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## 'Arms Traffic in Persian Gulf. Supply of information by exporters to the Custom authorities'

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### About this record

The file consists of a letter from Richard Thomas Prowse, Secretary to the Board of Customs, to the Under Secretary of State for India concerning the question of whether the Customs Consolidation Act 1876, empowers the Board of Customs to require, under penalty, names of suppliers and consignees of arms, ammunitions, and munitions of war.

It includes a copy of the case as laid before the Law Officers of the Crown and their opinion.

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C. 92.

Political, No. 1879/99.

Arms Traffic in Persian Gulf.

Supply of information by exporters to the Custom Authorities.

Customs to India Office.

No. 1240/1899.

Custom House, London,  
28th March 1899.

Sir,

With reference to Sir A. Godley's letter of the 25th January last, I am directed by the Board of Customs to acquaint you that, in compliance with the request of the Secretary of State for India, the opinion of the Law Officers of the Crown has been taken on the question whether Section 139 of the Customs Consolidation Act, 1876 (39 and 40 Vict. Cap. 36), empowers the Board to require, under penalty, names of suppliers and consignees of arms, ammunitions, and munitions of war; and a copy of the case as laid before the Law Officers, with a copy of their opinion subjoined, is transmitted herewith for the information of the Secretary of State.

I am, &c.,

R. T. PROWSE.

The Under Secretary of State  
for India.

ENCLOSURE.

CASE.

This case is put on the following points:—

In December 1897, the India Office and the Foreign Office expressed a wish to the Board of Customs through the Treasury that, in consequence of large exportations of arms, ammunition, and munitions of war to ports in the Persian Gulf, information could be obtained of the sailing and destination of all ships carrying such cargoes to that part of the world, the object being to facilitate the measures which Her Majesty's Government were adopting in those seas in order to check this illicit traffic.

Besides the supply of information which the Board at once agreed to furnish, and took steps accordingly, it was pressed upon them also to take, if they possibly could do so, measures not only to have and to impart knowledge of the departure of the various consignments, but also to closely examine, check, and, if that were legal, to detain them, and especially to find out, if possible, the real suppliers of the goods, and the real consignees. The Board of Customs were obliged to reply that they could comply with these requests to a certain extent only, and that the law they administered would not allow of all that was wished for being done.

In order to explain the question at issue it is necessary, at this point, to set out what the law in this respect is. Dutiable goods, which, of course, are never exported, except from bond, and goods receiving a drawback of duty, are not exported from the United Kingdom without the putting in, before they are laden, of certain documents, which constitute the "Entries" outwards of the goods; and any shipment not in accordance with those entries would be prevented. This, however, is not the case generally as to *free* goods, which all arms and ammunitions are. Free goods are laden without any previous "Entry," and, although all goods about to be exported may, at any time, be examined, in practice, unless there is any special reason for care or suspicion, free goods are laden and exported without any check on them at all.

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While this, however, is so, as to the goods themselves, they do not leave the country altogether unnoticed. For the purpose of trade returns, and statistics, it is provided that the exporter of free goods shall (under liability to a penalty) render, within six days after the final clearance of the ship, a full description of the goods he has exported, by a document called a "Specification," and these specifications are liable to be tested with the manifest of all the cargo in his ship which has, within the same time, to be rendered by the Master or his Agent.

S. 11 of Customs and Inland Revenue Act, 1881, (44 & 45 Vict. c. 12)

Such is the general law as to free goods; and the Board of Customs' pointed out that, under it, they could do nothing to prevent the sailing of the goods. There are, however, exceptions to this absence of provision as to free goods. By Section 139 of the Customs Consolidation Act, 1876, it is provided that, as to all articles which are "explosives" within the Explosives Acts, there shall be pre-entry of them, under penalty in the event of this not being complied with, before lading on board ship.

