

**PUBLIC ACCOUNTS COMMITTEE
(1977-78)**

(SIXTH LOK SABHA)

NINETEENTH REPORT

**PURCHASE OF ZINC SLABS
(DEPARTMENT OF SUPPLY)**

[Paragraph 37 of the Report of the Comptroller and
Auditor General of India for the Year 1974-75,
Union Government (Civil)]

Presented in Lok Sabha on 15 Dec. 1977
Laid in Rajya Sabha on 15 Dec. 1977



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 1977 (Agrahayana 1899 (S))

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**CORRIGENDA TO 19TH REPORT OF THE PUBLIC
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PART II*

Minutes of the Public Accounts Committee held on
17-7-1976 (FN & AN)
7-12-1977

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

PUBLIC ACCOUNTS COMMITTEE

(1977-78)

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Shri C. M. Stephen

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urf Piare Lall Talib
20. Shri S. A. Khaja Mohideen
21. Shri Bezawada Papireddi
22. Shri Zawar Hussain

SECRETARIAT

1. Shri B. K. Mukherjee—*Joint Secretary*
2. Shri T. R. Ghai—*Senior Financial Committee Officer*

*Elected w.e.f. 23 November 1977 vice S/Shri Sheo Narain and Jagdambi Prasad Yadav ceased to be Member of the Committee on their appointment as Ministers of State.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Nineteenth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraph 37 relating to 'Purchase of Zinc Slabs' included in the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil).

2. The Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil) was laid on the Table of the House on 26th March, 1976. The Public Accounts Committee (1976-77) examined this paragraph at their sittings held on 17 July, 1976 (FN&AN), but could not finalise this Report on account of dissolution of the Lok Sabha on 18 January, 1977.

3. The Public Accounts Committee (1977-78) considered and finalised this Report at their sitting held on 7 December, 1977 (AN) based on evidence taken and the further written information furnished by the Departments of Supply etc. The Minutes of the sittings form Part II* of the Report.

4. For facility of reference the conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. For the sake of convenience, the recommendations/observations of the Committee have also been reproduced in a consolidated form in Appendix.

5. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1976-77) in taking evidence and obtaining information for the Report.

6. The Committee also place on record their appreciation of the assistance rendered to them in the examination of this Audit Paragraph by the Comptroller & Auditor General of India.

7. The Committee would also like to express their thanks to the officers of the Departments of Supply and Mines Legal Affairs, Ministries of Communications (P&T Board) and Commerce Directorate General of Technical Development and Minerals and Metals Trading Corporation of India Ltd. for their cooperation extended by them in giving information to the Committee.

NEW DELHI ;
December 9, 1977
Agrahayana 18, 1899 (S)

C. M. STEPHEN,
Chairman,
Public Accounts Committee.

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

REPORT

Purchase of Zinc Slabs

Audit Paragraph

1.1. Our country's need for zinc is mostly (usually 75 to 80 per cent) met by imports. Imports of zinc from 1968-69 onwards were as follows :—

	(In tonnes)
1968-69	89,856
1969-70	36,554
1970-71	91,000
1971-72	70,500
1972-73	76,802
1973-74	62,672
1974-75	66,644

1.2. Indigenous production of zinc has been as follows since 1968-69 :—

	(In tonnes).
1968-69	28,024
1969-70	23,726
1970-71	21,650
1971-72	24,607
1972-73	22,837
1973-74	22,466
1974-75	22,781

1.3. There are only two indigenous producers of zinc in the country— one in public sector and the other in private sector. The public sector undertaking (installed capacity : 18,000 tonnes per annum) produces zinc from Zawar (Rajasthan) ore deposits. The producer 'A' in the private sector (installed capacity : 20,000 tonnes per annum) is dependent wholly on imported zinc concentrates.

1.4. Distribution of indigenous zinc was informally controlled by Government till January 1975. Upto January 1975 allocation of quantities to Government departments and industrial units registered with the Director General, Technical Development, used to be made by the Department of Mines and Metals for the half years : April to September and October to March. Upto 6th January 1975 the Director General, Supplies and Disposals, used to place orders for Government departments against the half-yearly allotments ; from 7th January 1975 Government departments were allowed to place orders directly. Since February 1975, informal control on distribution of indigenous zinc has been relaxed and the producers have been permitted

to sell the metal to Government departments, public sector undertakings and units registered with the Directorate General of Technical Development without any formal allocation. Supplies so made are to be reported to the sponsoring authorities.

1.5. Import of zinc is made through the Minerals, and Metals Trading Corporation, which fixes the sale price of imported zinc for every quarter. Sale price fixed by the Minerals and Metals Trading Corporation is the lowest for sale to registered exporters ; a little higher price is charged from "Actual users (P)" i.e. who export a prescribed portion of their production and the price charged from others is still higher. There was no formal control on the price of indigenous zinc but the producers agreed in June 1968 to sell the metal at a uniform price fixed by Government. The selling price of indigenous zinc of the two producers was initially fixed at Rs. 2,700 per tonne (exclusive of excise duty) in June 1968. Though this price was intended for the period upto 31st March 1969, it continued upto 31st January, 1970. On 9th February, 1970, the Department of Mines and Metals agreed to the proposal of the two producers to fixation of the price of indigenous zinc at Rs. 2,850 per tonne (exclusive of excise duty) for the period February 1970 to March 1971. While fixing this price, "the producers were informed that future proposals for increase in the selling price would be considered only on the basis of actual cost of production . . ." No price was fixed for the period from April 1971 to January 1972 ; according to the Department of Mines the price of Rs. 2,850 per tonne continued during that period.

1.6. While reviewing the performance of the public sector undertaking in November 1970 it was decided that it "might submit proposals for revision of price of zinc duly supported by cost data". Cost data for the public sector undertaking was received by the Department of Mines and Metals in February 1971. In the same month the Department of Mines and Metals informed 'A' that the public sector undertaking had represented for increase in price of zinc and asked 'A' to submit "cost data indicating actuals for the period 1969 and 1970" and "cost projections, based on the best estimation possible for the years 1971 and 1972", as the price of indigenous zinc was fixed earlier on a uniform basis for both the producers. 'A' submitted the cost data in March 1971 intimating Government that it had suffered losses in the earlier years due to low price fixed for zinc. In April 1971 the Bureau of Industrial Costs and Prices was requested to examine the cost data of the indigenous producers for price fixation.

1.7. The Bureau recommended (January 1972) the price of Rs. 4,090 per tonne from February 1972 (exclusive of excise duty etc.). Customs duty on imported zinc concentrate was withdrawn on 17th July 1968, and was

reimposed from 29th May 1971. The Bureau had recommended that retrospective effect to the increased price could be considered for the producers to the extent they utilised duty paid concentrates for production of zinc. Government, however, decided to allow the increased price only from 1st February 1972 on the following grounds :—

- (i) 'A' had just received a consignment and was to commence its utilisation shortly and, as such, "the question of giving retrospective price to (A) does not arise."
- (ii) The public sector undertaking had received only a small quantity of zinc concentrate in November 1971 on which it had paid duty and there were practical difficulties in segregating the zinc produced from duty paid concentrates from that produced from duty free concentrates received earlier.
- (iii) Retrospective increase in price "would create administrative problems relating to recoveries for the past sales, etc."

1.8. The performance of 'A' against orders placed on it by the Director General, Supplies and Disposals, on the basis of half-yearly allotments was as follows :—

- (a) Against the allotment for the half-year October 1970 to March 1971 orders were placed on 'A' for supply of 1,316 tonnes of zinc at the rate of Rs. 2,850 (excluding excise duty). 'A' supplied only 416 tonnes at the price of Rs. 2,850 per tonne. The balance 900 tonnes due to be supplied by March 1971 was not supplied by it. The period of delivery was extended once up to June 1971 and again upto August 1971. In August 1971, 'A' informed the Director General, Supplies and Disposals, that it could not supply zinc at the rate of Rs. 2,850 per tonne and requested him to treat this price as provisional for supplies made from April 1971, subject to finalisation of price by the Department of Mines. After the revised price of Rs. 4,090 per tonne (excluding excise duty) effective from 1st February 1972 was announced, 'A' intimated the revised price to the Director General, Supplies and Disposals, on 15th March 1972 requesting him to amend the contract for payment of the enhanced price for the outstanding 900 tonnes. On 1st September 1973, 'A' informed the Director General, Supplies and Disposals, that it was treating the order for the balance 900 tonnes as having lapsed. The case was referred to the Ministry of Law in July 1974. That Ministry advised in August 1974 that as the delivery period had expired long ago, the Department could only claim general damages treating 30th June 1971 as the date of breach.

The department assessed the market prices of zinc as on 30th June 1971 as Rs. 5,700 per tonne and worked out the general damages as Rs. 21.78 lakhs. The Department of Mines, however, informed the Director General, Supplies and Disposals, on 11th February 1975 that the selling price of Rs. 2,850 per tonne of indigenous zinc metal fixed for the period February 1970 to March 1971 continued up to 31st January 1972. In view of this, the Ministry of Law observed on 5th August 1975 that "if the Department is in a position to establish by way of documentary evidence to show that actual sale transactions had taken place at the relevant time @ Rs. 5,700 per metric ton then they may be in a position to support or substantiate their claim for general damages on the basis of the aforesaid rate. On the other hand, if the firm is in a position to lead the evidence to show to the contrary that the aforesaid rate is not truly reflective of the market rate for the reason that the actual sales have been concluded at the relevant time @ Rs. 2,850 per metric ton as fixed by the Ministry of Mines, then the claim of the Government may not be entertainable or sustainable". The amount of the general damages recoverable has not yet been worked out (November 1975). It may be mentioned in this connection that of the 416 tonnes supplied by 'A', 30.20 tonnes were supplied in July 1971 and October 1971 against two acceptances of tender of February 1971. On 1st September 1973, 'A' approached the Director General Supplies and Disposals to declare the price of Rs. 2,850 per tonne as final for those supplies. The Director General, Supplies and Disposals, did so in March 1974.

- (b) On the basis of allocation for April 1971 to September 1971. Director General, Supplies and Disposals placed the following three acceptances of tender on 'A' for supply of zinc ingots by 30th September 1971 :—

Date of acceptance of Tender	Quantity (In tonnes)	Supplies to be made to
(i) 2nd April, 1971	36.967	Southern Railway.
(ii) 15th May, 1971	10	Western Railway
(iii) 26th August, 1971	750	Posts and Telegraphs Department (Telecom Factory, Jabalpur).

1.9. The performance of 'A' against the acceptances of tender mentioned above was as follows :—

- (i) While acknowledging receipt of the acceptance of tender dated 2nd April 1971, the firm informed Director General, Supplies and Disposals on 21st April 1971, that the workmen of its factory had resorted to an indefinite strike from 13th March 1971 and that execution of the acceptance of tender should be deemed to be suspended until resumption of normal working in the factory. The strike ended on 23rd June 1971. But the firm did not make any supply against this acceptance of tender. After the price increase effective from 1st February 1972 was announced, 'A' wrote to the Director General, Supplies and Disposals, on 28th February 1972 requesting him to amend the acceptance of tender of 2nd April 1971 for allowing the increased price mentioned above and extending the period of delivery upto 30th April, 1972. (Subsequently, this quantity was purchased in June 1974 and July 1974 at a price of Rs. 15,035 per tonne).
- (ii) On receipt of the acceptance of tender dated 15th May 1971 the firm requested on 19th May 1971 for extension of the delivery period upto 31st December 1971 on the ground of strike in its factory but was informed by the Director General, Supplies and Disposals, on 6th July 1971 that the matter might be taken up by the end of September 1971. As in the case of the acceptance of tender of 2nd April 1971 mentioned above, 'A' wrote to the Director General, Supplies and Disposals, on 1st March 1972 to amend the acceptance of tender of 15th May 1971 for allowing the increased price effective from 1st February 1972 and extending the delivery period up to 30th April 1972.
- (iii) After placement of the acceptance of tender dated 26th August 1971, the Director General, Supplies and Disposals received a letter from the indenting officer on 16th September 1971 requesting him to spread over the delivery period from January 1972 to March 1972. This request had been made because the indenter was expecting a heavy consignment of some imported material during the next three to four months and unloading facilities at his end were very limited. The Director General, Supplies and Disposals enquired from 'A' on 11th October 1971, i.e., after the prescribed delivery period up to 30th September 1971 was already over, whether it could deliver the zinc during 1st January 1972 to 31st March 1972 in respect of acceptance

of tender dated 26th August 1971. Simultaneously, the indenter was also informed that the price of zinc was periodically fixed by the Department of Mines and if the delivery period was amended from 1st January 1972 to 31st March 1972, any price increase applicable to that period would have to be allowed to 'A'. The indenter sent a telegraphic reply (which was received in the Directorate General of Supplies and Disposals on 5th November 1971), stating that any increase in price was not acceptable to him and 'A' could despatch the stores immediately. On 19th November 1971, the Director General, Supplies and Disposals received 'A's reply stating that the acceptance of tender had been issued only on the strength of the allocation made by the Ministry of Mines and Metals and that it had not submitted any offer by itself. Hence the usual terms of the contract should not be binding on it. 'A' further stated that all possible efforts would be made to despatch the material within the stipulated delivery period, but supply would commence only after the final price was fixed by Government on its representation pending with Government.

1.10. On 9th December 1971, 'A' requested the Director of Inspection, Madras, to inspect the material against the acceptance of tender dated 26th August, 1971. 'A' also requested the Director General, Supplies and Disposals, on 9th December 1971 to extend the delivery period upto 31st March 1972 without liquidated damages and to confirm that the revised price for zinc being fixed by Government would apply to this acceptance of tender. Pending price fixation, 'A' expressed its willingness to accept payment on the basis of the provisional price mentioned in the acceptance of tender.

1.11. On 22nd December 1971, the Director of Inspection, Madras informed 'A' and the Director General, Supplies and Disposals, that as the delivery date stipulated in the acceptance of tender had expired on 30th September 1971, inspection of the material could not be taken up till the delivery date was suitably amended. After the increased price effective from 1st February 1972 was announced, 'A' requested the Director General, Supplies and Disposals, as in the case of the other two acceptances of tender, to amend the acceptance of tender dated 26th August 1971 allowing increase in price and extending the period of delivery upto 30th April 1972. On 26th May 1972 the Director General, Supplies and Disposals enquired from the indenter (earlier action was not taken as the papers were stated to have got mixed up with other papers) whether the price effective from 1st February 1972, i.e. Rs. 4,090 per tonne plus excise duty at Rs. 875, was acceptable to it. The indenter replied on 9th June 1972 that the stores were urgently required and that additional funds had been provided.

1.12. On 20th July 1972, the Director General, Supplies and Disposals allowed the increase price (Rs. 4,090 plus excise duty of Rs. 875 per tonne) effective from 1st February 1972 for supply of zinc ingots against the acceptance of tender dated 26th August 1971 and extended the delivery period up to 30th September 1972. The firm completed supplies on 21st August 1972.

1.13. In a meeting held with the representative of the Department of Mines on 13th April 1973, the Director General, Supplies and Disposals, was told that the selling price of indigenous zinc was fixed informally at Rs. 2,850 per tonne (exclusive of excise duty) from 1st February 1970 to 31st March 1971 and that even after 1st April, 1971, the same price continued as some supplies had been made by the producers against the contracts placed by the Director General, Supplies and Disposals, at Rs. 2,850 per tonne. The Director General Supplies and Disposals, was also told that the Department of Mines would have no objection to the Director General, Supplies and Disposals, enforcing his right under the terms of the contract for supply of zinc at the rate of Rs. 2,850 in respect of contracts for the period 1st April 1971 to 31st January 1972. The acceptances of tender dated 2nd April 1971 and 15th May 1971 were then referred to the Ministry of Law for advice whether it would be possible to obtain supplies from the firm at the price of Rs. 2,850 per tonne plus excise duty. In both the cases, the Ministry of Law advised that the firm could not be made to supply stores at the old rates, firstly because the Department of Mines had not decided the price applicable from 1st April 1971 and secondly because the Director General, Supplies and Disposals did not extend the delivery period of the contract, which had expired on 30th September 1971, inspite of reminders from the firm and thereby allowed the contracts to lapse. Both the acceptances of tenders were cancelled by Director General, Supplies and Disposals, in February 1974 without financial repercussions.

1.14. Government informed Audit in November 1975 that orders for 168 tonnes, 1,622 tonnes and 1,224 tonnes were placed on 'A' for supplies to Government departments against the allotments for the half-years October 1971 to March 1972, April 1972 to September 1972 and October 1972 to March 1973 ; 'A' supplied all these quantities at the rate of Rs. 4,090 per tonne (excluding excise duty).

1.15. The prices fixed by the Department of Mines and Metals for indigenous zinc and the prices of imported zinc fixed by the Minerals and Metals

Trading Corporation during April 1971 to March 1973 for various categories of users were as follows :—

	Price of indigenous zinc (including Excise Duty)	Price of imported zinc fixed by Minerals and Metals Trading Corporation for		
		Atual users	Atual users(P)	Registered exporters
				(Rupees per tonne)
April 1971 to June 1971	3,350 (a)	3,150 (c)	3,100 (c)	..
July 1971 to September 1971	3,350 (a)	4,200	..	4,130
October 1971 to December 1971	3,350 (a)	4,840 (d)	4,650 (d)	4,630 (d)
January 1972	3,725 (b)	5,260	5,000	4,970
February 1972 to March 1972	4,965 (b)	5,260	5,000	4,970
April 1972 to June 1972	4,965 (b)	5,330	5,000	4,970
July 1972 to September 1972	4,965 (b)	5,360	5,000	4,970
October 1972 to December 1972	4,965 (b)	5,510	5,290	5,245
January 1973 to February 1973	4,965 (b)	5,675	5,480	5,430
March 1973	4,965 (b)	6,215	6,035	5,980

(a) Includes excise duty of Rs. 500 per tonne.

(b) Includes excise duty of Rs. 875 per tonne.

(c) The prices effective from 29th May, 1971 were Rs. 4,120 and Rs. 4,055 respectively.

(d) The prices effective from 13th December 1971 were Rs. 4,910, Rs. 4,820 and Rs. 4,700 respectively.

1.16. It will appear from the above table that the prices of indigenous zinc were lower than the prices fixed by the Minerals and Metals Trading Corporation, except during the quarter April 1971 to June 1971. Indigenous zinc was allotted at the lower prices during July 1971 to March 1973 also to private units in priority sector registered with the Director General, Technical Development, Department of Steel etc.

1.17. From April 1973 the indigenous producers are allowed to sell zinc at prices not exceeding the prices fixed by the Minerals and Metals Trading Corporation ; one of the reasons for this is that different prices for the same commodity were considered undesirable, as in that event those who are allocated cheaper indigenous zinc would make a windfall gain out of it.

1.18. The prices fixed by the Minerals and Metals Trading Corporation are not linked to the cost of zinc concentrates imported by 'A' from time to time.

1.19. According to the information furnished by the Department of Mines in November 1975, the performance of 'A' from April 1973 onwards was as follows :—

Period	Allotment	Actual Order placed by DGS&D (In tonnes)	Actual quantity supplied	Price charged
April 1973—September 1973	2,888	1,980	1,970	Rs. 6,660 for 1,000 tonnes. Rs. 9,435 for 970 tonnes.
October 1973—March 1974	3,477	3,477	3,472	Rs. 13,710 for 1,540 tonnes. Rs. 15,035 for 1,712 tonnes. Rs. 15,475 for 220 tonnes.
April 1974—September 1974	3,850 (thereafter 3,000 tonnes diverted for registered exporters)	850	829	Rs. 16,660 for 823 tonnes. Rs. 14,000 for 6 tonnes.
October 1974—March 1975	2,000	1,003	473	Rs. 14,000 for 240 tonnes. Rs. 14,675 for 233 tonnes.

1.20. Comments about sale performance of the public sector undertaking (Hindustan Zinc Limited) have been included in paragraph 10 of the Report on Union Government (Commercial), 1974 Part III.

[Paragraph 37 of the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil)]

Establishment of Cominco Binani Zinc Ltd.—Terms of Collaboration, Capital Structure, etc.

1.21. An application dated 30 December, 1958 was received from Shri G. D. Binani, M/s. Binani Metal Works Private Ltd., Calcutta, on 16 January, 1959 by the then Ministry of Commerce and Industry, for grant of licence under the Industries (Development and Regulation) Act, 1951 for setting up of a zinc smelter based on foreign collaboration and imported zinc concentrates.

1.22. The demand for zinc then was estimated at 50,000/55,000 tonnes per annum and substantial increase in the demand was anticipated. No zinc smelting capacity was available ; small quantities of zinc concentrates were produced by Metal Corporation of India (MCI) at Zawar Mines in Rajasthan. The production of zinc concentrate was about 4000 tonnes of equivalent metal. A proposal of Metal Corporation of India to set up a 15,000 tonnes smelter based on indigenous ore was under consideration.

1.23. The proposals of Shri Binani for setting up of a zinc smelter based on imported concentrates were considered in the context of substantial gap between the demand and supply of zinc metal which could be foreseen then, even after taking into consideration the Metal Corporation's proposals for setting up a smelter at Udaipur. Production of zinc from imported concentrates in lieu of import of zinc metal involved savings in foreign exchange.

