

COMMITTEE OF PRIVILEGES

(FOURTH LOK SABHA)

TWELFTH REPORT

(Presented on the 24th November, 1970)



**LOK SABHA SECRETARIAT
NEW DELHI**

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PERSONNEL OF THE COMMITTEE OF PRIVILEGES
(1970-71)

CHAIRMAN

*Shri R. D. Bhandare

MEMBERS

2. Shri N. C. Chatterjee
- **3. Shri K. Hanumanthaiya
- †4. Shri Hem Barua
- ‡5. Shri S. M. Joshi
- †6. Shri Dhireswar Kalita
- ††7. Shri C. M. Kedaria
8. Shri V. Mayavan
9. Shri Raja Venkatappa Naik
10. Shri K. Raghuramaiah
- †††11. Chaudhuri Randhir Singh
12. Shri A. K. Sen
- ††13. Shri P. G. Sen
14. Shri Yajna Datt Sharma
15. Shri R. K. Sinha

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

*Appointed Chairman with effect from 27-7-1970 *vice* Shri Nitiraj Singh Chaudhary resigned from the Committee of Privileges.

**Appointed with effect from 29-7-1970, *vice* Shri P. Govinda Menon died.

†Appointed with effect from 27-8-1970, *vice* Sarvashri Surendrarath Dwivedy and H. N. Mukherjee respectively, resigned from the Committee of Privileges.

‡Appointed with effect from 17-11-1970, *vice* Shri Rabi Ray resigned from the Committee of Privileges.

††Appointed with effect from 20-5-1970, *vice* Dr. Ram Suthag Singh and Shrimati Jayaben Shah resigned from the Committee of Privileges.

†††Appointed with effect from 13-8-1970, *vice* Shri Nitiraj Singh Chaudhary resigned from the Committee of Privileges.

TWELFTH REPORT OF THE COMMITTEE OF PRIVILEGES (FOURTH LOK SABHA)

I. Introduction and Procedure

I, the Chairman of the Committee of Privileges, having been authorised to submit the report on their behalf, present this Report to the House on the question of privilege raised by Shri Madhu Limaye, M.P., against Shri N. N. Wanchoo, former Secretary, Department of Iron and Steel, Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, and certain other Officers of the Department of Iron and Steel for allegedly giving false evidence before the Public Accounts Committee.

2. The Committee held eight sittings. The relevant minutes of these sittings form part of the Report.

3. At their second sitting held on the 16th July, 1969, the Committee decided that the assistance of the Public Accounts Committee might be sought to ascertain their views whether any false evidence had been given before that Committee in the matter as alleged and, if so, by whom and in what respect.

4. At their fourth sitting held on the 27th April, 1970, the Committee noted the findings of the Public Accounts Committee contained in their Report, furnished to the Chairman of the Committee of Privileges by the Chairman of the Public Accounts Committee in response to the former's letter on the question of privilege.

5. At their fourth to eighth sittings held on the 27th April, 5th and 13th May, 18th August and 17th October, 1970 the Committee deliberated on the matter and arrived at their conclusions. The Committee authorised the Chairman to finalise their report on the matter on the lines of the conclusions arrived at by the Committee and to present it to the House.

II. Facts of the Case

6. On the 5th March, 1969, Shri Madhu Limaye, M.P. moved¹ the following motion in the House:—

“That the question of privilege against Shri N. N. Wanchoo, former Secretary, Department of Iron and Steel, and Shri S. C. Mukherjee, then Deputy Iron and Steel Controller, for allegedly giving false evidence before the Public Accounts Committee, be referred to the Committee of Privileges.”

¹ L. S. Deb. dt. 6-3-1969, cc. 219—226.

7. While raising the question of privilege, Shri Madhu Limaye stated² *inter alia* as follows:

"On the basis of irrefutable evidence, I accuse the former Secretary of the Steel Ministry Mr. Wanchoo, and Mr. S. C. Mukherjee, former Deputy Controller of Iron and Steel of fabricating false and misleading briefs and giving false evidence before the most important Committee of Parliament, namely, the Public Accounts Committee.

It was during the hearing by the Public Accounts Committee in the notorious Steel Barter and pre-import cases involving Aminchand Pyarelal, Ramkrishna Kulwantrai and other allied firms, that Mr. Wanchoo, in the presence of Mr. Mukherjee gave false evidence.

The Sub-Committee of the Public Accounts Committee enquired³ of the Ministry of Finance as to what conditions they had laid down for the Ministry of Iron and Steel while agreeing to the proposal for the issue of pre-import licences.

The Joint Secretary of the Ministry of Finance said that they had laid down two conditions:

- (a) There should be a firm export contract and the Bank should ensure that foreign exchange realised would be actually remitted to India; and
- (b) the firms should provide 15 per cent bank guarantee.

Clarifying the expression 'firm export contract' the Joint Secretary, Finance, said that the Ministry meant 'contract with a foreign buyer'.

On the basis of this information, the Sub-Committee of the Public Accounts Committee proceeded to examine Mr. Wanchoo, who was then the Steel Secretary. The Committee asked Mr. Wanchoo whether the Steel Controller understood the above conditions and their implications correctly. Mr. Wanchoo replied:

"The instructions of the Ministry left some room for different interpretations. . . . I feel the instructions of the Ministry were not as clear as they ought to have been on this particular point *viz.* what was intended".

² Original in Hindi.

³ See Appendix I.

The Sub-Committee enquired if there was any mis-understanding on this point between the Economic Affairs Department and the Ministry of Iron and Steel, the Secretary, Ministry of Iron and Steel stated:

'I would not say that. The Ministry of Iron and Steel do not seem to have translated the instructions of the Economic Affairs Department in clear and unambiguous terms.'

It was because of this evidence that the Public Accounts Committee was misled into making the following observation in its 50th Report, para 4.35 at page 62:

'The Sub-Committee regret to observe that these views of Ministry of Finance were not communicated in clear and unambiguous terms by the Department of Iron and Steel.....The Sub-Committee cannot but deprecate in strongest words this failure on the part of the Iron and Steel Ministry.'

Now my contention is that the whole story weaved by Mr. Wanchoo about ambiguity, about two possible interpretations as also about not translating and conveying properly the Finance Ministry's instructions to the Steel Controller is a concoction pure and simple. There was absolutely no basis for this statement. What is more important is that Mr. Wanchoo knew that there was no basis for making this observation. And yet Mr. Wanchoo, in the presence of the then Deputy Steel Controller Mr. S. C. Mukherjee and many other officers from the Ministries of Finance, Iron and Steel and Home Affairs and Additional Auditor General of India, deliberately gave false evidence, suppressed the true facts, and misled the Public Accounts Committee and the Parliament. This will become clear from the letters exchanged between the Ministry of Steel on the one hand and the Steel Controller on the other.....

From this exchange it will become clear that the question of interpretation and real intention was raised by Mr. Mukherjee himself because as he has himself admitted, a number of parties such as notorious Aminchand Pyarelal were pressing him.

Now having sought the clarification and got it in the most unambiguous and clearest possible terms, the Steel Controller violated the instructions of the Finance Ministry,

properly translated and conveyed by the Steel Ministry to the Steel Controller.

Not only this. While appearing before the Public Accounts Committee they deliberately suppressed this evidence on the files and successfully misled the Public Accounts Committee into absolving the Steel Controller of all responsibility in the matter.....”

8. The Minister of Steel and Heavy Engineering (Shri C. M. Poo-nacha) speaking on the motions, stated as follows:

“Shri N. N. Wanchoo, ICS, former Steel Secretary, appears to have committed certain errors in furnishing information to the Public Accounts Committee about certain matters of 1960, five or six years later. It has, however, to be pointed out that Shri Wanchoo took an early opportunity to bring the error to the notice of the Public Accounts Committee when the first action report on the recommendations of the Public Accounts Committee was sent to that Committee. During the investigation by the Committee of Enquiry on Steel Transactions, headed by Shri A. K. Sarkar, Shri Wanchoo referred again to the errors and made no attempt to conceal them. The Sarkar Committee did not draw any adverse inference against Shri Wanchoo. One of the members of the Committee, however, in his dissenting note expressed the view that Shri Wanchoo had been misled by Shri Mukherjee but even that dissenting member did not make any observation against Shri Wanchoo.

Adverse observation having been made by a dissenting member of the Sarkar Committee against Shri Mukherjee and the matter raised being one of privilege, it is in the interest of all concerned that possible doubts about Shri Mukherjee's conduct should be looked into by the Privileges Committee. The case of Shri Wanchoo does not contain even this element of doubt but since his case is closely interlinked with that of Shri Mukherjee, Government would have no objection to the cases against both of them being referred to the Committee of Privileges.”

9. The motion moved by Shri Madhu Limaye was then adopted by the House and the matter referred to the Committee of Privileges on the 6th March, 1969.

10. Relevant extracts from the minutes of the sitting of the Subcommittee of the Public Accounts Committee held on the 10th March,

1966, when Shri N. N. Wanchoo gave evidence* before the Sub-Committee, which were laid on the Table of Lok Sabha, are reproduced at Appendix I.

11. The Public Accounts Committee in their Fiftieth Report had reported, *inter alia*, as follows:

“4.167. In view of the lapses which have taken place in these deals, both in the offices of the Government as well as on the part of the parties, these cases require a thorough probe. In the case of the officers of the Government, the Sub-Committee also desire that responsibility should be fixed for the various lapses. The Sub-Committee, therefore, suggest that these cases should be investigated by a high powered Committee which should consist of a person of the status of a High Court Judge; an officer from the office of the Comptroller and Auditor General of India; an officer from the Central Board of Revenue well-versed in Customs Law, Import and Export (Control) Act, 1947 and Income-Tax Law. This high-powered Committee should be suitably assisted by an agency expert in investigation of the cases.

4.168. This high-powered Committee should investigate the various lapses which have been dealt with in this report in all the preceding paragraphs.....”

12. In this connection Shri Madhu Limaye submitted to the Chairman, Committee of Privileges, a statement⁴ on which his speech in the House on the 6th March, 1969 was based.

13. Subsequently, on the 22nd March, 1969, Shri Madhu Limaye submitted to the Speaker, Lok Sabha, another notice⁵ on the same subject in respect of other cognate matters, in which he desired that the matter be referred to the Committee of Privileges.

14. The Speaker directed on the 24th March, 1969 that this matter also be considered by the Committee of Privileges along with the previous reference made to the Committee by the House earlier.

15. In his notice dated the 22nd March, 1969, Shri Madhu Limaye had pointed out that false evidence had been given before the Committee on Public Accounts on the following additional counts:

- (i) The date on which the Iron & Steel Controller became aware of the omission that occurred in the matter of issue

*Verbatim record of the evidence was not laid on the Table of Lok Sabha.

⁴ See Appendix II.

⁵ See Appendix III.

of pre-import licence to M/s. Ram Krishan Kuliwant Rai, without their fulfilling the condition of having an export contract.

(ii) The figures about the imports allowed after the discovery of the mistake.

(iii) Revision of the form of guarantee bond.

16. In regard to these three issues, Shri Madhu Limaye had stated in his notice *inter alia* as follows:—

(I) (a) "In the 50th Report of the Public Accounts Committee (Third Lok Sabha) it will be seen⁶ 'that the Committee had asked Mr. S. C. Mukerjee to tell them as to when their attention was drawn to the fact that M/s. Ram Krishan Kulwant Rai had been given import licences *without* their having any export contract.

Mr. Mukherjee's reply was that the 'mistake' came to his notice when his attention was drawn to this by the Hindustan Steel Limited and that this was some time in the month of November, 1960. He did not mention any precise date.

* * * * *

It is interesting to note that the story about some November 1960 date reappears in the 56th Report of the Public Accounts Committee (Third Lok Sabha). Even at that stage all that the Committee was told was that the 'mistake' was brought to the notice of the Secretary earlier than 13th November, 1960, namely on 2nd November, 1960 at New Delhi. The Committee has blamed the Secretary for not initiating corrective action after his attention was drawn to this lapse.⁷

The fact, however, is that the 'mistake' was pointed out by Hindustan Steel Ltd. not once but twice. On both occasions Mr. Rao of H.S.L. seems to have spoken to Mr. Mukherjee on the telephone about the absence of export contract and confirmed the talk subsequently in two letters addressed to Mr Mukherjee.

The first of these two letters was written⁸ on 26th August, 1960 and the second on 25th October, 1969.⁹ A comparison of

⁶ See Appendix IV.

⁷ See Appendix V.

⁸ See Appendix VI.

⁹ See Annexure to Appendix VI.

the contents of these two letters would show that they were identical in all material respects. Thus the information given to the Public Accounts Committee that it was only some time in November that the 'mistake' was first pointed out to him by the H.S.L. was absolutely false. Even after the 'discovery' of this 'mistake', Mr. Mukherjee was not perturbed; he, in fact, told Mr. Rao not to worry and that he would arrange for the firm's export of ore to cover the foreign exchange involved in imports."

- (b) "In Part II (Appendices) to the 56th Report of the Public Accounts Committee mentioned above, there is a note¹⁰ by Mr. N. P. Mathur, Joint Secretary of the Ministry. Mr. Mathur has stated 'the mistake came to light in November, 1960'.

This is in conformity with the oral statement of Mr. Mukherjee before the Public Accounts Committee. It would thus appear that Mr. Mathur has also repeated the misleading and erroneous statement of Mr. Mukherjee. All these statements and assertions misled the Public Accounts Committee into holding that the 'mistake' came to light only on the 2nd November, 1960.

Part II (Appendices) to the 56th Report of the Public Accounts Committee contains two other notes on the subject viz. (i) by Mr. T. Swaminathan, Secretary to the Steel Ministry and (ii) by Mr. S. Sahay, Iron and Steel Controller (*vide* pages 14—32 and pages 33—57).

In para 3 of Mr. Swaminathan's note "and page 34 of Mr. Sahay's note,¹² it has been said that the 'mistake' was pointed out by H.S.L. to Mr. Mukherjee on 25th October, 1960. It is a matter for inquiry as to why these two officers did not refer to H.S.L.'s earlier letter of 26th August, 1960, when the 25th October 1960 letter itself has referred to H.S.L.'s earlier letter of 26th August, 1960."¹³

- (II) "It will also be clear from the Public Accounts Committee's observations¹⁴ in para 4.48 of their 50th Report that the

¹⁰ See Appendix VII.

¹¹ See Appendix VIII.

¹² See Appendix IX.

¹³ See Annexure to Appendix IX.

¹⁴ See Appendix X.

Public Accounts Committee had been informed by the witness that the 'bulk of imports' had already been made by the said firm before the 'mistake' came to their notice. It appears from page 267 of the Sarkar Committee's Report (Mr. Padhi's note of dissent)¹⁵ that Mr. Mukherjee had informed the Sarkar Committee that he—the Deputy Steel Controller—had given exact figures to the Public Accounts Committee. He had told the Committee that Rs. 95 lakhs worth of steel had already been imported when the 'mistake' was brought to his notice and that only Rs. 3.9 lakhs worth of steel had been imported after the 'mistake' was detected.

* * * * *

The figures about imports allowed after the discovery of the 'mistake' cited by Mr. Mukherjee before the Public Accounts Committee are also at variance with the facts brought out in Mr. Padhi's Note of Dissent to the Sarkar Committee's main Report. Taking 26th August, 1960 as the correct date on which the 'mistake' was pointed out by H.S.L., the value of import for which Customs Clearance Certificates were issued *subsequent* to this date was Rs. 8994605 (page 271 of the Sarkar Report, Part I).¹⁶ The value of imports which were cleared through the Customs after 25th October, 1960 was Rs. 2694768 (*vide* Para 5.48, page 270 of the Sarkar Committee Report).¹⁷ However, Mr. Mukherjee deliberately misled the Public Accounts Committee by saying that the imports cleared after the 'mistake' was discovered amounted to *only* Rs. 3.9 lakhs."

(III) ".....specific instance of false evidence before the Public Accounts Committee (Third Lok Sabha) consists of two false statements or suggestions:

- (a) The Public Accounts Committee was told in evidence that the Central Government Solicitor at Calcutta in drafting the form of the guarantee bond took¹⁸ the view that no bank would agree to give an absolute guarantee in the manner outlined by the Ministry's letter of 2nd February, 1960 (pages 233-34, 50th Report of the Public Accounts Committee).

¹⁵ See Appendix-XI

¹⁶ See Appendix XII.

¹⁷ Ibid.

¹⁸ See Appendix XIII and its Annexures.

(b) That the form of the guarantee bond as actually drafted by the Solicitor was adopted by the Deputy Chief Controller (pages 73-74 of the 50th Report).¹⁹

These two false statements/suggestions led the Public Accounts Committee to make an adverse comment on the work of the Central Government Solicitor at Calcutta (page 74 of the 50th Report).²⁰

The truth, however, is that the Central Government Solicitor never had any occasion to take the view attributed at (a) above because the form of the guarantee bond which was drafted by him completely fulfilled the stipulation of the Ministry in the letter mentioned above. His form made the guaranteed amount forfeitable simply on failure to export the specified quantity of semis within a specified number of months from the date of the execution of the bond. The forfeiture was relatable solely to failure to export within the specified period *from the date of the execution of the bond*.

It was Mr. Mukherjee who made alterations in the form of the guarantee bond secretly, without letting anybody know that he had made these vital and, what eventually proved to be, fatal alterations. The effect of these alterations was to make the guaranteed amount forfeitable *only if there was failure to export within three months from the date of delivery* of the semis by H.S.L. Thus with one stroke Mr. Mukherjee made the guarantee of forfeiture dependent on settlement of all disputes concerning delivery of the quantities of requisite quality by the H.S.L. to the barterer. On top of it, Mr. Mukherjee acquiesced in the Bank's limiting their liability to fixed periods of time without reference to delivery of semis.

Even before the Sarkar Committee Mr. Mukherjee appears to have tried in the beginning to conceal the fact that he had made certain important alterations in the form as drafted by the Solicitor. It was only on the second day of his examination by the Sarkar Committee that Mr. Mukherjee admitted, on persistent questioning that he had tinkered with the form of guarantee bond. This has been clearly brought out by Mr. Padhi at pages 231 to 243 in his Minute

¹⁹ Ibid

²⁰ Ibid.

of Dissent attached to the report of the Sarkar Committee (*vide* para 4.13 at page 239).²¹ The majority report has not contradicted these observations of Mr. Padhi, Mr. Padhi has also brought out at page 262 (Sarkar Report) that Mr. Mukherjee had even concealed the changes made by him in the bond from his own Chief, that is, Mr. Bam, the then Controller of Iron and Steel, Mr. Padhi has further observed that Mr. Mukherjee neither disclosed the correct position about the form of the guarantee bond to Mr. Wanchoo."

- (IV) "From all this it will be seen that Mr. Mukherjee has been guilty of the very very serious offence of giving false evidence before the Public Accounts Committee in several material respects deliberately and wilfully...three other officers are *prima facie* found to be guilty of giving false information to the Public Accounts Committee namely, Messrs N. P. Mathur, T. Swaminathan and S. Sahay."

17. The Committee called for factual comments from the Ministry of Steel and Heavy Engineering on the notice dated the 22nd March, 1969, received from Shri Madhu Limaye. The comments received from the Ministry are reproduced at Appendix XV.