As regards "ammunition," a portion of the articles to which the care of the Foreign and India Offices was directed, and which are "explosives," this provision met a large part of their requirements, but it did not do so at all as to another most material part, viz., arms, in relation to which a most important case had arisen of large quantities of arms shipped to Bushire in the Persian Gulf.

The Section, however, in question (Section 139) contains a provision going further than explosives. It contains a power for the Board, by order under their hands, to apply the pre-entry provisions, beyond explosives, to any goods where the Board are satisfied that "the public interests rendered such a course expedient"; and it was pointed out that the Board would readily make such an order as to arms, if the Treasury so directed. This suggestion was approved of by the controlling authorities, and an order to that effect was made, and issued on the 26th February 1898, applying to—

Cannon, machine guns, and other ordnance.

Muskets, rifles, revolvers, and small arms of other sorts.

Other fire-arms.

Swords, cutlasses, bayonets, and other arms not being fire-arms.

Torpedoes, shells, and shot, not containing explosives. (These articles, if charged, have to be entered as explosives.)

Parts of any of the above are to be entered as such under the appropriate heading.

For the convenience of Counsel the portion of Section 139 relating to this is here copied :

"The Commissioners of Customs may, by order under their hands, require due entry and clearance before shipment, and in such manner as they may direct, of any goods intended for exportation or carriage coastwise, on being satisfied that the public interests render such course expedient, and if upon such entry the goods shall not be found to correspond with the particulars contained therein, they may be detained until the cause be explained to the satisfaction of the Commissioners of Customs, who may thereupon restore the same on such terms as they may see fit."

The order thus made did not achieve all that the Foreign Office and India Office had expressed a wish for. It did not authorise detention of arms, &c. provided the pre-entry requirements were complied with; and the Board of Customs pointed out that detention in itself could be effected only by a Proclamation or Order in Council, under Section 8 of the Customs and Inland Revenue Act, 1879\*; but the circumstances were considered to be scarcely

\*42 & 43 Vict. c. 21.

of sufficient gravity to call for this strong measure.

Then, again, the request for accurate information as to the real suppliers of the goods, and the real consignees, was left in a doubtful state, and this is the point on which the opinion of the Law Officers is sought. This information is regarded as of the greatest importance by the India Office, and they have strongly urged on the Customs the acquisition of it, if possible. It is the opinion of the Board of Customs (and I have so advised them) that they have not a clear legal position to absolutely demand this information; and



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the question is whether this opinion is right or not. The India Office, while not wishing to throw any doubt on the Customs view, have expressed a wish to have the superior opinion of the Law Officers.

In order to understand the question, some explanation must be given as to the Customs documents or "Entries," and as to the use made of them. The forms of these documents are given in the Schedule to the Customs Consolidation Act, 1876, and it will be seen, upon examining them, that they are very carefully compiled, requiring from the person rendering them only just so much information as is necessary for the revenue, and other public purpose. For instance, in the report of the ship and of the cargo thereof, under Section 50, there is a provision that the name of the consignee shall be given; that is to say, the person who stands as such in the bills of lading from which the report is made up by the master. This statement, the name of the importing consignee, is desirable in these documents, because, besides this general report by the master of the contents of his ship, each consignee of any item of cargo has to make "entry" of that item of cargo separately. The general statement by the master can, by this means, be checked against the particular statements by each consignee, and if there is any omission the report facilitates inquiry as to why due "entry" has not been made.

Here, therefore, a certain amount of what may be considered, in a way, a trade secret, is to be made known to the Board of Customs; but in no other form in the Schedule is there any provision for diving into such private facts. Of course, any document put in either as to an import or as to an export must, naturally, be signed, and the person signing it must, in some way, assume the character of an importer or exporter; but it is provided in every form that there is no absolute necessity, even here, for the name of the importer or the exporter transpiring, because all these documents may be signed by agents; and with the exception of this statement as regards the importer and exporter, or, as it may be, his agent, the forms are merely descriptive of the articles of commerce themselves, and with no information as to the source of supply, or the individuals for whom they are destined.