1.24. The proposals of Shri Binani were considered by the Licensing Committee at its meetings held on 17-3-59 and 29-5-59. The Committee recommended the grant of a licence subject to the following :

- (i) The prior approval of the Government should be obtained for deviating from the terms of the Industrial Policy Resolution as the proposal envisaged the establishment of zinc smelter in the private sector ;
- (ii) the foreign exchange requirement should be screened by the CG/HEP Committee ; and
- (iii) the terms of foreign collaboration, if any, should be settled to the satisfaction of the Government.

Pursuant to the above, the matter was further discussed with the Ministries concerned and the proposal was submitted to the Cabinet in January, 1961 and was approved at its meeting held on 17 January, 1961.

1.25. The party (Shri G. D. Binani) in his application had, no doubt, indicated that foreign collaboration for setting up the zinc smelter was involved but had not specified the foreign collaborator. The name of COMINCO (Consolidated Mining and Smelting Company of Canada) as the collaborator for the zinc smelter was indicated to Government in August, 1961. The broad terms of collaboration of Cominco were furnished in November, 1961. These were approved on 29 October, 1962. On the same day industrial licence was granted to the party for the setting up of an electrolytic zinc smelter of 12,000 tonnes per annum capacity to be expanded to 20,000 tonnes per annum at Alwaye (Kerala).

1.26. The terms of collaboration and foreign exchange financing approved, in brief, were :

(i) Capital cost of the project estimated		Rs. 508.8 lakhs
(ii) Foreign Exchange components estimated		
(a) Plant & equipment	Rs. 104.5 lakhs }	Rs. 154 lakhs
(b) Know-how etc.	Rs. 28.5 lakhs }	
(c) Cost of technicians and training	Rs. 11.0 lakhs }	
(d) Interest during construction — FE	Rs. 10.0 lakhs }	
(iii) Foreign Exchange Financing :		
(a) Loan from Export Credit Insurance Corporation of Canada		Rs. 70.00 lakhs
(b) Equity participation by Cominco of Canada		Rs. 84 lakhs
(iv) Foreign collaboration — Cominco of Canada will provide know-how, technical assistance, engineering services, designing, training of personnel during the construction and start-up as also supervise the fabrication and erection of indigenous plant and machines and depute their technical personnel. The payment for the technical assistance approved were Rs. 28.5 lakhs for know-how and Rs. 11 lakhs towards cost of experts.		
(v) Financing the project :		
Equity — to Indians	Rs. 126 lakhs }	Rs. 210 lakhs
to Cominco	Rs. 84 lakhs }	
Loans — From ECIC Canada	Rs. 70 lakhs }	Rs. 206 lakhs
From IFC	Rs. 136 lakhs }	
Working capital loans	Rs. 92 lakhs	Rs. 92 lakhs
	Total	Rs. 508 lakhs

1.27. The principal shareholders of Cominco Binani Zinc Ltd. have been :—

	Rs. lakhs	Percentage
(i) Cominco of Canada	84	40.00
(ii) Metal Distributors	42	20.00
(iii) Kerala State Industrial Development Corporation	50.75	14.63
(iv) Life Insurance Corporation	20.00	9.53
(v) New India Assurance Co. Ltd.	10.00	4.76
(vi) Industrial Finance Corp.	8.90	4.24
(vii) Bank of India	1.50	..
(Total paid up capital Rs. 210 lakhs as on 31-3-76)		

1.28. The company was formed in August, 1962, and is managed by a Board of Directors consisting of **four** nominees of COMINCO, Canada, **three** of Metal Distributors and **three** representing Kerala State Industrial Development Corporation, Industrial Finance Corporation and the Central Government.

1.29. The Company is entirely dependent upon the imported zinc concentrates which are being imported from Canada and Australia.

Production, Import and requirement of zinc :

1.30. Indigenous production of zinc since 1968-69 has been as follows :—

	(in tonnes)
1968-69	28,204
1969-70	23,726
1970-71	21,650
1971-72	24,607
1972-73	22,837
1973-74	22,466
1974-75	22,781
1975-76	27,830
	194,101

1.31. India was entirely dependent on import of zinc till 1967, except for small quantities of the metal received back after smelting abroad on toll basis the zinc concentrates from Zawar Mines in Rajasthan. Zinc production commenced in the country for the first time in April 1967 with the commissioning of the smelter of Cominco Binani Zinc Ltd. in the private sector. Early in 1968 the Hindustan Zinc Ltd., a public Sector undertaking commissioned its zinc smelter at Debari near Udaipur in Rajasthan. M/s Cominco Binani Zinc Ltd. is in private sector and is dependent wholly on imported zinc concentrates whereas M/s Hindustan Zinc Ltd. is in public sector and produces zinc from Zawar (Rajasthan) ore deposits. Their installed capacity is 18,000 tonnes and 20,000 tonnes per annum respectively. However, the average production of Hindustan Zinc Ltd. was 11,900 tonnes per year as against 11,600 tonnes of Cominco Binani Zinc Ltd., if the production of seven years from 1969-70 to 1975-76 is taken into account. Annual production of zinc in each of these concerns has been as follows :—

	Cominco Binani Zinc Ltd.	Hindustan Zinc Ltd.
	(In tonnes)	
1968	10,325	13,402*
1969	13,165	9,925
1970	13,111	9,490
1971	10,824	12,125
1972	13,836	9,565
1973	10,183	2,147**
1974-75 (15 months)	11,317	13,952.50
1975-76	11,799	16,031.75

* Includes 4,807 tonnes of cathodes produced in 1967-68 but converted during 1958-69, equivalent to 4,327 tonnes of zinc ingots.

** Lower production of zinc ingots due to break-down of melting furnace and does not include 10,912 tonnes of cathodes produced equivalent to 10,365 tonnes of zinc ingots.

1.32. As the average production of M/s Cominco Binani Zinc Ltd. had been 11,600 tonnes per year against the installed capacity of 20,000 tonnes, the Committee desired to know the reasons for the low production. The representative of the Department of Mines has stated during evidence :

“The installed capacity is 20,000 tonnes. When the Bureau of Industrial Cost and Prices examined the cost structure, they also went into the question of capacity and they came to the conclusion that we should take the capacity at 17,000 tonnes because of certain inherent drawbacks in the plant. Over and above that, the Cominco Binani is having a roaster which will be the first major equipment in zinc production of a design which is known as “Hersch off” type which has given them innumerable troubles during their operations right from the beginning. This has been the major reason for the plant not having attained a reasonable capacity utilisation. In the expansion proposals, one of the main items of equipment in which substantial changes have been proposed is the roaster and go in for the new and the latest technology which Hindustan Zinc is also having, that is, the fluid bed roaster. In fact, the roaster had been a very weak link in the plant right from the beginning.”

1.33. Zinc concentrates imported by M/s. Cominco Binani Zinc Ltd. and their value are indicated in the following Table :

year	quantity (in tonnes)	c.i.f. value (Rs. in lakhs)
1	2	3
1968-69 }	Quantity not mentioned value limiting factor.	114.73
1969-70 }		283.77
1970-71 }		279.67
1971-72	18,750	173.45
1972-73	39,265	359.41
1973-74	37,351	591.08
1974-75	11,000	286.00
1975-76	Quantity not mentioned value limiting factor.	286.00
1975-76	24,152	640.00

1.34. Imports of zinc slabs since 1968-69 and their value are as follows :—

Year	Imports (In tonnes)	Value (Rs. crores)
1	2	3
1968-69	89,856	19.89
1969-70	36,554	8.25
1970-71	91,000	21.97
1971-72	70,500	17.73*
1972-73	76,802	20.78
1973-74	62,672	27.38
1974-75	66,644	55.27
1975-76	31,500	20.77

*As per Monthly statistics of the Foreign Trade of India -- Vol. II —Imports during 1971--72 quantity of zinc imported in all forms was 69,639 tonnes valued at Rs. 17.73 crores.

Asked about the reasons for the sharp decline in the import of zinc slabs during 1975-76, the Department of Mines have, in a note, stated :

“As will be seen from the figures of imports of zinc on page 140 of the Audit Report, import of the metal had been declining from 1973-74 onwards. The offtake of zinc had been poor during 1974-75 and the two producers and the canalising agency, i.e. the Minerals and Metal Trading Corporation had the following opening stocks of zinc as on 1-4-1975 :—

	(in tonnes)	
(i) M.M.T.C.	23,061	
(ii) Hindustan Zinc Ltd.	5,182	
(iii) Cominco Binani Zinc Ltd.	167	(Low opening stock due to shut down of the smelter due delay in receipt of imported concentrates).
Total	28,410	

The above opening stock, increased indigenous production (indigenous production during 1975-76 was 27,830 tonnes as against 22,781 tonnes during 1974-75) and the inventories with the consuming units (for which no realistic estimate is available) enabled substantial reduction in the import of zinc during 1975-76.”

1.35. Indigenous production has usually been short of requirement to the extent of 75 to 80 per cent which had to be met by imports. In 1975-76 indigenous production was 27,830 tonnes while the import was only 28,100

tonnes during the same year (upto February 1976) as against 66,644 tonnes in 1974-75. The Committee desired to know whether there was any great improvement or whether the total requirements of zinc in 1975-76 were very much less than what they used to be earlier. The witness has stated during evidence :—

“During 1975-76 production increased slightly, by four to five thousand tonnes but the import reduction basically was on account of reduced off-take during the year and the opening stocks on 1-4-1975.”

Enquired whether it implied that there could be less of imports because of certain reasons, the witness has replied in affirmative.

When the Committee enquired whether it was because of the state of market or something else, the witness has stated :

“During 1975-76 there was an actual demand of about 66,000 tonnes as estimated by the Government at the close of the year. As against that, for many years past the zinc consumption in the country had been hovering around 85—90,000 tonnes. There was a distinct drop in 1975-76 of the order of about 20,000 tonnes.”

1.36. When the attention of the Government was drawn to the Report of the Committee on Public Undertakings on Hindustan Zinc presented to Parliament in April, 1976, in which the demand for primary zinc was estimated at 80,000 tonnes for 1975-76 and at 1,15,000 tonnes for 1978-79, the witness has elaborated the reasons for drop in the demand thus :—

“The reasons are various. Basically the zinc required goes into the galvanizing industry. The bulk of zinc consumption is for the production of galvanized sheets, structures and other galvanized products. Secondly, it goes into dye-casting which in turn goes into the automobile and engineering industries. The third use is in alloy form in brass which again goes into other industries. The use of zinc is intimately connected with the production of these industries. I am afraid I will not be able to elaborate why the consumption in these industries went down as far as zinc is concerned, but obviously the activities in these industries were not up to the anticipated levels. This was anticipated by the normal rate of growth of economy which was estimated at the beginning of the Five Year Plan. This is the basis on which the figures were indicated, as it is mentioned there.”

To a question whether it was because of the requirement of organisations like Defence, Posts & Telegraphs Department, Railways and other

industries having gone down in 1975-76 that the production of zinc had come down, the witness has stated during evidence :—

“the industries which consume zinc.....are basically the galvanising industries which use quite a lot of zinc and in addition to the dry battery industry. During the last year, there has been a sizeable recession in the dry battery industry which consumes zinc. The production has not come up to our expectation because of lack of demand. Similarly, in the case of automobile industry, they have been experiencing recession with the result that the demand for zinc has gone down.”

Enquired about the proportion of zinc that the automobile industry consumes, the witness has stated :

“Very small proportion.”

When the Committee enquired about the reasons for it, the witness has stated :

“This is due to lack of demand. As a result of the recession in the industry itself, the prices went up considerably. As far as radio industry is concerned, the demand went down considerably because of the less purchasing power of the people with the result that the demand of the dry battery industry for Zinc had gone down considerably. So this actually shows that there was definitely a lack of demand of zinc in that particular year.”

1.37. As against the import of 66,644 tonnes of zinc slabs valued at Rs. 55.27 crores during 1974-75, the imports during 1975-76 (up to February, 1976) amounted to only 28,100 tonnes (value Rs. 18.57 crores) and this fall in imports was attributed to less demand during the year on account of recession. On the other hand, it is seen that while 11,000 tonnes (value Rs. 2.86 crores) of zinc concentrates had been imported by Cominco Binani Zinc Ltd. During 1974-75, the quantum and value of imports during 1975-76 had risen to 24,152 tonnes and Rs. 6.41 crores. The Committee desired to know the reasons for the increase in imports of Zinc concentrates when there was fall in demand and indigenous production. The Directorate of Technical Development, in a note have informed the Committee as under :—

“Against their import application submitted in 1974-75, M/s. Cominco Binani Zinc Ltd. were recommended import of two shiploads of zinc concentrates—one from Australia for 11,000 tonnes valued at Rs. 286 lakhs and the other from Canada for also the same quantity and value, making a total of 22,000

tonnes valued at Rs. 572 lakhs. The first recommendation was sent to CCI&E on 7-12-1974 and the second on 4-2-1975.

Country's requirement of zinc is being met partly from indigenous production and the balance through imports. In view of the insufficient indigenous production, bulk of the requirements of industries for zinc was being met by imports. The indigenous production and import of zinc during 1974-75 and 1975-76 were as under :—

Year	Indigenous production		Import	Total (Tonnes)
	HZL	CBZ		
1974-75	13953	8026	70001	91980
1975-76	16029	11799	30437	58265

Since the requirement of zinc is still being met by imports it was necessary that production should be increased as fast as possible to minimise the country's dependency on imports. It was in this context that the firm has been recommended a higher quantity of 24,152 tonnes valued at Rs. 641 lakhs of zinc concentrates during the subsequent period of 1975-76 which was our supplementary recommendation in favour of this firm in accordance with the policy for that year. According to the policy M/s. Cominco Binani Zinc's automatic application for zinc concentrate for the same year 1975-76 was entertained by CCI&E directly who issued them repeat licence valued at Rs. 286 lakhs (licence issued in terms of value only). The party could import 15,807 tonnes of zinc concentrate with this value.

Generally it takes about a year from the date of recommendation to the actual arrival of raw material from the overseas countries and, therefore, the recommendation which was made in 1975-76 is expected to fructify only during the current year. In view of this it is expected that the firm would be able to increase its production further during current year *vis-a-vis* their production in the previous years. (The firm's production during current year is expected at 13,000 tonnes as against their production of 11,799 tonnes in 1975-76)."

1.38. As to the steps taken to increase the production of Zinc in the country, the representative of the Department of Mines has informed the Committee as follows :—

“The Industrial Licence was given to the Cominco Binani Zinc sometime in 1962 and the plant came up in 1967. Then in 1971 they were given a letter of intent for expansion from 20,000 to 40,000.

The letter of intent was given after taking into consideration, at that time, the projections of future demands for zinc in the country and to minimise the import of zinc metal.

Now the second factor which came into the picture was that the change in the economic scale by an expansion from 20,000 to 40,000 would help in the reduction of costs also. It was in 1971 that the letter of intent was subject to certain conditions like making the necessary financial arrangements and the necessary foreign collaboration on certain terms, which the company has so far not finalised as such. The letter of intent has not yet been converted into an industrial licence; it is just a letter of intent that is there with them.

The Debhari Smelter, which had a capacity of 18,000 tonnes, has been expanded to 45,000 tonnes at the same site and it will be coming into operation towards the third quarter of this year. At this time I won't be able to say whether it is optimum expansion or not, but its expansion to more than double its capacity is already under construction.

Similarly, the Vizag smelter has not yet gone into operation; it is a 30,000 tons zinc smelter.”

1.39. According to a report appearing in 'Financial Express' dated 11 March, 1977, “the Visakhapatnam zinc smelter has been commissioned. The lead smelter of this twin zinc and lead plant is expected to be commissioned in the second phase by the end of the year.

However, with the commissioning of the first phase of the plant, the total zinc smelting capacity in the country has gone up from 38,000 tonnes to 95,000 tonnes, representing an increase of 57,000 tonnes or 150 per cent over the corresponding period of last year.

The smelter, the second of its type in the public sector, is based on imported concentrates, having a total smelting capacity of 30,000 tonnes.

The existing zinc smelter at Debari in Rajasthan was expanded earlier this year to increase its smelting capacity from 18,000 tonnes to 45,000 tonnes.

Both by the commissioning of the Vizag smelter and the expansion of the Debari smelter the production of metal is expected to go up to 60,000 by the end of this year, representing an increase of 130 per cent over January-December 1976.

The total production of zinc during 1976 registered an increase of 4.1 per cent over the previous year from 25,728 tonnes to 26,876 tonnes.

However, with the projected commissioning of the Vizag lead smelter by the end of this year, the total lead smelting capacity is expected to go up from 3,600 tonnes to 18,000 representing an increase of 400 per cent.

The project with a capacity of 10,000 tonnes per annum, is presently under advanced stages of construction."

Distribution of Indigenous Zinc

1.40. Distribution of indigenous Zinc was informally controlled by Government till January 1975. Upto January 1975 allocation of quantities to Government departments and industrial units registered with the Director General, Technical Development used to be made by the Department of Mines and Metals for the half years : April to September and October to March. Upto 6th January 1975 the Director General, Supplies and Disposals, used to place orders for Government departments against the half-yearly allotments; from 7th January 1975 Government departments were allowed to place orders directly. Since February 1975, informal control on distribution of indigenous zinc has been relaxed and the producers have been permitted to sell the metal to Government departments, public sector undertakings and units registered with the Directorate General of Technical Development without any formal allocation. Supplies so made are to be reported to the sponsoring authorities.

1.41. The Committee desired to know the procedure adopted for the distribution of zinc which is stated to have been informally controlled by Government till January, 1975 and the changes, if any, introduced from time to time. The Department of Mines and Metals, in a note furnished to the Committee, have stated as follows :—

"The production of indigenous zinc has been under informal control since June 1968."

The procedure adopted for distribution of indigenous zinc was that the likely production of zinc used to be estimated in advance at the beginning of each half-yearly period, namely, April-September and October-March. Similarly, the requirements of the Government Departments, DGTD units etc. were ascertained from the Ministry of Defence, Railways, P&T, DGTD etc.

The estimated requirements and the estimated production (including closing stocks) were then assessed and firmed up at meetings held in the Department of Mines to which the representatives of the producers and the concerned Departments were invited.

After allocating in full the requirements of Government Departments, the balance available was allocated to the DGTD, Department of Steel etc. for meeting a portion of the requirements of priority units on their books.

The allocation to the different sectors used to be sub-divided between the two zinc producers based on the anticipated availability from each.

The main objective of the informal distribution control on zinc was that the high priority users of zinc like Defence, Railways and P&T should have an assured source of supply and at the same time, the indigenous production of the metal was disposed of in a manner that the producers had no undue accumulation of stock. The allocations made at the meetings were mainly intended to facilitate the consuming Departments and the producers to plan their purchases/despaches in a phased manner and to enable the DGTD etc. to process the import applications of units on their books for imported zinc after taking into account the availability of indigenous zinc for their units.

No major changes in the procedure indicated above for the distribution of zinc were made till January, 1975. Minor adjustments to take care of the operational difficulties etc. of the smelters were, however, made from time to time in consultation with the concerned Departments."

1.42. From April 1973 the indigenous producers are allowed to sell zinc at prices not exceeding the prices fixed by the Minerals and Metals Trading Corporation; one of the reasons for this is that different prices for the same commodity were considered undesirable, as in that event those who are allocated cheaper indigenous zinc would make a windfall gain out of it.

1.43. The following table shows the percentage allotment to DGTD, Small Scale, Iron & Steel units etc. on the basis of estimated Zinc availability (estimated production plus the opening stock) from 1969-70 to 1972-73 :—

Year	Estimated metal availability	Allocation made to DGTD, I&S units etc.*	Percentage of (3) to (2)
	(tonnes)	(tonnes)	
1969-70	32,000	16,500	51.56
1970-71	21,300	16,173	75.93
1971-72	22,734	18,400	81.00
1972-73	36,500	32,236	88.00

*This also includes allocation to Steel Plants, public sector units on the books of DGTD, etc.

Enquired as to how the Government ensured that the private units actually used the zinc that was supplied by the MMTC and that it did not sell in the black market, the witness has stated :—

“We get allocations from three sources. They are : MMTC, Hindustan Zinc and Cominco Binani. We work out the requirement of these units on *pro rata* basis of their capacity and their operational requirement from time to time. On that basis, we distribute *pro-rata* of their entitlement. They receive our allotment from time to time. So on this basis, they release metal.”

1.44. The Committee desired to know as to how it was ensured that the deliveries of zinc to the units sponsored by the DGTD were in fact effected according to the stipulated schedules by the suppliers and that the zinc was not diverted to unauthorised users at higher prices. The Directorate General of Technical Development, in a note furnished to the Committee, have stated :—

“Zinc had been under informal distribution control by the Department of Mines since June, 1968 till January, 1975. After allotting in full the requirements of Government Departments such as Ministry of Defence, Railways, P&T, the balance available quantity was being allocated by the Department of Mines to the other authorities viz. DGTD, SSI and Department of Steel for further allocation to their units. DGTD got only a small fraction of their entire requirements which was distributed among the eligible units under intimation to the informal distribution control authority, viz. the Department of

Mines. Since bulk of the requirements of zinc was met by imports, DGTD units were meeting most of their zinc requirements by import.

Inter-Ministerial meetings are being held quarterly to monitor demand, production and import requirements of important non-ferrous metals which includes zinc and problems of industries—both producer as well as consumer industries—are discussed and remedial measures taken. There were however, no complaints from DGTD units of any diversion of zinc by CBZ to unauthorised users at higher prices.”