18. The factual position in respect of the said three issues raised by Shri Madhu Limaye, M.P., is as follows:—

I. *Alleged false evidence regarding the date on which the Iron and Steel Controller became aware of the omission that occurred in the matter of issue of pre-import licence to M/s. Ramkrishan Kulwantrai without having an import contract.*

(i) In the minutes of the sitting of the Sub-Committee of the Committee on Public Accounts held on the 11th March, 1966 (laid on the Table of Lok Sabha on the 26th April, 1966) when, among others, Shri N. N. Wanchoo, then Secretary Ministry of Iron and Steel and Shri S. C. Mukherjee, then Deputy Iron and Steel Controller, were examined, it has been stated *inter alia* as follows:

"In the case of one deal entered into with M/s. Ram Krishan Kulwant Rai in May, 1960, import licence worth Rs. 98.98 lakhs was stated to have been issued inadvertently (in June 1960) before ascertaining that there was a valid contract for exports between the HSL and the party. Subsequently, when (in November, 1960) this mistake was

²¹ See Appendix IV.

found efforts were made to persuade HSL to make available the semi-finished steel for export and HSL agreed to finalise the contract with the party."

(ii) In the minutes of the sitting of the Committee on Public Accounts held on the 18th August, 1966, which were laid on the Table of Lok Sabha on the 23rd August, 1966 when, among others, Shri T. Swaminathan, then Secretary, Ministry of Iron and Steel and Shri S. C. Mukherjee then Deputy Iron and Steel Controller, were examined, it has been stated *inter alia* as follows:

"The Committee asked the Secretary, Ministry of Iron and Steel as to when the mistake or irregularity of issuing import licences of about Rs. 101 lakhs without ensuring a contract with the H.S.L. committed in the office of the Iron and Steel Controller came to the notice of the then Secretary. The witness stated that from the material that was available to them, they were of the view that the then Secretary came to know of this on 13th November, 1960. There was, however, a record of a note of conversation on 2nd November, 1960 or so in the Iron & Steel Controller's file. But so far as they had been able to look into the Ministry's record, there was no note kept of the conversation of 2nd November, 1960. The Committee pointed out that there was also no record of the discussion of the 13th November, 1960 which the then Secretary had with the then Iron & Steel Controller and the then Chairman, HSL at Dum Dum Airport. The Secretary stated that the discussion was followed immediately, i.e. the next day on 14th November, 1960 by a letter from the Iron & Steel Controller to the Chairman H.S.L., a copy of which was also endorsed to the then Secretary. The Committee asked if the letter of 14th November, 1960 could be regarded as a proper record of discussion in so far as that letter mentioned many things and one of them was this interview with the Secretary. The Secretary replied: 'It is not a common record of interview'. He also stated that it did not appear to be a formal meeting at which the minutes would be recorded. The Committee pointed out that the question was not whether the meeting was formal or not but whether any record of this meeting was kept. The witness stated: 'In the sense you seem to think of the record, no record was kept'.

* * * * *

The Committee asked the Secretary whether it was on 2nd November or 13th November, 1960 that the then Secretary first came to know of this irregularity and how it was brought to his notice. The Secretary, Ministry of Iron & Steel stated that there was no evidence on the file except the letter dated 14th November, 1960 written by the then Iron and Steel Controller to the then Chairman, H.S.L. and copy to the then Secretary.

* * * *

The Committee further pointed out that on 31st August, 1960 the Deputy Iron & Steel Controller had made a noting in his file as under:

“I want a complete accounts of import licences issued to the firm and details of the corresponding export arrangement made by them. Immediately please.

Asked if he got the report, the Deputy Iron & Steel Controller stated that a report in this respect did not come to him finally and he also forget about it.”

(iii) In this connection, the Ministry of Steel and Heavy Engineering had stated, in their comments, *inter alia* as follows:

“With regard to the question of when the mistake (relating to the issue of import licence to M/s. Ramkrishan Kulwantrai without ensuring that they had finalised the contract with Hindustan Steel Ltd.) came to notice, it may be mentioned that the first reference to it was made in Shri S. C. Mukherjee’s note in file No. CP/RKK/32/60 dated 26th October, 1960, wherein he admitted that a serious lapse had occurred. In this note, Shri Mukherjee referred to a telephone conversation that Shri H. R. S. Rao, Assistant Sales Manager of Hindustan Steel Limited had with him on the previous day, when Shri Rao had brought the matter to his notice. This conversation was also referred to by Shri Rao in his letter of 25th February, 1961, to Hindustan Steel Limited’s Head Office at Ranchi, wherein Shri Rao had stated that he had conveyed to Shri Mukherjee in August, 1960 itself, that he had learnt by accident from the representative of M/s. Ramkrishan Kulwantrai that the party had been able to secure pre-import licence for approximately, one Crore of Rupees, without having entered into a contract with Hindustan

Steel Limited. Shri Rao, however, added in that letter that Shri Mukherjee, during the course of this telephone conversation had mentioned to Shri Rao that there was nothing to worry about, as it would be possible to get the party to export, if not the semis, some other items like ores. It must be remembered at this stage that an earlier barter deal with M/s. Ramkrishan Kulwantraï for the export of 5,000 tons of slabs and the import of finished steel had been approved by the Steel Controller and a contract had been entered into by the party with HSL. Shri Mukherjee who was asked by the Sarkar Committee whether Shri H. R. S. Rao had told him on the 26th August, 1960 as he claims to have in his letter of 25th February, 1961, explained that he came to know of the lapse only on 25th October, 1960 from Shri H. R. S. Rao, as recorded by him (Shri S. C. Mukherjee) in his note of 26th October, 1960. The position is that there were two barter transactions for semis which M/s. Ramkrishan Kulwantraï had proposed—one for 5,000 tons and the other for 25,000 tons. There is also reference to two telephonic conversations between Shri S. C. Mukherjee and Shri H. R. S. Rao, one on the 26th August, 1960 and the other on 25th October, 1960, when these barter deals were discussed. There is no dispute between Shri H. R. S. Rao and Shri S. C. Mukherjee that the 25,000 tons barter deal was discussed on 25th October, 1960. It is only regarding the discussion which is alleged to have taken place on 26-8-60 that there is a dispute. The Sarkar Committee have stated, with reference to the conversation of 26-8-60, that 'this conversation may be reasonably taken to have been concerning a barter deal with M/s. Ram Krishan Kulwantraï, but which one cannot be predicted with any certainty'. It may also be mentioned that a letter had been issued by Shri Rao on 26-8-60 referring to the telephone conversation between Shri Mukherjee and himself and enclosing a copy of their (HSL's) letter dated 9-6-60 to the Iron and Steel Controller which related to the barter deal involving export of 5,000 tons of slabs by M/s. Ramkrishan Kulwantraï. In this letter there is no mention by Shri H.R.S. Rao about M/s. Ramkrishan Kulwantraï not entering into a contract with Hindustan Steel Limited for 25,000 tons of semis. It is also noticed that copies of all the letters leading to 25,000 tons barter deal from 5-5-60 to

7-10-60 were marked to Hindustan Steel Limited who do not seem to have pointed out that there was no contract between M/s. Ramkrishan Kulwantraï and themselves for 25,000 tons of semis.

Shri Madhu Limaye has referred to the letter of Shri N. P. Mathur, Joint Secretary of the Ministry of Steel and to the letter of Shri T. Swaminathan, former Secretary of the Ministry and to a letter of Shri S. Sahay, Iron and Steel Controller. In all these cases, the reference, as will be noted from a reading of paras 4.39 to 4.52 of the 50th Report of the P.A.C. was to when the mistake came to light in the Ministry and the emphasis at that time was with regard to the action the then Secretary should have taken. This is probably why the Ministry did not refer to the note of Shri S. C. Mukherjee of 26-10-1960."

(iv) In the Majority Report of the Committee of Inquiry (Steel Transactions) (February, 1968), Sarkar Committee Report, it is stated *inter alia* as follows:—

"7.3. It will have been noticed from the facts earlier stated that at the time of issuing the pre-import licences, the Iron and Steel Controller's office had no information at all, This is probably why the Ministry did not refer to the from the Hindustan Steel Limited, that a contract for the sale of the required quantity of semis had been entered into between Ramkrishan Kulwantraï and Hindustan Steel Limited for the purpose of acquiring the materials to be exported under the barter deal. In fact, there was no such contract at all at this stage, and this is admitted by all parties concerned. The question that will have to be examined is how this fault came about and whether responsibility can be fixed on any particular officer or party for it. We will come back to this matter after we have stated some more facts in connection with this barter deal.

7.4. It appears that the import licences issued under this barter deal were amended from time to time, and there were as many as 9 amendments between 6-6-1960 and 7-10-1960. Each time, a copy of the letter approving the amendment requested by Ramkrishan Kulwantraï was forwarded by Iron and Steel Controller to Hindustan Steel Limited. Each of these letters bore the subject-heading 'Export of

25,000 tons of slabs and blooms on barter basis in exchange for the import of finished steel.'

- 7.5. Shortly prior to August 26, 1960, there appears to have been a telephonic conversation between Shri H. R. S. Rao, then Assistant Sales Manager of Hindustan Steel Limited, and Deputy Iron and Steel Controller, Shri S. C. Mukherjee. This conversation may be reasonably taken to have been concerning a barter deal with Ramkrishan Kulwantrai, but, which one, cannot be predicted with any certainty. On 26-8-1960, Hindustan Steel Limited wrote to Iron and Steel Controller referring to the telephonic conversation mentioned above and enclosing a copy of their letter dated 9-6-1960 to Iron and Steel Controller, which related to another barter deal with Ramkrishan Kulwantrai involving export of 5,000 tons of slabs, and later covered by Letter Order dated 15-6-1960. In this letter, it was stated that Hindustan Steel Limited had sold only 5,000 tons of slabs to Ramkrishan Kulwantrai implying that no more had been sold. When the Hindustan Steel Limited's letter of 26-8-1960 was placed before Shri S. C. Mukherjee, Deputy Iron and Steel Controller, he noted on the file:

I want a complete account of import licences issued to the firms and details of the corresponding export arrangements made by them. Immediate please.

Sd/- S. C. MUKHERJEE,
31/8.

In the margin of the file there appears a noting by Shri G. N. Sen, the dealing assistant, reading:—

'Malik of Ramkrishan Kulwantrai has promised to submit the required statement shortly.

Sd/- G. N. SEN,
6/9.

In his evidence before the Committee, Shri Sen stated that he had made the notes just referred to, as Shri S. C. Mukherjee had asked him to do so, and that it was not he himself who had any talk with Shri Malik, but it might have been Shri S. C. Mukherjee, who had that talk, a statement which Shri Mukherjee, in his evidence, was not in a position to contradict categorically.

However, it is not disputed that a complete account of import licences issued to Ramkrishan Kulwantraï was not submitted to Mukherjee either by the officer or by Malik. Mukherjee's evidence was that he had completely forgotten this matter as he had relied on his subordinates, whose duty it really was to see that the directions were carried out. The next event that is worth referring to in this connection is the noting in file No. CP/RKK|32|60 by Shri S. C. Mukherjee, dated 26-10-1960."

(v) In his dissenting note attached to the majority Report of the Committee of Inquiry (Steel Transactions) (February, 1968), Shri P. C. Badhi, one of the members has stated *inter alia* as follows:

"5.2. *The Issues.*—Shri Mukherjee claims that his lapse was due merely to oversight and that he did not realise his mistake until his attention was drawn to it orally by Shri H. R. S. Rao on 25th October, 1960. However, the following paragraphs will reveal that Shri Mukherjee was fully aware that he was issuing an import licence to PKKR at a time when no further contract with Hindustan Steel Limited for export of semis was possible.

* * * * *

5.7. *Shri Mukherjee's entertainment of RKKR's proposal but rejection of others at the same time.*—In reply to Shri S. C. Mukherjee's letter of 6th April 1960 RKKR expressed their desire on 8th April, 1960 for a barter proposal involving 25,000 tons of slabs and ingots, if not blooms. Shri Mukherjee, thereupon, issued a letter order of 5th May, 1960 in favour of RKKR saying that RKKR would be allowed to import certain categories of steel, without mentioning quantities (excepting the quantity of stainless steel) against export of 25,000 tons of slabs, ingots and blooms, without specifying the apportionment of quantities of slabs, ingots and blooms respectively. In fact, the letter quite clearly implies that the party had no contract with HSL as it says that 'prices, delivery and specifications of which is to be mutually agreed by you with HSL at the time of conclusion of the contract with them'. Shri Mukherjee endorsed a copy of the letter order to the SIC Section (Steel Import Control Section) of his office with the instructions 'for issue of import licence on application', even though, at that time, RKKR had neither ask-

ed for pre-import licences, nor submitted any bank guarantees nor even accepted the letter order. They did not, of course, have any contract for export. On the very date he issued this letter order to RKKR, Shri Mukherjee was rejecting other proposals for instance.....

- 5.8. *Forgetfulness or oversight ruled out.*—In the light of this evidence, it is impossible to believe that Shri Mukherjee issued this letter order dated 5th May, 1960 in favour of RKKR, and he did it in the full knowledge that RKKR had clearly a deliberate act of discrimination in favour of RKKR either by oversight or in forgetfulness. It was clearly a deliberate act of discrimination in favour of RKKR, and he did it in the full knowledge that RKKR had no contract for export with Hindustan Steel Limited.
- 5.9. *Awareness of non-existence of contract with HSL.*—That he knew that RKKR had no export contract with Hindustan Steel Limited is clear from the fact that he himself wrote to Hindustan Steel Limited on 23rd May, 1960 enquiring whether he might issue pre-import licence to RKKR for a total value of 2.1 million dollars. This letter to Hindustan Steel Limited was in fact special pleading on behalf of RKKR. How could Shri Mukherjee have reasonably expected Hindustan Steel Limited to agree to this proposal with any show of consistency when, to Shri Mukherjee's own knowledge, Hindustan Steel Ltd. was then engaged on the job of reducing pre-existing offers in consonance with the decision to scale down all proposals as the result of the decision reached at the meeting of the 23rd February, 1960 and Shri Boothalingam's instruction of 24th February, 1960? Thus Shri Mukherjee was fully aware at all material times upto 23rd May, 1960 not only of the fact that RKKR had no export contract with HSL for export of semis but that they had no chance of getting such a contract and to give them a barter contract at that stage would have been an act of favouritism. And yet, he was pursuing RKKR's offer and interceding on their behalf with the Hindustan Steel Ltd.
- 5.10. Without waiting for a reply from HSL to his letter dated 23rd May, 1960, or ascertaining the position from HSL either by telephone, or personal discussion or otherwise (if indeed he had any doubts), Shri Mukherjee ordered the issue of import licences of the value of 2.1 million dollars on 6th June, 1960 in favour of RKKR by taking a

bank guarantee of Rs. 15.15 lakhs.... In other words, the departure from the wording of the guarantee bond taken in all the other cases quite clearly establishes that even on 6th June, 1960 Shri Mukherjee was conscious that he was dealing with an exceptional case, that is, a case where there was no contract for supply of material by HSL, for export. Thus Shri Mukherjee's claim that he ordered the issue of the licence of the value of over Rs. 1 crore by oversight (and not deliberately) is completely untenable.

* * * * *

5.20. *Monthly returns from HSL furnished opportunity to detect absence of contract with RKKR.*—On the 30th June, 1960, Shri Ramchandran, Price and Accounts Officer of the Steel Controller's Office sent a note to Shri Mukherjee suggesting as 'a measure of precaution', that where pre-import licences had been given, a watch should be kept on the deliveries of semis by HSL so that there may not be 'serious consequences'. Strictly speaking, this advice was outside the functions of the P&AO. However, his note became the starting point of a new file in the Steel Controller's office with the No. CP|Progress (96)|60, and on 1st July, 1960 Shri Mukherjee noted thereon as follow:—

'We should have a party-wise ledger to watch the progress. The parties should be constantly reminded to give us the required information.'

Simultaneously, Shri Mukherjee requested Shri Bery of Hindustan Steel Limited, Calcutta, to send him monthly statements of all barter contracts and the progress of deliveries and exports against each. Shri Bery complied with the request and sent the first of his monthly statements on 19th July, 1960 showing the position as it stood on 15th July, 1960. This statement is a short one and presents very neatly in a tabular form the name of each barterer, the quantity of semis or pig iron which he had to export, a reference to his contract No., and the progress of actual deliveries against each contract. Similar statements showing the position on 15th August, 1960, 1st September, 1960, etc. were sent by Shri Bery to Shri Mukherjee on 20th August, 1960, 7th October, 1960 and so on, respectively. These statements were addressed to Shri

Mukherjee by name and were seen both by him and Shri Bam. The statements naturally did not contain any reference to any contract or commitment to supply 25,000 tons of semis to RKKR for the simple reason that no such contract existed.

* * * * *

- 5.30. In compliance with this message, Shri Mukherjee submitted to the Ministry with his letter No. C/Progress-(96) 60, dated 20th October, 1960 one consolidated tabular statement showing export commitment (quantities and description of pig iron and semis), the actual deliveries of pig iron and semis and the quantities of steel items licensed for import and the actual arrivals of imports against the name of each firm. This was a specially compiled statement. It does not show any export commitment of 25,000 tons of semis against the name of RKKR nor the corresponding imports for which he had issued licences already. The omission of RKKR's pre-import licence case from this statement is significant in that its inclusion was not strictly called for by the literal terms of the teleprinter message which pertained only to "barter" or cash export. The omission implies an awareness that the imports by RKKR were not under any existing commitment to them for selling them semis for export under any barter. To complete the story it should be added that the only outcome of the review in the Ministry was a note dated 2nd November, 1960 by Shri Nair (Under Secretary) to the effect that he was informed by Shri Mukherjee that Hindustan Steel Ltd. had a lot of ingots which Hindustan Steel Ltd. was keeping for rolling in its own mills and that Mukherjee considered it more advisable to sell them as ingots, rather than to roll them. There is evidence to show that Shri Mukherjee had actually come to Delhi on 2nd November, 1960 with his Controller to explain the irregularity in person to Shri Bhoothalingam and to seek his support for getting some semis for being given to RKKR so that the irregularity may be "covered up" or "rectified", as the case may be, according to one's point of view. This, no doubt, explains why Shri Mukherjee was taking the opportunity to canvass support for his idea with Shri Nair.

5.33. *How it came to light.*—It appears that Shri H. R. S. Rao, Assistant Sales Manager (Exports) in the Calcutta Office of HSL, had come to know about this irregularity accidentally, on the 26th August, 1960 from a conversation he had with RKKR when the latter called on him in his office in some other connection. It appears, RKKR mentioned to him that his firm had imported finished steel upto the value of 25,000 tons of semis to be exported by him. Shri Rao, it seems, pointed out to the party that there was no such commitment by HSL to supply 25,000 tons of semis to him and told him that he (Shri Rao) was going to get in touch with the Iron and Steel Controller. Thereupon the party is said to have pleaded with him to forget the subject and not to complicate matters at that stage as it could be quite easy for him to arrange for a barter deal for export of manganese ore or some other ore of equivalent value. Immediately after the conversation, Shri Rao, it appears, called Shri S. C. Mukherjee on the telephone and mentioned to him what he had heard from RKKR. It seems, Shri S. C. Mukherjee did not appear to be perturbed; on the contrary, he told him not to worry and added that he (Shri Mukherjee) would arrange for RKKR a barter deal for export of ores which could cover the foreign exchange involved in the import licences. In spite of this assurance by Shri Mukherjee, Shri Rao, according to his evidence, decided that he should place on record the fact that there was a contract with RKKR for only 5,000 tons of slabs, and this he did by a letter of the same date (*viz.* 26th August, 1960) which he got from one of his officers (Mr. Ghosh) to write for the 'attention of Shri S. C. Mukherjee'. This letter No. 78|CCP|RKK (32)|60, dated 26th August, 1960 is on record, and it reads:—

'With reference to Mr. Rao's telephonic conversation with you, I enclose a copy of our letter No. SE|24B|2153, dated 9th June, 1960 regarding supply of 5,000 tons of slabs to Messers. Ramkrishan Kulwant Rai against our original offer of 20,000 tons of slabs to the party.

