

**PUBLIC ACCOUNTS COMMITTEE  
(1974-75)**

(FIFTH LOK SABHA)

**HUNDRED AND FIFTY NINTH REPORT**

**[Paragraph 27 of the Report of the Comptroller and  
Auditor General of India for the year 1972-73,  
Union Government (Civil), relating to  
Department of Food]**



**LOK SABHA SECRETARIAT  
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*April 1975/Vaisakha 1897 (Saka)*

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25.4.1975.

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### PART II\*

Minutes of the sittings of the Public Accounts Committee—

8-7-1974 (AN)

23-4-1975 (AN)

24-4-1975 (FN)

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(1974-75)

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## INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Fifty Ninth Report of the Public Accounts Committee (Fifth Lok Sabha) on paragraph 27 of the Report of the Comptroller and Auditor General of India for the year 1972-73, Union Government (Civil) relating to Department of Food.

2. The Report of the Comptroller and Auditor General of India for the year 1972-73 (Civil) was laid on the Table of the House on 30th April, 1974. The Committee examined this Audit Paragraph at their sitting held on the 8th July, 1974. The Committee considered and finalised this Report at their sitting held on 23rd April, 1975. Minutes of these sittings form Part II\* of the Report.

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

4. The Committee place on record their appreciation of the assistance rendered to them in the examination of the paragraph by the Comptroller and Auditor General of India.

5. The Committee would also like to express their thanks to the officers of the Department of Food for the cooperation extended by them in giving information to the Committee.

NEW DELHI;  
April 23, 1975.  

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Vaisakha 3, 1897 (S).

JYOTIRMOY BOSU,  
Chairman,  
Public Accounts Committee.

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

## REPORT

### *Milo purchased from abroad*

#### *Audit Paragraph*

1.1. According to the Encyclopaedia Britannica, dhatura is considered to be one of the few weeds that are very poisonous. In 1964 the Central Drugs Research Institute, Lucknow, had stated that 660 dhatura seeds are fatal for children while 6600 seeds are fatal for adults. According to the Haffkine Institute, Bombay, however, (1973), 30 seeds in one Kg. of flour constitute an effective toxic dose. According to the U.S. Grain Standards Act, grade II milo should not contain more than 8 per cent of broken kernels, foreign matter and other grains. Dhatura grows with the grain and its admixture has been found in wheat as well as milo from time to time. In the United States of America milo is used primarily for cattle feed purposes, although some quantities of it are reported to be in human use as well in the U.S.A., such as for starch preparations, health foods etc. Dhatura has not been a problem in the United States, and under the U.S. Grain Standards, dhatura seeds are not listed as poisonous. Therefore, those standards, which recognise other poisonous weeds, do not have any specific norms or standards for dhatura seeds which, accordingly, are considered to be foreign material and/or dockage depending on the size of the seeds. Further, if the grains are of distinctly low quality, they are called under the U.S. Grain Standards Act, sample grade (and not grade I, II, III or IV). The U.S. Federal Food and Drugs Act prohibits the introduction or delivery for introduction into inter-state commerce of any food that is adulterated or misbranded. Under that Act a food is deemed to be adulterated if it contains any poisonous or deleterious substance which may render it injurious to health. In our country under the Prevention of Food Adulteration Rules framed under the Prevention of Food Adulteration Act 1954, foodgrains should be free from deleterious material.

1.2. Admixture of dhatura seeds (known as Jimson weed in the U.S.A.) in wheat purchased from the U.S.A. had been noticed for the first time in 1959. At that time, the United States Department of Agriculture (hereafter referred to as USDA) had pointed out that the United States standards for wheat did not provide for de-grading on the basis of individual types and kinds of weed-seeds, which for grading purposes only constituted dockage or foreign material. The USDA had assured the India Supply Mission, Washington, in 1960 that the question was being studied, and that due consideration was being given to find an ultimate solution.



1.3. Admixture of dhatura seeds was again noticed in certain wheat consignments purchased from the U.S.A. in 1963 and 1964. In February 1965, the USDA repeated its earlier views and pointed out that dhatura seeds were not considered poisonous under the U.S. wheat standards. At the same time, the USDA had added that if the India Supply Mission so wished, it could specify in the contracts that a certificate issued by the USDA (in accordance with the existing instructions) would be considered final evidence of the presence or absence of dhatura seeds. Under the instructions cited above, the U.S. licensed grain inspector would, on an application for such inspection, furnish samples to his grain inspection supervisor, who would send them to the appropriate Area Federal Seed Laboratory, which would issue a certificate to the applicant stating that the examination was made on a portion of the sample obtained for official inspection under the U.S. Grain Standards Act. The cost of such inspection was stated to be \$5 per man hour plus \$1 for each certificate.

1.4. In February 1966 our Food Department received a message from the USDA indicating that pre-shipment inspection and certification (in the United States) regarding dhatura seeds would cost on an average less \$10 per lot inspected; the message had added that such examination would only give official results and would not guarantee against the possible presence of objectionable weed-seeds. The matter was not then pursued further by our Food Department on the following considerations:—

- (a) Wheat with admixture of dhatura was being issued as far as possible only to the roller flour mills, which were equipped with necessary cleaning machinery where dhatura seeds could be separated in the cleaning process.
- (b) The incidence of dhatura was very small.
- (c) The cost of special pre-shipment inspection for detention of dhatura seeds would have to be incurred in foreign exchange.

1.5. During November 1972 to September 1973, the India Supply Mission, Washington, purchased 40.10 lakh tonnes of foodgrains in Argentina, Canada and the U.S.A. at a cost of about Rs. 308.75 crores. Out of that 14.39 lakh tonnes (costing about Rs. 94.22 crores) were milo (a kind of jowar) which was purchased from Argentina (4.94 lakh tonnes costing about Rs. 33.68 crores) and the U.S.A. (9.45 lakh tonnes costing about Rs. 60.54 crores).

1.6. The milo contracts with Argentine supplies provided for supply of Argentine milo in accordance with specifications of the Junta Nacional de Granos (Argentine Grain Board), whose certificate of quality the suppliers were required to furnish; these contracts further provided explicitly that the grain should be fit for human consumption. The milo

contracts with U.S. suppliers provided for supply of U.S. grade II yellow-grain sorghum (milo) conforming to United States Grain Standards.

1.7. During February 1973 to August 1973, thirty-three shipments of milo (6.48 lakh tonnes costing about Rs. 36.19 crores) were landed in Indian ports. Nine of these shipments (1.75 lakh tonnes costing about Rs. 9.14 crores) were purchased in Argentina, while twenty-four shipments (4.73 lakh tonnes costing about Rs. 27.05 crores) were purchased in the U.S.A. Eight Argentine shipments (1.53 lakh tonnes or 87 per cent of the shipped quantity costing about Rs. 8.01 crores) and five U.S. shipments (1.17 lakh tonnes or 25 per cent of the shipped quantity costing about Rs. 6.42 crores) were seen after their arrival in Indian ports, to have admixture of dhatura seeds.

1.8. In the course of these transactions there has sometimes been divergence between the results of analysis done by the Central Grain Analytical Laboratory of our Food Department and by the USDA, as follows:—

Name of the ship	USDA result	Central Grain Analytical Laboratory result
(Number of dhatura seeds per kilogram of milo which has about 35,000 grains)		
(1) MAISTORS MONOROVIA	Nil to 4	1 to 2
(2) NALANDA	Nil	Nil to 2
(3) JAGAT VIJETA	1	Nil
(4) KYNTHIA	1	2
(5) STATE OF MYSORE	3	Nil
(6) VISHWAMANGAL	44	15

1.9. In the U.S.A., official inspection agencies of the U.S. Government conduct pre-shipment quality control and inspection of the supplies purchased. Each shipment is subject to their certification, and payment is not made unless there is a clear certificate. On enquiry by our Food Department, the India Supply Mission, Washington, pointed out in February 1973 that it had always relied on the USDA inspection certificates in the past, and that there did not appear to be any reason for making any independent inspection. The Mission pointed out that the USDA's approach in the matter of dhatura admixture in foodgrains had been conveyed to the Government of India in 1965, and that there had been no

further instructions from Government thereafter, although considerable quantities of wheat/milo had since been purchased. The Mission also informed the Food Department that the U.S. authorities had agreed to consult experts and explore the need and feasibility of prescribing specific tolerance limits for dhatura seeds.

1.10. In March 1973, Government directed the India Supply Mission, Washington, to examine the legal aspects concerning possible violation of the U.S. food laws, although the U.S. grain inspectors had certified the consignments as being in conformity with U.S. Grain Standards. No instructions were given by Government to examine similar legal aspects about the Argentine supplies. The legal advice obtained was that Government could have practical remedy if it could establish that:—

- (a) the grains were of such distinctly low quality that it constituted a violation of the U.S. Grain Standards Act, and
- (b) particular shipments contained such an unusually high percentage of dhatura seeds as to render them unfit for human consumption.

According to the legal opinion obtained in the USA, however, it might be difficult to prove the above.

1.11. The India Supply Mission, Washington, informed Government in March 1973 that in the case of all outstanding shipment U.S. inspectors would be specifically requested to determine the presence of dhatura seeds and their incidence, and that for shipments that had already left or arrived the USDA's Federal Laboratory would furnish results on the basis of samples available with the USDA. The Mission stated that similar requests were being made to the Argentine authorities and parties.

1.12. The India Supply Mission, Washington, also informed the Food Department in March 1973 that in the latest case of wheat purchases it had attempted to make it a clear condition of purchase that the wheat supply should be entirely free from dhatura or other deleterious material, but that no supplier was willing to make a supply on such an absolute condition, or on the basis of a guarantee. The Mission was, however, able to get two suppliers of wheat to agree that if the USDA inspection at the time of shipment indicated presence of dhatura, the supplier would indemnify the Mission to the extent of 25 cents per tonne towards, the actual cost of cleaning in India.

Since cleaning abroad would be very costly and also the expenditure would have to be in foreign exchange, Government decided (March 1973) that cleaning should be done in India.

1.13. Since grade I milo is not available in the USA in sufficient quantities and also since it is very costly, purchase of grade II milo was continued, and having regard to the need to ensure minimum supplies to the masses, specifications of the exporting countries continued to be adopted. Since inspection by USDA inspectors was mandatory, no independent inspection agency or team has been appointed.

1.14. Twenty-seven steamers brought 5.16 tonnes of milo from abroad and discharged at Bombay port during February-November 1973. The milo in 15 of those ships was contaminated with dhatura. The grain was distributed to the State Governments of Maharashtra, Mysore, Rajasthan and Gujarat and the Food Corporation of India godowns in the States. Distribution statement of 16 out of those 27 steamers have been finalised so far (November 1973). One lakh and ninety eight thousand tonnes, being 96 per cent of the contents of those 16 steamers, were despatched to Maharashtra Government.

1.15. The Central Government had at first decided that, before issue to the public, the grains should be cleaned. This was to be done by the State Government/Food Corporation of India, and the latter was to bear the cost of cleaning. Mechanical cleaning, i.e., sieving, removes only about 80 per cent, and no more, of the dhatura seeds. Complete elimination is possibly by only hand-picking. Since such cleaning is time consuming, in June 1973 the Central Government requested the State Government to advise the domestic consumers to clean the supplies by handpicking as an essential safeguard. The Food Corporation of India thereafter gave up cleaning and informed the Maharashtra Government that since the consumers, and not the State Governments, are to clean the grains, the Corporation would not bear the charges of cleaning thereafter. The Maharashtra Government, however, told the Food Corporation of India that advices from the latter about absence of dhatura in particular shipments were received only 10 to 12 days after despatch, and it was not possible to inform the Collectors not to start cleaning operations. In July, 1973 the Government of Maharashtra told the Government of India that Food Corporation of India should continue to reimburse the cost of cleaning and/or certify the stocks as free from contamination. The Central Government has not so far (November 1973) sent a reply to the State Government, which told the Food Corporation in August 1973 that, pending receipt of a reply from the Central Government, the State Government would continue to clean the milo stocks and claim reimbursement of expenditure. The Maharashtra Government has arranged cleaning of all the milo despatched to it. (Out of 1.98 lakh tonnes of milo supplied to the State Government, 0.57 lakh tonnes were free from dhatura admixture.) According to that Government its expenditure on cleaning 49,024 quintals of milo upto the end of April, 1973 was Rs. 5.96 lakhs. This comes to about Rs. 12 per quintal.

1.16. Ten thousand three hundred and thirty-two tonnes of milo re-fractions valued at Rs. 46 lakhs, obtained as a result of cleaning, are lying in godowns in Maharashtra and Gujarat and have to be disposed of as cattle feed.

1.17. For want of time, it has not been possible to ascertain the position about imported milo discharged in other Indian ports.

[Paragraph 27 of the Report of the Comptroller and Auditor General of India (Civil) for the year 1972-73.]

*Admixture of Dhatura with Wheat*

1.18. According to Audit Para the admixture of dhatura seeds (known as Jimson weed in the U.S.A.) in wheat purchased from the U.S.A. had been noticed for the first time in 1959. Admixture of dhatura seeds was again noticed in certain wheat consignments purchased from U.S.A. in 1963 and 1964. The Committee desired to know what action was taken by Government when admixture of dhatura was first noticed in wheat consignments. In a note, the Department of Food have stated: "The presence of dhatura was noticed in some consignments of wheat received prior to 1973. The advice of the Central Food Technological Research Institute, Mysore, the Central Drug Research Institute, Lucknow and Haffkine Institute, Bombay, was sought in the matter. The Ministry of Health was also consulted. According to their advice wheat containing dhatura was issued to those roller flour mills who had adequate arrangements for cleaning. The matter was also taken up with ISM, Washington, and through them with USDA." In another note the Department of Food stated: "In 1963 and 1964 stocks of wheat were not issued as grains to consumers directly. These were cleaned in the roller flour mills having necessary cleaning arrangements and only milled products were issued for consumption."

1.19. During evidence before the Committee, the Secretary, Department of Food has stated: "The situation *vis-a-vis* wheat was simpler. When we gave wheat to the flour mills, there was no problem for them to clean wheat of the dhatura in cleaning process but it is difficult to separate milo of dhatura."

1.20. It is seen from the Audit para that in 1960 in United States Department of Agriculture had assured the India Supply Mission, Washington, that the question regarding admixture of dhatura in wheat was being studied to find an ultimate solution. Asked whether the matter was pursued by the India Supply Mission on the basis of the assurance given by USDA and, if so, with what results, the Department of Food in

a note have stated: "The India Supply Mission, Washington, pursued this matter with USDA. The Mission in their telex message dated 11th July, 1974 have intimated that the USDA is still conducting feeding trials to establish tolerance limits. Results are awaited."