1.45. As to the prices check exercised in the matter of control of zinc with particular reference to its production and distribution, the representative of the Department of Mines has stated :—

“Monitoring of supplies is done through the DGTD and the other sponsoring authorities and the follow up of the utilization, etc. comes within the jurisdiction of the sponsoring authorities.”

1.46. The machinery that was available with the Department of Mines and the sponsoring authorities to ensure that Government Departments, got the highest priority and for ‘detailed monitoring’, has been indicated in a note reproduced at Appendix I.

Informal price control and fixation of price based on actual cost data.

1.47. It has been stated in the Audit Para that there was no formal control on the price of indigenous zinc but the producers agreed in June 1968 to sell the metal at a uniform price fixed by Government. The selling price of indigenous zinc of the two producers was initially fixed at Rs. 2,700 per tonne (exclusive of excise duty) in June 1968. Though this price was intended for the period upto 31 March 1969, it continued upto 31 January 1970. On 9th February, 1970, the Department of Mines and Metals agreed to the proposal of the two producers to fixation of the price of indigenous zinc at Rs. 2,850 per tonne (exclusive of excise duty) for the period February 1970 to March 1971. While fixing this price, “the producers were informed that future proposals for increase in the selling price would be considered only on the basis of actual costs of production. ...” No price was fixed for the period from April 1971 to January 1972; according to the Department of Mines the price of Rs. 2,850 per tonne continued during that period.

1.48. While reviewing the performance of the public sector undertaking in November 1970 it was decided that it “might submit proposals for revision of price zinc, duly supported by cost data.” Cost data for the public sector undertaking were received by the Department of Mines and Metals in February 1971. In the same month the Department of Mines and

Metals informed M/s. Cominco Binani Zinc Ltd. (producer in the private sector) that the public sector undertaking had represented for increase in price of zinc and asked it to submit "cost data indicating actuals for the period 1969 and 1970" and "cost projections, based on the best estimation possible for the years 1971 and 1972", as the price of indigenous zinc was fixed earlier on a uniform basis for both the producers. M/s. Cominco Binani Zinc Ltd. submitted the cost data in March 1971 intimating Government that it had suffered losses in the earlier years due to low price fixed for zinc. In April 1971 the Bureau of Industrial Costs and Prices was requested to examine the cost data of the indigenous producers for price fixation.

1.49. Questioned about the basis on which the sale prices of indigenous zinc were fixed by Government in June, 1968 at Rs. 2,700/- per tonne and in February, 1970 at Rs. 2,850/- per tonne, the Department of Mines have informed the Committee :—

"The zinc smelter at Always in the private sector commenced commercial production in the middle of 1967 and the other smelter at Debari in the public sector went into commercial production early in 1968. With a view to avoiding speculative purchases as between the two producers and having regard to the ruling price, the selling prices of indigenous zinc were informally fixed, with the agreement of two producers, in June 1968 at Rs. 2,700/- (exclusive of excise etc.). An increase of Rs. 150/- per tonne was permitted to the two producers in February, 1970 on account of increase in most of principal raw materials."

In their letter No. 28(8)/69-MIV dated 9 February, 1970 to the two producers the Department of Mines and Metals, however, had *inter alia* incorporated the following condition while allowing an increase of Rs. 150/- per tonne w.e.f. 1 February, 1970 :—

"This is subject to the condition that a sum of Rs. 100/- per tonne out of the increased price should be kept separately for developmental purposes. The details of the procedure for utilisation of the sum of Rs. 100/- per tonne are being worked out and will be communicated to you shortly."

1.50. The following factors are stated to have been taken into consideration by the Department of Mines while informally fixing the price of zinc at Rs. 2,700/- (exclusive of excise duty) per tonne in June 1968 :

- (i) Avoidance of unhealthy competition and speculative purchases which would be inherent in a situation where different prices are charged by the producers.

(ii) Fixation of price around the ruling market price of the metal.

Though this price of Rs. 2,700/- (exclusive of excise duty) was fixed for the period ending 31 March, 1969, it continued till 31 January, 1970, when the price was revised to Rs. 2,850/- per tonne (exclusive of excise duty).

1.51. It has been stated that the revision of zinc price in February 1970 was based on the representation of the producers that the cost of inputs had gone up since the price was fixed earlier in June 1968. The revised price took care mainly of the increase in the cost of some inputs. It may be mentioned that the market price also at that point of time was higher than prior to June 1968. At that point of time the MMTC price of zinc was Rs. 3,430/- per tonne ex-godown against Rs. 3,350/- per tonne inclusive of excise duty fixed for the indigenous producers. The average market price as quoted in the Eastern Meal Review, Calcutta, in January 1970 was around Rs. 6,000/- per tonne.

1.52. To a question whether Government went in the cost of production or cost of zinc concentrates while fixing the price at Rs. 2700/- the representative of the Department of Mines has stated during evidence :—

“At that stage, since the smelters had just gone into operation, a little earlier, it was an *ad hoc* price fixation and at that point of time, the cost of production had not been gone into.”

He had also stated that when the price was increased to Rs. 2,850/- only the increases in the cost of main inputs were considered. It was thought that an increase of Rs. 150/- was justified and simultaneously the detailed cost study was also envisaged.

The witness has affirmed that Cominco Binani was apprised of Government intention in their letter No. 28(8)/69-MIV dated 9 February, 1970 para 2 of which reads as under :—

“In this connection, it may please be noted that future proposals if any for increase in the uniform price for indigenous zinc metal would be considered by the Government only on the basis of actual costs of production. You are accordingly advised to maintain proper accounts of all the elements of cost to facilitate consideration in the event of such proposals.”

1.53. The Committee have been informed that Cominco Binani Zinc Ltd. was informed by the Department that the Public Sector Undertaking had represented for an increase in price and was asked by the Department to submit relevant cost data after the same had been received from the Hindustan Zinc Ltd. in February 1971.

1.54. The Committee desired to know whether Cominco Binani had represented to the Government about the price increase before 1971. The representative of the Ministry of Steel and Mines has stated :

“Both the producers were representing that the price of Rs. 2,850 was not remunerative.”

When asked that the Committee wanted to know specifically whether there were representations from Cominco Binani asking for a price increase before February 1971 the representative had deposed :—

“There were representations both before and after February 1971 about increasing the price of zinc metal.”

The Committee wanted to know the reasons for the Department taking the initiative in informing the private company of the representation made by Hindustan Zinc Ltd. in February 1971. The Department have stated as follows :—

“Hindustan Zinc Ltd. represented for revision of the selling price of zinc *vide* letter dated 2/4-2-71. After examining the cost data both the producers were addressed separately to furnish cost data for 1969-70 and cost projections, based on the best estimation possible, for the year 1971-72”.

Asked to state why it was thought necessary by the Department of Mines and Metals to inform Cominco Binani in February, 1971, after the receipt of cost data from Hindustan Zinc Ltd., that the public sector undertaking had already asked for an increase in price and that they should submit their cost data, the representative has replied :—

“The period for which the price of Rs. 2,850/- was fixed was coming to a close on 31-3-71 and we had earlier started moving for getting an exercise done to determine the price based on the cost of production, and we asked Cominco Binani to furnish us the details about cost of production at that point of time.”

He has further added :

“It was basically to avoid unhealthy competition in the sale of Zinc.”

1.55. As the Ministry also asked for the cost data for 1969-70, the Committee enquired whether there was any intention of giving increase in price with retrospective effect. The representative of the Ministry of Steel and Mines has stated :

“There was no such intention. We asked them to furnish the information with regard to the cost of production to enable us

to go into the details to see the basis on which we should fix the price for the coming period. That is all I would be able to say."

He has added :

"The idea was not to give any retrospective benefit. When we asked them the actual cost of 1969-70, that was only because the past actuals and the future projections could become the basis for the price fixation by Bureau of Industrial Costs and Prices. So, we wanted to go into the past actuals for the full year completed by them for which accounts were available."

In this connection he has further stated :—

"Binanis have been representing earlier than when we asked them to furnish the cost data. The decision was taken in the Department earlier itself that any increase in the selling price will have to be based on the cost of production. Once that decision was taken, the next course was to ask for the details of the cost of production from the company. In accordance with that, the data was called for from the company."

1.56. Enquired whether the cost data of M/s. Cominco Binani or only the cost data of the Hindustan Zinc was referred to the Bureau of Industrial Costs and Prices, the witness has stated :—

"We referred the cost data of both the companies."

1.57. It is seen from the Audit Paragraph that the Bureau had recommended (January 1972) the price of Rs. 4,090 per tonne from February 1972 (exclusive of excise duty etc.). Customs duty on imported zinc concentrate was withdrawn on 17 July, 1968, and was reimposed from 20 May, 1971. The Bureau had recommended that retrospective effect to the increased price could be considered for the producers to the extent they utilised duty paid concentrates for production of zinc. Government, however, decided to allow the increased price only from 1 February, 1972 on the following grounds :

- (i) 'A' (Cominco Binani) had just received a consignment and was to commence its utilisation shortly and, as such, "the question of giving retrospective price to.....(A) does not arise."
- (ii) The public sector undertaking had received only a small quantity of zinc concentrate in November 1971 on which it had

paid duty, and there were practical difficulties in segregating the zinc produced from duty paid concentrates from that produced from duty free concentrates received earlier.

(iii) Retrospective increase in price 'would create administrative problems relating to recoveries for the past sales, etc.'

1.58. As the price recommended by the Bureau of Industrial Costs and Prices was to be effective w.e.f. 1 February, 1972, the Committee desired to know whether the two zinc manufacturing companies were informed by the Department of Mines that the price of Rs. 2,850/- per tonne would be effective during April 1971 to January, 1972 also and whether this position was accepted by the two companies. The Department of Mines, in a note furnished to the Committee have stated :

"The cost data from Hindustan Zinc Ltd. was received in February, 1971 and from Cominco Binani Zinc Ltd. in March, 1971. In April, 1971, the Chairman, Bureau of Industrial Costs and Prices was requested to take up cost study for the purpose of price fixation and complete the same within a period of two months. In his reply dated 29-4-71, the Chairman, Bureau of Industrial Costs and Prices informed that questionnaire would be sent to the producers shortly and assuming receipt of replies by the end of May, 1971, the report would be ready by about middle of July, 1971. The replies were sent by the producers only in July, 1971 (on 15-7-71 by Hindustan Zinc Ltd. and on 23-7-71 by Cominco Binani Zinc Ltd.). On 8-11-71, the Bureau of Industrial Costs and Prices was reminded to expedite the report. The Bureau submitted the report on 24-1-72.

The Bureau, in their report, recommended a price of Rs. 4090/- per tonne which was notified with effect from 1-2-72. In the intervening period from 1-4-71 to 31-1-72, the price of Rs. 2,850/- per tonne (exclusive of excise) continued as per the earlier precedent under similar circumstances for the period from 1-4-69 to 31-1-70. The two producers did supply zinc at the price of Rs. 2,850/- against DGS&D contracts as per details below :—

Cominco Binani Zinc Ltd.

(i) Telecom. factory Jabalpur	99.87 tonnes (July '71)
(ii) DCOS, North Eastern Railways, Gorakhpur	20.00 tonnes (July '71).

(iii) DC DS, CLW, Chittaranjan 0.904 tonnes
(July '71)

Hindustan Zinc Ltd.

1. Ordnance Factory, Katni 272.00 tonnes
(April '71)

2. DCOS, Western Railways 50.00 tonnes
(April '71)

1.59. Earlier, as stated by the Department of Mines, the price of Zinc which was fixed in June, 1968 with the consent of the two producers, was intended for period upto 31-3-69. This price, however, continued upto 31-1-70 when on representations made by the two producers, it was raised to Rs. 2,850/- per tonne (exclusive of excise) with effect from 1-2-70 for the period from February, 1970 to March, 1971. In the intervening period i.e. 1-4-69 to 31-1-70 the price of Rs. 2,700/- per tonne (exclusive of excise) continued and the two producers supplied zinc metal to the allottees at this price.

1.60. As Minerals and Metals Trading Corporation of India were also selling the imported zinc in the market, the Committee desired to know the basis on which the sale price of imported zinc is fixed by the Corporation from time to time.

The MMTC have informed the Committee as follows :—

“MMTC has been importing zinc from 1967-68. The selling price of zinc was being fixed by the Corporation on its own upto September, 1970.

Prior to the year 1971-72, the Corporation was fixing the selling price of the non-ferrous metals including zinc canalised through the MMTC for distribution to the Actual Users as per the guidelines decided at an inter-ministerial meeting held on the 17th August, 1970 under the Chairmanship of CCI&E. At this meeting a 3 tier pricing policy was formulated effective from October, 1970. In accordance with this decision separate selling prices were being fixed for the categories of REP (Registered Exporters), AU(P) (Preferred sources of supplies) and AU (Other actual users). The selling prices were determined on the basis of the actual landed cost, which *inter alia*, includes weighted average, c.i.f. import cost, customs duty, interest charges, port and other actual handling charges plus a service margin for MMTC as allowed from time to time by the Ministry of Commerce. Under this formula REP category of allottees were to get the benefit of the lowest prices followed by AU(P) and AU category of allottees. Such prices

were fixed on a *quarterly basis*. Upto 30-6-1973, the corporation's margins were fixed as percentage of c.i.f. cost and from 1-7-1973 these were fixed per tonne basis.

From the year 1971-72 onwards, the selling prices are determined by the Pricing Committee formed w.e.f. 17-9-1971 presided over by the Chief Controller of Imports and Exports and consisting of Economic Adviser in the Ministry of Industrial Development and Internal Trade, Development Commissioner (Small Scale Industries) Director General of Technical Development and representatives of the Department of Economic Affairs and Ministry of Commerce as members in terms of para 66 of the Import Trade Control Policy (Vol. I) for the year 1971-72. The basis of fixation of selling prices stated above however remain same."

According to the Audit Paragraph the prices fixed by the Department of Mines and Metals for indigenous zinc and the prices of imported zinc fixed by the Minerals and Metals Trading Corporation during April 1971 to March 1973 for various categories of users were as follows :—

	Prices of indigenous Zinc (including excise duty)	Price of imported zinc fixed by Minerals & Metals Trading Corporation for		
		Actual users	Actual users (P)	Registered exporters
(Rupees per tonne)				
April 1971 to June 1971	3350(a)	3150(c)	3100(c)	..
July 1971 to September 1971	3350(c)	4200	..	4130
October 1971 to Dec. 1971	3350(a)	4840(d)	4650(d)	4630(d)
January 1972	3725(b)	5260	5000	4970
Feb. 1972 to March 1972	4965(b)	5260	5000	4970
April 1972 to June 1972	4965(b)	5330	5000	4970
July 1972 to Sept. 1972	4965(b)	5360	5000	4970
October 1972 to Dec. 1972	4965(b)	5510	5290	5245
January 1973 to Feb. 1973	4965(b)	5675	5480	5430
March 1973	4965(b)	6215	6035	5980

(a) Includes excise duty of Rs. 500 per tonnes.

(b) Includes excise duty of Rs. 375 per tonnes.

(c) The prices effective from 29 May 1971 were Rs. 4120 and Rs. 4055 respectively.

(d) The prices effective from 13 December 1971 were Rs. 4910, Rs. 4820 and Rs. 4700 respectively.

It will be seen from the above table that the prices of indigenous zinc were lower than the prices fixed by the Minerals and Metals Trading Corporation, except during the quarter April 1971 to June 1971. It is stated that

indigenous zinc was allotted at the lower prices during July 1971 to March 1973 also to private units in the priority sector registered with the Director General, Technical Development Department of Steel, etc.

1.62. The Audit Para further mentions that from April 1973 the indigenous producers are allowed to sell zinc at prices not exceeding the prices fixed by the Minerals and Metals Trading Corporation; one of the reasons for this is that different prices for the same commodity were considered undesirable, as in that event those who are allocated cheaper indigenous zinc would make a windfall gain out of it. The prices fixed by the Minerals and Metals Trading Corporation are not linked to the cost of zinc concentrates imported by Cominco Binani from time to time.

1.63. As the prices fixed by MMTC are based on the cost of import and customs duty, handling charges cost of production of Zinc from zinc concentrates in foreign countries, higher labour cost etc. the Committee enquired as to why this firm had been allowed to charge the price fixed by MMTC. The witness has stated :—

“Since Binani’s operations are based on imported zinc concentrates, there is an indirect linkage between the MMTC prices and Binani’s cost of production, for the concentrate transactions in the world are based on the international prices of zinc metal after taking into consideration treatment charges and so on. Similarly, MMTC prices are also based on the international metal prices. So, to that extent there is an inbuilt linkage between the MMTC price and Binani’s cost of production. In addition to this, to avoid any unintended benefit of a major extent to Binani, the concentrates which are brought in attract customs duty of 45 per cent, which is the same as for zinc metal. Further the excise duty which is levied on the metal produced from the concentrate on which customs duty has already been paid.”

The Committee thereupon drew the attention of the representative of the Department of Mines to the following statement made in the Director’s Annual Report of M/s. Cominco Binani Zinc Ltd. for the year 1974-75 :—

“The satisfactory picture of profitability for the year under report has been mainly due to the following reasons :—

* * * * *

(ii) using up of inventories of zinc concentrates purchased earlier at prices lower than the current market price.”

The Committee, therefore, desired to know as to why MMTC did not collect the entire production and fix a reasonable price in relation to the cost of production and other factors. The witness has stated :—

“What you have pointed out from the Director’s Report is due to the fact that there is a time lag in the prices and stocks of concentrates have to be there, and with the fluctuations in metal prices in the international market, on which basis these concentrate prices are based, sometimes there is a higher or a lower price, but generally they should balance out with the passage of time. Moreover, this Report which you have quoted was for the first year when dividend was declared by this company.”

1.64. When the Committee asked whether the linking of price of indigenous zinc with the price of imported zinc had not given windfall gains to private units, the witness has deposed :—

“There was a period when the gains were substantial. That was for one year. I have with me the latest financial position for 1975-76. If I may be permitted to bring to your notice during this year, the Cominco Binani made a profit of Rs. 81 lakhs as against Rs. 10 crores profit made by The Hindustan Zinc Ltd.

He has added in this connection :—

“But it was ensured that the advantage went only to the priority sectors of the industry. That is why, after meeting the Government Department’s requirements in full, the balance was allocated for priority sectors of the industry.”

1.65. A note, furnished by the Department of Mines, indicating the circumstances in which it had been decided, in April, 1973, to allow indigenous producers to sell zinc at prices not exceeding the prices fixed by the Minerals and Metals Trading Corporation, is reproduced at Appendix II. It *inter alia* states :—

“From May 1972 onwards Cominco Binani Zinc Ltd., represented that though the Bureau’s recommendation is supposed to allow a return on the capital employed, they would operate at a heavy net loss, for the following reasons :—

- (i) *Assumption of average higher production of Zinc.*—According to the company, increase in production beyond 15,000 tonnes per annum would require heavy capital investment and prolonged shut-down which they could not afford at the then unsatisfactory financial position ;

- (ii) *Difference in credit assumed for sale of by-products.*—The Bureau had apparently taken higher credits for realisation from sale of by-product sulphuric acid and cadmium ;
- (iii) *Computation of capital employed.*—The company apprehended that the Bureau had not reckoned working capital requirements of six months in computing the capital employed ; and
- (iv) The company also desired an element to be allowed for amortization of carried forward losses and for unabsorbed depreciation.

1.66. Enquired as to how it was ensured that the entirely indigenous producer of zinc such as Hindustan Zinc Ltd. did not suffer in comparison to the non-indigenous producer such as Cominco Binani Zinc Ltd. by linking the prices to those fixed by the MMTC, the Ministry, in a note furnished to the Committee have informed :—

“The study of the Bureau of Industrial Costs and Prices (January 1972) had established that the cost of production of the Hindustan Zinc Ltd. (undertaking in the public sector) was much lower than that of Cominco Binani Zinc Ltd. They had, therefore, recommended that a sum equivalent to Rs. 600 per tonne of zinc metal should be mopped up through excise levy on the concentrates of Hindustan Zinc Ltd. This was not accepted by Government and the Hindustan Zinc Ltd. was allowed to sell zinc at Rs. 4090 per tonne (exclusive of excise). The company was, however, directed to conserve the additional funds generated for expansion schemes.

Unlike the smelter of Cominco Binani Zinc Ltd. which is based on imported concentrates, the smelter of Hindustan Zinc Ltd. at Debari is based on indigenous ore and has an edge over the smelter of Cominco Binani Ltd. The Government have throughout ensured that Hindustan Zinc Ltd. is placed in a more advantageous financial position than Cominco Binani Zinc Ltd.”

Enquired as to what check is exercised in the matter of control of the price of zinc, the representative of the DGTD has stated :—

“The price is fixed by the Mines and Metals Department from time to time.”

The representative of the Department of Mines has added in this connection :—

“As far as price fixation from 1-4-1973 onwards is concerned, the indigenous producers have been allowed to sell zinc at MMTC ruling prices.”

“None of the indigenous producers have been allowed to charge beyond the MMTC prices. That is the ceiling which has been put. Within that ceiling, they have to work. We have not received any complaint whatsoever from any quarter that they have violated the instructions of the Department by charging more than the MMTC's prices.”

1.67. The Committee desired to know the policy regarding fixation of the price of the Hindustan Zinc and Cominco Binani and therefore enquired whether it was also considered that in the case of Cominco Binani about 40 per cent of the profit would go in the foreign exchange in fixing the price. The representative of the Department of Mines has stated :—

“As far as the total profit is concerned, if it is converted into a dividend, then it is only 40 per cent; because of the shares held by the foreigners it would go abroad. But the dividend has been declared only for two years out of its operation for about nine years.”