With regard to most of these forms, it is provided in the Act that they may be modified in such manner as the Commissioners may, from time to time, think fit, and this is, no doubt, a very wide provision. At the same time, it has always been doubted whether a modification of any of the forms, so as to introduce an element of information which seems to have been studiously omitted in them all, and which would be raising a very large question of inquisitorial action into the movements of trade, would be a modification within the meaning of the power given for this purpose.

Then there is *this* point to be mentioned. In connection with the Customs Service there is an insurance office for those who are in the Service called the "Customs Fund," and for many years prior to 1880 the Directors of this Society published a daily journal called the "Bill of Entry," in which they gave particulars, in London, and at some of the larger outports, of all consignments inwards and outwards each day. This journal is largely bought in the commercial world, and has an extensive and profitable circulation. In giving the particulars in this journal of the imports and exports this Society were in the habit of stating (so far as they could be learnt from the entries) the names of the importers and of the exporters of goods. Frequently these names were of very little value, as they were only the names of importing and exporting agents; but the names were given for what they were worth.

In the year 1880, it was decided that this publication (which was producing a profit of about 10,000*l.* annually, a sum produced by making use of documents obtained at the public expense and by public officials) ought no longer to be used as a source of profit for an Insurance Society, but that the profit, whatever it might be, ought to go into the Public Exchequer. The publication therefore, was, by order of the Treasury, transferred from the Society to the Statistical Office of the Customs, with a certain amount of compensation to the officials who had been engaged in the work in the service of the Society.

When this transfer was made, the question was raised by traders whether it would not be right to ask for the suppression altogether in this publication of the names (whether agent or not) of exporters. It was considered that it was damaging to traders to have secrets of who were exporting goods, and

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where they were going to, made public; and after a considerable inquiry by a Departmental Committee, it was decided that these facts in the publication should be for the future omitted.

Of course, there is a considerable difference between stating names in a public journal, and requiring the statement of them on Customs documents; but in this case the requirement, if it were made, would be one, not for the purpose of assisting the Customs in any matter connected with the revenue, but for transmission to another Department of the Government, in order that some check and watch might be placed upon the doings of the particular people whose names would be thus extracted.

It has been thought right to point out the above trend of idea throughout the Customs documents and publications as to how far these kinds of secrets are to be required and to be made known. There would, no doubt, be a great deal to be said as to the strong reasons of high state why, in the present instance, the information should be obtained and imparted; but, on the other hand, it has to be considered, on the part of the Board of Customs, whether they can make a requirement as to which, if it should not be complied with, they would be powerless to enforce it, and as to which it is doubtful whether they could lay their finger on any provision by which they could take a refusal into Court.

So far, of course, as obtaining a signature *pro forma*, of a nominal exporter on the entry which is put in, this, no doubt, could be done, and is done, and such information, so far as it goes, could be made known to the India Office. This, however, would by no means supply all that is wanted, and would be little to rely upon.

It should be pointed out that, although in nearly every other instance where an entry or report, whatever it may be, is required under the Customs Act, there is a form provided in the Schedule, there is, as it happens, no form provided with regard to Section 139, and so, therefore, it might possibly be held that, as regards an entry under that Section, the Board have a perfectly free hand, and could, in relation to goods held to be of such importance, make requirements which were not thought necessary in ordinary cases; but when I was asked whether a form under this Section could be made thus stringent, I said that I thought it was exceedingly doubtful, but that possibly it might be justified under the words in regard to "public interests," on the ground, that is to say, that if public interests were strong enough to render an order necessary at all, they would be strong enough to render inquisitorial action, also, justifiable.

Upon this opinion the Board thought it undesirable to put the requirement of the names of suppliers and consignees into the form of entry which they directed to be used, but they instructed their Collectors to try, as far as possible, to get all such information in this respect as regards any consignment as they possibly could, and that when they made a return of a consignment (which in each case they were instructed to do) to the Board for transmission to the India Office, they should fill in particulars in this respect, so far as they had been able to obtain them.

