, in one ship there are a lot of shipments. So, they can be counter-checked, whether there is a certain amount of similarity, whether there is a certain amount of consistency between the prices of different exporters.

**Shri Guzder:** I hope some way could be evolved to do this.

**Shri Morarji Desai:** How can you subject them to check after the goods are gone?

**Shri Guzder:** Because it is not possible to check them at the time of export.

**Shri Morarka:** May I ask one question? We have been hearing so much about over-invoicing and under-invoicing. Over-invoicing is done only in the case of imports and under-invoicing in the case of exports. If on imports we have over-invoicing that means the value of the goods is shown more in the invoice than it really is. If the customs duty is paid on the invoice value that means, they will be actually paying more duty than they really ought to.

**Shri Morarji Desai:** This question relates mainly to the foreign exchange problem. There may be no direct loss or gain in customs, but there is great loss in foreign exchange.

**Shri Morarka:** For the purpose of clause 14 the practice of over-invoicing may not be relevant. But if they pay the duty on the basis of invoice they tend to lose; the customs would not lose.

**Shri Morarji Desai:** Customs does not merely deal with customs. Customs is also one of the agencies of Government to check malpractices in foreign exchange also.

**Shri Morarka:** How will you then determine the normal value?

**Shri Morarji Desai:** That is where we are fumbling.

**Shri Morarka:** The normal value will be higher than the invoice; it cannot be lower than the invoice.

**Shri Dehejia:** It may also be lower than the invoice. We are concerned at getting the correct value. I do not think the Customs Department can accept a lower or higher invoice.

**Shri Morarji Desai:** This is the only point where it can be caught. There is no other point. That is why one is more particular to see that this section is made sufficiently capable of removing the mischief. I do not say that what has been done is just sufficient or will be capable of doing it—I do not know. We have to consider this.

**Shri Bakar Ali Mirza:** We may consider provision of some penalty clause.

**Shri Kilachand:** Arising out this we would like to suggest that the normal price should be based on this, as also the price which is not ascertainable. Whatever further provisos you want to make to see that foreign exchange is not misappropriated it is for you to consider from time to time. You can think of it or we can think of it.

**Shri Dehejia:** These are not very simple matters. These are complicated affairs. I wonder whether it has come to your notice that a person may import goods and show a lower value. He might make good the difference in value in export. In a case like that under valuation of import and under valuation of export can work quite easily.

**Shri Bharat Ram:** The STC deals in barter. They must abide by the same clause.

**Shri Dehejia:** Normally where there is no reason to suspect or doubt anything the invoice is accepted as the value. When there is reason to suspect or doubt and it becomes necessary to determine the actual price, I take it your suggestion is that the rules should be framed in such a way that no harassment is caused.

**Dr. L. M. Singhvi:** In section 13 of the existing Act and clause 14 of the Bill as it is framed now, there is a concept of normal value. I would like to know the reaction of the witnesses as to which of the two concepts they, from their own point of view, prefer? Secondly, I would like to

have their reaction to the suggestion that was just now mentioned by the hon. the Finance Minister regarding the invoice value being considered as the normal value and providing for a penalty equal to the value of the goods, in case the invoice value is found to be based on a mis-declaration. On both these points, I would like to have their reaction.

**Shri Kilachand:** As far as your first point is concerned, we can say that in the new Bill, clause 14, takes care on a much better basis than what is provided in the old Sea Customs Act. Regarding point two, the hon. the Finance Minister made a suggestion to meet this difficulty of under-invoicing and over-invoicing. As I said, I do feel there will be a little difficulty in the sense that it would be still a question of investigation of what has been under-invoiced or over-invoiced. What Mr. Dehejia has indicated is a just and fair basis, in my view. Where the normal trend of business continues, the Customs takes the normal value for consideration as the c.i.f. value or invoice value. Where they feel there is a suspicion of a certain commodity imported or exported is not being done in a *bona fide* basis they have all the powers under the Act and rules to investigate into it and penalise the exporter or importer to the extent they can. I would personally like to leave this matter in that way. That would be much more flexible than have it done in a hard and fast manner.

**Shri Morarji Desai:** The present clause as it is would be suitable.

**Shri Kilachand:** When you make the rules, take these into consideration. We accept the clause as it is and executive instructions may take care of the various other things.

**Shri Morarji Desai:** That is a very realistic approach. We may not have spent all this time for nothing!

**Shri Kilachand:** We have only a small point to make. In connection with the goods exported which have borne a duty, if after a certain period

of time they are re-imported back by the same party, the export duty levied on it, or paid on it should be refundable. We would also like to add that the export duty or cess whichever has been realised on these goods must be refunded.

**Shri Dehejia:** That will have to be under the other Acts. What is levied under the Customs Act come under this. What is levied under the Tea Cess Act or Central Excise Act cannot be refunded under this Act.

**Shri Kilachand:** If there is a Central Excise Duty it should be refundable.

**Shri Dehejia:** That should be under the relevant Act.

**Shri Kilachand:** There is also a time-limit provided. In clause 20 you have got a time of three years. A similar time-limit should be provided in clause 26 as well.

**Shri Dehejia:** Suppose the goods come back after use? Would they always come back in the same condition?

**Shri Anand:** As might have been noticed there is a difference in time-limit between clause 20 and clause 26. Under clause 20 where certain duties have been paid on exports it is presumed it is going there for a brief period, and if it is not approved, it would come back normally. That is why we have said that the time-limit here should be much more stringent than in clause 20 where the question of duty does not arise. In clause 26 if we were to say that the duties will have to be refunded whenever the goods come back there will be a great deal of difficulty. It is certainly not the intention that once the purpose for which the goods have been sent out has been fulfilled the Government should refund the duty.

**Shri Kilachand:** There are cases where goods go for sale, and remain there for a number of years without sale. When the seller finds that he would stand to lose by selling them in that market he chooses to bring

them back. This has happened in the case of mica.

**Shri Dehejia:** How are they to be identified?

**Shri Kilachand:** On the quality from the invoice.

**Shri Morarji Desai:** It is impossible to identify mica. But what is your suggestion?

**Shri Kilachand:** My suggestion is to increase the time-limit to three years. I only gave mica as an instance.

**Shri Morarji Desai:** Where?

**Shri Kilachand:** In clause 26.

**Shri Morarji Desai:** Why should it be three years. Why should not the goods return after a year? Why should you keep it for such a long period.

**Shri Kilachand:** Because we feel there may be goods which may have to be kept for a longer period. It is a matter for the Committee to consider.

**Shri Bharat Ram:** With regard to clause 28, the proviso to sub-clause (1) says that in cases where duty has not been levied or has been short-levied or has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, there will be no time-limit for their being reopened for assessment. We merely want to say this. Where there is collusion, there should be stringent measures. But we hope that it is intended that it is only where there is collusion that this proviso will apply.

**Shri Morarji Desai:** Yes, that is so.

**Shri Bharat Ram:** But that is not clear.

**Shri Morarji Desai:** It is clear here. It is meant to cover cases where there is collusion or wilful mis-statement or suppression of facts.

**Shri Bharat Ram:** Where it says "wilful mis-statement or suppression" it is not clear.



**Shri Morarji Desai:** It applies to both—wilful mis-statement and wilful suppression. That will be made clear if it is not clear.

**Shri Bharat Ram:** That is all that we want.

**Shri S. S. More:** 'Suppression is always wilful. So the adjective is not necessary.

**Shri Morarji Desai:** It is to satisfy them. Anyhow, it is for us to decide what word to use.

**Shri Bharat Ram:** The other point is about issuing the notice and serving the notice. We would like that the word "issue" be changed into "serve".

**Shri Morarji Desai** (to Ministry officials): Here the question is between serving and issuing. If you say "issued", suppose you issue it to-day but it is not received by them. Even then you can act. When it is "serving", serving is by registered post. Then their receipt must come or it is returned as not taken. Then from that date you can take that it is "served". Therefore, whether we should have service or issue is the question. I think service is better. "Issued" means you have sent it. Who knows you have sent it? After all, the person concerned who is going to be punished must receive it. If he is not receiving it deliberately, let us provide for it that after it is sent a certain number of times it will be taken as served. I think the law provides for it. That is a better way.

**Shri Abrol:** We send it either through a peon or by registered post.

**Shri Morarji Desai:** What happens is, if the time-limit is six months and it is issued on the last date. Service will have to be done within six months. Do you want to extend the time-limit by this indirect method?

**Shri Kilachand:** Sir, we want that it should be served, not issued.

**Shri Guzder:** Clause 41 of the Bill which is equivalent to section 66 of the existing Act refers. . . .

**Shri Morarji Desai:** Please refer only to the clauses of the new Bill.

**Shri Guzder:** Clause 41 of the Bill is about delivering of the export manifest by the master of the vessel. In the existing Act five days are provided while in the proposed Act, it removes the time and gives discretion to the customs officer to fix the time. This is certainly an improvement, and we feel it is a liberalising provision in the new Bill. But what we would like to see added in the rules is that the wording might remain as it is, but there might be a proviso "not earlier than five days". That might be added.

**Shri Morarji Desai:** And not later than how many days?

**Shri Guzder:** That depends upon the officer's discretion.

**Shri Morarji Desai:** Then why should a minimum of five days be provided if a maximum is not provided? I am prepared to provide a minimum, provided you have a maximum limit also.

**Shri Guzder:** You can certainly say "not less than five days and not more than ten days". The idea is that it should not be less than what it is in the existing Act.

**Shri Morarji Desai:** Let it be three days and five days. Five days was the maximum. Why should it be a minimum of five days? You have not asked for more than seven days. So let it be three days minimum and seven days maximum.

**Shri Guzder:** Seven days was recommended by the Customs Reorganisation Committee.

**Shri Morarji Desai:** They are not the proper people. We can do that. Anyhow, that is a matter for the Rules, not here.

**Shri Guzder:** Then with regard to clause 46 we have one suggestion to make. Of course this is not incorporated in the Act but it is important from the point of view of the importer and therefore it arises here.



At present the Customs are in the habit of issuing detention certificates to the Port Trust for goods being detained through no fault of the importers.

**Shri Morarji Desai:** Why do you say "in the habit of issuing"? That is the practice. You may say that the practice is like this.

**Shri Guzder:** Yes, Sir. The practice followed is that the Customs issued detention certificates to the Port Trust for goods being detained when it is beyond the control of the importer. The main reasons are when the goods are sent on test. . . .

**Shri Morarji Desai:** If your point is that they should also be issued when the delay is on account of the Customs, we have said that we are going to consider it.

**Shri Dehejia:** On test it is given now.

**Shri Guzder:** Not on all cases.

**Shri Dehejia:** You know the Bombay practice. There is an agreement between the Bombay Port Trust and the Collector of Customs. Where it is on account of testing or verification of goods a certificate is given.

**Shri Guzder:** You were yourself the Chairman of the Bombay Port Trust and you will remember that it was mentioned that the certificates from the Customs to the Port Trust were more in the form of recommendation. . . .

**Shri Dehejia:** Even today, even if the provision is made in the Customs Act it will not be binding on the Port Trust.

**Shri Guzder:** But if the Customs issue it as a procedure, then it might be binding.

**Shri Morarji Desai:** It will have to be "Notwithstanding anything contained in the Port Trust Act". Then it will be binding on them.

**Shri Dehejia:** May I explain this? A number of circumstances arise

where it may be due to something done, or not done, by the importer also. His licence may not be adequate or properly worded.

**Shri Guzder:** Then it does not arise. This is only for the delay arising on account of the Customs.

**Shri Dehejia:** When the licence is not adequate, is it the fault of the Customs?

**Shri Kilachand:** It is the importers' fault. We are not asking for that.

**Shri Morarji Desai:** If the goods imported are not in accordance with the licence, it is the fault of the importer. Where there is delay because information has not been supplied, that is not the fault of the Customs. They have supplied the information, but the Customs pass an order after three days; it is their fault. I believe in such circumstances, the Port Trust accepts the certificate.

**Shri Dehejia:** In Bombay and Calcutta, they accept.

**Shri Guzder:** It may be put in here.

**Shri Morarji Desai:** How can it be put in here? You do not supply the information. Then you will say it is the fault of the Customs. That can be taken care of by circulars. It cannot be taken care of by a provision here. Then, I will have to consult the Port Trust authorities. That Ministry will have to be consulted. I cannot put a clause here which will be binding on them. That will not be right.

**Shri Kilachand:** It is not the intention to bind them at all.

**Shri Morarji Desai:** Let us go on this basis. We have said that we will provide for that.

**Shri Guzder:** In clause 46. . . .

**Shri Morarji Desai:** That is finished.

**Shri Guzder:** No. I only said that that question arose with reference to clause 46. Clause 46 lays down that the bill of entry shall mention all the goods that are imported under one

bill of lading. This particular clause also provides for discretion to the Customs officers to permit some changes. I would like to bring to your notice one important thing that has taken place in international transport, that is, consolidated freights. It so happens that freight rates for international air cargo are being fixed by the I.A.T.A. They have fixed certain rates for transport of goods. They have also fixed certain concessions for consignments weighing more than a certain weight. In order to get the advantage of this concession, small shippers send under one consolidated airway bill. This is the current practice in Europe and America. Unfortunately, in India, the shippers are not able to take advantage of this concession in freight. It would mean saving of foreign exchange. We are not permitted to make more than one bill of entry for one bill of lading/airway bill. We should permit more than one bill of entry for one bill of lading/airway bill, as consolidated freight-shipment.

**Shri Anand:** The section itself is certainly not against one bill of entry being put in for more than one bill of lading. As representation has been made, what is required is more bills of entry for one bill of lading by different parties.

**Shri Guzder:** Sub-delivery orders. If this can be provided by the rules, it is all right.

**Shri Morarji Desai:** If you want to provide it in the rules, do not say that here.

**Shri Guzder:** It will mean saving of foreign exchange.

**Shri Morarji Desai:** That you can say afterwards. What cannot be provided in the clause should not be discussed here. That can be discussed later in the rules.

**Dr. L. M. Singhvi:** I think that is also the suggestion made in the memo that has been submitted by the Federation that this may be provided for in the rules. I am wondering if it can be provided in the rules if it is

not completely consistent with the Act itself. If it is consistent it can be provided. But, then, it would be superfluous.

**Shri Morarji Desai:** It is not a question of superfluous rules. The clause itself, sometimes, is differently interpreted by different officers. Therefore, we give them instructions. It must be in conformity with the Act. If a rule says something which is not in conformity with the Act, it will not be legal. No court will uphold it.