Enquired whether it was a part of the consideration while determining the policy that a portion of the earning of the Cominco Binani would go in the shape of the foreign exchange to Canada which were supplying 50 per cent of the concentrates. The witness has stated :—

“I don't think this was a specific consideration while fixing the prices for Binani Company.”

He has added :—

“The BICP did not consider those factors while fixing the price.”

To a question whether this matter was considered in the Ministry at a high level, the witness has stated :

“As the records show, this factor did not figure in the study. This is an interesting point which has been raised. I am afraid, this was not considered in such depth and dimension.”

Asked as to why it was not taken into consideration, the witness has deposed :

“As I mentioned earlier, the cost of production of the indigenous zinc being lower than the cost of production from Cominco

Binani who were buying imported concentrates, when we had a parity formula between the two producers, it was to the advantage of the indigenous producer of the public sector, that is Hindustan Zinc. Invariably, they had observed that parity in prices was to the advantage of the Hindustan Zinc."

Performance of M/s. Cominco Binani Zinc Ltd. against Order placed on it by the DGS&D on the basis of half-yearly allotments.

1.68. Against the allotment for the half year October 1970 to March 1971 orders were placed on M/s. Cominco Binani Zinc Ltd. for supply of 1316 tonnes of zinc at the rate of Rs. 2,850 (excluding excise duty). Cominco Binani Zinc Ltd. supplied only 416 tonnes at the price of Rs. 2,850 per tonne. The balance 900 tonnes due to be supplied by March 1971 was not supplied by it. The period of delivery was extended once up to June 1971 and again upto August 1971.

1.69. In this context, the Committee desired to know the estimated production and actual production by the company during the half year ended 31 March, 1971. The Department of Mines have stated :

"While considering the distribution policy for indigenous zinc for October 1970—March 1971 period, the production of Cominco Binani Zinc Ltd. for the said period was estimated at 7,000 tonnes. Actual production during the same period was, however, 5,431 tonnes."

Enquired as to how this quantity had been allocated between different users and whether the firm had honoured its commitments to the other allottees during this period, the Department of Mines have stated :

"After taking into account the backlog of pending orders (1,856 tonnes approximate), stock of zinc at the end of September 1970 (about 750 tonnes) and the estimated production (7,000 tonnes), the net availability for allocation was estimated at 5,900 tonnes. Against this estimated net availability of 5,900 tonnes actual allocations were made for 5,759 tonnes."

"As stated above, there had been a shortfall of 1,569 tonnes in actual production during October 1970—March 1971 from the estimated level. The metal available for supplies, thus, got reduced to that extent."

1.70. Details of the sector-wise allocations, and the actual supplies made by Cominco Binani Ltd. (Total including supplies made against backlog from the previous period) are indicated in the table below :—

Sector	Allocation made for Oct. 1970—March, 1971	Backlog from pre-vious period	Supplies made including against backlog
1	2	3	4
(in tonnes)			
(i) Govt. Departments (Defence, P&T and Railways)	1,303		1,032*
(ii) Kolar Gold Mines and Hutti	16	1,856	16
(iii) DGTD units	3,090		3,511
(iv) Steel Plants	900		890
(v) Iron & Steel Units	450		222
Total	7,615		5,671

NOTE :—*Includes 416 tonnes against Oct. 1970—March 1971. Break-up of 1,856 tonnes sector-wise is not available and also could not be furnished by the firm now.

1.71. It is stated by the Department that "in the absence of the break-up of the back-log figures of 1,856 tonnes carried forward to October 1970—March 1971 period, it is difficult to state categorically as to the extent to which Cominco Binani Zinc honoured its commitments to the other sector. However, assuming that the back log is distributed *pro-rata* (except in the case of Kolar and Hutti Gold Mines who lifted the metal during the period itself) the position of supplies required to be made, and actually made would work out to as follows :

Sector	Allocation for Oct. 1970—March—1971	Pro-rata backlog (Assumed)	Total supplies	Supplies actually made
1	2	3	4	5
(In tonnes)				
(i) Government Departments	1,303	421	1,724	1,032
(ii) Kolar & Hutti	16	..	16	16
(iii) DGTD units	3,090	999	4,089	3,511
(iv) Steel Plants	900	291	1,191	890
(v) Iron & Steel Units	450	145	595	222
Total	5,769	1,856	7,615	5,671

On the above basis, it is *deduced* that by and large there was shortfall in supplies to the various sectors."

1.72. As the firm did not supply the balance quantity of 900 tonnes of zinc to the consignees out of the allocations for October 1970 to March 1971, the Committee desired to know whether the quantity remained in stock with the firm or they sold it to some other persons afterwards. The representative of the Department of Mines has stated during evidence :—

"Indirectly the indications were that this 900 tonnes would have been in the stocks of the company during that period because their stocks were higher than 900 tonnes all along that period."

1.73. In this context, the Department of Mines have however informed the Committee that M/s. Cominco Binani Zinc Ltd. did not supply Zinc outside allocations made during October 1970 March 1971.

1.74. At the instance of the Committee information regarding the opening stocks, production, deliveries effected against allocations, sales to parties other than authorised allottees and closing stocks of zinc during each half year from October 1970 to October 1975 in respect of Cominco Binani Zinc Ltd. as furnished by Department of Mines is given below :—

Period	Opening stock	Production	Sales against allocation	Others including losses	Closing stock
	(MT)	(MT)	(MT)	(MT)	(MT)
1	2	3	4	5	6
Oct. 70/Mar. 71	742	5431	5671	..	502
Apr. 71/Sep. 71	502	4,476	216	..	4762
Oct. 71/Mar. 72	4762	7986	5277	..	7471
Apr. 72/Sept. 72	7471	6113	8450	..	5134
Oct. 72/Mar. 73	5134	7063	7749	..	4448
Apr. 73/Sep. 73	4448	5484	8317	..	1615
Oct. 73/Mar. 74	1615	4468	4472	..	1611
Apr. 74/Sept. 74	1611	6070	4984	..	2697
Oct. 74/Mar. 75	2697	1957	4269	218*	167
Apr. 75/Sept. 75	167	5752	*1391	994	3534

*The distribution control was withdrawn in February, 1975.

1.75. As the delivery period was extended twice the Committee enquired whether it was a fact that these extensions were granted to the firm at their request. To this, the Secretary, Department of Supply has stated :

"Two extensions were given in respect of the tender which was accepted on 24-12-70 for 1,000 m.t. First initial extension was till

June 1971. Thereafter this was given till August, 1971. The factory had asked for extension on the ground that there was a strike in the factory, and so they were not able to supply. They invoked *force majeure* clause though we did not yield. They said they had backlog and wanted extension of time. It was granted till August, 1971."

1.76. According to information* furnished to the Committee, these extensions were given on 7th May, 1971 and 7 July on firm's requests dated 23 March, 1971 and 17 June, 1971 respectively.

1.77. The Committee pointed out that the original delivery period was to end by March, 1971 and the strike started sometime in the later part of March and therefore enquired whether the firm asked for extension on account of strike. The witness has replied :—

"On 23-3-1971 they asked for extension upto 30-6-71 without liquidated damages due to strike."

1.78. The Committee desired to know as to why the delivery period was extended upto 30 June, 1971 without any liquidated damages. The Director has stated during evidence :—

"The extension upto June 1971 was necessitated because of the 3 months' strike in the factory during that period."

To a question as to why the second extension was given, the witness has deposed :

"They stated that the strike had ended on 7-6-71 but there was substantial loss of production resulting in heavy backlog of arrears. In order to resume normal production levels they wanted to have some time till 31-8-1971."

1.79. When the Committee enquired whether it was not possible at that point of time to ask for liquidated damages, the Director General of Supplies and Disposals has stated :

" . . . liquidated damages arise only for late delivery. Here, no delivery has materialised."

In this connection, the representative of the Ministry of Law has explained :—

"The liquidated damages clause is generally incorporated while issuing the letter of extension of the delivery period, and such a provision is quite necessary. It would not legally be possible to claim

* Not vetted in Audit.

liquidated damages if in the original contract provision has not been made to that effect.”

He has added :

“In the letter of extension normally this provision will have to be repeated because of Section 55 of the Contract Act which says that when the stores are accepted beyond the date contemplated by the contract, the purchaser will have to claim the damages again before acceptance is taken. In this case that clause has not been put in the letter of extension, and in respect of any late supplies, the absence of such a clause would come in the way so far as the claim for liquidated damages is concerned.”

1.80. Enquired as to whether the letter of extension is predominantly decisive, the witness has replied :

“The letter of extension will be the decisive factor.”

To another question whether the clause was not put in the letter of extension because of lack of consultation with the Ministry of Law, the Director General of Supplies and Disposals has stated :

“It is purely procedural point. An extension of three months was deliberately given in this case without liquidated damages to cover the strike period. The letter contained no denial of other claims.”

1.81. When the Committee asked why this clause for levy of liquidated damages was not incorporated and insisted upon while allowing these two extensions, the Department of Supply, in a note, subsequently furnished to the Committee have stated* :

“A clause for levy of liquidated damages is generally included while granting extension to the original delivery period specified in the contract. Extension without liquidated damages is, however, granted in cases where it is clear that delay in supply is due to causes beyond the control of the supplier. From the re-constituted file it is not possible to specify the reasons for not incorporating the clause for levy of liquidated damages, while granting extensions upto 30-6-71 and 31-8-71. However, there was a strike in the factory from 13-3-71 to 7-6-71.”

1.82. The Committee desired to know whether the firm after giving the two extensions came forward with a proposal to DGS&D that they could

*Not vetted in Audit.

not supply the balance 900 tonnes at Rs. 2850/-. The Secretary, Department of Supply have informed in this connection :

“From the information we have on the basis of the reconstructed material, the department had been resisting any claim on the part of the company to get a higher price.”

1.83. According to the Audit Para, in August 1971, Cominco Binani Zinc Ltd. informed the Director General, Supplies and Disposals, that it could not supply zinc at the rate of Rs. 2,850 per tonne and requested him to treat this price as provisional for supplies made from April 1971, subject to finalisation of price by the Department of Mines. After the revised price of Rs. 4,090 per tonne (excluding excise duty) effective from 1 February, 1972 was announced, the firm intimated the revised price to the Director General, Supplies and Disposals, on 5 March, 1972 requesting him to amend the contract for payment of enhanced price for the outstanding 900 tonnes. On 1 September 1973, Cominco Binani Zinc Ltd. informed the Director, General, Supplies and Disposals, that it was treating the order for the balance 900 tonnes as having lapsed.

1.84. The Committee desired to know the steps taken by the DGS&D to follow up the A/T placed on the company in December, 1970 between the period from June 1971 to February 1972. The Department of Supply have stated* :

“The reconstituted file available could not indicate the specific steps, if any, taken by the DGS&D to follow-up the A/T dated 24-12-70 between the period from June 1971 to Feb. 1972. However, action in general policy file and similar cases would indicate that this default in supply had been brought to the notice of the Ministry of Mines periodically at allocation meetings and through such opportunities to the firm.”

1.85. In the meeting of zinc Allocation Committee (October 1971—March 1972) held on 21 October 1971, the representative of the DGS&D had pointed* out the unsatisfactory performance of M/s. Cominco Binani who had a back log of 1353 M/Ts against DGS&D orders placed with them in October 1970 to March 1971. The Department of Mines and Metals and D.G.T.D. had also pointed out that the firm had not cleared their other commitments of more than 6,000 M/Ts. The hold-up of production was attributed by the firm to prolonged strike in their factory. The firm's representative had, however, agreed to clear the back log as early as possible as the strike was over by then.

*Not vetted in Audit.

1.86. To a question as to why no steps were taken by the DGS & D to extend the date of supply after August, 1971, the witness has stated during evidence :—

“In these series of contracts the main issue has been the price applicable because the firm said they would not honour these contracts while we were keen that these should be supplied at the contracted price. We started the correspondence with the Mines Ministry on this very basic issue. The subsequent correspondence will show that we have been pursuing this matter with the Ministry of Mines. Till such time this issue was settled, we could not give the extension.”

1.87. The Department of Supply have, however, informed* the committee that ‘no correspondence with Cominco Binani Zinc Ltd. appears to have been entered into with regard to price fixation, presumably as the price fixation was the sole responsibility of the Department of Mines.’

1.88. As the firm had asked on 15 March, 1972 for enhanced price of Rs. 4090 per tonne for the outstanding 900 tonnes the order for which was ultimately treated as having lapsed by it, the Committee desired to know the role played by the Directors on the Board of Cominco Binani Zinc Ltd., from time to time, in regulating the company's activities and disciplining an apparently truant organisation which had not honoured its commitments. The Department of Mines in a note furnished to the Committee have *inter alia* stated :

“The Department of Mines nominated its representative on the Board of Cominco Binani Zinc Ltd. during August 1966 to April 1967 when the zinc smelter of Cominco Binani Zinc Ltd. was under construction.

Thereafter Government nominated its representative on the Board of the Company in June 1970 with a view to ensuring that the funds generated by the company are utilised for expansion and not frittered away by payment of higher dividend etc. Thus the main object of the nomination of the representative of the Department of Mines on the Board of Cominco Binani Zinc Ltd. in 1966 was to keep a watch on the progress of setting up the zinc smelter and in June 1970 to ensure that the additional resources likely to be generated (following the revision of zinc price from 2700/- to Rs. 2850/- per tonne allowed in February, 1970) were not frittered away by way of higher dividends and/or investment in the shares/debentures of associate companies, but ploughed back for expansion.

* Not cited in Audit.

Periodical reports were made by the Directors regarding the affairs of the company on return from Board meetings.

The Department of Mines have not received any specific reports from the representatives of the ASIDC and IFC (which are autonomous bodies) on the Board of Cominco Binani Zinc Ltd. during the relevant period."

1.89. The Committee have been informed that in the case of supplies to DGS & D during 1971-72 a reference was received in April 1971 from the DGS & D stating the closure of the zinc smelter of Cominco Binani Zinc Ltd. due to strike and enquiring whether extension of the delivery period of the A/Ts beyond 31 March, 1971 would attract the revised price. On 22 April, 1971 the DGS & D were informed that it was not possible for the Department of Mines to indicate at that point of time the extent to which the proposal to increase the price would be accepted by the Government. In regard to the extension of the delivery period, the DGS & D were informed that it was a matter for them to decide in terms of the contract with the party.

1.90. As the supplies to Defence, Railways, P & T etc. were routed through the DGS & D, there had generally been delays in the placement of orders and actual lifting of zinc and the Department of Mines did suggest streamlining the procedures (*i.e.* waiver of inspection clause and 100% payment on proof of despatch as early as 1971) and direct purchase (suggested in April 1973) by the consuming Departments. This was later accepted by the DGS & D/Ministry of Supply in January, 1975.

1.91. It is seen from the Audit Paragraph that the case was referred to the Ministry of Law in July, 1974 whereas the firm had informed the DGS & D on 1 September, 1973 that it was treating the order for the balance quantity of 900 tonnes of Zinc as having lapsed. The Committee required as to why the DGS & D had taken about ten months in referring the case to the Ministry of Law. The Secretary, the Department of Supply has stated during evidence :

"The facts were that we had a letter from the firm on 1-9-1973 and thereafter because the file could not be traced, they tried to secure the copies thereof from the other possible sources from which collateral documentation could be had. Thereafter the question arose whether we could consider the whole thing completely without referring to the indentors. Some how they made a reference to the two indentors—one was the Jabbalpure factory of the P & T and the other was the Railways."

1.92. Subsequently the Department of Supply, in a note furnished to the Committee, have elaborated the position as follows :

“Letter dated 1-9-73 from Firm was received in the DGS & D on 3-9-1973. In this letter, the firm had stated that since the required amendment letter against the contract dated 24-12-70 had not been received by them, the balance quantity of 900.111 M/Ts was treated as lapsed. The firm further requested the DGS & D to reduce the quantity on order to 248.889 M/Ts (from 1149 M/Ts) and to treat the contract price as firm and final. This was followed by letter dated 8-12-1973, which was received in the DGS & D on 13-12-1973.

The main file of the DGS & D for the contract in question was not traceable inspite of best efforts. The contract was issued to meet requirements of two indentors :

- (i) Manager, Telecom. Factory, Jabalpur 1000 M/Ts.
- (ii) Controller of Stores, South-Eastern Railway Calcutta-149 M/Ts.

Reference was made to both these indentors on 12-2-1974 to intimate the exact quantities, received by them and to also intimate whether the balance quantity, if any, could be treated as cancelled. A reminder was issued to both the indentors on 13-3-1974. The anager, Telecom. Factory intimated DGS&D on 1-3-1974 that he had received a quantity of 99.877 M/Ts leaving a balance of 900.123 M/Ts. He further desired that the firm might be asked to expedite supply of the balance quantity which was still required. He further desired that the firm might be asked to expedite supply of the balance quantity which was still required. He was informed by the DGS & D on 2-4-1974 that it would not be possible to arrange supply of the balance quantity at the contract rate, since the firm had refused to supply the outstanding quantity in 1971, primarily due to non-fixation of the price of indigenous Zinc by the Department of Mines for the period 1-4-1971 to 31-1-1972. Moreover, the price of Zinc had gone up considerably since the issue of the contract in December,1970 and a valid risk-purchase at that stage was not possible. The indenter was also requested to raise a fresh indent for his requirement. The indenter in his reply dated 26-4-1974 did not agree to cancellation of the balance quantity as Zinc was one of the important raw-materials required by him. He also

expressed his inability to raise a fresh indent for the outstanding quantity. So far as South-Eastern Railways are concerned, it appears that no reply was sent by them. This may be due to the fact that their requirement was met in full.

A reference was made to the firm by the DGS & D on 23-5-1974 to forward a copy of the A/T and all other correspondence as DGS & D's file relating to contract dated 24-12-1970 was not readily traceable. The firm forwarded a copy of the A/T and some relevant correspondence in compliance to the request of the DGS & D on 3-6-1974. This was followed by a letter dated 5-7-1974 under which the firm forwarded copies of 8 letters, which had not been sent earlier. Thereafter, a reference was made to the Ministry of Law on 24-7-1974 if the balance quantity of 900.123 M/Ts could be cancelled at firm's risk and cost."

1.93. The Committee pointed out that after the receipt of the firm's reminder in December, 1973, DGS & D had taken about 3 months' time in making a reference to the indentors and therefore enquired as to why the reference to the indentors was not made in the initial stages. The witness has stated :

"The information was not available because the original file is not traceable. They were therefore collecting the information from wherever they could lay their hands on, from the Liaison Officer of the P & T Department and also from other similar files where similar action had been taken."

He has further added :

"In this particular matter, so far, I am able to see the documentation on file and, in a matter like this, I can only rely on this documentation of file no doubt three months' delay to which the hon. Member just now referred was unfortunate. This has to be admitted. Subsequently, till the reference was made, action was taken on two factors—(a) to secure such copies as could be had from the correspondence, and (b) to refer to the indentors to verify whether the need still persisted. These were the two factors which contributed to this delay."

1.94. It has been stated during evidence that the Department had come to know in early 1974 that the relevant file was missing.

1.95. Enquired as to whether any responsibility has been fixed for the loss of file from since 1974, the witness has stated :

"We have already asked the Directorate to fix the responsibility. As a result of that, it has now been ascertained that the responsibility has been fixed on a few officers. In addition, they are continuing the investigation."

To a question as to what action the Government propose to take against those officers on whom the responsibility has been fixed, the Secretary, Department of Supply has stated :

"We have fixed the responsibility on two or three officers of the Directorate and their explanation has been called for. As I mentioned, in addition to this, the investigation is on. In the light of the results that obtained in the investigation we shall not hesitate to take appropriate action against the officers concerned."

He has added :

"We are very much concerned about loss of these papers. We have the system for locking up pre-A.T. files. We are thinking of similar improvement in the movement system of the entire directorate. I am sure we will be able to find effective method for locating individual files which move in the directorate. In this transaction this file was linked up with the main file concerning fixation of price in that period. The policy file is there."

Intervening at this point the Secretary, Department of Supply has stated :—

"There were two aspects of the case—one operational and the other administrative aspect. The DGS&D wanted to lose no time on the operational aspect. Action was taken to consult law and take further action and to claim general damages found feasible. The other aspect was taken simultaneously upon to the stage of fixing responsibility."

1.96. The Department of Supply have, however, clarified* that the loss of file first came to their notice on 23 February, 1974 and that the file could not be traced. Disciplinary proceeding against an Assistant Director and an U.D.C. who had handled the file last according to the

*Not vetted in Audit.

Movement Register of the Directorate have been initiated and action is under way.

197. In their 144th Report (Fifth Lok Sabha) the Public Accounts Committee had examined another case relating to the Binani Group of Companies, where also a letter written by the Company was stated to have been lost, and the vigilance and disciplinary aspects of the case were stated to be under examination. The Committee have been informed* by the Department of Supply that the above two officers were also involved among others in that case and as a result of disciplinary proceedings initiated in that case, recordable warnings were issued to these officers on 30 August, 1976.

