

P. A.C. No. 617

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

(SIXTH LOK SABHA)

SEVENTY-FOURTH REPORT

TRACK FITTINGS

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

**[Paragraph 15 of the Report of the Comptroller and
Auditor General of India for the year 1975-76,
Union Government (Railways)]**



Presented in Lok Sabha on 20-4-1978

Laid in Rajya Sabha on

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1978/Chaitra, 1900 (Saka) -

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<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>Corrections</u>
iv	5	3	<u>For</u> 'giving' <u>read</u> 'giving'
9	1.23	5	<u>For</u> 'aRailway' <u>read</u> 'Railway'
13	1.37	7	<u>For</u> 'on by' <u>read</u> 'on'
36	1.79	1	<u>For</u> 'pandrol clips loose jaws' <u>read</u> 'pandrol clips/loose jaws'
60	1.135	5	<u>For</u> 'firms' <u>read</u> 'firm'
68		9	<u>For</u> 'that fact' <u>read</u> 'the fact'
78		12	<u>For</u> 'through' <u>read</u> 'trough'

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(1977-78)

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*Elected with effect from 23 November, 1977 *vice* Sarvashri Sheo Narain and Jagdamb i Prasad Yadav ceased to be Members of the Committee on their appointment as Ministers o f State.

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(ii)

SECRETARIAT

1. Shri B. K. Mukherjee—*Joint Secretary.*
2. Shri H. G. Paranjpe—*Chief Financial Committee Officer.*
3. Shri T. R. Ghai—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Seventy Fourth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraph 15 of the Report of the Comptroller & Auditor General of India for the year 1975-76, Union Government (Railways) relating to Track Fittings.

2. The Report of the Comptroller & Auditor General of India for the year 1975-76, Union Government (Railways) was laid on the Table of the House on 13 June, 1977. The Public Accounts Committee (1977-78) examined this paragraph at their sittings held on the 15 October, 1977. The Committee considered and finalised this report at their sitting held on 18 April, 1978. The Minutes of the sittings form Part II* of the Report.

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

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

5. The Committee would also like to express their thanks to the Chairman and Members of the Railway Board for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
April 19, 1978.

Chaitra 29, 1900 (S).

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

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REPORT

PROCUREMENT OF PANDROL CLIPS AND MODIFIED LOOSE JAWS

Audit Paragraph

1.1. Pandrol clips and modified loose jaws are fastenings used to fit long welded rails on to steel and concrete sleepers. The raw material for the manufacture of these fastenings is silico-manganese spring steel.

1.2. The requirements of the Railways for these fastenings were being procured solely from firm 'A' of Bangalore; the orders being placed, from time to time on the basis of negotiated rates. While negotiating the prices, it had been the general practice of the Tender Committees to judge the reasonableness of the prices with reference to prevailing prices of the raw material, namely, 19 mm diameter silico-manganese spring steel.

1.3. Orders for 28.40 lakh pandrol clips costing Rs. 2.58 crores and 13 lakh modified loose jaws costing Rs. 97.5 lakhs were placed on firm 'A' by the Railway Board on 15th February and 19th June, 1975 respectively. The first order covered two years' requirements, namely, 1974-75 and 1975-76 and the second order covered requirements of 1974-75 and part of 1975-76. While placing these orders, the steep fall in steel prices which had occurred during this period was not taken note of, resulting in procurement of the items at higher rates entailing a large additional expenditure. These cases are discussed in the succeeding paragraphs.

Pandrol clips

1.4. Pandrol clip, a patented item of a firm of United Kingdom, was manufactured in India by firm 'A' under a collaboration agreement of 11th December 1968. The agreement was valid till 10th December 1975 and accordingly firm 'A' was the sole supplier of this item till December 1975. Consequently, the Railway Board was procuring this item from this firm on single tender basis.

1.5. In September 1973 an order was placed on this firm for supply of 31 lakh pandrol clips at the rate of Rs. 5.58 per clip (total value—Rs. 1.73 crores). The rate of Rs. 5.58 was based on the basic price of Rs. 3,065 per tonne (f.o.r., Bangalore) of silico-manganese spring steel exclusive of extras for ensuring close tolerance required for pandrol clips. The price was subject to adjustment on account of variation

in excise duty on raw material. Full supply of 31 lakh pandrol clips was completed by 31st August, 1974. However, the actual receipts of steel trough sleepers and concrete sleepers during 1973-74 was lower than anticipated and the requirement of pandrol clips for the sleepers received was only 14.88 lakh pieces. Thus against the order placed in September 1973, a spill over of 16.12 lakh clips was available for use during 1974-75.

1.6. On the basis of assessment of requirement of pandrol clips for 1974-75 at 33.60 lakh pieces, firm 'A' was asked in May 1974 to quote for supply of 21 lakh pieces. It quoted in June 1974 a rate of Rs. 9.38 per piece for the supply of minimum 30 lakh pandrol clips.

1.7. The Railways' requirement of pandrol clips was reassessed in August 1974 in view of the financial stringency and the curtailment of track renewal programmes. It was estimated that the requirement of pandrol clips would be 6.68 lakhs for 1974-75 and 22.21 lakhs for 1975-76 making a total of 28.89 lakhs. In September 1974, a rate of Rs. 9.08 per piece (as against the last purchase price of Rs. 5.58 of September 1973) was negotiated by the Tender Committee with the firm for supply of 28.40 lakh pandrol clips. The price was subject to adjustments on account of variations in electricity charges, cost of light diesel oil and excise duty on raw material. The price of Rs. 9.08 per piece (which was about 62 per cent above the last contract rate of September 1973) was worked out by the Tender Committee on the basis of the price of raw material (silico-manganese spring steel rounds) prevailing in September 1974, i.e. Rs. 4,850 per tonne. The negotiated rate was approved on 30th January 1975 without ascertaining the then prevailing market rate of silico-manganese spring steel. The contract was placed on 15th February 1975 for 28.40 lakh pandrol clips for meeting two years' requirements at a total cost of Rs. 2.58 crores. According to the contract the supplies upto 31st March 1975 were to be limited to 7 lakh numbers only. However, on the basis of instructions of the Railway Board issued earlier in November/December 1974, the Research, Designs and Standards Organisation had inspected 8.80 lakh pandrol clips upto 19th January 1975 i.e., even before the contract was placed. Full supply of 28.40 lakh clips was completed by the firm in January 1975.

1.8. During the period from September 1974 (when the price was negotiated) to 15th February 1975 (when the contract was placed) there had been steady fall in the market price of various steel materials. The tenders for special steel opened in the Board's office on 7th January 1975, 14th January 1975 and 21st January 1975 showed fall in prices ranging from 8 to 21 per cent as compared to

previous year's contract prices. It may also be mentioned here that the Railway Board happened to float a tender for procurement of silico-manganese spring steel on 15th February 1975. The tenders, which were opened on 31st March 1975, indicated raw material (silico-manganese steel) price as Rs. 4,300 per tonne as against the rate of Rs. 4,850 per tonne prevailing in September 1974 and adopted for order placed in February 1975 for supplies to be made to meet two years' requirements. No notice would appear to have been taken of the trend of fall in steel prices in January 1975 nor the then current market price of silico-manganese spring steel ascertained. The relevance of the second point just made is also clear from the outcome of the tender of February 1975 for silico-manganese steel the rate for which came down after negotiations to Rs. 3,117 per tonne on 5th June 1975. Placement of order in February 1975 on the basis of raw material prices prevailing in September 1974 resulted in a very large financial advantage to the firm on the purchase of 28.40 lakh pandrol clips.

1.9. In accordance with the collaboration agreement referred to above, firm 'A' had to pay to its collaborator 5 per cent royalty on the net selling price of pandrol clips less the value of imported components, if any, subject to Indian taxes. The price per clip fixed after negotiations with firm 'A' under each contract, including the contract concluded in February 1975 included this element of royalty at 5 per cent of the price of product payable to the foreign collaborator in United Kingdom. The annual royalty is payable on the annual production limited to the licensed capacity plus 25 per cent which in the case of firm 'A' worked out to 18.75 lakh clips per year. The firm manufactured in 1974 and 1975 excess quantities of 1.98 and 9.65 lakh clips respectively over the licensed capacity plus twenty-five per cent, for which full price inclusive of royalty amount was allowed. On the inadmissibility of the royalty on these supplies being pointed out by audit in September 1975, the Railway Board ordered (May 1976) recovery of an amount of Rs. 4,89,892 (on account of royalty on the excess production) from the dues of firm 'A'.

1.10. On a representation from firm 'A' against this recovery, the Railway Board referred the matter to the Ministry of Industrial Development in September 1976.

1.11. The Ministry of Industrial Development decided (December 1976) to regularise the excess production for the reasons that the entire production of the clips was for Railways' use and in the

absence of this the Railways' programme would have been adversely affected. It also advised that it had no objection to the payment of royalty on the manufacture of pandrol clips in excess of 18.75 lakhs.

1.12. The Railway Board stated (January 1977) that the rate of Rs. 9.08 per clip was negotiated by the Tender Committee in September 1974 on the basis of the then prevailing rates for raw material and orders of the competent authority could be obtained only on 30th January 1975 and contract placed in February 1975. It further stated that the rates of special steel received in January 1975 and the rates obtained in March 1975 in response to the tenders for silico-manganese spring steel had no relevance as the former pertained to steel of different specifications and the latter to a much later period with reference to date of negotiations namely, September 1974.

1.13. The Railway Board further stated (February 1977) that ordering of 28.40 lakh clips to meet two years' requirements upto 1975-76 was also considered necessary because the firm's collaboration agreement with the U.K. firm was to expire on 10th December 1975 and consequently it was apprehended that there would not be any supply of pandrol clips thereafter from it.

1.14. As regards inspection of 8.80 lakh pandrol clips by the Research, Designs and Standards Organisation even before the contract was placed, the Railway Board stated that pandrol clips are critical safety items and firm 'A' was the sole supplier of this item. It was essential, in the interests of the Railways, that there was no break in the continuity of production so that the flow of supplies of these components was not interrupted. Accordingly, it was maintained, that a working arrangement with firm 'A' was considered necessary under which the Railways' estimated requirements were projected to it and also inspected without issue of formal inspection notes so that there was no commitment to purchase them till contracts were finalised.

[Sub-paras 15.1 to 15.14 of Paragraph 15 of the Report of the Comptroller & Auditor General of India for the year 1975-76, Union Government (Railways)]

Assessment of requirements

1.15. Pandrol clip is a common elastic fastening for tying rails with concrete, steel, trough CST-11 and wooden sleepers with suitable accessories. In each case, 4 pandrol clips per sleeper are required. In the case of steel sleepers, pandrol clips are used in con-

junction with 4 modified loose jaws per sleeper, and in the case of wooden sleepers with two special bearing plates per sleeper. For use with concrete sleeper, 4 inserts are needed, but with CST-11 sleepers no accessories are necessary. Rejected steel sleepers are also used with 4 pandrol clips alongwith welded plates.

1.16. The details of the orders for pandrol clips placed by the Railways from time to time are given below:—

Contract No. & Date	Quantity Rate per piece	
	In lakhs	Rs.
67/W(IC) CS/20 23-4-69	10	3.85
69/W(CS)/46 25-11-71	5	5.17
72/W(TM)/CS/1 8-6-72	20	5.17
73/W(TM)/1/3 19-9-73	31	5.58
74/W(TM)/1/1 15-2-75	28.40	9.08

1.17. The Committee enquired how were the quantities procured from time to time determined. The Member Engineering explained during evidence:—

“The quantity of these pandrol clips was procured from time to time on the basis of the assessment of the requirement. For example, if we take the first order of 23-4-69 for 10 lakh number pandrol clips, these 10 lakh number pandrol clips were required for 1.30 lakh rejected sleepers fitted with rail and one lakh concrete sleepers expected to be produced from Indian Hume Pipe Company. So, each sleeper, whether it is a steel sleeper or concrete sleeper, required some pandrol clips. The total requirement of 2.30 lakh sleepers was made in 1969. The total number of clips on the basis of 2.30 lakh sleepers comes to 9.20 lakhs. So, the order was placed in 1969 at 10 lakhs.

Similarly, when we come to the next order of 1971, for 5 lakh number pandrol clips, these have been assessed for a total number. The total assessment was made in 1971 of all the sleepers that would be manufactured from 1969 onwards and that came to 3.81 lakh sleepers. The total number of pandrol clips required on the basis of 3.81 lakh sleepers came to 15 lakhs. Ten lakhs had been ordered in

1969. The balance order of 5 lakhs was placed in 1971. So, this account for 10 lakhs and 5 lakhs of 1969 and 1971 respectively.

When we come to the order of 1972 for 20 lakh pandrol clips, here again an overall assessment was made of the position from March 1969 to March 1973 covering concrete sleepers, pandrol steel sleepers and modified sleepers, and modified CST 9 sleepers. The approximate quantity came to 25 lakhs. We ordered only 20 lakhs expecting a reduction in supply of sleepers."

1.18. The Audit Paragraph points out that against the order for 31 lakh pandrol clips placed in September, 1973, the full supply was completed by 31st August, 1974. However, as the actual receipts of steel trough sleepers and concrete sleepers during 1973-74 was lower than anticipated, only 14.88 lakh pieces of pandrol clips could be used and as a result a spill over of 16.12 lakh clips was available for use during 1974-75. The requirement for 1974-75 was assessed at 33.60 lakh pieces but taking into account the spill over from the previous year's supply, quotations for supply of only 21 lakh pieces were invited in May, 1974. The Railways' requirement of pandrol clips was reassessed in August, 1974 in view of the financial stringency and the curtailment of track renewal programmes. It was estimated that the requirement of pandrol clips would be 6.68 lakhs for 1974-75 and 22.21 lakhs for 1975-76 making a total of 28.89 lakhs. Explaining the reasons for scaling down the requirements of clips for 1974-75, the Ministry of Railways, have, in a note, stated:

"Requirement of 1974-75 for pandrol clips were assessed as 33.60 lakhs in March/April 1974. The tender enquiry was called for 21 lakhs only in May 74, keeping in view the estimated spill over from 73-74 contract.

The quantity of 21 lakhs pandrol clips was based on the availability of about Rs. 56 crores for track renewals in 1974-75. The allocation was reduced drastically to about Rs. 43 crores in August 74 due to financial stringency. On reassessment of 74-75 requirements, the quantity for 1974-75 was reduced to 6.68 lakhs only."

1.19. It is seen that in May 1974 the tender enquiry was called for 21 lakh pieces of pandrol clips keeping in view the estimated spill-over from the 1973-74 contract. However the actual contract placed on 15th February, 1975 was for 28.40 lakh clips which represented two years requirements. Asked why two years requirements

were clubbed together, the Ministry of Railways have, in a note, stated:—

“As regards the clubbing of the requirements of 1974-75 and 1975-76, this was done keeping in view the fact that firm had quoted a rate for a minimum of 31 lakh nos. Since their capacity was higher, any reduction in quantity would have resulted in an increase in rates, as their overheads would have been distributed on a smaller quantity. The fact that this firm is the only source of supply of pandrol clips and would not be in a position to manufacture any further pandrol clips after a period of 5 years in term of the collaboration agreement with their principals was also kept in view. If open tenders for 75-76 had been invited after December, 75 supplies from new sources would not have materialised.”

1.29. The Committee were informed that the supplies of all the 28.40 lakh clips ordered in February 1975 were completed by January, 1976. Out of these, 9.54 lakh numbers of clips had been utilised upto 31-3-77 and 15.67 lakhs upto September, 1977, leaving a balance of 12.73 lakh clips. It is thus to be seen that out of the 28.40 lakh clips acquired against the requirements for 1974-75 and 1975-76, only 9.54 lakh numbers of clips could be used upto the end of 1976-77 and by the end of the year 1976-77 18.86 lakh numbers remained unused. The Committee enquired whether this balance also included the spill-over from the earlier contract and if not what was the actual balance on 1-4-1977. The Committee also asked that since the procurement was for consumption during the year 1975-76 and there was huge spill-over of stocks how could the Ministry of Railways tell the Ministry of Industrial Development in September, 1976 that but for supply from the firm, their track programmes would have suffered. In a note, the Ministry of Railways have stated:—

“The spill over of 18.86 lakh nos. of pandrol clips as on 1-4-77 was the total spill-over and not only from the supplies made against the last contract of 28.40 lakhs placed on firm 'A'. Pandrol rail clip is a fastening being used on the concrete, steel trough CST-11 and wooden sleeper. While placing the order for 28.40 lakhs of pandrol rail clips in Feb., 75, the total requirement of 75-76 was taken into account besides 7 lakhs for 74-75 whereas the order for modified loose jaws to be used with pandrol rail clips on steel trough sleepers covered the requirements only upto June 75. For the balance requirements of modified loose laws for 75-76, open tenders were invited and orders were placed on 6 other firms. No supplies came from

these suppliers and as a result of this the pandrol rail clips supplied by the firm 'A' could not be utilised. Further, the number of concrete sleepers received during 1975-76 also fell short of the requirements although the orders were placed on the firms, manufacturing concrete sleepers. Had these modified loose jaws and concrete sleeper been available, there would have been no spillover of pandrol rail clips. It is in view of this assesment that the Ministry of Industry, Department of Industrial Development, was informed that in case the pandrol clips were not received, the programme of Railways would suffer adversely."

1.21. During evidence the Committee enquired when the requirements for the year 1974-75 had on reassessment been reduced to less than 7 lakh pieces, how could an advance commitment for 22 lakh pandrol clips be made for the next year i.e., 1975-76. The Member Engineering stated:—

"As far as the advance commitment is concerned, if you go back into the quotation of G.K.W you will find that even though we have taken 6 lakhs from them they quoted a much higher rate. Then they have offered a bigger quantity at a lower rate."