**Dr. L. M. Singhvi:** My suggestion was only whether they would prefer a change by making these expressions 'importer' and 'bill' in the plural in the Act as it stands: whether that would meet their suggestion or they would only want such a thing to be incorporated in the rules. My own opinion is that if it can be incorporated in the rules, it can be conveniently incorporated in the Act, by saying importer or importers and bill or bills.

**Shri Morarji Desai:** Even if you say that, it will not serve their purpose unless it is clarified in the rules. That is why they are insisting on the rules. So, why change here unnecessarily? The rule will be there.

**Shri Bharat Ram:** As long as it is provided in the rules, it is all right.

**Shri Dehejia:** Do you refer to goods sent by the same parties or different parties?

**Shri Guzder:** Different parties.

**Shri Dehejia:** If something goes wrong, who will be responsible?

**Shri Guzder:** It is only sub-delivery. My point is, you will get a reduction in the freights.

**Shri Morarji Desai:** We will do it. But, it cannot be done here.

**Shri Guzder:** You may put it in the rules.

**Shri Bharat Ram:** Clauses 100 to 104. refer to powers of arrest and so on. The only thing that we would like here

is that the grounds of arrest should be communicated forthwith.

**Shri Morarji Desai:** We have said that it will be recorded in writing.

**Shri Bharat Ram:** They should be communicated forthwith. That is what we want. Later on he is told. When a person is being arrested, he should be able to know.

**Shri Morarji Desai:** No warrant mentions the grounds of arrest. The section under which the arrest is made is mentioned. We have said, he must record in writing his reasons for doing so so that you can ask for a copy of it. That is what can be done.

**Shri Bharat Ram:** It is stated here:

"...he may arrest such person and shall, as soon as may be, inform him of the grounds of such arrest."

When he is going to be arrested, give him the grounds. Why should not the grounds be given forthwith when you arrest?

**Shri Morarji Desai:** Why not simultaneously with the arrest? That would guarantee that the reasons have been written beforehand and not afterwards?

**Shri Dehejia:** What might happen is, when the arrest is made, there may be enough evidence on record to justify the arrest. Even after the arrest, further investigation goes on and further facts will come to light. If grounds are communicated at the time of arrest, they may not be complete. There may be further grounds.

**Shri Bharat Ram:** At least the grounds on which he is initially being arrested may be mentioned. It may be said, these and others.

**Shri Dehejia:** The others may not be ready.

**Shri Bharat Ram:** At least some of the grounds on which he is being arrested should be there.

**Shri Morarji Desai:** The Constitution lays down:

"No person who is arrested shall be detained in custody without being informed, as soon as may be of the grounds for such arrest...."

If some grounds are given and afterwards some more grounds are given, they may not be relevant and you will say that they were the only grounds.

**Shri Bharat Ram:** It may be said, these and others.

**Shri Morarji Desai:** I think these words are right. I cannot go beyond the Constitution.

**Shri Bade:** Even under the Criminal Procedure Code, grounds are not given at that very moment. They are given when they are produced in the court.

**Shri Morarji Desai:** They cannot be given at the time of arrest. We were arrested several times. We were never given any grounds of arrest. Not even after a fortnight.

**Shri Bharat Ram:** The section under which he is arrested should be given at the time of arrest.

**Shri Morarji Desai:** That will be given. There must be a warrant.

#### Clause 110

**Shri Bharat Ram:** What we want to emphasise is that the documents which are seized should be returned within a reasonable period. The customs authorities may have photostat copies thereof if they want them for a longer period.

**Shri Dehejia:** Except those which are required for further proceedings, the documents can be returned.

**Shri Bharat Ram:** They may have photostat copies.

**Shri Morarji Desai:** Photostat copies are not accepted in court and so the originals must be with the customs. The originals must remain with the court. You can take them from the

court. We will provide that those persons who want, can be given photostat copies at their expense. That can be done.

**Shri Bharat Ram:** That is all right.

#### Clause 128

**Shri Kilachand:** I am referring to (1)(b). The grounds on which the decision has been arrived should be recorded.

**Shri Morarji Desai:** That is never done generally in appeals.

**Shri Kilachand:** A decision has been arrived at. Even in income-tax appeals, the grounds are stated.

**Shri Morarji Desai:** When the decision is changed in appeal, grounds have to be given. Otherwise, it confirms the original order.

**Shri Kilachand:** The right of personal hearing should be given.

**Shri Morarji Desai:** Where a thing is summarily rejected, why should there be personal hearing?

**Shri Kilachand:** It is the feeling of the trade that justice is not being done to them. It is summarily rejected without even giving an opportunity to the person to appear in person and explain his case.

**Shri Morarji Desai:** Provision is made that where necessary, they will give him a proper hearing.

**Shri Kilachand:** If you read 128(2), it says: 'The appellate authority may, after giving an opportunity to the appellant, if he so desires....'. What does 'if he so desires' mean?

**Shri Morarji Desai:** The appellant. If he wants, he will get it. Why do you want a change?

**Shri Kilachand:** I thought 'if the appellate authority so desires'. I am sorry. So that is all right.

**Shri Morarji Desai:** There is a proviso saying that if it is to be enhanced, he has to be given a hearing.

#### Clause 129

**Shri Kilachand:** This is about deposit of penalty before appeal is filed.

**Shri Morarji Desai:** There is a proviso there also.

**Shri Kilachand:** It is discretionary. Suppose the person is not able to pay the fine?

**Shri Morarji Desai:** They will certainly allow him an opportunity.

**Shri Kilachand:** At one stage, you are not in favour of giving discretionary powers to the officers; at other stages, it is the other way.

**Shri Morarji Desai:** I have never said that—in some cases, not all.

**Shri Kilachand:** In this case, why cannot there be a proviso?

**Shri Morarji Desai:** If I make it rigid, you will find it difficult.

**Shri Kilachand:** In this particular case, I think there should be a proviso that the fine or levy will not be collected before the appeal is filed.

**Shri Morarji Desai:** If they avoid paying, what happens? Therefore, if they want to go in appeal, they have to deposit it.

**Shri Kilachand:** It may be harsh on a person who may not be able to pay.

**Shri Morarji Desai:** There he will be allowed.

**Shri Bharat Ram:** Does this also provide for complete allowing or part allowing?

**Shri Morarji Desai:** Both. The words 'dispense with such deposit' are there. It is not for the levying authority, it is for the appellate authority.

#### Clause 147

**Shri Guzder:** Here I am making more a suggestion or appeal. An importer may have committed collusion, suppressed facts and wilfully deprived Government of review. But the agent

may not be aware of it at all. Yet the Bill provides that if the Government cannot lay hands on the importer, the agent will be caught.

**Shri Morarji Desai:** The clearing agent must know his customer. I am not going to let the agent alone. He is the only person I can catch hold of properly.

**Shri Guzder:** But he may have no control over the importer.

**Shri Morarji Desai:** He will not deal with such shady customers.

**Shri Dehejia:** There are known cases.

**Shri Guzder:** You should first proceed against the importer. Why take a short-cut?

**Shri Morarji Desai:** Short-cut is sometimes good.

**Shri Guzder:** He may not have anything to do with it.

**Shri Morarji Desai:** How is one to prove collusion in such cases. It is implied in all such cases. But if he proves that he has absolutely no knowledge of it, we will take that into consideration.

**Shri Guzder:** At least provide it in the rules; otherwise, customs officers will never act accordingly.

**Shri Bade:** Your request is that it should be provided in the clause itself.

**Shri Guzder:** Yes or at least in the rules.

**Shri Morarji Desai:** We can say that if he satisfies Government that he had no reason to believe or no knowledge of it, we will consider it.

**Shri Dehejia:** The agent is the only person whom we know.

**Shri Morarji Desai:** Supposing the clearing agent gets a new customer, of whom he has had no experience. He may be dealing with him for the first time, and his customer may let him down.

**Shri Dehejia:** But the importer is not known to the customs authorities, he may not be traced.

**Shri Morarji Desai:** Then the agent will not be allowed to pass off.

**Shri Dehejia:** The clearing agent signs the bill of entry, takes the goods, pays the duty, and actually he is the only person who knows who the importer is.

**Shri Guzder:** In the event of the importer being known, and the clearing agents proves to the satisfaction of the authorities that he had no knowledge of the wrong doing of the importer, he may not be penalised.

**Shri Morarji Desai:** If the importer is held liable, then the agent will not be liable. We will not hold both liable.

**Shri Guzder:** You may proceed against the importer first.

**Shri Morarka:** What is the position in law? Is it the rule that once an agent, always an agent? Suppose an agent clears for a particular transaction and that is over. He has cleared the goods, got the commission, paid the duties etc. If after two or three years the customs authorities discover that there had been an undercharge of duties, will they first catch hold of the clearing agent instead of taking recourse against the importer?

**Shri Morarji Desai:** We should not do that first, but he was responsible for that particular thing at that time, therefore he is liable for that.

**Shri Morarka:** His agency terms are over, he had discharged his duty.

**Shri Morarji Desai:** But he had also pocketed the fees.

**Shri Morarka:** For that purpose he has done the work.

**Shri Morarji Desai:** For that purpose, as long as that liability lasts, his liability lasts. And they do not want that exemption.

**Shri Morarka:** I was only making an enquiry.

**Shri Bade:** You are taking objection to the responsibility of the agent under clause 147. I draw your attention to clause 28(1) proviso, where in respect of any duty being not levied or short-levied or erroneously refunded etc., the importer or the agent or the employee is liable. If the agent is liable under clause 28, why should he not be liable under clause 147?

**Shri Gazder:** For that we have stipulated a time-limit. Here there is no time-limit. It may happen after ten years.

**Shri Bade:** If there is a time-limit, you have no objection?

**Shri Gazder:** Yes.

**Shri Bade:** You agree that it should be the vicarious liability of the agent and the employee also?

**Shri Gazder:** The Government is taking that view.

**Shri Bade:** What is your opinion? You are appearing as a witness here. The Budhwar Committee have opined that the agent should not be made responsible.

**Shri Kilachand:** Both of them should not be made liable. The agent only acts as such for doing certain services to his clearing, for clearing his goods. Once he has cleared the goods, handed them over to the party, paid the dues etc., his function ceases. We are not in favour of the agent being made liable. First you must take steps against the importer and his employee.

**Shri Bade:** So, you have got objection to clause 28 also.

**Shri Gazder:** We have stated that in our memorandum.

**Shri Bade:** But you have not raised it before the Committee.

**Shri Morarji Desai:** Clause 147 is a general liability, while clause 28 is a specific liability clause.

**Shri Ramanathan Chettiar:** Shri Morarka was saying that once the clearance was made, the responsibility of the agent ceased. That is wrong in law, because the agent is responsible for an act done. So, there is responsibility of both the agent and the importer.

**Shri Bharat Ram:** I may refer to section 204 of the existing Act, which does not find a place in the present Bill, in regard to the publication of rules, notifications etc., to be collected and arranged and published at intervals not exceeding two years. This was very useful.

**Shri Morarji Desai:** I have said we will publish a manual every year; we will go on amending it every year, and give the additions every year; if the corrections became too many, we will publish it again. It need not be here.

**Shri Bharat Ram:** It was in the old Act.

**Shri Morarji Desai:** It need not be here because even if a few days elapse in publishing it, you will hold us liable. We will issue a standing order.

**Shri Bharat Ram:** I would now like to thank you and all the Members on behalf of the Federation for listening to us so patiently, even though some of the points which we raised may not have had very much sense in them. But certainly you have heard our point of view, and we are hoping and we have the feeling that at least on some points we have been able to convince you that there was some sense in what we said, and we hope that the Act as it emerges will take care of some of the difficulties which we have placed before you.

**Shri Morarji Desai:** I thank you for agreeing that clause 14 could remain as it is.

**Chairman:** Thank you for the evidence.

*(The witnesses then withdrew)*

## II. THE ASSOCIATED CHAMBERS OF COMMERCE OF INDIA, CALCUTTA.

### Spokesmen:

1. Shri J. L. Puri,
2. Mr. J. H. Forman,
3. Mr. R. Von Leyden.

*(Witnesses were called in and they took their seats).*

**Chairman:** We have got your memorandum; if you want to add to it or supplement it, you may do so.

**Mr. Forman:** On behalf of the Associated Chambers of Commerce, I regret that our notes have been somewhat scrappy on account of shortness of time.

The Bill as it stands now, is without the rules and regulations. It is difficult to interpret it. Of course, we have to know what the rules and regulations will be. We sincerely trust that when they are published, sufficient opportunity will be given to the Chamber and the public, as a whole, to study and comment on them.

**Chairman:** That is always done. That is done after the Bill is passed. They will be placed before the Parliament. They cannot be published along with the Bill.

**Mr. Forman:** As we have stated in the preamble to our note, the Associated Chamber of Commerce feel that little notice has been given to the report of the Customs Reorganisation Committee, which, we thought, contained really sound advice, in a sense.

As a result of this new Bill, the customs will appear to be given considerably more judicial powers than they had in the past. The Associated Chambers of Commerce would like to suggest that provision should be made for the setting up of a Tribunal comprising of High Court Judges or members from the Board and the Finance Ministry and customs authorities to which we could easily have an appeal against the decisions which the customs authorities may take as a result of this Bill coming into law.

The Chamber appreciates that considerable effort has been put into the drafting of this Bill and that an endeavour has been made to have a more realistic approach to the problems of the importer and those who deal with customs.

We have been dealing with various special associations who have direct dealings with the customs authorities and we know what they feel. We also appreciate a reference to the GATT and the fact that every genuine effort has been made to try and find out what is happening in other parts of the world before this Bill was introduced.

What we are pointing out is not in any way a sort of endeavour to find out loopholes in the law. We are always mindful of our civic duties.

You have received a copy of the note of the Chamber on the various points. Obviously, there must have been notes from various other associations. Rather than go through each and every one of the points made in our note, I would like to lay emphasis on some of the more important ones and answer the number of points that might be raised.

First of all, I would like to refer to the Chamber's note on clause 14(1)(a). We think that the wording is a bit loose and can be tightened up. We sincerely trust that the authorities would agree with this.

My first point here is that the expression 'like goods' is a much too general term whereas goods of the like kind or quality would be far more clear. The example given in the Chamber's note will bear out this point.

The second point I would refer to is about clause 14(1)(b). The C. B. R. has had a number of cases in the past. In view of what has been said in our note, I have not very much to say now. We only feel that it is leading too far. We feel that the administration of the individual will have a bearing on it. There have been some cases of abuse in the past.