In this connection, I have to inform you that we have sold only 5,000 tons of slabs to the party against their enquiries for slabs and blooms'.

It is the discovery of this letter in the files of the Steel Controller that has led our Committee to ascertain the

context in which it was written, to unravel the significance of the words only 5,000 tons of slabs occurring in the letter.

- 5.34. The gist of the telephonic conversation has been recorded by Shri H. R. S. Rao in a letter dated 25th February, 1961, which he had occasion to write to his head office at Ranchi.
- 5.35. Shri Rao was closely questioned by our Committee about this conversation and how he remembered it six months later. This evidence has not been shaken and is found to be completely trustworthy. Shri Mukherjee also could not ultimately deny the substantial accuracy of Shri Rao's version of the conversation though in the beginning in a written memorandum he had said 'I emphatically deny that I had any knowledge of the lapse...before 25th October, 1960'.

* * * * *

- 5.37. A. *Disposal of Shri Rao's letter of 26th August, 1960.*— Although Shri Mukherjee is stated to have told Shri H. R. S. Rao on 26th August, 1960 not to worry about the case (an attitude which would be quite consistent with the sense of guilt which he would be anxious to conceal), what he did on receipt of Shri H. R. S. Rao's letter of 26th August, 1960 is equally significant. He sent down the letter to his clerk, Shri G. N. Sen, on 27th August, 1960 with the words 'papers at once' written thereupon. The clerk put up to him a note on 29th August, 1960 as follows:

"PUC (*i.e.* paper under consideration) has reference to Hindustan Steel's letter of 9th June, 1960, on the basis of which letter order has been issued to the firm for the export of 5,000 tonnes of slabs on barter basis Submitted please."

Thereupon Shri Mukherjee wrote on 31st August, 1960.

'I want a complete account of import licences issued to the firm and details of corresponding export arrangements made by them. Immediately please.'

There is a note dated 6th September, 1960 on the margin by Shri G. N. Sen as follows:

'Mr. Mallick of M/s. Ramkrishan Kulwantraí has promised to submit the required statement shortly.'

The file does not show any further action. It is by no means clear why the firm's representative (Shri Mallick should have been asked for any statement when the information was available in the office. Shri Mukherjee appears to have spoken to the same gentleman after 26th October, and got from him on 29th October, 1960 a proposal that RKKR would export something else to make good the foreign exchange. It is quite clear to me that no further action on the part of the clerk was called for. All the information Shri Mukherjee wanted was on his desk and he knew it, as he dealt with it on the 29th August, 1960. Shri H. R. S. Rao's version is that when he spoke to Shri Mukherjee on 26th August, 1960, Shri Mukherjee did not react like one surprised at the information. He know all about it and told him not to worry. That should finally dispose of Shri Mukherjee's defence."

II. *Alleged wrong figures given about the imports allowed after discovery of the omission.*

(i) In the minutes of the sitting of the Sub-Committee of the Committee on Public Accounts held on the 11th March, 1966 (which were laid on the Table of Lok Sabha on the 26th April, 1966) when, among others, Shri N. N. Wanchoo, then Secretary, Ministry of Iron and Steel and Shri S. C. Mukherjee, then Deputy Iron and Steel Controller, were examined, it has been stated *inter alia* as follows:

"Asked how much quantity had been imported in November, 1960, when this omission came to notice, the representative of the Iron & Steel Controller stated that all but 149 tons had been imported by then (upto 11/60 the firm imported 8297 tons of steel). Ultimately (by February, 1961) the firm imported the entire quantity but exported nothing.

* * * * *

.....The Secretary, Ministry of Iron & Steel stated that when the matter came to their notice in November, 1969, they stopped the customs permit of the party until it entered into contract with HSL. The Deputy Iron and Steel Controller stated that subsequently the party did not export anything and the bank guarantee also expired. The contract with HSL was under dispute."

(ii) In this connection, the Ministry of Steel and Heavy Engineering had stated, in their comments, *inter alia* as follows:

"In regard to the ancillary point raised by Shri Madhu Limaye

regarding the actual imports, made after the mistake was noticed, the position is as follows:—

Shri Padhi in his annotation found in para 5.47 of his Dissenting Note has stated as follows:—

‘Our Committee’s investigation shows that actually Customs Clearance Permits of the value of Rs. 26,94,788 were issued after 25th October, 1960. Shri Mukherjee had given wrong figures both to our Committee as well as to the PAC’.

This aspect of the question has been dealt with in para 4.41 of the 50th Report of the Public Accounts Committee. The relevant portion is—

‘By that time, i.e. November, 1960, the party had made imports of 8,297 tonnes of steel, valued at Rs. 95.08 lakhs and a balance of 149 tonnes worth Rs. 3.90 lakhs was only left. The Customs Clearance Permits were stopped at that time until the party entered into contract with HSL (which was done on 18-1-61).

It seems there was some misunderstanding regarding the word ‘import’. Pre-import licences for Rs. 98.98 lakhs were issued to M/s. Ramkrishan Kulwantrai in respect of contract No. 28 with Hindustan Steel Limited. It was decided not to issue any (Customs Clearance Permits) in this case after 25-10-60. After that date Rs. 26.94 lakhs worth of goods arrived, and CCPs were issued to clear these goods. As on November, 1960, the value of goods yet to be shipped was Rs. 3.90 lakhs. Hence, the two values Rs. 26.94 and Rs. 3.90 lakhs referred to two different aspects of utilisation of the same licence.

While on this question, reference may be made to the evidence given to the PAC whether CCPs were stopped when the mistake was noticed. While the evidence given by the Department of Iron & Steel to the PAC was that CCPs were stopped, in actual fact 12 CCPs were issued to M/s. Ramkrishan Kulwantrai in respect of semis barter contract No. 28 with the HSL and contract No. 14 with HSL during the months of November and December, 1960. Whether it was right to have issued CCPs is a question which has been gone into by the Sarkar Committee in paras 6.20 and 6.21 of the Report. The Committee have held that for the purpose of import, legally speaking, it was not incumbent for the licensee to take a CCP and

they have also said that it would not have been practically advisable to refuse the issue of CCPs, since the goods covered by the import licence were to arrive or had already arrived. Lastly, the Committee have said that no damage or loss was caused by the issue of CCPs."

(iii) In the majority Report of the Committee of Inquiry (Steel Transactions) (February 1968) it is stated *inter alia* as follows:—

"6.20. The facts are that on 26th October, 1960, when Shri S. C. Mukherjee, Deputy Steel Controller, discovered that pre-import licences had been issued inadvertently to Messrs Ramkrishan Kulwantrai without ensuring the existence of a contract by the party with Hindustan Steel Ltd. he passed orders that no further Customs Clearance Permits were issued to Messrs Ramkrishan Kulwantrai between 28th October, 1960 and 18th January, 1961.

6.21. The point, however, arises, to what extent the Customs Clearance Permits could have been refused and whether it would have been wise to do so. Under these circumstances, the Committee feel that although the officers in the S.I.C. Branch did not carry out the instructions of Shri S. C. Mukherjee, no damage or loss was caused by the issue of Customs Clearance Permits."

(iv) In his dissenting note attached to the majority Report of the Committee of Inquiry (Steel Transactions) (February, 1968), Shri P. C. Padhi, one of the members has stated *inter alia* as follows:—

"5.46. Shri Mukherjee was asked in the course of his examination by our Committee. . . .

III. 121. Q. How much of it (imports) was outstanding at the time?

A. In the PAC I had given the figure that the party had made imports of 8297 tons of steel valued at 95 lakhs and a balance of 149 tonnes worth Rs. 3.9 lakhs was only left.

* * * * *

5.48. . . . I have reason to think also that he (Shri S. C. Mukherjee) was deliberately understating the value of the material still to be cleared. The actual value of the imports brought in after 26th October, 1960, was Rs. 26,94,788 which included Rs. 9,55,532 on account of stainless steel. If he had taken steps to forfeit the bank guarantee and cancel the licence at the end of October,

1960 he could have saved nearly Rs. 27 lakhs of foreign exchange and realised Rs. 15,15,000 by way of guarantee money.....

5.49. If immediately after his lapse was first brought to his notice by an outsider, viz. Shri H. R. S. Rao, in August, 1960, Shri Mukherjee had taken steps to forfeit the guarantee bond, and cancelled the licences, he would have saved for Government total foreign exchange expenditure of nearly 90 lakhs (Rs. 89,94,605 to be precise) and recovered Rs. 15,15,000 by way of guarantee forfeiture. However, the fact is that he knew from the beginning that he was issuing import licences without there being an export contract."

III. Changes in the form of Bank-Guarantee Bond.

(i) The factual position on this issue, as stated in the minutes of the sitting of the Sub-Committee of the Public Accounts Committee held on the 9th and 10th March 1966 (which were laid on the Table of Lok Sabha on the 26th April, 1966) when, among others, Shri N. N. Wanchoo, then Secretary, Ministry of Iron and Steel and Shri S. C. Mukherjee, Deputy Iron and Steel Controller, were examined is as follows:

"He (Shri N. N. Wanchoo, the then Secretary, Ministry of Iron and Steel) further explained that although Government instructions were that the party should give an absolute guarantee to export, the Solicitors of the Steel Controller drafted the guarantee form in a qualified manner in that it provided that the party was obliged to export if the H.S.L. in its turn supplied the steel within a reasonable period."

* * * * *

"The bank-guarantee form laid down earlier by the Ministry (a copy of which was made available to the Sub-Committee) was revised by the Solicitor of the Steel Controller, after grant of pre-import licences against deals involving export of semis was decided upon. The revised form differed from the original one in many respects, e.g. it provided that the party would export within three months from the date of delivery of the materials by HSL, etc. Asked why did they refer the matter to the Solicitors, the Deputy Steel Controller stated that because of conditions laid down by the Ministry for pre-import licences, they

thought that the Solicitor should have a look at the guarantee form. He also stated that they did not experience any difficulty in enforcing the guarantee under the old form. The Secretary of the Ministry admitted that the revised form provided for a limited bank guarantee but that the main failure had been is not watching when the guarantee was expiring and taking timely action to renew the same."

* * * *

"...he (Shri N. N. Wanchoo, the then Secretary, Ministry of Iron and Steel) stated 'The Steel Controller, when he found that the Solicitor drafted the bank-guarantee in a form which did not entirely carry out the wishes of the Ministry, should have really brought this matter to the notice of the Ministry or taken up again with the Solicitor. There was undoubtedly failure on his part to do so.' He further added... 'it would have been better if they brought to our notice that the bank guarantee did not carry out the instructions in our letter²² dated 2-2-68'. The Sub-Committee asked if the desirability and necessity for this failure had been considered, the witness stated 'we will consider'."

(ii) Commenting on this issue, the Public Accounts Committee, in their 50th Report (Third Lok Sabha), observed as follows:—

"The Sub-Committee were informed during evidence that although the Ministry's letter of 2-2-1960 laid down that the party should furnish an absolute guarantee to export, the Solicitor of the Iron and Steel Controller (Government Solicitor) in drafting the guarantee form took the view that no bank would agree to such an absolute guarantee. He (Solicitor) worded the bank guarantee form²³ in a qualified manner in that condition of the guarantee was that 'the Iron and Steel Controller has agreed to enter into contract with the obliger (i.e. the party) for import ofon the undertaking of the obliger to export.....produced by M/s. Hindustan Steel Ltd. within 3 months from the date of delivery of the material, by M/s. Hindustan Steel Ltd.' Therefore, the actual form of the bank guarantee as drafted by the

22. See Appendix XVI.

23. See Appendix XVII.

Solicitor was quite different in all material respects from the intentions of the Government's letter."

* * * *

"Asked if there was any failure when old form was in use, the Deputy Iron and Steel Controller stated that there had been no failures. Asked why then they changed it and referred the matter to the Solicitor, he stated 'because of the Ministry's letter where some conditions were given for pre-imports, we thought that we should have a look at the form and we sent it to the Solicitor. He felt that this form is not suitable and he drafted a different form'."

"The Sub-Committee enquired if the Controller was not at fault in not insisting on bank guarantees in terms of Ministry's letter dated 2-2-1960, the Secretary stated that 'The Steel Controller, when he found that the Solicitor drafted the bank-guarantee in a form which did not entirely carry out the wishes of the Ministry should have really brought this matter to the notice of the Ministry or taken it up again with the Solicitor. There was undoubtedly failure on his part to do so. Quite often as laymen we issue instructions and lawyers draft them differently. I do not say that it was a grievous omission although it would have been better if he had brought it to our notice so that we could have either modified our instructions or acquiesced in that particular form of guarantee'."

This is yet another case where Iron and Steel Controller did not carry out the conditions laid down by the Ministry in their letter dated 2-2-1960 regarding furnishing of bank guarantee. The Iron and Steel Controller was responsible to the Ministry. If he felt any difficulty in getting guarantees in the form required, he should have placed the matter before the Ministry for their consideration. The Sub-Committee regret to note that this was not done. On the other hand he referred it to the Solicitor who drafted the guarantee form which was not in consonance with the intention of the Ministry.

The Sub-Committee fail to appreciate the attitude of the Government Solicitor who took upon himself obligation to advise that no bank would agree to such a bank-guarantee. Instead of drafting the document and embodying the intentions of the Government, he

went outside the scope of his duties and drafted a form which was least satisfactory.

The result has been that limited, conditional and qualified bank-guarantees were furnished by the parties and accepted by the Iron and Steel Controller, with attendant difficulties in enforcing the same. The Sub-Committee cannot help feeling that there was a serious lapse on the part of Iron and Steel Controller in taking guarantees in a form which did not carry out intentions of the Ministry."

(iii) In the Majority Report of the Committee of Inquiry (Steel Transactions) (February, 1968), it was stated *inter alia* on this issue as follows:—

"Were the bank guarantees intended to be absolute—In the letter²⁴ of the 2nd February 1960, it had been mentioned that 'it should be made clear to the exporter that the guarantee will be forfeitable in case of failure to earn the foreign exchange by export, whatever be the reasons therefore'. The addition of the words 'whatever may be the reasons therefor' in the letter issued on 2nd February, 1960 is something which does not find a place at all in the notings on the file. The words 'whatever be the reasons therefore' could include the failure on the part of the manufacturer to supply the goods. In this case, the Hindustan Steel Limited were to supply the semis. It will be remembered that one of the objectives of the scheme was to relieve the Hindustan Steel Limited of the stocks of semis which it apprehended would accumulate. It was not like the barter scheme involving export of manganese ore, mica or scrap where it was possible for and expected if the barterers to procure the item and the quantity required, to fulfil the terms of the proposal for barter, from wherever they could. In the case of semis the object was to secure the material to be exported from Hindustan Steel Limited and to give them relief to that extent. Hence if the meaning of the words 'whatever be the reasons therefor' is construed to include what has been stated above, then in the event of Hindustan Steel Limited failing to manufacture and supply as per terms of the contract, such failure might not prevent the forfeiture of the bank guarantee. Shri Bhoothalingam—Shri Bam, Shri N. C. Deb, Shri S. C. Mukherjee and Shri Wanchoo were all asked on this question and they were

24. See Appendix XVI.

of the uniform opinion that the words 'whatever be the reasons therefor', could not be said to include the failure on the part of the Hindustan Steel Limited to supply. They, however, agreed that, apart from this one contingency, if the barterer were to fail to export, he would certainly be liable to forfeiture of his bank guarantee. In our view any other interpretation of these words would in the circumstances of this case, be unreasonable and we would not be prepared to accept any such meaning being attached."

* * * * *

"Form of the Bank Guarantee employed:—

... a copy of the letter of 2nd February, 1960, and the original bank guarantee submitted by Amin Chand Pyare Lal in another case, and other forms of bank guarantees in force in other categories of cases, and also performance bonds, were sent by the Department of Iron and Steel to the Solicitor, Shri S. N. Sen, asking him to draft one in terms of the letter of 2nd February, 1960. The Solicitor, Shri S. N. Sen discussed with Shri S. C. Mukherjee and he drafted a bank guarantee form.²⁵ This form was in consonance with the conditions stipulated in the letter of 2nd February, 1960, making the guarantee forfeitable if there was a failure to earn foreign exchange irrespective of reasons, The Solicitor, Shri S. N. Sen, when he appeared before the Committee, stated that he did not remember having told anyone that no bank would give an absolute guarantee as appears to have been the impression given to the Public Accounts Committee, but by whom is not clear. Shri Mukherjee, however, made a change in the bank guarantee drafted by the Solicitor, namely, that, instead of the words 'within—from the date of these present' within which period according to Mr. Sen's draft, the semis were to be exported, he put the words 'within three months of the delivery of the materials by the Hindustan Steel Limited'. In the form in which the Solicitor drafted, it might be that the condition stipulated in the letter of 2nd February, 1960 (that whatever be the reasons for the failure to earn foreign exchange the bank guarantee was forfeitable) was attracted. However, if all the circumstances connected with the furnishing of

²⁵ See Appendix XVIII.

the bank guarantee were taken into consideration, it would be difficult to say whether the condition imported by the words used by the Solicitor would have been enforced as an absolute condition. Shri Bhoothalingam, during examination stated that at the time that this matter leading to the issue of the letter of 2nd February, 1960 was considered, he did not specifically think of the point whether the condition of forfeiture should be absolute. He, however, said that such a condition would have been unreasonable. Shri Wanchoo also took the same view. By changing it in the manner in which Shri Mukherjee had done—providing for the export being made within a certain time of supply by Hindustan Steel Ltd., the bank guarantee was made workable and easily enforceable. However, care should have been taken in the actual execution of the bank guarantee to have it drawn up in terms of the agreed deliveries in the contract between the barterer and the Hindustan Steel Limited, so as to ensure that the 'three months' was from the last delivery date mentioned in the contract between the barterer and the Hindustan Steel Limited. Care should also have been taken to ensure that the period of validity of the bank guarantee was for a sufficiently longer period beyond the last date for export so as to enable follow-up action."

(iv) In his dissenting Report attached to the Majority Report of the Committee of Inquiry (Steel Transactions) (February, 1968), Shri P. C. Padhi, one of the Members of the Committee, has, on the "Form of Bank-Guarantee Bond", stated *inter alia* as follows:

"One of the conditions for the grant of a pre-import licence was that if a barterer was unable to furnish an irrevocable letter of credit for the entire quantity of export, he should be required to furnish a banker's guarantee to the extent of 15 per cent of the value of the import licence. It was to be made clear to the barterer that the guarantee was forfeitable in case of failure on his part to earn foreign exchange by export whatever be the reason therefor.²⁶

In some of the semi barter cases, the firms failed to earn the foreign exchange spent on pre-imports; but in no case the bank guarantee forfeited. The failure to invoke the bank guarantee was undoubtedly, in part at least, due to

26. See Appendix XVI.

a realisation that in the form in which the bank guarantee was taken, it was of no avail.