1.22. In reply to a question as to what was the usual practice in regard to placing of contracts for the pandrol clips the Member Engineering stated that "we always put up for one to two years". He added:

"In 1969 we estimated our requirements for one year. In 1971 order also, we booked our requirements only upto 1970-71. But in 1972 we booked our requirements right upto March 73."

1.23. When asked which was the more common practice that is to plan for one year or two years, the witness stated that "2 or 3 years is more common because you have to plan your track renewal items." In this context the Committee asked if this had been the practice why for the requirements of 1975-76, the Railways had been waiting till the middle of 1975. The Member Engineering stated:

"There was a tremendous constraint on funds in 1974-75. From Rs. 68 crores the allotment come down to Rs. 43 crores."

Determination of Prices

1.24. Asked how the rates for pandrol clips were being determined from time to time, the Ministry of Railways have, in a note, stated:

"As regards the determination of rates, since firm 'A' were the sole suppliers of this item, Railway Board had been

procuring the pandrol clips from the firm 'A' on single tender basis. The rates were negotiated on each occasion on the receipt of an offer from the firm. The reasonableness of the rates was adjudged with reference to the price of silico manganese spring steel prevailing at the time of negotiations, taking these rates, however, as a near guide. Further, variations on account of other inputs such as fuel, electricity, excise duty and labour costs were provided for. A profit of 10 per cent on the total cost was added in fixing the price. A royalty of 5 per cent on the net sale value (payable by firm 'A' to their collaborators) was also added before arriving at the final price."

1.25. It is seen that in September, 1973 an order was placed on the firm for supply of 31 lakh pandrol clips at the rate of Rs. 5.58 per clip. However, for the contract placed in February, 1975 for 28.40 lakh pandrol clips, the rate agreed to was Rs. 9.08 per piece. The Committee has been informed that the rate of Rs. 5.58 per clip under contract of September, 1973 and Rs 9.08 per clip under contract of February, 1975 were arrived at as under:—

(Figures in rupees)

	Contract of September 1974	Contract negotiated in September 1974 (order placed in February 1975)
Steel price EN-45, Silico-manganese base on Board's order on Saurashtra Iron Foundry in 1973--IS-7	2830	4850.00
Add 3% CST	85	145.50
	2915	4995.50
Railway freight to Bangalore	150	205.00
	3065	5200.50
Add for closer tolerance	40	40.00
	3105	5240.00
Raw material per clip 1.09 Kg.	3.39	5.71
Conversion cost	50%	
	1.43 increased	2.15
	4.82	7.86
Add 10% profit	.48	.79
	5.30	8.56
Royalty 5%	.28	.45
	5.58	9.10

1.26. During evidence the Committee desired to know as to how at the time of placing order in September, 1973 the price of silico-manganese spring steel was fixed at Rs. 3065 per tonne and considered to be reasonable. The Member Engineering explained that the basic price was taken at the price which was quoted in response to Tender No. IS-7 which had been opened by the Stores Directorate on 23-4-1973. When asked as to how the price for the order placed in February, 1975 had been determined, the witness stated:

“We got the figure of Rs. 4,850 from offers in response to a tender which was opened on 27-5-1974—which was IS-13.”

1.27. The Committee pointed out that the contract was negotiated in September, 1974 but the actual order had been placed only in February, 1975. Asked whether efforts were made to verify the ruling prices at the time of placing the contract, the Member Engineering stated:—

“Upto September, 1974, when the negotiations were held, this was the price that was available. The Tender Committee submitted their recommendations, and the recommendations were based on this price of Rs. 4,850. That again was an average.”

1.28. On being asked whether the Railway Board was aware that the price of silico-manganese steel was steadily going down at that time, the Member Engineering replied in the negative. However when asked whether they tried to ascertain the ruling price of the steel before placing the order, the witness stated:

“We did not try to get that. It was not necessary because it was already negotiated and it was in the process of being accepted.”

1.29. The Committee drew attention to the fact that the tender opened in March, 1975, i.e., about one month after the contract of February, 1975, had revealed that the price of the steel had come down to Rs. 4,300 against the price of Rs. 4,850 on which the contract of February, 1975 had been finalised. In this connection, the Member Engineering stated:

“The negotiations for the tender for Pandrol Clips were held in September, 1974; the only data that was available for comparing prices was the data which was available in response to our tender which was opened on 27th May, 1974.”

1.30. The Committee asked how could the Railway Board justify the placement of order in February, 1975 and that too for two years requirements on the basis of raw material price prevailing in May, 1974, particularly when there was indication that there was a fall in the prices of special steel in January, 1975. The Ministry of Railways have, in a note stated:

“The Tender Committee for pandrol clips finalised its recommendations in November, 1974. At that stage there was no evidence of any fall in steel prices. However, neither the special steel for which tenders were opened in January, 1975 nor the silico-manganese steel for which the tenders were opened in March, 1975 is comparable to the raw material required for the manufacture of pandrol clips.”

1.31. On being asked whether no attention was paid to the market trends, the Chairman, Railway Board stated in evidence:—

“The sanctity of the tender should be honoured, unless we take a conscious decision to cancel the tender.”

The Member Engineering added in this connection:

“Between May, 1974 and September, 1974, there was no occasion for us to get any indication of another price for silico-manganese steel except the one which we got in May, 1974. Having negotiated the price with one party, on the basis of this raw material price, the Tender Committee’s proceedings had to be allowed to take their normal course for getting the acceptance of the competent authority.”

1.32. In reply to a question whether the price situation between the date of negotiating the contract in September, 1974 and the date of placing the contract in February, 1975 will not be considered, the Member Engineering stated: “Normally no.” The Chairman, Railway Board further added:

“Unless we see that there is some crash and we feel that it should be scrapped and re-tendered, we do not. If the price had gone up, we would not give a higher price. The sanctity of the tender should be honoured.”

1.33. The Committee asked whether in January, 1975, i.e., before placing the order the Railway Board became aware that the prices of special steels were sharply coming down. To this the Member Engineering replied:—

“The three tenders for special steels were received on 7th, 14th and 21st January, 1975 and they were not for silico-manganese steel.”

1.34. Asked whether the downward trend in the prices of special steel did not give any indication that the price of silico-manganese steel might also have come down, the Member Engineering stated:

“These fresh tenders which were opened in January, 1975 were tenders which showed a decline in prices as far as special steels were concerned. The specifications for silico manganese steel and special steel are two different specifications altogether and normally even if it is brought to our notice—in this particular case it was not brought to the notice of the officer concerned and who put up the file—here is a tender which was opened on the 7th and as soon as the file came back from the Minister it was put up to the Minister on the 8th.”

In the same context he added:

“Now between the 7th and 8th January, even if we accept the position that the prices of special steel should govern a reconsideration of the tender, it is just not possible.”

1.35. It is seen from the Audit Paragraph that the tenders for special steel opened in the Board's office on 7th January, 1975, 14th January, 1975 and 21st January, 1975 showed fall in prices ranging from 8 to 21 per cent as compared to previous years contract prices. When the Committee asked whether in view of the declining trend in prices, it was not worthwhile to reconsider the market prices of the silico-manganese steel for the purpose of finalising the contract, the Member Engineering stated:

“I personally do not think so because as it is, it has always been difficult to get silico manganese steel.

As far as this particular contract was concerned, we have entered into a contract not for the supply of the raw material but for the supply of the finished product, i.e., pandrol clips. What we have done in the contract while negotiating it was that we took the rates prevalent in May, 1974 as obtained from a tender for silico-manganese

steel as a near guide for establishing a certain basis for holding negotiations with the contractor for finalising the rate for the finished product."

He added:

"It was the main basis on which we negotiated with the contractor but the contractor need not have accepted this basis even."

He further added:

"We could ascertain the ruling price of silico manganese steel if there was a tender which was opened for that at that particular point of time. The next tender which was opened for that at that particular point of time. The next tender which was opened for silico-manganese steel was in the month of March, 1975."

1.36. The Committee was informed that the tender opened in March, 1975 had been floated on 17-2-1975. In reply to a question whether it was not possible to wait for a few weeks for finalising the contract as fresh tenders had been floated on 17-2-1975, the Member Engineering stated:

"The negotiations for this deal had already been completed."

1.37. The Committee pointed out that since the prices were coming down sharply the Railways could have negotiated only for their requirements for 1974-75 and not for 1975-76. To a question whether it did not strike them, the Member Engineering stated:

"No. It did not strike us."

He added:

"The tender for special steels was opened on by the 7th January, 1975. It was dealt with by the Stores Directorate. But pandrol clips tender was dealt with by the Civil Engineering Directorate. Between 7th and 8th one could not expect Stores Directorate to assume the downward trend in the silico-manganese prices.

We could not take note for the simple reason that the established suppliers had always been quoting rates which were not influenced by downward trend."

1.38. When the Committee enquired whether the prices of silico-manganese steel had no link with the prices of other types of steel, the Member Engineering stated:

"The price of steel which we get is fixed by the Joint Plant Committee. For the general steel the prices have not been going down. This is an isolated case of the special steel and the tender opened in January, 1975 could not lead us to the conclusion that the silico-manganese steel would come down.

I would like to submit that there is some sort of sanctity about the negotiations which we had processed. We had processed papers for acceptance."

1.39. The Committee pointed out that the price of Rs. 9.08 per clip quoted in this tender was more than 60 per cent of the price quoted in the previous tender namely Rs. 5.58 per clip and the new price was being accepted not for one year's supply but even for a huge quantity to be used in a subsequent year. In these circumstances, the Committee asked, whether it was not reasonable to have ascertained the position from the market. The Member Engineering stated:

"We took the price of silico manganese in May 1974. From May, 1974 to March, 1975 no price was available."

1.40. In reply to a question whether it never struck the Railways that prices should be brought down, the Member Engineering stated:

"Not in this particular case."

1.41. The Committee asked if the prices had gone up and the supplier had come up with some fresh proposals, what would have been the reaction of Railways. The Member Engineering stated:

"We would not have considered their fresh proposal because the negotiations had been completed."

1.42. At that stage the Committee's attention was drawn to the case when the Tender Committee of the Railway Board had in October, 1975 asked for a reduction in the price of modified loose jaws on the basis of fall in price of silico-manganese spring steel during 1975 and the firm had offered a rebate of Rs. 7 lakhs, which was accepted. The Committee asked why did not the Ministry of Railways press for a similar reduction in the case of Pandrol Clips which also were to be manufactured from silico-manganese steel. In a note, the Ministry of Railways have stated:

"The order for modified loose jaws was to Alteration 2. When the firm came up for issuing an amendment to the con-

tract for the acceptance of modified loose jaws to alteration 1, an opportunity was taken to renegotiate the price, as a result of which an *ad hoc* rebate of 7 lakhs could be obtained. This itself was noteworthy, since the contract had already been concluded on a firm price basis. However, in the case of pandrol clips no such opportunity was available to the Railways to reopen the concluded contract which was entered into in February, 1975. Hence, no rebate of the type that was obtained in the contract for modified loose jaws was obtained in the case of pandrol rail clips. Further, the question of obtaining a rebate in the case of pandrol clips did not arise, because the contract for this material was negotiated in November, 1974, and the Tender Committee had assessed the price of silico manganese steel then prevailing. The subsequent reduction in the clips by adopting as a nearguide, the price of special steel silico-manganese steel could not obviously necessitate a revision of the prices of pandrol clips. On the same considerations the firm 'A' would not have been entitled to an increase in price had the prices of silico-manganese gone up because the contract for the pandrol clips was a firm price contract."

Payment of Royalty

1.43. It is seen from the Audit Paragraph that the pandrol clip was a patented item of a firm of U.K. and was being manufactured in India by M/s Guest Keen Williams Ltd. under a collaboration agreement of 11th December, 1968. The Committee have been informed by the Department of Industrial Development that the Licence No. L/1A(7)(90)/70-EIM dated 24-9-70 issued to M/s Guest Keen Williams Ltd. Calcutta for the manufacture of Pandrol Clips and Lock Spikes in their unit to be set up at Bangalore in the State of Karnataka was for the manufacture of the items for an annual capacity of 1.5 million Nos. on maximum utilisation of the plant. It was mentioned in the licence that no section of the industrial undertaking should have, except with the prior approval of the Government of India, capacity substantially in excess of that specified in the licence. Condition I of the Additional Conditions attached to the licence stated as follows:—

"The Industrial undertaking shall obtain prior permission from the Government of India before effecting a substantial expansion of its capacity for the manufacture of these articles or before establishing capacity for the manufacture

of any other article falling under the first schedule to the Act.”

1.44. The Committee enquired whether the collaboration agreement or the contracts executed subsequently for supply of pandrol clips provided for imposing restrictions on the manufacture beyond the permissible limits as per the licence issued to the firm and if not what safeguards had been provided against excess manufacture. In a note the Department of Industrial Development have stated:

“The Collaboration Agreement between Guest Keen Williams Limited, Calcutta and M/s. Lock Spikes Limited, London for the manufacture of Lock spikes and Pandrol Rail clips did not mention any quantitative limit for the payment of royalty. But when the party wrote to the Ministry on 7-6-1974 that since no specific quantity limitation for payment of royalty was incorporated in the foreign collaboration agreement, they were liable to remit royalty on whatever quantity they manufactured under the licence upto December, 1975, the Ministry clarified the position to the party under their letter dated 7-11-74 that payment of royalty was related to the quantum of production against the licensed capacity only, that if production exceeds the licensed capacity, royalty upto 25 per cent thereof can be paid and that in case production was in excess of this quantum prior approval of the Government will have to be obtained regarding the terms of royalty.”

1.45. From the information made available to the Committee it is seen that the Ministry of Railways had placed an initial order on M/s. Guest Keen Williams for the supply of 10 lakh Nos. of Pandrol Rail Clips in April, 1968 and the supplies were completed by 25-9-1970. Subsequently further orders were placed on the firm for a total quantity of 84.4 lakhs, based on the actual requirements of the Indian Railways in accordance with the details given below:—

Contract No.	Dated	Quantity	Supplies commenced	Supplies completed
69/W(TM)/CS/46 . . .	23-11-71	5 lakhs	30-11-71	26-5-72
72/W(TM)/CS/1 . . .	8-6-72	20 lakhs	1-1-72	31-8-73
73/W(TM)/1/3 . . .	19-9-73	31 lakhs	3-10-73	24-8-74
74/W(TM)/1/1 . . .	15-2-75	28.40 lakhs	17-2-75	Jan. 76

1.46. According to the Audit Paragraph the annual royalty is payable on the annual production limited to the licenced capacity plus 25 per cent which in the case of M/s. Guest Keen Williams Ltd. worked out to 18.75 lakh clips per year. The firm had however manufactured in 1974 and 1975 excess quantities of 1.98 and 9.65 lakh clips respectively over the licenced capacity plus twenty five per cent, for which full price inclusive of royalty amount was allowed. The Committee desired to know what mechanism had been devised to ensure that the firm did not manufacture in excess of the licensed capacity and the permissible excess. In a note, the Ministry of Railways have stated:

“The supplies made by the firm in 1974 were against the order for 31 lakh pandrol clips placed by the Railway Board in September, 73. Supplies against this order were completed in August, 74. Supplies made by the firm in 1975 were against the order placed by the Railway Board in February, 75, for 28.40 lakh pandrol clips.

The firm's application for enhancement of their licensed capacity from 15 lakh Nos. per annum to 40 lakh Nos. per annum was recommended by the Ministry of Railways in May, 73 to the Deptt. of Industrial Development. It was, therefore, expected that necessary approvals for this enhancement of capacity would be accorded to the firm by the Deptt. of Industrial Development. Hence, no specific restriction was imposed in the contract placed by the Railway Board in February, 75. It was only in August 1975 that the Ministry of Railways became aware, in the course of a meeting in the Deptt. of Industrial Development, that the firm had been authorised by the latter Ministry to enhance their capacity to 40 lakh Nos. per annum subject to the payment of royalty to their collaborators being restricted to 18.75 lakh Nos per annum.”

1.47. It has been stated by the Ministry of Railways that no specific restriction was imposed on the contract for supply of 28.40 lakhs pandrol clips placed in February 1975 on the presumption that Ministry of Industrial Development would accord approval for enhancement of capacity of the firm. The Committee asked whether this could be done in anticipation of the actual enhancement of the licensed capacity, especially when payment of royalty to the foreign collaborator was involved. The Ministry of Railways have stated:

“Having recommended the increase in capacity to 40 lakh nos. per year, the Ministry of Railways presumed that they were not precluded from ordering the quantity of more than 18.75 lakh nos. It may also be added that the condition placing a ceiling on the quantity for payment of royalty at 18.75 lakh nos. per annum was not known to the Ministry of Railways till August, 75 whereas the order of pandrol clips was placed in February, 1975.”

1.48. As the original licence granted to the firm in 1970 was for a capacity of 15 lakh clips per annum, the Committee enquired how could contracts for supply of 31 lakh clips and 28.40 lakh clips be placed in September 1973 and February 1975 respectively. The Ministry of Railways, in a note, stated:

“The firm’s application for enhancing of their licensed capacity from 15 lakh nos. per annum to 40 lakh nos. per annum was recommended in May 1973 by the Ministry of Railways to the Department of Industrial Development. It was, therefore, presumed that necessary approvals for this enhancement of capacity would be accorded to the firm by the Department of Industrial Development. Hence, contracts were placed for supply of 31 lakhs and 28.40 lakh clips in September 1973 and February 1975 respectively.”

1.49. In the same context, the Ministry of Industry have stated:

“The original licence was issued on 24-9-1970 for a capacity of 1.5 million nos. of Pandrol Rail Clips and Lock Spikes on maximum utilisation of the plant. An industrial unit can produce upto 125 per cent of the capacity, which in this case would work out to 18.75 lakhs. This Ministry has no comments to offer on the circumstances under which contracts for supply of 31 lakh clips and 28.40 lakh clips were placed in September 1973 and February 1975 respectively, by the Ministry of Railways on the Company.”