**Shri Bade:** I want to ask one question. You have said in your note that the provisions contained in 14(1)(b) are very vague and that it has not given an accurate basis of determining the normal price. I want to know what would be the correct definition of normal price. If I want to give a definition of 'normal price' in clause 2, the definition section, what should I put there?

**Mr. Forman:** I hope the Associated Chambers of Commerce would be averse to suggest it. What we are dealing with here is not so much a definition but a criticism of the nearest equivalent of such price, and the methods of ascertaining that price.

**Shri Bade:** Instead of 'the nearest ascertainable equivalent of such price' what should be the wording?

**Mr. Forman:** I think we may enlarge on that. For instance, officials at one part state that a particular item is worth Rs. 50 while officials at another part state that it is worth Rs. 100. These are the sort of situations we have in mind.

**Mr. Von Leyden:** The Chamber does not want to assume legislators' authorities for defining what they consider the right thing. It would be quite happy if any kind of definition is given in order to remove the uncertainty. Great difficulty is caused to the trade today as on the landing of goods the importer does not know how much duty he has got to pay. Now under the new Bill the definition is left to rules. The Chamber feels that the legislators should at least indicate in the Bill the methods on which the real value has to be assessed.

**Shri Dehejia:** You started by saying that you are very happy that in drafting the Bill note has been taken of the international ideas and you also referred to GATT. I wonder whether you are aware that they have also used the word 'like merchandise'. That definition has been arrived at by discussion among different countries. In a matter like this there should be uni-

formity of ideas between different countries because these are international transactions.

**Mr. Forman:** I entirely agree.

**Shri Dehejia:** Again, the United Kingdom is a party to the Brussels Convention which used exactly the same words. The GATT provision says that when the actual value is not ascertainable in accordance with subparagraph (b) the value for customs purposes should be based on the nearest ascertainable equivalent of such goods.

**Mr. Forman:** What you say about GATT is all very commendable but the note of the Chambers, I think, amply brings out our point in particular. May I quote the instance given there. All art silk goods, for instance, could be said to be like goods. But within the generic description there might be art silk articles of a different sort, quality, etc. each having its own normal price.

**Shri Dehejia:** I think the wording here is the correct interpretation of the words 'like merchandise' because 'like' means like in a number of respects.

**Mr. Forman:** The Chambers have suggested that the words 'goods of the like kind and quality' should be retained.

**Shri Dehejia:** 'Like' by itself conveys more. If you mention 'kind and quality' you are tied down to consider only two things. When you say 'like merchandise', there may be other qualities and other traits of the goods which may have to be considered in a given case. 'Like merchandise' is a much more expressive and much wider phrase than saying like 'kind and quality' if I may say so. That is why the GATT has used it.

**Shri Morarji Desai:** We will amplify it in the rules. If you can provide a better definition, we are prepared to consider it.

**Mr. Forman:** Thank you. The next point is about the real value clause 14(b).

**Shri Dehejia:** I have read out to you the GATT provision.

**Mr. Forman:** The next clause is 15 which refers to cargo overcarried and subsequently returned to the original port in which duty was assessed. We would be happy if accommodation can be made in the Bill to apply the original rate when the cargo is returned.

**Shri Morarji Desai:** What have you to suggest in clause 15?

**Shri Puri:** Our views given in our memorandum are based on our experience. We want a proviso to be added to clause 15. It very often happens that the new Finance Bill is placed before Parliament and the duty is increased. For example.

**Shri Morarji Desai:** That is, it has gone out and come back? But that is provided in another clause.

**Shri Puri:** No, Sir. For example, if there is a consignment consisting of 150 cases.....

**Shri Morarji Desai:** It cannot be done. I do not think there is any possibility of changing it.

**Shri Puri:** I request you to give me an opportunity to explain the point in a moment. Now, once the goods have been discharged, the duty has been charged at the prevailing rate, and when the goods come back—they do come back.....

**Shri Morarji Desai:** Why should it come back?

**Shri Puri:** Supposing out of 150 cases, 75 cases are discharged at Madras and the other 75 cases at Calcutta, in the meantime, the rate of duty has been increased or decreased.

**Shri Dehejia:** Are there different rates as between Calcutta and Madras?

**Shri Puri:** What I mean to say is, the time-lag is there.

**Shri Morarji Desai:** In the meantime, if the duty is decreased, we will charge you at the decreased rate.

**Shri Puri:** That provision has not been there in the Sea Customs Act..

**Shri Dehejia:** It is there.

**Shri Puri:** In practice, that has not been done.

**Shri Morarji Desai:** In practice you may say that the duty has not been decreased.

**Shri Dehejia:** Could you give one case where the duty in force on the date is not charged and where the higher duty is charged?

**Shri Puri:** There have been very few cases where the duty has been decreased, and where the duty has been on the increased rate, even the Government have asked the shipowners to pay saying, "you have over-carried the goods and in the meantime the duty has increased."

**Shri Morarji Desai:** You will have to pay for it then.

**Shri Puri:** Over-carriage is not something that can be controlled. It is beyond control.

**Shri Morarji Desai:** If it is not controlled, then it is your negligence.

**Shri Puri:** It amounts to a thousand rupees, sometimes.

**Shri Morarji Desai:** It may be a lakh of rupees. You have to pay. I do not think that for your negligence the Government is going to pay.

**Mr. Forman:** Then, I may refer to clause 23. Here, the new Bill has made a genuine effort to improve the position. But we would suggest that the remittance of duty should be extended to goods lost otherwise than by pilferage or destroyed either before unloading or in the course of unloading. The Chamber has given two cases or examples in this connection. One is, bagged cargo often spills in the holds during discharge through insufficiency of packing, etc. So, the quantity discharged is less as some of it goes on the other side.

**Shri Morarji Desai:** The duty has been limited. I do not know what you want. This clause is meant for that purpose. Please read clause 23 (1) and (2), both.

**Shri Bade:** He wants to remove the words "otherwise than by pilferage."

**Shri Morarji Desai:** That is what they are asking for, and that is what is done. That is provided here. I do not know what is not provided. Pilferage is in the other clause.

**Mr. Forman:** Well, if it is already covered in the Bill, we delete it and pass on to the next.

**Shri Morarji Desai:** It does cover it. The proviso says that the goods are to be destroyed by the owner. We say that the Government will destroy them at the expense of the owner, so that we will only charge the cost of it.

**Mr. Forman:** Now, I come to clause 28. We notice that in the Bill, with respect to this clause, the time-limit for claim has been removed. This, we feel, is unfair.

**Shri Morarji Desai:** Only for collusion why should the time-limit be kept? We want to make collusion to be punished eternally.

**Mr. Forman:** I commend it, but in the case of a collusion which happened 20 years ago, the question of keeping the records comes in.

**Shri Morarji Desai:** If it is proved, it should be liable. If it is not proved, no collusion will occur further. Collusion has first to be proved, and then it has to be disproved.

**Mr. Forman:** If there is a demand 20 years after, the company will have to keep the records.

**Shri Morarji Desai:** Unless it is proved, where is the necessity for disproving it?

**Mr. Forman:** It may first be the original company. Then, after 20 years, if the company is asked to pay for what has been raised, say, in 1933,....

**Shri Morarji Desai:** He will have to prove that.

**Mr. Forman:** The written statement is there.

**Shri Morarji Desai:** If it is acceptable, it will be accepted. You must pay for it. It will be chargeable. But it all depends upon whether the person who passed them will accept them. Then you can refute it. Supposing, a person comes under the influence of MRA, why should I not believe him?

**Mr. Forman:** In that case, the company will have a difficult time disproving it. Sometime that happens and, as you will see, we suggest that a time-limit of five years may be prescribed. You may fix a reasonable period to be applied.

**Dr. L. M. Singhvi:** I would like to know what would be considered a reasonable time to be prescribed under clause 28.

**Shri Morarji Desai:** Five years, as he says. They preserve the record for five years.

**Dr. L. M. Singhvi:** What is the basis for the suggestion?

**Shri Morarji Desai:** They say that they preserve the records for five years.

**Dr. L. M. Singhvi:** Is that the usual practice? In most trading firms, apart from income-tax purposes for which the period is much further than five years, what is the usual practice?

**Shri Morarji Desai:** In regard to income-tax, it can go for 16 years. Formerly, the period was indefinite. I have made it 16 years now. Otherwise, it was indefinite.

**Dr. L. M. Singhvi:** I suppose the records have to be preserved for the purpose of income-tax for at least 16 years. From that point of view, five years would not be a reasonable limit of time for keeping the records in this case.

**Mr. Forman:** Financial records and company records are two entirely different things.

**Shri Morarji Desai:** You will have to preserve the records for income-tax purposes. Otherwise, you are liable to be charged.

**Mr. Forman:** I had better be careful!

**Shri Morarji Desai:** You had better be careful!

**Dr. L. M. Singhvi:** For how long do you preserve your company records?

**Mr. Forman:** 16 years with effect from now!

**Mr. von Leyden:** There is a difference between company records—custom house records and other records—and the financial accounts which have to be kept now for income-tax purposes. If we have to keep on the documents connected with one single transaction which parties may require, then, large warehouses will have to be found in order to keep the documents. So, I beg for more than five years.

**Shri Morarji Desai:** No honest company has to fear anything. There is no danger of any honest company being charged after 20 years.

Will you be satisfied if we keep it at 10 years?

**Mr. Forman:** It will be something.

**Shri Morarji Desai:** Let us consider that.

**Shri Puri:** Next item is clause 30 which deals with delivery of import manifest or import report. Sub-clause (1) says that:

"The person-in-charge of a conveyance carrying imported goods shall, immediately after arrival thereof at a customs station, deliver to the proper officer, in the case of a vessel or aircraft an import manifest....".

I submit that it is not a practical proposition, particularly when ships are loaded in Indian ports, East Pakistan,

Rangoon, etc. As it is now, the manifest is delivered within 24 hours. That may be retained.

**Shri Dehejia:** What is the difficulty about 'immediately'?

**Shri Puri:** If the steamer arrives at 4 o'clock, how can the manifest be delivered immediately?

**Shri Dehejia:** 'Immediately' does not mean in the same breath.

**Shri Puri:** As it is, the customs officers will have the liberty to decide as they like. We want a uniform procedure and we submit that present section 53 in the Sea Customs Act may be retained.

**Shri Dehejia:** There also, it is a discretionary power.

**Shri Morarji Desai:** Sub-clause (b) says:

"If the proper officer is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof immediately after the arrival of the conveyance, he may accept it after such arrival."

**Shri Puri:** One officer may say it should be done with 1 day, another may say within two days and so on. We want a uniform procedure.

**Shri Morarji Desai:** If you want 24 hours to be provided, I shall certainly do so.

**Shri Dehejia:** It may suit the present witness to say 24 hours, but there are people in other places who have represented otherwise. I do not suppose the present witness speaks for all of them.

**Shri Morarji Desai:** I do not see what you lose if more time is given to some people.

**Shri Puri:** At least an assurance may be given that in the rules it will be provided. The difficulty is where the ships are loaded, say, from Vishakapatnam or Rangoon, the manifest may not arrive before the ships arrive. We

want, therefore, that there should be a uniform procedure. It may be provided that the manifest may be delivered within 24 working hours from the arrival of the ship, because the next day may be a holiday.

**Shri Morarji Desai:** We will see what is necessary to be done. This makes it a little bit less rigid.

**Shri Dehejia:** In the previous Act also, the power is discretionary.

**Shri Puri:** If it can be provided in the rules, I will be too glad.

**Shri Morarji Desai:** I do not see that there is any hardship; it only removes hardship.

**Shri Dehejia:** Some get so used to one thing that even a thing which is better may look bad.

**Shri Puri:** Certainly not; I beg to differ from you. It is not fair.

**Shri Morarji Desai:** There is nothing unfair in that; generally that is the practice.

**Shri Puri:** We only suggest that there may be a uniform procedure rather than leave it to the discretion of the officers.

**Shri Dehejia:** Uniformity in administration can best be brought about by supervision.

**Dr. L. M. Singhvi:** Does not the witness think that it is not necessarily to be provided in the Statute? If there is any difficulty, the department can easily take care of it. As it is, the circumstances are easier for them rather than onerous.

**Shri Morarji Desai:** He does not mind if it is provided in the rules. He has said so.

**Shri Puri:** My next submission is that in clauses 30(2) and 41(2), the words "to the best of his information, knowledge and belief" should be added.

**Dr. L. M. Singhvi:** He is always free to make a further declaration that it is to the best of his information, knowledge and belief.

**Shri Morarji Desai:** How can it be put down here. You can always say that the declaration is to the best of your information, knowledge and belief.

**Shri Puri:** All the Manifests are made from the Manifests which are received from the port of shipment.

**Shri Morarji Desai:** You have to take care to see that they are not wrong.

**Shri Puri:** That is done.

**Shri Morarji Desai:** That is enough. Then I do not think there is any danger.

**Shri Dehejia:** Sub-clause (3) says:

"If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented."

**Shri Puri:** That is something else. That is where marks and numbers may be wrong.

**Shri Morarji Desai:** If the officer is satisfied that there was no fraudulent intention, he may permit it to be amended.

**Mr. Forman:** It is not correct to add anything in writing on a printed declaration form.

**Shri Morarji Desai:** What you are going to say is truth. Sub-clause (3) provides that if the intention was not fraudulent then it can be amended. We cannot qualify truth like this. What about 41(2)?

**Shri Puri:** We would like to have a uniform procedure laid down.

**Shri Morarji Desai:** We are saying "minimum of three days and a maximum of seven days".

**Shri Puri:** That would be all right.

Then we come to clause 42(2)(c). We would humbly submit that as the shipping companies cannot submit all

shipping bills at the time of port clearance this clause should not be there. All this information is being given in the requirements under clause 41. How can we submit shipping bills? They are retained by the customs authorities. This is according to the represent practice. An Allow Order is given on the dock challan. It should not be a condition that the shipping companies must produce shipping bills or bills of export at the time of port clearance. The shipping bills are presented to the customs authorities by the exporters themselves. We do not come in the picture at all.

**Shri Morarji Desai:** Why should this be a condition on the shipping companies?

**Shri Abrol:** The normal procedure is that the shipping companies get the authority from the person concerned that such and such goods could be taken on board. Only after seeing that endorsement the carrier is allowed to take the goods on board. When the goods are put on the board the carrier takes the shipping bill. We only want him to give it back so that we may check it. It is only in the case of shipments ex-lighters that the shipping bills are not given and part order are given.