How the Guarantee Bond was evolved:—It has been stated that the bank guarantee form was drafted by Shri S. N. Sen, the Central Government Solicitor at Calcutta. Shri S. C. Mukherjee sent to the Solicitor a note dated 9th March, 1960 in which he sought advice on the form of the bank guarantee. In the said note Shri Mukherjee had indicated to the Solicitor the purpose which the guarantee bond was to fulfil in the terms mentioned in the Ministry's letter of 2nd February, 1960. The records show that Shri S. N. Sen prepared a draft of the guarantee form²⁷ and sent it to Shri Mukherjee with a note dated 26th March, 1960. Thereupon, Shri S. C. Mukherjee put up the form to the Controller with the following note:—

'Controller and P&AO may please see. We may ask all firms who have already been granted I/L and furnished bank guarantee in the old form to replace them by the one drawn up by the Solicitor.'

Sd/- S. C. MUKHERJEE
2-4-60

Shri Bam put his signature below this on 4th April, 1960 signifying his approval.

It appears that when the matter was being investigated by the Public Accounts Committee, Shri Mukherjee claimed that all he did was to adopt the form of the bank guarantee that was suggested by the Central Government Solicitor and that, not being himself a lawyer, he did not examine the form to see whether it did fulfil the requirements laid down in the letter dated 2nd February, 1960.

Substantial changes in the form:—Our Committee's investigation has revealed that Shri Mukherjee had not only made vital and far-reaching changes in the form after it was received from the Solicitor but had accepted guarantee bonds in which the banks had given themselves the liberty of limiting their liability to short periods which was not contemplated by the Solicitor's form. According to Shri S. N. Sen's evidence, the contingency on the happening of which the amount guaranteed by the bond

²⁷See Appendix XVIII.

was forfeitable was stated as follows in the form prepared by him:

'the condition of the above written bond is such that if the Obliger shall fail to secure foreign purchaser for and arrange export out of India of (1) tons of (2) produced by Hindustan Steel Limited within..... (3) months from the date of these presents or such further time as the Government may agree to allow to the Obliger.....'

* * * * *

....according to Shri S. N. Sen (Central Government Solicitor, Calcutta), the requirement of the Ministry's letter (viz., that the guarantee should be forfeitable on failure to export 'whatever be the reasons therefor') completely met by his form. Shri S. N. Sen said that in the form which he had drafted there was no provision for the bank limiting its liability by saying 'valid upto.....' Such a limitation was not contemplated by him.

The note of Shri Mukherjee with which he put up the form drafted by the Solicitor for the information and approval of the Controller did not mention that he (Shri Mukherjee) had made any alterations in it. Actually, Shri Mukherjee filled up the blank space marked '(3)' above with the word 'three' and he changed the words underlined above (viz., 'months from the date of these presents') into 'months from the date of delivery by Hindustan Steel Limited'. He made these alterations without consulting the Solicitor or anybody else."

* * * * *

"Shri Mukherjee maintained (during his oral evidence before the Sarkar Committee) that the form which he adopted on the advice of the Solicitor fulfilled the conditions laid down by Government."

* * * * *

"It is clear (from the oral evidence of Shri S. C. Mukherjee before them) that Shri Mukherjee tried in the beginning to suppress the fact that it was he who changed the form of the bank guarantee" and make it practically useless.

²² See Appendix XVII.

The question now remains to be considered whether he made these vital alterations with a full knowledge of their implications or just carelessly. Knowing that we were, at the time we examined him, handicapped by want of knowledge as to his precise contribution to the guarantee bond, it was unfortunate that an attempt should have been made to mislead the Committee by saying that it was the Solicitor who had put in the words 'months from the date of delivery', whereas in point of fact it was Shri Mukherjee who changed the words 'from the date of these presents' to 'from the date of delivery by HSL'. From the fact that an attempt was made to mislead us on this point, I conclude that he knew the significance of what he had done.

There is another circumstance which conclusively establishes Shri Mukherjee's awareness of the implications of what he had done. In the case of pre-import licences issued to M|s. Ramkrishan Kulwant Rai on 10th June, 1960, Shri Mukherjee was aware that the firm had no export contract with HSL. In that connection Shri Mukherjee had recorded a note on the 28th October, 1960, as follows:—

'In the Bank Guarantee which the firm has furnished they have clearly given an undertaking to export materials and we can easily forfeit their Bank Guarantee for their failure to export the materials for whatever reasons there may be.'"

* * * * *

"This clearly proves that Shri Mukherjee was aware that where the bank guarantee was linked with the date of delivery by HSL it would not be possible to enforce it without reference to facts or disputes about delivery. In other words, his deliberate action in introducing reference to the date of delivery in the standard form was made only with the idea of defeating bank guarantee.

There is another document which conclusively establishes Shri Mukherjee's awareness of the effect of what he had done to the bank guarantee form. In a letter, D.O. No. C|Progress|(96)|60, dated 18th July, 1960 to the address of Shri Bhoothalingam (drafted by Shri Mukherjee and signed by Shri Bam) he referred to the serious situation

that may arise if deliveries are long delayed in cases where pre-import licences had been issued. The following is an extract of the relevant portion of the letter:—

‘This might create a very serious situation as we have, in many cases, permitted the firms to import steel, before export, against 15 per cent bank guarantee. Although the form of the Bank Guarantee (copy enclosed) has been so drafted by us in consultation with the Solicitor to the Central Government at Calcutta that the parties cannot go back on their commitment for export simply on the plea that supplies have been delayed by Hindustan Steel, we may find it difficult to force them to export the materials, particularly in cases where the prices of exportable goods go down considerably.’

From the Ministry's file in which this letter is recorded, it is seen that the copy of the guarantee bond was not actually sent along with this letter but the letter clearly shows that Shri Mukherjee knew that a guarantee bond, if it was to be useful must not have reference to date of delivery. And it is in respect of this vital aspect that he made the change in the Solicitor's form, without anybody's knowledge. In the letter above, he was no doubt giving assurances that everything was all right although he knew that the guarantee bond form as changed by him was very far from being all right.

There is another serious matter, namely, that when this question was being enquired into by the Public Accounts Committee, Shri Mukherjee allowed it to be understood that the form of the bank guarantee that was being used by him was the one that was suggested by the Solicitor. He allowed it to be understood that the defect lay more in the failure to watch renewal of bank guarantee than in the form itself. This had the effect of diverting attention to the question of failure to watch renewals etc. He did not even disclose the fact that the Government Solicitor's form did not contemplate that the bank should be permitted to limit its liability by reference to a dead line and without reference to the reasonable needs of the particular undertaking the fulfilment of which was to be guaranteed... Shri S. C. Mukherjee's assertion that banks would not give guarantees with longer period of validity has no basis. The Committee had seen bank guarantees

given to other Departments by the State Bank of India which were valid for as long as three years from the date of the bond.

It seems, therefore, that Shri Mukherjee should be held responsible:

- (a) for having made very vital alterations in the form of guarantee with the awareness that by so doing he was protecting not the interest of Government but conferring practically complete immunity on the firms;
- (b) for having misled Shri Wanchoo, while he was giving evidence before the Public Accounts Committee, to believe that no alterations had been made in the Solicitor's draft;
- (c) for having in the beginning also tried to mislead our own Committee; and
- (d) for effectively depriving the Government of the protection or safeguard which the bank guarantee was intended to provide, by
 - (i) allowing banks to limit the duration of their liability to short periods, usually six months or less; and
 - (ii) by making the enforcement of the bank guarantee dependent on settlements of disputes concerning dates of effective delivery which may embrace such diverse topics as quantity offered for delivery, quality of the material offered for delivery *vis-a-vis* contract specifications, legal date of delivery, when is delivery complete, modus and points of delivery, and so forth."

19. Pursuant to a decision taken by the Committee of Privileges on the 16th July, 1969, the Chairman of the Public Accounts Committee was addressed by the then Chairman of the Committee of Privileges for the views of the Public Accounts Committee on the question whether any false evidence was given before the Public Accounts Committee as alleged by Shri Limaye, and if so, by whom and in what respect. The Public Accounts Committee decided to remit this matter for detailed examination by a Sub-Committee of that Committee. The said Sub-Committee examined Sarvashri N. N. Wanchoo and S. C. Mukherjee at their sitting held on the 22nd October, 1969 and submitted their Report to the Public Accounts Committee.

20. The Public Accounts Committee approved the report of the Sub-Committee, referred to in para 19 above, on the 26th March, 1970 and a copy of the said Report was furnished by the Chairman, Public Accounts Committee, to the Chairman, Committee of Privileges.

21. The said Report of the Public Accounts Committee evidence given by Sarvashri N. N. Wanchoo and S. C. Mukherjee at their sitting held on the 22nd October, 1969 and extracts of written notes furnished by Shri N. N. Wanchoo to the said Sub-Committee are reproduced in Appendices XIX to XXI, respectively.

III. Findings of the Committee

22. In their Report furnished to the Chairman of the Committee of Privileges, the Public Accounts Committee have examined in detail the following three issues raised by Shri Madhu Limaye, M.P.:—

- (i) "That Shri N. N. Wanchoo, the then Secretary, Ministry of Steel and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller 'gave false evidence' before the P.A.C. by not apprising the Committee of the existence of certain instructions issued by the Department of Steel about the conditions on which pre-import licences could be issued under barter deals."
- (ii) "That in regard to a barter deal involving M/s. Ram Krishan Kulwant Rai, where the import licences were issued by mistake even though there was no export contract, Mr. Mukherjee gave 'misleading' evidence before the Committee by telling them that the mistake came to notice sometimes in November and that the bulk of the imports had taken place by that time. Subsequently, in certain notes, which were submitted to the Committee, Shri N. P. Mathur, the then Joint Secretary, Shri T. Swaminathan, the then Secretary, Department of Steel and Shri S. Sahay, the then Iron and Steel Controller also failed to place the full facts in this regard, before the Committee."
- (iii) "That in regard to guarantee bonds to be taken from firms which undertook barter deals, the P. A. C. was incorrectly informed during evidence that the Central Government's Solicitor at Calcutta took the view that these bonds could not be made absolute and drafted them in a conditional manner."

23. The findings of the Public Accounts Committee in respect of the above-mentioned three issues are as follows:—

- (i) Omission to bring to the notice of the Public Accounts Committee certain instructions issued by the Ministry of Steel, Mines and Fuel about the conditions on which pre-import licences could be issued under barter deals.

"1. 15. There was an omission on the part of Shri Wanchoo to bring to the notice of the Public Accounts Committee certain instructions issued by the Ministry of Steel, Mines and Fuel in March, 1960 about the conditions on which pre-import licences could be issued under barter deals. The Committee cannot, however, from this conclude that Shri Wanchoo had intended to mislead the P. A. C. The following considerations have weighed with the Committee in taking this view:

- (i) Shri Wanchoo was not the Secretary of the Ministry of Steel at the time these instructions were issued. He could, therefore, have been genuinely unaware of these instructions.
- (ii) Evidence on the subject was taken by the PAC in March, 1966, i.e., six years after instructions were issued. Shri Wanchoo tendered evidence with the aid of a brief prepared by his departmental officers. The brief itself had been prepared on the basis of a questionnaire given to the Department by the P.A.C., which did not touch on this aspect of the transactions specifically. The files on the subject were numerous and even if it had been possible for Shri Wanchoo to have gone through them himself before coming to give evidence, he still might not have recalled a matter of detail of this nature, though the Committee regret that Shri Wanchoo did not, on his own admission, read through all the files.
- (iii) The omission to bring these instructions to the notice of the P.A.C. led to the Committee censuring the Ministry for its "failure" in this respect. Had the Committee been apprised of the existence of these instructions, the Ministry's position in this regard would have been vindicated. Shri Wanchoo, as the then Secretary of the Ministry, had every reason to bring these instructions to the notice of the Committee if he had been aware of them. It does not therefore seem reasonable to suppose that he suppressed them deliberately.

- (iv) The omission to bring this matter to the notice of the Committee was noticed by Shri Wanchoo himself after the evidence was tendered and in an Action Taken Note on para 4.35 to the Fiftieth Report, which was sent to the P.A.C. on 19th July, 1966, the Ministry rectified the omission.

1.16. The other question is whether Shri S. C. Mukherjee was responsible for misleading the PAC on this point. As the Committee have stated earlier, Shri Mukherjee did not tender evidence on this point before the PAC. He did aid in preparing a brief for Shri Wanchoo but he was not sole author of the brief. In any case, the brief as such was not placed before the PAC, it was an internal document of the Ministry prepared for the Secretary's facility. Though Shri S. C. Mukherjee could have, if he had been alert, corrected Shri Wanchoo when he was giving evidence before the Public Accounts Committee, the Committee cannot bring home to Shri S. C. Mukherjee any direct responsibility for the PAC having been misled on this point."

- (ii) *Issue of pre-import licence in the absence of an export contract*

"1.24. On the basis of the available evidence, the Committee find it difficult to conclude that the mistake in issue of import licence came to the notice of the Iron and Steel Controller's Organisation earlier than 25th October, 1960. So far as the Ministry of Steel, Mines and Fuel is concerned, the facts that could be ascertained indicate that the mistake was reported to the Ministry by the Iron and Steel Controller in November, 1960, first orally and then through a written communication.

1.25. It is possible to take the view that the Assistant Sales Manager of Hindustan Steel Ltd. brought the mistake to the notice of the Deputy Iron and Steel Controller (Shri S. C. Mukherjee) sometime in August, 1960 itself. However, this view can be sustained only on the assumption that a telephonic conversation that took place between these two officers sometime prior to 26th August, 1960 related to this particular transaction. Documentary confirmation of this conversation, which is available in a letter dated 26th August, 1960 sent by the Hindustan Steel Ltd. to the Deputy Iron and Steel Controller, does not, however, unambiguously indicate the exact subject matter that was discussed over the telephone. The letter referred to "supply of 5,000 tons of slabs to M[s. Ramkrishan Kulwantrai against our (Hindustan Steel's) original offer of 20,000 tons of slabs to the party" and proceeded to say that "we have so far sold only 5,000 tons of slabs to the party.....' Now, amongst the export contracts of M[s. Ram-

Krishan Kulwant Rai, which were approved under the barter scheme, there were two contracts, one, contract No. 14 for export of 5,000 tons of slabs against which import licence was issued on 15th June, 1960, and another, contract No. 28 for export of 22,137 tons of slabs and 9,161 tons of ingots, against which import licence was issued on 7th June, 1960. The reference in Hindustan Steel's letter to sale of 5,000 tons could well be construed to be a reference to contract No. 14 instead of contract No. 28 (which was the transaction on which evidence was taken by the PAC).

1.26. Another point bearing on this issue is also worth mentioning as it has been raised in Shri P. C. Padhi's minute of dissent to the report of the Committee of Inquiry. In February, 1961, the Assistant Sales Manager, Hindustan Steel wrote a letter to his head office at Ranchi in which he was categorical that he had brought the mistake in issue of import licence against contract No. 28 to the notice of the Deputy Iron and Steel Controller, when he spoke to him over the phone. This, no doubt, makes the position unambiguous, but this communication, besides having issued six months after the telephonic conversation, was not addressed or endorsed to the party with whom the conversation took place. In the circumstances its utility as a piece of evidence to be relied on is limited.

1.27. For the foregoing reasons the Committee are inclined to give the benefit of doubt to Shri S. C. Mukherjee and cannot hold that he misled the P.A.C. in regard to the date on which the mistake in issue of import licence came to his notice. So far as Shri N. N. Wanchoo is concerned, he spoke for the Ministry of Steel, Mines and Fuel, and, as has been stated by the Committee earlier, the mistake came to the notice of the Ministry only in November, 1960. The question of his having misled the P.A.C. does not, therefore, arise.

1.28. Shri Madhu Limaye's motion on the question of evidence given to the Public Accounts Committee regarding the date on which the mistake came to notice mentions three other officers—Shri T. S. Swaminathan, formerly Secretary, Ministry of Steel; Shri S. Sahay, Iron and Steel Controller and Shri N. P. Mathur, Joint Secretary Ministry of Steel. Notes signed by these officials submitted to the Public Accounts Committee which appear in Part II (Appendices) of the Fifty-Sixth Report of the Public Accounts Committee (Third Lok Sabha) dealt with the question of the date on which the mistake came to notice. Shri Mathur's note, which appears at pages 9—12 of the Fifty-Sixth Report mentions that 'the import licence in this case was issued on 5th May, 1960 and the mistake came to light in November, 1960' and then proceeds to explain what action the Secretary o'

the Ministry thereafter took. Shri T. Swaminathan's note, which appears at pages 14 to 16 of the Fifty-Sixth Report says that 'the mistake was pointed out to the Iron and Steel Controller by Hindustan Steel on 25th October, 1960, and Shri S. Sahay's note at pages 33—37 *ibid* also indicated the same position.

1.29. The foregoing section would indicate that the mistake in issue of import came to the notice of the Iron and Steel Controller's Organisation in October, 1960 and to the notice of the Ministry of Steel, Mines and Fuel in November, 1960. In view of this, the question of the other officers named in this section having misled the Public Accounts Committee by furnishing wrong information about the date will not arise.

1.30. One point that arises at this stage is the clash between the dates mentioned in the evidence and notes. The evidence and notes refer to 25th October, 1960 as well as some time in November, 1960 as the date on which the mistake came to light. A closer analysis would indicate that 25th October, was the date on which the Hindustan Steel Limited brought the mistake to the notice of the Iron and Steel Controller, while it was in November that the Iron and Steel Controller brought the matter to the notice of the Ministry of Steel. In view of this, there appears to be no inconsistency on this point.

1.38. The Committee observe that there was a factual inaccuracy in the statement given to the PAC about the quantum and value of imports made by the party in this case after the mistake in issue of import licence came to notice in November, 1960. The Public Accounts Committee were informed that 149 tonnes of sheets valued at Rs. 3.9 lakhs were imported by the party after the mistake came to notice. In point of fact, about 1937 tonnes valued at Rs. 26.94 lakhs were cleared by the party against customs clearance permits which were issued in or after November, 1960.

1.39. The question is whether this amounted to a substantial misrepresentation of the position. The word 'import' has been defined in Section 2 (23) of the Customs Act, 1962 as 'bringing into India from a place outside India'. On this view of the position, it could possibly be concluded that there was a misrepresentation of the position, as the party had as in November, 1960, yet to bring 'into India' goods valued at Rs. 26.94 lakhs. However, this has to be weighed against the implications of the legal opinion adverted to by the Committee of Inquiry that 'when there is an import licence, it is not necessary to obtain a customs clearance permit.' Effectively, this would imply that, as the party had, as in November 1960, arranged for shipment

from abroad of all but goods worth Rs. 3·9 lakhs, Government could not have stopped their import by denying Customs Clearance Permits. In other words, all that Government could have done when the mistake came to their notice was to have stopped imports valued at Rs. 3·9 lakhs by cancelling their import licence or taking some such other step. For this reason the Committee are inclined to take the view that the evidence given before the Public Accounts Committee, did not tantamount to misleading the Committee, though the witness should have informed the Committee that goods valued at Rs. 26·94 lakhs were still to come into the country in November, 1960, when the mistake came to notice."