1.50. The Committee have been informed by Audit that in March 1973 the firm requested the Department of Industrial Development for amendment of its industrial licence to enable it to manufacture 40 lakh clips per annum to meet the increased demand of the railways for pandrol clips for their track modernisation programmes. It indicated that no import of raw material and no foreign exchange would be required for this. The firm was informed by the Department in July 1973 that an amendment of its licence was not possible but it might submit an application for effecting substantial expansion of its capacity which would be considered on merits in the light of the policy prevailing at that time by the Government.

In August 1973, the firm applied for an Industrial licence for affecting substantial expansions for the manufacture of pandrol clips and other similar products. A letter of intent was issued to the firm, with a copy to Railway Board on 6-7-1974, for effecting substantial expansion for production of 40 lakh clips per annum subject to the condition that no foreign collaboration or payment of royalty to the existing collaborators for the manufacture of pandrol clips beyond 15 lakh numbers would be allowed. The firm was to apply for an industrial licence. In June 1974 and January 1975 the firm represented to the Department of Industrial Development against the quantitative restrictions on payment of royalty, on the plea that the collaboration agreement did not contain any such quantitative restriction on payment of royalty. The firm was informed by the Department of Industrial Development in November 1974 and again in December 1975 that payment of royalty had to be related to the production against capacity and that the production could exceed beyond the licensed capacity only upto 25 per cent; if production exceeded the licensed capacity in accordance with these instructions of the Government royalty upto 25 per cent in excess thereof could be paid. The Railway Board was also advised accordingly in November, 1975.

1.51. The firm's claim for payment of royalty on excess production had been repeatedly rejected by the Ministry of Industry. Ultimately, however, the Ministry of Industry agreed to regularise the excess production. During evidence the Committee desired to know what were the grounds for rejection of the claim earlier and on what new considerations the Ministry of Industry subsequently agreed to regularise the excess production. A representative of the Ministry of Industry explained during evidence:

"This collaboration was approved in 1967. At that time collaboration approvals did not normally carry a clause that payment of royalty will be restricted to licensed production plus 25 per cent thereof. At various periods all along, certain refinements have been introduced. Only in 1969 this practice started when such cases came to notice that people were producing much in excess of their licensed capacity. So, this clause was started to be inserted in approval letters that royalty payment will be restricted to licensed capacity plus 25 per cent thereof. In this collaboration agreement, as facts are, no capacity was mentioned. There is another reason. Initially the firm had a registration certificate for manufacture of various types of forgings. They had come to the gov-

ernment stating that they would take up the manufacture of pandrol clips within the ambit of that registration certificate, and they would not need any further capital equipment. In a registration certificate, normally capacity is not mentioned. It is merely a permission taking note of the fact that you are manufacturing a particular thing.

Subsequently some time in 1969 the DGTD brought it to the notice of the Ministry that pandrol clips was a new specialised item which had been developed and it should not be normally covered within the general registration certificate which the party had and, therefore, the party would need an industrial licence for this purpose. So, the party was advised to formally apply an industrial licence which they did some time in 1969.

The matter was discussed with the Railway Ministry and ultimately a capacity of 15 lakh nos. was given to the party for pandrol clips. That is why when some time in 1976 when the Railway Board referred to the Ministry whether any royalty would be payable on the extra production, the Ministry wrote back saying that royalty should be restricted to 15 lakhs plus 25 per cent thereof. Subsequently in March 1976 in the Ministry of Industrial Development this question of excess production was considered in its entirety by the Industrial Policy Group presided over by the Secretary, Ministry of Industrial Development with some other Secretaries to Government as members. It was felt that a general policy should be adopted for dealing with cases of excess production. *Inter alia*, it was decided that unless some injury had taken place to the known and declared socio-economic objectives of the government, we should be liberal in regularising such excess production but such cases would be examined case by case on merits and submitted to the licensing committee for orders. In October 1976 we received a further reference from the Railway Board saying that the party had again represented to them that they should be paid royalty on excess production. Subsequently, a senior officer of the Railway Board also came for discussion and it was brought out that the only purchaser of this item was the Railway Board; that whatever the party had produced had been purchased by the Railway

Board and that if this party had not produced this extra quantity, the programme of the Railways would have suffered. We took the case back to the licensing committee and in view of what was stated by the Railway Board, the Licensing committee regularised the excess production."

1.52. While regularising the excess production, the Ministry of Industrial Development also regularised the payment of royalty on the excess production. The Committee asked how was the payment of royalty on the quantity manufactured in excess justified. The Ministry of Industry have, in a note stated:

"The Ministry of Railways wrote to this Ministry on 10-3-1976 stating that during 1974 and 1975, the Company had supplied to them more than licensed capacity plus 25 per cent and that they had also computed royalty on such excess supplies. They wanted the Ministry's advice about the quantities for which royalties were paid to the collaborator and whether the Company might be directed to refund the amount on the excess supply. On 15-4-1976 this Ministry advised the Railway Board that under rules the firm could claim royalty on excess production upto 25 per cent beyond the licensed capacity and if excess payments had been made by the Railway Board to the Company, it was for them to have the amount recovered from the Company. On 28-9-1976 the Ministry of Railways again wrote to this Ministry, on representation from this firm, and wanted the advice of this Ministry whether the firm could be permitted to remit royalties in excess of 18.75 lakh nos. per year. A senior Officer of the Railway Board also met the Joint Secretary in the Ministry and during discussions pointed out that in case GKW had not supplied the items to their full requirements, the Railway Programme would have suffered. Accordingly the case was put up before the LC-cum-MRTP Committee for regularisation of the excess production on the above ground. The Committee agreed to regularise the excess production. The Railway Board were informed about the minutes of the LC-cum-MRTP Committee *vide* this Ministry's letter dated 9-12-76. It was also added in the letter to the Railway Board that this Ministry would have no objection to payment of royalty on the manufacture of Pandrol Rail

Clips and Lock Spikes in excess of 18.75 lakh Nos. per annum during the years 1973, 1974 and 1975 as the production had been regularised. It may be clarified that this Ministry had regularised the excess production of the Company under the Licensing provisions of the Industries Development and Regulation Act and the no objection given by this Ministry was only with reference to the angle of excess production. Any other matters connected with the need and quantum of royalty paid to the Company is not the concern of this Ministry but are to be decided by the Ministry of Railway only."

1.53. In another note, the Ministry of Industry have stated:

"On an earlier reference from the Railway Board, this Ministry had no doubt, advised the Railway Board on 15-4-1976 that the payment of royalty by the Indian Company to their foreign collaborators should be restricted to the licensed capacity plus 25 per cent thereof and that this Ministry was not aware of the circumstances under which the Railway Board had made payments to M/s Guest Keen Williams Ltd. even for the royalty which the firm had to pay to their collaborator and that if excess payment had been made by the Railway Board to the company, it was for them to have the amount recovered from the Company. Therefore, on a subsequent reference from the Railway Board, the regularisation of the excess production was approved by Government. As a logical step this Ministry advised the Railway Board under their endorsement dated 9-12-1976 that they would have no objection to the payment of royalty on the excess production also. The purpose of making the stipulation in the endorsement dated 9-12-76 contrary to the earlier advice dated 15-4-1976 to the Railway Board was because of the deliberate decision of the Government to regularise the excess production of the Company. But the ultimate decision regarding actual payment of royalty and about any other matters connected therewith rests with the Railway Board. It was with this view that it has been mentioned above that the no objection given by this Ministry was only with reference to excess production and that any other matters connected with the need and quantum of royalty paid to the Company is not the concern of the Ministry."

1.54. It is seen that in the letter of intent issued to the firm in July, 1974, copy endorsed to the Railway Board by the Ministry of Industrial Development, it was clearly indicated that no royalty to the foreign collaborator was payable for manufacture beyond 15 lakhs clips. The Committee desired to know in those circumstances how in an order for supply of 28.40 lakhs clips placed in February, 1975 royalty element was allowed in the price in the first instance. The Ministry of Railways have, in a note stated:

“In regard to the letter of intent, it may be stated that Ministry of Railways did not receive the copy of the same said to have been issued by the Ministry of Industrial Development. It was only in August, 1975 that the Ministry of Railways became aware that the firm had been authorised by the latter Ministry of enhancement of the capacity to 40 lakh nos. per annum, subject to the payment of royalty to their collaborators being restricted to 18.75 lakh nos. per annum. Hence, while the order for the supply of 28.40 lakh nos. was placed in February, 75 royalty element was allowed in the price since there was no such restriction in the collaboration agreement between firm ‘A’ and their collaborators.”

1.55. In this connection the Ministry of Industry have stated:

“It would be observed from the copy of the letter of intent issued to the Company on 6-7-1974 that one of the conditions of the letter of intent was that no foreign collaboration or payment of royalty to the existing collaborators for the manufacture of Pandrol Rail Clips beyond 15 lakh nos. would be allowed. A copy of this letter of intent was also endorsed to the Ministry of Railways, Railway Board, New Delhi. This Ministry has no comments to offer on the circumstances under which the order for supply of 28.40 lakhs placed in February 1975 by the Ministry of Railways on the Company contained the royalty element.”

1.56. In another note, the Ministry of Industry have stated:

“A copy of this Ministry’s letter No. 11(7)/67-EIM dated 21-9-1970 forwarding the licence No. L/IA(7)(90)/70-EIM dated 24-9-1970 to the Company was endorsed to the Ministry of Railways (Railway Board), New Delhi. This

Ministry is not in a position to explain how the Ministry of Railways placed orders for quantities in excess of this in absence of authorised enhancement of manufacturing capacity."

1.57. During evidence the Member Engineering stated that when the letter (March 1973) came from M/s. Guest Keen Williams Ltd. asking for the capacity to be enhanced to 40 lakhs, there was no reason for the Railway Board to disbelieve that royalty would not have to be paid for the excess quantity. On being pointed out that in view of the Ministry of Industrial Development letter of July, 1974 having been endorsed to the Ministry of Railways, it was to be presumed that the Ministry of Railways were aware of the fact that the excess production would not be eligible for payment of royalty, the Member Engineering stated:

"This letter from Ministry of Industrial Development is not traceable in the Railway Board's files. I do not want to dispute this point given in the evidence. As soon as we got the order, we withheld payment. We have not made any payment."

1.58. The Railway Board's letter No. 73^w(TM)111 dated 12-11-74 addressed to the Ministry of Industry and Civil Supplies, Secretariat for Industrial Approvals, Udyog Bhawan, New Delhi is reproduced below:

"Sub: Application for expansion of Industrial Licence for Pandrol Rail Clips by Guest Keen Williams Ltd.

Ref: Your letter of Intent No. II:687/74 dated 6-7-1974.

Your above letter of Intent has been issued to M/s. Guest Keen Williams Ltd. for expansion of their capacity for manufacture of Pandrol Rail Clips from 15 lakhs nos. (as at present) to 40 lakh nos. as recommended by this Ministry.

The firm have, however, brought to our notice that the conditions under which the Letter of Intent has been granted are not fully acceptable and are at variance for contractual obligations with their collaborators.

Under Para 2-III it has been stipulated that no foreign collaboration or payment of royalty to the existing collaborators for the manufacture of Pandrol Rail Clips beyond 15 lakh nos. will be allowed.

It may be stated that the royalties payable are governed by the existing agreement approved by the Ministry of Industrial Development; as per this agreement royalties are payable irrespective of the quantity manufactured as there is no quantity limit stipulated in the agreement. Besides, the Pandrol Rail Clips are still covered by an Indian patent, and royalty is, therefore, required to be paid to the collaborators. In the circumstances it may perhaps not be correct to insist upon this condition.

Ministry of Railways are very keen to increase the pace of track modernisation, and expansion of Industrial Licence is, therefore, urgent. In view of the above it is requested that the Industrial Licence may be issued with the modification suggested above."

1.59. It would appear from the above that even in November, 1974, the Ministry of Railways were aware that the letter of intent issued by the Ministry of Industrial Development on 6-7-1974 stipulated that no foreign collaboration or payment of royalty to the existing collaborators for the manufacture of Pandrol Rail Clips beyond 15 lakh numbers was to be allowed.

1.60. On the question of the payment of royalty the Member Engineering has stated in evidence:

"The firm had come up with a request for an increase in the capacity some time in May 1973 and from the records available with the Railway Board there is nothing on record for the Railway Board to show that royalty will not be paid beyond 15 lakhs. In fact there is a note recorded by the Board in 1970 after the meeting was held by the Ministry of Industrial Development with the Railway Board that the capacity should be restricted to 15 lakhs. That was restricted to 15 lakhs because the first order was for 10 lakhs and the next order was going to be for 5 lakhs but it has been clearly recorded after this meeting was held by the Board that we may await the minutes. It was also recorded in the same note of 1970 that if we find that 15 lakhs pandrol clips do not meet our requirement, we will have to press the Ministry of Industrial Development for permitting GKW to manufacture larger quantity. So there is no reason for us to believe that when they came up with the request for the licensing capacity

to be enhanced in 1973 the royalty should be withheld. But the royalty is built-in in the analysis of rate. So there is no question of withholding it."

1.61. In reply to a question whether the royalty was paid in anticipation that its payment will be approved, the Member Engineering stated:

"Yes, it was in good faith."

1.62. The Committee desired to know whether the Ministry of Railway had since refunded the amount of Rs. 4.90 lakhs withheld from the dues of the firm on account of royalty on the excess production. The Committee were informed that the amount withheld (Rs. 4.90 lakhs) on account of royalty on the excess production in 1974 and 1975 beyond 18.75 lakhs per annum had not yet been refunded to the firm.

1.63. Relevant extracts from the correspondence exchanged between the Ministry of Industry and M|s. Guest Keen Williams Ltd. on the one hand and between the Ministry of Industry and the Ministry of Railways on the other, in regard to payment of royalty on excess production are reproduced below:

Letter No. DL|VK|Pandrol|247 dt. 8th June, 1974 from M|s. Guest Keen William Ltd. to the Ministry of Industrial Development.

I refer to my recent interview with you when the question of paying royalty to our existing collaborators for the production arising from our expansion of capacity above the original 15 lakh Nos. Pandrol Rail Clips was discussed.

During the discussion I had drawn your kind attention to the fact that there exists an agreement between Pandrol Ltd. and ourselves which has received Governments' approval and which does not lay down any quantity limitation for payment of royalty. The agreement is valid upto December 1975 and under this agreement we were liable to remit royalty at the rate agreed upon on whatever quantity of Pandrol Rail Clips are manufactured under licence from the Patentees (Pandrol Ltd.) upto December, 1975.

In view of the above, you had been kind enough to suggest that we write to you drawing attention to this point so that the matter may be reconsidered. We now request you to please look into this matter bearing in mind the terms and conditions of the present agreement.

Letter No. 7(31/73-Engg. Ind. dated 7-11-74 from the Ministry of Industry & Civil Supplies to M/s Guest Keen Williams Ltd.

Your contention that the collaboration agreement concluded with the U.K. firm does not contain any quantitative limitation and as such royalty can be paid without any quantitative restriction is not tenable. Payment of royalty is related to the quantum of production against the licensed capacity only. If production exceeds the licensed capacity, in accordance with the instruction of the Government on the subject, royalty up to 25 per cent in excess thereof can be paid. In case of production in excess of this quantum, prior approval of the Government will have to be obtained regarding the terms of payment of royalty. In case of pandrol clips, your licensed capacity is 15 lakhs Nos. only and payment of royalty at the approved rate has to be related to the production against this capacity. In the letter of intent issued to you for the substantial expansion from 15 lakhs Nos. to 40 lakh Nos. It has been clearly mentioned that no foreign collaboration or payment of royalty to the existing collaborator will be allowed, in respect of the substantial expansion.

Letter No. 75/W/(TM) 1/2 dated 10/12-3-1976 from the Ministry of Railways to the Department of Industrial Development.

In the calendar years 1974 and 1975, M/s G.K.W. supplied the following quantities of Pandrol Clips to the Indian Railways:

Year	Quantity supplied
1974	20,73,720
1975	25,09,000
Jan. 1976	3,31,000

NOTE.— The quantity of 3,31,000 Nos. supplied in January, 1976, was manufactured by the firm and inspected by R. D. S.O. before the end of December, 1975. In other words, the production during 1975 was 28.40 lakh Nos.

It would be seen from the above that in 1974 and 1975 the quantity supplied by M/s Guest Keen Williams is more than the 25 per cent excess permitted over 15 lakhs (i.e. more than 18.75 lakhs).

Although the Railway Board's contract with M/s G.K.W. does not mention the payment of royalty separately, yet while arriving at the rates to be paid to M/s G.K.W. for the above supplies, an element of royalty amounting to 28 paise per Pandrol Rail Clip for the year 1974 and 45 paise per clip for the supplies made in the year 1975 had been taken into account.

In view of the contents of the last para of item 19.4 of the minutes of the meeting, it is considered that M/s G.K.W. should refund to the Railways the amount of royalties included in the rates for quantities supplied in excess of 18.75 lakhs. Ministry of Industrial Development are required to look into this matter and advise whether a final decision has since been taken about the quantities for which royalties are payable by M/s G.K.W. to their collaborators and if so, M/s G.K.W. may also be directed to refund the amount of royalties on the quantities supplied in excess of those on which payment of royalty is permitted.

Letter No. 11(7)/67-Engg. Ind. dated 15-4-76 from the Department of Industrial Development to the Ministry of Railways.

The licensed capacity of M/s Guest Keen Williams Ltd., Calcutta for the manufacture of Pandrol Rail Clips and Lockspikes is 15 lakh Nos. per annum on maximum utilisation of plant and machinery. The firm can exceed this capacity up to 25 per cent only. In terms of the observations of the Licensing Committee that the firm can claim royalty on excess production upto 25 per cent of the licensed capacity, the firm can pay royalty to their collaborators to that extent only. In fact they have been informed accordingly. This Ministry is not aware of the circumstances under which the Railway Board have made payments to M/s Guest Keen Williams even for the royalty which the firm have to pay to their collaborators. If excess payment had been made by the Railway Board to the company, it is for them to have the amount recovered from the company.