**Shri Puri:** The practice is that the shipping bills are presented to the customs officers in the docks by the shippers. Thereafter the Port Commissioners take the dock challan to the customs authorities who give the permit. The shipping companies do not take the shipping bills in their possession and, therefore, they are not in a position to present them.

**Shri Abrol:** I am afraid you are talking only about the ex-lighter shipments in Calcutta. We are providing for the normal shipments that are taking place in Bombay and Madras where goods are loaded from the shore.

**Shri Puri:** Even where goods are loaded from the shore shipping bills are not given to the shipping companies at Calcutta.

**Shri Abrol:** I am afraid you are talking only of Calcutta port.

**Shri Morarji Desai:** What happens at that port? This will apply to the Calcutta port also.

**Shri Abrol:** In that case the shipping bills will be with us.

**Shri Morarji Desai:** Why is it necessary to provide this here?

**Shri Abrol:** This is the authority for the carrier to take goods on board, otherwise they will not be allowed to take the goods on board. How is the carrier to know that some goods have been passed? Unless the authority is with him how can we check and make the levy?

**Shri Morarji Desai:** If the bills are not with him the proper officer will not ask him.

**Shri Puri:** The shipping bills are not submitted to the shipping companies at all. They are given to the customs. Allow Orders are given on the dock challan.

**Shri Morarji Desai:** Without the bill of export how can a ship be allowed to go?

**Shri Puri:** The shipping bills are kept with the customs officers. We do not take possession of the shipping bills at all. We just get an allow order on the basis of the dock challan.

**Shri Dehejia:** Kindly see clause 40 of the Bill which says:

"The person-in-charge of a conveyance shall not permit the loading at a customs station unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;"

**Shri Puri:** I quite agree that no cargo can be loaded unless and until a shipping bill has been passed by the Customs House. But according to the procedure the shipping bills are not presented to the shipping companies but they go to the Customs Officer and

him the Port Commissioners approach for an allow order.

**Shri Dehejia:** Will the witness kind-read clause 40 which says:

"The person-in-charge of a conveyance shall not permit the loading at a customs station—

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export.... has been handed over to him...."

**Shri Morarji Desai:** Therefore he must take it from the exporter and hand it over. It is a new provision and you will have to adjust yourself to it. It is not an existing provision. You will have to take the shipping bill from the exporter; otherwise, you do not load it.

**Shri Puri:** If this is going to be a new procedure, we will undertake to produce the shipping bill along with the EGM. In Bombay shipping bills etc. are normally submitted with the EGM.

**Shri Morarji Desai:** This is a new procedure. Therefore there is no question of the normal procedure. When a new provision is made, it will have to be carried out.

**Shri Abrol:** The procedure at present is slightly different then what we have put in clause 40 which says that you will not take anything on board unless the shipping bill has been given to you.

**Shri Puri:** How do you expect me to produce 500 shipping bills on the day I get port clearance? I take port clearance from the Customs Collector 48 hours before the sailing and I am still loading cargo. At the time the ship is to sail the EGM can be given.

**Shri Morarji Desai:** There is no trouble, whether you give one bill or 500 bills. I do not see what difficulty is there in giving all the bills together.

**Shri Puri:** How can it be possible when no cargo can be loaded without proper shipping bills?

**Shri Morarji Desai:** That is what clause 40 provides, namely, that the bill must be given before a clearance can be given.

**Shri Puri:** We cannot give the bills at the time of port clearance because it is 48 hours before sailing and cargo is still being loaded.

**Shri Morarji Desai:** Why should it be given 48 hours earlier? It should be given before you go.

**Shri Abrol:** It is only prepared earlier. It is handed over to the ship after they have stopped taking any further cargo.

**Shri Puri:** Port clearance is always given earlier. If the ship is to sail, say, at 4 O'clock in the morning, how can you expect the customs station to be open at that time?

**Shri Dehejia:** It will not be handed over in the customs house itself and as the witness knows there are officers present at the time of the ship's sailing. I do not suppose the witness is as new as that.

**Shri Puri:** Is it the intention of the framers of this particular clause that customs clearance will be given by the Customs Officers on board the steamer before the ship sails?

**Shri Morarji Desai:** It will not be given on board the steamer but in the office. It should not be the duty of the Customs Officer to go on board the steamer and give it; it is your duty to take it from his office.

**Shri Abrol:** Just before you are wanting to sail you will go to the officers who is in charge of the wharf and he will give it to you.

**Shri Puri:** If that is the intention, certainly I will still like to record that there might yet be difficulties.

**Shri Morarji Desai:** If there are any difficulties, if this causes any delay in



the ship leaving the port, we will certainly remove those difficulties. You can tell those difficulties to us.

*Clause 74(1)*

**Shri Puri:** The drawback on aviation fuel should be hundred per cent. and not 95 per cent. as is permitted by this particular clause. It is an international obligation of India to exempt duty on fuel uplifted on international aircraft.

**Shri Morarji Desai:** If that is the rule, you must provide for hundred per cent.

**Shri Anand:** We will make that.

**Shri Morarji Desai:** That particular provision will be made there.

*Clauses 86 and 87*

**Shri Puri:** It is humbly submitted that ships which are permitted to have stores ex bond at the various ports should also be permitted to consume those stores while they are within the port limits. The present procedure is that whatever has been taken ex bond on a steamer is not permitted to be consumed unless that steamer has sailed and has cleared off the Port limits. If this is done, it would be a further facility for the ship's officers and crew.

**Shri Abrol:** The facility will now be available to all foreign going vessels. The definition includes the period that the foreign-going vessel may spend in India provided that it only participates in foreign trade.

**Shri Puri:** From whatever bond the goods are taken at a particular port in Indian waters stores should be allowed to be consumed within the port itself. At present bond supplies are given to the ships but they are not allowed to consume any such goods until and unless they have cleared the Port limits.

**Shri Morarji Desai:** Clause 87 says:

"Any imported stores on board a vessel or aircraft (other than

stores to which section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft."

**Shri Puri:** This facility is being granted. I agree with you. But my reference is only to those stores which are taken ex-bond by steamers. They are not allowed to be consumed within the port itself.

**Shri Morarji Desai:** If they are not to pay duty on that, they cannot be allowed to consume that.

**Shri Puri:** Even if a ship is a foreign-going ship?

**Shri Morarji Desai:** Even then. If you take any new stores here, why should you consume them here?

**Shri Puri:** But they are being supplied ex-bond.

**Shri Morarji Desai:** You may consume other stores if you like. But on these stores duty will have to be paid if you want to consume them. If you want to take the stores, you can take them; but you should not consume those stores in this port because those stores are taken from this port. If a foreign-going ship purchases stores in this port, it must pay the duty.

**Shri Puri:** A foreign-going ship has been allowed to buy stores from bond, especially stores which have been kept without payment of duty and are supplied on board the steamer under the customs.

**Shri M. G. Abrol:** Evidently, the witness has not examined Section 88 which says as follows:

"The provisions of section 69 and Chapter X shall apply to stores (other than those to which section 90 applies) as they apply to other goods, subject to the modification that for the words "exported to any place outside" or the word "exported" wherever they occur, the words "taken on board any foreign-going vessel or aircraft as stores" shall be substituted."

The provisions of Section 69 will apply to stores also.

**Shri Dehejia:** The question is whether it is covered by the present Act or not.

**Shri Morarji Desai:** Clause 9 applies to Indian Navy only.

**Shri Dehejia:** This is with reference to Clauses 88 and 69.

**Shri Morarji Desai:** Why should not we bring it in one place?

**Shri Dehejia:** We can do it.

**Shri Morarji Desai:** The intention is to allow them. We will see that this is clarified.

**Shri Puri:** The ships which are actually coming from abroad but for only one particular voyage are allowed to trade on the Indian coast. They are the foreign ships and not the ships belonging to the Indian companies. We request that permission should also be given and suitable modifications may be made wherever this can be made in the chapter under stores for stores without payment of duty. For one reason or other they have permitted the ship only to trade on the Indian coast for just one single voyage only.

**Shri Morarji Desai:** Why should they have free consumption? They should pay the duty.

**Shri Puri:** The consumption should be without payment of duty.

**Shri Morarji Desai:** I don't think that is right. Foreign ships have a lot of advantage over our ships. I don't want to give anything more. (*Interruptions*). He is asking for one more privilege. Why should anybody not ask for more?

**Shri Puri:** I will explain it again. No foreign ship is allowed to ply without the prior permission of the Director-General of Shipping or the Ministry of Transport or Aviation, whichever Ministry controls it, of that country.

**Shri Morarji Desai:** They may allow,

**Shri Abrol:** The countries of Australia, Canada and U.S.A. are charging duty whenever there is coastal trade.

**Shri Puri:** I don't know. The ship has gone on only one single voyage under a specified licence from the Director of Shipping.

**Shri Morarji Desai:** One more concession. That is all.

**Shri Mahida:** Has the witness in mind any international convention which regulates such things? Is this done in England?

**Shri Puri:** In England this is done. They are going free of duty, if a ship of any other country is allowed under special circumstances to carry on coastal trade for one or two voyages. That is what I say.

**Shri Morarji Desai:** I don't think any ship of India will be allowed to do that. This concession should not be given.

**Mr. Forman:** I wish to say something referring to clause 105 read in conjunction with clause 110. It is our view that the officers should accept the responsibility also if they are going to accept these powers. They must be prepared to accept the responsibility too. Therefore, we have made a recommendation in our Memorandum as follows:

"All goods seized and all documents and things seized shall be in the charge of the Assistant Collector of Customs who shall be responsible for their safe custody".

**Shri Morarji Desai:** They should be responsible for safe custody.

**Mr. Forman:** Then we have suggested:

"The person from whose custody the goods, documents, or things are seized, or on whom an order is served under this section shall forthwith be informed in writing of the nature of the offence by

virtue of which the goods are believed to be liable to confiscation or to which the proceedings under this Act relate and he may forthwith apply to the Assistant Collector of Customs to decide whether there is a case to investigate."

"This is what we have suggested. Then we say:

"If the Collector of Customs shall thereupon decide that there is no case to investigate he shall cause the goods, documents or things to be immediately returned to the persons from whose custody they were seized, and shall cancel any order served on such person under this Act and if he shall decide that there is a case to investigate he shall direct proceedings to be commenced and a show-cause notice to be issued within such period not exceeding one month as he may deem fit and if proceedings are not commenced or a show-cause notice issued within such period he shall order the immediate return of the goods, documents or things and cancel any order served on such person".

This is what we have stated in connection with clause 110 read in conjunction with clause 105.

**Shri Morarji Desai:** Wherefrom are you reading?

**Mr. Forman:** This is from our Memorandum. We wish to ensure that there is no hardship. That is our point.

**Shri Morarji Desai:** If there is abuse of power, we will punish the man.

**Mr. Forman:** There are some hardships.

**Shri Morarji Desai:** We will remove the hardship. Every officer has to do his duty. They are responsible to Government for that. Every officer has to do his duty. Otherwise, it will mean that no officer will do his duty. In all their transactions which they do, if the action is bonafide, they are all protected.

**Mr. Forman:** The Chamber has suggested that there should be a very thorough examination before this is done.

**Shri Morarji Desai:** When certain things are happening, when we find that foreign people are coming with gold etc., we cannot take any risk. How can anybody take any risk? Therefore, that must not happen. But if any officer behaves wrongly, then we will certainly deal with him. He will be removed from service. That will be a sufficient check. I do not think you need to be afraid. We will certainly deal with them rigorously.

**Mr. Forman:** That is right. If you are satisfied, it is all right.

Clause 115—Confiscation of conveyances.

Here again the Chamber feels that perhaps innocent persons may suffer. Smuggling may have been done without their knowledge. They may not have sufficient proof with them. Then, Sir, this clause is based on the situation which obtained in U.K. a couple of hundred years ago. There used to be smuggling. Actually one ship was seized.

**Shri Morarji Desai:** That is a different thing altogether. They were called pirates, not smugglers. That was a different thing. We are not going on that basis. We are going here on the basis of ships which have come here with gold and other things.

**Mr. Forman:** In many cases owners of the ships have been co-operating with the Government.

**Shri Morarji Desai:** Then we also help them, if they are co-operative.

**Shri Dehejia:** May I mention one thing. The owners of the ships may not know it, but what about the other officers of the ships and their employees?

**Mr. Forman:** I am not trying to condone smuggling.

**Shri Morarji Desai:** If we find that that has been done only by some person without the knowledge of the

officers of the ship, we will not do it. If they cannot prove that it was done without their knowledge, then we will have to forfeit the ship. Otherwise, they would not take very great care.

**Mr. Forman:** There was a recent case where a foreign ship had been confiscated and it cost them a lot.

**Shri Dehejia:** Do you think that in that ship a saloon panelling could have been removed and new panelling done without the knowledge of the officers of the ship?

**Shri Morarji Desai:** How could that have been done without the knowledge of the superior people? We have got to give most exemplary punishment. We have got to check them and make it impossible for these things to go on.

**Mr. Forman:** I am merely suggesting that innocent people should not be punished.

**Shri Morarji Desai:** That will be a matter of consideration afterwards, not in a law.

**Mr. Forman:** Anyhow, if I may say so, the Chamber has made this point.

**Shri Morarji Desai:** The Chamber must do it. I have no quarrel with the Chamber.

**Shri Puri:** These ships have got so many cavities and if in a small place somebody hid a diamond or something else, the owner of the ship who is ten thousand miles away is punished.

**Shri Desai:** It is not the question of one diamond. We can understand that. It is large scale smuggling, that one has to think of. Do not think that Government is going to deal with people so harshly without any reason. That would not be done. Gold worth crores of rupees is smuggled. It cannot go on like that.

Any other point? We have already given you more than an hour.

**Mr. Forman:** Only one or two points more.

**Shri Morarji Desai:** At the beginning you said you had only two or three points. Now it is lengthening to more points.

**Shri Puri:** Clause 116. In the original Act, it was provided that if any package is shortlanded, the penalty would be twice the amount of duty and where the duty cannot be assessed, the penalty will be Rs. 500 per package. That safeguard has unfortunately been removed.

**Shri Morarji Desai:** We do not want to provide safeguards for these things.

**Shri Puri:** Are we to understand that the penalty will be charged on the basis of actual duty or it will be charged on an *ad hoc* basis? I am asking this because unfortunately at present the Customs officers are charging penalty upto the tune of Rs. 10,000 per package.