*Contamination of Milo with Dhatura*

1.21. The Committee were informed that the total imports of milo from 1963 to 1973 were of the order of 5.6 million tonnes. Asked since when milo was being imported, the Secretary, Department of Food has stated during evidence: "In 1947 a small quantity was imported. Later on it was under PL 480." He has given the following figures of imports year by year:

1947	. . . . .	Half a million tonnes	
1948	. . . . .	2 lakh tonnes	
1949	. . . . .	3.63 lakh tonnes	
1950	. . . . .	3.49 lakh tonnes	
1951	. . . . .	9.64 lakh tonnes	} from China and U.S.A.
1952	. . . . .	6.4 lakh tonnes	
1953	. . . . .	1.13 lakh tonnes	
1954	. . . . .	8000 tonnes	
1955, 1956 & 1957		Nil	
1958	. . . . .	86000 tonnes	
1959	. . . . .	11000 tonnes	
1960	. . . . .	34000 tonnes	
1961	. . . . .	19000 tonnes	
1962, 1963 & 1964		Nil	
1965	. . . . .	96000 tonnes	
1966	. . . . .	17.26 lakh tonnes	
1967	. . . . .	18.19 lakh tonnes	
1968	. . . . .	4.65 lakh tonnes	
1969	. . . . .	2.95 lakh tonnes	
1970, 1971 & 1972		Nil	

1.22. According to Audit paragraph, eight Argentine shipments (1.53 lakhs tonnes or 87 per cent of the shipped quantity costing about Rs. 8.01 crores) and five U.S. Shipments (1.17 lakhs tonnes or 25 per cent of the shipped quantity costing about Rs. 0.42 crores) were seen, after their arrival in Indian ports, to have admixture of dhatura seeds.

1.23. The Committee wanted to know specifically if there had been earlier instances of import of dhatura contaminated milo. To this the reply of the Department of Food is: "On the basis of the record available in the Food Department, the presence of dhatura seed in the milo was noticed for the first time in the consignment received in February, 1973."

1.24. During evidence the Committee drew the attention of the Secretary, Department of Food, to the following telegram sent to him by the India Supply Mission, Washington and enquired whether it was not clear from the telegram that the question of admixture of dhatura in milo had arisen much earlier:

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"File No. 26-10/73-S & I  
S. No. 15(R)  
OTD

CCB No. 02448

Telegram SECRET

From Indembassy, Washington . . . . . DTG Mr. 01 1545

To Foreign, New Delhi . . . . . DTR Mar 02 2145

By Ch. No. 57

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### IMMEDIATE

JONEJA Food Secretary from Banerji.

Continuation my telegram 54 of 26 February about Milo Shipments.

2. We have since had several discussions with USDA officials. Have also had the benefit of discussing matter with Ambassador JHA. Agriculture Secretary T. P. Singh also happened to be present.

3. These further consultations and investigations into old records both of USDA as well as ourselves establish that problem of Dhatura admixture in foodgrains shipments from USA has arisen a number of times in the past. It arose in 1960 or earlier as also in 1963 and 1964. Agriculture Secretary recalled that problem of admixture of Dhatura in Milo imported from USA had arisen much earlier in fifties as well as when he was Food Secretary before. . . . In 1963 as well as 1964 extent of admixture per kilo was evidently much higher than now pointed out by you. . . . At our instance USDA officials have made fresh check of position and confirmed that there has not been contrary determination by them to this date."

1.25. The Secretary, Department of Food, has stated during evidence: "May I again submit that this refers to the Agricultural Secretary recalling, that is Mr. T. P. Singh, that the problem of admixture of dhatura in milo might have arisen earlier. My information is that the question of dhatura in milo arose in 1973. This is the information that has been given to me by my colleagues."

1.26. In spite of the telegram, subsequently, in a written note, the Department of Food has stated:

"From available records the presence of dhatura in milo was noticed for the first time in the consignment brought by S. S. Maistros on the basis of inspection carried on 8th February, 1973, when the ship started discharging cargo at Bombay. The first inspection report of the vessel reporting presence of dhatura was received in the Ministry on 13-2-1973."

This information is contrary to the information given in telex message sent by the Indian Supply Mission, Washington.

1.27. In regard to incidence of dhatura contamination in milo, the Secretary, Department of Food has stated during evidence: "In all these consignments, the extent of dhatura seeds was normally about 1 to 5 per kg. It was only in one shipment that it was of the order of about 15. In an odd case, 45, so far as the sample was seen. But the limit . . . of the order of 60 and odd, it has not been found anywhere." In reply to a question the witness has stated: "If I may humbly submit, to the best of my knowledge, no case of dhatura poisoning came to our notice."

1.28. Giving details of the milo purchased from abroad from 1972 onwards and its distribution in States, the Department of Food have in a note stated: "During 1972 milo was purchased from Argentina and USA in December, 1972. The total quantity of milo purchased from Argentina and USA during December, 1972 to September 1973 was about 14.39 lakh tonnes. A quantity of 76,000 tonnes was also purchased in October, 1973, making the total purchase of 15.15 lakh tonnes between December 1972 to October 1973. This quantity started arriving at the Indian ports from February 1973 onwards. The total quantity received from February 1973 to April, 1974 was 15.05.659 tonnes. Out of the milo so received, 11.88 lakh tonnes was distributed between the various States from February, 1973 to April, 1974."

1.29. In connection with the examination of the subject, the Committee desired to have papers/files relating to the selection of suppliers for the purchase of wheat and milo in the last two years from America. In a



written reply furnished to the Committee, the Department of Food have informed the Committee as under:

**"The Department of Supply who were referred to on this point have observed as under:—**

'In so far the submission of the files to the Public Accounts Committee is concerned, the Director General, India Supply Mission, Washington, has explained that for the purchase of grain from the year 1972 onwards hundreds of contracts have been issued. The files relating to these contracts are required for day to day decisions and actions relating to claims, either against the suppliers or against the buyer. Despatch of these files to India would dislocate work. In view of this position, the Department of Food may consider suggesting for the consideration of the Public Accounts Committee if the files could be checked by the local Audit Officer at Washington. This department shall take further action on this point after the Public Accounts Committee makes known its decision in this regard.'

1.30. The Committee desired that the relevant files regarding purchase of grains from the year 1972 onwards should be air-freighted from Washington for their perusal. The Department of Food requested the Department of Supply to take necessary action on this point inasmuch as I.S.M., Washington, is under the administrative control of the Department of Supply. A telex message was sent by the Department of Supply to India Supply Mission, Washington, reading as follows:

**"AIR FREIGHT ALL RELEVANT FILES AND PAPERS RELATING TO SELECTION OF SUPPLIERS FOR WHEAT AND MILO PURCHASED BY ISM WASHINGTON IN 1972 AND THEREAFTER (.) THESE SHOULD COVER BOTH PRE AND POST TENDER FILES (i) YOU WILL NO DOUBT RETAIN NECESSARY COPIES WHERE ACTION IS OUTSTANDING AND TO AVOID FINANCIAL AND OTHER IMPLICATIONS (.) HOWEVER FILES AND PAPERS ARE REQUIRED BY CHAIRMAN PAC IMMEDIATELY."**

1.31. On the 15th April, 1975, the Department of Supply has intimated as under:

**"We have received photo copies of the relevant purchase notes in respect of purchase made by ISM Washington between December, 1972 and February, 1975. Files in original are**

awaited. A monthly statement of contracts covering the purchases in question has also been received. Further, we have received two files which deal with registration of food-grain suppliers, reverification of their financial position, etc."

The above matter was made available to the Committee on the 19th April, 1975. Files in original were however not made available to the Committee.

1.32. In a communication dated the 18th March, 1975, the Minister of Agriculture stated *inter alia* that "the Government after consulting the Law Ministry is of the considered opinion that the administrative Ministry can refuse to produce documents/files before the PAC on the ground that its disclosure would be prejudicial to the safety or the interest of the State."

1.33. The State-wise distribution of the 11.88 lakh tonnes of milo distributed between February, 1973 and April, 1974 is as given below:

Miharashtra . . . . .	7,11,317	tonnes
Gujarat . . . . .	2,43,399	"
West Bengal . . . . .	19,605	"
Bihar . . . . .	6,981	"
Karnataka . . . . .	1,02,521	"
Rajasthan . . . . .	1,03,000	"
Kerala . . . . .	1,500	"

1.34. The Committee were informed that out of the total quantity of milo received, the presence of dhatura seeds was noticed in a quantity of 7,22,236 tonnes. The quantity of Dhatura contaminated milo cleaned by FCI before despatch was 19,776 tonnes only. It would therefore mean that 7,02,460 tonnes of contaminated milo was despatched to various States without cleaning by FCI.

1.35. In a statement made in the Lok Sabha on the 7th March, 1973 it was *inter alia* stated: "The first consignment of milo purchased from U.S.A. arrived at Bombay Port during the first week of February, 1973. Immediately on arrival, the grain was subjected to inspection and it revealed the presence of 'dhatura' seeds. Immediate steps were taken to withhold the release of the stocks to the State Governments for issue through the fair price shops. Simultaneously, arrangements for cleaning the the milo to make it free from the presence of 'dhatura' seeds were also undertaken, at the dock as well as in the FCI depots. The milo, after

cleaning, has been found to be generally free from the presence of 'dhatura' seeds. The Haffkine Institute, Bombay, after analysis, has certified that the flour produced from cleaned milo is free from toxic material and has recommended the distribution of milo flour produced from the cleaned grain."

1.36. The Committee desired to know the measures taken in chronological order for the proper cleaning of milo before issue to consumers. In a written note, the Department of Food has stated:

"On receipt of the first inspection report from Bombay, the FCI issued instructions on 15-2-73 to their Bombay office to stop further releases and to advise all consignees to withhold issues in case some stocks have since been despatched. It was examined by us and on 16-2-73, Joint Secretary (Policy) spoke over phone to Managing Director, FCI, who informed him that Manager (Quality Control) was proceeding to Bombay on the following day to look into the matter from technical angle. Instructions regarding the cleaning of milo were handed over personally to the Deputy Secretary, Government of Maharashtra on 19-2-73. On 22nd February, 1973, Quality Control Officer, Department of Food and Managing Director, FCI, visited Bombay and verbal instructions on the spot were issued about cleaning of dhatura contaminated milo. Experiments were conducted about the suitability of mechanical cleaning and advice was also given about the suitable sieving arrangements. Another letter was issued by the FCI to Maharashtra State Government on 24-2-73, for stencilling the Dhatura contaminated bags in red. On 2nd March, 1973, detailed instructions regarding cleaning of milo seeds were issued by FCI to their regional officers. *Inter alia* it was mentioned in these instructions that the bags marked in red ink received in far away centres should be cleaned with the FCI cleaning machines by fixing a sieve of 3.5. mm. round holes at the bottom. On 7th March, 1973, instructions were issued by the Food Secretary to the FCI that milo containing dhatura seeds should be thoroughly cleaned and the senior Quality Control Officers in the regions should personally supervise this work and he reiterated that Government would like to be assured that in no circumstances milo containing dhatura seeds is issued to the consumers. FCI reiterated these instructions by telex on the 8th March, 1973, for the strict compliance to their zonal and regional officers. On 16th/17th April, 1973, Zonal Managers were asked to keep a proper record of cleaning of milo, the bags received, quantity cleaned and residents. Stocks despatched to the State Government were also to be cleaned by them and accounts

maintained. Instructions with special reference to keep the accounts of cleaning of milo were issued by the Assistant Financial Adviser, FCI. The Food Department realising that cleaning of such stocks manually is costly and exceedingly time-consuming resulting in near break-down of the distribution system addressed all the Chief Secretaries of the States requesting them that domestic consumers be advised to clean stocks by hand-picking or otherwise as an essential safeguard. It was further desired that instructions be issued to ensure that domestic consumers are advised to remove as usual weed seeds etc. present in the foodgrains before consumption."

1.37. The Committee enquired from the representative of the Department of Food whether it was a fact that the Food Corporation of India felt that picking up of dhatura could be done by hand-picking by the house-wives themselves and therefore they did not send any intimation to the Maharashtra Government to get it cleaned. But, later on, when it was discovered that it was not possible for the house-wives alone to do this, the Food Department sent some communication which, according to the Maharashtra Government, was received by them only after ten or twelve days after the date of despatch, asking them to inform the Collectors of Districts that this should be hand-picked by the consumers themselves directly. Observing that this was a matter of life and death, the Committee enquired why did the Food Department not ask the Maharashtra Government or the Department themselves to inform all the District Magistrates directly to warn all the house-wives to hand-pick them. The Secretary, Department of Food, has stated in evidence: "I agree with you. We did speak to the Maharashtra Government on telephone. Later on, a telegram was also sent. You will kindly appreciate that from the Centre no direct instructions are issued to the District Magistrates. We function through the State Governments. This was a supplemental safeguard which we wanted to take when we were doing the cleaning through the mechanical process."

#### **Role of F.C.I.**

1.38. The Committee enquired whether it was not the responsibility of the FCI to see that the milo distributed by them was free from dhatura and if so, how it was ensured. In a note the Department of Food have stated:—

"The primary function of the FCI is to undertake the purchase, storage, movement, transport, distribution and sale of food-grains and other foodstuffs. It was within the sphere of responsibility of the FCI to ensure that the milo was cleaned before it was issued."

139. During evidence when the Committee pointed out that FCI should have ensured that milo was cleaned of dhatura before distribution, the Secretary, Department of Food has stated:—

“Once we have given the material to the State Governments and told them to get it cleaned, then it becomes their responsibility. Otherwise, there will be a breakdown of supplies. We just cannot keep it with us. The State Governments helped us in a very big way by organising a battery of workers for doing the cleaning. It gave employment to women and children, particularly, in the drought areas. They were engaged in picking up these things and were paid and it was possible to consume it quickly. The State Governments helped us in expediting the process in a very big way and after the material has been handed over by the FCI to the State Governments, then it becomes their responsibility.”

1.40. The Committee desired to know how far the assurance given by the Minister of Agriculture in Parliament on the 7th March, 1973 that unless and until milo was cleaned it should not be issued to the consumers, had been implemented in practice. The Secretary, Department of Food has stated in this connection during evidence:

“It was implemented in the sense that we gave the instructions to see that the materials were not only cleaned by mechanical method but also hand-picked. A lot of money has been spent in organising hand-picking of this material. Subsequently, in addition to this, we have said that as a matter of supplemental caution, the consumers should also be told to hand-pick and get rid of the seeds as they do in any other household where the housewife does it.”

1.41. Explaining the reasons why cleaning of milo by hand-picking was resorted to, the witness has stated:—

“Earlier we had given instructions that it should be cleaned mechanically and then supplemented further. Once we found that mechanical cleaning was not giving the necessary results it was necessary to have the hand-picking. So, we said, ‘Please have it hand-picked and advise the consumers.’ The Maharashtra Government during that period engaged a large number of people for hand-picking also because it provided employment incidentally.”

1.42. Subsequently, in a note on the subject, the Department of Food have stated:—

“Since the manual cleaning of milo containing dhatura seeds before issue was found to be very costly and exceedingly time consuming, at times resulting in the near breakdown of the Public Distribution System, it was decided in June, 1973 that in so far as milo issued directly to domestic consumers was concerned it was necessary that they were advised to clean stocks by hand-picking or otherwise, as an essential safeguard. The State Governments were advised to issue appropriate instructions in the matter.”

1.43. During evidence the Committee pointed out that the fact that dhatura was deleterious was not disputed and that the Minister of Agriculture had at one stage assured that the contaminated milo will not be issued from the depots unless it was properly cleaned. If in spite of the assurance the uncleaned milo was issued it could be assumed that the Department of Food allowed the things to take their own course. In this context, the Secretary, Department of Food has stated:—

“It would not be right to put it that way. What we have said is that hand-picking is essential. Where the quantum involved is a little large, it can be entrusted to the hand-picking organisation, and where it is so small, the system of consumers being requested to do has been introduced. Where it is just one hit in a kilogram, we have said that the consumers can be requested to do so.”

The witness has further added:—

“What we have done is that if the incidence of dhatura is large, we will do the initial cleaning with hand-picking. It is hand-picking not by the housewife but by the cleaning operations. In that case, we will have to send it for cleaning to the mill or for handpicking.”