Letter No. DL/VK/PRC/175 dated 7-6-1976 from M/s. Guest Keen Williams Ltd. to the Ministry of Railways.

We note with deep concern that you have decided to hold back payment of an amount of Rs. 4,89,891.60 on the grounds that royalties are not payable to our collaborators

on any quantity above licensed capacity plus 25 per cent per annum.

We would respectfully draw your attention to the contract for Pandrol Rail Clips signed by you as purchaser and by us as supplier and point out that your action in holding up payment on account of royalty is *ultravires* the terms of the contract.

It is stated by you that the Ministry of Industry & Civil Supplies, Deptt. of Industrial Development have advised you that royalties are not payable in excess of 15 lakhs plus 25 per cent per annum, i.e. 18.75 lakhs Nos. per annum. We may advise you in this connection that you have in the past paid us in excess of such quantity per annum* and indeed we have after receiving payment from you remitted royalty in excess of this quantity with necessary G.O.I. permission.

The agreement between our collaborators and ourselves which was approved by the Department of Industrial Development and is on record with the Government of India and yourselves is quite clear inasmuch as royalty is payable to our collaborators on any quantities manufactured by us and supplied to you during the currency of the agreement without any limitations on quantity.

Letter No. 74 W/TM/11 dated 24-9-1976 from the Ministry of Railways to the Ministry of Industrial Development.

Since it has come to the notice of this Ministry from your letter dated 29-8-1975 that royalties were not payable on Pandrol rail clips supplied in excess of 13.75 lakhs per annum, a clarification was sought from your Ministry *vide* this office U.O. of even number dated 12-3-1976. If the railways can withhold the amount payable as royalties for quantities supplied in excess of 18.75 lakhs. On re-

• 1973	20,82,104 Nos.
1974	21,75,800 Nos.
1975	24,40

ceipt of your reply, recoveries for the amount of royalties in excess of 18.75 lakhs of pandrol clips supplies during 1974 and 1975 had been made from the firm from their pending bills.

The firm have represented to the Railways that these recoveries should not be made and have pointed out that their agreement with M/s Pandrols Limited does not specify any limit on the quantities on which royalty is payable. They have further stated *vide* their letter dated 6-7-1976 that they have been permitted by the Reserve Bank of India to remit royalties on all supplies to M/s Pandrols Limited for which payment have been received by them without any restrictions on the quantities. They have pointed out that during the year 1973, they had been allowed to remit the royalties on 20,82,104 Nos. of pandrol rail clips. In the years 1974 and 1975 also they have been permitted to remit royalties for quantities in excess of 18.75.

The representation of the firm may please be considered in the light of the facts that they have now brought out and this Ministry advised if the firm can be permitted to remit royalties in excess of 18.75 lakh Nos. per annum, in terms, of their collaboration agreement with M/s. Pandrols Limited.

Endorsement No. II (7)/67-Eng. Ind. dated 9-12-1976 from the Ministry of Industry to the Ministry of Railways.

The case was considered in the 36th Meeting of the LC-cum-MRTP Committee whose minutes are reproduced below:

'For the reasons contained in the note placed before it, the Committee recommend the regularisation of the excess production made by the company during the years 1973-74 and 1975. The Committee noted that the entire production was meant for the Ministry of Railways and in the absence of this production, the railways programme would have been adversely affected.'

Hence this Ministry has no objection to the payment of royalty on the manufacture of Pandrol rail clips and lock spikes in excess of 18.75 lakh Nos. per annum during the years 1973, 1974 and 1975.

1.64. The Department of Industrial Development had *vide* their Circular No. 13 dated 15th April, 1976 (1976 Series) laid down the

following policy in regard to penalising excess production over licensed capacity:—

“At the meeting of the Industrial Policy Group held on 3rd March 1976 while considering policy to be followed for penalising excess production, the following decision was taken by the Policy Group:—

‘Secretary (ID) pointed out that with the recent decisions to permit production above licensed capacity in selected industries, the size of this problem was likely to have been reduced. In respect of other cases of excess production, after discussion, it was felt that these may be brought up before the Licensing Committee for a decision on a case by case basis. In general, it was felt that from an economic point of view, action against excess production would be justified if there was sufficient reason to believe that some injury had been caused to one or more of Government’s socio-economic objectives.’

1.65. Explaining the reasons for regularising the excess production of M/s Guest Keen Williams Ltd. the Ministry of Industry have in a note stated:

“The Railway Board wrote to the Ministry in September 1976 whether the party may be permitted to remit royalties beyond 18.75 lakh Nos., on the basis of a representation received from them. The matter was re-considered in the light of circular No. 13 (1976 Series) dated 15th April, 1976 issued by this Ministry that cases having excess production ought to be brought up before the Licensing Committee after examining whether from the Economic point of view action against excess production would be justified if there were special reasons to believe that injury has been caused to one or more of Government’s Socio-economic objectives. It was observed that the entire production of the Company was meant for the Ministry of Railways to meet their essential requirements and that if the Company had not produced the extra Nos., the Railway programme would have suffered. Accordingly, the case was considered by the LC-cum-MRTIP Committee who recommended the regularisation of the excess production during the years 1973, 1974 and 1975 and this was agreed to by Government. The Ministry

of Railways were advised accordingly under our letter dated 9-12-1976."

1.66. The Committee desired to know whether before regularising the excess production of M/s. Guest Keen Williams Ltd., it had been considered that the granting of this concession to the company will not result in any benefit to the Railways as the period of collaboration agreement had already expired. The representative of the Ministry of Industry stated:

"We did not consider that aspect.....".

1.67. When the Committee asked what advantage the Ministry of Railways expected to get in recommending to the Ministry of Industry that the excess production of M/s. Guest Keen Williams Ltd. might be regularised, the Chairman, Railway Board stated:

"This was 1974-75 production. The firm had been representing that they had been permitted by the Reserve Bank of India for remitting royalty on excess production and, therefore, their representation was forwarded to the Ministry."

1.68. During evidence the Committee enquired what action if any, was taken against a licensee who produced more than the licensed capacity. A representative of the Ministry of Industry stated:

"This problem has been there. Very often, the parties have produced much in excess of their licensed capacity. We have taken the advice of the Ministry of Law. Unfortunately, as the Industries Development and Regulation Act exists today, the Law Ministry's advice is that no penal action will stand in a court of law. We are going to amend this Act to provide for this sort of a lacuna."

1.69. Asked whether apart from the penal action, was it not possible to take any other action, the witness stated:

"We can always tell the party that you restrict your production to the licensed capacity."

1.70. The Committee desired to know what mechanism had been developed to ensure that the licensed capacity was not exceeded by the industrial units. The representative of the Ministry of Industry stated in evidence:

"The parties do give their statistical data to the D.G.TD. every six months. That is for statistical purposes. I do

not think that there is any machinery devised which could examine all the returns submitted by so many units all over the country and keep monitoring if they are exceeding their licensed capacity. If it comes to our notice, then remedial measures are taken."

1.71. Asked whether, in view of the seriousness of the problem, the setting up of any monitoring agency was contemplated, the witness stated:

"I would just like to mention again that the setting up of the monitoring agency would be a very appropriate thing only when we have taken amendment to the Industrial Development and Regulation Act whereby we can bring such people to some account. At the moment, it is not just possible within the ambit of the present law."

1.72. The Committee were informed by the Ministry of Industry that in the letters issued by the Secretariat for Industrial Approvals of the Department of Industrial Development conveying the approval of foreign collaboration, presently a condition is imposed that the payment of royalty at the rate approved will be restricted to the specified licensed capacity plus 25 per cent in excess thereof. In case of production in excess of this quantum, prior approval of the Government would have to be obtained regarding the terms of payment of royalty in respect of such excess production.

Inspection by R.D.S.O.

1.73. The Audit paragraph brings out that even before the contract for the supply of 28.40 lakh clips had been finalised in February 1975, on the basis of instructions of the Railway Board issued in November/December 1974, the Research, Designs and Standards Organisation had inspected 8.80 lakh pandrol clips upto 19 January 1975. Explaining the circumstances leading to the inspection of these clips before the finalisation of the contract, the Member, Engineering stated in evidence:

"As far as pandrol clips are concerned, the supply against the previous contract had finished in August 1974. In May 1974 we had already floated the enquiry for the new quantities to be entered into for 1974-75, on the basis of which the September 1974 negotiations were held. Between Sep-

tember 1974 and the entering into of the contract of February 1975, there was no workload at all on the factory at Bangalore. We were interested in getting pandrol clips. To maintain continuity in the production of pandrol clips and to maintain our inspection staff also—as otherwise they would have to be shifted, and so on and so forth—we allowed them to carry on with the manufacture of pandrol clips at their own risk. We said that we would not give them the inspection notes for the pandrol clips because payment can only be made on the basis of inspection notes.”

He added:

“We made it quite clear to the company that, if the contract was not concluded the despatches would not be done, inspection notes would not be issued and they would not be entitled for payment.”

1.74. The Audit paragraph also brings out that like pandrol clips, loose jaws were also inspected by the Research, Designs and Standards Organisation before formal orders were placed. In this connection, the Member Engineering has stated in evidence:

“By October 1974 they had completed their old contract. In between, in June 1974 we had already started the process of entering into a new contract which was finalised in June 1975. From October 1974 we could not stop their production. They made a request to us whether they could carry on, on the assumption that the contract could be finalised. We said, ‘Carry on’. We sent our staff for inspection.

No inspection notes and no commitment were made here.”

1.75. The Committee enquired whether such inspections prior to the placement of orders had been made by the Railways in any other case. The Committee also wanted to know whether it was not unusual to inspect articles manufactured by the prospective suppliers before contracts were finalised and formal orders were placed with the approval of the competent authority. In a note, the Ministry of Railways have stated:

“No eventuality arose prior to the placement of contracts in February 75/June 75 for the supply of pandrol clips/modified loose jaws for continuing the inspection before

placement of orders on the firm. There was no earlier occasion when the gap between the completion of supplies against an earlier order and the placement of a fresh order on the firm was substantial. The necessity of evolving a working arrangement in 1974-75 arose since the supplies against the earlier contracts had already been completed (August 1974 for pandrol clips and October 1974 for modified loose jaws) and the placement of the fresh orders was delayed on account of administrative reasons. Further, the staff posted in the factory for inspection had to be withdrawn for a short period in case the inspection of pandrol clips and modified loose jaws had not been continued, as there was no other inspection work at Bangalore. The inspection of modified loose jaws and pandrol clips did not make it obligatory on the part of the Purchaser to procure all the fastenings that would have been manufactured by the firm prior to the placement of the contract. While permitting RDSO to continue inspection, it was made very clear to them that no inspection certificates be issued till the contract was concluded. The Administration was, therefore, to take only such quantities as were actually required for their use. The firm 'A' were the sole suppliers for modified loose jaws and pandrol clips to Indian Railways hence it may not perhaps be appropriate to regard them as prospective suppliers in that context. In fact, the requirements for 1974-75 had already been indicated to the firm as early as in May, 1974.

There are no other contracts where such working arrangement had to be resorted to."

1.76. The Committee asked whether any legal or financial advice was obtained before entering into such working arrangements. The Ministry of Railways have, in a note, stated:

"No legal and financial advice was considered necessary before permitting the inspection of pandrol clips and modified loose jaws before placement of orders, since no financial commitments were being entered into."

1.77. During evidence before the Committee, the Financial Commissioner for Railways has stated:

"We do not agree to inspection before the order is placed. But in the Railways for the long lead items inspection is done

in advance without any commitment. In the case of BHEL where the lead time is two years or three years, we do place orders. We also give them advance payments.

In this particular case, to keep continuity, the Civil Engineering Directorate had asked the Inspector who was located there to inspect it but issue no despatch orders. When it came to the notice of Finance later, we did say that this should not have been done. But there were certain extenuating circumstances in that they were the only monopoly suppliers and if the contract is entered into later, the continuity is broken.

At that stage, i.e., in November, 1974 we were not consulted. But it came to us later. We said that if any such dispensation is to be given, we should be consulted. This is what happened in this case."

1.78. In reply to a question whether Finance should have been consulted before ordering inspection, the Financial Commissioner for Railways stated:

"I should imagine that."

He added:

"If order has been placed and if inspection people are satisfied, there is no financial implication."

1.79. The Committee asked whether the pandrol clips loose jaws were long lead items. The Financial Commissioner for Railways stated that this was not a long lead item.

1.80. The Committee enquired at what stage the decision was taken before ordering advance inspection. The Member Engineering stated in evidence:

"The decision was taken at the level of the Joint Director, who was in charge of the track modernisation. He issued instructions to RDSO. We gained confidence in the use of elastic fastenings in 1971-72. Then there was a Committee to review the standards of the trunk routes and as to what should be the standards on the routes. On the basis of that committee's report, the Railway Board took this decision."

1.81. The Committee also asked how the Ministry of Railways concluded without consulting legal and financial authorities that

such an arrangement did not involve any financial and legal commitments. The Ministry of Railways have, in a note, stated:

“Firm ‘A’ was the only source of supply at that point of time (holding the collaboration agreement for the pandrol clips which is also covered by a patent of their Principals) i.e. upto December 1975. For Modified Loose Jaws Railways were committed to take the supplies from the firm ‘A’ only with their design upto May 1975. There was, therefore, a working arrangement under which the Railway’s requirements were inspected by the RDSO, the inspecting agency, and RDSO were directed in November 1974 to carry out inspection of the material but withhold despatches as well as inspection notes till the formal contract was placed. The Joint Director Civil Engg. (TM) had given this order and he had this authority. No legal or financial advice was considered necessary since no financial commitments were being made. Neither inspection certificates were to be issued nor any despatches were allowed to be made before the contract was placed.”

Development of indigenous design for pandrol clip.

1.82. The Committee desired to know what steps had been taken from time to time by the Railway Board/Research, Designs and Standards Organisation at least after 1968 to develop an indigenous design for pandrol clips so that overcharging for supplies of the same by monopoly suppliers could be obviated. In a note, the Ministry have stated:

“Pandrol clips is a patented item of M/s. Lock Spikes Ltd. of U.K. (now known as Pandrols Ltd.). This firm had a patent in India which expired in May 1975. Firm ‘A’ was having a collaboration agreement with M/s. Lock Spikes which expired in December 1975. Firm ‘A’ was the only source of supply of this item and no other source could be developed during this period since the patent expired only in May 1975. Action for procurement of this item is in hand RDSO have already prepared a drawing for rail clips to be used in lieu of pandrol clips.”

1.83. The Committee pointed out that it was known that the collaboration agreement was for a period of 7 years and was to come

to an end in December 1975. Asked what steps had been taken to meet this eventuality, the Member Engineering stated in evidence:

“Earlier to 1975, we were simultaneously going on with the development of our elastic clips to our own designs prepared by our RDSO—IRN 202 and 304 clips. IRN-304 which is elastic fastening which has been designed by RDSO is also under trial. These trials are in progress. In 1975 when the collaboration agreement expired and when the trials we were conducting did not prove very successful, we took the decision to prepare a revised new drawing for elastic clips with the same contours and dimensions as the pandrol clips, which could be done since the patent expired.”

1.84. The Committee asked since when the trials for the development of elastic clips had been conducted. The Member Engineering stated:

“In 1968-69. It takes 7 to 8 years to know whether they are suitable. There are two aspects to it. Even the clips that we were designing were for concrete sleepers—IRN-202 and IRN-304. These were first tested in our laboratories and then a developmental order was placed for IRN-202. They were used on concrete sleepers laid on the Central Railway. They were kept in service trials and certain problems arose. We found the concrete sleepers were cracking below the seat of the fastening. So, we had to give up IRN-202. IRN-304, is still under trial, it has not been given up.

In the collaboration agreement it has also been stated that after December 1975 GKW cannot produce pandrol clips of that design for five years.”

1.85. In reply to a question whether the Railway Board was satisfied with the supply position, the witness stated:

“Our supplies would be exhausted by the end of this year.”

1.86. As to the future supplies, he added:

“As soon as the order is issued, we will get supplies as quickly as possible. We have already sounded people like Republic Forge, Secunderabad. GKW may also come forward

to do it. Now there is competition, they will have to, if they want their factory at Bangalore to survive.”

1.87. The Ministry of Railways have informed the Committee that a design of elastic rail clip in lieu of the pandrol clip has already been finalised including specifications. Open tenders have been invited for the elastic rail clip.

.. 1.88. The Committee note that from 1969 onwards Railways were procuring pandrol clips from M/s. Guest Keen Williams Ltd. on a single tender basis. The pandrol clip was a patented item of a firm of U.K. and was being manufactured in India by M/s. Guest Keen Williams Ltd. under a collaboration agreement, which was valid till December 1975. The licence issued to M/s. Guest Keen Williams Ltd. in terms of the collaboration agreement provided for the manufacture of 15 lakh numbers of pandrol clips by the firm annually. The Audit paragraph points out that orders were being placed by the Railways on the firm from time to time on the basis of negotiated rates and while negotiating the prices, it had been the general practice of the Tender Committees to judge the reasonableness of the prices with reference to prevailing prices of the raw material, namely, 19 mm diameter silico-manganese spring steel.