**Shri Morarji Desai:** I would tell them to charge even Rs. 20,000 even if it is the value of Rs. 500. That is not on the actual value of a particular package. It is only that particular package which is found. Many other packages may have gone without anybody's notice. The punishment should be very very prohibitive.

**Shri Puri:** I agree with you. But where the duty cannot be assessed, there must be a safeguard that it should be so much per package. Would you suggest that it should be left to the discretion of the Customs authorities?

**Shri Morarji Desai:** As it is here. The amount is mentioned.

**Shri Puri:** I want to know what will happen where the duty cannot be assessed.

**Shri Morarji Desai:** It can be assessed.

**Shri Puri:** What about the cases where the duty cannot be assessed?

**Shri Morarji Desai:** Why can it not be assessed?

**Shri Puri:** Then it is all right. It should not be done on an ad hoc basis. That is my submission.

**Shri Morarji Desai:** If the duty cannot be assessed, then no fine can be levied.

**Mr. Forman:** Clause 140—Offences by companies.

Here I would respectfully submit that our responsibility here should be the same as it obtains under the Companies Act. Sub-clause (1) says:

“...responsible to the Company for the conduct of business of the company.....”;

and sub-clause (2) says:

“...attributable to any negligence on the part of any director, manager, secretary or other officer of the company.....”.

**Shri Morarji Desai:** Same thing is there in sub-clause (2). This is the same thing. There is no difference.

**Mr. Forman:** Clause 147—this relates to the responsibility of the importer vis-a-vis the agent. I may say that importers are not in collusion with dishonest agents.

**Shri Morarji Desai:** Agents say that they are not in collusion with dishonest importers. That is what the agent said who came just before you. What am I to do? We will deal with persons who are dishonest. That is all we are going to do. Unfortunately, any side being dishonest makes my officers dishonest. That is my difficulty.

I think, that is all.

**Mr. Forman:** We thank you very much.

**Shri Puri:** We are grateful to you for giving us a very patient hearing. Thank you.

**Chairman:** Thank you.

*(The witnesses then withdrew)*

### III. THE BOMBAY CUSTOM HOUSE CLEARING AGENTS' ASSOCIATION, BOMBAY.

*Spokesmen:*

1. Shri K. D. Pathak.

2. Shri M. T. Bandivdekar.

*(Witnesses were called in and they took their seats)*

**Chairman:** We have got your memorandum which has been circulated to the Members of the Committee. If you have got anything further to add, you may do so.

**Shri Pathak:** We shall first take up clause 13. We have said that the importer should not be made liable to pay duty on pilfered goods, because after unloading and before clearance the goods are lying either in the custody of the Customs or the Port Commissioners, in major ports, or it may be in the custody of the steamer agents or the State Government officers at minor ports. We have said that since the importer has no control over the goods after they are unloaded and before clearance, he should not be made liable to pay the duty on them. When a vessel which brings the cargo comes, it cannot discharge it, or even berth at any other places except the one nominated by the Customs. The vessel has to come at the place nominated by the Customs. It has to file a manifest immediately on arrival with the Customs; it has to discharge cargo under the supervision of the Customs and the cargo would be delivered to the person nominated by the customs and not the importer. So right from the time the cargo is received, it is in the custody of persons other than the importer and the importer has absolutely no control over the goods. When the cargo is lying in the custody of a person other than the importer over which he has no control, to say that he has to pay the duty even on pilfered goods, is not fair.

**Chairman:** This point has been urged by every witness. It has to be considered.

**Shri Pathak:** We do not know what the others have said. If the Committee thinks that it should not be prolonged, I shall go to the next point.

**Mr. Chairman:** The Committee will consider it.

**Shri B. R. Bhagat:** We have to consider where the goods are consumed. Moreover the bulk of the cargo is insured.

**Shri Pathak:** The goods are definitely consumed, but it goes into somebody else's hands, except the importer. To hold the importer liable to pay the duty is not correct, according to us.

**Shri B. R. Bhagat:** The point of collusion is there. It has to be taken note of.

**Shri Pathak:** That has to be established.

**Shri Dehejia:** There are some goods which can be used by certain parties only. There may be part of a machine which can be used only by an assembler of machines. There are so many factors to be considered.

**Shri Pathak:** Can it be said definitely that it has gone into the hands of the importer.

**Chairman:** This is a point which has been made by everybody and all aspects of it will be considered. You may rest assured that we shall give the fullest consideration to this matter.

**Shri Shankaraiya:** The Clearing Agents will be knowing the whole thing with regard to the removal of the goods. Can they give any information or throw some light as to how this pilferage takes place and how it can be prevented?

**Shri Bandivdekar:** The position in the Bombay Port particularly is that the goods are landed and a manifest is submitted to the Customs and the Port Trust. From the Customs it is not possible for the people to know

anything. But the copy that is submitted to the Port Trust goes into various hands and those who want to take unfair advantage of it will know what goods are received by a particular steamer and landed from that ship. From there they can find the marks and numbers of cases—whether it is ball-bearing goods or cycle chains and so on. Some control or some sort of machinery has to be evolved there, so that the information that goes into the hands of the Port authorities can remain confidential and may not be misused.

**Shri B. R. Bhagat:** Only those goods which are not cleared quickly and are lying there for a period are generally pilfered. It is the responsibility of the clearing agents also to clear them speedily. They lie in the dock for a number of days. So they have also some responsibility in this matter.

**Shri Bandivdekar:** The clearing agents have no information about these. They have no access to the manifest. The manifest goes into the hands of some authorities, and they know the entire thing. From there it is possible for others to know.

**Shri Pathak:** You have mentioned about speedy clearance.

**Shri B. R. Bhagat:** Pilferage takes place only because there is no quick clearance and the goods are lying there.

**Shri Dehejia:** Therefore, speedy clearance will prevent pilferage.

**Shri Pathak:** I have to say something on that, because it is not in the interests either of the importer or the clearing agent to retain the goods in the Port Trust area if they can clear them speedily. But there are certain hurdles regarding detention due to the Customs procedure or the ITC formalities. And this procedure sometimes takes a very long time and the goods lie there pending the finalisation of the Customs documents. It is not that they are purposely using the Port Trust sheds as warehouses or godowns.

**Shri Dehejia:** Would it be true in all cases?

**Shri Pathak:** I should think so.

**Shri Dehejia:** There are a number of causes known to you or to the people associated with the Customs operations: there are a variety of reasons for which the goods remain uncleared.

**Shri Pathak:** The variety of reasons is only so far as the Customs and ITC procedure are concerned. There is no other reason why they should lie in the docks.

**Shri Dehejia:** People who want to smuggle can have different consignments with the same marks. When one is unloaded it may have the same marks as another, and while clearance may be obtained for the first one they wait and actually clear the second.

**Shri Pathak:** It may be that in certain cases there may be a collusion between the importer and the pilferers, and the port authorities. But that is not true in all cases.

**Shri Dehejia:** That is just the point I put to you, that there can be exceptional cases where the importer also is responsible. The ownership remains with the importer all the time even though the custody is with the Port Trust or the port authorities. When goods are lost from the importer's ownership, though they may be in the custody of somebody else—maybe his agent or friend—he suffers the loss.

**Shri Morarka:** The loss is all right. Here he pays duty over and above that.

**Shri Pathak:** An exception does not prove the rule. In exceptional cases I do admit that it may be so, but not in all cases.

**Shri Dehejia:** There can be a provision that duty will be paid immediately on presentation of the bill of entry. And then the goods are lost. What will happen? We do not have it because that will cause hardship. If the duty is required to be paid along

with the bill of entry, what would happen? Nothing.

**Shri Pathak:** Then the Customs should refund the duty.

**Chairman:** This is only to provide for such exceptional cases. But we will consider all this.

**Shri Dehejia:** We have undertaken to consider all the different combinations of circumstances that may arise.

**Chairman:** You may take up only the important points. I think you are mostly concerned with clause 147.

**Shri Pathak:** Yes, Sir, clauses 147 and 28.

**Chairman:** Instead of going into all the general provisions I suggest you refer to such clauses as apply to you in your capacity as clearing agents.

**Shri Pathak:** Very well, Sir. I will take up clause 147 read with clause 28.

Under clause 147(3) the Custom House Agents are deemed owners of the goods because they clear on behalf of the importers. Before I proceed with this point I think I would not be wrong if I give a background of the clearing agents' trade. We have been given a licence by the Customs after examination of all the proofs and we have been authorised to process the documents with the Customs. By virtue of our licence we have been authorised to clear the consignments on behalf of the importers. The importer comes to the clearing agent and says, "I have got these goods, please clear these goods." We take the documents, present the bill of entry and process it through the Customs, get the goods cleared and hand them over to the importer.

The moment the goods are handed over to the importer the connection or the relation between the clearing agent and the importer ceases. According to the code of conduct immediately the goods are cleared we have settled his accounts and squared up everything, and the moment this is



done the relationship between the clearing agent and the importer is over. Because, the importer is not bound to give his subsequent consignment to the same clearing agent. He can give it to anybody. He may give it to the same man or to anybody else. He is absolutely free.

So this is a case of casual employment. It is not a permanent agency as between the importer and the clearing agent, because he is concerned only with the particular consignment, and the clearing agent has not been given a general lien on their goods. Suppose any money is due to the clearing agent after that from the importer, he cannot detain his subsequent consignment or anything. The moment his accounts are squared up, the relation between the clearing agent and the importer ceases.

**Chairman:** What is it you want to be done?

**Shri Pathak:** In clause 147(3) a liability is being created that the moment we clear the goods on behalf of the importer we become deemed owners of the goods, and whatever liabilities there are the same attach to the clearing agents.

**Chairman:** For that particular consignment of goods your liability is there for whatever acts of omissions and commissions there are.

**Shri Pathak:** The penalty on the importer, even the imprisonment, attaches to the clearing agent? Whatever the liability of the importer, that liability has been attached to the clearing agent only because he has cleared that particular consignment. As I told you, once the consignment is cleared and the goods are delivered to the importer, there is nothing in the hands of the clearing agents if subsequently, a liability has been created by the Customs.

**Chairman:** Subsequent liability only as regards that particular consignment.

**Shri Dehejia:** Suppose there is a mis-statement?

**Chairman:** Simply because you have handed over, you cannot escape.

**Shri Pathak:** Suppose the mis-statement is on the part of the importer. After the goods have been delivered, after the relationship between the clearing agent and the importer ceases, the importer will say, I am not going to pay anything, let the clearing agent pay.

**Shri Dehejia:** May I put it this way? Liability arises out of a thing done while your contract lasted. These things are done while you are acting as the agent. A declaration is given suppressing certain things. May be by the importer, may be by the clearing agent. We are not fixing the responsibility. That may come to light subsequently. The fact that he has ceased to be your customer does not mean that the action has ceased to be yours or of your customer at the relevant time. . .

**Shri Pathak:** That is not the point.

**Shri Dehejia:** I realise what you say that you have no hold on the customer subsequently. That is quite true. But, these things have occurred when you had the relationship of customer and agent.

**Shri Pathak:** Actually, the point is, we do not act as the agent of the importer. We clear the consignments by virtue of our profession, holding a licence of the Customs House.

**Shri Dehejia:** Licence as clearing agent. Whose agent?

**Shri Pathak:** Customs House.

**Shri Dehejia:** They have no agents. They have nothing to do. Kindly consider the basic point. You are appointed agent by the importer. The Customs recognise you. You do not become an agent of the Customs. You are an agent of the importer. Can there be any doubt on that?

**Shri Bandivdekar:** This provision is there already in the previous Act. The Customs authorities authorise the Customs house agents. Certain rules have been prescribed. We sign the bill of entry, we process it, we pay the duty, we deliver the goods. After that, we have to hand over all the documents to the importer. There is nothing with us. If some questions are raised at that time, we can say what is the correct position. Actually, after a year or two, it will be impossible for us without the documents to point out whether it was a misstatement or a collusion. Because, by that time, the invoice, the bill of lading, duty bill, all the documents are returned to the importer. Under that section, there are rules which enjoin on us that we have to give a factual account to the importer. If we want to keep a deposit from the importer for whom we clear, that also we cannot do. The result is, merely because we have signed a bill of entry for the sake of Rs. 5 or Rs. 10 per case—these are the charges in Bombay—we take responsibility for a very huge amount. Clause 28 is coupled with clause 147. That clause says that if there is collusion or misstatement, notice can be given for an unlimited time for a number of years. Actually, the position is, all those documents we cannot keep with ourselves. How can we meet the demand? That is the difficulty.

**Shri Dehejia:** It is not as if only the agents are being held liable. The liability is fixed on both the importer as well as the clearing agent. In quite a number of cases, to the Customs authorities, the importer may be nothing more than a name. He would be known to you. Somebody may have signed; he must have taken instructions, so that he is known to you. He is not known to the Customs at all. The Customs know ABC Co. They may not know whether ABC Co. exists; the clearing agent knows.

**Shri Bandivdekar:** Actually the position is, the documents are received through banks for large number of consignments which are consigned to

up-country importers. In such cases the clearing agent does not know who is the importer. Only through correspondence through banks these things come. Ultimately, if this responsibility is to be fastened on the clearing agents, we will have to ask the importer or the bank to sign the bill of entry. That will be impossible. For example, a bank in Delhi cannot sign a bill of entry. We have to send the bill of entry forms to Delhi to get them signed. Expeditious clearance will not be possible.

**Shri Dehejia:** Bill of entry forms are available.

**Shri Bandivdekar:** Forms are available. These forms have to be signed. At the present moment, except signing bills of entries, while processing, we have to make a number of declarations.

**Shri Morarka:** May I ask, clause 147(3) is not a new provision; it is an already existing provision.

**Shri B. R. Bhagat:** Formerly it was section 4. I think it was challenged and it went up to the Supreme Court. The Supreme Court decided that this provision is not improper. It is quite a proper provision. The principle of the equity of it has been decided by the Supreme Court. So far as practicability is concerned, we do not know the importer. You act as agent. You take all the responsibility for any misstatement. It is not as if it is absolute responsibility in the sense that you will be charged for anything. It is a single transaction. If you take care to see that there is no mistake, if you scrutinise carefully, if you take care to see that there is no misstatement or under-valuation and that all the statements are truthful, nothing will happen. No liability will come to you. I do not think even from the equity or practicability points of view, there is any objection.