1.44. On being pointed out that the entire milo should have been cleaned before distribution, the witness has stated:—

“My submission is that the housewife comes into the picture only if there is only one grain or so. If it is more than that, we have to do the cleaning. I have said that. . . . Cleaning by the housewife was a supplemental measure. If there were more, it had to be cleaned by the governmental agency, call it FCI,

State Government, etc. Where large quantity is involved, mechanical cleaning to the best possible extent; otherwise hand operations."

The witness has further added:—

"Most of the consignments barring one, did not contain more than 5 to 8 grains, one should consider whether one should go in for hand-picking as well as mechanical cleaning, because it will involve two operations and it would cost money for transport and other things."

1.45. The Committee were informed that the mechanical cleaning of the milo was got done by the Food Corporation of India through the flour mills. In reply to a question whether there was any machinery to supervise the cleaning operation in the flour mills, the Secretary, Department of Food has stated:

"Our Supervisors are there. All the time, they have to see this. . . . This is done by the Food Corporation of India staff, assisted by the Supply officials of the State Governments."

1.46. It was stated in evidence that the mechanical cleaning of milo gave only 80 per cent satisfaction and the process had therefore to be supplemented by hand-picking. Asked whether the help of scientists, had been taken to evolve better machinery for clearing, the Secretary, Department of Food has stated during evidence :

"We have been trying it. So far, we have not succeeded in it."

1.47. In a written note on the subject, the Department of Food stated:

"The Engineering Wing of the FCI after consulting some fabricating agencies have developed a Grain Cleaning Machine which would get rid of 80-90 per cent of dhatura from milo. It may also be mentioned that M/s Kirloskars had also shown some interest in developing such grain cleaning machines."

1.48. The Committee were informed that other countries like Pakistan and African countries were also importing milo. When the Committee pointed out that other countries should also be facing the same problems of cleaning, and might have evolved some methods of cleaning, the Secretary, Department of Food has stated during evidence:

"The difficulty experienced by us was with regard to milo when it was mixed with dhatura. That was during the last year only. Previous to that we were not facing any such problem. It so happened that in growing wheat earlier, possibly, they had been

able to get rid of the dhatura. They then started getting this with milo. In our earlier purchases, dhatura was there with the wheat. Now it has come over to the milo. We shall certainly keep this suggestion in mind."

1.49. Referring to the complaints of the State Governments that they got intimation about the admixture of dhatura seeds in milo after 10 to 12 days of the date of despatch by the FCI, the Secretary, Department of Food informed the Committee that immediately after the first vessel arrived in Bombay the inspectors of FCI conducted physical inspection and on the very first day of discharge the whole thing was tested. In the same context he has added:

"These samples are taken from the various holds and tested and it was the FCI inspection staff which brought to our notice. We had them tested. Based on that, we told them not to issue them unless it has been cleaned. This was done by telephone; this was done by telegram. During the first week of March itself, a communication went from the Government. All the subsequent decisions which have been taken, namely, mechanical cleaning, hand-picking and the additional safeguard that the housewives should be requested to hand-pick them, have been taken not by the FCI but at the Government level. We, in the Government, take full responsibility for it. It is not the FCI which comes into the picture. They are only executing agents."

1.50. In reply to a question the witness has stated during evidence:

"Under the mechanised process that we have, we are able to unload about 1500 to 2000 tonnes a day, depending on the size of the cargo which a ship has brought. . . . It does take ten days, near about ten days, for a ship to be unloaded completely."

1.51. The Committee pointed out that although it has been stated that immediate action was taken yet the States had complained that they got the intimation after 10 or 12 days of despatch of consignments. In this connection attention was drawn to the following extracts from a letter written on the 20th October, 1973 by the Food & Civil Supplies Department of Government of Maharashtra:

"Communication from the FCI regarding the absence of dhatura or ergot in a particular ship is received only after 10 to 12 days after despatches from this ship have commenced and hence it is not possible to inform the Collectors not to start cleaning operations well ahead of the actual receipt of the stocks,



"At the same time, it is necessary for the Collectors to undertake cleaning up operations in respect of imported wheat, milo...."

"A very serious aspect of the matter is that the officials in the docks do not take sufficient care to mark the bags with the name of the ship and the absence of dhatura or ergot before the bags are delivered to the Districts by trucks or wagons."

1.52. The Secretary, Department of Food has stated:

"The State Government will get the thing only after the whole ship has been cleared of the cargo. As I had submitted, in a day, with the help of the evacuators, you can take out of a ship only about 1500 to 2000 tonnes a day. If a ship contains about 10,000 to 15,000 tonnes and if it is to be cleared of the whole quantity, it takes about 8 to 10 days, some times more, depending upon the quantity. The very nature of operations is such that unless the whole thing has been seen, you do not know whether the contamination is only at the bottom or at the top or at the middle. The whole thing has to be seen."

1.53. Referring to the charge made by the Department of Food and Civil Supplies of the Government of Maharashtra that proper indication on the bags containing contaminated milo was not given by FCI, the Committee enquired whether any such complaints had been received. To this the Secretary, Department of Food has replied:

"We have not had any such complaint."

1.54. The Committee pointed out to the representative of the Department of Food that the certificates given by the officials of the Food Corporation of India that the particular consignments were free from admixture of dhatura proved to be incorrect and bogus as is evident from the letter dated the 20th August, 1973 from Shri P. S. Sundram of the Department of Food & Civil Supply of Maharashtra to Smt. C. J. Patel of the Department of Food, the extracts of which are reproduced below:

"Although the reports about admixture of dhatura seeds in milo stocks ex-Lete and Fidelity were received from the Collector of Thana only, earlier the Collector of Amroti and the F.D.O. Poona had reported admixture of the Dhatura seeds in milo stocks ex-Anthemlos which was certified by the F.C.I. as free from dhatura seeds. The Government, therefore, decided not to take any risk and to clean all the bags of milo before issue, in order to avoid complaints from the public."

1.55. The Committee wanted to know whether any investigation had been made against the officials of F.C.I. who had given the bogus certificates and also the results of the action taken. The Department of Food have, in a written note, stated:

“Disciplinary action, based on the enquiry conducted into the matter is being processed against the officers concerned.”

1.56. The Committee pointed out that the presence of dhatura in milo was a known fact and therefore prompt action was called for to prevent its distribution in contaminated form. Even anticipatory action should have been taken. The Secretary, Department of Food in this connection has stated during evidence:

“I can assure you that the magnitude of the task which we had to deal with was very big and the State’s conditions were terrible as far as administrative arrangements were concerned. I am afraid there cannot be hundred per cent efficiency. There may be lapse here and there.”

He has further stated:

“Instructions have been issued at various levels. The first ship arrived on the 5th February and after all the examinations were completed, we gave telephonic instructions and the FCI gave instructions in writing on the 15th February to all the recipients there. Both the Food Corporation and the Government of Maharashtra were advised to release the grain for consumption only after it had been cleaned. It was followed by another instruction by me on the 7th March to the Managing Director. Then again in June, we had said that it must be done by hand-picking supplemented by housewives’ efforts also.

So, despite this and you know that although there was this scarcity involving about 20 crores of people in the entire country—that was the size of the problem to be dealt with—and there were at one time nine million people here on our rolls everyday to whom work had to be given and food distributed—the very fact that no case of dhatura poisoning took place is itself something to be remembered.”

### Cleaning Charges

1.57. The Committee desired to know the cleaning charges per quintal of contaminated milo. The Secretary, Department of Food has stated in evidence:

“We have not got the firm figures. It seems to be roughly of the order of Rs. 12. It consists of three components. One is the

labour charges. It comes to Rs. 4-5. We have not got the exact figure. Then there is the transport charge."

1.58. Subsequently in a note submitted to the Committee, the Department of Food have stated:"

"The average cost of cleaning of milo by F.C.I. is reported to be approximately 2.02 rupees per quintal. Maharashtra Government has reported the cost to be on an average Rs. 12/- per quintal. The ISM, Washington who was asked to explore the possibility of cleaning milo before shipment informed us in March 1973 that the cost of cleaning may be around \$ 3 to \$4 (Rs. 24 to Rs. 32) extra per ton. It was also reported that special equipment and other facilities needed for cleaning being limited, the process would be time consuming and would inevitably dislocate shipments giving rise to heavy claims from owners of vessels which had been chartered. It was further stated that such mechanical cleaning will not help complete elimination of jimson/dhatura. Besides this, the cleaning charges would have been incurred in foreign exchange."

1.59. In regard to the total expenditure incurred by the Government in cleaning the whole lot of contaminated milo, the Department of Food have stated:

"The expenditure incurred by the Food Corporation of India on cleaning milo in which presence of dhatura was noticed, was Rs. 3,99,094/-. Information relating to the expenditure on such cleaning incurred by the State Government is being obtained by FCI."

1.60. The Committee enquired as to what was the total loss sustained by Government taking the transactions as a whole. In this connection the Department of Food have stated:

"The accounts are yet to be finalised and the information will be available on finalisation of accounts."

1.61. The Audit paragraph states that since the cleaning of milo by hand-picking was time consuming, in June, 1973 the Central Government requested the State Governments to advise the domestic consumers to clean the supplies by hand-picking as an essential safeguard. It has been further stated that the Food Corporation of India thereafter gave up cleaning and informed the Maharashtra Government that since the cleaning was to be done by the consumers, the Corporation would not bear the charges of

cleaning thereafter. The Maharashtra Government informed the Government of India in July, 1973 that the Food Corporation of India should continue to reimburse the cost of cleaning and/or certify the stocks as free from contamination. During evidence the Committee enquired whether the Maharashtra Government had been reimbursed on account of the cleaning charges incurred by them. The Secretary, Department of Food informed the Committee that "Whatever bill we receive, we will reimburse them after examination."

He added:

"I can assure you that as and when the bills are received they will be most expeditiously looked into and all reasonable charges will be reimbursed."

1.62. In a note the Department of Food has further stated:

"The cost of cleaning by the State Government is still not determined. It is difficult to determine precise quantitative estimate of expenditure incurred for any specific period."

#### Milo Refractions

1.63. The Audit para brings out that 10,332 tonnes of milo refractions valued at Rs. 46 lakhs, obtained as a result of cleaning, were lying in godowns in Maharashtra and Gujarat and have to be disposed of as cattle feed. The Committee desired to know whether the dhatura in the milo refractions will not be harmful for cattle. To this the Secretary, Department of Food replied in evidence:

... Whether it would be poisonous or not for the animals, I say that this is mixed with the other cattle feed and the same gets widely distributed. Whenever we give them, they have to purchase this because it is mixed with so many other things ... It gets completely diluted."

1.64. As regards the disposal of the refractions the Department of Food have in a note stated:

"The quantity of milo refractions disposed of as cattle feed by the FCI so far is about 3331.4 tonnes. As regards the effect of milo refractions, since the refractions are not used as such but mixed with other fodder and feed material such as chaff, hay, straw etc. and gets very much diluted, it is not likely to have any adverse effect. FCI, had, however, issued suitable instructions regarding the disposal of refractions containing dhatura seeds."

*Further purchase of Milo (1973)*

1.65. On the 2nd April, 1973, the Minister of Agriculture made the following statement in Lok Sabha regarding purchase of milo from abroad:

“The Hon’ble Members are already aware of the Government’s decision to import during the current year, on commercial basis, about 2 million tonnes of wheat/milo from abroad. As for milo, 6.5 lakh tonnes have already been contracted for purchase and necessary arrangements for shipping have been finalised. Having regard to the presence of dhatura seeds noticed in some consignments of milo, Government have since decided to stop any further purchase of milo. Out of 6.5 lakh tonnes of milo already contracted for purchase, 1.18 lakh tonnes have been received in the Indian ports upto 20th March, 1973, while the balance quantity of milo is under despatch. By and large, shipping arrangements had been finalised and necessary contracts entered into with the shippers etc. for the rest of milo. Government have been advised that the arrangements finalised and contracted will have to be allowed to stand, as otherwise there may be serious financial and legal implications. However, instructions have been issued that stricter inspection should be carried out before despatch of milo. As already stated on the floor of this House, arrangements have been made to clean milo received from abroad before distribution.”

1.66. During evidence the Committee desired to know why the earlier decision not to make further purchases of milo because of the presence of Dhatura was reversed. The Secretary, Department of Food has informed the Committee that “The matter was reviewed by Government and the decision was taken.”

1.67. In a note on the subject the Department of Food have state:

“Instructions were issued to ISM, Washington to stop further purchases of milo on 14-3-73. The ISM reported that while suppliers were willing to do every thing possible to provide supplies which would be free from dhatura, they were not in a position to give absolute guarantee that supplies would be totally free from obnoxious weed seeds etc. to conform to our Prevention of Food Adulteration Act and rules thereunder. It was further stated that no suppliers would be forthcoming at all if stocks totally free from obnoxious material

were insisted upon because the suppliers would prefer to export their supplies to other countries which buy according to the US Grade Specifications and Standards and are known not to insist upon such conditions about dhatura etc. In view of the essential and imperative need to ensure supply of minimum quantity of food-grains to the masses and also in view of the availability of US Grade I stocks being limited and also the prices being prohibitive, it was decided at the highest level in May, 1973, to resort to import of Milo from USA and Argentine conforming to the specifications of the exporting countries." ..

1.68. The Committee asked what further precautions were taken in regard to import of foodgrains in future. To this the Secretary, Department of Food has replied during evidence:

"The only precaution that we can take depends on how we are placed. If we happen to be in a sellers' market, then we have to make the hard choice of either to buy the grain which, according to the specifications of the country, is quite all right or do without it. If we have to buy, we will have to buy and if it comes again with such admixture, we have to make them cleaned mechanically, if possible, and if not, by hand-picking." . . . "We will always have to tell the consumers as the last safeguard to take to hand-picking which every housewife does."

1.69. To a question as to what steps were proposed to be taken to see that future supplies were free from dhatura the Secretary, Department of Food has stated in evidence:

"The precautions continue to be taken. No additional steps have been taken or probably can be taken."

1.70. In reply to another question the witness has replied:

"There are two questions involved. One is, do we buy mi'o which can have this difficulty or we do not buy at all. That is the first question. As I submitted, it depends on our food situation and the market in which we have to go and buy. If our situation is bad and we have to buy from the market, we can buy only that much and only of that quality that their specifications permit. We have no choice. We are not in the buyer's market.

Then comes second stage. Having got the material which may need cleaning, what are we supposed to do? We have said that where cleaning is necessary and it is required on a large basis, then the cleaning operation will be undertaken but it will be mostly of the hand-picking type. In addition we will take the precaution of requesting the consumers, and the house-wives also to see that if there is anything left, they could pick up and throw it away. I was only submitting that for a given situation, I could not foresee what other possible steps we could take."

1.71. During evidence the Committee enquired what was the position with regard to imported milo discharged in ports other than those in Maharashtra and Gujarat. The Secretary, Department of Food have stated:

"In other ports also we had this difficulty. But in other ports, the quantity discharged was very small. A major portion of the discharges was in the ports of Maharashtra and Gujarat. The picture appears to be that the U.S. milo received at the Maharashtra and Gujarat ports happened to be contaminated. But, the quantity received in other ports was very small. For instance, in West Bengal, it was 8000 tonnes; in Andhra it was 2,000 tonnes; in Karnataka it was 12,000 tonnes; in Kerala it was 28,000 tonnes but, in Madras, it was 79,000 tonnes. About 5,96,000 tonnes were received in Maharashtra of which 1,64,000 tonnes happened to be contaminated. In Gujarat, of 2,86,000 tonnes, 15,850 tonnes were contaminated. I am afraid that the entire quantity obtained from Argentina was itself contaminated in one way or the other. Most of it was again in Maharashtra and Gujarat; a small quantity of 6,000 tonnes was in Andhra Pradesh and 4,714 tonnes in West Bengal."