1.89. The Committee find that in May 1971 on the basis of assessment of requirements of pandrol clips for 1974-75 at 33.60 lakh pieces, the firm was asked to quote for supply of 21 lakh pieces. In June 1974 the firm quoted a rate of Rs. 9.38 per piece for the supply of a minimum of 30 lakh pandrol clips. It is further seen that in August 1974, the Railways' requirement of pandrol clips was reassessed in view of the financial stringency and the curtailment of track renewal programmes and it was estimated that the requirement of pandrol clips would be 6.68 lakhs for 1974-75 and 22.21 lakhs for 1975-76 making a total of 28.89 lakhs. On the basis of negotiations held in September 1974, the Tender Committee recommended purchase of 28.40 lakh pandrol clips at the rate of Rs. 9.08 per piece, which was about 62 per cent above the last contract rate of Rs. 5.58 of September 1973. The negotiated rate was approved on 30 January, 1975 and the formal contract was placed on 15 February, 1975 for 28.40 lakh pandrol clips for meeting two years' requirements.

1.90. During examination of the subject, the Committee have noted the following glaring lapses on the part of the Railway authorities who were responsible for making arrangements for the procurement of these pandrol clips.

(i) As pointed out in the Audit paragraph during the period from September 1974 (when the price was negotiated) to 15 February 1975 (when the contract was actually placed) there had been a steady fall in the market price of various steel materials and the tenders for special steels opened in the Railway Board's office on 7, 14 and 21 January 1975 clearly indicated fall in prices ranging from 8 to 21 per cent as compared to previous year's contract prices. However, the Railway Board did not take notice of this downward trend in steel prices as they had negotiated the rate in September 1974 on the basis of the basic price of Rs. 4,850 per tonne for the silico-manganese spring steel, which had been quoted in the tender IS-13 opened on 27-5-1974. It has been argued that since the rate had already been negotiated in September 1974, there was no occasion to reopen the negotiations and the "sanctity of the tender had to be honoured". It has also been stated that neither the special steel for which tenders were opened in January 1975 nor the silico-manganese steel for which tenders were opened in March 1975 and in respect of which a falling trend in prices was indicated, was comparable to the raw material required for the manufacture of pandrol clips. Both these arguments are untenable for reasons stated below.

. . .

The Tender Committee's recommendation made in November 1974 could not be treated as final till it was finally approved by the Competent Authority and this approval was accorded only on 30 January 1975. The final contract was concluded with the firm on 15 February 1975. Thus there was ample time to take stock of the situation emerging as a result of the falling trend in prices which was quite conspicuous. The Committee would not like to believe that the terms negotiated with the firm in September 1974 were irrevocable and sacrosanct. The argument that the special steel or the silico-manganese steel whose prices indicated a fall were not comparable to the raw material required for the manufacture of Pandrol clips is only an attempt to cover up the lapse by introducing an element of technicality. It has been admitted that reasonableness of the prices for pandrol clips quoted by the firm was being adjudged by the Railway Board with reference to price of silico-manganese steel, taking these rates as the 'near-guide'. Though the price differential between the rates paid for the last contract of September 1973 and the rates finalised in November 1974 was glaring and though the downward trend in prices of steel was noticeable, and the concerned authorities were cognisant of this fact, they took no corrective action whatsoever. The Committee have no doubt that the Tender Committee have failed to safeguard the financial interests of the Railways in this matter and given

undue benefit to a private party. The Committee desire that the responsibility for the lapse should be fixed.

(ii) The other serious lapse which has caused considerable concern to the Committee is the manner in which the requirements for two years, namely, 1974-75 and 1975-76 were clubbed together. It is noted that the requirements for the year 1974-75, which had originally been assessed as 33.60 lakhs in March/April 1974, were on a reassessment made in August 1974 in the context of drastic reduction in the allocations and non-receipt of sleepers, reduced to just 6.68 lakhs only. However, for placing the order on the firm the requirements for the year 1975-76 were assessed as 22.21 lakhs and an order for supply of 28.40 lakh pandrol clips was negotiated with the firm to cover up the requirements of both the years 1974-75 and 1975-76. The advance ordering of such a large quantity of 28.40 lakh pandrol clips in November 1974/February 1975 (when the actual requirements for 1974-75 were reassessed at that point of time to be only 6.68 lakh clips and the corresponding requirements of the Modified Loose Jaws for 1975-76 were yet to be covered) resulted in heavy overstocks which were not required for urgent track programmes of the Railways. The Railway Board have stated that clubbing was done keeping in view the fact that the firm had quoted a rate for a minimum of 31 lakh numbers. Secondly, since their capacity was higher any reduction in quantity would have resulted in an increase in rates. The Committee are not convinced with the explanation for ordering 28.40 lakh clips as requirements for the two years viz. 1974-75 and 1975-76. The Committee have come to the conclusion that the requirements for 1975-76 were inflated and sought to be covered in advance for the benefit of the firm.

Besides, by clubbing the two years' requirements at that particular time the Railways failed to take any advantage of the falling prices of steel. The firm had been the sole supplier and the Railways were the sole purchaser and as such the quantity to be ordered as well as the rates could have been negotiated keeping in view the actual requirements of clips for the Railways and the prevalent special steel prices, as had been the practice in the past. The Railway Board was aware that there was fall in steel prices during this period through opening of the tenders for special steels during January 1975 prior to the approval of the Tender Committee's recommendations by the competent authority. The quantity of clips actually ordered should have been restricted to cover the imme-

mediate requirements for 1974-75 only. For the rest of the requirements for 1975-76 fresh rates could have been negotiated by taking advantage of the fall in prices. It is relevant to point out in this connection that in reply to the question as to why the negotiations were not confined for requirements for 1974-75, the Member Engineering stated 'it did not strike us'. It is also significant to note that the Railway Board had at that point of time yet to issue tender inquiry and finalise orders for modified loose jaws required to be used in track along with these clips during 1975-76 and these were ordered only in June 1975.

Moreover, the price differential between the rates paid for the last contract of September 1973 and rates negotiated and finalised in November 1974 was so glaring that even in the normal course the Railway Board should have made a deeper study of the market trends before entering into advance commitments for their future requirements, which could not at all be considered emergent or even urgent. Unfortunately no attention was paid to this aspect and the firm which was the sole supplier of the item, exploited the situation to its own advantage. The extra burden on the Railway exchequer as a result of the unwarranted decision to go in for advance procurement of pandrol clips for 1975-76 is not susceptible of quantification but judging by the amount of rebate which the firm was obliged to grant in the case of the contract for modified loose jaws (which case is also dealt with in a later section of this Report) it can be inferred that the amount involved was substantial. The Committee cannot but deprecate such injudicious decisions which were not in the interest of the Railway and were to the benefit of the supplier and which give rise to a suspicion of the bona fides of the concerned authorities.

(iii) Another disturbing feature of the transaction was the advance inspection of the pandrol clips ordered by the Railway Board in November/December 1974 and carried out by the Research, Designs and Standards Organisation in the premises of the supplier firm much before the contract was actually finalised in February 1975. Not only in this case but in the case of modified loose jaws also advance inspection had been ordered much before the contract was finalised in June 1975. The Committee have been informed that such arrangements for the advance inspection of the stocks to be purchased were sometimes made in the case of long lead items but the procedure followed in the case of pandrol clips/loose jaws, which were not long lead items, was unprecedented as there had been no such instance earlier. The Committee were surprised to

learn that this arrangement had been ordered by an officer of the rank of a Joint Director and this aspect of the advance inspection had also not been brought to the notice of the competent authority. Nor were financial and legal authorities consulted in the matter. The Financial Commissioner for Railways has gone on record, when asked by the Committee, whether Finance should have been consulted before ordering inspection, that "I should imagine that". The Committee cannot help suspecting that advance inspection was collusive and would like this matter to be probed with a view to fixing responsibility.

(iv) Yet another lamentable feature which has come to light is that after having entered into an exclusive arrangement with M/s. Guest Keen Williams Ltd. for the supply of the pandrol clips for a period of seven years, the Railway Board/Research, Designs and Standards Organisation do not appear to have made any concerted effort to develop an alternative source for this supply. It has been stated that since the pandrol clip was a patented item no other source could be developed during the period of the currency of patent which expired only in May 1975. Prima facie this appears to be a facetious argument in that the arrangement entered into with the firm did not obviously preclude the Research, Designs and Standards Organisation from developing their own design for the manufacture of this vital component during currency of the patent. And keeping in view the fact that it required 7 to 8 years to develop a suitable design for an elastic clip of the kind required by the Railways it was all the more necessary for the RDSO to have paid special attention to this aspect of the matter. On their own admission the clips so far designed by RDSO were suitable only for concrete sleepers and even they had not yet been found suitable after trials. This failure on the part of a premier Research Organisation of the Railways has to be deplored. The Committee would like to know how the Railways have managed to get adequate supplies of this vital component after the agreement with the firm came to an end in December 1975.

1.91. The Audit para also highlights a serious lacuna in the working of the Industries (Development and Regulation) Act, 1951. From the information made available to them in connection with the paragraph under examination, it has transpired that there is no in-built mechanism to keep a watch on the industrial units to ensure that they do not exceed the licensed capacity. It is particularly unfortunate that this deficiency remained undetected for nearly three decades. In the opinion of the Committee, the very purpose of licensing would appear to have been defeated inasmuch

as even if such a violation of the Act came to notice no penal action against the offending party could be initiated. Since the Ministry of Industry are now fully conscious of the loopholes, the Committee would like to recommend that urgent remedial steps be taken so that unscrupulous licencees are not allowed to exploit the lacunae in the relevant Act to their advantage with impunity.

1.92. The Committee further find that the collaboration agreement between the U.K. firm and M/s Guest Keen Williams Ltd. for the manufacture of pandrol clips, which was approved by the Ministry of Industry in 1967 did not carry a clause that payment of royalty will be restricted to licensed capacity plus 25 per cent thereof. No quantitative restriction on the firm's capacity was thus mentioned. In this connection the representative of the Ministry of Industry has explained that in the earlier agreements of this type such a stipulation was not made but the deficiency has since been rectified. In the letters now issued by the Secretariat for Industrial Approvals of the Department of Industrial Development conveying the approval for foreign collaboration presently a condition was imposed that the payment of royalty at the rate approved will be restricted to the specified licensed capacity plus 25 per cent in excess thereof. The Committee feel that it may be examined whether it would not be worthwhile to issue general instructions to the effect that even in cases where such a stipulation has not been made in the agreement of foreign collaboration, the payment of royalty etc. will be regulated according to the general principle, namely, the licensed capacity plus 25 per cent excess production. The precise action taken in this behalf may be intimated to the Committee.

1.93. The Committee find that the case of M/s. Guest Keen Williams Ltd. in so far as it relates to the payment of royalty to its foreign collaborators, stands on a slightly different footing. Although the collaboration agreement between M/s. Guest Keen Williams Ltd. and the U.K. firm for manufacture of pandrol clips did not mention any quantitative limit for the payment of royalty, the Ministry of Industry had in its correspondence with the firm clarified that payment of royalty was related to the licensed capacity only and that for production in excess of the stipulated quantity, namely, 125 per cent of the licensed capacity, the prior approval of the Government was to be obtained regarding the terms of royalty to be paid to the collaborator. Despite their assertions to the contrary, the Committee are convinced that the Ministry of Railways were aware of this position much before August 1975. In fact the Railway Board's letter No. 73/W(TM)/1/11 dated

12-11-1974 to the Department of Industrial Development wherein the Board had pleaded for modification of this condition of ceiling on payment of royalty on production in excess of the licensed capacity clearly shows the awareness of the Board. The Committee feel that the placing of orders by the Railway Board for quantities much above the licensed capacity of M/s. Guest Keen Williams Ltd. was by itself an objectionable act which should be thoroughly investigated with a view to fixing responsibility.

1.94. The Committee are also unhappy about the procedure followed in regularising the excess production of the firm as also in authorising the payment of royalty with retrospective effect. All along the Ministry of Industry had taken a stand that no royalty on the production in excess of the stipulated quantity, namely, licensed capacity plus 25 per cent, which in the case of M/s Guest Keen Williams Ltd. worked out to 18.75 lakh pandrol clips, was payable. However, on representations from the firm, the Railway Board took up the matter with the Ministry of Industry with considerable zeal and after a great deal of efforts they persuaded the latter to agree to the regularisation of the excess production of the firm during the years 1974 and 1975. While regularising the excess production the Ministry of Industry have relied on a circular issued on 15-4-1976 which prescribed that "cases having excess production ought to be brought before the Licensing Committee after examining whether from the economic point of view action against excess production would be justified if there were special reasons to believe that injury has been caused to one or more of Government's socio-economic objectives". The Railways' agreement with M/s Guest Keen Williams Ltd. expired in December 1975 and the Railway Board were not committed to take any further supplies from this firm. In view of this the Committee are at a loss to understand what advantage the Ministry of Railways expected to get in recommending to and pleading with the Ministry of Industry that the excess production of M/s Guest Keen Williams Ltd. might be regularised. It may be noted that the Railways were the sole consumer of this item and the firm had no choice but to supply the pandrol clips to the Railways.

1.95. The Committee are equally surprised at the action taken by the Ministry of Industry in regularising the excess production, which was clearly a violation of the terms of the licence, on the grounds of socio-economic benefit knowing fully well that the collaboration agreement of the firm with their U.K. Principal had already expired and the firm had ceased to manufacture this

item. It is not, therefore, clear as to what socio-economic objective of the Government was sought to be served in the opinion of the Ministry of Industry by recommending ex-post-facto regularisation of excess production of this firm at that point of time.

1.96. Further, the circumstances under which the remittances on account of royalty payments on the excess production of the firm were permitted by the Reserve Bank of India require to be looked into.

1.97. The Committee feel that the whole matter appears to have wider ramifications, which require to be probed in depth with a view to fix responsibility for the lapses on the part of various authorities. Since the decisions in the case were taken by the Railway Board, the Committee desire that the investigation should be entrusted to a high-powered independent body.

Modified Loose Jaws

Audit Paragraph

1.98. Modified loose jaws are used as fastenings with steel sleepers for laying long welded rails. Firm 'A' whose rolling mills are located at Calcutta, was the sole supplier of modified loose jaws till May 1975. The firm made an improvement in the Research, Designs and Standards Organisation's design of the modified loose jaws. While accepting the firm's improved design, it was agreed by the Board in February 1971 that in case it was decided to continue the purchase of the modified loose jaws to the firm's design, it would be purchased only from it upto four years from the date of first supply of 10 thousand modified loose jaws of its design. The firm had supplied the first 10 thousand modified loose jaws according to its design by May 1971 and, therefore, this agreement to purchase loose jaws from it only was valid upto May 1975. The requirements of loose jaws for 1975-76 onwards were to be procured after calling for open tenders.

1.99. For the requirements of 1973-74, an order for 18 lakh pieces at the rate of Rs. 4.98 per piece was placed on the firm in January 1974 with stipulation that deliveries would be completed by March 1975. The firm completed the supplies ahead of the schedule by October 1974 itself. The requirements of the modified loose jaws were estimated in February 1975, as 9.36 lakh pieces for 1974-75 and as 16 lakh pieces for 1975-76.

1.100. The firm had again modified its design in May 1974 which was approved by the Research, Designs and Standards Organisation.

In June, 1974. Consequently, orders placed prior to this date were for the earlier design (Alteration 1) and those placed after this date were for modified design (Alteration 2).

1.101. As the Railways were committed to take supplies of this item from this firm upto May 1975 only, it was decided by the Railway Board in February 1975, to restrict the purchase from the firm to meet the requirement for 1974-75 only, that is for 9 lakh pieces of modified loose jaws and to float open tenders for the requirements of 1975-76.

1.102. For supply of 9 lakh loose jaws negotiations were held with the firm in April 1975; it quoted a rate of Rs. 7.67 per piece for a quantity of a lakh pieces and a rate of Rs. 7.55 per piece for a minimum order of 13 lakh pieces (for Alteration No. 2).

1.103. Modified loose jaws as also pandrol clips and bearing springs for rolling stock are manufactured from silico-manganese spring steel. It had been the practice, in negotiating the price for the loose jaws supplied by this firm since 1971, to adopt the rates for 19 mm dia silico—manganese spring steel rounds obtained in steel tenders as a general guide after adding thereto sectional extras for the special flats.

1.104. In the tender for silico-manganese spring steel (IS-17) for manufacture of bearing springs etc., for rolling stock opened on 31st March, 1975, the lowest rate obtained for 19 mm rounds was Rs. 3,580 per tonne; the lowest rate obtained from an established firm 'B' of Calcutta was Rs. 4,300 per tonne. On the basis of the rate of firm 'B' of Calcutta (where the rolling mills of firm 'A' were also situated), the element of price of silico-manganese spring steel used in the manufacture of modified loose jaws derived by the Tender Committee for purchase of loose jaws was Rs. 4,833 per tonne.

1.105. The Tender Committee for purchase of loose jaws was informed on 28th April, 1975 that the rates of silico-manganese spring steel rounds as per tender opened in March 1975 would be known only when the order against this tender was finalised.

1.106. The Tender Committee for purchase of spring steel had anticipated (22nd May, 1975) reduction in the price of this item because of the improved availability of steel in the market and reduction in the demand for steel in the country. This Tender Committee held negotiations with the tenderers and the revised offers were received on 5th June, 1975—these were between Rs. 2,990 and

Rs. 3,200 per tonne only. The revised offer of firm 'B' of Calcutta was Rs. 3,117 per tonne only as against Rs. 4,300 per tonne tendered in March 1975 on the basis of which the cost of steel raw material for loose jaws had been derived as Rs. 4,833 per tonne. The orders for purchase of this steel were placed in August 1975.