**Shri Pathak:** If I have read the judgment of the Supreme Court rightly, I do not think they have considered the propriety of section 4. They have said that since section 4 is there,

according to section 4, the clearing agents are responsible. They have not commented anything on the propriety or impropriety of section 4.

**Shri Morarka:** Apart from the question that the hon. Deputy Minister put to you, may I know, in your experience, in actual practice, have clearing agents ever been made responsible for defaults committed like the one contemplated here? Has the clearing agent suffered any loss and if so, in how many cases? Or, are you discussing theoretically?

**Shri Bandivdekar:** In one case, I know, a cess charge was recovered to the tune of Rs. 32,000 from the clearing agent. The clearing agent was a big man.

**Shri Morarka:** One case in 80 years.

**Shri Bandivdekar:** There were so many cases. That was a big case.

**Chairman:** Just as you are trying to shift responsibility, they may also try.

**Shri B. R. Bhagat:** Neither you nor the importer should be responsible: what do you suggest?

**Shri Bandivdekar:** The procedure has become so complicated. There is smuggling as it is said. Actually, in the case of semi-finished goods also mostly machinery, there are complications. While dealing with all these complications, if the clearing agents are held responsible for anything that is wrong, really, it becomes difficult.

**Chairman:** The section says, the clearing agent, the importer, owner, all of them will be responsible. You prove who is responsible. You can certainly safeguard your interests.

**Shri Bade:** Clause 147 only says that if an agent does something, liability will go to the importer or owner.

**Shri Bandivdekar:** There is sub-clause (3).

**Shri Bade:** The importer will be responsible for that.

**Shri Pathak:** What about 147(3).

**Chairman:** You can prove that such and such person is the owner or importer.

**Shri Bandivdekar:** Our difficulty is that if the liability comes later on, we have no papers.

**Shri Ramanathan Chettiar:** Keep copies.

**Shri Bandivdekar:** It is difficult to keep copies of invoices etc.

**Shri Raman Chettiar:** You can talk to the importer about it.

**Chairman:** You can show that you are not responsible.

**Shri Himatsingka:** This provision is already there.

**Shri Pathak:** We have protested against this even before.

**Shri Bandivdekar:** We have come before the framers to plead that some relief should be given.

**Shri B. R. Bhagat:** Apart from apprehended fear, is there any actual case of hardship?

**Shri Bandivdekar:** Yes.

**Chairman:** Only one.

**Shri Prabhat Kar:** Even in that case, what was the time-lag?

**Shri Bandivdekar:** We are in existence as an association for some years. We have not been keeping any record. At that time, these were also negligible. But during the last few years, the rates of duty have increased considerably on some items. It is even 600 per cent.

**Shri B. R. Bhagat:** You will appreciate that we cannot always realise duty from the importer. So we can realise it only from the clearing agent.

**Shri Bandivdekar:** Formerly, there was no provision while taking a bond from the clearing agent. Now that provision has been made to the effect that if the amount has to be realis-

it can be appropriated from the deposit amount of the clearing agent.

**Chairman:** If there are cases of harassment, you can go up in appeal. Have you taken up any such cases in appeal?

**Shri Bandivdekar:** This has recently been introduced. Formerly while giving the bond, this was not there. This new provision was introduced only a couple of years ago.

**Shri Pathak:** Our prayer is only this, that we should be treated in the same category as chartered accountants or lawyers, and this liability should not be imposed on us.

**Shri B. R. Bhagat:** Do you not think that the combined effect of (2) and (3) as they are worded is to make you less liable than before?

**Shri Pathak:** (3) is only a repetition of the original section 4. (2) is an addition.

**Shri B. R. Bhagat:** It is less onerous.

**Shri Pathak:** We do not want to have any liability on this account.

**Shri Bandivdekar:** The clearing agents are not even paid the amount of duty by the importer. That is the position.

**Shri Narendra Singh Mahida:** You should change your designation from 'clearing agents' to something else.

**Shri Pathak:** We agree that the clearing agent should be liable for any misrepresentation or negligence on his part under section 132. But so far as the other liabilities are concerned which arise on account of the importers or the customs, he should not be made responsible for them.

**Shri B. R. Bhagat:** What are the faults of the importer which you would not know?

**Shri Pathak:** We go by the documents. We have no access to their books. The importer may be in Ludhiana or Amritsar. We only go on the basis of documents given to us at the port. Nobody will allow us access to their books.

**Shri Bandivdekar:** If the customs authorities rigorously scrutinise the documents, we have absolutely no objection, because that is in our favour. But what happens so often is that the importer comes in a hurry and the customs people also pass them because the firm may be of good standing. Ultimately when the liability comes, the firm may not be in existence.

Then if the goods are detained by the customs, there is no provision either in the existing Act or in the Bill for issue of detention certificates. We suggest the inclusion of a clause after clause 144 to this effect.

**Shri B. R. Bhagat:** Who gives such certificates?

**Shri Bandivdekar:** The customs.

**Shri Dehejia:** I wonder whether such a provision can be inserted in this Bill. It is within the discretion of the Port Trust to accept it or not. In matters of procedure like his, this Act cannot bind them. It is beyond the purpose of this legislation.

*(The witnesses then withdrew)*

*The Committee then adjourned.*

## SELECT COMMITTEE ON THE CUSTOMS BILL, 1962

### MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE CUSTOMS BILL, 1962

*Thursday, the 2nd August, 1962 at 09.30 hours.*

#### PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

#### MEMBERS

- |                                   |                                     |
|-----------------------------------|-------------------------------------|
| 2. Shri Ramchandra Vithal Bade.   | 13. Shri Shankarrao Shantaram More. |
| 3. Shri R. Ramanathan Chettiar.   | 14. Shrimati Savitri Nigam.         |
| 4. Shri N. T. Das.                | 15. Shri Prabhat Kar.               |
| 5. Shri Morarji Desai.            | 16. Shri A. V. Raghavan.            |
| 6. Shri B. D. Deshmukh.           | 17. Shri Shivram Rango Rane.        |
| 7. Shri J. N. Hazarika.           | 18. Shri R. V. Reddiar.             |
| 8. Shri Prabhu Dayal Himatsingka. | 19. Shri M. Shankaraiya.            |
| 9. Shri Hari Vishnu Kamath.       | 20. Dr. L. M. Singhvi.              |
| 10. Shri Narendrasingh Mahida.    | 21. Shri Sumat Prasad.              |
| 11. Shri Bakar Ali Mirza.         | 22. Shri Bali Ram Bhagat.           |
| 12. Shri R. R. Morarka.           |                                     |

#### DRAFTSMEN

1. Shri G. S. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
2. Shri C. J. Venkatachari, *Deputy Draftsman, Ministry of Law.*

#### REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

1. Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*
2. Shri D. P. Anand, *Member, Central Board of Revenue and ex-officio Joint Secretary, Ministry of Finance.*
3. Shri M. G. Abrol, *Officer on Special Duty, Ministry of Finance.*

#### SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

#### WITNESSES EXAMINED

##### I. THE ALL-INDIA MANUFACTURERS' ORGANISATION, BOMBAY

1. Shri Prabhu V. Mehta.
2. Shri Hans Raj Gupta.
3. Shri D. M. Desai.

## II. THE BOMBAY BULLION ASSOCIATION LIMITED, BOMBAY

- |                               |                            |
|-------------------------------|----------------------------|
| 1. Shri Chandulal Kasturchand | 4. Shri Chimanlal C. Shah  |
| 2. Shri Mangulal Trikamlal    | 5. Shri P. Gopalakrishniah |
| 3. Shri Amratlal Sonawala     | 6. Shri Jayendra Mehta     |

## III. THE MADRAS JEWELLERS' AND DIAMOND MERCHANTS' ASSOCIATION, MADRAS

- |                         |                            |
|-------------------------|----------------------------|
| 1. Shri V. Pandurangiah | 3. Shri P. Gopalakrishniah |
| 2. Shri Harendra Mehta  | 4. Shri Kanayalal Mehta    |

## I. ALL-INDIA MANUFACTURERS' ORGANIZATION, BOMBAY

### Spokesmen:

1. Shri Prabhu V. Mehta
2. Shri Hans Raj Gupta
3. Shri D. M. Desai.

*(Witnesses were called in and they took their seats.)*

**Chairman:** We have got your memorandum, which has been circulated to the Members. If you want to supplement it, you may do so.

**Shri Mehta:** With your kind permission, we may be allowed to refer to several clauses which we have not touched in our memorandum. Particularly, in clause 11(2), among the purposes mentioned is:

"(p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;"

We feel that this purpose is likely to take away the basic or fundamental rights of the people to carry on lawful trade, because the Government might, by a notification, say that in certain commodities no private citizen of India might trade, because elsewhere sufficient power is given to Government to issue a notification for purposes of security, maintenance of public order and standards of decency, morality etc. Normally such purposes are likely to be achieved even if this sub-clause (p.) is excluded. That is our first submission.

**Shri Morarji Desai:** You can go to a court of law if it is a case of fundamental right.

**Shri Mehta:** We do not wish to do that.

**Shri Morarji Desai:** I think you are totally wrong when you say that it is against fundamental rights, because it is being done even now. It is not a new thing which is being done. According to this nobody is going to be prohibited. In some cases, imports and exports have to be prohibited. How can you allow the two things together? If no citizen of India is allowed to import a particular commodity except the State Trading Corporation, that has got to be said. That is all that is done. So also, only licensed importers are allowed, unlicensed importers are not allowed. What is the meaning of saying fundamental right? Should only a few people be given monopoly?

**Shri Mehta:** I did not refer to fundamental right in a legal sense. I must apologise.

**Shri Morarji Desai:** You are entitled to say whatever you want. You need not apologise at all. We are only trying to discuss.

**Shri Mehta:** Our second submission is in regard to clause 13 which says that if goods are lost due to pilferage, the importer has to pay the duty on such goods. This has to be read with clause 23 where the Collector has been given powers of remission of duty in case goods are lost otherwise

than by pilferage etc. Pilferage is so much rampant and so much on the increase at the ports, port trust premises, warehouses etc., that the importer loses—I am speaking on behalf of the manufacturers, we are more concerned with them—raw materials and components out of the very meagre quotas available to him. On account of it, production suffers, and on top of it he has also to pay duty on such pilfered goods. The goods are not in our possession. They are in the possession of the customs or port trust, and if there is a loss due to pilferage, why should we be penalised twice? So, we suggest that clause 23 might also include remission of duty in case of pilferage and clause 13 may be deleted.

Coming to Clause 14, we fear that the term "normal price" is likely to be misunderstood, particularly when it is translated in relation to the term, "the seller and the buyer have no interest in the business of each other". Speaking as manufacturers, there are many technical collaborations with foreign firms, who supply components etc., according to their own designs. Would it be construed by clause 14(1) (a) that the technical collaboration is a business relation when the import takes place? If so, almost all the cases will fall under (b) instead of (a). The term "where the seller and the buyer have no interest in the business of each other" has to be more specifically explained. Relations such as sole selling agents, distributors, representatives or branches might probably be construed as business relation, but technical collaboration may not be so construed.

**Shri Morarji Desai:** What is your alternative suggestion?

**Shri Mehta:** My suggestion is that in the case of a dispute about the normal price, the customs might accept a certificate from a recognised or well-known and established Chamber of Commerce in the exporting country that these are the normal fair prices of these articles exported to your

country. That certificate should be considered valid, and customs may accept it for purpose of customs duty.

**Shri Mehta:** Then, with regard to clause 18, provisional assessment of duty, we have a modest submission to make. That is, instead of exactly twice the amount of the excess duty, it might be said, 'not exceeding twice the amount' so that a certain discretion might be given to the officer-in-charge, if he considers that he has to get a deposit of a lesser amount in a particular case.

About clause 20(1)(a), speaking as manufacturers, we have difficulties in that particular clause. It has not been mentioned in our memorandum. One is the satisfaction of the Assistant Collector of Customs, if the goods exported have been re-imported. That satisfaction is extremely difficult. Suppose, we send a consignment of 400 or 500 pieces and 4 or 5 pieces come back, it will be very difficult to prove that these 4 or 5 pieces are not of that particular consignment.

I may cite an example. One of our members had sent a lock to a bank in Ceylon along with other security furniture. They found it defective and sent it back to India for repairs. It took exactly 4 months for us to get that particular lock through the customs because of the difficulty in identification of the particular lock having been exported. A long procedure had to be gone through. Because of this, the bank in Ceylon got fed up with it; and to avoid this difficulty which might happen again, they placed an order in England. We lost our business.

The same thing happens in the case of goods sent for exhibitions. When they come back, the customs take the view, 'How can you prove that these are the same goods that were sent to the exhibition and which have come back? So, our submission is that whenever the Collector of Customs finds it difficult to satisfy himself that the articles in question are



the same articles which were exported and are re-imported, they might be subject to a bond procedure so that no time lag is there between the replacement or repair of the thing and the satisfaction of the Collector of Customs. Because we are exporting large quantities of manufactured items, we have to consider this from that point of view.

**Shri Morarji Desai:** You are referring to goods which are re-exported after they have come back. But what happens to goods which cannot be re-exported afterwards?

**Shri Mehta:** If they are rejected goods, then the Collector's satisfaction will have to be there. We have no objection to that.

**Shri Dehejia:** You may be aware that the bond procedure is available not only for goods which are re-imported and exported but also for goods which are just imported. So, what exists in the Bill is much wider than what you suggest.

**Shri Mehta:** I thought that when this Bill comes into force the bond procedure might be discontinued.

**Shri Morarji Desai:** But where is this bonding arrangement?

**Shri Mehta:** That is in a separate clause.

**Shri Morarji Desai:** If it applies to this then you are satisfied?

**Shri Mehta:** If we are assured that it applies, we are satisfied.

**Shri Bade:** They have not given notes regarding clause 20(1).

**Shri Mehta:** I said so.

**Shri Bade:** What is the amendment you want in this clause? I cannot understand that.

**Shri Mehta:** What we want to say is that the bond procedure should apply to goods which have been once exported and which have come back for repairs or replacements etc. In these cases, identification is the real

problem and the Collector of Customs has to be satisfied that these are the goods that were exported and have come back.

**Shri Bade:** In clause 20(1) it is already given.

**Shri Mehta:** It is said, 'to the satisfaction of the Assistant Collector of Customs'. That satisfaction is really very difficult.