1.72. In a note the Department of Food have intimated that "the quantity of imported milo containing dhatura discharged at other Indian Ports was 10,714 tonnes."

#### *Role of India Supply Mission*

1.73. In a note the Department of Food have stated:

"In 1972, the then Food Secretary who had gone to London in connection with some International conference also visited USA, Canada and Argentina to explore the possibilities of

purchasing foodgrains. A team consisting of former Union Food Secretary, DG, ISM, Washington, Deputy Financial Adviser of the Supply Mission was authorised to effect purchase of foodgrains on commercial basis in the Americas. The purchase was made according to the specifications of the exporting country."

1.74. The Committee desired to know whether the team that finalised the purchases of foodgrains made the selection after physical examination of the samples of milo. The Secretary, Department of Food has replied during evidence:

"I do not know what happened there in Washington."

1.75. The Committee enquired whether the India Supply Mission or the team which visited USA for finalising the milo deal were aware of the findings of the Haffkine Institute to the effect that use of dhatura could be injurious for health. The Secretary, Department of Food has stated in evidence:

"It is difficult for me to say whether they were aware of it or not. . . . So far as dhatura in wheat is concerned, they might be aware but about milo, I do not know."

1.76. Subsequently in a written note the Department of Food have stated:

"The India Supply Mission, Washington, and Shri R. R. Bahl, former Food Secretary, have informed this Department that they were not aware of the findings of the Haffkine Institute, Bombay and Coonore Laboratories."

1.77. In another written note furnished to the Committee, the Department of Food have stated:

"India Supply Mission, Washington have stated that as the supplies were governed by the official standards of the exporting countries, the question of selection after physically examining the representative samples did not arise, particularly when the same grade was being purchased for many years in the past."

1.78. In regard to the role of India Supply Mission, Washington in the matter of purchase of foodgrains from abroad, the Department of Food have in a note stated:

"Briefly all purchases on behalf of the Government of India originating in the North and South America are handled by the Mission.



More specifically as far as Foodgrain purchases are concerned India Supply Mission, Washington, has been authorised by the Food Corporation of India as per the decision of their Board of Directors to effect purchases on their behalf. Accordingly in all matters of foodgrain purchases, the I.S.M., Washington is directly in contact with the Food Corporation of India and the Ministry of Food and Agriculture.”

1.79. During evidence before the Committee, the Secretary, Department of Food has deposed:

“Its (I.S.M. Washington) role is to purchase things on our behalf according to the best price that they can get from the market; and see that we get things according to the specifications which obtain in that country. They have no authority to change the specification of the U.S. Government. We can plead with them, which we have done; but we are not the only purchasers in the market. Last year, we had the option; if we did not want it, we could have stopped the purchases. The option before U.S. was whether we were going to purchase and clean them here, or not purchase at all. We are not in a buyers’ market, Sir.”

1.80. In the statement in Lok Sabha on the 7th March, 1973, the Minister of Agriculture had stated that India Supply Mission had been addressed in regard to preshipment inspection of the supplies from America. Asked about the action taken in this behalf, the Secretary Department of Food has stated:

“We had addressed the Supply Mission to see what they could do to improve the situation, both at the U.S.-end as well as the Argentina end. They had made requests to the Argentinian Board and also the US Department of Agriculture. They could not do anything more than that.”

1.81. The Committee desired to know the methods of procurements followed by the India Supply Mission. The Secretary, Department of Food has stated in evidence:

“We authorise ISM Washington for certain quantity which the Government decides should be purchased and we indicate the delivery date as per our requirements. After this is done, it is left to ISM Washington under the broad supervision of the Ambassador to organise the purchase which he does there.”

1.82. The Committee enquired whether the purchases were made on the basis of global tenders and if not, the reasons therefor. The Secretary,

Department of Food has informed the Committee that "Normally, global tenders are not given because that pushes up the prices. One they know that we are in the market, that could push up the prices."

1.83. The Committee desired to see (i) the relevant papers relating to the visit of the High-level Purchase Team headed by the former Food Secretary (Shri R. R. Bahl) which went from New Delhi for purchase of foodgrains, and (ii) papers relating to purchase of milo without calling of global tenders. The Department of Food in their letter dated the 14th March, 1975 have regretted their inability to submit the secret/top secret papers regarding the above.

1.84. According to the Audit Paragraph the milo contracts entered into by India Supply Mission with Argentina suppliers provided for supply of Argentina milo in accordance with specifications of the *Junta Nacional de Granos* (Argentine Grain Board), whose certificate of quality the suppliers were required to furnish. These contracts further provided explicitly that the grain should be fit for human consumption. The milo contracts with U.S. suppliers provided for supply of US grade II yellow-grain sorghum (Milo) conforming the United States Grains Standards. The Committee wanted to know why the stipulation regarding fitness for human consumption included in the contracts with Argentina suppliers was not provided in the contracts with U.S. suppliers. The Secretary, Department of Food has stated in evidence:

"I believe, for the first time, we made this purchase from Argentina. We wanted to be sure that this would be fit for human consumption. So far as USA's specification is concerned it is meant for both."

1.85. In reply to a question, the witness has further stated:

"As I submitted earlier, here, the definition of 'foodgrain' makes it clear that it is for human consumption as well. Since we went for supplies in Argentina for the first time, it was thought necessary that India Supply Mission should put it in the contract. Subsequently, when it was pointed out to them, USA also agreed to include this in the contracts. From 31st July onwards, they have also included this."

1.86. Asked whether the stipulation regarding fitness of grains for human consumption was in practice complied with, the Secretary, Department of Food has stated in evidence:

"It is implemented. It is according to the specification fit for human consumption. This is the same for the Americans also. They also started doing it."

1.87. In a note the Department of Food have stated:

“In the case of Argentina it was for the first time that milo was purchased from that country. So, by way of abundant caution the stipulation ‘fit for human consumption’ was incorporated in the contract with Argentina suppliers. When dhatura was noticed in the US milo, at our instance, the suppliers started mentioning in the ‘Document confirming the purchase’ that the commodity is fit for human consumption.”

1.88. The Committee enquired whether it was a fact that the variety of milo that was purchased was “exclusively” meant for cattle feed in the U.S.A. and Argentina. The representative of the Department stated that “mainly” would be the right word. The Committee drew the attention of the representative of the Department of Food to the following despatch by Shri T. V. Parasuram appearing in the Indian Express of 12th March, 1973 and asked for comments:

“Washington, March 11. American reaction to complaints from India of ‘poisoned milo’ is one of shock and pained surprise. The Americans point out that a percentage of what they call ‘Jimson Wood’ is normally mixed in the grade of milo which India sought for human consumption but which is given to cattle here. Unlike in India, there is a grain for every need and there is a broad distinction between ‘foodgrains’ and food grains. While this has not become a hot issue in Washington, reporting from India reflect excitement among American officials directly exposed to the problem. A leading wire-service quotes an American official as saying, ‘I cannot understand the great excitement about this.’ They bought milo before they had the problem before. The milo they bought we only feed to livestock. They know that Grade II milo is livestock food and not food for humans. It is their business if they want to feed it to people. They bought it and they can do anything they want with it.”

1.89. The representative of the Department state:

“I can only submit that I wish I could take Mr. Parasuram with the same credence with which you are taking him. But I can assure you that the United States Government knew that we were using this for food.”

He added:

“There, if I may say so, even wheat is used as cattle food. Would that by implication mean that we should stop eating wheat?”

1.90. In another note the Department of Food has explained:

“Milo is purchased conforming to the specifications of the exporting country. The mere fact of American using milo primarily for food purposes does not make U.S. milo as such unsuitable for human consumption. In fact U.S.A. itself has at times purchased milo for supplying to other countries for human consumption. However, after the presence of dhatura was noticed in U.S. milo, as a matter of abundant caution, the U.S.A. suppliers were asked to incorporate in the Document confirming the purchase, a certificate to the effect that the commodity sold was fit for human consumption. The intention was to ensure that the supplies were within the specifications.”

1.91. The Committee were informed—almost the entire milo supplies received from Argentina were contaminated with dhatura. The extent of contamination was 2—3 grains of dhatura per kg. The variation was 1—8. “As far America is concerned, out of 10 lakhs, 1.80 lakhs was contaminated.”

1.92. The Audit Para states that in March 1973 Government directed the India Supply Mission to examine the legal aspect concerning possible violation of the U.S. food laws, although the U.S. grain inspectors had certified the consignments as being in conformity with U.S. Grain Standards. No instructions were given by Government to examine similar legal aspects about the Argentina supplies. When asked about the reasons for this, the Department of Food in a note stated:

“The milo purchased from Argentina conformed to the specifications laid down by that country. It was not considered necessary to obtain legal opinion separately in respect of Argentina supplies.”

1.93. The Audit para states that the India Supply Mission, Washington, had informed the Food Department in March, 1973 that in the latest case of wheat purchases it had attempted to make it a clear condition of purchases that the wheat supply should be entirely free from dhatura or other deleterious material, but that no supplier was willing to make a supply on such an absolute condition, or on the basis of a guarantee. The Mission was, however, able to get two suppliers of wheat to agree that if the USDA inspection at the time of shipment indicated presence of dhatura, the supplier would indemnify the Mission to the extent of 25 cents per tonne towards the actual cost of cleaning in India.

1.94. The Department of Food had in March, 1974 informed the Audit as under:

“With regard to the offer of two supplies to indemnify the Mission to the extent of 25 cents per tonne towards the actual cost of cleaning in India, however, it may be pointed out that even this offer was subject to the USDA inspection indicating the presence of *dhatūra*. In the first place, the U.S. Grain Standards Act does not recognise *dhatūra* as a deleterious material. Assuming that their certificate did not make mention of existence of *dhatūra* in any shipment, offer to indemnify would only mean the supplier increasing the sale price of the grain in such a way that the incidence of cleaning would ultimately be borne by the importing country itself.”

1.95. Asked whether these suppliers had agreed to pay 25 cents per tonne towards the cost of cleaning because the percentage of *dhatūra* contents was high, the Secretary, Department of Food stated:

“No, Sir. I don't think there was any such thing except one or two suppliers who were amenable to their persuasion and might have agreed to pay 25 cents towards the cost of cleaning.”

1.96. The Committee enquired of the representative of the Department of Food whether Government preferred any claims against the Argentine and the U.S. suppliers who supplied milo contaminated with *dhatūra*. The Secretary, Department of Food, informed the Committee in evidence:

“So far we had not done it...Legally, they are not viable...It was based on the advise of the legal officer in Washington and our Law Ministry here.”

1.97. Asked to state the authorities from whom legal advice was taken, the Secretary, Department of Food has stated:

“Mr. A. K. Das Gupta, Legal Adviser...This is about US supply...We do not have separate advice from them.”

He has further added:

“This is the legal advice. They said that they are in general agreement with the views expressed by the Legal Adviser, ISM, Washington on the ground that the clearance was given to all the shipments by the licensed inspector and they said if the facts are proved, then the Government will have to take the case for damage.”

1.98. A copy of the advice furnished by the Legal Adviser of ISM, Washington, is given in *Appendix I*. The concluding portion of the Appendix reads as under:

“In summary, it is our opinion that, based upon the facts described to us, the Government’s practical remedies in this case depend upon its ability to establish that (1) the grain was of such “distinctly low quality” as constituted a violation of the Grain Standards Act or (2) particular shipment contained such an unusually high amount of jimson seed as rendered it unfit for human consumption. We believe that proof of the former would be most difficult in view of legal impediment such as the prior dealings of the parties, the absence of specific standards, and the clearance given all the shipments by a licensed grain inspector. As to the latter, we believe legal proceedings might be feasible if the facts can be proven as we have described.”

*Foodgrains Suppliers Operating in USA and Argentina*

1.99. The Committee desired to know the names of firms operating in Argentina and U.S. for supply of milo to India. In a note, the Department of Food have stated:

“Two sets of foodgrain suppliers operating in USA Argentina have been obtained from India Supply Mission, Washington. These are pleased at *Appendices II and III*.”

1.100. The Committee enquired whether there was any interlocking of capital and ownership of firms mentioned in the list of suppliers of foodgrains in Argentina and USA. In this connection, the Department of Food have in their letter dated 14th March, 1975 intimated:

“As regards the information regarding the inter-locking of capital and ownership of firms mentioned in the list given in reply to Point 20, particularly with Cargill Inc. and Continental Grain Co. and the names of directors and major share holders on these firms, a copy of the statement (*Appendix IV*) indicating purchase of food grains in the Americas supplier-wise from December, 1972 to January, 1975, obtained from the ISM Washington is enclosed. ISM Washington has also indicated that according to business week magazines, the following five firms are the biggest grain dealers in the USA and are engaged in nearly 90 per cent of the total grain exports from USA:—

1. M/s. Continental Grain Co., New York
2. M/s. Cargil Inc. Minneapolis

3. M/s. Cook Industries Inc. Momphis
4. M/s. Douis Dreyfus Corporation, New York
5. M/s. Bunge Corporation, New York.

As regards names of Directors and major share-holders of Cargill Inc., and Continental Grain Co., ISM, Washington, has informed us that they are trying to obtain the necessary information from these firms."

1.101. One of the suppliers of foodgrains from Argentina is Warinco A.G. The Committee enquired whether the Food Corporation of India who had entered into a contract with this firm had full details about its ownership, etc. The representative of the Food Corporation of India has stated during evidence:

"FCI is only a formal party. ISM, Washington, entered into these contracts."

Asked to state whether the F.C.I. did not examine the contracts before they were finalised on their behalf by the India Supply Mission abroad, the representative of the Department of Food has stated:

"No, Sir. . . . They have been authorised to sign on our behalf."

He has added that:

"This transaction was at the Government level. The handling and payments are done by the FCI."

#### *Pre-shipment Quality Control and Inspection*

1.102. According to the Audit Paragraph in U.S.A., official inspection agencies of the U.S. Government conduct pre-shipment quality control and inspection of the supplies purchased. Each shipment was subject to their certification and payment was not made unless there was a clear certificate. On an enquiry by the Department of Food, the India Supply Mission, Washington pointed out in February, 1973 that they had always relied on the official inspection certificates issued by USDA in the past and that there did not appear to be any reason for making any independent inspection. During evidence the Secretary, Department of Food informed the Committee that according to the American Law it was only their inspectors who had got the right to inspect and that is why no arrangements for pre-shipment inspections had been made by the India Supply Mission, Washington. The witness added:

"We have looked into the matter. Under their law, the mandatory power is that the Inspectors of U.S.A. will do the inspection and even if our chaps were allowed to do the inspection, that will not be valid."

1.103. The Committee enquired how in the absence of any pre-shipment inspection it could be ensured that the stocks of milo purchased by ISM were of satisfactory quality. To this the Secretary, Department of Food has replied in evident:

“For the purpose of our satisfaction, it would be of no use because officially the certificate which carries the legal weight is that of the US authorities. . . . what we can get from them is only upto their specifications.”