1.107. Meanwhile, without awaiting the outcome of the price negotiations regarding the purchase of spring steel, the Tender Committee for purchase of loose jaws made recommendations of 23rd May, 1975 for placement of orders for modified loose jaws on firm 'A' at Rs. 7.50 per piece. This rate was 50 per cent higher than the previous rate. The Tender Committee also recommended increase in the quantity from 9 lakh pieces (as decided by the Board earlier) to 13 lakh pieces to cover partly the requirements for 1975-76 also on the grounds that (i) it would take 6 to 8 months for supplies to materialise against the contract to be finalised after inviting fresh tenders for 1975-76, (ii) the anticipated receipts of steel through sleepers in the first quarter of 1975-76 would require another 6 lakhs of modified loose jaws and (iii) the firm had quoted the rate of Rs. 7.50 each for the supply of 13 lakh modified loose jaws. The recommendations of the Tender Committee were approved by the Board on 3rd June, 1975. Advance acceptance letter was issued to the firm on 4th June, 1975 and on 19th June, 1975 contract was placed on the firm for a total value of Rs. 97.5 lakhs. The price per piece was worked out on the basis of the raw material price of Rs. 4,300 per tonne. The price was subject to adjustment based on variations in electricity rates, price of light diesel oil and excise duty on steel raw material with reference to rates indicated in the contract. According to the contract, the supplies were to commence in 2 to 4 weeks from the date of the order and completed within 6 months thereafter.

1.108. In July 1975, firm 'A' informed the Railway Board that even before the award of the contract in June 1975 it had manufactured some quantities of modified loose jaws to the earlier drawing, namely, Alteration No. 1. It also intimated that it continued to manufacture the material to Alteration No. 1 even before it received the contract of June 1975, to maintain continuity in production and also to avoid labour problems arising from lack of orders. It had by that time manufactured 11 lakh pieces of loose jaws to Alteration No. 1. It also explained that there was only a minor difference between loose jaws manufactured to Alteration No. 1 and those manufactured to Alteration No. 2. It accordingly sought for an amend-

ment to the contract for supply of 13 lakh loose jaws to Alteration No. 1; the amendment was to be that supplies could be either to Alteration No. 1 or to Alteration No. 2.

1.109. It was considered by the Railway Board in August 1975, that, as the manufacture of these 11 lakh loose jaws to Alteration No. 1 had commenced immediately (November, 1974) after the completion of the earlier order, it would be reasonable to presume that the price structure for this quantity should be built up from the price accepted in the earlier order (*viz.*, Rs. 4.98 per piece) subject to escalations catered for in the earlier contract.

1.110. On 16th August 1975, it was pointed out in audit that the rate of Rs. 7.50 per modified loose jaws was high with reference to the steel prices negotiated in June 1975, and that on the basis of the rate of Rs. 3,117 per tonne offered by a Calcutta firm the price per loose jaw worked out to only Rs. 6.35.

1.111. The Railway Board came to the conclusion on 18th August, 1975, that from the technical point of view both Alteration 1 and Alteration 2 were equally suitable for use with railway sleepers and that Alteration 2 had been introduced "only at the request of the firm who pleaded better manufacturing convenience in their works as the reason for the change."

1.112. The Railway Board also decided (August 1975) that the price applicable to 11 lakh modified loose jaws to Alteration 1 offered by firm 'A' should be negotiated by the Tender Committee.

1.113. The Tender Committee noted (October 1975) that steel prices had started falling in January 1975 and orders for special steel which had been placed in February 1975 revealed a fall in prices to the extent of about 15 per cent as compared to the prices in October 1974. The orders placed in June 1975, on the basis of quotations for spring steel received in March 1975, showed further declining trend in prices of spring steel—the revised rate of Rs. 3,117 per tonne of Calcutta firm (5th June 1975) representing a further reduction of 16 per cent from the above rate. The Tender Committee felt that a reasonable average price for the entire quantity of 13 lakh pieces should be around Rs. 6.90 per piece. Accordingly, the rate of Rs. 6.90 per piece for the modified loose jaws to Alteration 1/Alteration 2 was offered to the firm in April 1976. The firm, in May 1976, expressed its inability to accept this rate but, however, offered a lumpsum rebate of Rs. 7 lakhs. This was accepted by the Board and in Jun 1976, the contract was amended to provide for the acceptance of loose jaws to Alteration 1/Alteration 2.

1.114. The following points are worth mentioning:—

- (i) The revised requirements of modified loose jaws for 1974-75 were not covered before or during 1974-75. Orders were placed only in June 1975 and supplies were effected from June 1975 to January 1976. It may be recalled that after May 1975 there was no obligation on the part of the Railway Board either under the commitment to the firm or otherwise to procure future requirements of the loose jaws by a single tender from firm 'A' only.
- (ii) The revised requirements of modified loose jaws for 1974-75 (actually procured in 1975-76) were estimated at 9.36 lakh pieces only, but the size of the order was increased to 13 lakh pieces on the recommendations of the Tender Committee as indicated earlier. Thus, the estimated requirements of modified loose jaws for a part of the year 1975-76 were also covered. The estimated requirements for 1975-76 were to be procured in any case by open tender. In arriving at this decision the Railway Board had felt that the steel through sleepers were being received against the 1975-76 orders and, therefore, modified loose jaws would be required to match the trough sleepers to be received during the first quarter of 1975-76 and it would take time before the requirements for the modified loose jaws for 1975-76 proper could be covered by floating open tenders. A review of the consumption of loose jaws on the various Railways made by the Board in October, 1976, revealed that the entire quantities supplied to Western Railway (4.05 lakhs) and Central Railway (1.75 lakhs) had not been used at all till January, 1976.
- (iii) The Tender Committee for purchase of modified loose jaws had been informed that the finalised price of steel as per the tenders for silico-manganese steel would be known only after the order was placed. Without awaiting the outcome of the negotiations, the Tender Committee for the modified loose jaws went ahead and finalised (23rd May 1975) its recommendations (order placed on 4th June 1975) for the rate for procurement of loose jaws at the rate of Rs. 7.50 per piece, derived from the rate of Rs. 4,300 per tonne for steel obtained in March 1975. As already mentioned, after negotiations this rate in respect of the Calcutta firm was reduced to Rs. 3,117 per tonne by

5th June 1975. If this rate for the steel raw material had been adopted, the rate for modified loose jaws would work out to Rs. 6.40 per piece. On a total supply of 13 lakh pieces, this would entail an extra expenditure of Rs. 14.30 lakhs (the extra expenditure would be Rs. 7.30 lakhs after off-setting the lump sum rebate of Rs. 7 lakhs allowed by the firm).

- (iv) Out of 13 lakh pieces of modified loose jaws supplied by the firm, 11 lakh pieces had already been manufactured by the firm not against any specific order of the Railway Board from November 1974 onwards and to a superseded design, viz., Alteration No. 1. On the basis of Railway Board's instructions issued in November/December 1974, the Research, Designs and Standards Organisation had completed inspection of more than 8 lakh modified loose jaws by May 1975, i.e., even before the contract therefor was placed. The firm had despatched 2.6 lakh loose jaws by 30th June 1975 and 7.9 lakh (cumulative) loose jaws by 31st July 1975 duly inspected by the Research, Designs and Standards Organisation which commenced inspection in November 1974. There was no obligation on the part of the Railway Board to purchase modified loose jaws to Alteration No. 1. Again the Railways are the only users of the modified loose jaws. Consequently, firm 'A' could not have either produced them for the market or disposed them of to any other party.
- (v) It was only in June 1976 that it was decided to accept the firm's supply of modified loose jaws to Alteration No. 1 also. Consequently, it was necessary for the Railway Board to obtain such loose jaws only at the rates based on the current market price of raw material (Rs. 2,480 per tonne in December, 1975). With reference to the average market rate for silico-manganese steel prevailing in 1976, the extra amount paid for procurement of the modified loose jaws to the out-dated drawing was Rs. 10.60 lakhs after off-setting the lump sum rebate of Rs. 7 lakhs.

1.115. It may be mentioned that fresh tenders were invited by the Railway Board in July 1975 for supply of 16 lakh loose jaws for the requirement of the year 1975-76; orders had been placed in March 1976 at the rate of Rs. 4.50 per piece.

1.116. The Railway Board stated (February 1977) that firm 'A' had indicated in the discussion held in September 1975 that it would

not be correct to compare the prices quoted by other manufacturers in the silico-manganese steel tender (IS 17) with the prices of raw material required for the manufacture of modified loose jaws. The reduction ratio of 25:1 from ingot to bar. The quality of spring steel re-spring steel it was necessary that there should be minimum reduction ratio of 25:1 from ingot to bar. The quality of spring steel required for manufacture of modified loose jaws is superior to that of spring steel flats procured against tender—IS 17.

1.117. It may be mentioned that these points made by the firm in support of its claim for a higher price for the raw material had been examined by the Tender Committee and found to be not tenable and, all along the reasonableness of the quotation or tender of the firm was examined by the Tender Committee with reference to the silico-manganese steel prices.

1.118. According to the Railway Board the Tender Committee for modified loose jaws did not apparently consider it necessary to wait for the finalisation of the silico-manganese steel tender (IS 17) because the modified loose jaws to be produced by firm 'A' were to be manufactured from its own spring steel.

1.119. As regards inspection of large quantities of modified loose jaws by the Research, Designs and Standards Organisations even before the placement of the contract, the Railway Board stated that a working arrangement with the firm (as in the case of pandrol clips) was considered necessary under which the estimated requirements of the Railways were projected to the firm and also inspected without issue of formal inspection notes so that there was no commitment to purchase them till the contracts were finalised.

[Sub-paras 15.15 to 15.36 of Paragraph 15 of the Report of the Comptroller & Auditor General of India for the year 1975-76, Union Government (Railways)].

1.120. The Committee desired to know on what basis the Railway Board agreed in February, 1971 to purchase the modified loose jaws only from firm 'A' (M/s. Grest Keen Williams Ltd.) for a period of four years. The Ministry of Railways have, in a note, stated:

“Open tenders were invited for the procurement of modified loose jaws to RDSO's design T-496 and T-505. Firm 'A', while submitting the offer, gave their own design based RDSO's design T-496 as altered *vide* their drawing No.

E-25800 Alteration I. Orders were placed on another firm for supply of modified loose jaws to RDSO's design T-505 and on firm 'A' to their design. Since the design submitted by firm 'A' was their own and they agreed to take up the order if the purchases were made from them exclusively for a minimum period of 4 years, it was considered advisable to accept the offer since it would enable the Administration to develop alternative design and alternative sources."

1.121. Asked what was the improvement made by the firm on the Research, Designs and Standards Organisation's design, the Ministry of Railways stated:

"According to R.D.S.O. design, the Modified Loose Jaws was to be first rolled as a special section from billet and then forged to the required form and dimensions followed by various finishing operations for proper seating in the sleeper. The main difference in G.K.W. design was in adopting a section which would be rolled from billet in the same direction as for conventional jaws and the rolled section was adoptable for conversion into finished form by straight operation of heating and pressing. It was thus having the potential of mass production technique as well as a reliable fitting specimen."

1.122. The Committee enquired how were the quantities of modified loose jaws procured from time to time and the rates therefor determined. The Ministry of Railways have informed:—

"The procurement of modified loose jaws was made through open tenders as well as limited enquiry from firm 'A'. The rates were determined generally from time to time based on the rates (prevailing at the time of negotiations) of silico-manganese spring steel including CST Rly. freight, however, taking these rates only as a near guide.

Further variations on account of other inputs such as fuel electricity, excise duty and costs were provided for. A profit of 10 percent on the total cost thus arrived at was allowed in fixing the price."

1.123. It is seen from the Audit Paragraph that the requirements of the modified loose jaws had been estimated in February, 1975 as 9.36 lakh pieces for 1974-75 and as 16 lakh pieces for 1975-76. Since the Railways were committed to take supplies of this item from the

firm 'A' upto May, 1975 only, it was decided by the Railway Board in February, 1975 to restrict the purchase from the firm to meet the requirements of 1974-75 only, that is for 9 lakh pieces of modified loose jaws and to float open tenders for the requirements of 1975-76. The Tender Committee for the purchase of loose jaws however recommended on the 23rd May, 1975 for placement of orders for modified loose jaws on the firm for 13 lakh pieces to cover partly the requirements for 1975-76 also. Giving reasons for the placement of this order on firm 'A' (M/s Guest Keen Williams Ltd.) the Member Engineering stated in evidence:

"The contract that we entered into in June, 1975—we started floating the inquiry with GKW from the previous year, May, 1974. Now with the change in the requirements of the materials from time to time we decided that we will call for a tender for 13 lakhs of which 10 lakhs would be for the period 1974-75 and 3 lakhs would be for the first three months of 1975-76. Secondly, the rate given by GKW for modified loose jaws was again based on a certain quantity and if you reduce that quantity, they said, they would have to increase the rate because of overhead expenditure."

1.124. In a note subsequently furnished at the instance of the Committee, the Ministry of Railways have stated:

"The part requirements of Modified Loose Jaws for 1975-76 were also included in the contract due to the following reasons:—

- (i) Firm 'A' quoted a lower rate for a minimum order of 13 lakh nos.
- (ii) It was proposed to cover the requirement of Modified Loose Jaws for the steel trough sleepers to be received in the first quarter of 75-76 also, since there was no prospect of supplies of Modified Loose Jaws from the other sources materialising against the open tender to be called after May 75."

1.125. The Committee asked how could the Railway Board justify the procurement of 13 lakh loose jaws against the revised requirement of 9.36 lakhs when the pace of consumption by the Railways was slow because of short supply of steel trough sleepers. The Ministry of Railways have, in a note, stated:

“While the Modified Loose Jaws tender of firm ‘A’ was under consideration an assessment was made in Feb., 1975 before the placement of order regarding the availability of steel trough sleepers vis-a-vis requirement of Modified Loose Jaws so that ordering of modified Loose Jaws could be done on as realistic a basis as possible.

Railways had on hand 1.54 lakh steel trough sleepers to be utilised in December, 1974, and 1.50 lakh nos. more were expected from January 75 to March 75. Railways also had 2.90 lakh Modified Loose Jaws on hand. Thus, the net requirement for 74-75 was for 9.36 lakhs. To this 3.64 lakhs Modified Loose Jaws were added for about 1 lakh sleepers expected in April—June 75. No doubt, the overall supply position of steel trough sleepers was only about 60 per cent of the planned quantity from 73-74 to 75-76. The Railways actually received 4.54 lakh sleepers in 74-75 as compared to 3.64 lakhs in 73-74. Provision for the anticipated increased supply of steel trough sleepers in 74-75, as well as for about 1 lakh sleepers expected in April—June 75 was made in arriving at the requirement of Modified Loose Jaws.”

1.126. It is seen that for the requirements of 1973-74, the order of 18 lakh pieces of loose jaws was placed in January, 1974 at the rate of Rs. 498 per piece. The negotiated rate settled by the Tender Committee on the 23rd May, 1975 for placement of order on the same firm for a total quantity of 13 lakh pieces of loose jaws was Rs. 7.50 per piece. This rate was thus 50 per cent higher than the previous rate. In arriving at the rate of 7.50 per piece, the Tender Committee had derived the price of silico-manganese spring steel used in the manufacture of modified loose jaws as Rs. 4,833 per tonne on the basis of rate of Rs. 4,300 per tonne quoted by an established firm of Calcutta in response to the tender No. IS-17 opened on 31st March, 1975. These rates obtained against the tenders were further negotiated by the concerned Tender Committee and the revised offers received on the 5th June, 1975 had indicated that the prices of steel were between Rs. 2,990 and Rs. 3,200 per tonne. The revised offer of the Calcutta firm, whose rate was taken as the base for determining the rate of Rs. 7.50 per piece was Rs. 3,117 per tonne only as against Rs. 4,300 per tonne tendered in March, 1975. Thus the Tender Committee for loose jaws made its recommendation for purchase on 23rd May, 1975 whereas the tenders for silico-manganese spring steel had been opened on 31st March, 1975 and revised quotations received on 5th June, 1975. The Committee enquired why could not the Tender

Committee for modified loose jaws wait till the finalisation of the rates of the Railway Board's tender (IS-17) for spring steel particularly as they had been informed earlier that the rates for silico-manganese steel would be known when the order was finalised and the tender/quotation had shown a downward trend. In a note, the Ministry of Railways have stated:

“The Tender Committee for modified loose jaws did not wait for the outcome of the Tender IS-17 since it was not the intention to test the market through IS-17 tender for deciding on the reasonableness or otherwise of the raw material price adopted for modified loose jaws. Further, the negotiations subsequently conducted in IS-17 tender were conducted with the object of bridging the gap between the rates of established suppliers (conventional steel plants) and the mini steel plants. The assessment of raw material cost for modified loose jaws made by the Tender Committee was, therefore, reasonable.”

1.127. The Audit Paragraph brings out that in August, 1975, the Railway Board decided that the price applicable to 11 lakh modified loose jaws of Alteration 1 offered by the firm against the contract for 13 lakh loose jaws of Alteration 2 should be negotiated by the Tender Committee in view of the noticeable decline in the price of silico-manganese spring steel. When the Tender Committee indicated that the reasonable price per piece should be Rs. 6.90 against the rate of Rs 7.50 negotiated earlier, the firm expressed its inability to accept this rate but however offered a lump sum rebate of Rs. 7 lakhs. During evidence, the Member Engineering explained:

“It is recorded quite clearly in the meeting of the Tender Committee held on 27th October, 1975. The Tender Committee gave an indication of the price received through the tenders in March, 1975. They took advantage of the subsequent trend of prices and said, let us take advantage of that and get them some reduction in the rate.”

He added:

“We took the original rates at each point of time and worked out the average rate of Rs. 6.90 paise.”

1.128. The Committee pointed out that the rate of Rs. 7.50 per piece had been negotiated by taking the price of spring steel at Rs. 4,300 per tonne and since the price of this steel had come down to Rs. 3,117 per tonne after negotiations, the price of the modified loose

jaws could have been further reduced. The Member Mechanical stated:

"The tender for IS-17 was opened on 31st March, 1975. These were two conventional manufacturers. Others were not doing it. We used it as a handle for negotiating with G.K.W.....Rs. 3,117 was the price negotiated on IS-17 a month or two later. That was to bridge the gap between the conventional plants and new plants."