**Shri Bade:** Then, what is the procedure you suggest?

**Shri Mehta:** That is why I am suggesting the bond procedure.

**Chairman:** It is there in clauses 60 and 61; please read 60.

**Shri Mehta:** Our understanding is that that does not include this. The operation procedure should be available for every factory because we cannot repair the things in the bonded warehouse. Let me explain myself.

Suppose we have exported a machine tool; and a complicated part came back for repairs. It might have to go through a process of several stages in the factory and the whole factory will have to become a bonded warehouse. It is not possible.

**Shri Morarji Desai:** It is impossible to do so. All your work will stop. You have to send a new part. You cannot send that part back. That is all that could happen in that case. It is not possible to undertake that kind of arrangement.

**Shri Desai:** An example of a lock had been given by Shri Mehta. The lock should have been repaired in the factory and a bond or a guarantee from the manufacturer could have been taken.

**Shri Morarji Desai:** What do you lose by sending a new part? You can repair the other one and keep it for your own purpose.

**Shri Mehta:** There may be a special specification.

**Shri Morarji Desai:** You can send a new part. I do not understand the difficulty. Why should you need the system of a bonded warehouse and all that?

**Shri Desai:** It is not always that the goods are made in accordance with the specifications and requirements of our own country. If we have to manufacture a part to meet the specifications of either Egypt or Iran or Iraq, then, that part will be useful only in that country. If I am called upon to manufacture a new part rather than repair the defective one, which can sell only in Iran or Iraq, then it will mean additional cost and loss to me.

**Shri Morarji Desai:** You can export the same thing again.

**Shri Desai:** Provided another equipment is sold.

**Shri Morarji Desai:** When it comes back, the duty, if any, will have been refunded. When you send it again, you pay the duty, if it is to be paid. I do not see where the objection lies.

**Shri Desai:** The problem is about the delay in giving satisfaction.

**Shri Morarji Desai:** That is a different thing altogether. That has got no relation to this. That is a matter for proper arrangement. This does not solve your difficulty. If there is delay in giving satisfaction, that is an arrangement that has got to be made. I do not know why it takes so much time. Unnecessary time is taken for nothing. Wrong enquiries are made when no enquiries are to be made; and no enquiries are made when they have to be made. That is a bad thing; that should not be done.

**Shri Meh'a:** Thank you very much.

**Shri Bade:** How can there be the satisfaction of the proper officer by giving the bond?

**Shri Morarji Desai:** Where is the necessity for satisfaction? Nobody is going to get two parts unless it be from the same consignment. Who is

going to import two parts and get a refund? That can very easily be satisfied. I do not think it will take long time.

**Shri Desai:** It does take a long time.

**Shri Morarji Desai:** I do not think it will be difficult to arrange this. Satisfaction should not take a long time.

**Shrimati Savitri Nigam:** May I know what is the suggestion of the witness in order to get over the delay part of it?

**Shri Mehta:** We have been assured by the hon. Finance Minister that it would not occur. Therefore, we have no suggestion to make.

**Shri Morarka:** May I ask one clarification? It is said in this proviso to 20(1) that if such importation takes place within three years—it means Indian goods exported but imported back—no duty would be payable on that. Which are the goods for which you give three years' period for the purchaser to satisfy himself whether the goods are according to the requirements or not? Why should there be three years?

**Shri Dehejia:** The point is that they may bring a part here, repair it and then send out again. We are trying to facilitate the trade. For instance, Godrej locks had gone to Ceylon but after sometime some were sent back because they required some repairs. It was not as if a guarantee was given but then we want to encourage our trade also. But the period cannot also be more because after a time satisfaction will become more and more difficult because of the need to see the documents with the customs authorities. The marks on the goods exported may also get erased.

**Shri Prabhat Kar:** If the period is reduced, the question of difficulty about satisfaction may not arise.

**Shri Dehejia:** The difficulty will not arise in any case provided the goods are identifiable. A thing may be

manufactured in India and sent abroad but one may get foreign parts of a similar kind into India which may be of more value in India. So that the question of identity has to be gone through.

**Shri Morarka:** How does this three years' period help you?

**Shri Mehta:** We are exporting a variety of things now; there was one case where one entire factory was involved. We are exporting distilleries and things like that where performance satisfaction may take time. The delay might occur in the other country.

For instance, we are exporting textiles to Germany, Sweden and Norway; there are warehousing facilities. The customs takes delivery of these and the customer can take delivery of it even after 6, 7 or 8 months.

**Shri Prabhat Kar:** Are there specific cases where the exported goods have come back in the third year?

**Shri Mehta:** Cases have been reported where goods have come back after 1½ or even two years.

**Shri Ramanathan Chettiar:** Apart from sending machinery for exports I would like to know whether for any customer you have given any guarantee for more than one year.

**Shri Mehta:** For electric fans we give a guarantee for two years.

**Shri Morarji Desai:** All the world over it is only one year.

**Shri Mehta:** But we have to go and capture new markets. Refrigerators are given a guarantee for seven years. We are trying to create confidence in our products.

**Shri Desai:** Therefore, our submission is that the period should be increased from three years to five years.

**Shri Dehejia:** Three years is a good compromise. These goods will come in and then go out and they are covered by the other clauses also.

**Shri Mehta:** In clause 20 (2) it refers to 25 per cent of the total cost of production or manufacture. It might be a matter of dispute: it will be difficult for the Collector of Customs to examine and find out the cost of production. It could be changed to 20 per cent of the export value. The cost of production would be difficult to determine.

**Shri Morarji Desai:** We will consider that: we can take the cost of exports. They do not want to let out the cost of production.

**Shri Mehta:** No, no, Sir. We have agreed to let the Productivity Council to study it in six industries and we will welcome the Government to study it; it may help us perhaps in understanding our problems better.

**Shri Morarji Desai:** If we take the export value given in the shipping Bill it will be simpler.

**Shri Morarka:** That will not meet the whole situation because it is for the goods manufactured in India. That is the condition precedent.

**Shri Dehejia:** Has this led to any difficulty so far?

**Shri Mehta:** It is not being followed, and that is why I feel it will cause difficulties. It is not there at all.

**Shri Morarji Desai:** There is no harm, I think, in following their suggestion. What we have to be satisfied with is that it must be 25 per cent, that is, 25 per cent of the manufacture must have been done in India. In order to be satisfied about that, whether you take the cost of production or the selling value, it is all the same. The selling value can be easily identified because it is put in the shipping bill.

**Shri Morarka:** If they are not going to refer to the shipping bill, how are you going to be satisfied about that?

**Shri Morarji Desai:** 25 per cent of the value has got to be manufactured here. They will have to satisfy us about it.

rs Shri Desai: It is not very difficult to  
of satisfy because when we obtain the  
ht export incentives, in that, these  
fi break-ups are given regarding the  
to contents—whether they are indigenous  
o or foreign.

20 Shri Morarji Desai: We can cer-  
st ainly do that.

Shri Dehejia: When you say only  
the export price shall be taken, then,  
it may be that something is imported  
from Japan and is being exported—  
and there may be no part of it which  
is manufactured in India.

re Shri Morarji Desai: Only 25 per  
cent.

Shri Dehejia: It is for goods manu-  
factured or produced in India. Take,  
for instance, transistor, which is 100  
per cent made in Japan. It comes to  
India and goes to Iran. For that, they  
will give the export value.

Shri Mehta: You have a provision  
to cover the goods imported for sub-  
sequent re-export.

Shri Dehejia: The goods being  
covered are of Indian production. The  
proviso says:

"For the purpose of this section  
goods shall be deemed to have  
been produced or manufactured in  
India, if at least twenty-five per  
cent. of the total cost of production  
or manufacture of the goods has  
been incurred in India."

Shri Morarji Desai: Export value of  
the goods or the price of the goods that  
are sold. You can specify them. You  
put it down only to cover that value.  
What they mean is, the selling price.  
We shall mention the selling price.

Shri Desai: I would say that it should  
be scaled down to 20 per cent.

Shri Morarji Desai: I do not see why  
we should support the people who are  
manufacturing less and less here. Why  
should they get the facilities? I do  
not know. I am not interested in the  
Actually no part in it.....

Shri Mehta: Then we come to clause  
23(1). We started with our submis-  
sion on clause 13 wherein the goods  
lost by pilferage also are to be includ-  
ed. We would re-submit our point  
about that clause and request that  
that should be considered.

Then we come to clause 28. Here,  
there is some kind of time-limit which  
is required in respect of these duties,  
and we thought that perhaps a period  
of six months should be sufficient for  
the purpose.

Shri Morarji Desai: Here, it is six  
months only.

Shri Mehta: No time-limit for serv-  
ing notice is fixed.

Shri Morarji Desai: Where it is col-  
lusion, there should be no time-limit  
specified. When there is collusion,  
why should there be any time-limit?

Shri Mehta: It might be difficult  
for large houses where the imports  
are large. If I want to sell the firm  
to some other firm, the party will  
say, "what are these responsibilities?  
The responsibilities might arise even  
after 50 years, and so I will not accept  
the responsibility of the firm." There  
has to be some definiteness about the  
responsibility. We have to look into  
the future and see how this will  
react on all kinds of eventuality.

Shri Morarji Desai: It lies on the  
importer, the Indian firm, and not on  
the foreign firm.

Shri Mehta: The Indian firm is sold  
to somebody else.

Shri Morarji Desai: It will be on  
the Indian firm even then.

Shri Mehta: But the liability will  
lie on the buyer who has paid.

Shri Morarji Desai: The buyer in  
another country will have no liability.

Shri Mehta: I think I have not  
made my point clear. If A has import-  
ed certain consignments and if A  
firm has been sold to B, who has  
actually no part in it. . . . .

**Shri Morarji Desai:** He should take the risk; otherwise he should not buy.

**Shri Mehta:** That is where the difficulty comes in.

**Shri Morarji Desai:** That difficulty does not matter.

**Shri Mehta:** Why not have six months or a year or two years? Would it not be possible to fix two years in order that it may be found out?

**Shri Morarji Desai:** Sometimes we get information after ten years.

**Shri Bade:** Yesterday there was a suggestion that there should be some time for serving notice. So, for this wording, has he got any objection?

**Shri Morarji Desai:** He is talking about the proviso to clause 28. There, it is collusion. He says that it is indefinite. Yesterday, we said we might increase the period to ten years. They were satisfied. So, these witnesses have also got to be satisfied.

**Shri Mehta:** We have made our submission, and it is for you to consider it in the interests of the country.

**Shri Morarji Desai:** That will be for the Commissioner to fix.

**Shri Bade:** What is the suggestion of the witness? Does he want six months, or, does he want a greater period, or does he want to change the entire provision?

**Shri Morarji Desai:** We have already decided it. By implication we have decided that the period will be for serving the notice.

**Shri Mehta:** We do not want any change, and we do not want anybody who indulges in undesirable activities to go free. Let them be proceeded with according to the law.

Then we come to clause 47. It appears that the taking of the decision on the assessment and on the nature of the goods need not be simultaneous. That is, it appears that a simultaneous decision need not

be taken about the assessment and to whether the goods are prohibited ones or not. We submit that both the decisions should be simultaneous. The provision should be such as prescribe that a decision whether the goods are prohibited goods or not and a decision on assessment should be made simultaneously. From the wording of the clause it appears that they need not be simultaneous. It is not very clearly stated.

**Shri Morarji Desai:** Unless the officer says that they are permissible goods, the goods will not be permitted inside. How can it be afterwards?

**Shri Mehta:** The person is always called upon to pay the duty, when the assessment is made.

**Shri Morarji Desai:** All that will be done. Without assessment of duty and without deciding anything, they are not prohibiting the goods. It is some imaginary things that you are pointing out.

**Shri Mehta:** Both the things must be done simultaneously.

**Shri Morarji Desai:** It cannot be otherwise.

**Shri S. S. More:** I think the provision should be redrafted.

**Shri Mehta:** Otherwise, it will cause misunderstanding.

**Shri S. S. More:** First, a decision whether the goods are to be prohibited or not should be taken, and then the question of duty leviable arises.

**Shri Morarji Desai:** The clause reads thus:

"When the importer of any goods entered for home consumption has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer, if he is satisfied that the goods are not prohibited goods, may make an order permitting clearance of the goods for home consumption."

**Shri Mehta:** So, the clearance order comes after the importer has paid the duty.

**Shri S. S. More:** First, the duty is paid. Then the officer comes to the decision whether they are prohibited goods or not. Then the point about the satisfaction comes in.

**Shri Morarji Desai:** If he has paid the duty, then he may be allowed to clear the goods.

**Shri S. S. More:** The goods should not be prohibited after the duty is paid. First the decision on prohibition should be taken and then the duty should be paid. I think this clause has to be redrafted properly.

**Shri Morarji Desai:** We shall consider that . . .

**Shri Mehta:** In regard to clause 59, I submit that the bond should not be for twice the amount of duty assessed.

**Shri Morarji Desai:** You are not depositing any money; it is only a bond.

**Shri Mehta:** Sometimes, you may be called upon to pay. Our difficulty is the customs do not accept the bond on any scheduled bank unless and until it is guaranteed by the Reserve Bank or State Bank. If bonds on scheduled banks are also accepted, this difficulty will not arise.

**Shri Morarji Desai:** It is an executive matter. We will consider it later on.

**Shri Mehta:** Clause 69—Clearance of warehoused goods for exportation. Sub-clause (2) says:

"If the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India . . . . . " etc.

If there is definite proof, it is all right. But on the basis of certain opinion, action can be taken under this clause.

**Shri Anand:** This will be a Government notification; not an order of an individual officer.

**Shri Mehta:** If it is a Government notification, then it is a different matter.

Then, clause 101 gives power to search suspected persons in certain other cases. At the outside, I would make it clear that I hold no brief for anybody who commits any offence; but it has been our unfortunate experience that sometimes wide powers given to officers might also lead to harassment. Therefore, we submit that it may be provided that nobody lower than the rank of a gazetted officer will be given this power.

**Shri Dehejia:** Suppose there is a woman passenger who has come down and who has to be searched.

**Shri Mehta:** A female will be searched by a female.

**Shri Morarji Desai:** The search may be by anybody, but the order must not be by anybody except a gazetted officer.

**Shri Himatsingka:** In some places, there is no gazetted officer; there will be only a sepoy.

**Shri Dehejia:** The status of a person who may search under clause 101 is the same as in the old Act.

**Shri Morarji Desai:** Even in excise, the SI is not a gazetted officer. Then, you will have to bring an Inspector.

**Shri Mehta:** We know that it is the same as in the old Act, but since we have got this opportunity, we are mentioning it.