198. It is seen from the Audit Paragraph that in respect of the order placed on Cominco Binani Zinc Ltd. by the DGS & D against the allotment for the half year October 1970 to March 1971, the Law Ministry had advised in August, 1974, that as the delivery period had expired long ago, the Department could only claim general damages treating 30 June 1971 as the date of breach. From the facts of the case it is, however, noted that the company had requested, on 15 March, 1972 that the contract might be amended for the payment of the enhanced price of Rs. 4,090 per tonne in respect of the outstanding quantity of 900 tonnes. Again, on 1 September, 1973, the company had approached the DGS&D to declare the Price of Rs. 2850 as final for the supply of small quantity of 30.20 tonnes. In the light of this correspondence and the conduct of Cominco Binani Zinc Ltd. during this period, the Committee desired to know whether this did not amount to either a continuation of the existing contract or revival of the contract. The Ministry of Law have informed* the Committee in this regard as follows :—

"The question of continuation of the contract would arise only if, after the occurrence of the breach of the contract either party to the contract has done something by correspondence or otherwise in relation to that part of the contract remaining unperformed, thereby manifesting an intention to abide by the contract despite the breach.

In the present case, the breach of contract took place on 30-6-71. In the letter dated 15-3-1972, the firm sought an amendment of the contract in respect of the outstanding quantity at the enhanced price of Rs. 4090/- as against the contract price of Rs. 2850/-. The letter is in the nature of fresh offer on the part of the firm to supply the outstanding quantity at a

*Not vetted in Audit.

price different from that originally agreed upon, which the Department was free to accept or not. This does not obviously contain any reference to performance of any contract as originally envisaged by the parties and, therefore, cannot have the effect of keeping the contract alive. In the letter dated 1-9-1973 the firm requested the Department to amend the A/T so as to make the price of Rs. 2,850 final in respect of the quantity already supplied. It is apparent from this letter that the amendment sought was in respect of the quantity already supplied under the contract and the firm not having made any proposal committing themselves to supply the outstanding quantity at the contract price, namely, Rs. 2,850, it will not have the effect of keeping the contract alive.

In the circumstances, the two letters written by the firm on 15-3-72 and 1-9-73 do not result in continuing the existing contract or reviving it in any way."

1.99. The Department of Mines however, informed the Director General, Supplies and Disposals, on 11 February, 1975 that the selling price of Rs. 2,850 per tonne of indigenous zinc metal fixed for the period February 1970 to March 1971 continued upto 31 January, 1972. In view of this, the Ministry of Law observed on 5 August, 1975 "If the Department is in a position to establish by way of documentary evidence that actual sale transactions had taken place at the relevant time at the rate of Rs. 5.700 per Metric tonne then they may be in a position to support or substantiate their claim for general damages on the basis of the aforesaid rate. On the other hand, if the firm is in a position to lead the evidence to show to the contrary that the aforesaid rate is not truly reflective of the market rate for the reason that the actual sales have been concluded at the relevant time at the rate of Rs. 2,850 per metric ton as fixed by the Ministry of Mines, then the claim of the Government may not be entertainable or sustainable." Audit Para mentions that the amount of the general damages recoverable had not been worked out (November 1975). It may be mentioned in this connection that of the 416 tonnes supplied by the firm 30.20 tonnes were supplied in July 1971 and October 1971. On 1 September, 1973, the firm approached the Director General, Supplies and Disposals to declare the price of Rs. 2,850 per tonne as final for those supplies. The Director General, Supplies and Disposals did so in March, 1974.

1.100. The Committee enquired the basis on which the market price of Zinc had been assessed at Rs. 5,700 per tonne as on 30 June, 1971. The Department of Supply have stated :—

"To assess the market rate, DGS&D had to place reliance on the Eastern Metals Review, a commercial Journal which published among other things the market prices of non-ferrous metals.

As per legal advice, it may not be necessary to issue a fresh enquiry to ascertain the market rate. If the purchase of the item has been made during the period just before or just after the date of breach, the rate established in such purchases can be taken as the market price. The date of breach in this case was 30-6-1971. The Eastern Metals Review for the period ending 28-6-1971 had indicated the market rate for Electrolytic Zinc in Calcutta as Rs. 5,700 per tonne. As such, this rate was taken as the market rate prevailing roundabout the date of breach. Ministry of Law also held the view that there might be no impediment to the Department claiming the General Damages at that rate but it may have to be left to the Arbitrator to award such sums as he may deem fit and proper the circumstance of the case."

1.101. To another question as to why the price of 30.2 tonnes of Zinc was fixed by the DGS&D at Rs. 2850, the Secretary of the Department of Supply has stated during evidence :—

"No doubt in the case of this thirty tonnes supply they had agreed to abide by the price of Rs. 2,850. When that was finalised at that rate, by that time, it had become clear that the intention of the Mines Ministry was that the price of Rs. 2,850 would continue till the 1st February, 1972. So far as evidentiary value in regard to the general damage claim is concerned, it is no doubt true that the general damages will have to be fixed with reference to the prevailing market rates. We had to rely on the evidence, the Law Ministry had also advised on that, that we could rely on the basis of the Eastern Metal Bulletins. From the information we have gathered from the DGS&D, during the relevant period—from April 1971 to September 1971—there were supplies by the Cominco Binani to others which were far higher than Rs. 2,850. The price was ranging from Rs. 2,750 to Rs. 5,215. So, these two will have to be the main basis of evidence on which one has to rely and have to avail of that to make our claim for the general damages. What will be the actual position, well, that will be entirely for the arbitrator to take the view."

The Director General of Supplies & Disposals has, however, added in this connection :—

"The point here is that the supplies materialised in 1971 itself when the question was still under debate on the price issue. The

finalisation of the price was the only action which had been taken as late as 1974 when we came to know then that the prices were being finalised.

1.102. Since the DGS&D was apparently aware, as it transpired during evidence, that Cominco Binani Zinc Ltd. had sold zinc during the relevant period at prices ranging from Rs. 3,750 to Rs. 5,215 per tonne, the Committee desired to know the reasons that weighed with the DGS&D in declaring, in March 1974, the price of Rs. 2,850 per tonne as final in respect of the small quantity of 30.20 tonnes supplied in July 1971 and October 1970. The Department of Supply have replied

The price of Rs. 2,850 per tonne declared firm and final by the DGS&D in March 1974 for supply of 30.20 MT related to the following two contracts:—

- (i) A/T No. SMH-5/503/45/109/11-1-71/PL/PAOM/479, dated 11-2-71 for 20 MT.
- (ii) A/T No. SMH-5/506/45/169/2-12-70/PAOM-481 dated 15-2-71 for 10.195 M.T.

The original A/T delivery date for these two contracts was 31-3-71.

As such, only the prices ruling on 31-3-81 could be given to the firm. Moreover, since the firm had not asked for any extra price for supplies made in July 1971 and October, 1971 the A/T price of Rs. 2,850 per M/T was declared firm and final. The information furnished in evidence that zinc was sold by Cominco Binani in the relevant period (in April—September 1971 and October 71 to March 72) at prices ranging from Rs. 3,750—5,215 was only gathered from DGTB in July, 76 by way of additional data that could support the basis adopted for calculating damages.

1.103. The Committee also desired to know whether it was brought to the notice of the Ministry of Law, while seeking their opinion on this case, that on 1 September, 1973, Cominco Binani Zinc had accepted the rate of Rs. 2,850 per tonne for 30.20 tonnes supplied in July and October 1971 against the order placed in February, 1971 but had refused, on the same date, to accept the same price for the outstanding supplies of 900 tonnes. The Department of Supply in a note furnished to the Committee have stated*

“While seeking the Law Ministry’s opinion in regard to contract, their attention was not specifically drawn to these two contracts

*Not vetted in Audit.

because against the said contract the firm had supplied some quantities in February and July 1971 and had asked for a price of Rs. 2,850 per MT to be fixed for the quantity supplied. The firm had wanted the price for the outstanding supply of 900 MT to be fixed as on the date of despatch which after 1-2-72 was Rs. 4,090 per MT and with effect from 1-4-1973 at MMTC rates. However, the reference note has drawn attention to the fact that in respect of the supplies made in February 71 and July 1971, the firm had wanted that the price of Rs 2,850 per MT be made firm and final. Their advice was sought for as to whether the DGS&D could cancel the outstanding quantity of 900 MT at the firm's risk and expense, as supplies had not materialised by them".

1.104. Enquired as to how it was ensured that this unsupplied quantity of 900 tonnes of Zinc had not been sold in the open market at higher prices, particularly in view of the fact that Cominco Binani Zinc Ltd. was stated to have sold zinc to others at prices ranging from Rs. 3,750 to Rs. 5,215 per tonne, the Department of Supply have stated

"There had been shortfall of 1569 tonnes in actual production during October 1970—March 1971 from the estimated level. The metal available for supplies, thus got reduced to that extent. The Cominco Binani Zinc Ltd. did not supply zinc outside allocation during the relevant period. Supply of Zinc by Cominco Binani Zinc Ltd. at higher prices was during 1971-72 (mainly from about August 1971 to January 1972). The sales, however, were confined to allottees on the books of the DGTD, Iron and Steel Controller etc. No sale was made in the open market.

The fact that Cominco Binani Zinc. Ltd. had sold zinc (to some allottees) at higher prices was brought to the notice of the Department of Mines only in June, 1972, much after the revision of the price of zinc in February 1972.

The matter was looked into. It was submitted by Cominco Binani Zinc Ltd. that as the selling price of Rs. 2,850 per tonne had become unremunerative, they were supplying zinc to allottees who were ready to take the metal against a deposit on the understanding that the revised price announced by Government would apply for such sales. The parties, it was stated, agreed to deem that the supplies were effected after the price had been revised. The amounts realised were around the then ruling prices of the MMTC for imported zinc.

A serious view of the manner in which Cominco Binani Zinc Ltd. had acted in the matter was taken by the Government. It was however, felt that :

- (i) no legal action could be taken against the company as the control in force was purely informal.
- (ii) there was no strong case on grounds of equity as (a) the company had been selling zinc at prices not remunerative as brought out by the report (1971) of the Bureau of Industrial Costs and Prices and (b) the private parties who had taken the metal at higher prices had sold their products without any provision for subsequent reduction/refund to their customers; and
- (iii) no administrative action could be considered as the matter had been reported to the Government much after the expiry of the relevant period, *i.e.* only in June 1972 after revision of prices to Rs. 4,090 per tonne (exclusive of excise) in February, 1972.

In the circumstances, Cominco Binani Zinc Ltd. were reprimanded on 13-9-1973 and the case submitted to the then Minister (S&M)."

1.105. To another question whether the Government had filed their claim before the Arbitrator, the Director General of Supplies and Disposals has replied in the affirmative. But when the Committee desired to know the date on which the claim was filed, he has stated : "the detailed working of the claims will be submitted when hearing starts. We have just appointed our lawyer for that."

The Department of Supply have in this connection, informed* the Committee as under :

"The Arbitrator had been appointed and the Government Counsel also nominated. No sitting of the Arbitrator has been held so far, and as such the time by which it is expected to be completed cannot be anticipated."

1.106. According to the Audit Para on the basis of allocation for April 1971 to September, 1971 Director General, Supplies and Disposals, placed

*Not vetted in Audit.

the following three acceptance of tenders on Cominco Binani Zinc Ltd. for supply of zinc ingots by 30 September, 1971 :—

Date of acceptance of tender	Quantity (in tonnes)	Supplies to be made to
(i) 2 April, 1971	36.967	Southern Railway
(ii) 15 May, 1971	10	Western Railway
(iii) 26 August, 1971	750	Posts & Telegraphs Department (Telecom., Jabalpur)

1.107. The performance of the firm against the acceptance of tender mentioned above was as follows : (i) While acknowledging receipt of the acceptance of tender dated 2 April, 1971, the firm informed Director General, Supplies and Disposals, on 21 April, 1971 that the workmen of its factory had resorted to an indefinite strike from 13 March, 1971 and that execution of the acceptance of tender should be deemed to be suspended until resumption of normal working in the factory. The strike ended on 23 June, 1971. But the firm did not make any supply against this acceptance of tender. After the price increase effective from 1 February, 1972 was announced, the firm wrote to the Director General, Supplies and Disposals on 28 February, 1972 requesting him to amend the acceptance of tender of 2 April, 1971 for allowing the increased price mentioned above and extending the period of delivery upto 30 April, 1972. (Subsequently, this quantity was purchased in June 1974 and July 1974 at a price of Rs. 15,035 per tonne).

As the strike ended on 23 June, 1971 and the firm did not supply against this acceptance of tender, the committee desired to know whether the supply order was followed up during June, 1971 to January 1972. The Secretary, Department of Supply has stated during evidence :

“In March 1971, when the order was due for delivery the order was actually placed for the full quantity at Rs. 2850 but thereafter the firm advised us that there was an indefinite strike—and this strike was not settled till June 1971. The indenter was asked whether he required it urgently or not. In the meanwhile the firm asked for a higher price, which was not accepted by the Department. Meanwhile, the indenter wanted the supplies to be made and, thereafter, it was pursued with the firm also.”

Pointing out that it was after February 1972 that the enquiries from the indenter stated, the Committee enquired specifically as to how it was followed up between the period June 1971 to February 1972. The witness has replied :

"During this period, the main question was one of what is the correct applicable price and this was pursued with the Ministry of Mines. This was also pointed out to the Finance Ministry saying that this required some urgent decision. The unsatisfactory performance of the Cominco Binani in regard to the supply of this quantity was also brought to their notice. It was pointed out that the firm had not cleared their commitment of more than 6,000 metric tonnes and that the firm had attributed this to the very prolonged strike in the factory. Now that the strike was over, we should tell them to expedite the supplies. Pending the fixation of the price and this correspondence they were not making the supplies."

He has further added in this connection :

"We repeatedly addressed the firm to make the supplies. We took up with the Ministry of Mines and brought it to their notice that the firm was not willing to make the supplies and that there was a backlog."

Enquired whether the Government had received any communication from the firm that they were not prepared to supply at this rate, the witness has stated :

"They had only asked for the extension of delivery period. They also requested for fixing the price and amend clause 19(c)".

To another question as to whether any effort was made by the DGS&D to get the supplies expedited after 23 June, 1971, the Secretary, Department of Supply has stated :

"I find that the progress Directorate of the DGS&D was repeatedly making efforts with the firm, as also through the Ministry of Mines. The default was specifically brought to the notice of the Ministry of Mines in the allocation meeting for October 1971 to March 1972, and it was concluded that the producers should honour the pending orders which have been taken into account while estimating the net availability of metal for allocation during this period."

The Committee have been informed during evidence that Cominco Binani Zinc Ltd. had supplied zinc in June 1974 and July 1974 at the rate of Rs. 15,035 per tonne and that the stores were routed through the DGS&D at that time because the dispensation of the Ministry of Supply for direct purchase had not then been issued.

When the Committee pointed out whether DGS&D did not find something surprising in the price, the Secretary, Department of Supply has stated :

"The policy decision was already taken by the Ministry of Mines that there need not be any separate price for indigenous producers, but they may also be permitted to go upto the ceiling of the MMFC price and quote the price. This was done on 1st April, 1973. Therefore, when subsequently these purchases were made that dispensation of the Ministry of Mines had come into operation."

(ii) It has been stated in the audit para that on receipt of the acceptance of tender dated 15th May, 1971 the firm requested on 19th May, 1971 for extension of the delivery period upto 31 December, 1971 on the ground of strike in its factory but was informed by the Director General, Supplies and Disposals, on 6th July, 1971 that the matter might be taken up by the end of September, 1971. As in the case of the acceptance of tender of 2nd April, 1971 mentioned above, the firm wrote to the Director General, Supplies and Disposals, on 1st March, 1972 to amend the acceptance of tender of 15th May, 1971 for allowing the increased price effective from 1st February, 1972 and extending the delivery period upto 30th April, 1972.

When the Committee desired to know why DGS&D asked the firm on 6th July, 1971 to take up the matter regarding extension in delivery in September, 1971 particularly when the strike in the factory was over on 23rd June, 1971 the witness has stated :

"The delivery period stipulated in this case was 30th September 1971: The firm advised that as there had been strike, they could not guarantee their supplies and they requested for extension of time till 31st December, 1971 assuming normal operations after the strike. The Department however advised them to take up the question by the end of September, 1971."

Enquired as to why DGS&D took about 1 1/2 months in replying to firm's letter dated 19th May, 1971, the witness has stated :

"The delivery was stipulated by 30th September, 1971. At that time it was a little too premature to know, what would be the backlog and what would be the production etc."

Asked as to why the same action was not taken in respect of the tender dated 2nd April, 1971 the witness has replied :

“I wish to submit that in the case of the first AT 502 this question would not arise because the firm had not specifically asked for extension. In AT 514 which is the second contract concluded in May 1971 they specifically asked for extension beyond 30th September.”

When the Committee asked whether the quantity ordered on 15th May, 1971 was purchased subsequently by the Western Railway, the witness has replied :

“That has not been purchased subsequently and we have also ascertained from the Railways that this quantity was not purchased by them.”

He has added in this connection :

“So far as the first one 900 tonnes was concerned, I wish to submit that the original delivery period was 31st March, 1971 and the firm subsequently got it extended to 31st August, 1971. Thereafter there was no further extension. Then we had taken proceedings to see what can be the correct procedure in regard to the cancellation of the particular contract and how general damages could be claimed.

So far as 502 and 514 were concerned, as it could not be supplied by 30th September, 1971 the ATs were cancelled without financial repercussions on either side on 6th February, 1974. The quantity required by the Railways in the tender accepted on 2nd April, 1971—this is the first one, No. 502—was reliable according to audit to subsequent purchases. In regard to 514 the AT was cancelled on 6th February, 1974 without financial implications and the indenter cancelled his demand on 11th October, 1973, though earlier he wanted it. Subsequently we have ascertained that the Railways have not gone in for this purchase.”

However, the Department of Supply, in a note furnished to the Committee have stated* in this connection :

“The quantity cancelled against A/T No. 502 dated 15th May, 1971 was subsequently ordered on Cominco Binani Zinc Ltd. against

*Not vetted in Audit.

allocations made for the period October, 1973 to April, 1974. Order was placed on the said firm vide A/T No. SMH-5/502/45/138/165/PAOM/885 dated 16th January, 1974 at a provisional rate of Rs. 9435 per MT. The final price paid was Rs. 15035 per MT being the actual user's MMTC price for the period 1st April, 1974 to 30th June, 1974.

The Department of Supply has intimated* the following reasons for cancelling the above A/Ts without financial repercussions :

“In respect of A/T Nos. 502 and 514, the firm had stated that in case they did not receive amendments increasing the price and refixation of delivery periods by a certain date, they would treat the A/T as lapsed. Ministry of Law advised that in respect of these two contracts, since the DGS&D did not choose to amend the contracts nor replied to the firm, the supplier could not be forced to supply the stores at the original prices. It was, therefore, decided to cancel these two contracts without financial repercussions.”

(iii) According to clause 10 of the acceptance of tender dated 26th August, 1971, the delivery was to be made in convenient instalments and supply completed by September 1971. The Post and Telegraphs Board stated (October 1975) that : “The Manager, Telecom Factory, Jabalpur wrote a letter to DGS&D on 13th September, 1971 for spreading of delivery period from January 1972 to 31st March, 1972. It would be relevant to add that this letter was written by the Manager, Telecom Factory, Jabalpur because of the limited loading facilities in this factory and as he was expecting huge supplies of HRMS coils in the period of three to four months from September, 1971.” The Director General, Supplies & Disposals enquired from the firm on 11th October, 1971, i.e. after the prescribed delivery period upto 30th September, 1971 was already over, whether it could deliver the zinc during 1st January, 1972 to 31st March, 1972 in respect of acceptance of tender dated 26th August, 1971. Simultaneously, the indenter was also informed that the price of zinc was periodically fixed by the Department of Mines and if the delivery period was amended from 1st January, 1972 to 31st March, 1972, any price increase applicable to that period would have to be allowed to the Cominco Binani Zinc Ltd. The indenter sent a telegraphic reply (which was received in the Directorate General of Supplies and Disposals on 5th November, 1971), stating that any increase in price was not acceptable to him and the Cominco Binani Zinc Ltd. could despatch the stores immediately.

*Not vetted in Audit.

Enquired about the unloading capacity with the Indentor, the P&T Board in a note furnished to the Committee have stated*

The Telecom Factory, Jabalpur has one railway siding with facility for unloading one wagon at a time. In the year 1971, this factory had no material handling facility in the form of fork lift truck for transporting after unloading. All the items had to be moved with the help of manual labour. Heavy items after being unloaded, used to be shifted with the help of a tackle. The amount of items that can be unloaded by manual labour is also dependant on the nature of the item. The items like HRMS Coils (hot rolled mild steel sheet), can be unloaded at the rate of about 100 metric tonnes in a shift of 8 hours as each coil weighs about 8 to 10 metric tonnes.

Enquired as to whether the unloading capacity was fully utilised from 16th to 30th September, 1971, the P&T Board have informed the Committee :

"The unloading capacity during 16th to 30th September, 1971, was expected to be fully utilised by the Manager, Telecom Factory, Jabalpur, as apart from the other usual materials like coal, steel, angles, channel rods etc. he had received intimation both by way of an amended A/T to the delivery schedule as well as a letter from the Indian agent of the Japanese Firm from where the hot rolled mild steel coils was being imported. According to these, supplies of HRMS Coils at the following rates were to be effected :

As per advice of the agent	As per the amended delivery schedule to the A/T
July, 1971	2,500 metric tonnes
August, 71	1,900 " " "
Sept. 1971	1,900 " " "
Oct., 1971	1,900 " " "
Nov. 1971	1,800 " " "

*Advices received on 16-7-1971.