(iii) *Changes in Bank Guarantee Form*

"1.44. It is evident that a material change in the form of the bank guarantee was made by Shri Mukherjee and not by the Government Solicitor. There was, therefore, misrepresentation of the position to this extent when evidence was tendered before the Public Accounts Committee in March, 1966. This was unfortunate as it led the Committee passing strictures against the Government Solicitor, which it would not have done, had it been apprised of the correct position.

Evidence on this point was tendered by Shri N. N. Wanchoo as well as Shri S. C. Mukherjee, but the Committee feel that, as the author of the changes that were made in the bank guarantee form, it was Shri Mukherjee's responsibility to have apprised the Public Accounts Committee of the correct position and to have correctly briefed Shri Wanchoo, particularly as the changed form of the bank guarantee had not been shown to the Ministry at any stage before evidence was given on this point. In fact, Shri P. C. Padhi in his minute of dissent to the Report of the Committee of Inquiry has found Shri Mukherjee responsible for having misled Shri Wanchoo, while he was giving evidence before the Public Accounts Committee to believe that no alterations had been made in the Solicitor's draft. On the other hand, the majority of the Committee of Inquiry have pointed out that 'by changing it (the bank guarantee form) in the way in which Shri Mukherjee had done, the bank guarantee was made workable and easily enforceable.'

1.45. The Committee however, cannot but come to the conclusion that Shri S. C. Mukherjee did not correctly present the facts to the Public Accounts Committee on the question of changes made in the bank guarantee form."

CONCLUSIONS

24. After a careful consideration of the documents made available to the Committee and the oral as well as written evidence given by Sarvashri N. N. Wanchoo and S. C. Mukherjee before the Sub-Committee of the Public Accounts Committee, the Committee fully agree with the findings and observations of the Public Accounts Committee contained in their Report²⁹ on the matter, furnished to the Chairman of the Committee of Privileges. The conclusions of the Committee on the specific issues raised by Shri Madhu Limaye, M. P., are given in the succeeding paragraphs.

While arriving at their conclusions, the Committee observed that full and adequate opportunity had already been given to Sarvashri N. N. Wanchoo and S. C. Mukherjee to explain their position in the matter, both orally and in writing, before the Sub-Committee of the Public Accounts Committee which had investigated the matter in detail. The Committee did not, therefore, consider it necessary to ask them to appear before the Committee for further oral examination or to submit any further written statement to the Committee.

25. Omission to bring to the notice of the Public Accounts Committee certain instructions issued by the Ministry of Steel, Mines and Fuel about the conditions on which pre-import licences could be issued under barter deals.

The Committee agree with the findings of the Public Accounts Committee that although "there was an omission on the part of Shri Wanchoo to bring to the notice of the Public Accounts Committee during his evidence before the Committee on the 10th March, 1966, certain instructions issued by the Ministry of Steel, Mines and Fuel in March, 1960, about the conditions on which pre-import licences could be issued under barter deals". yet it cannot be concluded that "Shri Wanchoo had intended to mislead the Public Accounts Committee", in view of the circumstances of the case stated in the Report of the Public Accounts Committee in this respect.

The Committee also agree with the Public Accounts Committee that as Shri S. C. Mukherjee had not himself given evidence on this point before the Public Accounts Committee, Shri S. C. Mukherjee cannot be held directly responsible for the Public Accounts Committee having been misled on this point, although he could have, "if he had been alert, corrected Shri Wanchoo when he was giving evidence before the Public Accounts Committee".

²⁹ See Appendix XIX.

The Committee are, therefore, of the view that no further action is called for in so far as this aspect of the matter is concerned.

26. Issue of pre-import licence in the absence of an export contract

As regards the question of misleading the Public Accounts Committee by Sarvashri N. N. Wanchoo and S. C. Mukherjee during their evidence on the 10th March and 19th August, 1966, before that Committee, about the date on which the mistake in issuing five pre-import licences in June, 1960, in favour of M/s. Ram Krishan Kulwant-rai, under a barter transaction (contract No. 28), in the absence of an export contract, came to the notice of the Deputy Iron and Steel Controller (Shri S. C. Mukherjee) and the Ministry of Steel, Mines and Fuel, the Committee agree with the finding of the Public Accounts Committee that in the circumstances of the case, Shri S. C. Mukherjee should be given the benefit of doubt and that, it cannot, therefore, be held that Shri S. C. Mukherjee misled the Public Accounts Committee in regard to the date on which the mistake came to his notice. The question of Shri N. N. Wanchoo having misled the Public Accounts Committee in regard to the date on which the mistake came to the notice of the Ministry of Steel, Mines and Fuel, and the question of the other three officers, namely, Shri T. Swaminathan, formerly Secretary, Ministry of Steel, Shri S. Sahay, Iron and Steel Controller and Shri N. P. Mathur, Joint Secretary, Ministry of Steel, having misled the Public Accounts Committee on this point, does not arise, as concluded by the Public Accounts Committee.

As regards the question whether the Public Accounts Committee was misled about the quantum and value of imports which had taken place by the time the mistake in issuing the pre-import licence in the absence of an export contract came to notice, the Committee agree with the view of the Public Accounts Committee that though "there was a factual inaccuracy in the statement given to the P.A.C. about the quantum and value of imports made by the party in this case after the mistake in issue of import licence came to the notice in November, 1960", and the witness (Shri S. C. Mukherjee) "should have informed the Committee that goods valued at Rs. 26.94 lakhs were still to come into the country in November, 1960, when the mistake came to notice", but this "did not tantamount to misleading the Committee", in view of the reasons given by the Public Accounts Committee.

The Committee are accordingly, of the opinion that no further action is called for in the matter on this issue.

27. *Changes in Bank Guarantee Form*

The Committee agree with the finding of the Public Accounts Committee that "a material change in the form of the bank guarantee was made by Shri Mukherjee and not by the Government Solicitor", and that, therefore, a "misrepresentation of the position to this extent" was made by Shri S. C. Mukherjee when he gave evidence before the Public Accounts Committee in March, 1966.

The Committee have, accordingly, reached the conclusion that Shri S. C. Mukherjee did not correctly present the facts to the Public Accounts Committee during the course of his oral evidence on the question of changes made in the bank guarantee form. The Committee are, therefore, of the opinion that Shri S. C. Mukherjee has committed a breach of privilege and contempt of the House by misrepresenting the position in the matter and thereby misleading the Public Accounts Committee. The fact that such contempt has been committed by a responsible public servant of Shri S. C. Mukherjee's position, has increased the gravity of the offence.

The Committee do not, however, consider that Shri N. N. Wanchoo, who had also given evidence on this point before the Public Accounts Committee, can be held responsible for misleading the Public Accounts Committee, in view of the reasons stated by the Public Accounts Committee.

IV. **Recommendations**

28. The Committee are of the view that Shri S. C. Mukherjee deserves to be censured for the contempt of the House committed by him in misleading the Public Accounts Committee in the matter of changes made in the bank guarantee form.

The Committee, however, feel that the requirements of the case would be fulfilled if the disapproval and displeasure of the House in respect of the contempt of the House committed by Shri S. C. Mukherjee is conveyed to him (Shri S. C. Mukherjee) and also to the Government of India for such disciplinary action against him as they deem fit.

R. D. BHANDARE.

Chairman,

Committee of Privileges.

Dated the 12th November, 1970.

MINUTES

I

First Sitting

New Delhi, Wednesday, the 7th May, 1969

The Committee sat from 16.00 to 16.40 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

2. Shri N. C. Chatterjee
3. Shri Surendranath Dwivedy
4. Shri Shri Chand Goyal
5. Shri Hem Raj
6. Shri Thandavan Kiruttinan
7. Shri Raja Venkatappa Naik
8. Shri G. L. Nanda
9. Shri K. Narayana Rao.

SECRETARIAT

Shri J. R. Kapur—*Under Secretary.*

* * * *

5. The Committee decided to take up for consideration at their next sitting the question of privilege raised by Shri Madhu Limaye, M.P., in the House on the 6th March, 1969 and referred to the Committee by the House against Shri N. N. Wanchoo, former Secretary, Department of Iron and Steel, and others for allegedly giving false evidence before the Public Accounts Committee.

* * * *

The Committee then adjourned.

*Paragraphs 2, 3, 4 and 6 relate to other cases and have accordingly, been omitted.

Second Sitting*New Delhi, Wednesday, the 16th July, 1969*

The Committee sat from 10.30 to 12.15 hours.

PRESENTShri R. K. Khadilkar—*Chairman.***MEMBERS**

2. Shri N. C. Chatterjee
3. Shri Surendranath Dwivedy
4. Shri Shri Chand Goyal
5. Shri Hem Raj
6. Shri Thandavan Kiruttinan
7. Shri H. N. Mukerjee
8. Shri Raja Venkatappa Naik
9. Chaudhuri Randhir Singh

SECRETARIATShri B. K. Mukherjee—*Deputy Secretary.*Shri J. R. Kapur—*Under Secretary.*

* * * *

5. The Committee held a general discussion on the question of privilege raised by Shri Madhu Limaye, M.P. against Shri N. N. Wanchoo, former Secretary, Department of Iron and Steel & others for allegedly giving false evidence before the Public Accounts Committee. The Committee decided that in this matter the assistance of the Public Accounts Committee might sought to ascertain their views whether any false evidence was given before that Committee in the matter and, if so, by whom and in what respect. The Committee authorised the Chairman to address a letter on the subject to the Chairman of the Public Accounts Committee.

* * * *

The Committee then adjourned.

*Paragraphs 2 to 4 relate to other cases and have accordingly, been omitted.

III

Third Sitting

New Delhi, Thursday, the 17th July, 1969

The Committee sat from 11.30 to 12.15 hours

PRESENT

Shri R. K. Khadilkar—*Chairman*

MEMBERS

2. Shri N. C. Chatterjee
3. Shri Surendranath Dwivedy
4. Shri Hem Raj
5. Shri Thandavan Kiruttinan
6. Shri H. N. Mukerjee
7. Shri Raja Venkatappa Naik
8. Shri P. Ramamurti
9. Chaudhuri Randhir Singh

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

* * * *

2. The Committee approved the letter to be addressed by the Chairman to the Chairman of the Public Accounts Committee seeking that Committee's assistance and views on the question whether any false evidence was given before the Public Accounts Committee, as alleged by Shri Madhu Limaye and, if so, by whom and in what respect.

* * * *

The Committee then adjourned.

IV

Fourth Sitting

New Delhi, Monday, the 27th April, 1970

The Committee sat from 16.00 to 17.15 hours.

PRESENT

Shri G. G. Swell—*Chairman*

*Paragraph 3 relates to another case and has, accordingly, been omitted.

MEMBERS

2. Shri Rajendranath Barua
3. Shri Surendranath Dwivedy
4. Shri Hem Raj
5. Shri Thandavan Kiruttinan
6. Shri H. N. Mukerjee
7. Shri Raja Venkatappa Naik

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

2. The Committee took up further consideration of the question of privilege raised by Shri Madhu Limaye, M.P., in the House on the 6th March, 1969, against certain officers of the Department of Iron and Steel, for allegedly giving false evidence before the Committee on Public Accounts.

In this connection, the Committee noted the findings of the Public Accounts Committee contained in their Report, sent to the Chairman of the Committee of Privileges by the Chairman of the Public Accounts Committee in response to the former's letter dated the 17th July, 1969, requesting for the "views of the Public Accounts Committee on the question whether any false evidence was given before the Public Accounts Committee, as alleged by Shri Madhu Limaye, and, if so, by whom and in what respect."

3. The Committee deliberated on the matter and directed that the evidence, both written and oral, given before the Sub-Committee of the Public Accounts Committee, on the 22nd October, 1969, by Shri N. N. Wanchoo, the then Secretary, Department of Iron and Steel and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, be circulated to the members of the Committee of Privileges, together with the questionnaire which was sent to those officers in advance of their oral examination by the Sub-Committee of the Public Accounts Committee. The Committee also desired that copies of the 50th and 56th Reports of the Public Accounts Committee relating to these matters as also the Sarkar Committee Report on Steel Transactions be circulated to the members of the Committee of Privileges.

4. The Committee decided to examine in person Shri N. N. Wanchoo, the then Secretary, Department of Iron and Steel, Shri S. C.

Mukherjee, the then Deputy Iron and Steel Controller and Shri H. R. S. Rao, the then Assistant Sales Manager, Hindustan Steel Limited, at their sitting to be held some time in the last week of June or first week of July, 1970.

The Committee then adjourned.

V

Fifth Sitting

New Delhi, Tuesday, the 5th May, 1970.

The Committee sat from 16.00 to 17.15 hours.

PRESENT

Shri Nitiraj Singh Chaudhary—*Chairman.*

MEMBERS

2. Shri R. D. Bhandare
3. Shri N. C. Chatterjee
4. Shri P. Govinda Menon
5. Shri Raja Venkatappa Naik
6. Shri K. Raghuramaiah
7. Shri A. K. Sen

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

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5. The Committee decided to meet again on **Wednesday the 13th** May, 1970, at 16.00 hours, to consider the following matters:—

Question of privilege raised by Shri Madhu Limaye, M.P., against Shri N. N. Wanchoo, former Secretary, Department of Iron and Steel, and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, and certain other officers for **allegedly giving false evidence** before the Public Accounts Committee.

The Committee then adjourned.

*****Paragraphs 2, 3, 4 and a portion of paragraph 5 relate to other cases and have accordingly been omitted

VI

Sixth Sitting*New Delhi, Wednesday, the 13th May, 1970.*

The Committee sat from 16.00 to 16.25 hours.

PRESENTShri Nitiraj Singh Chaudhary—*Chairman.***MEMBERS**

2. Shri R. D. Bhandare
3. Shri N. C. Chatterjee
4. Shri P. Govinda Menon
5. Shri K. Raghuramaiah
6. Shri A. K. Sen

SECRETARIATShri B. K. Mukherjee—*Deputy Secretary.*Shri J. R. Kapur—*Under Secretary.*

* * * * *

4. The Committee then considered the question of privilege raised by Shri Madhu Limaye, M.P., against certain officers of the Department of Iron and Steel for allegedly giving false evidence before the Committee on Public Accounts. The Committee decided to consider the matter further after the evidence, both oral and written, given before the Sub-Committee of the Public Accounts Committee, on the 22nd October, 1969, by Shri N. N. Wanchoo, the then Secretary, Department of Iron and Steel and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, was made available by the Public Accounts Committee and circulated to the members of the Committee of Privileges.

* * * * *

The Committee then adjourned.

VII

Seventh Sitting*New Delhi, the 18th August, 1970.*

The Committee sat from 15.00 to 16.20 hours.

PRESENTShri R. D. Bhandare—*Chairman.*

****Paragraphs 2, 3, 5 and 6 relate to other cases and have, accordingly, been omitted.

MEMBERS

2. Shri C. M. Kedaria
3. Shri K. Raghuramaiah
4. Shri A. K. Sen
5. Shri P. G. Sen
6. Shri R. K. Sinha
7. Chaudhuri Randhir Singh

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

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6. The Committee then considered the question of privilege raised by Shri Madhu Limaye, M.P., against certain officers of the Department of Iron and Steel for allegedly giving false evidence before the Committee on Public Accounts.

The Committee decided to defer further consideration of the matter to their next sitting.

* * * * *

The Committee then adjourned.

VIII

Eighth Sitting

New Delhi, Saturday, the 17th October, 1970.

The Committee sat from 11.00 to 12.15 hours.

PRESENT

Shri R. D. Bhandare—*Chairman.*

MEMBERS

2. Shri Hem Barua
3. Shri Dhireswar Kalita

**** Paragraphs 2, 3, 4, 5 and 7 relate to other cases and have accordingly, been omitted.

4. Shri V. Mayavan
5. Shri P. G. Sen
6. Shri Yajna Datt Sharma
7. Shri R. K. Sinha

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

* * * * *

6. The Committee then deliberated upon the question of privilege raised by Shri Madhu Limaye, M.P., against certain Officers of the Department of Iron and Steel for allegedly giving false evidence before the Committee on Public Accounts. The Committee arrived at the following conclusions:—

“After a careful consideration of the documents made available to the Committee and the findings of the Sub-Committee on Public Accounts in the matter, the Committee have reached the conclusion that Shri S. C. Mukherjee did not correctly present the facts to the Public Accounts Committee during the course of his oral evidence on the question of changes made in the bank guarantee form. The Committee are, therefore, of the opinion that Shri S. C. Mukherjee has committed a breach of privilege and contempt of the House by misrepresenting the position in the matter and thereby misleading the Public Accounts Committee. The fact that such contempt has been committed by a responsible public servant of Shri S. C. Mukherjee’s position, has increased the gravity of the offence.

The Committee are of the view that Shri S. C. Mukherjee deserves to be censured for the contempt of the House committed by him.

The Committee, however, feel that the requirements of the case would be fulfilled if the disapproval and displeasure of the House in respect of the contempt of the House com-

mitted by Shri S. C. Mukherjee is conveyed to him (Shri Mukherjee) and also to the Government of India for disciplinary action against him."

7. The Committee authorised the Chairman to finalise their report on the matter, on the above lines, on their behalf, and to have it presented to the House in the next session.

* * * * *

The Committee then adjourned.

APPENDIX I

(See Para No. 7 of the report)

EXTRACTS FROM MINUTES OF THE SITTING OF THE SUB-COMMITTEE OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 10-3-1966.

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The Sub-Committee enquired of the representative of the Ministry of Finance as to what conditions were laid down by them while agreeing to the proposal of the Ministry of Iron & Steel for grant of pre-import licences in January, 1960. The Joint Secretary of that Ministry stated that they had laid down two conditions *viz.* (i) there should be a firm export contract and the Bank should ensure that the foreign exchange realisations were remitted to India and (ii) there should be a 15 per cent bank-guarantee. By firm export contract, the Ministry of Finance meant a firm contract with the foreign buyer.

Asked whether the condition at (i) above had been understood by the Steel Controller to mean a firm contract with HSL rather than with the foreign buyer, the Secretary, Ministry of Iron & Steel stated that they had provided two things; (a) an irrevocable letter of credit assigned in favour of the exporter for the value of entire export quantity, and import licence for import of steel items should be issued, and (b) in case the exporter is not able to procure the irrevocable letter of credit for the entire quantity of export, then he may be asked to furnish bank-guarantee equivalent to 15 per cent of the value of licence applied for. He added that an irrevocable letter of credit could only be furnished if there was a firm contract with the foreign buyer. He further stated that although it did not say in so many words that there should be a contract, the implication seemed to be that generally there should be a contract. Asked if that was the intention of the Ministry, was the same understood by the Steel Controller correctly, the Secretary Ministry of Iron & Steel stated "May be. The instructions of the Ministry left some room for different interpretations.....I feel the instructions of the Ministry were not as clear as they ought to have been on this particular point *viz* what was intended. Was it intended that there should be a firm contract with the party or was it intended that there should be a firm import contract." The Sub-

Committee enquired if there was any mis-understanding on this point between the Economic Affairs Deptt. and the Ministry of Iron & Steel, the Secretary, Ministry of Iron & Steel stated "I would not say that. The Ministry of Iron & Steel do not seem to have translated the instructions of the Economic Affairs Deptt. in clear and unambiguous terms". This, he added, was not deliberate.