He added:

"From November, 1974 to June 1975, in three stages we have taken the prices that prevailed at that time. We did not take Rs. 3,117 as the basis except for the last stage."

1.129. The Chairman, Railway Board added in this connection:

"There is one peculiar thing. M/s. Bajrang which quoted Rs. 4,300, they brought it down to Rs. 3,117 out of pure distress sale to us. It was something unusual and nobody could foresee such things.... M/s. Bajrang is also not a small concern. But they had mini-steel plants and they were prepared to do anything for that matter."

1.130. In the same context the Member Engineering stated:

"For the manufacture of 4.62 lakhs modified loose jaws we took the rate of 4,495 from November, 1974 to February, 1975 in response to IS-13 tender. Then for the next quantity of 2.51 lakhs between March and April, 1975, there was no rate available. But there was an indication of the rates. We made an average reduction of 15 per cent and applied this to the earlier rate and arrived at 3,821."

1.131. According to the Audit Paragraph the Railway Board had stated in February, 1977 that the firm had indicated in the discussions held in September, 1975 that it would not be correct to compare the prices quoted by other manufacturers in the silico manganese steel tender (IS-17) with the prices of raw material required for the manufacture of modified loose jaws. The Committee asked on what basis the Railway Board did now say that it would not be correct to compare the prices quoted by other manufacturers with the prices of raw material required for the manufacture of modified loose jaws when the Tender Committee of May, 1975 and October,

1975 had not found the plea of the firm tenable in this regard and had actually satisfied itself about the reasonableness of the price only by such comparison. In a note, the Ministry of Railways have stated:

"The Tender Committee for Modified Loose Jaws did not specifically reject the contention of the firm that the raw material for manufacturing modified loose jaws used by them was different from the silico manganese spring steel obtained against Railway Board's contract for this steel. At the same time, in the discussions held with the firm they did not want to give the impression of accepting this condition because this would have made any reduction in the price of modified loose jaws difficult if not impossible. It is relevant to mention that the difference in the quality of steel between the conventional steel plants and mini steel plants did not specifically come in for mention in the TC proceedings earlier because it was only in 1975 that the mini steel plants started quoting for silico manganese spring steel against Railway Board's tender."

1.132. Loose jaws are vital track components and the basic design thereof is that of the Research, Designs and Standards Organisation. In this context, the Committee desired to know what steps had been taken by the Railway Board from time to time to develop more sources for supplying this material so that overcharging, if any, by the monopoly suppliers could be avoided. In a note, the Ministry of Railways have stated.

"Design for Modified Loose Jaws was developed in 1969. From 1969 to 1973, tenders were invited many a time for supply of modified loose jaws to RDSO's design T-496 and T-505 and developmental orders were placed on various firms. None of the firms could develop the item and make any supplies. On the expiry of the commitment with firm 'A' for the supply of modified loose jaws to their design in May, 75, a design of modified loose jaws similar to that of firm 'A' was evolved by RDSO and tenders were invited in 1975 for the supply of 16 lakh Nos. These tenders were opened in July 75 and orders for 10.5 lakh modified loose jaws at the rate of Rs. 4.50 each placed on the firm in March, 1976. Till date none of these firms has been able to develop the modified loose jaws to the required specifications. Further tests are in hand.

A counter offer was also made to firm 'A' for the supply of 8 lakh Nos. at the rate of Rs. 4.50 piece, but the firm did not accept this counter offer."

1.133. The Committee enquired whether the supplies of modified loose jaws against the contract placed in March, 1976 had been received and if not, what were the difficulties and how it was proposed to overcome them. The Ministry of Railways have, in a note, stated:

“No supplies against the orders placed in 1976 have so far been received. None of the firms has been able to supply satisfactory samples. The main difficulty being faced is that the firms on whom orders have been placed have yet to develop the required technology and other facilities for heat treatment etc. The samples manufactured by them are not able to withstand the pulsating test which is a must for acceptance in the initial stages to judge the suitability of the product. To overcome this difficulty, it is proposed to give extension to those of the existing firms who approach the Administration for more time to continue their development effort. It is proposed to float further tenders and place further developmental orders on more firms.”

1.134. During evidence the Committee enquired about the reasons why other tenders had not come up for supply of modified loose jaws. The Member Engineering stated:

“The reason is: first of all I would like to make a point about the modified loose jaws. We have been trying to get other people in the field at various stages. In 1970 we placed an order and in 1973 we placed another order on a firm other than GWK and in 1974 we placed an order on a firm other than GWK and this order we now placed in July 1976 was with a number of suppliers. One reason why in the beginning of 1970 these firms were not able to supply Modified Loose Jaws to specifications was that they did not have the technological know-how for the raw material required for Modified Loose Jaws which had a reduction ratio of 25:1 and that they did not have with them. Secondly, we had prepared our own two drawings for modified loose jaws in 1969 and invited the tender based on those drawings. They submitted samples which when sent to the laboratory failed in the testing. At that stage GWK came out with a modified loose jaw and it stood the test in the laboratory and then we started and entered into an agreement with GWK that for four years we would not allow others to use that design. We still kept on testing the market at various stages in 1973 and 1974 to see

whether other parties could come in the field. In 1975 when we floated the tender, we did two things. We took the modified loose jaw drawing of GKW and adopted it ourselves. Second thing we did was that we specifically included it in our specifications with the minimum required reduction ratio of 20:1. According to the metallurgical experts this should be the reduction ratio to keep the quality. Then contracts were placed in 1976 and they are still open. We are not cancelling the contracts nor are we talking risk purchase action nor have we placed another order on GKW. We have just got this tender opened for 10 lakhs. Though this contract is still open, there are only one or two firms which have come forward with samples and their samples are still in testing. They have not passed the testing which is prescribed in our specifications."

1.135. The Committee find that in terms of an agreement entered into with M/s. Guest Keen Williams Ltd. the Railway Board were committed to purchase the modified loose jaws (a fastening used with steel sleepers) for a period of four years ending in May 1975. The firm was the sole supplier and right from February 1971 the Railway Board had been getting the supplies of this item from them. The requirements of the modified loose jaws were estimated in February 1975 as 9.46 lakhs pieces for 1974-75 and as 16 lakh pieces for 1975-76. In February 1975 the Railway Board had also decided that in view of the impending expiry of the agreement in May 1975, only 9 lakh pieces of modified jaws representing the requirements of 1974-75 only be purchased from this firm and for the requirements of 1975-76 open tenders should be floated. For the supply of 9 lakh loose jaws negotiations were held with the firm in April 1975 and the firm quoted a rate of Rs. 7.67 per piece for a quantity of 9 lakh pieces and a rate of Rs. 7.55 per piece for a minimum order of 13 lakh pieces of jaws corresponding to a particular specification known as Alteration No. 2. The Tender Committee made recommendations in May 1975 for placement of orders for modified loose jaws on M/s Guest Keen Williams Ltd. at Rs. 7.50 per piece and also for increasing the quantity of modified loose jaws from 9 lakh to 13 pieces to cover partly the requirements for 1975-76 also.

1.136. The Committee's examination has revealed that the Tender Committee's recommendations both in regard to the negotiation of a rate of Rs. 7.50 per piece, which was 50 per cent higher than the previous rate and the enhancement of quantity of loose jaws from 9 lakh pieces (as decided by the Board earlier) to 13 lakh pieces were not warranted by the conditions obtaining at that point of time.

1.137. In so far as the enhancement of quantity of jaws from 9 lakh to 13 lakh pieces is concerned the main reason which appears to have influenced the Tender Committee was that a marginally low price had been quoted by the firm for a minimum of 13 lakh pieces against 9 lakh pieces for which the tender was called. The firm which was the sole supplier of the item was thus able to impose its own conditions and the Railways had only to acquiesce in the terms quoted by the firm.

1.138. The Committee are not at all convinced with the arguments now advanced by the Railway Board that the order for the loose jaws was enhanced keeping in view the expected increase in the supply of steel trough sleepers in the first quarter of 1975-76 and because the procurement of the loose jaws for 1975-76 proper would have taken a long time. These arguments easily fall through when the pace of consumption of the loose jaws on the Railways is taken into account. According to Railways' own admission only about 60 per cent of the planned quantity of the steel trough sleepers, with which these jaws were to be used, had been received during the period 1973-74 to 1975-76. Further as pointed out in the Audit paragraph a review of the consumption of loose jaws on the various Railways made by the Board in October 1976 had revealed that the entire quantities of loose jaws supplied to the Western Railway (4.05 lakhs) and Central Railway (1.75 lakhs) had not been used at all till January 1976. The acquisition of a larger number of loose jaws at that point of time was thus not warranted by the needs of the Railways. Moreover, since the future requirements of Railways were in any case to be procured from 1975-76 onwards by open tenders and not necessarily from this firm, there was no justification for making advance purchases in this manner. It is also relevant to add that the modified loose jaws were inspected in advance of the order. The Committee have already made their observations on this aspect earlier.

1.139. Further the methodology followed in negotiating with the firm for the fixation of the rate of Rs. 7.50 per piece only strengthens the Committee's conviction that the transaction had been handled in a manner which was prejudicial to the railway finances. It is seen that on the basis of rates for 19 mm rounds of silio-manganese spring steel obtained through tender IS-17 in March 1975, the Tender Committee for the purchase of loose jaws had derived a rate of Rs. 4,833 per tonne for the spring steel to be used in the manufacture of modified loose jaws for negotiations with the firm. This rate was related to the lowest rate of Rs. 4,300 per tonne offered by a

Calcutta firm. At that point of time the Tender Committee for purchase of spring steel had not finalised the tender for spring steel as it anticipated a further reduction in the price of this item because of the improved availability of steel in the market and reduction in the demand of the steel in the country. On further negotiations the tenderers for spring steel had revised their offers in June, 1975 and the rate of the Calcutta firm, on the basis of which negotiations for the rate of loose jaws had been conducted, came down to Rs. 3,117 per tonne only as against Rs. 4,300 per tonne tendered in March, 1975. The Tender Committee for loose jaws had not waited for the finalisation of the negotiations relating to the purchase of spring steel but had on 22 May, 1975 recommended placement of orders at a rate negotiated with reference to the steel price of Rs. 4,300 per tonne. If the Tender Committee had awaited the result of negotiations about the price of spring steel, they could have related their negotiations for the price of loose jaws to a price of Rs. 3117 per tonne only. Why the Tender Committee did not choose to wait for the outcome of the negotiations on the tender for the spring steel knowing fully well that there was a marked downward trend in prices is rather baffling. It has been worked out by Audit that if the rate had been negotiated with reference to the rate of steel at Rs. 3117 per tonne, the Railway could have saved Rs. 7.30 lakhs after offsetting rebate of Rs. 7 lakhs allowed by the firm on the total supply of 13 lakh pieces. In the absence of any satisfactory explanation on the point the Committee cannot but conclude that the Tender Committee failed to safeguard the financial interest of the Railways. The haste with which the Tender Committee finalised its proceedings only creates doubts about the bona fides of the transaction which needs to be thoroughly investigated.

1.140. The Committee also feel that at a later stage when the Tender Committee was given another chance to negotiate with the firm the price of loose jaws corresponding to a superseded design, it failed to take full advantage of the situation. This occasion had arisen in July, 1975 when the firm had sought an amendment to the concluded agreement of 19 June, 1975. At that stage the firm offered to supply 11 lakh pieces of loose jaws of a different specification against the contract for supply of 13 lakh pieces which had been finalised with the Railways on 19 June, 1975. The negotiations on this point lasted for about a year and an amendment to the contract as desired by the firm was agreed to by the Railways in June, 1976. Surprisingly, however, no notice appears to have been taken of the further fall in the prices of spring steel. Between June, 1975 and December, 1975, the relevant price of the spring steel had come down

from Rs. 3117 per tonne to Rs. 2480 per tonne. It has been estimated by Audit that with reference to the average market rate for silico-manganese steel prevailing in 1976 the extra amount paid for procurement of modified loose jaws to the outdated drawing was Rs. 10.60 lakhs after off-setting the lump sum rebate of Rs. 7 lakhs allowed by the firm. The Committee are constrained to observe that at every stage the firm which had the monopoly for the supply was able to exploit the situation to its own advantage and the Railways failed to protect their own financial interest. It is to be noted in this context that just as the firm was a sole supplier of this item, the Railways were in the position of a sole buyer. They could and should have conducted the negotiations with the firm in such a manner as to obtain most favourable terms for the Railways.

1.141. The Committee are unhappy to note that no alternative source for the supply of this vital track component has so far been developed satisfactorily despite a lot of developmental efforts made by the Research, Designs and Standards Organisation of the Railways. The supplies against the orders placed in March, 1976 on the firms other than the firm in question had not yet materialised because these firms have "yet to develop the required technology and other facilities for heat-treatment etc." The Committee would like the Railway Board to give every possible assistance to these upcoming firms so that they are able to meet the Railways' requirements satisfactorily and the Railways are not placed in such a situation as to having to pay exorbitant prices to the same firm which was the only supplier and which obviously used their position to Railways disadvantage.

NEW DELHI;
April 19, 1978
Chaitra 29, 1900 (S)

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

APPENDIX

Conclusions/Recommendations

Sl. No.	Para No.	Ministry/ Department concerned	Conclusion/recommendation
1	2	3	4
1	1.88	Railways	The Committee note that from 1969 onwards Railways were procuring pandrol clips from M/s. Guest Keen Williams Ltd. on a single tender basis. The pandrol clip was a patented item of a firm of U.K. and was being manufactured in India by M/s. Guest Keen Williams Ltd. under a collaboration agreement, which was valid till December, 1975. The licence issued to M/s. Guest Keen Williams Ltd. in terms of the collaboration agreement provided for the manufacture of 15 lakh numbers of pandrol clips by the firm annually. The Audit paragraph points out that orders were being placed by the Railways on the firm from time to time on the basis of negotiated rates and while negotiating the prices, it had been the general practice of the Tender Committees to judge the reasonableness of the prices with reference to prevailing prices of the raw material, namely, 19 mm, diameter silico-manganese spring steel.
2	1.89	-do-	The Committee find that in May, 1974 on the basis of assessment of requirements of pandrol clips for 1974-75 at 33.60 lakh pieces, the

firm was asked to quote for supply of 21 lakh pieces. In June, 1974 the firm quoted a rate of Rs. 9.38 per piece for the supply of a minimum of 30 lakh pandrol clips. It is further seen that in August, 1974, the Railways' requirement of pandrol clips was reassessed in view of the financial stringency and the curtailment of track renewal programmes and it was estimated that the requirement of pandrol clips would be 6.63 lakhs for 1974-75 and 22.21 lakhs for 1975-76 making a total of 28.89 lakhs. On the basis of negotiations held in September, 1974, the Tender Committee recommended purchase of 28.40 lakh pandrol clips at the rate of Rs. 9.08 per piece, which was about 62 per cent above the last contract rate of Rs. 5.58 of September, 1973. The negotiated rate was approved on 30 January, 1975 and the formal contract was placed on 15 February, 1975 for 28.40 lakh pandrol clips for meeting two years' requirements. 8

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During examination of the subject, the Committee have noted the following glaring lapses on the part of the Railway authorities who were responsible for making arrangements for the procurement of these pandrol clips.

(i) As pointed out in the Audit paragraph during the period from September, 1974 (when the price was negotiated) to 15 February, 1975 (when the contract was actually placed) there had been a steady fall in the market price of various steel materials and the tenders for special steels opened in the Railway Board's office on 7, 14 and 21 January, 1975 clearly indicated fall in prices ranging from 8 to

21 per cent as compared to previous year's contract prices. However, the Railway Board did not take notice of this downward trend in steel prices as they had negotiated the rate in September, 1974 on the basis of the basic price of Rs. 4,850 per tonne for the silico-manganese spring steel, which had been quoted in the tender IS-13 opened on 27-5-1974. It has been argued that since the rate had already been negotiated in September, 1974, there was no occasion to reopen the negotiations and the "sanctity of the tender had to be honoured." It has also been stated that neither the special steel for which tenders were opened in January, 1975 nor the silico-manganese steel for which tenders were opened in March, 1975 and in respect of which a falling trend in prices was indicated, was comparable to the raw material required for the manufacture of pandrol clips. Both these arguments are untenable for reasons stated below.

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The Tender Committee's recommendation made in November, 1974 could not be treated as final till it was finally approved by the Competent Authority and this approval was accorded only on 30 January, 1975. The final contract was concluded with the firm on 15 February, 1975. Thus there was ample time to take stock of the situation emerging as a result of the falling trend in prices which was quite conspicuous. The Committee would not like to believe that the terms negotiated with the firm in September, 1974 were irrevocable and sacrosanct.

The argument that the special steel or the silico-manganese steel whose prices indicated a fall were not comparable to the raw material required for the manufacture of pandrol clips is only an attempt to cover up the lapse by introducing an element of technicality. It has been admitted that reasonableness of the prices for pandrol clips quoted by the firm was being adjudged by the Railway Board with reference to price of silico-manganese steel, taking these rates as the 'near-guide'. Though the price differential between the rates paid for the last contract of September, 1973 and the rates finalised in November, 1974 was glaring and though the downward trend in prices of steel was noticeable, and the concerned authorities were cognisant of this fact, they took no corrective action whatsoever. The Committee have no doubt that the Tender Committee have failed to safeguard the financial interests of the Railways in this matter and given undue benefit to a private party. The Committee desire that the responsibility for the lapse should be fixed.