@Amendment issued in duly September, 1971

In view of this, the Telecom Factory had to gear itself for receipt of these material as and when they were received. The Manager

*Not vetted in Audit.

accordingly wrote a letter to DGS&D requesting for rescheduling the delivery period for zinc from January to March, 1972. However, the actual receipt of material between 16th September, 1971 to 30th September, 1971 was 90 metric tonnes of HRMS Coils and 40 metric tonnes of hard coke. Apparently the expectations and receipt of HRMS Coils were not realised to the extent envisaged in the A/T or as advised by the Indian Agent of the Japanese firm.

The Committee desired to know the reasons for the DGS&D enquiring from the Company, on 11th October, 1971, after the stipulated delivery period (30th September, 1971) was already over, whether it could effect the supplies during 1st January, 1972 to 31st March, 1972. The witness has stated during evidence :

"This letter from P&T Department came at the end of September and the firm was addressed in early October because the delivery period was valid upto end of September. This enquiry was necessitated as the indenter P&T Department desired for the postponement of supplies."

In this connection, the Department of Supply have informed* the Committee as follows :—

"The indentors request for postponing delivery of the material from the contract delivery date of 30-9-1971 to 1 January, 1972 to 31 March, 1972 was received in DGS&D on 16-9-1971. Thereafter, it was decided on 4-10-71 that the firm should be asked to postpone delivery accordingly. This letter was issued on 11-10-71. It was then decided to allow the revised prices effective from 1-2-1972. No consultation with the Dept. of Mines was made before accepting the revised prices. In connection with a reference made to Department of Mines on 20-3-1972 to persuade M/s. Hindustan Zinc Ltd. not to insist on revised prices effective from 1-2-72 for supplies due during the period April, 1971 to September 1971, they had advised, as under on 24-2-1972". :—

"Further, when this Department considered the question of price increase to be allowed to the two zinc producers with effect from 1-2-1972, the question of the price chargeable in respect of the stocks held by the two producers was also specifically considered and it was decided that the producers may be allowed to charge the revised price of Rs. 4090 per tonne exclusive of excise w.e.f. 1-2-1972 on stocks and future production."

*Not vetted in Audit.

It is stated during evidence that the DGS&D initiated action in May 1972 on the indenter's telegram dated 5 November, 1971. The Committee enquired as to why the Government took such a long time. The Director General of Supplies and Disposals has stated :

"I find from the noting here that this was put up on 6-11-1971, as soon as the telegram was received. The Assistant Director starts his noting by saying that the case got mixed up with other papers in the section and so action could not be taken so far; this note is dated 15-5-1972."

To a question when the Director General of Supplies and Disposals stated that the Assistant Director was very much in the organisation and that they had looked into that aspect only recently, the Committee asked whether the Government had come to know about it only after audit report the witness has deposed :

"We went into the para only when the audit report came and we examined this."

Since the indenter's telegram remained unanswered, the Committee enquired whether he had sent any further reminder. The representative of the P&T Board has stated :

"From the records I find that we reminded them in December 1971 and in February 1972."

When the Committee enquired as to why no action was taken on the reminders, the Director General of Supplies and Disposals has stated :

"Apparently this has all gone into that file, all those papers; that must have been the reason why no action was taken."

Since the Director of Supplies and Disposals had conceded during evidence that no action taken on firm's letter dated 9 December, 1971 and 22 February, 1972 for extension of delivery period, the Committee desired to know the reasons for this. The witness has deposed :

"Because the file was not put up by the A. D. during that period."

1.108. It is further stated in the Audit Para that on 19 November, 1971, the Director General, Supplies and Disposals received the Cominco Binani Zinc Ltd.'s reply stating that the acceptance of tender had been issued only on the strength of the allocation made by the Ministry of Mines and Metals and that it had not submitted any offer by itself. Hence the usual terms of the contract should not be binding on it. The firm further stated that all possible efforts would be made to despatch the material within the stipulated

delivery period, but supply would commence only after the final price was fixed by Government on its representation pending with Government.

1.109. On 9 December, 1971, the firm requested the Director of Inspection, Madras, to inspect the material against the acceptance of tender dated 26 August, 1971. The firm also requested the Director General, Supplies and Disposals, on 9 December, 1971 to extend the delivery period upto 31 March, 1972 without liquidated damages and to confirm that the revised price for zinc being fixed by Government would apply to this acceptance of tender. Pending price fixation Cominco Binani Zinc Ltd. expressed its willingness to accept payment on the basis of the provisional price mentioned in the acceptance of tender.

1.110. The Committee desired to know whether the firm's contention—that the usual terms of contract would not be binding on them—was correct and whether this aspect was got examined by the Ministry of Law. The witness has admitted during evidence that the Ministry of Law was not consulted. Subsequently the Department of Supply, in a note furnished to the Committee, have stated* that the firm did not pursue this matter.

1.111. When the Committee enquired whether the Government were aware of the fact that the firm knew that the prices were going to be revised upwards and their intention was to hold the stock and offer it only after the price revision, the witness has stated that they came to know from the Mines Ministry that the prices had been revised and that they were not aware of the firm's intentions.

1.112. According to Audit the Director General, Supplies and Disposals informed them in December, 1975 that : "... the firm's letter dated 9-12-1971, offering the stores for inspection, firstly did not mention any quantity, secondly was conditional to granting the extension upto 31-3-1972 indicating their intention to despatch it later even if it was inspected quickly, & thirdly, the letter stated that the revised price of zinc which were being fixed by the Govt. would apply to this case. It was obvious that the firm were in the know of the fact that the prices were being shortly revised and had intended to despatch the material only after the price revision had taken effect, and that is why they had asked for a long extension in D. P. upto 31-3-1972. Obviously, the letter was a vague one."

1.113. When the attention of the witness was drawn to the above letter, the Secretary, Department of Supply has stated :

"The point was that all along, during this period 1971-72, the increase in price was under contemplation in the Ministry of Mines at

*Not vetted in Audit.

the same time for the deliveries which were held over. The question was whether this price would apply to the stock which was not supplied by the party, and so, they were waiting for a clarification. But all along, their intention was to resist the claim of the company for any increase. Therefore, they could not straightaway say yes and that is why, they could not accept this contention."

1.114. When the Committee pointed out that the Government knew very well that the suppliers were taking recourse to a ruse to inflate their bill of payment and yet they did not exercise their right, the Secretary, Department of Supply has stated during evidence :

"So far as this particular contract is concerned, this has got to be viewed only on the basis of what increase can be allowed to the party. On that basis, the Department had gone on to find out whether any payment was due to them. But they left it to be decided by the Mines Ministry. They could be inclined to consider giving them extension. But the mere act of extension means increased price to the firm."

1.115. The Audit para further states that on 22 December, 1971, the Director of Inspection, Madras informed the Cominco Binani Zinc Ltd. and the Director General Supplies and Disposals, that as the delivery date stipulated in the acceptance of tender had expired on 30 September, 1971, inspection of the material could not be taken up till the delivery date was suitably amended. After the increased prices effective from 1 February, 1972 was announced, the firm requested the Director General, Supplies and Disposals, as in the cases of the other two acceptance of tender, to amend the acceptance of tender dated 26 August, 1971 allowing increase in price and extending the period of delivery upto 30 April, 1972. On 26 May, 1972 the Director General, Supplies and Disposals enquired from the indenter (earlier action was not taken as the papers were stated to have got mixed up with other papers) whether the price effective from February 1972, i.e. Rs. 4,090 per tonne plus excise duty Rs. 875, was acceptable to it. The indenter replied on 9 June, 1972 that the stores were urgently required and that additional funds had been provided.

1.116. On 20th July, 1972, the Director General Supplies and Disposals allowed the increased price (Rs. 4,090 plus excise duty of Rs. 875 per tonne) effective from 1 February, 1972 for supply of zinc ingots against the acceptance of tender dated 26 August, 1971 and extended the delivery period upto 30 September, 1972. The firm completed supplies on 21 August, 1972.

1.117. The Committee enquired whether the DGS&D had taken any action on the indenter's letter dated 20 December, 1971. The Secretary Department of Supply has stated during evidence :

“The delivery date was actually extended in an order of the Directorate dated 20-7-72 and the revised delivery period was 30-9-72. This again is relatable to the period of gap in action in the office of the DGS&D.”

When the Committee pointed out that the gap gave a complete break and that they could not get any information, the witness has stated :

“Certainly it would invite corrective action and the Directorate is already proceeding with it.”

1.118. Since the firm wanted the extension in the date of delivery upto 30 April, 1972, the Committee enquired as to why DGS&D wrote to the indenter on 26 May, 1972. The representative of the Department of Supply has stated :

“That was explained by the Directorate as being due to lack of action by the Directorate for six months. It was done because at that time the revised price had come into operation. So, they had to verify from the indenter whether he was prepared to pay it. Hence this reference was found necessary.”

When the Committee asked as to why timely action was not taken, the witness has stated :

“The thinking in the Directorate has been that if the supplier wants extension and if it were to be granted or if an amendment were to be issued, then it would have the consequence of giving the increase if any, that would be applicable for the period 1-2-72 onwards. Therefore they persisted in insisting on the original terms of the AT; but when subsequently it was found that the period had expired and also that the indenter was still keen on having the supply there was no alternative, to refixing the date as 30-9-1972. The revised price was also made effective.”

1.119. The Committee desired to know as to what steps have been taken by the Government to streamline the work of DGS&D. The representative of the Department of Supply has stated during evidence :—

“We have already taken it up; we are keenly conscious of the need to streamline the organisation and make it function more efficiently. I can certainly submit that this aspect has already been engaging the attention of the Ministry and we are considering procedures and methods so that there could be much better and

more effective attention being given and a high level committee presided over by the Minister of Supply is already going into the changes that are required ; we can certainly mention here that this process will be continually engaging our attention."

1.120. In a note furnished subsequently to the Committee in this regard, the Department of Supply have stated* :

"A High Power Committee comprising representatives of the concerned Central Government Department and three non-official members from Trade and Industry had been constituted on 24-12-1974 under the Chairmanship of Minister (Supply & Rehabilitation) to review the entire gamut of purchase procedures being followed by the various departments under Central Government and suggest improvement to the same. The composition and terms of reference of this Committee are indicated in the Notification No. PIII-1(30)/74 dated the 24 December, 1974 (Appendix III).

Interim report of the Committee pertaining to procedures of purchase followed by the DGS&D is likely to be finalised shortly after the next meeting of the High Power Committee. Regarding procedures of purchase followed by various Government organisations making purchases within their own delegated powers, separate working groups have been constituted to go into the same in depth and make necessary recommendations for consideration of the High Power Committee."

1.121. The Committee have been informed* that as a result of suggestions made by the Vigilance Commission for strengthening of the Vigilance Unit additional staff consisting of one Deputy Director and one Section Officer has already been sanctioned for the DGS&D for the vigilance work. The question of creation of the post of a Director for vigilance work in the DGS&D is still under consideration, as it is inter-linked with the overall re-assessment of the staff in the Inspection Wing and the Purchase Wing.

1.122. The Committee note that India was entirely dependent on import of zinc till 1967, except for small quantities of the metal received back after smelting abroad on toll basis the zinc concentrate from Zawar Mines in Rajasthan. Zinc production commenced in the country for the first time in April 1967 with the commissioning in the private sector of the smelter of Cominco Binani Zinc Limited at Alwaye (Kerala) with an installed capacity of 20,000 tonnes per annum. Early in 1968 the Hindustan Zinc Limited

*Not vetted in Audit.

(a public sector undertaking) commissioned its zinc smelter at Debari near Udaipur with an installed capacity of 18,000 tonnes per annum. It produces zinc from Zawar ore deposits. The Committee also note that the application dated 30 December, 1958 of M/s. Binani Metal Works (Pvt.) Ltd., Calcutta for setting up a zinc smelter of 12,000 tonnes per annum capacity, to be expanded to 20,000 tonnes, at Alwaye (Kerala) in collaboration with a foreign firm (Cominco of Canada) and imported zinc concentrates, was approved by the Cabinet on 17 January, 1961. Though the firm had indicated in the application the involvement of foreign collaboration for setting up a zinc smelter, it had not specified the name of the collaborator and it was only in August, 1961, i.e. after the approval of the project by the Cabinet, that the party intimated name of the foreign collaborator to Government. It is incomprehensible how in the absence of adequate particulars about the foreign collaboration, the Government considered the feasibility of the project in the private sector. The Committee would like to be apprised of the rationale for adoption of this unusual procedure.

1.123. The Committee are concerned to note the falling trend in the production of zinc in the country year after year as they find that from 28,024 tonnes in 1968-69 the production had fallen progressively to 22,781 tonnes in 1974-75. Though it picked up to 27,830 tonnes in 1975-76, it has still to reach the level of initial production of 1968-69. The result of low indigenous production of zinc has been that the country had to depend mainly on imports to meet its requirements. What is more disturbing is the fact that against the average production of 24,263 tonnes during the years from 1968-69 to 1975-76, the average imports were 65,691 tonnes.

1.124. The main factor, as it appears to the Committee, for the low production of zinc has been the low output of the two smelter units since their inception. It is observed that the average production of M/s. Cominco Binani Ltd. (in the private sector) and Hindustan Zinc Ltd. (in the public sector) during the years 1968-69 to 1975-76 had been 58 per cent (11,600 tonnes) and 66 per cent (11,900 tonnes) of their installed capacity of 20,000 tonnes and 18,000 tonnes, respectively. The Committee need hardly emphasise that precise reasons for the low production of zinc by these units may be identified and appropriate steps taken to step up the production. Alongside the measures that the Government may take to augment the production by the existing smelters, there should be a time-bound programme for prospecting for ore so that in course of time the country may be completely self-sufficient in this vital sector.

1.125. The Department of Mines have informed the Committee that for increasing the production of zinc in the country a letter of intent for expansion of 20,000 to 40,000 tonnes was issued to M/s. Cominco Binani Ltd. in 1971 and that the Hindustan Zinc Ltd., was expanded from 18,000 tonnes

to 45,000 tonnes at the same site. It is also stated that Visakhapatnam Smelter has been set up with a capacity of 30,000 tonnes but this Smelter has yet to go into operation. The Committee regret that though five years have passed, the letter of intent issued to the private firm for expansion has not yet been converted into an industrial licence nor has there been any progress in finalising the foreign collaboration terms for making necessary financial arrangements. The Committee would like to know the action the Ministry proposes to take against the firm for their failure to make necessary contractual arrangements. They would also like to know why M/s. Cominco Binani Ltd. were given the permission to expand their concern when they have not been able to work to their original installed capacity of 20,000 tonnes per annum.

1.126. The Committee would like to emphasise that concerted efforts should be made to expand the indigenous capacity of zinc in the public sector instead of depending on imports and foreign collaboration. The Committee would like to be apprised of the positive steps taken or proposed to be taken in this direction so as to achieve complete self-reliance in the production of zinc within the country.

1.127. The Committee regret to note that there has not been any uniform policy in regard to the fixation of prices of indigenous zinc. In June 1968, the two producers agreed to sell the metal at Rs. 2700 per tonne (exclusive of excise duty). This price was originally tenable for a period upto 31 March, 1969, but it continued upto 31 January, 1970. It was stated by the Ministry that this price fixation was done on an *ad hoc* basis without examination of the prevailing cost of production. On February 9, 1970, the Department of Mines agreed to the proposal of the indigenous producers to fixation of the price of zinc at Rs. 2,850 per tonne for the period February 1970 to March 1971. The increase of Rs. 150 per tonne was stated to be on account of the increase in the cost of principal raw materials. It has been admitted during evidence that before agreeing to the price increase, the Government only "went into major increases in the cost of main inputs" instead of going into the cost of production in detail. It is not clear to the Committee how the Ministry satisfied themselves about the increase in the cost of raw materials before conceding the request for an increase of Rs. 150 per tonne in the price of zinc in February 1970. The Committee can only draw the conclusion that there was no proper mechanism in the Ministry to determine the prices on the basis of cost of the main inputs required in the production of zinc.

1.128. The Committee have noticed that while allowing an increase of Rs. 150 per tonne with effect from 1 February, 1970, the Department in their letter dated 9 February, 1970 addressed to the producers had stated that "this is subject to the condition that a sum of Rs. 100 per tonne out of the

increased price should be kept separately for development purposes. The details of the procedure for utilisation of the sum of Rs. 100 per tonne are being worked out and will be communicated to you shortly." The Committee are unaware of all the amounts that have actually been spent for development purposes by the producers. The Committee would like to have this information as also the details of the procedure laid down for the utilisation of the accumulations.

1.129. The Committee further note that while fixing the price at Rs. 2850, the producers were informed that future proposals for increase in the selling price would be considered on the basis of actual costs of production. While the public sector undertaking was being reviewed in November 1970, it was decided that it might submit proposals for revision of zinc price duly supported by cost data. The cost data for the public sector undertaking was received by the Department of Mines and Metals in February 1971. The Committee are perturbed to learn that in the same month the Department had informed M/s. Cominco Binani Ltd. that the public sector undertaking had represented for increase in price of zinc and it might supply 'cost data indicating actuals for the year 1969 and 1970 and cost projections based on the best estimation possible for the years 1971 and 1972'. The cost data from Cominco Binani Ltd. was received in March 1971 and the cost data of both the companies were referred to the Bureau of Industrial Costs and Prices in April 1971. The Bureau in their Report submitted on 24 January, 1972, recommended a price of Rs. 4090 per tonne with effect from 1 February, 1972. Although price for the intervening period from 1 April, 1971 to 31 January, 1972 was not fixed, the Department of Mines have stated that the price of Rs. 2850 per tonne continued during the period.

1.130. The Committee are unable to appreciate the reasons which prompted the Ministry to communicate to Cominco Binani Ltd. the fact that the public sector undertaking had asked for a price increase. The requisite information about the cost data could have been obtained from the firm without making a specific reference about the public sector undertaking. In the opinion of the Committee, this unusual procedure might have encouraged the firm to inflate their cost data and also hold up supplies to various departments in expectation of a price rise. In view of the fact that the price of zinc for the period 1 April 1971 to 31 January 1972 was not fixed, an atmosphere of uncertainty was unnecessarily allowed to be created. The Committee would therefore like the Government to probe the reasons for non-fixation of the prices of the zinc during the period 1 April 1971 to 31 January 1972.

1.131. The Committee learn that from April 1973 the indigenous producers were allowed to sell zinc at prices not exceeding the prices fixed by the MMTC. One of the reasons for allowing the producers to sell zinc at this

price was the representation made by the firm (M/s. Cominco Binani Ltd.) in May 1972 in which it had stated that though the recommendation of the Bureau of Industrial Costs and Prices was supposed to allow a return on the capital employed, it was operating at a heavy net loss. The Committee are unable to understand how the Ministry instead of going into the cost data of the indigenous producers, linked the price of zinc, on the basis of a representation made by the firm, to that charged by the MMTC. The Committee find from the firm's Annual Report for the year 1974-75 that this had resulted in windfall gains to the firm. The Committee are surprised that while fixing these prices, the Department of Mines and Metal did not take into consideration, as has been admitted by the Department during evidence, the fact that 40 per cent of the profits on this account would go in foreign exchange to foreign shareholders in the shape of dividend. The Committee feel that there is a strong case for conducting a thorough probe into the circumstances leading to the increase in the prices of zinc from time to time with particular reference to the undeserved profits that must have accrued to the producers on account of shifts in Government policy. The Ministry should also see whether the officials of the Department of Mines and Metal have rendered the proper and complete advice to the Government in this respect.

1.132. The Committee note that the performance of Cominco Binani against orders placed on it by the DGS&D on the basis of half-yearly allocation had been far from satisfactory. According to the Audit Paragraph this firm did not supply a quantity of 900 tonnes of zinc to the Government Departments out of an allocation of 1316 tonnes made for the period October 1970 to March 1971 in spite of granting two extensions from 31 March 1971 to 30 June, 1971 and again upto 31 August, 1971. The Committee note with concern that these extensions were granted on 7 May, 1971 and 7 July 1971 on firm's requests dated 23 March, 1971 and 17 June, 1971 respectively without claiming liquidated damages and without consulting the Ministry of Law. The representative of the Ministry of Law has stated during evidence that the liquidated damages clause is generally incorporated while issuing the letter of extension of the delivery period to enable the Government to claim liquidated damages whereas the representative of the Department of Supply has stated that from the re-constituted file it is not possible to specify the reasons for not incorporating the clause for levy of liquidated damages. The Committee deplore this serious omission and would like that responsibility for the lapse should be fixed. The Committee further would like to know the reasons for not consulting the Ministry of Law in this matter and for taking about 1½ months as against the stipulated seven days in issuing the above two extensions in delivery period.

1.133. The Committee also note with concern that the Ministry have no proper system to maintain records of important decisions in the Decisions

Book, so that even if the files are weeded out with the efflux of time, at least the Decisions Book could be referred to and consulted. The Committee would like that this aspect should be looked into and the procedure for filing papers streamlined.