APPENDIX II

(See para 12 of the Report)

Statement on which the speech of Shri Madhu Limaye, M.P. in the House on the 6th March, 1969 was based

MADHU LIMAYE, M.P.

Privilege Motion arising out of false evidence before the P.A.C.

The matter that I am raising today is a most unusual matter. This is the first case of its kind in the history of our Parliament, and I hope the House will give it the serious consideration it deserves.

This is not a motion against any minister. This is a motion against two top ranking civil servants who have misled the PAC and two Houses of Parliament.

On the basis of irrefutable evidence, I accuse the former Secretary of the Steel Ministry Mr. Wanchoo, and Mr. S. C. Mukherjee, former Deputy Controller of Iron & Steel of fabricating false and misleading briefs and giving false evidence before the most important Committee of Parliament, namely: the Public Accounts Committee.

It was during the PAC hearing in the notorious Steel Barter and pre-import cases involving Aminchand Pyarelal, Ramkrishna Kulwantrai and other allied firms, that Mr. Wanchoo, in the presence of Mr. Mukherjee gave false evidence on oath.

The PAC Sub-Committee enquired of the Ministry of Finance as to what conditions they had laid down for the Ministry of Iron and Steel while agreeing to the proposal for the issue of pre-import licences.

The Joint Secretary of the Ministry of Finance said that they had laid down two conditions:

- (a) There should be a firm export contract and the Bank should ensure that foreign exchange realised would be actually remitted to India; and
- (b) the firms should provide 15 per cent bank guarantee.

Clarifying the expression "firm export contract" the Joint Secretary, Finance, said that the Minister meant "contract with a foreign buyer."

On the basis of this information the PAC Sub-Committee proceeded to examine Mr. Wanchoo, who was then the Steel Secretary. The Committee asked Mr. Wanchoo whether the Steel Controller understood the above conditions and their implications correctly. Mr. Wanchoo replied: (Now I am quoting from the minutes of the sixth meeting of the PAC Sub-Committee held on 10th March, 1966).

"May be. The instructions of the Ministry left some room for different interpretations...I feel the instructions of the Ministry were not as clear as they ought to have been on this particular point viz. what was intended. What it intended that there should be a firm contract with the party or was it intended that there should be a firm import contract." The Sub-Committee enquired if there was any misunderstanding on this point between the Economic Affairs Department and the Ministry of Iron and Steel, the Secretary, the Ministry of Iron and Steel stated "I would not say that the Ministry of Iron and Steel do not seem to have translated the instructions of the Economic Affairs Department in clear and unambiguous terms". This he added, was not deliberate.

It was because of this evidence that the PAC was misled into making the following observation in its 50th Report para 4.35 at page 62:

"The Sub-Committee regret to observe that these views of Ministry of Finance were not communicated in clear and unambiguous terms by the Department of Iron and Steel, with the result that the Iron and Steel Controller understood firm export contract as a mere sales contract with H.S.L. rather than firm contract with the foreign buyer. Even the Secretary, Ministry of Iron and Steel admitted in evidence that "the Ministry of Iron and Steel do not seem to have translated the instructions of the Economic Affairs Department in clear and unambiguous terms. The Sub-Committee feel that by not issuing the instruction regarding pre-import licences in clear and unambiguous terms, the Ministry of Iron and Steel watered down the instructions of the Finance Ministry, even though it might not have been deliberate, as stated by the Secretary. The

Sub-Committee cannot but deprecate in strongest words this failure on the part of the Iron and Steel Ministry.”

Now my contention is that the whole story weaved by Mr. Wanchoo about ambiguity, about two possible interpretations as also about not translating and conveying properly the Finance Ministry's instructions to the Steel Controller is a concoction pure and simple. There was absolutely no basis for this statement. What is more important is that Mr. Wanchoo knew that there was no basis for making this observation. And yet Mr. Wanchoo, in the presence of Deputy Steel Controller Mr. S. C. Mukherjee and many other officers from the Ministries of Finance, Iron and Steel Controller and Home Affairs and Additional Controller and Auditor General of India and officers from his office intentionally, deliberately gave false evidence, suppressed the true facts, and misled the PAC and the Parliament. This will become clear from the letters exchanged between the Ministry of Steel on the one hand and the Steel Controller on the other.

To prove this I rely on the correspondence exchanged on the subject between the then Steel Ministry and the Deputy Controller of Steel. This is of transcendental importance and also brief and I would like to quote it in full.

I shall begin by quoting the letter of March 10, 1960 by Mr. S. C. Mukherjee to the Deputy Secretary of the Ministry of Steel which reads as follows:

IRON AND STEEL CONTROLLER

33, Netaji Subhas Road

Calcutta-1

March 10, 1960

D.O. No. C/3/59

Dear Shri Ramanathan,

The other day I spoke to you about Ministry's letter No. SC (C)-5 (5)/60 of 2nd February, 1960 laying down the procedure for barter deals. In paragraph 2(b) of this letter it is mentioned that import licence against barter deals should be issued before the export is made in cases "where a firm contract for export" exists. We are not quite clear as to what firm contract for export the Ministry has in view in this context; in other words whether the Ministry desires that the exporter should have a firm contract with the supplier of the exportable material in India, e.g. Hindustan Steel Ltd., Kalinga Industries Ltd., etc. or whether a firm contract for export should

exist with the foreign buyer of the exportable materials and only a letter of Credit would be lacking. You promised to look into the relevant file and to give me a ring. As I have not received any communication from you so far and as a number of parties are pressing us for issue of import licences prior to export by submitting 15 per cent Bank Guarantee. I would request you to send me a telegram as soon as you get this letter.

Yours sincerely,

Sd/- S. C. MUKHERJEE

Shri G. Ramanathan, I.A.S.,
Deputy Secretary to the Government of India,
Ministry of Steel, Mines and Fuel,
Department of Iron and Steel,
New Delhi.

EXTRACT NOTES FROM No. SC(B)23(5)/60 S. No. (6)

As desired by DS(Ram), I discussed this case with Shri Y. T. Shah of E.A.D. He was of the view that before allowing imports against bank guarantees in barter deals, Iron and Steel Controller should ensure whether the exporter of pig iron has entered into firm commitments with the purchases abroad. He, however, added that if we experience any practical difficulty in insisting on this condition, he would be prepared to reconsider the matter. I think we should normally insist on the exporter in India having a firm contract with a purchaser abroad before allowing imports against bank Guarantees. We should not commit foreign exchange on imports in the hope that the exporter in India would be able to conclude a suitable deal at a later date. Draft reply submitted for approval.

Sd/- C. A. NAIR

12-3-60

D. S. (Ram)

The notes at pages 3-5 *ante* will recall. Shri Shah of the Economic Affairs, Department, with whom I discussed the matter, would like that before we allow imports of Steel to precede exports, we should also have some satisfactory evidence that the exporter has a definite commitment to sell to a foreign party. This is the purport

of his note at p. 5 *ante*. I propose to issue the letter which Shri Shah has seen, to Shri Mukherjee, after Secretary has seen.

Sd/- G. RAMANATHAN
16-3-60

Secretary

Sd/- S. BHOOTHALINGAM
16-3-60

D. S. (Ram)

D.O. No. S.C. (C)-5 (5) /60

17th March, 1960

My dear Mukherjee,

Please refer to your letter No. C/3/59, dated the 10th March, 1960. I have consulted the Economic Affairs Department, Government's intention is that at the time you allow import on a bank guarantee, you should have satisfactory evidence that the exporter in India has a definite commitment from a foreign party to purchase the tonnage proposed to be exported. We would leave the form of evidence to you.

Yours sincerely,
Sd/- G. RAMANATHAN

Shri S. C. Mukherjee,
Deputy Iron & Steel Controller,
33, Netaji Subhas Road,
Calcutta-1.

From this correspondence it will become clear that the question of interpretation and real intention was raised by Mukherjee. As he has himself admitted, he sought this clarification because a number of parties such as Aminchand Pyarelal were pressing him.

Now having sought the clarification and got it in the most unambiguous and clearest possible terms, they deliberately violated the instructions of the Finance Ministry, properly translated and conveyed by the Steel Ministry to the Steel Controller.

Not only this. While appearing before the P.A.C. they deliberately suppressed this evidence on the files and successfully misled the P.A.C. into absolving the Steel Controller of all responsibility in the matter.

The Finance Ministry's clarification, incidentally, has the endorsement and signature of Mr. Bhoothalingam and Mr. Ram.

It will thus be seen that the P.A.C. and Parliament have been intentionally hoodwinked by Mr. Wanchoo and Mr. Mukherjee.

I would in this connection like to draw the attention of the House to two sections of the Indian Penal Code which deal with the giving of false evidence and fabricating false evidence namely sections 191 and 192. The punishment for these offences can extend to seven years.

Now, it has been held that this Parliament is on par with a Court of Law and enjoys certain rights, power and privileges and can punish their violation.

Mr. Kaul and Mr. Shakhder have in their book on Parliamentary Practice held that "prevaricating, giving false evidence, or wilfully suppressing truth or persistently misleading a Committee" is a breach of privilege and constitutes a contempt of Parliament (p. 201).

I contend that giving false evidence before a Committee is as grave an offence as committing perjury before a Judicial Tribunal.

Prima facie, Mr. Wanchoo and Mr. Mukherjee have, therefore, been guilty of this serious offence.

I would like to say a few words here about the relationship of the Civil Service with the Ministers and the doctrine of ministerial responsibility for civil servants' lapses. Under our Parliamentary system for all departmental failures the Ministers are held responsible, at least constructively. They have often had to pay for these lapses by resigning or by getting dismissed.

But in this particular case the doctrine of ministerial responsibility is not at all attracted.

It is the practice of the PAC not to call Ministers for giving evidence. Only in one exceptional instance did the Speaker allow a Minister to appear before the PAC, and this was a sequel to the uproar caused by 50th PAC Report on Steel Barter Deals.

In this particular case the evidence was given by the Secretary of the Steel Ministry. The then Steel Minister had nothing to do with this evidence. The invisible power of the Civil service has so

far remained beyond the reach of Parliament. But there is an instance in which Civil Servants are directly implicated.

I hope the matter will be sent to the Committee for investigation and report and the Committee would deal with the case expeditiously. No leniency or mercy can or should be shown to those who are guilty of giving false evidence before a statutory Committee of Parliament.

APPENDIX III

(See para 13 of the Memorandum)

Copy of notice of question of privilege dated the 22nd March, 1969 received from Shri Madhu Limaye, M.P. and referred to the Committee of Privileges by the Speaker.

MADHU LIMAYE,
MEMBER,
LOK SABHA.

Parliament House,
New Delhi.
22nd March, 1969.

To

The Speaker,
Lok Sabha.

SUBJECTS:—*Further privilege questions relating to the Motion against Mr. N. N. Wanchoo and Mr. S. C. Mukherjee referred to the Committee of Privileges on the 6th March, 1969.*

Sir,

You will, perhaps, remember that on 6th March, 1969 my motion relating to the false evidence given by Mr. N. N. Wanchoo, the then Steel Secretary, and Mr. S. C. Mukherjee, former Deputy Controller of Iron and Steel, before the Public Accounts Committee was referred to the Privileges Committee for investigation and report.

Subsequently further study has made me aware of two other cognate instances of false evidence which I take the opportunity of bringing promptly to your notice.

(1) In the 50th Report of the Public Accounts Committee (Third Lok Sabha) at page 64 it will be seen that the Committee had asked Mr. S. C. Mukherjee to tell them as to when their attention was drawn to the fact that M/s. Ram Krishan Kulwant Rai had been given import licences *without* their having any export contract.

Mr. Mukherjee's reply was that the "mistake" came to his notice when his attention was drawn to this by the Hindustan Steel Limited and that this was sometime in the month of November, 1960. He did not mention any precise date.

It will also be clear from the P.A.C.'s observations in para 4.48 at page 67 (*ibid*) that the P.A.C. had been informed by the witness that the "bulk of imports" had already been made by the said firm before the "mistake" came to their notice. It appears from page 267 of the Sarkar Committee's Report (Mr. Padhi's note of dissent) that Mr. Mukherjee had informed the Sarkar Committee that he—the Deputy Steel Controller—had given exact figures to the Public Accounts Committee. He had told the Committee that Rs. 95 lakhs worth of steel had already been imported when the "mistake" was brought to his notice and that only Rs. 3.9 lakhs worth of steel had been imported after the "mistake" was detected.

This evidence is not only misleading but false in two respects, both in regard to the date on which the Deputy Steel Controller's attention was drawn to the "mistake" as well as in respect of the figures relating to the imports which had already been made at the time the "mistake" was detected and brought to his notice.

It is interesting to note that the story about some November, 1960 date reappears in the 56th Report of the Public Accounts Committee (Third Lok Sabha). Even at that stage all that the Committee was told was that the "mistake" was brought to the notice of the Secretary earlier than 13th November, 1960, namely on 2nd November, 1960, at New Delhi. The Committee has blamed the Secretary for not initiating corrective action after his attention was drawn to this lapse.

The fact, however, is that the "mistake" was pointed out by Hindustan Steel Ltd. not once but twice. On both occasions Mr. Rao of H.S.L. seems to have spoken to Mr. Mukherjee on the telephone about the absence of export contract and confirmed the talk subsequently in two letters addressed to Mr. Mukherjee.

The first of these two letters was written on 26th August, 1960 (*vide* page 257 of Sarkar Committee Report, Mr. Padhi's note of dissent) and the second on 25th October, 1960 (*vide* page 29 Part II relating to Appendices to the 56th Report, Third Lok Sabha). A comparison of the contents of these two letters would show that they were identical in all material respects. Thus the information given to the P.A.C. that it was only sometime in November that the "mistake" was first pointed out to him by the H.S.L. was absolutely false. Even after the "discovery" of this "mistake", Mr. Mukherjee was not perturbed; he, in fact, told Mr. Rao not to worry and that he would arrange for the firm's export of ore to cover the foreign exchange involved in imports!

In Part II (Appendices) to the 56th Report of the P.A.C. mentioned above, there is a note by Mr. M. P. Mathur, Joint Secretary of the Ministry, at page 10 of the Appendices. Mr. Mathur has stated "the mistake came to light in November, 1960".

This is in conformity with the oral statement of Mr. Mukherjee before the P.A.C. It would thus appear that Mr. Mathur has also repeated the misleading and erroneous statement of Mr. Mukherjee. All these statements and assertions misled the Public Accounts Committee into holding that the "mistake" came to light only on 2nd November, 1960.

Part II (Appendices) to the 56th Report of the P.A.C. contains two other notes on the subject viz. (i) by Mr. T. Swaminathan, Secretary to the Steel Ministry and (ii) by Mr. S. Sahay, Iron and Steel Controller (*vide* pages 14-32 and pages 33-57). In para 3 of Mr. Swaminathan's note and page 34 of Mr. Sadhy's note it has been said that the "mistake" was pointed out by H.S.L. to Mr. Mukherjee on 25th October, 1960. It is a matter for inquiry as to why these two officers did not refer to H.S.L.'s earlier letter of 26th August, 1960, when the 25th October, 1960 letter itself has referred to H.S.L.'s earlier letter of 26th August, 1960 (*vide* pages 29 and 53 of Part II of 46th Report).

So much about the date on which the "mistake" was pointed out by H.S.L.

The figures about imports allowed after the discovery of the "mistake" cited by Mr. Mukherjee before the P.A.C. are also at variance with the facts brought out in Mr. Padhi's Note of Dissent to the Sarkar Committee's main Report. Taking 26th August, 1960 as the correct date on which the "mistake" was pointed out by H.S.L., the value of import for which Customs Clearance Certificates were issued *subsequent* to this date was Rs. 8994605/- (page 271 of the Sarkar Report, Part I). The value of imports which were cleared through the Customs *after* 25th October, 1960 was Rs. 2694768/- (*vide* Para 5.48, page 270 of the Sarkar Committee Report). However, Mr. Mukherjee deliberately misled the P.A.C. by saying that the imports cleared *after* the "mistake" was discovered amounted to *only* Rs. 3.9 lakhs.

(2) The second new specific instance of false evidence before the P.A.C. (Third Lok Sabha) consists of two false statements or suggestions:

- (a) The P.A.C. was told in evidence that the Central Government Solicitor at Calcutta in drafting the form of the guarantee bond took the view that no bank would agree to give an absolute guarantee in the manner outlined by the

Ministry's letter of 2nd February, 1960 (Pages 233-34, 50th Report of the P.A.C.);

- (b) That the form of the guarantee bond as actually drafted by the Solicitor was adopted by the Deputy Chief Controller (Pages 73-74 of the 50th Report).

These two false statements|suggestions led the Public Accounts Committee to make an adverse comment on the work of the Central Government Solicitor at Calcutta (Page 74 of the 50th Report).

The truth, however, is that the Central Government Solicitor never had any occasion to take the view attributed to in (a) above because the form of the guarantee bond which was drafted by him completely fulfilled the stipulation of the Ministry in the letter mentioned above. His form made the guaranteed amount forfeitable simply on failure to export the specified quantity of semis within a specified number of months from the date of the execution of the bond. The forfeiture was relatable solely to failure to export within the specified period *from the date of the execution of the bond*.

It was Mr. Mukherjee who made alterations in the form of the guarantee bond secretly, without letting anybody know that he had made these vital and, what eventually proved to be, fatal alterations. The effect of these alterations was to make the guaranteed amount forfeitable *only if there was failure to export within three months from the date of delivery* of the semis by H.S.L. Thus with one stroke Mr. Mukherjee made the guarantee of forfeiture dependent on settlement of all disputes concerning delivery of the quantities of requisite quality by the H.S.L. to the barterer! On top of it, Mr. Mukherjee acquiesced in the banks' limiting their liability to fixed periods of time *without reference to delivery of semis*.

Even before the Sarkar Committee Mr. Mukherjee appears to have tried in the beginning to conceal the fact that he had made certain important alterations in the form as drafted by the Solicitor. It was only on the second day of his examination by the Sarkar Committee that Mr. Mukherjee admitted, on persistent questioning, that he had tinkered with the form of the guarantee bond. This has been clearly brought out by Mr. Padhi at pages 231 to 243 in his Minute of Dissent attached to the report of the Sarkar Committee (*vide para 4.13 at page 239*). The majority report has *not* contradicted these observations of Mr. Padhi. Mr. Padhi has also brought out at page 262 (Sarkar Report) that Mr. Mukherjee had even concealed the changes made by him in the bond from his own Chief, that is, Mr. Bam, the then Controller of Iron and Steel.

Mr. Padhi has further observed that Mr. Mukherjee neither disclosed the correct position about the form of the guarantee bond to Mr. Wanchoo.

From all this it will be seen that Mr. Mukherjee has been guilty of the very very serious offence of giving false evidence before the P.A.C. in several material respects deliberately and wilfully. Since his matter has already been referred to the Committee it would suffice your asking the Committee to deal with this aspect also. However, since three other officers are *prima facie* found to be guilty of giving false information to the P.A.C., namely Messrs. M. P. Mathur, T. Swaminathan and S. Sahay, it might be necessary to place a regular motion before the House. Since the Minister of Steel and the House have accepted the principle of investigation and report by the Committee of Privileges, this new motion can be adopted *without discussion* by the House. I do not, however, mind your referring the matter to the Committee straightaway in exercise of your inherent power under Rule 227; the principle which underlies the motion moved by me on 6th March, 1969 and the principle behind suggested reference by you in respect of these three officers would be the same.