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(ii) The other serious lapse which has caused considerable concern to the Committee is the manner in which the requirements for two years, namely, 1974-75 and 1975-76 were clubbed together. It is noted that the requirements for the year 1974-75, which had originally been assessed as 33.60 lakhs in March/April, 1974, were on a re-assessment made in August, 1974 in the context of drastic reduction in the allocations and non-receipt of sleepers, reduced to just 6.68 lakhs only. However, for placing the order on the firm the requirements for the year 1975-76 were assessed as 22.21 lakhs and an order for supply of 28.40 lakh pandrol clips was negotiated with the firm to

cover up the requirements of both the years 1974-75 and 1975-76. The advance ordering of such a large quantity of 28.40 lakh pandrol clips in November, 1974 & February, 1975 (when the actual requirements for 1974-75 were reassessed at that point of time to be only 6.68 lakh clips and the corresponding requirements of the Modified Loose Jaws for 1975-76 were yet to be covered) resulted in heavy overstocks which were not required for urgent track programmes of the Railways. The Railway Board have stated that clubbing was done keeping in view that fact that the firm had quoted a rate for a minimum of 31 lakh numbers. Secondly, since their capacity was higher any reduction in quantity would have resulted in an increase in rates. The Committee are not convinced with the explanation for ordering 28.40 lakh clips as requirements for the two years viz., 1974-75 and 1975-76. The Committee have come to the conclusion that the requirements for 1975-76 were inflated and sought to be covered in advance for the benefit of the firm.

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Besides, by clubbing the two years' requirements at that particular time the Railways failed to take any advantage of the falling prices of steel. The firm had been the sole supplier and the Railways were the sole purchaser and as such the quantity to be ordered as well as the rates could have been negotiated keeping in view the actual requirements of clips for the Railways and the prevalent special steel prices, as had been the practice in the past. The Rail-

way Board was aware that there was fall in steel prices during this period through opening of the tenders for special steels during January 1975 prior to the approval of the Tender Committee's recommendations by the competent authority. The quantity of clips actually ordered should have been restricted to cover the immediate requirements for 1974-75 only. For the rest of the requirements for 1975-76 fresh rates could have been negotiated by taking advantage of the fall in prices. It is relevant to point out in this connection that in reply to the question as why the negotiations were not confined for requirements for 1974-75, the Member Engineering stated 'it did not strike us'. It is also significant to note that the Railway Board had at that point of time yet to issue tender inquiry and finalise orders for modified loose jaws required to be used in track along with these clips during 1975-76 and these were ordered only in June, 1975.

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Moreover, the price differential between the rates paid for the last contract of September 1973 and rates negotiated and finalised in November 1974 was so glaring that even in the normal course the Railway Board should have made a deeper study of the market trends before entering into advance commitments for their future requirements, which could not at all be considered emergent or even urgent. Unfortunately no attention was paid to this aspect and the firm which was the sole supplier of the item, exploited the situation to its own advantage. The extra burden on the Railway exchequer as a result of the unwarranted decision to go in for advance

procurement of pandrol clips for 1975-76 is not susceptible of quantification but judging by the amount of rebate which the firm was obliged to grant in the case of the contract for modified loose jaws (which case is also dealt with in a later section of this Report) it can be inferred that the amount involved was substantial. The Committee cannot but deprecate such injudicious decisions which were not in the interest of the Railway and were to the benefit of the supplier and which give rise to a suspicion of the *bona fides* of the concerned authorities.

(iii) Another disturbing feature of the transaction was the advance inspection of the pandrol clips ordered by the Railway Board in November/December 1974 and carried out by the Research, Designs and Standards Organisation in the premises of the supplier firm much before the contract was actually finalised in February 1975. Not only in this case but in the case of modified loose jaws also advance inspection had been ordered much before the contract was finalised in June, 1975. The Committee have been informed that such arrangements for the advance inspection of the stocks to be purchased were sometimes made in the case of long lead items but the procedure followed in the case of pandrol clips/loose jaws, which were not long lead items, was unprecedented as there had been no such instance earlier. The Committee were surprised to learn that this arrangement had been ordered by an officer of the rank of a Joint Director

and this aspect of the advance inspection had also not been brought to the notice of the competent authority, nor were financial and legal authorities consulted in the matter. The Financial Commissioner for Railways has gone on record, when asked by the Committee, whether Finance should have been consulted before ordering inspection, that "I should imagine that". The Committee cannot help suspecting that advance inspection was collusive and would like this matter to be probed with a view to fixing responsibility.

(iv) Yet another lamentable feature which has come to light is that after having entered into an exclusive arrangement with M/s. Guest Keen Williams Ltd. For the supply of the pandrol clips for a period of seven years, the Railway Board/Research, Designs and Standards Organisation do not appear to have made any concerted effort to develop an alternative source for this supply. It has been stated that since the pandrol clip was a patented item no other source could be developed during the period of the currency of patent which expired only in May 1975. *Prima facie* this appears to be a facetious argument in that the arrangement entered into with the firm did not obviously preclude the Research, Designs and Standards Organisation from developing their own design for the manufacture of this vital component during currency of the patent. And keeping in view the fact that it required 7 to 8 years to develop a suitable design for an elastic clip of the kind required by the Railways it was all the more necessary for the RDSO to have paid special attention

to this aspect of the matter. On their own admission the clips so far designed by RDSO were suitable only for concrete sleepers and even they had not yet been found suitable after trials. This failure on the part of a premier Research Organisation of the Railways has to be deplored. The Committee would like to know how the Railways have managed to get adequate supplies of this vital component after the agreement with the firm came to an end in December, 1975.

The Audit para also highlights a serious lacuna in the working of the Industries (Development and Regulation) Act, 1951. From the information made available to them in connection with the paragraph under examination, it has transpired that there is no in-built mechanism to keep a watch on the industrial units to ensure that they do not exceed the licensed capacity. It is particularly unfortunate that this deficiency remained undetected for nearly three decades. In the opinion of the Committee, the very purpose of licensing would appear to have been defeated inasmuch as even if such a violation of the Act came to notice no penal action against the offending party could be initiated. Since the Ministry of Industry are now fully conscious of the loopholes, the Committee would like to recommend the urgent remedial steps be taken so that unscrupulous licencees are not allowed to exploit the lacunae in the relevant Act to their advantage with impunity.

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I. 92

Industry

The Committee further find that the collaboration agreement between the U.K. firm and M/s. Guest Keen Williams Ltd. for the manufacture of pandrol clips, which was approved by the Ministry of Industry in 1967 did not carry a clause that payment of royalty will be restricted to licensed capacity plus 25 per cent thereof. No quantitative restriction on the firm's capacity was thus mentioned. In this connection the representative of the Ministry of Industry has explained that in the earlier agreements of this type such a stipulation was not made but the deficiency has since been rectified. In the letters now issued by the Secretariat for Industrial Approvals of the Department of Industrial Development conveying the approval for foreign collaboration presently a condition was imposed that the payment of royalty at the rate approved will be restricted to the specified licensed capacity plus 25 per cent in excess thereof. The Committee feel that it may be examined whether it would not be worthwhile to issue general instructions to the effect that even in cases where such a stipulation has not been made in the agreement of foreign collaboration, the payment of royalty etc. will be regulated according to the general principle, namely, the licensed capacity plus 25 per cent excess production. The precise action taken in this behalf may be intimated to the Committee.

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I. 93

Railways

Industry

The Committee find that the case of M/s. Guest Keen Williams Ltd. in so far as it relates to the payment of royalty to its foreign collaborators, stands on a slightly different footing. Although the collaboration agreement between M/s. Guest Keen Williams Ltd. and the U.K. firm for manufacture of pandrol clips did not mention

any quantitative limit for the payment of royalty, the Ministry of Industry had in its correspondence with the firm clarified that payment of royalty was related to the licensed capacity only and that for production in excess of the stipulated quantity, namely, 125 per cent of the licensed capacity, the prior approval of the Government was to be obtained regarding the terms of royalty to be paid to the collaborator. Despite their assertions to the contrary, the Committee are convinced that the Ministry of Railways were aware of this position much before August 1975. In fact the Railway Board's letter No. 73/W (TM) 111 dated 12-11-1974 to the Department of Industrial Development wherein the Board had pleaded for modification of this condition of ceiling on payment of royalty on production in excess of the licensed capacity clearly shows the awareness of the Board. The Committee feel that the placing of orders by the Railway Board for quantities much above the licensed capacity of M/s. Guest Keen Williams Ltd. was by itself an objectionable act which should be thoroughly investigated with a view to fixing responsibility.

The Committee are also unhappy about the procedure followed in regularising the excess production of the firm as also in authorising the payment of royalty with retrospective effect. All along the Ministry of Industry had taken a stand that no royalty on the production in excess of the stipulated quantity, namely, licensed capacity

plus 25 per cent, which in the case of M/s. Guest Keen Williams Ltd. worked out to 18.75 lakh pandrol clips, was payable. However, on representations from the firm, the Railway Board took up the matter with the Ministry of Industry with considerable zeal and after a great deal of efforts they persuaded the latter to agree to the regularisation of the excess production of the firm during the years 1974 and 1975. While regularising the excess production the Ministry of Industry have relied on a circular issued on 15-4-1976 which prescribed that "cases having excess production ought to be brought before the Licensing Committee after examining whether from the economic point of view action against excess production would be justified if there were special reasons to believe that injury has been caused to one or more of Government's socio-economic objectives". The Railways' agreement with M/s Guest Keen Williams Ltd. expired in December 1975 and the Railway Board were not committed to take any further supplies from this firm. In view of this the Committee are at a loss to understand what advantage the Ministry of Railways expected to get in recommending to and pleading with the Ministry of Industry that the excess production of M/s. Guest Keen Williams Ltd. might be regularised. It may be noted that the Railways were the sole consumer of this item and the firm had no choice but to supply the pandrol clips to the Railways.

The Committee are equally surprised at the action taken by the Ministry of Industry in regularising the excess production, which was clearly a violation of the terms of the licence, on the grounds of

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			<p>socio-economic benefit knowing fully well that the collaboration agreement of the firm with their U.K. Principal had already expired and the firm had ceased to manufacture this item. It is not, therefore, clear as to what socio-economic objective of the Government was sought to be served in the opinion of the Ministry of Industry by recommending <i>ex-post-facto</i> regularisation of excess production of this firm at that point of time.</p>
9	I. 96	Finance	<p>Further, the circumstances under which the remittances on account of royalty payments on the excess production of the firm were permitted by the Reserve Bank of India require to be looked into.</p>
10	I. 97	Railways	<p>The Committee feel that the whole matter appears to have wider ramifications which require to be probed in depth with a view to fix responsibility for the lapses on the part of various authorities. Since the decisions in the case were taken by the Railway Board, the Committee desire that the investigation should be entrusted to a high-powered independent body.</p>
11	I. 135	-do-	<p>The Committee find that in terms of an agreement entered into with M/s. Guest Keen Williams Ltd. the Railway Board were committed to purchase the modified loose jaws (a fastening used with steel sleepers) for a period of four years ending in May 1975. The</p>

firm was the sole supplier and right from February 1971 the Railway Board had been getting the supplies of this item from them. The requirements of the modified loose jaws were estimated in February 1975 as 9.36 lakh pieces for 1974-75 and as 16 lakh pieces for 1975-76. In February 1975 the Railway Board had also decided that in view of the impending expiry of the agreement in May 1975, only 9 lakh pieces of modified jaws representing the requirements of 1974-75 only be purchased from this firm and for the requirements of 1975-76 open tenders should be floated. For the supply of 9 lakh loose jaws negotiations were held with the firm in April 1975 and the firm quoted a rate of Rs. 7.67 per piece for a quantity of 9 lakh pieces and a rate of Rs. 7.55 per piece for a minimum order of 13 lakh pieces of jaws corresponding to a particular specification known as Alteration No. 2. The Tender Committee made recommendations in May 1975 for placement of orders for modified-loose jaws on M/s. Guest Keen Williams Ltd. at Rs. 7.50 per piece and also for increasing the quantity of modified loose jaws from 9 lakh to 13 lakh pieces to cover partly the requirements for 1975-76 also.

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The Committee's examination has revealed that the Tender Committee's recommendations both in regard to the negotiation of a rate of Rs. 7.50 per piece, which was 50 per cent higher than the previous rate and the enhancement of quantity of loose jaws from 9 lakh pieces (as decided by the Board earlier) to 13 lakh pieces were not warranted by the conditions obtaining at that point of time.

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13	I. 137	Railways	<p>In so far as the enhancement of quantity of jaws from 9 lakh to 13 lakh pieces is concerned the main reason which appears to have influenced the Tender Committee was that a marginally low price had been quoted by the firm for a minimum of 13 lakh pieces against 9 lakh pieces for which the tender was called. The firm which was the sole supplier of the item was thus able to impose its own conditions and the Railways had only to acquiesce in the terms quoted by the firm.</p>
14	I. 138	-do-	<p>The Committee are not at all convinced with the arguments now advanced by the Railway Board that the order for the loose jaws was enhanced keeping in view the expected increase in the supply of steel through sleepers in the first quarter of 1975-76 and because the procurement of the loose jaws for 1975-76 proper would have taken a long time. These arguments easily fall through when the pace of consumption of the loose jaws on the Railways is taken into account. According to Railways' own admission only about 60 per cent of the planned quantity of the steel trough sleepers, with which these jaws were to be used, had been received during the period 1973-74 to 1975-76. Further as pointed out in the Audit paragraph a review of the consumption of loose jaws on the various Railways made by the Board in October 1976 had revealed that the entire quantities of loose jaws supplied to the Western Railway (4.05 lakhs) and Central Railway (1.75 lakhs) had not been used at all till</p>

January 1976. The acquisition of a larger number of loose jaws at that point of time was thus not warranted by the needs of the Railways. Moreover, since the future requirements of Railways were in any case to be procured from 1975-76 onwards by open tenders and not necessarily from this firm, there was no justification for making advance purchases in this manner. It is also relevant to add that the modified loose jaws were inspected in advance of the order. The Committee have already made their observations on this aspect earlier.

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I.139

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Further the methodology followed in negotiating with the firm for the fixation of the rate of Rs. 7.50 per piece only strengthens the Committee's conviction that the transaction had been handled in a manner which was prejudicial to the railway finances. It is seen that on the basis of rates for 19 mm rounds of silico-manganese spring steel obtained through tender IS-17 in March 1975, the Tender Committee for the purchase of loose jaws had derived a rate of Rs. 4,833 per tonne for the spring steel to be used in the manufacture of modified loose jaws for negotiations with the firm. This rate was related to the lowest rate of Rs. 4,300 per tonne offered by a Calcutta firm. At that point of time the Tender Committee for purchase of spring steel had not finalised the tender for spring steel as it anticipated a further reduction in the price of this item because of the improved availability of steel in the market and reduction in the demand of the steel in the country. On further negotiations the tenderers for spring steel had revised their offers in June 1975 and the rate of the Calcutta firm on the basis of which negotiations for

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the rate of loose jaws had been conducted, came down to Rs. 3,117 per tonne only as against Rs. 4,300 per tonne tendered in March 1975. The Tender Committee for loose jaws had not waited for the finalisation of the negotiations relating to the purchase of spring steel but had on 22 May, 1975 recommended placement of orders at a rate negotiated with reference to the steel price of Rs. 4,300 per tonne. If the Tender Committee had awaited the result of negotiations about the price of spring steel, they could have related their negotiations for the price of loose jaws to a price of Rs. 3,117 per tonne only. Why the Tender Committee did not choose to wait for the outcome of the negotiations on the tender for the spring steel knowing fully well that there was a marked downward trend in prices is rather baffling. It has been worked out by Audit that if the rate had been negotiated with reference to the rate of steel at Rs. 3117 per tonne, the Railway could have saved Rs. 7.30 lakhs after offsetting rebate of Rs. 7 lakhs allowed by the firm on the total supply of 13 lakh pieces. In the absence of any satisfactory explanation on the point the Committee cannot but conclude that the Tender Committee failed to safeguard the financial interest of the Railways. The haste with which the Tender Committee finalised its proceedings only creates doubts about the *bona fides* of the transaction which needs to be thoroughly investigated.

The Committee also feel that at a later stage when the Tender Committee was given another chance to negotiate with the firm the

price of loose jaws corresponding to a superseded design, it failed to take full advantage of the situation. This occasion had arisen in July 1975 when the firm had sought an amendment to the concluded agreement of 19 June 1975. At that stage the firm offered to supply 11 lakh pieces of loose jaws of a different specification against the contract for supply of 13 lakh pieces which had been finalised with the Railways on 19 June 1975. The negotiations on this point lasted for about a year and an amendment to the contract as desired by the firm was agreed to by the Railways in June 1976. Surprisingly, however, no notice appears to have been taken of the further fall in the prices of spring steel. Between June 1975 and December 1975, the relevant price of the spring steel had come down from Rs. 3117 per tonne to Rs. 2480 per tonne. It has been estimated by Audit that with reference to the average market rate for silico-manganese steel prevailing in 1976 the extra amount paid for procurement of modified loose jaws to the outdated drawing was Rs. 10.60 lakhs after off-setting the lump sum rebate of Rs. 7 lakhs allowed by the firm. The Committee are constrained to observe that at every stage the firm which had the monopoly for the supply was able to exploit the situation to its own advantage and the Railways failed to protect their own financial interest. It is to be noted in this context that just as the firm was a sole supplier of this item, the Railways were in the position of a sole buyer. They could and should have conducted the negotiations with the firm in such a manner as to obtain most favourable terms for the Railways.

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The Committee are unhappy to note that no alternative source for the supply of this vital track component has so far been developed

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satisfactorily despite a lot of developmental efforts made by the Research, Designs and Standards Organisation of the Railways. The supplies against the orders placed in March 1976 on the firms other than the firm in question had not yet materialised because these firms have "yet to develop the required technology and other facilities for heat-treatment etc." The Committee would like the Railway Board to give every possible assistance to these upcoming firms so that they are able to meet the Railways' requirements satisfactorily and the Railways are not placed in such a situation as to having to pay exorbitant prices to the same firm which was the only supplier and which obviously used their position to Railways' disadvantage.