1.134. The Committee find that Cominco Binani had informed the DGS&D in August 1971 that it could not supply zinc at the rate of Rs. 2850 per tonne and requested them to treat this price as provisional for supplies made from April 1971, subject to finalisation of price by the Department of Mines. After the announcement of the revised price of Rs. 4090 effective from 1 February, 1972, the firm had asked DGS&D on 15 March, 1972 to amend the contract for payment of enhanced price for the outstanding 900 tonnes. However, on 1 September 1973, the firm informed the DGS&D that it was treating the order for the balance quantity as having lapsed. The Department of Mines have informed the Committee that the firm did not supply zinc outside the allocations made during October 1970—March 1971. The Committee desire to know the steps taken by the Department of Mines & Metals against the firm for not fulfilling the contractual obligations.

1.135. The Committee would like to point out that the representative of the DGS&D, the Department of Mines and Metals and DGTD at the meeting of Allocation Committee (October 1971—March 1972) held on 21 October 1971, had pointed out the unsatisfactory performance of the firm which had a backlog of 1353 metric tons against DGS&D orders placed with it in October 1970 to March 1971 and other commitments of more than 6000 tonnes. The hold-up in production was attributed by the firm due to prolonged strike in their factory. As there had been a shortfall of 1569 tonnes in actual production during the period October 1970 to March 1971 from the estimated level, it is not understood how the firm was allowed to take shelter behind the plea of strike for the proven non-compliance of the orders to the extent of 7353 tonnes (1353 tonnes against DGS&D orders and 6000 tonnes against other commitments).

1.136. The Committee note with concern that Government did not nominate any person on the Board of Directors of Cominco Binani continuously for three years, i.e. from May 1967 to May 1970. The Committee consider this to be a serious lapse which should be investigated.

1.137. According to the Department, the main object of the nomination of a representative on the firm's Board of Directors in August, 1966, was to keep a watch on the progress of the setting up of the zinc smelter. It was further stated that in June 1970 the renomination of an official representative was to ensure that the additional funds generated by the smelter were not frittered away by way of higher dividends and/or investment in the shares/debentures of associate companies, but ploughed back for expansion.

The Committee would like to know whether the Government Director had ever raised the question of non-supply of zinc slabs to various Government Departments in the Board of Director's meetings or brought the matter to the notice of the Department of Mines and, if so, the action taken by the Department of Mines on the basis of the Government representative's reports.

1.138. According to the Audit Paragraph the case of non-supply of zinc was referred to the Ministry of Law in July 1974 whereas the firm had informed the DGS&D on 1 September, 1973 that it was treating the order for the balance quantity of 900 tonnes of zinc as having lapsed. This letter was followed by another letter dated 8 December, 1973. The Committee are surprised to learn that a reference to the indentors was made on 12 February 1974, i.e. after a lapse of about three months asking them to intimate to the DGS&D the exact quantities received by them. It has been admitted during evidence that this delay was unfortunate. The Committee have a suspicion that undue favours were shown to the firm by the officials of the Department whose role in regard to the entire transaction relating to the award of this particular contract should be fully investigated. The Committee would like to be apprised in clear terms whether there was a collusion between the officials of the Department and the Executives of the firm.

1.139. The Committee note that one of the indentors had asked the DGS&D on 14 March 1974 to expedite that supplies. That indenter in response to DGS&D letter dated 2 April 1974 had not agreed to the cancellation of unsupplied quantity. It is interesting to note that the DGS&D thereafter requested the firm on 23 May 1974 to forward a copy of the A/T and other relevant correspondence to them as their own file was stated to be missing. The reconstitution of file was stated to have been done after 5 July 1974. The case was referred to the Ministry of Law on 24 July 1974.

1.140. It has been stated during evidence that the responsibility for the loss of the file in the DGS&D has been fixed on a few officers. The Committee note that two officers (one Assistant Director and one U.D.C.) who had already been warned in connection with another case referred to in the 144th Report (5th Lok Sabha) of the Public Accounts Committee, were involved in the present case also. The Committee are surprised at the leniency shown to the delinquent officers whose probity had been under a cloud. The Committee would like to be informed about the action taken against these and other officers who might be involved in this deed.

1.141. The Committee have been informed by the Department of Supply that the Ministry of Law also held the view that there might be no

impediment to the Department claiming the general damages provided the Department could prove by documentary evidence that sale transactions had taken place at Rs. 5700 per metric tonne against the sale price of Rs. 2850 per metric tonne fixed for the period February 1970 to March 1971 which continued upto 31 July 1972. The Ministry of Law had also felt that it was for the Arbitrator to award such sums as may deem fit and proper in the circumstances.

1.142. The Committee find another inconsistency in the approach of the Ministry. The firm had accepted on 1 September 1973 the rate of Rs. 2850 per tonne for 30.20 tonnes supplied in July and October 1971 but it had refused on the same date, to accept the same price for the outstanding supplies of 900 tonnes. There is ostensible reason for not bringing this fact to the notice of the Ministry of Law, while seeking their opinion on this case. The Department of Supply have informed the Committee that a serious view of the manner in which the firm had acted in the matter was taken by the Government, but no legal action could be taken against it as the control in force was purely informal. It is not understood how the DGS&D could agree to the price fixation of a smaller quantity of 30.20 tonnes at Rs. 2850 per tonne when the firm on the same date refused to supply a larger quantity of 900 tonnes at the original price. It appears that the Ministry had no means available to discipline a supplier who had dictated his own terms and conditions and thereby grabbed substantial profits. The Committee feel that if the fact that the firm was asking for a higher price than what was informally fixed had been brought to the notice of the Department of Mines by the Department of DGTD and Iron and Steel Controller etc. in time, it could have been possible for the Government to take corrective/administrative measures against the firm. The Committee would like to have a satisfactory explanation for this lapse.

1.143. The Committee find that two other Acceptance of Tenders were placed by the DGS&D on the firm on 2 April 1971 and 15 May 1971 for supply of 36.967 and 10 tonnes to Southern Railway and Western Railway respectively. The Committee are perturbed to note that the firm instead of supplying the stores within the stipulated dates of delivery, wrote to the DGS&D on 28 February 1972 and 1 March 1972 requesting them to amend the acceptance of tenders of 2 April 1971 and 15 May 1971 respectively for allowing the increased prices effective from 1 February, 1972 and extending the period of delivery upto 30 April 1972. In this connection, the Department of Supply have informed the Committee that the Ministry of Law advised them that in respect of these two contracts, since the DGS&D did not choose to amend the contracts nor replied to the firm, the supplier could not be forced to supply the stores at the original prices. It was, therefore, decided to cancel these two contracts without financial repercussions.

The Committee are disturbed to note that the Department had no powers whatsoever of compelling the firm to meet its contractual obligations. The attitude shown by the firm is, to say the least, very much reprehensible. The Committee would like that the responsibility for not replying to the firm's above letters which had prevented the Government from cancelling the contracts at firm's risk and cost may be fixed.

1.144. The Committee learn that according to clause 10 of another Accepted Tender dated 26 August 1971, the delivery of zinc was to be made in convenient instalments by 30 September 1971 to the Manager, Telecom Factory, Jabalpur who had so informed the DGS&D on 13 September, 1971, because of the limited loading facilities in that factory for spreading of delivery period from January 1972 to 31 March 1972. The Committee are surprised to note that the DGS&D on 11 October 1971, i.e. after the expiry of delivery period, enquired from the firm whether it could deliver the stores during 1 January 1972 to March 1972. The Committee would like to know the specific reasons for taking about a month in addressing the firm in this case. It is a matter of great concern to the Committee that action was initiated in DGS&D in May 1972 on the indentors' telegram dated 5 November 1971 in spite of the fact that he had issued two reminders in December 1971 and in February 1972. It has been conceded during evidence that the relevant file was not put up by the Assistant Director during that period. The action taken against the officer on this account may be intimated to the Committee.

1.145. It is seen from the Audit Paragraph that M/s. Cominco Binani had stated on 19 November 1971 that as the acceptance of tender of the allocation made by the Ministry of Mines and Metals without any offer from its side, the usual terms of the contract should not be binding on it. It has been admitted during evidence that this aspect was not got examined in the Ministry of Law. The Committee are unable to understand as to why the Ministry of Law was not consulted in this matter. The reasons for this lapse may be investigated under advice to the Committee.

1.146. The Committee find that the Secretary, Department of Supply had admitted during evidence that 'they are keenly conscious of the need to streamline the organisation and make it function more efficiently'. The Committee have been subsequently informed by the Department of Supply that 'a High Power Committee comprising representatives of the concerned Central Government Department and there non-official members from trade and industry had been constituted on 24 December 1974 under the Chairmanship of Minister of Supply and Rehabilitation to review the entire gamut of purchase procedures being followed by the various departments under Central Government and to suggest improvement of the same'. The

Committee would like to be apprised about the recommendations made by the Committee and the action taken by Government thereon.

1.147. To sum up, the defects in the terms of contract such as making no provisions for liquidated damages; avoiding consultation with the Ministry of Law in time; non-availability of proper machinery for controlling the activities of a recalcitrant firm which was not honouring its contractual obligations; revision of the prices of zinc haphazardly—there being a gap of one year which was exploited by the firm to its advantage; lack of proper procedure available in the DGS&D for recording their decision—loss of file which had to be reconstructed and the lack of effective surveillance over the activities of the officers who came into contract with the firm during the execution of the contract, are some of the glaring shortcomings and deficiencies which have come to the notice of the Committee during their examination of this Paragraph. The Committee strongly feel that the firm (M/s. Cominco Binani Zinc Ltd.) has belied the expectations of making available a scarce metal, such as zinc, to the Government Departments under one pretext or the other. It appears to the Committee that the only aim before the firm was to neutralize its earlier losses and to make windfall given by holding the stock and offer it only after the price revisions. It is clear that the suppliers had taken recourse to a ruse to inflate their bills of payment and Government did not exercise their right to intervene. The Committee hope that the authorities concerned would learn a lesson from these lapses and take suitable and conclusive measures to obviate their recurrence.

1.148. The Committee note that from April 1973 the indigenous producers are allowed to sell zinc at prices not exceeding the prices fixed by the Minerals and Metals Trading Corporation. The Committee are of the view that the zinc price should have been fixed either on the basis of actual cost of production of indigenous producers or on the basis of price arrived at by pooling the prices of indigenous and imported zinc as has been done in the case of fertilisers instead of allowing the indigenous producers to sell zinc at MMTC prices.

NEW DELHI;
December 9, 1977
Agrahayana 18, 1899(S).

C. M. STEPHEN,
Chairman,
Public Accounts Committee

APPENDIX I.

(Vide para 1.46)

A detailed note indicating the machinery available with the Department of Mines and the sponsoring authorities to ensure that Government Departments did, in fact, get the highest priority and for 'detailed monitoring'.

It may be stated that the informal price control was resorted to with a view to avoiding unhealthy competition and speculative purchases as between the two indigenous zinc producers. The main objective of the informal distribution control was to cater to the priority requirements of Defence, Railways, P. & T. etc. in the first instance and to allocate the available balance to priority units on the books of the D.G.T.D. etc.

2. The allocations used to be made and the monitoring of supplies done at the half-yearly meetings held in the Department of Mines with the representatives of the concerned Ministries/Departments and the producers. Specific instances of difficulties brought to the notice of the Department at these meetings or, from time to time, regarding zinc supplies by the indigenous producers were looked into by the officers of the Department dealing with the indigenous production of zinc metal.

3. In the case of supplies to DGS&D during 1971-72, it may be mentioned that in April 1971 a reference was received from the DGS&D stating the closure of the zinc smelter of Cominco Binani Zinc Ltd. due to strike and enquiring whether extension of the delivery period of the A/Ts beyond 31-3-71 would attract the revised price. On 22-4-71, the DGS&D were informed that it was not possible for the Department of Mines to indicate at that time the extent to which the proposal to increase the price would be accepted by the Government. In regard to the extension of the delivery period, the DGS&D were informed that it was a matter for them to decide in terms of the contract with the party.

4. Thereafter, a reference was received from the Department of Supply regarding non-supply of zinc in March 1972 by Hindustan Zinc Ltd., the other zinc producer. The matter was looked into and it was found that the non-supply was due to non-receipt of certain clarifications sought by the Hindustan Zinc Ltd. A reply was sent to the Department of Supply on 24th April, 1972.

5. As the supplies to Defence, Railways, P&T, etc. were routed through the DGS&D, there had generally been delays in the placement of orders and actual lifting of zinc and the Department of Mines did suggest streamlining the procedures (*i.e.* waiver of inspection clause and 100 per cent payment on proof of despatch as early as 1971) and direct purchase (suggested in April 1973) by the consuming Departments. This was later accepted by the DGS&D/Ministry of Supply in January, 1975.

6. The monitoring of supplies in the DGS&D is looked after by the Planning and Development Directorate in consultation with the Commodity Directorate concerned.

APPENDIX II

(Vide para 1.65)

A note indicating the circumstances in which it had been decided, in April 1973, to allow indigenous producers to sell zinc at prices not exceeding the prices fixed by the Minerals and Metals Trading Corporation.

The selling price of zinc of the two indigenous producers *i.e.* Hindustan Zinc Ltd. and Cominco Binani Zinc Ltd. was revised to Rs. 4090/- per tonne (exclusive of excise) *w.e.f.* 1st February, 1972 based on the report of the Bureau of Industrial Costs and Prices. From May 1972 onwards Cominco Binani Zinc Ltd., represented that though the Bureau's recommendation is supposed to allow a return on the capital employed, they would operate at a heavy net loss, for the following reasons :—

- (i) *Assumption of average higher production of zinc.*—According to the company, increase in production beyond 15,000 tonnes per annum would require heavy capital investment and prolonged shut-down which they could not afford at the then unsatisfactory financial position ;
- (ii) *Difference in credit assumed for sale of by-products.*—The Bureau had apparently taken higher credits for realisation from sale of by-product sulphuric acid and cadmium ;
- (iii) *Computation of capital employed.*—The company apprehended that the Bureau had not reckoned working capital requirements of six months in computing the capital employed ; and
- (iv) The company also desired an element to be allowed for amortization of carried forward losses and for unabsorbed depreciation.

2. The company also pleaded that unless they were able to demonstrate to the financial institutions and to the share-holders (no dividend had been paid by the two companies in about 6 years of operation) that its operations could be made economically viable in the future, it would be difficult for them to take up the expansion of the zinc smelter for which a 'letter of intent' had been issued in July 1971.

3. The company's representation was examined in consultation with the Bureau of Industrial Costs and Prices who concluded that the main difference in their approach and that of the company was that while the

Bureau had projected the cost of the future without taking into account items like past losses and their repercussions on the present financial position, the company was taking these factors also in its cost computations.

4. The matter was examined by the Government, in detail, keeping in view the growth envisaged in the industry through the expansion programmes of the two producers and in the context of rising zinc prices all over the world, the importance of the indigenous zinc industry as a foreign exchange saver and it was felt that the pricing policy for the zinc industry should be based, *inter alia*, on the following major considerations :—

- (i) Zinc industry was in its infancy and had to be nurtured as had been done in the case of other metals such as aluminium through Tariff protection for over two decades ;
- (ii) Zinc was in the core sector and Government was expected to prepare detailed plans for the development of the entire industry so that the targets set can be achieved, render assistance required by way of resources, foreign exchange, inputs etc. and review its performance from time to time to deal effectively with factors adversely affecting the growth of the industry. The Estimates Committee in para 2.24 of its 19th Report on Industrial licensing had said "the real test of the effectiveness of measures taken for development of core industries is in the rate of growth of production in the core industries which, the Committee find has been none too impressive." It was, therefore, considered that it was imperative to improve the financial position of the industry consisting of only two zinc producers enabling them to optimise production from existing capacity and to generate funds to undertake the planned expansion as early as possible.
- (iii) Hindustan Zinc Ltd. was in the public sector and any profit made by it would accrue to Government either in the form of tax or re-investment in its expansion programmes at Visakhapatnam and in Rajasthan. It was necessary to build up its image by enabling it to function satisfactorily from the financial point of view also.
- (iv) There was substantial Government interest in Cominco Binani Zinc Ltd. as there was financial participation by financial institutions (Kerala State Industrial Development Corporation, Life Insurance Corporation, Industrial Financial Corporation and Bank of India) to the extent of about Rs. 60-61 lakhs and the Industrial Finance Corporation/Kerala State Industrial Development Corporation had extended loans to the tune of Rs. 314 lakhs at that point of time.

- (v) The demand for zinc was rising and there was need to step up indigenous production as rapidly as possible by expeditious expansion programmes.
- (vi) Hindustan Zinc Ltd. and Cominco Binani Zinc Ltd. had accumulated very large losses upto 31st March, 1972 and 31st December, 1971 and this adverse financial position affected their existing operations and would not allow for the planned expansion particularly in the case of Cominco Binani Zinc Ltd.
- (vii) According to the guidelines of the Bureau of Public Enterprises for public sector enterprises operating under monopolistic and semi-monopolistic conditions, the pricing of their products should be within the basis of the landed cost of comparable imported goods.
- (viii) It would be desirable to have a single price for zinc within the country and two prices resulted in some consumers getting lower priced zinc. It was also felt that the proposal would afford some relief to Cominco Binani Zinc Ltd. as M.M.T.C. was revising its price in conformity with the rise in world market prices of zinc which in turn increased the price of imported zinc concentrates.

5. At the time of considering the proposal to allow the two indigenous producers to sell their zinc at prices not exceeding the MMTC's prices, it was visualised that the companies would thereby generate additional funds to enable them to wipe out past losses and accumulate funds for the expansion. This was the main objective sought to be achieved by equalisation with M.M.T.C.'s prices.

6. It may be mentioned that there is a clear relationship between the price of zinc metal in the international market and the price of zinc concentrates. Payment for zinc concentrates is made on the basis of recoverable zinc metal content in the concentrate and thus the price of the concentrate varies with the increase/decrease in the price of zinc metal. The M.M.T.C. buys zinc metal in the international market and determines its selling prices on the basis of the landed cost of the same.

7. Having regard to the above, it was proposed with the approval of the then Minister (S&M), that the two indigenous producers of zinc should be permitted to sell zinc at a price not exceeding the ruling M.M.T.C. prices. The price was revised accordingly *w.e.f.* 1st April, 1973 after consultation with the Chief Economic Adviser and with the concurrence of the Finance Ministry.

8. The Comptroller and Auditor General of India's report on the Hindustan Zinc Ltd. for the year 1974 (Union Government Commercial Part-III) had reviewed in detail the pricing policy adopted from time to time in respect of zinc since the inception of the two units. The Committee on Public Undertakings (1975-76—5th Lok Sabha) which examined the report of the Comptroller and Auditor General of India, had with reference to the pricing policy concluded as follows in its 88th Report dated 26th April, 1976 :—

“The Committee regret to observe that till March, 1973 the Hindustan Zinc Ltd. was made to sell zinc produced by it at a price which not only unremunerative but also lower than the MMTC's price for imported zinc and thus suffer loss in the process. The Committee would like the Government to review the pricing policy followed till March, 1973 and draw lessons for their future guidance.”

(Para 8.20)

APPENDIX III

(Vide Para 1.120)

A copy of Notification No. P III-1(30)/74 dt. 24-12-1974 Issued by the Ministry of Supply and Rehabilitation (Department of Supply), showing the composition and terms of reference of the High Power Committee.

RESOLUTION

No. P III-1(30)/74.—It is essential that organisations for Government purchases should be able to secure the requirements of Government without undue delay and with due regard to efficiency and economy. In view of the overgrowing volume, value, variety and complexity of stores which have to be purchased now, it has become increasingly important to consider whether the existing organisations for and the methods adopted in purchasing stores in India and abroad are adequate. With a view to examine the question in depth and make specific recommendations for streamlining the existing organisations for such functions, their structure method of work and procedures, the Government has decided to set up a Committee consisting of the following :—

Chairman

1. Minister of Supply & Rehabilitation.

Member

2. Secretary, Department of Supply.

Non-official Members

3. Shri A. N. Haksar.
4. Shri M. V. Kamath.
5. Shri N. M. Wagle.

Members

6. A representative each of the Ministries of Finance.
(Department of Expenditure)
7. Communications (P & T Board).

8. Railways.
9. Defence ; and
10. Industrial Development
 - A representative each of
11. Planning Commission (to represent the interests of State Governments
12. Comptroller & Auditor General ; and

Member-Secretary

13. Director General (Supplies & Disposals)

The following will be the terms of reference :

- (a) To identify and suggest improvements in the system and procedures of purchases (both indigenous and imports) adopted by different Ministries/Departments of the Central Government with a view to achieve the aim of efficiency and economy in procurement.
- (b) To examine and suggest improvements in the system and procedures of financial payments for the purchases by and on behalf of Central Government with a view to cut down delays to effect savings.
- (c) Any other related matters such as specifications, inspection, testing, clearance, shipment etc.
- (d) Organizational set up for (a), (b) and (c) above.

The Committee will have its headquarters in New Delhi and will submit its report to the Government of India in the Department of Supply as early as possible.

ORDER

ORDERED that the Resolution be published in the Gazette of India, Part I, Section 1.

ORDERED also that a copy of the Resolution be communicated to all Ministries/Departments of Government of India ; the Cabinet Secretariat ; the Prime Minister's Secretariat ; Secretary to the President ; the Planning Commission ; the Comptroller and Auditor General ; the India Supply Missions in London and Washington; Member-Secretary of the Committee : State Governments; Administration of Union Territories and all other concerned.