With regards,

Yours sincerely,

Sd/- MADHU LIMAYE

APPENDIX IV

[See para 16(I) (a) of the report]

EXTRACTS FROM THE 50TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (THIRD LOK SABHA)

* * * * *

(c) Pre-import allowed without even ensuring a contract with HSL.

4.39. The Sub-Committee were informed that the procedure adopted by the office of the Iron & Steel Controller in entering into these deals and in granting pre-import licences was to first verify that there was a valid contract between HSL and the party for export of semi-finished steel and thereafter give an import licence on application by the firm on furnishing the requisite bank-guarantee or letter of credit. However, in one instance (i.e. of M/s. Ramkrishan Kulwantrai) a licence was issued "inadvertently" even without their entering into a contract with the HSL. This firm made an offer in March, 1960 and the deal was approved by the office of the Iron & Steel Controller on 5.5.60 and the import licence was issued on 7.6.60 (5 I/Ls. of value of Rs. 101 lakhs were issued). This 'mistake' was found out in November, 1960 and efforts were made to persuade HSL to make available the steel for being exported and thereby earn foreign exchange to off-set the foreign exchange lost by way of imports.

4.40. Asked when the omission came to their notice and whether any responsibility was fixed in the matter, the Deputy Steel Controller stated that "the firm submitted an import licence application. There was a bank guarantee and they asked for pre-import licence. It is necessary to find out whether HSL has contract or not. It was not done in this case by mistake. Assistant Checking Officer did not check it. HSL said that the firm approached them for contract, they have not signed the contract; they (i.e. Steel Controller) have given import licence. They found that mistake has occurred. The letter was written by the Controller to the Chairman, HSL that this mistake occurred and HSL agreed to finalise the contract with them. This was squared up. There was lapse on the part of the officer concerned. He was told to be more careful in future. Actually there was mistake on everybody's part. Responsibility was there squarely on all of them, the firm, the officer and clerk concerned."

4.41. When pointed out that this mistake came to their notice when the matter was reported by HSL otherwise there was no system by which they could discover it, he stated "it ought to have been checked. I quite agree that there was no regular system." It was also stated that the original deal was sanctioned in May, 1960 and the mistake came to their notice only in November, 1960. By that time i.e. November, 1960, the party had made imports of 8297 tonnes of steel valued at Rs. 95.08 lakhs and a balance of 149 tonnes worth Rs. 3.90 lakhs was only left. The customs permit was stopped at that time until the party entered into contract with H.S.L. (which was one on 18.1.61). The party made the remaining imports worth Rs. 3.90 lakhs by February, 1961, thus making total imports of Rs. 98.98 lakhs. In regard to exports made, the Deputy Steel Controller stated that "they have not exported anything. The contract with H.S.L. is in dispute. They have not taken any material at all." As regards bank guarantees, he stated "that also has expired."

APPENDIX V

[See para 16(I) (a) of the report]

EXTRACTS FROM THE 56TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (THIRD LOK SABHA)

In Chapter IV of their Fiftieth Report (Third Lok Sabha), presented to Parliament on 26th April, 1966, the Public Accounts Committee had commented upon certain barter deals dealt with by the Iron & Steel Controller. In paras 4.39 to 4.52 of this Report, the Public Accounts Committee dealt with a case in which pre-imports had been allowed by the office of the Iron & Steel Controller without even ensuring that the firm in question had a contract with H.S.L.

* * * * *

1.3. On 28th July, 1966 in reply to a question asked by an honourable member in Lok Sabha, the Chairman, Public Accounts Committee made a statement regarding the receipt and examination of the comments of the Government on Chapter IV of the 50th Report of the P.A.C. (Third Lok Sabha).

1.4. On the 2nd August, 1966 the House adopted the following motion:

“That this House, in the light of the statement made by the Chairman of Public Accounts Committee on 28th July, 1966, in Lok Sabha, directs the Public Accounts Committee to consider Government's reply to Paragraphs 4.39 to 4.52 of their 50th Report (Third Lok Sabha) in so far as they refer to the then Secretary of the Department of Iron & Steel and submit its report to Lok Sabha within 21 days.”

1.7. The Committee recorded the evidence of the Secretary, Ministry of Iron & Steel and other officers brought by him on 18th August, 1966.

* * * * *

(i) Record of discussions not kept

2.4. The Committee asked the Secretary Iron & Steel as to when this mistake or irregularity of issuing import licences of about Rs. 101 lakhs without ensuring a contract with the H.S.L. came to the notice of the then Secretary. The witness stated that from the material that was available to them they were of the view that the then

Secretary (Shri Bhoothalingam) came to know of this on 13th November, 1960. There was, however, a record of a note of a conversation on 2nd November, 1960 or so. But so far as they had been able to check up from the Ministry's records, there was no note kept of the conversation of 2nd November, 1960. The Committee pointed out that in the Ministry there was no record of the discussion of the 13th November, 1960 which the then Secretary had with the Iron & Steel Controller and Chairman, H.S.L. at Dum Dum Airport. The Secretary stated that the discussion at the airport was followed immediately i.e., the next day on 14th November, 1960 by a letter from the Iron & Steel Controller to the Chairman, H.S.L. and a copy was also endorsed to the then Secretary. The Committee asked if that letter of 14th November, 1960 could be regarded as a proper record of the discussion in so far as that letter mentioned many things and one of them was this interview with the Secretary. They further enquired if that was the proper way of keeping record of the interview, the Secretary replied "It is not a common record of interview." He also stated that it did not appear to be a formal meeting at which the minutes would be recorded. The Committee pointed out that the question was not whether the meeting was formal or not, but whether any record of this meeting was kept. The witness stated "In the sense you seem to think of the record, no record was kept."

2.5. The Committee regret to note that no proper record of the discussion which took place at Dum Dum Airport on 13th November, 1960 between the then Secretary Iron & Steel, the then Iron and Steel Controller and the then Chairman, H.S.L. was kept either in the Ministry or in the Office of the Iron and Steel Controller. The letter dated 14th November, 1960 cannot be regarded as a record of the discussion which took place.

2.6. The Committee drew attention of the witness to the following note dated 17th November, 1960 recorded by the Deputy Iron & Steel Controller:

"This matter was discussed by the Controller with Secretary on 2nd November, 1960 at New Delhi. Shri K. N. Subbaraman of Hindustan Steel was also present. The circumstances under which the import licence was issued to M/s. Ramkrishan Kulwantraï against 15 per cent Bank Guarantee before they had finalised the export deal with Hindustan Steel was explained. Secretary felt that there was no reason why Hindustan Steel should not agree to sell the requisite quantity of slabs required by the firm for earning the foreign exchange spent on the import of steel. It

was also explained to the Secretary that the firm was willing to take slabs and ingots available in stock at Rourkela irrespective of the specification and analysis—of this material. As Rourkela had large stocks of slabs and ingots which do not conform to any standard specification. Secretary felt that they should welcome the proposal of the firm to accept materials from stock. He asked Shri Subbaraman to issue immediate instructions to Hindustan Steel's Calcutta Office to finalise the barter deal which was initiated by the Iron and Steel Controller as far back as March, 1960. Secretary also desired that a suitable letter should be addressed to the Head Office of Hindustan Steel to give necessary instructions to their Calcutta Office for making all out effort to sell the unwanted stocks of slabs and ingots at Rourkela on barter basis if cash sales were not possible.

On 13th November, again this matter was mentioned by Secretary to Shri Srinagesh, Chairman, Hindustan Steel and Controller also discussed the matter with Shri Srinagesh in detail on the same day. The circumstances leading to the sanction to the barter deal by Iron and Steel Control and import of Steel materials by the firm was explained to Shri Srinagesh and he agreed to take up the matter immediately on his return to Headquarters. In confirmation of this discussion the letter to Shri Srinagesh at Sl. No. 70 was issued with copy to Secretary."

* * *

2.10. The Committee asked the Secretary whether it was on 2nd November, or 13th November, 1960 that the then Secretary first came to know of this irregularity and how it was brought to his notice. The Secretary, Ministry of Iron and Steel stated that there was no evidence on the file except the letter dated 14th November, 1960 written by the then Iron and Steel Controller to then Chairman, H.S.L.

* * *

2.18. The Committee observe that this case was brought to the notice of the then Secretary on 2nd November, 1960. The Committee find that when this mistake came to the notice of the then Secretary, he did not initiate any action to find out (a) whether there was any lacuna in the procedure of issuing import licences, (b) whether the mistake in this case was bonafide or malafide, and

(c) whether the Iron and Steel Controller had taken preventive measures. In view of this the Committee had no reasons to modify their earlier observations that the then Secretary simply acquiesced in this mistake and that there was a positive failure on the part of the Department of Iron and Steel to enquire into this lapse.

APPENDIX VI

[See para 16(1) (a) of the report]

EXTRACTS FROM THE DISSENTING NOTE BY SHRI P. C. PADHI ATTACHED TO THE MAJORITY REPORT OF THE COMMITTEE OF INQUIRY (STEEL TRANSACTIONS) (FEBRUARY, 1968)

5.1. The irregularity.—On the 6th of June, 1960 Shri S. C. Mukherjee, Deputy Controller of Iron and Steel, ordered the issue of 5 import licences of the total value of over a crore of rupees in favour of the firm M|S Ram Kishan Kulwant Rai before the later had been given a contract by Hindustan Steel Limited for the export of semis. Shri Mukherjee allowed the Import Licences merely on the strength of the firms application accompanied by a bank's guarantee for Rs. 15 lakhs on the assumption that they would export 25,000 tons of semis (slabs and blooms) to be supplied by Hindustan Steel Limited. He brought the irregularity to the notice of the Steel Controller by a note dated 26th October, 1960 (See Annexure to Appendix V) in which he suggested that he committed the irregularity through oversight caused by pressure of work, and that he came to know of his lapse only on the previous day, viz. 25th October, 1960, when Shri H.R.S. Rao of Hindustan Steel Limited spoke to him on the telephone to point out that RKKR had never been given any contract for export of 25,000 tons of semis. (The full text of Shri Mukherjee's note is at Annexure to Appendix V). It should be mentioned here that the firm of RKKR has not upto this day exported anything, but has spent foreign exchange worth Rs. 98,97,827 on imports of steel items, which included Rs. 16,54,626 worth of stainless steel. Even after the disclosure of irregularity, the firm was allowed to continue to import steel on the strength of the import licences irregularly issued in June, 1960. The value of such steel brought into India after 1st November, 1960 was Rs. 26,94,768 which included Rs. 9,55,532 worth of stainless steel. Shri Mukherjee had informed the Public Accounts Committee and also our Committee that the value of imports which were allowed after 26th October, 1960 was only Rs. 3.9 lakhs. In point of fact, the correct figure is Rs. 26.94 lakhs.

* * * *

5.32 I now turn to another kind of evidence which confronts Shri Mukherjee more directly, because it is partly based on his conversa-

tion with Shri H. R. S. Rao of the Calcutta Office of Hindustan Steel Limited.

5.33. How it came to light.—It appears that Shri H. R. S. Rao, Assistant Sales Manager (Exports) in the Calcutta Office of HSL, had come to know about this irregularity, accidentally, on the 26th August, 1960 from a conversation he had with RKKR when the latter called on him in his Office in some other connection. It appears, RKKR mentioned to him that his firm had imported finished steel upto the value of 25,000 tons of semis to be exported by him. Shri Rao, it seems, pointed out to the party that there was no such commitment by HSL to supply 25,000 tons of semis to him and told him that he (Shri Rao) was going to get in touch with the Iron and Steel Controller. Thereupon the party is said to have pleaded with him to forget the subject and not to complicate matters at that stage as it would be quite easy for him to arrange for a barter deal for export of manganese ore or some other ore of equivalent value. Immediately after the conversation, Shri Rao, it appears, called Shri S. C. Mukherjee on the telephone and mentioned to him what he had heard from RKKR. It seems, Shri S. C. Mukherjee did not appear to be perturbed; on the contrary, he told him not to worry and added that he (Shri Mukherjee) would arrange for RKKR a barter deal for export of ores which would cover the foreign exchange involved in the import licences. In spite of this assurance by Shri Mukherjee, Shri Rao, according to his evidence, decided that he should place on record the fact that there was a contract with RKKR for only 5,000 tons of slabs, and this he did by a letter of the same (*viz.* 26th August, 1960) which he got one of his officers (Mr. Ghosh) to write for the "attention of Shri S. C. Mukherjee". This letter No. 78|CCP|RKK (32).60, dated 26th August, 1960 in one record, and it reads:—

"With reference to Mr. Rao's telephonic conversation with you, I enclose a copy of our letter No. SE|24B|2153, dated 9th June, 1960, regarding supply of 5,000 tons of slabs to Messrs. Ram Krishan Kulwant Rai against our original offer of 20,000 tons of slabs to the party.

In this connection, I have to inform you that we have sold only 5,000 tons of slabs to the party against their enquiries for slabs and blooms."

It is the discovery of this letter in the files of the Steel Controller that has led our Committee to ascertain the context in which it was written, to unravel the significance of the words "only 5,000 tons of slabs" occurring in the letter.

* * * *

5.35. Shri Rao was closely questioned by our Committee about this conversation and how he remembered it six months later. His evidence has not been shaken and is found to be completely trustworthy. Shri Mukherjee also could not ultimately deny the substantial accuracy of Shri Rao's version of the conversation though in the beginning in a written memorandum he had said, "I emphatically deny that I had any knowledge of the lapse... before 25th October, 1960".

5.36. On the question as to how Shri H. R. S. Rao could remember the gist of the conversation some six months later, there is the fact that Shri H. R. S. Rao had occasion to talk with Shri S. C. Mukherjee again on the telephone, on the same subject, on 25th October, 1960, and this fact must have helped to keep alive Shri Rao's memory. On the 25th October, 1960, Shri Rao wrote the following letter to Shri S. C. Mukherjee:—

ber, 1960 addressed to M|s Ram Krishan Kulwant Rai, copy to us.

In this connection, I have to draw your attention to our letter Nos. SE248|2153 of 9th June and SE|24B-13817 of 20th June, 1960 and SE|4 of 26th August, 1960, from which it will be observed that we have sold 5000 tons of slabs only to M|s Ram Krishan Kulwant Rai, Calcutta, against their various enquiries for slabs and blooms.

This confirms my phone conversation on date."

ANNEXURE TO APPENDIX VI

[See para 16(I) (a) of the report]

EXTRACTS FROM THE APPENDICES ATTACHED TO THE REPORT OF THE COMMITTEE OF INQUIRY (STEEL TRANSACTIONS) (FEBRUARY, 1968)

Copy of notes in file No. CP|RKK|(32)|60, at pages 19-22|N and Page 24|N

IMMEDIATE

I have so far been permitting Shri Gopen Sen of the CDN Section to submit all cases regarding barter direct to me without routing the cases through the Superintendent and the Section Officer. I am finding it more and more difficult, due to heavy pressure of other work to deal with such cases without the help of some other Officer.

With immediate effect, therefore, Shri Gopen Sen should submit all his cases through the Superintendent|Section Officer viz. A.C.(T).

Sd|- S. C. MUKHERJEE,

AC(T)

26-10-60.

Supdt. (CDN).

Shri G. N. Sen.

IMMEDIATE AND CONFIDENTIAL

No import licence or Custom Clearance Permit should be issued to M|s. Ram Krishan Kulwant Rai without my specific approval on each individual case.

Sd|- S. C. MUKHERJEE,

A. C. (Sen)

26-10-60

D.A.C. (BASU).

Shri Rao of Hindustan Steel rang me up yesterday to say that we have sanctioned some barter deals in favour of M|s. Ram Krishan Kulwant Rai against which they have not finalised the export side as yet. He also stated that the firm has been pressing them for finalising the export side on the plea that they have already been permitted to import the materials on submission of the requisite Bank Guarantee. Issue of an import licence even on submission of a Bank Guarantee would not be in order if the export side had not been finalised by Hindustan Steel. I, therefore, immediately looked up our papers to see if any such irregularity has been committed by us. I extremely regret to point out that the statement made by Shri Rao is substantially correct and that there has been a rather serious lapse on our part in this particular case. The facts of the case are briefly related below:—

M|s Ram Krishan Kulwant Rai submitted on 28th March, 1960 (SI.No.18) a barter proposal for export of 25,000 tons slabs, ingots and blooms and wanted to import only stainless steel sheets. According to our prescribed formula, they were told that import of stainless steel sheets would be granted only to the extent of 1 ton for every 100 tons of slabs and ingots exported. The firm accepted this proposal vide SI. No. 20. Thereupon a letter indicating the terms and

conditions under which their barter deal may be approved was issued to them as usual on 5th May, 1960 (Sl. No. 21). One of the conditions indicated in the letter was that the delivery, specification and price of the materials to be exported will have to be mutually agreed upon by the firm with Hindustan Steel Ltd. On 6th May, 1960 (Sl. No. 24) the firm accepted the terms and conditions and requested us to confirm that they would be permitted to import materials prior to export on submission of a Bank Guarantee for 15% of the total value of goods to be imported. We thereupon made a reference to Hindustan Steel (Sl. No. 25) asking them to confirm that the export side of the barter deal has been finalised by them and also whether an import licence could be issued. Without finalising the export side of the deal with Hindustan Steel Ltd., the firm submitted a bank Guarantee for 15% of the import value on 1st June, 1960 and also submitted import licence applications and the Bank Guarantee with the earlier correspondence and S.I.C. Section was authorised (S. 26) to issue import licences to the firm on the presumption that the export side of the deal has been duly finalised by them. This was indeed a serious lapse on the part of my assistant as well as on my part. It appears that the firm has already imported some materials against these import licences and I am checking up the exact position separately.

Although we are no doubt responsible for having failed to check the firm's proposal for issue of import licences with the relevant previous papers, the primary responsibility for this irregularity must lie on the firm itself. It was made quite clear in our letter of 5th May, 1960 in which the terms and conditions of the proposed deal was laid down that they must finalise the export side of the deal with Hindustan Steel. They should not have, therefore, applied for import licence with Bank Guarantee before finalising the export side of the deal with Hindustan Steel Ltd. Further the import licence already issued to the firm clearly indicates that the licence has been issued as per terms and conditions set forth in our letter of 5th May, 1960. They should not have, therefore imported any material against this licence before finalising the export side of the deal with Hindustan Steel Ltd. In the Bank Guarantee which the firm has furnished they have clearly given an undertaking to export materials and we can easily forfeit their Bank Guarantee for their failure to export the materials for whatever reasons there may be. We are

not bound to request Hindustan Steel to supply the requisite exporting material to them and it is for them to get the exportable materials from Hindustan Steel by mutual agreement. If they fail to do so, we can even blacklist the firm.