**Shri Dehejia:** How many instances of overacting have come to your notice? I do not say there are not, but it is very rare.

**Shri Morarji Desai:** I do not think there will be any difficulty on this account.

**Shri Mehta:** Then, in regard to clause 102, we submit that the person should be brought before the gazetted officer of customs or the magistrate as the case may be as quickly as possi-

because in the next clause 103, the words "without unnecessary delay" are used.

**Shri Morarji Desai:** You may say "with the least possible delay".

**Shri Mehta:** We have suggested the substitution of the word "forthwith". But I believe the spirit of our suggestion is accepted.

**Shri Morarji Desai:** Yes; we will see what can be done.

**Shri Mehta:** Clause 104 gives the power to arrest. Here also our submission is that gazetted officers may have that power.

**Shri Morarji Desai:** We will provide that he must put down the reasons for arresting a particular person in writing.

**Shri Mehta:** We have also suggested that "as soon as may be" should be substituted by "forthwith". If the spirit of our suggestion is accepted, we are satisfied.

Then, clause 105 deals with power to search premises. We feel that a magistrate should issue this order instead of a departmental officer.

**Shri Dehejia:** Under a number of other Acts dealing with income-tax, excise, etc., this power to search premises is there.

**Shri Morarji Desai:** If you try to get the order from a magistrate, the magistrate's clerk is there and everything goes on in the routine manner, by which time the information reaches the man concerned and when actually the search is made, nothing is found.

**Shri Mehta:** There is a lot of force in that.

**Shri Bade:** In the case of excise, the officer does not go to the magistrate, but he only writes in his diary that he has received information that at such and such place, illicit distillation is going on and he searches the premises. In a democratic coun-

try, it should not be done, but when it is done in the case of excise, why not in the case of customs also?

**Shri Mehta:** I agree; we are conscious of what is happening.

**Shri A. V. Raghavan:** This affects the fundamental rights. Even under the Cr. P. C., apart from taking a warrant, when the police search a house, immediately they have to inform the magistrate that they made a search of that house. So, here also, the customs officer may inform the magistrate about the search that he has made, so that there may be judicial notice of the search. You said that by the time the magistrate makes the order, the man concerned gets the information. So, after the search is made, the magistrate may be informed.

**Shri Morarji Desai:** Why should the magistrate be informed? The magistrate has no jurisdiction over the customs officer. He will report to his superior officer.

**Shri A. V. Raghavan:** If he does not report to the superior officer?

**Shri Morarji Desai:** He will be dismissed. Why should the magistrate be informed?

**Shri Bakar Ali Mirza:** We can discuss that in the Committee.

**Shri Morarji Desai:** Yes.

**Shri Desai:** We do not wish to press the point.

**Shri Mehta:** Regarding clause 123, we consider it to be an important change. In certain cases at least there should be a provision that the Customs Officer should be able to establish a *prima facie* case.

**Shri Morarji Desai:** He has to give his reasons in writing before he seizes the goods.

**Shri Bade:** What the witness says is that there is a burden placed on the accused to prove the negative, which is an impossible thing.



**Shri S. S. More:** This clause is similar to section 178A. Many times the Supreme Court has laid down very specifically that the onus may be heavy but it is reasonable and in the interest of the country. It has been held valid. This is only a reproduction of section 178A. The judiciary has given everything in favour of this clause. The contention that the onus has been wrongly placed has now no legs to stand on.

**Shri Mehta:** Against the judgment of the Supreme Court we have nothing to submit.

Regarding clause 129 we feel that there should be a time limit within which the wrongful duty or penalty should be refunded by the customs. We have known cases where it has taken three to four years. There should be some time limit fixed.

**Shri Morarji Desai:** It should be returned within a month. Why should it take more time. We will provide that within one month of the issue of the order the amount must be refunded.

**Shri Morarka:** Under sub-section (2) it is said:

"If upon any such appeal it is decided that the whole or any portion of such duty or penalty was not leviable, the proper officer shall return to the appellant such amount of duty or penalty as was not leviable".

Suppose the duty was not leviable and in fact he did not pay anything, what is there to be refunded?

**Shri Morarji Desai:** We will say "such amount as was deposited". It will be added when we provide the time limit.

**Shri Mehta:** With your permission, Sir, I would like to go back to clause 128. This is regarding the appellate provisions. We know that there are certain advantages in that particular clause. But we do feel that there is no provision at all, apart from the 1812 (B) LS—7

departmental enquiry, for an independent tribunal. We in the trade and industry have been feeling for quite some time now that at a certain stage somebody from the department concerned must come into the picture to judge the equity of the case. We have felt that appeals sometimes are only a repetition of a departmental enquiry.

**Shri Dehejia:** Revision lies to the Government.

**Shri Morarji Desai:** If there is a tribunal, it would not come to the Government.

**Shri Mehta:** We would welcome an independent tribunal.

**Shri Morarji Desai:** Because you can always get liberties there. These are executive things. I do not think any judiciary is necessary.

**Shri Dehejia:** Clause 131 provides for revision by Central Government. The first appeal lies to a departmental officer.

**Shri Mehta:** Sometimes our experience is that when against a decision of a particular appraiser we go to the Assistant Collector of Customs, the Assistant Collector of Customs calls the same appraiser and asks him to listen to the appeal.

**Shri Morarji Desai:** That is wrong. If that happens you must let us know and we will stop it quickly.

**Shri Gupta:** That is why we have made this suggestion.

**Shri Morarji Desai:** But that does not solve the problem.

**Shri Dehejia:** The first appeal goes to a departmental officer and the revision goes to the Central Government.

**Shri Mehta:** There are three stages—the appraiser, the Assistant Collector and then the Collector.

**Shri Dehejia:** There cannot be a second appeal. The second one is the revision.

**Shri Mehta:** We do hope that you will reconsider our suggestion about the independent tribunal.

**Shri Morarji Desai:** I am sorry.

**Shri Mehta:** Then, our reading of clause 140 is that perhaps all the directors of the company or partners of a firm can be held responsible.

**Shri Morarji Desai:** If he proves that it was without his knowledge then nothing can happen.

**Shri Mehta:** Will they not undergo the rigours of arrest etc.?

**Shri Morarji Desai:** Nobody will be arrested so lightly.

**Shri Mehta:** The director of a firm in Bombay may be at Calcutta. He might not even know of a particular thing happening in Bombay.

**Shri Morarji Desai:** Then he has no business to be the director of that firm. If he proves that it was without his knowledge then he will not be punished. The proviso is complete.

**Shri Mehta:** We have nothing more to suggest as far as this Bill is concerned. We are grateful to you for giving us this opportunity.

*(The witnesses then withdrew.)*

## II. THE BOMBAY BULLION ASSOCIATION LIMITED, BOMBAY

### Spokesmen:

1. Shri Chandulal Kasturchand
2. Shri Mangulal Trikamlal
3. Shri Amratlal Sonawala
4. Shri Chimanlal C. Shah.
5. Shri P. Gopalakrishniah
6. Shri Jayendra Mehta.

*(Witnesses were called in and they took their seats.)*

**Chairman:** Your Memorandum has been distributed to the members of the Committee. If you want to submit or add anything, you may now do so.

**Shri Trikamlal:** We are very grateful to you for giving us this opportunity to appear before you. Ours is an association trading in bullion, ready and forward. We are concerned with this Bill only to the extent it affects

our trade. Our only object is to see that merchants doing bona fide business are not put to unnecessary and avoidable hardships. We have no sympathy for those who indulge in smuggling and we are willing to extend our fullest co-operation to the Government in preventing smuggling. I will put before you our idea of trade in gold in Bombay.

The Bombay Bullion Association is one of the biggest markets in bullion at present in Asia and, formerly, it was one of the biggest markets in the world. Quotations of our bullion market are recognised in London and New York. Our daily turnover in bullion in ready gold alone is to the tune of about Rs. 12 lakhs to 15 lakhs every day, weighing about 100 kilograms.

Our Association is the only recognized association for forward transactions in gold and silver in India, functioning under the Forward Contracts Regulation Act and under the supervision of the Forward Markets Commission. Trading in bullion is done in forward as well as in ready and whenever deliveries are to be taken, they are given and taken through the clearing house of the Bombay Bullion Association, which is conducted by the Bank of Baroda Limited. Purchasers desirous of taking delivery pay the money in advance to the clearing house and the seller who has to give delivery gives the number of the bars and the weight and fineness in advance to the clearing house. The clearing house then issues delivery orders with its own cheque and the purchaser takes delivery from such seller whom the clearing house has directed to give him delivery. He has to take delivery from him and not from the original seller. It is the clearing house which decides which purchaser will take delivery from which seller. Gold comes into the market for ready sale every day in the shape of ornaments, Ravas, lagdis, bars or old coins, the fineness ranging from 75 to 99.75.

The import of gold was first restricted in 1939. Until 1946 gold was imported duty-free. The Reserve

Bank statistics show that during the period 1851—1956 gold worth Rs. 353 crores has been imported into India. Besides this, there is a huge hoard of indigenous gold and century old stock. Gold in various shapes is purchased by merchants, melted, refined and then turned into gold bars. A number of well-known merchants issue their own lagdis of different weights.

**Shri Morarji Desai:** What has all this to do with this Bill? I think you better come to the clauses and then explain to us how your business is affected by the various clauses.

**Shri Trikamlal:** There are Government as well as private refineries where gold is melted and turned into lagdis with specific markings.

**Shri Morarji Desai:** I am very much exercised over the refining of gold.

**Shri Trikamlal:** From the above facts it will be clear that it is impossible to distinguish smuggled gold from other gold and there the difficulties of our trade arise because of this difficulty of identification.

**Shri Morarji Desai:** It is because the refineries melt gold.

**Shri Gopalkrishniah:** We are not concerned with what the refineries do in their normal course of business. All that we want is to safeguard our interests in these provisions of law.

**Shri Morarji Desai:** I am interested in safeguarding the country's interest; not your interest at the cost of the country. Let me make it quite clear.

**Shri Trikamlal:** Our only object is that a person who can prove his bona fides should not be harassed or penalised.

**Shri Morarji Desai:** You take up the clauses. Why do you want to say all this?

**Shri Shah:** He wants to give you an idea of the nature of the trade. Probably you already have an idea of this thing.

**Shri Morarji Desai:** I have a full idea of it.

**Shri Trikamlal:** Then I would like to deal with some of the clauses. First of all, I take up clauses 100 to 110. On all these clauses there are one or two principal points which I will make. Firstly, where search of persons or premises is to be done, or where goods are to be seized, or if any person is to be arrested, it should be done only under an order of a court in order to prevent any abuse of this power.

**Shri Morarji Desai:** I am not agreeable to that.

**Shri Trikamlal:** At present search of premises can be done only under the orders of a court. Arrests and seizures are serious matters for merchants. Their reputation also is at stake. That is why we submit that it should be done under the orders of a court. When a person is arrested he should immediately be produced before a magistrate so that he has an opportunity to furnish bail.

**Shri Morarji Desai:** That will always be done. Under the Criminal Procedure Code it has to be done within 24 hours.

**Shri Trikamlal:** At times it is not done. I will cite a recent example.

**Shri Dehejia:** Let us hear their Legal Adviser on this point.

**Shri Shah:** The clause says that an arrested person should be produced before a magistrate without unnecessary delay. Now, if a man is arrested, say, at 5 O'clock in the evening on a Saturday, he will be produced before the magistrate only on Monday at 11 O'clock. What they want is that he should be taken to the magistrate immediately so that he will be in a position to furnish bail without delay.

**Shri Morarji Desai:** He may grant bail himself.

**Shri Shah:** The Customs Officer does not grant bail. It is the magistrate who can give the orders. Customs Officers should be empowered to take

bail immediately and if a man is in a position to give bail he should be released immediately.

**Shri Morarji Desai:** We are trying to see what words can be put in place of 'unnecessary'.

**Shri Shah:** In the existing Act the word is 'forthwith'.

**Shri Morarji Desai:** We may say 'without undue delay' or 'without any delay'. We are trying to see what words can be put in there.

**Shri Shah:** The point is that Customs Officers have no power to grant or take bail. It is only a magistrate who can do so.

**Shri Bade:** Are not offences under the Customs Act bailable offences?

**Shri Shah:** They are.

**Shri Bade:** So, when they are bailable they must take bail.

**Chairman:** What he is saying is that Customs Officers have no power to order bail and by the time the man is produced before a magistrate it is more than 24 hours. So, they are making the point that Customs Officers should be empowered to take bail.

**Shri Morarji Desai:** It has to be done within 24 hours but if there is a Sunday intervening or if it is a long distance then it is lengthened by that time.

**Shrimati Savitri Nigam:** Why should the Customs Officers not be empowered?

**Shri Morarji Desai:** It is a matter for us to consider.

**Shri Shah:** That is the only point so far as that is concerned. The other point is that when an officer takes action on the ground of "reasonable belief" or "having reason to believe" he should immediately give the grounds of his belief to the person concerned.

**Shri Morarji Desai:** He will not give the grounds immediately but he will write them down. When the person asks for a copy of that, it will be given.

**Shri Shah:** At present what is done is that only an order is served.

**Shri Morarji Desai:** That is always the case. When the search warrant is issued do they mention the reasons in that? It is not possible to give the grounds immediately.

**Shri Shah:** Within a particular time it should be done.

**Shri Morarji Desai:** That we will see. All those safeguards must be exercised.

**Shri Shah:** Under the Preventive Detention Act a person is given the reasons for his detention.

**Shri Dehejia:** There are arrests made under the Criminal Procedure Code also. I do not suppose we are going in for preventive detention in the Customs.

**Shri Morarji Desai:** When we take powers like these which could be abused we must provide certain reasonable safeguards to see that those powers are not misused by a stray officer and if he does that then we can put him down. We must provide these safeguards. Therefore we must put down the reasons or grounds in writing immediately and whenever they want a copy it should be given.

**Shri Dehejia:** But safeguards I suppose should correspond to what exists in other similar Acts.

**Shri Morarji Desai:** There there are other safeguards also.

**Shri Dehejia:** We can have those. The point is what safeguards are necessary.

**Shri Shah:** Take, for example, clause 123. A Customs Officer can seize goods in the reasonable belief that they are smuggled goods and the other person has to prove that they are not smuggled goods. In order that he may be able to prove that he must know the grounds on which the Customs Officer holds that belief. That is the point that I am making. The Customs Officer is unable to prove that they are smuggled goods, but he attaches them in the reasonable belief that they are