In a great many instances the Collectors, by their industry and influence, have been able to supply these particulars, but in a recent case an entry having been put in, signed by an agent for the exporters, a refusal has been made to furnish information as to the suppliers of the goods, and information, also, as to the persons or authorities for whom they may be intended. The goods consisted of large supplies of arms and ammunition, and were going to Bushire on the Persian Gulf. The objection to give the information is couched in these words:—

"We really cannot understand for what statistical purpose these are required, and as this disclosure regarding our business appears to us unwarranted and most unusual, we shall feel obliged by your informing us upon what authority you make the request. As a matter of principle, we strongly object to supply to anybody the names of our suppliers and customers for any goods, and we must respectfully decline to do so in this instance unless you can refer us to an Act of Parliament which lays this obligation upon us."

There is only one more point to mention, but to which it is necessary to call the attention of the Law Officers. Besides the Customs documents which have been referred to, there are, of course, the documents which pass



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between the traders themselves, as, for instance, invoices and bills of lading. Here, again, even with these documents before an inquirer, it would not be certain, having regard to the number of purchases which take place merely on commission from and by middlemen, that the names of the real suppliers of goods and the real consignees of goods, would be discoverable; but, nevertheless, access to these documents would go a long way towards knowledge of the inner history of transactions, and where there is access to these documents available to the Board of Customs it might be argued that they have a right to demand in their forms any facts which the trading documents available to them might be expected to disclose.

With regard to these trading documents, there is access to them by the Board of Customs prescribed in two Sections of the Customs Act; that is to say, in Section 65 as to the entries of goods inwards, and in Section 11 of the Customs and Inland Revenue Act, 1881, in relation to the Specifications as to free goods, which have to be rendered within six days after the final clearance of the ship.

It has sometimes been urged, that the access to these documents provided for in these two instances establishes a general footing that they may always be demanded by the Commissioners of Customs whenever they think fit. I have not, however, so thought myself. It seemed to me that this, being an inquisitorial power, must be read very strictly, and confined simply to those instances in regard to which the Act specially lays it down; and as regards goods exported, there is a very good reason why it is provided in relation to the specifications for free goods and not in regard to any verification of the entry of dutiable or drawback goods, because as regards specifications for free goods, they (as stated earlier in this case) are not rendered until the ship and the goods have departed, and when there is no power to test the information by examination of the goods themselves.

Upon the above the Law Officers are asked to kindly state whether or not they think that, under Section 139 of the Customs Act, the Board have a power to modify the form of entry which they have so far prescribed for the

purpose of that Section, and to put into that entry also a requirement that the true name shall be given of the supplier of the goods exported, and the true name also of the consignee at the port of destination to whom the goods are about to be consigned, and to require that such statements shall be truly made, and in the event of their not being made, or being made in such a way as to give reasonable ground for believing that they are untrue, to take action for the detention of the goods until the requirements are thoroughly and truly complied with, or the ultimate forfeiture of the goods.

There is a general provision, under Section 131 of the Customs Act, that any goods for which entry before shipment is required, and which are shipped, without due clearance, shall be forfeited.

of destination to whom the goods are about to be consigned, and to require that such statements shall be truly made, and in the event of their not being made, or being made in such a way as to give reasonable ground for believing that they are untrue, to take action for the detention of the goods until the requirements are thoroughly and truly complied with, or the ultimate forfeiture of the goods.

C. J. FOLLETT.

OPINION.

We are of opinion that the Board have *not* power to require these further particulars. The power under Section 139 is merely to order before shipment entry with such particulars as would ordinarily be made after shipment. The provision that the entry is to be "in such manner as they may direct" does not confer the power to require such further particulars, any more than the similar words in Section 110 of the same Act, or Section 11 of the Act of 1881 which now takes its place.

(Signed) RICHARD E. WEBSTER.  
ROBERT B. FINLAY.

Law Officers' Department,  
20th March 1899.



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