1.104. The Committee pointed out that even if the imported stuff conformed to the specifications of the exporting country, inspection ought to have been made to ensure that the stuff so imported was edible and if it was so it should have been refused. In this connection, the Secretary, Department of Food has stated during evidence:

“At the highest level we have taken a decision. We could not afford not to get the material here.”

On being asked whether the decision that pre-shipment inspection need not be done was taken at the Ministers' level, the witness stated:

“The matter went right upto the Cabinet and the decision was that we have no option but to buy the material.”

1.105. In reply to a question the witness has added:

“We do insist on a pre-shipment certificate. Let us not say that it was not inspected before there. The point is this. It was inspected by the mandatory inspectors.”

On being pointed out that the mandatory inspectors in U.S.A. would only safeguard the sellers' interest and not the buyers' interest, the Secretary, Department of Food has stated:

“Pre-shipment inspection by the American authorities has been there. We did not consider additional pre-shipment inspection necessary in addition to the Americans'. We thought it would not serve any useful purpose.”

The Committee invited the attention of the representative of the Department of Food to the statements that the American shipments were inspected by Government inspectors but in the advice sent by the Legal Adviser of India Supply Mission, Washington, a reference has been made to Licensed Grain Inspector. The Committee asked whether the Licensed Grain



Inspector could be considered a Government Inspector. The Secretary, Department of Food has stated in evidence:

"My understanding was that he is a licensed inspector. He is certainly licensed by USDA. Whether the Government pay him completely and whether he is a government servant, I have to check up. I am grateful to you for pointing this out."

1.106. When the Committee pointed out that there was no prohibition as such under U.S.A. law which debarred the buyers from making a pre-shipment inspection, the Secretary, Department of Food has stated in evidence:

"I agree with you completely that they do not prohibit us. It is not necessary in my opinion."

In a written note on the subject, the Department of Food informed the Committee that:

"The need for pre-shipment inspection of milo by independent Inspectors appointed by the Government of India was considered, but in view of U.S. laws whereby inspections by the Inspectors licensed under U.S. Grain Standards Act by and of USDA is mandatory, the matter was dropped, since in case of any legal dispute, USDA inspections would have prevailed over independent inspections and thus the expenditure involved would have been infructuous."

*Position vis-a-vis Prevention of Food Adulteration, 1954*

1.107. During evidence the Committee pointed out that under Prevention of Food Adulteration Act, 1954, foodgrains should be free from deleterious material. The Committee further enquired whether it was not a fact that according to section 5 of the Food Adulteration Act, any one who sells or causes to be sold any article purporting to be an article of food, if he is found adulterating something, he is answerable in a court of law. It was further pointed out that Section 14 of the Prevention of Food Adulteration Act provides that no manufacturer or distributor or dealer of any article of food shall sell such an article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such an article to the vendor. Then Section 19 says that it shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated article of food to allege merely that the vendor was ignorant of the nature, substance and quality of article sold by him or that the purchaser having purchased any article was not prejudiced by the same. The Committee

pointedly asked the witness whether the Department ever thought of launching any prosecution for the supply of contaminated consignments. The Secretary, Department of Food, has stated in evidence:

“It is the intent and the facts which could and not the way we are saying about this provision. So far as we are concerned, we have produced a material which, according to our judgment and the best medical advice, is not the one which could be poisonous or unsafe for human consumption. Therefore, if the matter has to go to a court of law, we will stand by our explanation.”

He has further added:

“We have taken a decision knowing what the position is. But we are convinced that there is no such thing as this thing being obnoxious or poison or affecting the health of the people.”

1.108. In reply to a question, the witness has stated:

“As I said earlier, when we have taken a decision, we know that there is a toxic effect of this to some extent. We, in the first instance, gave instructions that it had to be cleaned before it could be given to the public. Later on, when we realised that even mechanical cleaning will not completely rid this of *dhatūra*, we gave supplemental instructions that the consumers be advised to pick them up also. We have not, knowingly, willingly and intentionally said that these seeds should be given to the public or should be passed on to the consumers. On the contrary, knowingly, without eyes open, we have been doing everything possible to see that these are removed mechanically in the first instance. Subsequently, we requested the consumers to hand pick them up and throw them out which every housewife in this country does whenever she deals with such grains. We have done everything possible and therefore I am quite certain even if somebody were to go to court and ask this, it would be quite clear that we have done everything possible to see that the law is not violated.”

1.109. On being asked about the position under American Law, the witness has stated:

“In U.S.A. *dhatūra* is not considered as an adulterant in that fashion. If the American wheat contains *dhatūra*, it does not come under the mischief of the law at all.”

1.110. The witness has added:

“Even till today, they do not recognize that it has a deleterious effect, despite the fact that we have had lengthy correspondence with that country. They are not prepared to do it.”

1.111. In a statement in the Lok Sabha on the 7th March, 1973, the Minister of Agriculture stated:

“‘Dhatura’ seeds grow along with agricultural crops as weed and as such some ‘dhatura’ seeds get mixed up at the time of mechanical harvesting. According to the U.S. Grain Standards, ‘dhatura’ seeds are not considered poisonous. They are considered as foreign material and/or dockage depending on the size of the seed. It is understood that the U.S. Government themselves even now are purchasing and supplying the same kind of milo and subject to the same certification to several countries including for human consumption under their own programme.”

1.112. During the course of discussion on the statement the Minister further stated:

“We are not concerned with what is regarded in the United States or in any other part of the world. As I have already said before the House, so far as we are concerned, we consider ‘dhatura’ as poisonous material and for that purpose, all steps are being taken to see that it is cleaned properly before it is issued to the consumer.”

1.113. The Committee were informed that the agreements with the suppliers of milo provided that the stuff would be according to the selling country’s specifications. To a question whether the imported milo was found to be conforming to those specifications, the Secretary, Department of Food has replied:

“That is right, it was first of all certified by their inspectors before it left and on arrival, we found that while it conformed to that country’s specifications, it had a few grains of *dhatura*, which was not according to our specifications.”

1.114. The Committee enquired whether in view of the differences in the approach of U.S.A. and Indian scientist in regard to the deleterious effect of *dhatura* seeds any clarification had been issued by Government for the guidance of the consumers. The Secretary, Department of Food has stated in evidence: “It has been explained in Parliament by the Min-

ister. So far as we are concerned, we have issued instructions that it should be cleaned as far as possible, first of all mechanically, then by hand picking and finally we requested the house-wives also as a safeguard to see that it is removed before use."

1.115. Referring to the provisions of the Prevention of Food Adulteration Act, 1954, the Committee desired to know as to what would be the position if producers and sellers of wheat in India were found to be using dhatura seeds as adulterants. In this connection the Secretary, Department of Food has stated. "In my humble judgement, our laws should permit and say that this is the permissible limit. . . . I would like the law to make a provision for a permissible limit which has no harmful effect at all and that one should be a workable law. I personally feel we should make a provision."

1.116. In reply to a question the witness has explained: "To begin with, within the law that we have ourselves promulgated, we have taken all precautions; we have done everything possible to clean it by mechanical method, by hand-picking and as a matter of fact by way of further abundant caution requested the consumers at the housewives' level to see that it should not remain."

1.117. When asked about the amount of dhatura seeds which would render milo unfit for human consumption, it was stated during evidence that according to the present law there was no limit at all. The witness added that experts were looking into it as to what should be considered the same tolerance limit. In a note on the subject, the Department of Food have stated: "The Ministry of Health and Family Planning have sought the advice of the experts for laying down the safe tolerance limit for dhatura. Their recommendations are awaited."

1.118. According to the Encyclopaedia Britannica, Dhatura is considered to be one of the few weeds that are very poisonous. In 1964 the Central Drugs Research Institute, Lucknow, had stated that 660 dhatura seeds are fatal for children while 6600 seeds are fatal for adults. According to the Haffkine Institute, Bombay, however (1973), 30 seeds in one Kg. of flour constitute an effective toxic dose. The Committee note that the admixture of dhatura seeds in wheat purchased from the USA had been noticed from time to time since 1959 onwards. On receipt of such wheat with admixture of dhatura seeds the Department of Food is stated to have been taking up the question with the United States Department of Agriculture through the India Supply Mission, Washington with a view to find out an ultimate solution of the problem. In the telex sent by the India Sup-

ply Mission, Washington to the Food Secretary in March 1973, it has been stated:

"The problem of Dhatura admixture in foodgrains shipments from USA has arisen a number of times in the past. It arose in 1960 or earlier as also in 1963 and 1964. Agriculture Secretary recalled that problem of admixture of dhatura in milo imported from USA had arisen much earlier in fifties as well as when he was Food Secretary before. . . . In 1963 as well as 1964 extent of admixture per kilo was evidently much higher than now pointed out by you. . . . At our instance USDA officials have made fresh check of position and confirmed that there has not been contrary determination by them to this date.

1.119. The Committee have been told that the India Supply Mission, Washington, pursued the matter of supply of contaminated milo with the United States Department of Agriculture and the present position was that "the USDA is still conducting feeding trials to establish tolerance limits." The Committee would like the matter to be pursued vigorously.

1.120. The Committee cannot but express their most serious concern and deprecate the casual manner in which the Department of Food has been treating this matter which could prove to be fatal to millions of people in the country. If imports of foodgrains are inescapable, the Committee desire that the Government should ensure by all possible means that the imported foodgrains distributed to masses are free from all deleterious stuff such as dhatura seeds etc.

1.121. The Committee note that during December, 1972 to September 1973 the India Supply Mission, Washington purchased 14.40 lakh tonnes (costing about Rs. 94.22 crores) of milo (a kind of jowar) from Argentina and the U.S.A. A further quantity of 76,000 tonnes of milo was also purchased in October, 1973, making the total purchase of 15.16 lakh tonnes between December 1972 to October 1973. Out of the total quantity of milo received during this period the presence of dhatura seeds was noticed in a quantity of 7,22,236 tonnes of milo, that is about 50 per cent of the quantity imported. According to the Secretary, Department of Food and extent of dhatura seeds in the contaminated milo was normally about 1 to 5 seeds per Kg. In one shipment it was even of the order of about 15 seeds and in an odd case the incidence was as dangerously high as 45 seeds per Kg.

1.122. It was further stated that a major portion of the discharges of milo was in the ports of Maharashtra and Gujarat. The U.S. milo received at the Maharashtra and Gujarat ports happened to be contaminated. But, the quantity received in the other ports was very small. It has also

been stated that in the case of Argentina the entire supply of milo was contaminated with dhatura. In a written note furnished to the Committee, the Department of Food have intimated that the quantity of imported milo containing dhatura discharged at other Indian ports was 10,714 tonnes.

1.123. The Committee were given to understand that the purchase agreements entered into by the India Supply Mission with supplier countries stipulated that the milo would conform to the specifications of the exporting countries only. According to U.S. Grains Standards admixture of dhatura seeds in milo is considered only as foreign material and/or dockage depending on the size of the seeds. The presence of dhatura seeds in milo imported from these countries could not therefore be technically treated as a deleterious material so as to come under the mischief of the Prevention of Food Adulteration Act, 1954 and Rules made thereunder. According to the Ministry this created the anomalous situation whereby no legal action could be taken against the foreign suppliers even though the milo imported from those countries had considerable admixture of dhatura seeds which are considered to be poisonous and may be fatal if the number of seeds exceed a certain limit. The owner of the contaminated milo (in this case the Government of India) became liable to action under Section 5 of the Food Adulteration Act as soon as the consignments landed in India. It is unfortunate that we found ourselves in a situation where we could not insist upon the supplies being made according to the specifications acceptable to us. The predicament in which grains of second rate quality (Grade II) which were primarily used as cattlefeed in the USA had to be accepted arose primarily because of the low level of agricultural production in the country. The Committee are concerned that the Department of Food could not procure milo of a high grade or quality which would be pre-eminently suitable for human consumption and free from contamination.

1.124. A glaring flaw in the contracts entered into by the India Supply Mission, Washington was that there was no stipulation regarding pre-shipment quality control and inspection of food supplies by independent agencies. Both in the case of USA and Argentina complete reliance was placed on the certificates of quality issued by the official inspection agencies of US Government and the Argentina Grain Board respectively. It has been stated that in regard to pre-shipment inspection of the supplies India Supply Mission was addressed by the Department of Food "to see what they could do to improve the situation, both at the US as well as the Argentinian end. They had made requests to the Argentina Board and also the US Department of Agriculture. They could not do anything more than that". Such an explanation only confirms the Committee's apprehension that adequate attention was not given to the pre-shipment quality control of the food-grains imported from abroad. The Department of Food was only anxious to purchase whatever stuff could be had. When

food-grains worth crores of rupees were being purchased and the presence of dhatura seeds in these foodgrains was a known fact, it was only reasonable that the India Supply Mission should have taken steps with a view to ensure that the supplies shipped to India not only conformed to the specifications of the exporting countries but also conformed to "our own standards and the conditions in our country, whether it is poisonous or non-poisonous". This point was stressed by the Minister of Food & Agriculture in the Lok Sabha on the 7th March, 1973.

1.125. The Committee regret to observe that the Department of Food as also the India Supply Mission, Washington placed complete reliance on the paper certificates of quality issued by the Licensed Inspectors (they are not Government Inspectors and they are presumably paid by the sellers). The Committee fail to understand why the Department of Food did not consider it necessary to appoint their own inspectors for making pre-shipment inspection when there was no prohibition as such under the U.S. law which debarred the buyers from making their own pre-shipment inspection. The Committee consider this to be a serious lapse which might have endangered the health of the consumers of contaminated milo in India. It also put the country to huge financial losses.

1.126. The Committee have been informed that the India Supply Mission was able to get two suppliers of wheat to agree that if the USDA inspection at the time of shipment indicated presence of dhatura, the suppliers would indemnify the Mission to the extent of 25 cents per tonne towards the actual cost of cleaning in India. Although the two suppliers had offered to indemnify the Mission to the extent of 25 cents per tonne towards the actual cost of cleaning in India, the Department of Food did not pursue the matter to its logical conclusion on the assumption that the "offer to indemnify would only mean the supplier increasing the sale price of the grain in such a way that the incidence of cleaning would ultimately be borne by the importing country itself." The Committee deplore the casual manner in which the whole question was dealt with by the Department of Food. As matters stood, the Indian exchequer had to bear the cost of cleaning the dhatura contaminated milo that was discharged at the ports in Maharashtra and Gujarat.

1.127. In a statement made in the Lok Sabha on 2nd April, 1973, the Minister of Agriculture inter alia stated that the India Supply Mission had been asked to make the pre-shipment inspection more strict. This only indicates that necessary precautions were not taken earlier. The Committee consider this to be a serious lapse and require fixation of responsibility and appropriate action under advice to the Committee.

1.128. Even though it was a seller's market, the Committee are surprised that no tenders even on a limited basis were invited and the tran-

sactions were finalised on the basis of private negotiations without taking due precaution to ensure that the firms with which negotiations were undertaken were not in any way inter-locked.