H. K. KOCHER, Joint Secy.

APPENDIX IV

Conclusions/Recommendations

S. No.	Para No. of the Report	Ministry/Department Concerned	Conclusion/Recommendation
1	2	3	4
1.	1.122	Deptt. of Mines and Metals	<p>The Committee note that India was entirely dependent on import of zinc till 1967, except for small quantities of the metal received back after smelting abroad on toll basis the zinc concentrate from Zowar Mines in Rajasthan. Zinc production commenced in the country for the first time in April 1967 with the commissioning in the private sector of the smelter of Cominco Binani Zinc Limited at Alwaye (Kerala) with an installed capacity of 20,000 tonnes per annum. Early in 1968 the Hindustan Zinc Limited (a public sector undertaking) commissioned its zinc smelter at Debari near Udaipur with an installed capacity of 18,000 tonnes per annum. It produces zinc from Zawar ore deposits. The Committee also note that the application dated 30 December, 1958 of M/s. Binani Metal Works (Pvt.) Ltd., Calcutta for setting up a zinc smelter of 12,000 tonnes per annum capacity, to be expanded to 20,000 tonnes, at Alwaye (Kerala) in collaboration with a foreign firm (Cominco of Canada) and imported zinc concentrates, was approved by the Cabinet on 17 January, 1961. Though the firm had indicated in the application the involvement of foreign collaboration for setting up a zinc smelter, it had not specified the name of the collaborator and it was only in August, 1961, i.e. after the approval</p>

of the project by the Cabinet, that the party intimated name of the foreign collaborator to Government. It is incomprehensible how in the absence of adequate particulars about the foreign collaboration, the Government considered the feasibility of the project in the private sector. The Committee would like to be apprised of the rationale for adoption of this unusual procedure.

2. 1.123 -do-

The Committee are concerned to note the falling trend in the production of zinc in the country year after year as they find that from 28,024 tonnes in 1968-69 the production had fallen progressively to 22,781 tonnes in 1974-75. Though it picked up to 27,820 tonnes in 1975-76, it has still to reach the level of initial production of 1968-69. The result of low indigenous production of zinc has been that the country had to depend mainly on imports to meet its requirements. What is more disturbing is the fact that against the average production of 24,263 tonnes during the years from 1968-69 to 1975-76, the average imports were 65,691 tonnes.

3. 1.124 -do-

The main factor, as it appears to the Committee, for the low production of zinc has been the low output of the two smelter units since their inception. It is observed that the average production of M/s. Cominco Binani Ltd. (in the private sector) and Hindustan Zinc Ltd. (in the public sector) during the years 1968-69 to 1975-76 had been 58 per cent (11,600 tonnes) and 66 per cent (11,900 tonnes) of their installed capacity of 20,000 tonnes and 18,000 tonnes, respectively. The Committee need hardly emphasize that precise reasons for the low production of zinc by these units may be identified and appropriate steps taken to step up the production. Alongside the measures that the Government

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may take to augment the production by the existing smelters, there should be a time-bound programme for prospecting for ore so that in course of time the country may be completely self-sufficient in this vital sector.

4. 1.125 Deptt. of Mines & Metals

The Department of Mines have informed the Committee that for increasing the production of zinc in the country a letter of intent for expansion of 20,000 to 40,000 tonnes was issued to M/s. Cominco Binani Ltd. in 1971 and that the Hindustan Zinc Ltd., was expanded from 18,000 tonnes to 45,000 tonnes at the same site. It is also stated that Visakhapatnam Smelter has been set up with a capacity of 30,000 tonnes but this Smelter has yet to go into operation. The Committee regret that though five years have passed, the letter of intent issued to the private firm for expansion has not yet been converted into an industrial licence nor has there been any progress in finalising the foreign collaboration terms for making necessary financial arrangements. The Committee would like to know the action the Ministry proposes to take against the firm for their failure to make necessary contractual arrangements. They would also like to know why M/s. Cominco Binani Ltd. were given the permission to expand their concern when they have not been able to work to their original installed capacity of 20,000 tonnes per annum.

5. 1.126

-do-

The Committee would like to emphasise that concerted efforts should be made to expand the indigenous capacity of zinc in the public sector instead of depending on imports and foreign collaboration. The Committee would like to be apprised of the positive steps taken or proposed to be taken in this direction so as to achieve complete self-reliance in the production of zinc within the country.

6. 1.127 -do-

The Committee regret to note that there has not been any uniform policy in regard to the fixation of prices of indigenous zinc. In June 1968, the two producers agreed to sell the metal at Rs. 2700 per tonne (exclusive of excise duty). This price was originally tenable for a period upto 31 March 1969, but it continued upto 31 January 1970. It was stated by the Ministry that this price fixation was done on an *ad hoc* basis without examination of the prevailing cost of production. On February 9, 1970, the Department of Mines agreed to the proposal of the indigenous producers to fixation of the price of zinc at Rs. 2850 per tonne for the period February 1970 to March 1971. The increase of Rs. 150 per tonne was stated to be on account of the increase in the cost of principal raw materials. It has been admitted during evidence that before agreeing to the price increase, the Government only "went into major increases in the cost of main inputs" instead of going into the cost of production in detail. It is not clear to the Committee how the Ministry satisfied themselves about the increase in the cost of raw materials before conceding the request for an increase of Rs. 150 per tonne in the price of zinc in February 1970. The Committee can only draw the conclusion that there was no proper mechanism in the Ministry to determine the prices on the basis of cost of the main inputs required in the production of zinc.

7. 1.128 -do-

The Committee have noticed that while allowing an increase of Rs. 150 per tonne with effect from 1 February, 1970, the Department in their letter dated 9 February 1970, addressed to the producers had stated that "this is subject to the condition that a sum of Rs. 100 per tonne out of the increased price should be kept separately for development purposes."

The details of the procedure for utilisation of the sum of Rs. 100 per tonne are being worked out and will be communicated to you shortly." The Committee are unaware of the amounts that have actually been spent for development purposes by the producers. The Committee would like to have this information as also the details of the procedure laid down for the utilisation of the accumulations.

8. 1.129 Deptt. of Mines & Metals

The Committee further note that while fixing the price at Rs. 2850, the producers were informed that future proposals for increase in the selling price would be considered on the basis of actual costs of production. While the public sector undertaking was being reviewed in November, 1970, it was decided that it might submit proposals for revision of zinc price duly supported by cost data. The cost data for the public sector undertaking was received by the Department of Mines and Metals in February, 1971. The Committee are perturbed to learn that in the same month the Department had informed M/s. Cominco Binani Ltd. that the public sector undertaking had represented for increase in price of zinc and it might supply 'cost data indicating actuals for the year 1969 and 1970 and cost projections based on the best estimation possible for the years 1971 and 1972'. The cost data from Cominco Binani Ltd. was received in March, 1971 and the cost data of both the companies were referred to the Bureau of Industrial Costs and Prices in April, 1971. The Bureau in their Report submitted on 24 January, 1972, recommended a price of Rs. 4090 per tonne with effect from 1 February, 1972. Although price for the intervening period from 1 April, 1971 to 31 January,

1972 was not fixed, the Department of Mines have stated that the price of Rs. 2850 per tonne continued during the period.

9. 1.130 -do-

The Committee are unable to appreciate the reasons which prompted the Ministry to communicate to Cominco Binani Ltd. the fact that the public sector undertaking had asked for a price increase. The requisite information about the cost data could have been obtained from the firm without making a specific reference about the public sector undertaking. In the opinion of the Committee, this unusual procedure might have encouraged the firm to inflate their cost data and also hold up supplies to various departments in expectation of a price rise. In view of the fact that the price of zinc for the period 1 April, 1971 to 31 January, 1972 was not fixed, an atmosphere of uncertainty was unnecessarily allowed to be created. The Committee would therefore like the Government to probe the reasons for non-fixation of the prices of the zinc during the period 1 April, 1971 to 31 January, 1972.

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10. 1.131 -do-

The Committee learn that from April, 1973 the indigenous producers were allowed to sell zinc at prices not exceeding the prices fixed by the MMTC. One of the reasons for allowing the producers to sell zinc at this price was the representation made by the firm (M/s. Cominco Binani Ltd.) in May, 1972 in which it had stated that though the recommendation of the Bureau of Industrial Costs and Prices was supposed to allow a return on the capital employed, it was operating at a heavy net loss. The Committee are unable to understand how the Ministry instead of going into the cost data of the indigenous producers, linked the price of

zinc, on the basis of a representation made by the firm, to that charged by the MMTC. The Committee find from the firm's Annual Report for the year 1974-75 that this had resulted in windfall gains to the firm. The Committee are surprised that while fixing these prices, the Department of Mines and Metals did not take into consideration, as has been admitted by the Department during evidence, the fact that 40 per cent of the profits on this account would go in foreign exchange to foreign shareholders in the shape of dividend. The Committee feel that there is a strong case for conducting a thorough probe into the circumstances leading to the increase in the prices of zinc from time to time with particular reference to the undeserved profits, that must have accrued to the producers on account of shifts in Government policy. The Ministry should also see whether the officials of the Department of Mines and Metals have rendered the proper and complete advice to the Government in this respect.

11. 1.132 Deptt. of Supply

The Committee note that the performance of Cominco Binani against orders placed on it by the DGS&D on the basis of half-yearly allocation had been far from satisfactory. According to the Audit Paragraph this firm did not supply a quantity of 900 tonnes of zinc to the Government Departments out of an allocation of 1316 tonnes made for the period October, 1970 to March, 1971 in spite of granting two extensions from 31 March, 1971 to 30 June, 1971 and again up to 31 August, 1971. The Committee note with concern that these extensions were granted on 7 May, 1971 and 7 July, 1971 on firm's requests dated 23 March, 1971 and 17 June, 1971 respectively without claiming liquidated damages and without

consulting the Ministry of Law. The representative of the Ministry of Law has stated during evidence that the liquidated damages clause is generally incorporated while issuing the letter of extension of the delivery period to enable the Government to claim liquidated damages whereas the representative of the Department of Supply has stated that from the re-constituted file it is not possible to specify the reasons for not incorporating the clause for levy of liquidated damages. The Committee deplore this serious omission and would like that responsibility for the lapse should be fixed. The Committee further would like to know the reasons for not consulting the Ministry of Law in this matter and for taking about 1½ months as against the stipulated seven days in issuing the above two extensions in delivery period.

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12. 1.133 -do-

The Committee also note with concern that the Ministry have no proper system to maintain records of important decisions in the Decisions Book, so that even if the files are weeded out with the efflux of time, at least the Decisions Book could be referred to and consulted. The Committee would like that this aspect should be looked into and the procedure for filing papers streamlined.

13. 1.134 -do-

The Committee find that Cominco Binani had informed the DGS&D in August, 1971 that it could not supply zinc at the rate of Rs. 2850 per tonne and requested them to treat this price as provisional for supplies made from April, 1971, subject to finalisation of price by the Department of Mines. After the announcement of the revised price of Rs. 4090/- effective from 1 February, 1972, the firm had asked DGS&D on 15 March,

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			<p>1972 to amend the contract for payment of enhanced price for the outstanding 900 tonnes. However, on 1 September, 1973, the firm informed the DGS&D that it was treating the order for the balance quantity as having lapsed. The Department of Mines have informed the Committee that the firm did not supply zinc outside the allocations made during October, 1970—March, 1971. The Committee desire to know the steps taken by the Department of Mines & Metals against the firm for not fulfilling the contractual obligations.</p>
14.	1.135	Deptt. of Supply/ Deptt. of Mines & Metals	<p>The Committee would like to point out that the representative of the DGS&D, the Department of Mines and Metals and DGTD at the meeting of Allocation Committee (October, 1971—March, 1972) held on 21 October, 1971, had pointed out the unsatisfactory performance of the firm which had a backlog of 1353 metric tons against DGS&D orders placed with it in October, 1970 to March, 1971 and other commitments of more than 6000 tonnes. The hold-up in production was attributed by the firm due to prolonged strike in their factory. As there had been a shortfall of 1569 tonnes in actual production during the period October, 1970 to March, 1971 from the estimated level, it is not understood how the firm was allowed to take shelter behind the plea of strike for the proven non-compliance of the orders to the extent of 7353 tonnes (1353 tonnes against DGS&D orders and 6000 tonnes against other commitments).</p>
15.	1.136	Deptt. of Mines & Metals	<p>The Committee note with concern that Government did not nominate any person on the Board of Directors of Cominco Binani continuously for three years, <i>i.e.</i> from May, 1967 to May, 1970. The Committee consider this to be a serious lapse which should be investigated.</p>

16. 1.137 -do-

According to the Department, the main object of the nomination of a representative on the firm's Board of Directors in August, 1966, was to keep a watch on the progress of the setting up of the zinc smelter. It was further stated that in June, 1970 the renomination of an official representative was to ensure that the additional funds generated by the smelter were not frittered away by way of higher dividends and/or investment in the shares/debentures of associate companies, but ploughed back for expansion. the Committee would like to know whether the Government Director had ever raised the question of non-supply of zinc slabs to various Government Departments in the Board of Director's meetings or brought the matter to the notice of the Department of Mines and, if so, the action taken by the Department of Mines on the basis of the Government representative's reports.

17. 1.138 Deptt. of Supply

1.138. According to the Audit Paragraph the case of non-supply of zinc was referred to the Ministry of Law in July, 1974 whereas the firm had informed the DGS&D on 1 September, 1973 that it was treating the order for the balance quantity of 900 tonnes of zinc as having lapsed. This letter was followed by another letter dated 8 December, 1973. The Committee are surprised to learn that a reference to the indentors was made on 12 February, 1974, *i.e.* after a lapse of about three months asking them to intimate to the DGS&D the exact quantities received by them. It has been admitted during evidence that this delay was unfortunate. The Committee have a suspicion that undue favours were shown to the firm by the officials of the Department whose role in regard to the entire transaction relating to the award of this particular contract should be fully investigated. The Committee would like

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			to be apprised in clear terms whether there was a collusion between the officials of the Department and the Executives of the firm.
18.	1.139	Deptt. of Supply	The Committee note that one of the indentors had asked the DGS&D on 14 March 1974 to expedite the supplies. That indenter in response to DGS&D letter dated 2 April 1974 had not agreed to the cancellation of unsupplied quantity. It is interesting to note that the DGS&D thereafter requested the firm on 23 May 1974 to forward a copy of the A/T and other relevant correspondence to them as their own file was stated to be missing. The reconstitution of file was stated to have been done after 5 July 1974. The case was referred to the Ministry of law on 24 July 1974.
19.	1.140	-Do-	It has been stated during evidence that the responsibility for the loss of the file in the DGS&D has been fixed on a few officers. The Committee note that two officers (one Assistant Director and one U.D.C.) who had already been warned in connection with another case referred to in the 144th Report (5th Lok Sabha) of the Public Accounts Committee, were involved in the present case also. The Committee are surprised at the leniency shown to the delinquent officers whose probity had been under a cloud. The Committee would like to be informed about the action taken against these and other officers who might be involved in this deed.
20.	1.141	-Do-	The Committee have been informed by the Department of Supply that the Ministry of Law also held the view that there might be no impediment to the Department claiming the general damages provided the Department could prove by documentary evidence that sale transactions had taken place at Rs. 5700 per metric tonne against the sale price of Rs 2850/- per metric

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tonne fixed for the period February 1970 to March 1971 which continued up to 31 July 1972. The Ministry of Law had also felt that it was for the Arbitrator to award such sums as may deem fit and proper in the circumstances.

21. 1.142 Deptt. of Supply/Deptt.
of Mines & Metal

The Committee find another inconsistency in the approach of the Ministry. The firm had accepted on 1 September 1973 the rate of Rs. 2850/- per tonne for 30.20 tonnes supplied in July and October 1971 but it had refused on the same date, to accept the same price for the outstanding supplies of 900 tonnes. There is ostensible reason for not bringing this fact to the notice of the Ministry of Law, while seeking their opinion on this case. The Department of Supply have informed the Committee that a serious view of the manner in which the firm had acted in the matter was taken by the Government, but no legal action could be taken against it as the control in force was purely informal. It is not understood how the DGS&D could agree to the price fixation of a smaller quantity of 30.20 tonnes at Rs. 2850/- per tonne when the firm on the same date refused to supply a larger quantity of 900 tonnes at the original price. It appears that the Ministry had no means available to discipline a supplier who had dictated his own terms and conditions and thereby grabbed substantial profits. The Committee feel that if the fact that the firm was asking for a higher price than what was informally fixed had been brought to the notice of the Department of Mines by the Department of DGTD and Iron and Steel Controller etc. in time, it could have been possible for the Government to take corrective/administrative measures against the firm. The Committee would like to have a satisfactory explanation for this lapse.

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22.	1.143	Deptt. of Supply	<p>The Committee find that two other Accepted Tenders were placed by the DGS&D on the firm on 2 April 1971 and 15 May 1971 for supply of 36,967 and 10 tonnes to Southern Railway and Western Railway respectively. The Committee are perturbed to note that the firm instead of supplying the stores within the stipulated dates of delivery, wrote to the DGS&D on 28 February 1972 and 1 March 1972 requesting them to amend the acceptance of tenders of 2 April 1971 and 15 May 1971 respectively for allowing the increase prices effective from 1 February, 1972 and extending the period of delivery up to 30 April 1972. In this connection, the Department of Supply have informed the Committee that the Ministry of Law advised them that in respect of these two contracts, since the DGS&D did not choose to amend the contracts nor replied to the firm, the supplier could not be forced to supply the stores at the original prices. It was, therefore, decided to cancel these two contracts without financial repercussions. The Committee are disturbed to note that the Department had no powers whatsoever of compelling the firm to meet its contractual obligations. The attitude shown by the firm is, to say the least, very much reprehensible. The Committee would like to know the reasons for not replying to the firm's above letters as it had prevented the Government from cancelling the contracts at firm's risk and cost.</p>
23.	1.144	-Do-	<p>The Committee learn that according to clause 10 of another Accepted Tender dated 26 August 1971, the delivery of zinc was to be made in convenient instalments by 31 September 1971 to the Manager, Telecom</p>

Factory, Jabalpur who had so informed the DGS&D on 13 September, 1971, because of the limited loading facilities in that factory for spreading of delivery period from January 1972 to 31 March 1972. The Committee are surprised to note that the DGS&D on 11 October 1971, *i.e.* after the expiry of delivery period, enquiry from the firm whether it could deliver the stores during 1 January 1972 to March 1972. The Committee would like to know the specific reasons for taking about a month in addressing the firm in this case. It is a matter of great concern to the Committee that action was initiated in DGS&D in May 1972 on the indentors' telegram dated 5 November 1971 in spite of the fact that he had issued two reminders in December 1971 and in February 1972. It has been conceded during evidence that the relevant file was not put up by the Assistant Director during that period. The action taken against the officer on this account may be intimated to the Committee.

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24. 1.145 Deptt. of Supply

It is seen from the Audit Paragraph that M/s. Cominco Binani had stated on 19th November 1971 that as the acceptance of tender of the allocation made by the Ministry of Mines and Metals without any offer from its side, the usual terms of the contract should not be binding on it. It has been admitted during evidence that this aspect was not got examined in the Ministry of Law. The Committee are unable to understand as to why the Ministry of Law was not consulted in this matter. The reasons for this lapse may be investigated under advice to the Committee.

25. 1.146 -do-

The Committee find that the Secretary, Department of Supply has admitted during evidence that "they are keenly conscious of the need to streamline the organisation and make it function more efficiently". The

Committee have been subsequently informed by the Department of Supply that 'a High Power Committee comprising representative of the concerned Central Government Department and three non-official members from trade and industry had been constituted on 24 December 1974 under the Chairmanship of Minister of Supply and Rehabilitation to review the entire gamut of purchase procedures being followed by the various departments under Central Government and to suggest improvement of the same.' The Committee would like to be apprised about the recommendations made by the Committee and the action taken by Government thereon.

26. 1.147 Deptt. of Supply/
Deptt. of Mines
& Metals

To sum up, the defects in the terms of contract, such as making no provision for liquidated damages; avoiding consultation with the Ministry of Law in time; non-availability of proper machinery for controlling the activities of a recalcitrant firm which was not honouring its contractual obligations; revision of the prices of zinc haphazardly—there being a gap of one year which was exploited by the firm to its advantage; lack of proper procedure available in the DGS&D for recording their decision—loss of file which had to be reconstructed and the lack of effective surveillance over the activities of the officers who came into contract with the firm during the execution of the contract, are some of the glaring shortcomings and deficiencies which have come to the notice of the Committee during their examination of this Paragraph. The Committee strongly feel that the firm (M/s. Cominco Binani Zinc Ltd.) has belied the expectations of making available a scarce metal, such as zinc, to the Government Departments under one pretext or the other. It appears to the Committee that the only

aim before the firm was to neutralize its earlier losses and to make windfall gains by holding the stock and offer it only after the price revision. It is clear that the suppliers had taken recourse to a ruse to inflate their bills of payment and Government did not exercise their right to intervene. The Committee hope that the authorities concerned would learn a lesson from these lapses and take suitable and conclusive measures to obviate their recurrence.

27. 1.148 Deptt. of Mines
& Metlas

The Committee note that from April 1973 the indigenous producer are allowed to sell zinc at prices not exceeding the prices fixed by the Minerals and Metals Trading Corporation. The Committee are of the view that the zinc price should have been fixed either on the basis of actual cost of production of indigenous producers or on the basis of price arrived at by pooling the prices of indigenous and imported zinc as has been done in the case of fertilisers instead of allowing the indigenous producers to sell zinc at MMTC prices.

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