1.129. The Committee have been informed that the milo contracts entered into by India Supply Mission with Argentina suppliers provided for supply of Argentina milo in accordance with the specifications of the Junta Nacional de Granos (Argentina Grain Board) whose certificates of quality the suppliers were required to furnish. In spite of this almost the entire consignment was found to be contaminated in one way or the other. These contracts further provided explicitly that the grain should be fit for human consumption. On the other hand, the milo contracts with U.S. suppliers provided for supply of U.S. Grade II yellow-grain sorghum conforming to U.S. Grains Standards. Asked to explain the reasons for omission of a stipulation that the supply must be fit for human consumption the Secretary, Deptt. of Food has stated: "I believe for the first time we made this purchase from Argentina. We wanted to be sure that this would be fit for human consumption. So far as USA's specification is concerned, it is meant for both (human and animal)". The Committee are unable to accept this explanation of the Secretary, Department of Food, which appears to them to be over simplification of facts. Keeping in view the performance of the American suppliers in the past (1960 onwards), the Committee would have thought that the Deptt. would have taken care to introduce a positive stipulation in the contracts entered into with the American suppliers that the foodgrains should be fit for human consumption.

1.130. From the note furnished by the Department of Food, it is seen that when the admixture of dhatura was noticed in the supplies of U.S. milo, the American suppliers started mentioning in the "document confirming the purchase" that the commodity is fit for human consumption. The Committee are of the view that such an action should have been taken earlier.

1.131. During evidence before the Committee it was made out that although the India Supply Mission could not do better because of the peculiar circumstances obtaining at that time, the Food Corporation of India and the Department of Food took all the precautions to ensure that the milo supplied to the consumers was free from dhatura seeds. The Committee are not satisfied that all possible precautions had been taken in time. In this connection, it is interesting to note that in a note furnished to the Committee, the Department of Food have stated that "It was within the sphere of responsibility of the FCI to ensure that the milo was



cleaned before it was issued." That this was not done is borne out by the fact that out of 7,22,236 tonnes of contaminated milo only a small quantity of 19,776 tonnes was got cleaned by the Food Corporation of India before despatch. The cleaning of the rest of the 7,02,460 tonnes of milo was therefore presumably done by the State Governments or by the consumers themselves. Further a series of instructions to State Governments for proper cleaning of milo are stated to have been issued both by the Department of Food and the Food Corporation of India but it cannot be said with certainty whether these instructions were actually implemented so as to ensure that the ultimate consumer got only dhatura-free milo. As a matter of fact, from the informations made available to the Committee, it is seen that the Food Corporation of India miserably failed to discharge its duties properly besides violating the Prevention of Food Adulteration Act. Complaints were received from the State Governments that the intimation regarding presence of dhatura seeds in particular shipments reached the State Governments after 10 to 12 days of the despatch of contaminated milo by Food Corporation of India. The FCI was required to stamp the bags containing milo with dhatura and where the milo was free from dhatura, they were to give a certificate that the supply was free from dhatura. It is because of FCI's failure to do this task of marking and issuing of certificates in a satisfactory manner, that the State Governments had to undertake cleaning of all the bags and this resulted in a considerable additional expenditure. The Committee recommend that complaints against the Food Corporation of India from the State Governments may be thoroughly investigated with a view to fixing individual responsibility under advice to the Committee|House.

1.132. The Committee further note that in June 1973 the Food Corporation of India gave up cleaning of milo and informed the Maharashtra Government that as henceforth the consumers, and not the State Governments, were to clean the grains, the Corporation would not bear the charges of cleaning thereafter. In July 1973, the Government of Maharashtra told the Government of India that the Food Corporation of India should continue to reimburse the cost of cleaning and/or certify stocks as free from contamination. The Committee would like to know what was the total amount reimbursed to each of the State Governments on account of cleaning charges incurred by them. The extra expenditure incurred by the State Governments on cleaning due to late issue of Food Corporation advices about the absence of dhatura seeds from particular consignments may also be worked out and indicated and the responsibility for this lapse fixed under intimation to the Committee.

1.133. The Committee would also like to be apprised of the final position regarding the disposal of milo refractions accumulated as a result of cleaning.

1.134. From the foregoing paragraphs the Committee get an impression that all that was necessary and which could have been done was not done to safeguard the interest of the consumers. As for the future the Committee stress that the Department of Food should take necessary steps to streamline its machinery for procurement as well as distribution so that the history of contaminated milo supply is not repeated again.

1.135. The Committee would particularly like to emphasise that urgent attention be paid to the devising of better mechanical devices for cleaning of contaminated milo. The proposal regarding issue of milo only in the form of flour also needs to be carefully examined.

1.136. The Committee have been told that the total expenditure incurred by the Food Corporation of India on cleaning milo in which presence of dhatura was noticed was Rs. 3,09,094. Information relating to the expenditure on such cleaning incurred by the State Governments has not been furnished. This may be done without further delay.

1.137. The Committee note that the Minister of Agriculture categorically stated and assured on the Floor of the Lok Sabha on 2nd April 1973 in reply to Call Attention Motion that "having regard to the presence of dhatura seeds noticed in some consignments of milo, Government have since decided to stop any further purchase of milo." In spite of that import of milo went unabated till January 1975. Since it was stated on the floor of the House that milo will not be imported hereafter, the decision taken by the Government to import the milo even thereafter should have been conveyed to the House in a formal manner.

1.138. The Committee have been informed that a High-level Purchase Team headed by the former Secretary (Shri Behl) went from New Delhi to USA for the purchase of foodgrains. The Committee desired to have relevant papers relating to (i) the visit of this High-Level Purchase Team; (ii) the purchase of milo without calling of global tenders; and (iii) selection of suppliers operating in the marketing for purchase of wheat and milo in the last two years in America. The Committee regret that despite a specific request to this effect, the Department of Food did not make available the relevant papers for inspection by the Committee. The papers referred to in (ii) above have been refused on the ground that it would be prejudicial to the safety and interest of the State.

NEW DELHI;  
April, 1975/Vaisakha 1897 (S).

JYOTIRMOY BOSU,  
Chairman,  
Public Accounts Committee.

(APPENDIX 1)

(See para 1.98)

*Copy of the advice furnished by the Legal Adviser of ISM Washington*

**BAKER, NELSON & WILLIAMS**

Counsellors at Law  
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New York, N.Y. 10005

May 1, 1973

Mr. S. Banerji,  
Director General,  
India Supply Mission,  
2536 Massachusetts Avenue,  
Washington, D.C. 20008

Dear Sir:

You have requested our advice as to the standards which may govern the quality of sorghum which was purchased through your offices for export to India from United States ports, and which was found to contain datura, commonly called jimson seed, upon its arrival in India. You have also inquired whether the Government has any remedies arising from the delivery of this sorghum.

An examination of the contracts in question reveals that the grain was described as "U.S. No. 2 or Better Yellow Grain Sorghum". Paragraph 10 of these contracts provides that the quality and condition of the grain must be in accordance with the "Official Grain Standards of the United States", which compliance is to be proven in accordance with paragraph 17(iii) by production of a certificate of a licensed inspector showing the grade and certifying that the grade was determined in accordance with the Official Grain Standards. The certificate must also show, among other things, the percentage of "broken kernels, foreign materials and other grains" contained in the product. Paragraph 15 of the contracts provides that construction and performance thereof shall be governed by the laws of the State of New York.

Standards for grain are contained in the United States Grain Standards Act (7 U.S.C. § 71, 74—79, 84—87 and 87a—87h) which prohibits *inter*

*alia*, the exportation of grain from the United States in violation of standards prescribed under the Act (7 US. § 77). This Act further provides that any grain which is described as being of a designated official grade, such as the description contained in your contracts, must comply with the Official Grain Standards of the United States. These Standards presently require the following for U.S. No. 2 Yellow Grain Sorghum:

1. "The Class Yellow Grain Sorghum shall be grain sorghum with yellow salmon-pink or red seed coats which contains not more than 10.0 per cent of grains sorghum of other colors." [Official Grain Standards § 26.551 (b) (1)];
2. A minimum test weight per bushel of 55.0 pounds must show no more than 14.0 per cent moisture, 5.0 per cent damaged kernels including 0.5 per cent heat damaged kernels and 8.0 per cent "broken kernels, foreign materials and other grains". [Official Grain Standards § 26.553 (a)];
3. In addition to the foregoing standards, the grain must not contain stones, be musty, or sour, or heating, must not be badly weathered, must not contain any commercially objectionable foreign odor except of smus, and must not otherwise be "of distinctly low quality".

The term "distinctly low quality" is defined in the grain sorghum Standards as including "grain which contains more than two crotalaria seeds in 1,000 grams of grain". Aside from this definition, the standards are not specific.

The Grain Division, Consumer and Marketing Service, U.S. Department of Agriculture, has published more specific standards for wheat which contain stipulations similar to those applicable to sorghum, but in addition include a provision that numbered United States grades may not contain any "commonly recognized harmful or toxic substance(s)".

We have been advised in conversations with Grain Division officials that the inclusion of "commonly recognized harmful or toxic substances" in the wheat standards was intended to prohibit the practice of a number of wheat farmers who were adding treated wheat which contained rock salt, mercury from fertilizer and other foreign substances to untreated wheat. These officials indicated that it is these substances which the quoted provision of the wheat standards is intended to regulate. Further, at the time this provision was added, which we understand was approximately eight years ago, it was found that the presence of crotalaria seeds in wheat and other grains was sufficiently widespread to justify regulations prohibiting the use of numbered grades which contained more than two such seeds in 1,000 grams of grain. The crotalaria seed provisions was added to

official grain standards covering all grains, but the provisions relating to "commonly recognised harmful or toxic substances", was applied only to wheat. This selective application would appear to indicate that standards for sorghum are not as high as those for wheat and that they do not prescribe the presence of all harmful or toxic substances. We further understand that, as a result of consultation between the India Supply Mission and the U.S. Department of Agriculture, proposals are presently being considered to amend standards for grain sorghum and other grains by adopting the wheat standards and establishing limitations on the content of harmful or toxic substances in grain depending upon the use for which the grain is intended. This, too, would suggest that such standards did not exist before and do not exist now and that the phrase "distinctly low quality" does not apply in all cases in which toxic substances are found to be present. Based upon the foregoing, we are of the opinion that present grain standards do not prohibit the presence of all harmful or toxic substances in grain sorghum and that these standards would be violated only if such substances were present in such amounts as to make the grain of "distinctly low quality", the determination of which would be a question of fact. The fact that the grain was not found to be "of distinctly low quality" in certificates issued by grain inspectors would not be conclusive of this issue, but would make it difficult to prove otherwise.

Assuming no violation of the Grain Standards Act, an inquiry into compliance with provisions of the Federal Food, Drug and Cosmetic Act is required ("Food and Drug Act") (21 U.S.C. §§ 301—392).

Section 331 of the Food and Drug Act prohibits the introduction or delivery for introduction into interstate commerce of any food that is adulterated or misbranded. We are of the opinion that shipment of grain to India constitutes "interstate commerce" within the meaning of the Act [21 U.S.C. § 321 (b); *230 Boxes, More or Less, of Fish v. U.S.* 168 Fed. 2d 361 (Mich. CCA 1948)] *The 230 Boxes* case decided that the importation of food from Canada into the United States was within "interstate commerce", citing Section 321, which provides that interstate commerce means commerce between any state or Territory and any place outside thereof. The Court held that "any place outside thereof" includes foreign countries.

It seems to us that the grain sorghum, which is the subject of the contracts described above, constitutes "food" within the meaning of the Act, since Section 321 (a) (f) provides that "food" includes articles used for food or drink for man or animal and articles used as components thereof. An informal ruling by the Food and Drug Administration dated May 7, 1940 indicated that raw sugar which had yet to be refined, was not

"food" within the meaning of the Act, because it contains certain impurities which can only be removed by the refining process, but we are of the opinion that this position may well be distinguished from the facts of this case and that in any event the issue would be governed by a number of more recent which make it clear that material which has yet to be processed in order to remove certain impurities may still be considered "food". In *U.S. v. O.F. Bayer and Co.*, 188 Fed 2d 555 (2nd Cir. 1951) the court held:

"It is . . . common knowledge that green coffee beans are used to produce . . . roasted coffee beans. Hence, no evidence is necessary to establish that green coffee beans are a 'food', as defined by the statute. Whether or not they are edible before being roasted, they are certainly 'components' of an article used for 'food'. Hence they fulfill the statutory definition of 'food'. Nor is it material that a further process, 'roasting', is necessary before they are intended for human consumption. A 'food' does not have to be ready to eat or drink before it can be adulterated and subject to condemnation."

Other court cases have also so ruled. (See *U.S. v. 52 Drums of Maple Syrup*, 100 Fed 2d 914 (2d cir. 1940), and *U.S. v. Five hundred (500) Bags, Etc.*, 97 Fed. Supp, 790. aff'd *Otis McAllister and Co., Inc. v. U.S.* 194 Fed. 2d 388 (5th cir. 1952).

There are different rules applying to food that contains substances which have been added to it where the addition could have been avoided, where substances have been unavoidably added, and where substances have not been added, but have always been present in the food. We are of the opinion that the jimson seed which was found to be present in grain sorgam shipped to India is not a "food additive" since the Food and Drug Act would appear to require an intention to add a substance to a food during processing in order for such substance to be designated a "food additive". It would, therefore, appear that the jimson seed falls into the third category described above in that it is a substance which was harvested with the grain and never removed.

Under these circumstances, a violation of the Act would be found only if the food were "adulterated" within the meaning of those provisions of § 342 which provides as follows:

"A food shall be deemed to be adulterated:

"(a) (i) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such food

shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health."

*There would appear to be no question that jimson seed is a poisonous or deleterious substance.* (John. M. Kingsoury *Eotsonour plants of the United States and Canada* [Prentiss Hall: 'B' Englewood Oliffe, New Jersey 1964] (pp. 280-282)). The Kingebury work citing Mitchell, J. E. and F.N. Mitchell, "Jimson Weed (*Datura* 1955, stramonium) Poisoning in Childhood", *J. Fediatrics* 47: 227 (1955), states that on the basis of the toxicity of pure atropine, about four to five grams of the crude leaf or seed of the jimson seed plant "approximates the fatal dose in a child". A violation of this section would therefore, depend upon a finding that the substance was present in such amounts as would "ordinarily render it injurious to health". This is a question of fact which would have to be answered by competent experts.

Assuming the grain is proven to be adulterated by application of the rules described above, a violation of the Food and Drug Act may be established not to have taken place if the following three elements are proven:

1. The food "accords to the specification of the foreign purchaser";
2. The food "is not in conflict with the laws of the country to which it is intended for export"; and
3. The food "is labelled on the outside of the shipping package to show that it is intended for export." [21 U.S.C. § 381 (d)].

As indicated above, the specifications called for in the contracts were that the grain be in accordance with the Official Grain Standards of the United States. To reiterate, whether the grain was in accordance with these standards is a question of fact which would depend upon whether it is found to be of "distinctly low quality". The second element requires an inquiry into the laws of India in order to determine whether grain sorghum containing jimson seed violates Indian Law. If it does, this export exception to the Food and Drug Act prohibition against shipment of adulterated food would not be applicable, but if Indian law is not violated, the exception would apply if the other elements described above are present.

The Prevention of Food Adulteration Act of 1954 has been supplied to us as the statute currently in force with respect to this subject in India. Basically, that Act prohibits the importation into India of any "adulterated food". The definition of "adulterated" is broader than that found in the

Food and Drug Act in that it provides that an article of food "shall be deemed to be adulterated. . . . (h) if the article contains any poisonous or other ingredients which render it injurious to health". As indicated above, the Food and Drug Act deems food to be adulterated only if the quantity of any poisonous or other deleterious substance which is not a "food additive" *ordinarily* renders it injurious to health.

The Prevention of Food Adulteration Act refers only to any article used as food or drink for human consumption or which "ordinarily enters into, or is used in the composition or preparation of human food. . . ." [ § 2(v)]. Therefore, food which is "adulterated" within the meaning of The Food and Drug Act would be "adulterated" within the meaning of the Prevention of Food Adulteration Act only if it were intended for human consumption. You have informed us that there is ample evidence to prove that the sorghum in question was intended by both the Government and the suppliers to be used for human consumption so that this matter would not present any difficulty. Under these circumstances, if the grain sorghum in question can be proven to be "adulterated" within the meaning of the Food and Drug Act, it would also be adulterated for purposes of Indian law. Accordingly, the shipment of such grain would not fall within the export exception stated in Section 381(d) and its introduction into interstate commerce would be in violation of the Food and Drug Act.

There is authority for the view that even though an article of food contains deleterious matter prohibited by the law of the country to which it is exported, the export exception may still apply if the purchaser in the foreign country could have removed such deleterious material before using the product in order to bring its use into compliance with local law [U.S. v. *Catz American Co.*, 53 F. 2d 425 (9th Cir. 1931)]. Although the opinion does not make it clear, the foreign statute at issue in the *Catz American* case appeared to prohibit only the use of certain impure materials in food while The Prevention of Food Adulteration Act prohibits the use ( § 7) as well as the importation of such food ( § 5). On this ground alone this case is distinguishable, and it is our opinion that *Catz American* would not control the situation you have described to us.

You have also posed the question of what steps, if any, the Government can take against the suppliers. In this connection it is important to remember that the same type of grain has been purchased by the Government and sold by the same suppliers for human consumption over a period of almost twenty years. On several occasions it was brought to the attention of the U.S. Department of Agriculture by the India Supply Mission at the request of the Food Department of India that there was a small



amount of jimson seed present in the sorghum. However, the Department of Agriculture was evidently unimpressed and did not change its standards. Correspondence evidencing these communications is very likely known to the suppliers or would become known to them if they inquire. In these past occasions, the failure of the Department to act on the India Supply Mission's request also suggests that there was compliance with the standards set by the Department.

The legal question raised by prior performance is whether the Government's acceptance of shipments in the past constitutes a waiver of any rights it might now have to object to the deliveries in question. Generally, a party to a contract who has repeatedly waived a condition contained in that contract may not later assert his rights under similar conditions if his waiver in the past had justifiably led the other party to the contract to rely on such waiver in performing his obligation.

We have indicated that the contracts are governed by the laws of New York. Accordingly, pursuant to Section 2—315 of the Uniform Commercial Code the suppliers may be found to have warranted that the goods would be fit for human consumption. This assumes once again that both parties fully understood that the grain would be used for this purpose. Section 2—316(3) (c) provides that such a warranty can be excluded from a contract or modified by a prior course of dealing between the parties. As applied to the facts of this case, the prior acceptance of grain containing jimson probably constitutes a waiver of any right to object to shipments containing a small amount of jimson seed, but we do not believe that any waiver would be found to exist in the case of shipments containing an extraordinarily large amount. Further more, this doctrine would appear to be inapplicable where a party has violated a criminal statute and where the aggrieved party is seeking to enforce a private remedy accorded to him under that statute. [See *De Pasquale v. Williams-Bauer Company* 151 Fed 2d 578. (2nd Cir. 1945)]. We are of the opinion that the reasoning of the *De Pasquale* case would likely apply to the present facts if it can be shown that the suppliers violated either the Food and Drug Act or the Grain Standards Act and if it can also be shown that the Government is entitled to private relief based upon such violations. This question is considered below.

The question of remedies depends in part upon which statute, if either, has been violated. If the grain was of such low quality that the Grain Standards Act was violated, a breach of contract would exist since the contract expressly provides that quality must conform with the Grain Standards Act. Under these circumstances, a proper measure of damages

would include the cost of cleaning the grain or an amount equal to the difference between its value and its replacement cost, whichever is less, together with damages, if any, which naturally flowed from the breach. On the other hand, if neither statute was violated, we are of the opinion that the Government would be entitled to no relief inasmuch as the contract provided only that the Grain Standards Act would govern quality and prior shipments containing a small amount of jimson seed had been accepted in the past. The question is therefore whether any relief is available if it is established that the grain was of high enough quality to conform with the standards of the Grain Standards Act but was nevertheless ordinarily injurious to health so that it was "adulterated" within the meaning of the Food and Drug Act.

In this last situation, we believe that the Government could recover damages for past shipments only if a breach of contract or breach of warranty could be established. The Food and Drug Act itself provides for certain sanctions for introduction of adulterated food into interstate commerce, but these sanctions, including seizure and condemnation of the adulterated food, injunction against future shipments and criminal penalties, are remedies which could be sought only by and in the name of the United States (21 USC § 337). The Food and Drug Act does not provide for any private remedy and consequently, damages would not be recoverable by the Government in proceedings instituted under that Act. [*Newman v. Piggie Park Enterprise*, 390 US. 400 (1968)]; Furthermore, as the United States is the only party authorized to bring proceedings under the Food and Drug Act, any application for injunctive relief would depend upon the Government's success in persuading the United States Justice Department to seek such relief.

We understand that the suppliers have now taken steps to clean the grain prior to the shipment of those quantities which remain to be shipped under the contract. Although these efforts would not preclude the Justice Department from seeking an injunction, we believe it would discourage it from doing so. As to imposing penalties for past shipments, we believe that only criminal penalties including fine and imprisonment are applicable but that these would not be sought in the absence of proof beyond a reasonable doubt that the suppliers, either through criminal negligence or with wilful criminal intent, had shipped adulterated food. We have been informed of no facts which indicate such an intention.

There is authority in a number of United States cases for the proposition that a contract shall be deemed to include all laws which exist at the time and place of contracting as though such laws were expressly referred to and incorporated therein [*Von Hoffman v. City of Quincy*, 71 U.S. 535 (1866)]. [*Northern Pacific Railway Company v. Wall*, 241 U.S. 87

(1916)]. While the statement of the rule contained in many cases, as applied to the facts of this case, would appear to indicate that the violation of the Food and Drug Act also constitutes a breach of contract, we do not believe that the rule would properly be so applied. The preponderance of the authorities indicates that the rule has been much qualified so that it probably means today only that existing laws will be used to interpret the intention of the parties but will not supersede a contrary intention which otherwise appears. [*The Travelers Indemnity Company v. National State Bank of New Jersey*, 328 Fed. Supp. 208 (D. N. J. 1971); 3 Corbin, *Contracts* § 551 (1960); 4 Williston, *Contracts* § 615 (3d Ed. 1961); see also *Northern Pacific Railway Company v. Wall, Supra*; *Rehart v. Clark* 448 Fed. 2nd 170 Fed. (9th Cir. 1971)].

If the existing laws, including the Food and Drug Act, may be used only to interpret the intention of the parties, it is doubtful whether the suppliers would be found to have violated the contract by shipping grain which complied with the Grain Standards Act but which violated the Food and Drug Act. The parties expressly stipulated that quality would be governed by the Grain Standards Act, and to assert that the contract should be interpreted to mean a higher standard than that which was bargained for would, in our opinion, be unsuccessful.

It is possible that an entire contract, even though valid on its face, may nevertheless be judged void and unenforceable if performance of it constitutes a violation of law [15 Williston *Contracts* § 1761, p. 196 (3d Ed. 1972)]. The theory of law which applies in such a case is that the courts will not enforce an illegal bargain.

We are of the opinion that the facts as described to us would not justify a holding that the contracts should be judged void and unenforceable. The rule is generally applied only where there is proof of some degree of moral turpitude and criminal intent, neither of which is evident here [See *McConnell v. Commonwealth Pictures*, 1 N. Y. 2nd 465 (1969)]. In the absence of such proof the courts are generally willing to leave the parties to their contractual remedies and not to invalidate the entire contract. An English court has described such considerations as follows:—

“Caution in this respect is I think especially necessary in these times when so much of commercial life is governed by regulations of one sort or another which may easily be broken without wicked intent . . . . (Commercial men who have unwittingly offended against one of the multiplicity of regula-

tions may nevertheless feel that they have not thereby forfeited all rights to justice.”

[*St. John Shipping Corporation v. Joseph Rank Ltd.*, (1957 1 Q.B. 267, 288, 289)].

Short of establishing breach of the entire contract, it only remains to consider the Government's remedies for breach of warranty. We have indicated above that an implied warranty that the grain was fit for human consumption was made by the suppliers assuming, as we do, that they were aware of the use to which the grain was to be put. We have also indicated that the warranty may have been waived by the Government to the extent that shipments containing similar amounts of jimson seed were accepted in the past. However, where any shipment has contained an unusually high amount of the substance which renders it unfit for human consumption, we believe damages for such shipment as described above could be recovered by the Government. In the absence of standards defining what is fit for human consumption, this fact would require proof by competent experts.

In summary, it is our opinion that, based upon the facts described to us, the Government's practical remedies in this case depend upon its ability to establish that (1) the grain was of such "distinctly low quality" as constituted a violation of the Grain Standards Act or (2) *particular shipments contained such an unusually high amount of jimson seed as rendered it unfit for human consumption*. We believe that proof of the former would be most difficult in view of legal impediments such as the prior dealings of the parties, the absence of specific standards, and the clearance given all of the shipments by a licensed grain inspector. *As to the latter, we believe legal proceedings might be feasible if the facts can be proven as we have described.*

Very truly yours

Sd/- O. Taft-Nelson.

**APPENDIX II**  
(See para 1.99)

*List of suppliers of U.S. foodgrains*

1. Bunge Corporation, New York.
2. Cargill Inc., Minnesota and Portland.
3. Continental Grain Co., New York.
4. Cook Industries Inc., Memphis and Portland.
5. Farmers Export Co., Kansas City.
6. Garnac Grain Co., New York.
7. Good Pasture Inc., Houston.
8. Louis Dreyfus Corp., New York.
9. Mitsui and Co., New York and Portland.
10. Nichimen and Co., New York and Portland.
11. North Pacific Grain Growers, Portland.
12. Peavy Co., Minneapolis.
13. Producers Grain Corp., Texas.
14. Toshoku Ltd., New York.
15. Toyomenka Inc., New York.
16. United Grain Corp., Portland.
17. Union Equity Cooperative Exchange, Oklahoma.
18. Mitsubishi, New York.
19. Koppel Bulk Terminal, California.
20. Marubeni America Corp., New York.
21. ADM Grain Co., Illinois.
22. Tradax Geneva Sa., Switzerland. (Subsidiary of Cargill).

### **APPENDIX III**

(See para 1.99)

#### *List of suppliers of Argentina foodgrains*

1. La Plata Cereal Co. S.A. Buenos Aire, Argentina.
2. Tradex Geneva Sa. Geneva, Switzerland (represented by Cargill on our list).
3. Warinco A.G. Zurich, Switzerland (represented by Bunge Corp.)
4. Nidera Handels Compagine B. V. Rotterdam.
5. Finnagrain Compagine Commerciale Agricole et Financiers S. A. Geneva, Switzerland (represented by Continental Grain on our US list).
6. Andre and CIE S. A. Lausanne, Switzerland (represented by Garnac Grain on our US list).
7. Cargill Inc., Minnesota, Minneapolis (on our US list).

## APPENDIX IV

(See para 1.100)

*Statement of purchase of Foodgrains suppliers-wise from December, 1972 to January, 1975*

Name of Suppliers	April-72—March-73		April 73—March 74	
	Wheat	Sorghum	Wheat	Sorghum
<i>USA</i>				
Continental Grain Co. . . . .	..	35,000	25,000	140,000
Cook Industries Inc. . . . .	134,000	65,000	150,000	150,000
Koppel Bulk . . . . .	..	80,000	..	..
Producers Grain Corp. . . . .	..	141,000	25,000	50,000
Louis Dreyfus Corp. . . . .	131,693	50,000	25,000	70,000
Cargill Inc. . . . .	128,000	100,000	106,000	30,000
Garnac Grain Co., Inc. . . . .	25,000	..	..	.
North Pacific Grain Growers . . . . .	5,000	..	..	.
Union Equity Coop. Exch. . . . .	..	..	570,800	.
Goodpasture . . . . .	..	..	245,000	20,000
ADM Grain . . . . .	..	..	67,000	..
Bunge Corp. . . . .	..	..	50,000	..
(Cargill) Gradax Overseas Geneva . . . . .	..	..	30,000	25,000
United Grain Corp. . . . .	..	..	30,000	.
Marubeni America Corp. . . . .	..	..	20,000	50,000
Mitsubishi Intl. Corp. . . . .	..	..	..	..
Mitsui & Co. (USA) Inc. . . . .	..	..	..	..
Total :	423,693	471,000	1,343,800	535,000
<i>CANADA</i>				
Cargill Inc. . . . .	20,500	..	..	..
Canadian Wheat Board. . . . .	400,000	..	150,000	..
Total :	420,500	..	150,000	..

1	2	3	4	5
<i>ARGENTINA</i>				
Socef (C/O L. D. Corp.) . . . . .	..	16,000	..	..
Tradex (C/O Cargill) . . . . .	50,000	5,000	..	..
Warinco (C/O Bunge Corp.) . . . . .	..	100,000	..	150,000
Nidera . . . . .	..	25,000	..	50,000
(C/O Continental) Finnagrain . . . . .	..	25,000	..	100,000
Cargill Inc. . . . .	92,000	..	..	..
La Plata Cereal . . . . .	50,000	..	..	..
Andre Cie (C/O Garnac Grain) . . . . .	..	..	..	15,000
Mitsubishi Intl. Corp. . . . .	..	..	..	..
Junta Nacional de Granos . . . . .	..	..	..	..
Total :	192,000	171,000	..	315,000
GRAND TOTAL :	1,036,193	642,000	1,493,800	850,000

Name of Suppliers	April 74-75		YEAR-WISE TOTAL GRAIN			
	Wheat	Sorghum	1972-73	1973-74	1974-75	G. Total
<i>USA</i>						
Continental Grain Co.	781,000	..	35,000	165,000	781,000	981,000
Cook Industries Inc.	770,000	..	199,000	300,000	770,000	1,269,000
Koppel Bulk . . . . .	73,000	..	80,000	..	73,000	153,000
Producers Grain Corp.	..	..	141,000	75,000	..	216,000
Louis Dreyfus Corp.	680,000	..	181,693	95,000	680,000	956,693
Cargill Inc. . . . .	845,000	..	228,000	136,000	845,000	1,209,000
Garnac Grain Co., Inc.	433,000	..	25,000	..	433,000	458,000
North Pacific Grain Growers	..	..	5,000	..	..	5,000
Union Equity Coop. Exch.	25,000	..	..	570,800	25,000	596,800



	1	2	3	4	5	6
Goodpasture . . .	25,000	..	..	265,000	25,000	290,000
ADM Grain . . .	..	..	..	67,000	..	67,000
Bunge Corp. (Cargill) Tradax . . .	2,90,000	..	..	50,000	290,000	340,000
Overseas Geneva . . .	..	..	..	55,000	..	55,000
United Grain Corp. . . . .	1,05,000	..	..	30,000	105,000	135,000
Marubeni America Corp. . . . .	75,000	..	..	70,000	75,000	145,000
Mitsubishi Int. I. Corp. . . . .	50,000	..	..	..	50,000	50,000
Mitsui & Co. (USA) Inc. . . . .	1,75,000	..	..	..	175,000	175,000
Total :	4,327,000		894,693	1,878,800	4,327,000	7,100,493
<i>CANADA</i>						
Cargill Inc. . . . .	80,000	..	20,500	..	80,000	100,500
Canadian Wheat Board. . . . .	440,000	..	400,000	150,000	440,000	990,000
Total :	520,000		420,500	150,000	520,000	1,090,000
<i>ARGENTINA</i>						
Socef (C/O L. D. Corp) . . . . .	..	..	16,000	..	..	17,000
Tradax (C/O Cargill) . . . . .	..	..	55,000	..	..	55,000
Warinco (C/O Bunge Corp) . . . . .	..	200,000	100,000	150,000	200,000	450,000
Nidera . . . . .	..	..	25,000	50,000	..	75,000
(C/O Continental) Finnagrain . . . . .	..	..	25,000	100,000	..	135,000
Cargill Inc. . . . .	..	..	92,000	..	..	92,000
Lapalata Cereal . . . . .	..	..	50,000	..	..	50,000
Andre Cie (C/O Garnac Grain) . . . . .	..	..	..	15,000	..	15,000
Mitsubishi Int' I. Corp. . . . .	..	200,000	..	..	200,000	200,000
Junta Nacional de Granos . . . . .	250,000	29,526	..	..	279,526	279,526
Total :	250,000	429,526	363,000	315,000	679,526	1,357,526
<b>GRAND TOTAL :</b>	<b>5,097,000</b>	<b>429,526</b>	<b>1,678,193</b>	<b>2,343,800</b>	<b>5,526,526</b>	<b>9,548,519</b>

## APPENDIX V

*Summary of main conclusions/Recommendations*

Sl. No.	Para No.	Ministry Deptt. concerned	Conclusions/ Recommendations
1	2	3	4
1	1. 118	Food	<p>According to the Encyclopaedia Britannica, Dhatura is considered to be one of the few weeds that are very poisonous. In 1964 the Central Drugs Research Institute, Lucknow, had stated that 660 dhatura seeds are fatal for children while 6600 seeds are fatal for adults. According to the Haffkine Institute, Bombay, however, (1973), 30 seeds in one Kg. of flour constitute an effective toxic dose. The Committee note that the admixture of dhatura seeds in wheat purchased from the USA had been noticed from time to time since 1959 onwards. On receipt of such wheat with admixture of dhatura seeds the Department of Food is stated to have been taking up the question with the United States Department of Agriculture through the India Supply Mission, Washington with a view to find out an ultimate solution of the problem. In the telax sent by the India Supply Mission, Washington to the Food Secretary in March 1973, it has been stated:</p> <p style="text-align: center;">“The problem of Dhatura admixture in foodgrains shipments from USA has arisen a number of times in the past. It arose in 1960</p>

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or earlier as also in 1963 and 1964. Agriculture Secretary recalled that problem of admixture of dhatura in milo imported from USA had arisen much earlier in fifties as well as when he was Food Secretary before. . . . In 1963 as well as 1964 extent of admixture per kilo was evidently much higher than now pointed out by you. . . . At our instance USDA officials have made fresh check of position and confirmed that there has not been contrary determination by them to this date.

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I.119

Food

The Committee have been told that the India Supply Mission, Washington, pursued the matter of supply of contaminated milo with the United States Department of Agriculture and the present position was that "the USDA is still conducting feeding trials to establish tolerance limits." The Committee would like the matter to be pursued vigorously.

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I.120

Do.

The Committee cannot but express their most serious concern and deprecate the casual manner in which the Department of Food has been treating this matter which could prove to be fatal to millions of people in the country. If imports of foodgrains are inescapable, the Committee desire that the Government should ensure by all possible means that the imported foodgrains distributed to masses are free from all deleterious stuff such as dhatura seeds etc.

- 4            I . 121            Do.            The Committee note that during December, 1972 to September 1973 the India Supply Mission, Washington purchased 14.40 lakh tonnes (costing about Rs. 94.22 crores) of milo (a kind of jowar) from Argentina and the U.S.A. A further quantity of 76,000 tonnes of milo was also purchased in October, 1973, making the total purchase of 15.16 lakh tonnes between December 1972 to October 1973. Out of the total quantity of milo received during this period the presence of dhatura seeds was noticed in a quantity of 7,22,236 tonnes of milo, that is about 50 per cent of the quantity imported. According to the Secretary, Department of Food an extent of dhatura seeds in the contaminated milo was normally about 1 to 5 seeds per Kg. In one shipment it was even of the order of about 15 seeds and in an odd case the incidence was as dangerously high as 45 seeds per Kg.
- 5            I . 122            Do.            It was further stated that a major portion of the discharges of milo was in the ports of Maharashtra and Gujarat. The U.S. milo received at the Maharashtra and Gujarat ports happend to be contaminated. But, the quantity received in the other ports was very small. It has also been stated that in the case of Argentina the entire supply of milo was contaminated with dhatura. In a written note furnished to the Committee, the Department of Food have intimated that the quantity of imported milo containing dhatura discharge at other Indian ports was 10,714 tonnes.
- 6            I . 123            Do.            The Committee were given to understand that the purchase agreements entered into by the India Supply Mission with supplier countries stipulated that the milo would conform to the specifications of the exporting countries only. According to U.S. Grains Standards admixture of dhatura seeds in milo is considered only as foreign material and or dockage depending on

the size of the seeds. The presence of dhatura seeds in milo imported from these countries could not therefore be technically treated as a deleterious material so as to come under the mischief of the Prevention of Food Adulteration Act, 1954 and Rules made thereunder. According to the Ministry this created the anomalous situation whereby no legal action could be taken against the foreign suppliers even though the milo imported from those countries had considerable admixture of dhatura seeds which are considered to be poisonous and may be fatal if the number of seeds exceed a certain limit. The owner of the contaminated milo (in this case the Government of India) became liable to action under Section 5 of the Food Adulteration Act as soon as the consignments landed in India. It is unfortunate that we found ourselves in a situation where we could not insist upon the supplies being made according to the specifications acceptable to us. The predicament in which grains of second rate quality (Grade II) which were primarily used as cattlefeed in the USA had to be accepted arose primarily because of the low level of agricultural production in the country. The Committee are concerned that the Department of Food could not procure milo of a high grade or quality which would be pre-eminently suitable for human consumption and free from contamination.

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A glaring flaw in the contracts entered into by the India Supply Mission, Washington was that there was no stipulation regarding pre-shipment quality control and inspection of food supplies by independent agencies. Both in the case of USA and Argentina complete

reliance was placed on the certificates of quality issued by the official inspection agencies of US Government and the Argentina Grain Board respectively. It has been stated that in regard to pre-shipment inspection of the supplies India Supply Mission was addressed by the Department of Food "to see what they could do to improve the situation, both at the US as well as the Argentinian end. They had made requests to the Argentina Board and also the US Department of Agriculture. They could not do anything more than that." Such an explanation only confirms the Committee's apprehension that adequate attention was not given to the pre-shipment quality control of the food-grains imported from abroad. The Department of Food was only anxious to purchase whether stuff could be had. When food-grains worth crores of rupees were being purchased and the presence of dhatura seeds in these foodgrains was a known fact, it was only reasonable that the India Supply Mission should have taken steps with a view to ensure that the supplies shipped to India not only conformed to the specifications of the exporting countries but also conformed to "our own standards and the conditions in our country, whether it is poisonous or non-poisonous". This point was stressed by the Minister of Food & Agriculture in the Lok Sabha on the 7th March, 1973.

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I.125

Do.

The Committee regret to observe that the Department of Food as also the India Supply Mission, Washington placed complete reliance on the paper certificates of quality issued by the Licensed Inspectors (they are not Government Inspectors and they are presumably paid by the sellers). The Committee fail to understand why the Department of Food did not consider if necessary to appoint their own inspectors for making pre-shipment ins-

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pection when there was no prohibition as such under the U.S. law which debarred the buyers from making their own pre-shipment inspection. The Committee consider this to be a serious lapse which might have endangered the health of the consumers of contaminated milo in India. It also put the country to huge financial losses.

9. I. 26 Food

The Committee have been informed that the India Supply Mission was able to get two suppliers of wheat to agree that if the U.S.D.A. inspection at the time of shipment indicated presence of dhatura, the suppliers would indemnify the Mission to the extent of 25 cents per tonne towards the actual cost of cleaning in India. Although the two suppliers had offered to indemnify the Mission to the extent of 25 cents per tonne towards the actual cost of cleaning in India, the Department of Food did not pursue the matter to its logical conclusion on the assumption that the "offer to indemnify would only mean the supplier increasing the sale price of the grain in such a way that the incidence of cleaning would ultimately be borne by the importing country itself." The Committee deplore the casual manner in which the whole question was dealt with by the Department of Food. As matters stood, the India exchequer had to bear the cost of cleaning the dhatura contaminated milo that was discharged at the ports in Maharashtra and Gujarat.

10. I. 127 Food

In a statement made in the Lok Sabha on 2nd April, 1973 the Minister of Agriculture *inter alia* stated that the India Supply Mission had been

asked to make the pre-shipment inspection more strict. This only indicates that necessary precautions were not taken earlier. The Committee consider this to be a serious lapse and require fixation of responsibility and appropriate action under advice to the Committee.

11. I-128 Food

Even though it was a seller's market, the Committee are surprised that no tenders even on a limited basis were invited and the transactions were finalised on the basis of private negotiations without taking due precaution to ensure that the firms with which negotiations were undertaken were not in any way inter-locked.

12. I-129 Food

The Committee have been informed that the milo contracts entered into by India Supply Mission with Argentina suppliers provided for supply of Argentina milo in accordance with the specifications of the *Junta Nacional de Granos* (Argentina Grain Board) whose certificates of quality the suppliers were required to furnish. In spite of this almost the entire consignment was found to be contaminated in one way or the other. These contracts further provided explicitly that the grain should be fit for human consumption. On the other hand, the milo contracts with U.S. suppliers provided for supply of U.S. Grade II yellow-grain sorghum conforming to U.S. Grains Standards. Asked to explain the reasons for omission of a stipulation that the supply must be fit for human consumption the Secretary, Department of Food has stated: "I believe for the first time we made this purchase from Argentina. We wanted to be sure that this would be fit for human consumption. So far as U.S.A.'s specification is concerned, it is meant for both (human and animal)". The Committee are unable to accept this explanation of the Secretary, Department of Food, which



appears to them to be over simplification of facts. Keeping in view the performance of the American suppliers in the past (1960 onwards), the Committee would have thought that the Department would have taken care to introduce a positive stipulation in the contracts entered into with the American suppliers that the foodgrains should be fit for human consumption.

13. I-130 Food

From the note furnished by the Department of Food, it is seen that when the admixture of dhatura was noticed in the supplies of U.S. milo, the American suppliers stated mentioning in the "document confirming the purchase" that the commodity is fit for human consumption. The Committee are of the view that such an action should have been taken earlier.

14. I-131 Food

During evidence before the Committee it was made out that although the India Supply Mission could not do better because of the peculiar circumstances obtaining at that time, the Food Corporation of India and the Department of Food took all the precautions to ensure that the milo supplied to the consumers was free from dhatura seeds. The Committee are not satisfied that all possible precautions had been taken in time. In this connection, it is interesting to note that in a note furnished to the Committee, the Department of Food have stated that "It was within the sphere of responsibility of the FCI to ensure that the milo was cleaned before it

was issued." That this was not done is borne out by the fact that out of 7,22,236 tonnes of contaminated milo only a small quantity of 19,776 tonnes was got cleaned by the Food Corporation of India before despatch. The cleaning of the rest of the 7,02,460 tonnes of milo was therefore presumably done by the State Governments or by the consumers themselves. Further a series of instructions to State Governments for proper cleaning of milo are stated to have been issued both by the Department of Food and the Food Corporation of India but it cannot be said with certainty whether these instructions were actually implemented so as to ensure that the ultimate consumer got only dhatura-free milo. As a matter of fact, from the information made available to the Committee, it is seen that the Food Corporation of India miserably failed to discharge its duties properly besides violating the Prevention of Food Adulteration Act. Complaints were received from the State Governments that the intimation regarding presence of dhatura seeds in particular shipments reaching the State Governments after 10 to 12 days of the despatch of contaminated milo by Food Corporation of India. The FCI was required to stamp the bogs containing milo with dhatura and where the milo was free from dhatura, they were to give a certificate that the supply was free from dhatura. It is because of FCI's failure to do this task of marking and issuing of certificates in a satisfactory manner, that the State Governments had to undertake cleaning of all the bags and this resulted in a considerable additional expenditure. The Committee recommend that complaints against the Food Corporation of India from the State Governments may be thoroughly investigated with a view to fixing individual responsibility under advice to the Committee/ House.

1	2	3	4
15.	I-132	Food	<p>The Committee further note that in June 1973 the Food Corporation of India gave up cleaning of milo and informed the Maharashtra Government that as henceforth the consumers, and not the State Governments, were to clean the grains, the Corporation would not bear the charges of cleaning thereafter. In July 1973, the Government of Maharashtra told the Government of India that the Food Corporation of India should continue to reimburse the cost of cleaning and/or certify stocks as free from contamination. The Committee would like to know what was the total amount reimbursed to each of the State Governments on account of cleaning charges incurred by them. The extra expenditure incurred by the State Governments on cleaning due to late issue of Food Corporation advices about the absence of dhatura seeds from particular consignments may also be worked out and indicated and the responsibility for this lapse fixed under intimation to the Committee.</p>
16.	I-133	Food	<p>The Committee would also like to be apprised of the final position regarding the disposal of milo refractions accumulated as a result of cleaning.</p>
17.	I-134	Food	<p>From the foregoing paragraphs the Committee get an impression that all that was necessary and which could have been done was not done to safeguard the interest of the consumers. As for the future the Committee stress that the Department of Food should take necessary steps to streamline its machinery for procurement as well as distribution so that the history of contaminated milo supply is not repeated again.</p>

18. I 135 Food      The Committee would particularly like to emphasise that urgent attention be paid to the devising of better mechanical devices for cleaning of contaminated milo. The proposal regarding issue of milo only in the form of flour also needs to be carefully examined.
19. I 136 Food      The Committee have been told that the total expenditure incurred by the Food Corporation of India on cleaning milo in which presence of dhatura was noticed was Rs. 3,99,094. Information relating to the expenditure on such cleaning incurred by the State Governments has not been furnished. This may be done without further delay.
20. I 137 Food      The Committee note that the Minister of Agriculture categorically stated and assured on the Floor of the Lok Sabha on 2nd April 1973 in reply to Call Attention Motion that "having regard to the presence of dhatura seeds noticed in some consignments of milo, Government have since decided to stop any further purchase of milo." In spite of that import of milo went an unabated till January 1975. Since it was stated on the floor of the House that milo will not be imported hereafter, the decision taken by the Government to import the milo even thereafter should have been conveyed to the House in a formal manner.
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1	2	3	4
21.	I 138	Food	<p>The Committee have been informed that a High-level Purchase Team headed by the former Secretary (Shri Behl) went from New Delhi to USA for the purchase of foodgrains. The Committee desired to have relevant papers relating to (i) the visit of this High-Level Purchase Team; (ii) the purchase of milo without calling of global tenders; and (iii) selection of suppliers operating in the market for purchase of wheat and milo in the last two years in America. The Committee regret that despite a specific request to this effect, the Department of Food did not make available the relevant papers for inspection by the Committee. The papers referred to in (ii) above have been refused on the ground that it would be prejudicial to the safety and interest of the State.</p>

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