From the talk I had with Shri Rao it is quite clear that Hindustan Steel is not going to supply 25,000 tons of slabs to this party to enable them to fulfil their commitment against this particular barter deal. We have therefore to find ways and means to adjust the imports already made against other foreign exchange earnings of the firm. Unfortunately Shri Kulwant Rai or Shri Malik of the firm who was handling this affair could not be contacted. Shri Kulwant Rai is expected to be back in Calcutta tomorrow. I have, however, told a representative of the firm that they must stop all further imports against this licence and they should submit proposals for adjustment of the foreign exchange which they have already spent on the imports made against this licence. I am also issuing instructions to S.I.C. to stop issue of C.C.Ps. to this firm against all their import licences until they have given a complete account of their pending import licences and have submitted acceptable proposals for adjustment of the foreign exchange spent by them on the imports against these licences. I may add that the firm has got a number of other barter deals as also import licences as an established importer against which the foreign exchange spent by them on the import of materials against this licence can be adjusted. If they do so we may let them off for this time with a severe warning. As regards my barter assistant and myself, we extremely regret that this lapse has taken place due to heavy rush of work and we beg to be condoned for this lapse. I shall take immediate steps to ensure that such lapses do not occur again. At present I have been dealing with these barter cases with the help of only one Lower Division Clerk so as to avoid delay. In further I shall have all these files sent up to me through the Supdt. and Section Officer so that there is sufficient check exercised.

Controller.

Sd/- S. C. MUKHERJEE.

26-10-60.

It is most unfortunate that such a serious lapse should have taken place in the office. We must immediately explore all avenues to see that the damage is repaired. As Shri Kulwantrao is arriving in Calcutta in a day or two, we should prevail upon him to surrender his other unutilised import licences of the equivalent value. In the

meantime, I find that DC (M) has already taken other precautionary measures.

After we get a clearer picture, we may submit a detailed report to the Ministry.

Sd|- A. S. BAM,
26-10-60.

DC (M)

APPENDIX VII

[See para 16(I) (b) of the report]

EXTRACT FROM 56TH REPORT (PART II-APPENDICES) OF THE PUBLIC ACCOUNTS COMMITTEE (THIRD LOK SABHA)

(ii) Paragraph 4.51 relates to the issue of the import licence to the firm of M/s. Ram Krishan Kulwant Rai by the Iron & Steel Controller in contravention of these definite instructions that such import licences should not be issued without first verifying that there is a firm export contract as mentioned above. This mistake was admittedly made by the concerned officials in the Iron & Steel Controller's Organisation. However, the Sub-Committee has observed that when this mistake came to the notice of the Ministry of Iron & Steel, the then Secretary "simply acquiesced in it and had not a single word to say about it."

As a preliminary point, Government would like to draw attention to the fact that the need to balance imports to the maximum extent possible with exports under this pre-import scheme was not over looked by the then Secretary. Well before the transactions that are referred to in this particular aspect of the Sub-Committee's Report, he drew the attention of the Iron & Steel Controller to the need for a realistic working of the scheme in his letter of February 24, 1960, which is reproduced at pages 238 and 239 of the Report. This particular firm, Messrs Ram Krishan Kulwant Rai, is one of those particularly referred to in that letter.

The import licence in this case was issued on 5th May, 1960 and the mistake came to light in November 1960. In paragraph 4.50 Sub-Committee has noted that information regarding this lapse was brought to notice in a round about manner and has referred to the informal discussion at Dum Dum airport on 13th November. In paragraph 4.51 the Sub-Committee has also adverted on the fact that the then Secretary did not even keep a record of the discussions he had with the Officers at Dum Dum airport. While it is undoubtedly true that the then Secretary (who was passing through the airport after inspecting a steel plant) did not himself record the discussions, Government would like to bring to the notice of the Public Accounts Committee that the Iron & Steel Controller communicated, in writing, the gist of the discussions the very next day

to the Chairman, Hindustan Steel, with a copy to the Secretary, Ministry of Iron & Steel. Thus, within a matter of 2 or 3 days, the substance of the discussions at the airport did in fact come on record both in the Ministry of Iron & Steel and with Hindustan Steel. It is not necessary when such discussion take place that the senior-most Officer present, should himself record the discussions, provided that at any other level a suitable record was brought on file without any delay and there was no failure of the official machinery as a result of the then Secretary himself not recording the discussions.

When the mistake came to light, the then Secretary tried his best to rectify the mistake by corrective action. In the ultimate analysis the mistake was in not ensuring exports commensurate with the authorised imports. It was for this reason that the Secretary considered, and in the opinion of the Government rightly, that the larger interests of the country demanded that first priority should be given to try and fulfil the export commitment made against this deal, so that the necessary foreign exchange is earned. Such action at that stage could only be by calling upon the firm to discharge its export obligation and by providing it to the best extent possible the necessary quantum of steel for this purpose from Hindustan Steel Ltd. It was such action that the then Secretary directed should be taken as shown in paras (iii) and (iv) below.

* * * * *

Sd/- N. P. MATHUR,
Joint Secy. to the Government of India

APPENDIX VIII

[See para 16 (I) (b) of the report]

EXTRACTS FROM THE 56TH REPORT (PART II—APPENDICES) OF THE PUBLIC ACCOUNTS COMMITTEE (THIRD LOK SABHA)

2. The circumstances in which the import licence was issued in favour of M/s. Ram Krishan Kulwant Rai without verifying whether a contract with H.S.L. existed, are as follows:—

* * * * *

3. Before issuing this letter of 6th June, 1960, with the advice to the Steel Import Section to issue Import Licence it was necessary to verify that the firm had actually concluded a contract with Hindustan Steel Ltd., for the export of the steel materials to be exported against this deal. This was not done. The mistake was pointed out to Iron and Steel Controller by Hindustan Steel Ltd., on 25-10-60.

* * * * *

Sd/- T. SWAMINATHAN,

Secretary.

APPENDIX IX

[See para 16 (II) (b) of the report]

EXTRACTS FROM THE 56TH REPORT (PART II—APPENDICES) OF THE PUBLIC ACCOUNTS COMMITTEE (THIRD LOK SABHA)

A chronological account of the correspondence, leading to the issue of a barter sanction on 5th May, 1960 and 5 Import Licences on 7-6-1960 to M|s. Ramkrishan Kulwant Rai, is given below:—

* * * * *

Before issuing the said letter on the 6th June, 1960 with the advice to the Steel Import Section to issue Import Licence, it was necessary to verify that the Hindustan Steel Ltd., had actually concluded a contract with the firm for the export of the steel materials to be exported against this deal. This was not done. As stated before the Public Accounts Committee, this was not done, inadvertently. This mistake came to light on the receipt of Hindustan Steel Ltd. letter, dated 25-10-1960. It is apparent from that letter that M|s. Ramkrishan Kulwant Rai had not entered into any contract with Hindustan Steel Ltd., for the fulfilment of the barter deal sanctioned on the 5th May, 1960.

* * * * *

Sd|- S. SAHAY,
Iron and Steel Controller.

ANNEXURE TO APPENDIX IX

[See para 16(II) (b) of the report]

EXTRACTS FROM THE 56TH REPORT (PART II—APPENDICES) OF THE PUBLIC
ACCOUNTS COMMITTEE (THIRD LOK SABHA)

H. R. S. Rao
Asstt. Sales Manager (Exports),
Hindustan Steel Ltd.,
2, Fairlie Place,
Calcutta-1.

D.O. No. SE.16-14|24313

25th October, 1960.

My dear Mukherjee,

SUB: *Barter export of Slabs|Ingots|Blooms in exchange to
import of finished steel products.*

I have to refer to your letter No. C/RKK/(32)/60 of the 7th October, 1960 addressed to M|s. Ram Krishan Kulwant Rai, Calcutta, copy to us.

In this connection, I have to draw your attention to your letters Nos. SE/248/2153 of 9th June, SE|24B|13817 of 20th June, 1960 and SE|4 of 26th August, 1960 from which it will be observed that we have sold 5,000 tons of slabs only to M|s. Ram Krishan Kulwant Rai, Calcutta, against their various enquiries for slabs and Blooms.

This confirms my phone conversation on date.

Yours sincerely,
Sd|- H. R. S. RAO

Shri S. C. Mukherjee,
Dy. Iron & Steel Controller,
33, Netaji Subhas Road,
Calcutta.

APPENDIX X

[See para 16(II) of the report]

EXTRACTS FROM THE 50TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (THIRD LOK SABHA)

4.41. When pointed out that this mistake came to their notice when the matter was reported by H.S.L. otherwise there was no system by which they could discover it, he stated "it ought to have been checked. I quite agree that there was no regular system." It was also stated that the original deal was sanctioned in May, 1960 and the mistake came to their notice only in November, 1960. By that time i.e. November, 1960, the party had made imports of 8297 tonnes of steel valued at Rs. 95.08 lakhs and a balance of 149 tonnes worth Rs. 3.90 lakhs was only left. The customs permit was stopped at that time until the party entered into contract with H.S.L. (which was done on 18-1-61). The party made the remaining imports worth Rs. 3.90 lakhs by February, 1961, thus making total imports of Rs. 98.98 lakhs. In regard to exports made, the Deputy Steel Controller stated that "they have not exported anything. The contract with H.S.L. is in dispute. They have not taken any material at all." As regards bank guarantees, he stated "that also has expired."

4.48. It is also very surprising to note that there is no regular system in the office of the Iron and Steel Controller to detect such mistakes and they came to know about it only in November, 1960, when H.S.L. pointed out after five months of the issue of imports licences and by which time the party had made bulk of imports.

APPENDIX XI

[See para 16(II) of the report]

EXTRACTS FROM THE DISSENTING NOTE ATTACHED TO THE MAJORITY REPORT OF THE COMMITTEE OF INQUIRY (STEEL TRANSACTIONS) (FEBRUARY, 1968)

III.121. Q. How much of it (imports) was outstanding at the time?

A. In the PAC I had given the figure that the party had made imports of 8297 tons of steel valued at 95 lakhs and a balance of 149 tonnes worth Rs. 3.9* lakhs was only left.

III. 122. Q. It would still have been in the national interest to cancel the remaining import licence at that stage?

A. I did not do so because he was expected to earn foreign exchange and HSL was being persuaded to give the material. So we simply stopped the CCP for the time being to force him to sign a contract with H.S.L.

III. 123. Q. Stoppage of CCP was, on your own admission, an illegal move. But you were reluctant to have the remedies which were open to you legally. How do you explain this attitude on your part?

A. I judged that as most of the imports had been made already, it would be more to the interest of the country to make him earn the foreign exchange rather than punish him for a small tonnage which was still to be imported.

III. 126. Q. The remedy immediately available at that time was forfeiture of the bank guarantee of Rs. 15.15 lakhs and saving of foreign exchange of over Rs. 3 lakhs.**

A. Yes.

*Our Committee's investigation shows that actually Customs Clearance Permits of the value of Rs. 26,94,788 were issued after 25th October, 1960. Shri Mukherjee had given wrong figures both to our Committee as well as to the P.A.C.

**This was based on Shri Mukherjee's wrong statement. Actually, the remedy then available was forfeiture of bank guarantee of Rs. 15 lakhs and saving of foreign exchange of nearly 27 lakhs.

APPENDIX XII

[See para 16(II) of the report]

EXTRACTS FROM THE DISSENTING NOTE ATTACHED TO THE MAJORITY REPORT OF THE COMMITTEE ON INQUIRY (STEEL TRANSACTIONS) (FEBRUARY 1968)

5.48. I have given above only a very few questions and answers from the voluminous evidence to show that Shri Mukherjee even while admitting his lapse and appearing to be suggesting "very strong" measures on paper, could not think of anything more than a "severe warning". He tried to exaggerate the difficulties of getting the licences cancelled. In the beginning, he even tried to say that he was not aware of the provisions regarding cancellation of licence.*** He knew that the "strong" measures he was suggesting were an eye wash, that CCPs could not be stopped and were not in fact stopped. I have reasons to think also that he was deliberately understating the value of the material still to be cleared. The actual value of the imports brought in after 26th October, 1960, was Rs. 26,94,788 which included Rs. 9,55,532 on account of stainless steel. If he had taken steps to forfeit the bank guarantee and cancel the licence at the end of October, 1960 he could have saved nearly Rs. 27 lakhs of foreign exchange and realised Rs. 15,15,000 by way of guarantee money. He could still have set the firm the task of earning the remainder of the foreign exchange by making an export effort. Even in the course of the evidence, Shri Mukherjee's thoughts went unconsciously in the direction of the hardship which he would have caused to RKKR if he had cancelled the unutilised portion of the licence. He was thinking of the letters of credit that might have been opened by RKKR in favour of the foreign exporters (*vide* his answer to Question No. 138 above).

5.49. If immediately after his lapse was first brought to his notice by an outsider, *viz.* Shri H. R. S. Rao, in August, 1960, Shri

*** The questions and answers reproduced above relate to the third day of Shri Mukherjee's oral examination. On the first day of his examination he had been asked how he thought he could enforce compliance with his demands for extension of bank guarantee. His answers, reproduced in the Fourth Chapter of this Note of Dissent, show that he knew all about cancellation of import licence. He himself mentioned the power to cancel licences as the sanction behind his demands for extension of bank guarantee. *vide* his answers to Questions I-194 and 195 reproduced in Chaptr IV of this Note.

Mukherjee had taken steps to forfeit the guarantee bond, and cancelled the licences, he would have saved for Government total foreign exchange expenditure of nearly 90 lakhs (Rs. 89,94,605 to be precise) and recovered Rs. 15,15,000 by way of guarantee forfeiture. However, the fact is that he knew from the beginning that he was issuing import licences without there being an export contract.

APPENDIX XIII

[See para 16 (III) (a) of the report]

EXTRACTS FROM THE 50TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (THIRD LOK SABHA)

Bank Guarantee Form:

4.62. The Sub-Committee were informed during evidence that although the Ministry's letter of 2-2-1960 (Annexure A) laid down that the party should furnish an absolute guarantee to export, the Solicitor of the Iron & Steel Controller (Government Solicitor) in drafting the guarantee form took the view that no bank would agree to such an absolute guarantee. He (Solicitor) worded the bank guarantee form (at Annexure B) in a qualified manner in that the condition of the guarantee was that "the Iron & Steel Controller has agreed to enter into contract with the obliger (i.e. the party) for import of.....on the undertaking of the obliger to export.....produced by M/s. Hindustan Steel Ltd. within 3 months from the date of delivery of the material, by M/s. Hindustan Steel Ltd.". Therefore, the actual form of the bank guarantee as drafted by the Solicitor was quite different in all material respects from the intentions of the Government's letter.

4.63. Asked why they went to the Solicitor when the terms of the guarantee were already known to them and a guarantee form was in use earlier for export of ferrous scrap, pig iron etc., the Secretary of the Ministry who made available a copy of the old guarantee form (Appendix XXXIII) stated that "this bond (old guarantee bond) is obviously not suitable for the type of transactions we were going to enter into."

4.64. Asked if there was any failure when old form was in use, the Deputy Iron & Steel Controller stated that there had been no failures. Asked why then they changed it and referred the matter to the Solicitor, he stated "because of the Ministry's letter where some conditions were given for pre-imports. we thought that we should have a look at the form and we sent it to the Solicitor. He felt that this form is not suitable and he drafted a different form."

When pointed out that the previous form was better than the revised one as under that, the currency period of the guarantee could be fixed by Government as they considered necessary, the Secretary of the Ministry stated that "the main failure was not in watching when the bank-guarantee was expiring and taking timely action."

4.65. The Sub-Committee enquired if the Controller was not at fault in not insisting on bank guarantees in terms of Ministry's letter dated 2-2-1960, the Secretary stated that "The Steel Controller, when he found that the Solicitor drafted the bank-guarantee in a form which did not entirely carry out the wishes of the Ministry should have really brought this matter to the notice of the Ministry or taken it up again with the Solicitor. There was undoubtedly failure on his part to do so. Quite often as laymen we issue instructions and lawyers draft them differently. I do not say that it was a grievous omission although it would have been better if he had brought it to our notice so that we could have either modified our instructions or acquiesced in that particular form of guarantee."

4.66. This is yet another case where Iron & Steel Controller did not carry out the conditions laid down by the Ministry in their letter dated 2-2-1960 regarding furnishing of bank guarantee. The Iron & Steel Controller was responsible to the Ministry. If he felt any difficulty in getting guarantees in the form required, he should have placed the matter before the Ministry of their consideration. The Sub-Committee regret it to the Solicitor who drafted the guarantee form which was not in consonance with the intention of the Ministry.

The Sub-Committee fail to appreciate the attitude of the Government Solicitor who took upon himself obligation to advise that no bank would agree to such a bank-guarantee. Instead of drafting the document and embodying the intentions of the Government, he went outside the scope of his duties and drafted a form which was least satisfactory.

The result has been that limited, conditional and qualified bank guarantees were furnished by the parties and accepted by the Iron & Steel Controller, with attendant difficulties in enforcing the same. The Sub-Committee cannot help feeling that there was a serious lapse on the part of Iron & Steel Controller in taking guarantees in a form which did not carry out intentions of the Ministry.

4.67. They would also recommend that Government should look into this matter and prescribe a suitable bank-guarantee form for use by the Iron & Steel Controller in future.

ANNEXURE 'A' TO APPENDIX XIII

No. SC(C) 5(5) |60

GOVERNMENT OF INDIA

MINISTRY OF STEEL, MINES & FUEL

(DEPARTMENT OF IRON & STEEL)

New Delhi, the 2nd February, 1960

Magha 1881 (Saka).

From

Shri C. A. Nair,
Officer on Special Duty.

To

The Iron & Steel Controller,
33, Netaji Subhash Road,
Calcutta-1.

SUBJECT: *Procedure for barter deals.*

Sir,

The procedure adopted so far in the case of barter deals is to issue an import licence for steel after export has taken place. In barter deals, the size of the export commodity is large and deliveries can be made only over a period of time. If the present procedure is adopted, it is felt that the import of steel may take place after our pressing needs are over. It may even come after our steel plants have started producing the same category. Hence the procedure to be followed for barter deals in exports involving the export of scrap, pig iron, or steel ingots or slabs has been considered in consultation with the Ministry of Finance and it has been decided to revise the existing procedure.

In cases where delay in exports is anticipated for reasons satisfactory to the Iron and Steel Controller, the following procedure may be adopted:

- (a) On production of an irrevocable letter of credit assigned in the favour of the exporter for the value of the entire

quantity, an import licence for import of steel items may be issued.

- (b) in case the exporter is not able to procure an irrevocable letter of credit for the entire quantity of export then he may be asked to furnish an irrevocable bank guarantee equivalent to 15 per cent of the value of the import licence applied for.

It should be made clear to the exporter that the guarantee will be forfeitable in case of failure to earn the foreign exchange by export, whatever be the reason therefor. It should also be made clear to the exporter that in case of failure to export, Iron and Steel Controller will have no further dealings with him. The guarantee will be releasable on actual export of the full quantity contracted for.

Import licence should be issued only in cases where a firm contract for export exists.

Yours faithfully,

Sd/- C. A. NAIR,

Officer on Special Duty.

ANNEXURE 'B' TO APPENDIX XIII

NON-JUDICIAL STAMP RUPEES TEN

Dated the 17th April, 1966.

KNOW YE ALL BY THESE PRESENTS that we..... a firm registered under the Indian Partnership Act and carrying on business amongst other places at.....hereinafter referred to as the OBLIGOR (which term shall unless excluded by or repugnant to the subject for context include the partners therein for the time being and their respective heirs, executors, administrators and assigns).....a Banking Company having its registered office atand branch office *inter alia* at.....hereinafter referred to as the SURETY (which terms shall unless excluded by or repugnant to the subject or context include its successor or assigns) are held and firmly bound unto the PRESIDENT OF INDIA hereinafter referred to as the "GOVERNMENT" (which term shall unless excluded by or repugnant to the subject or context include his successor or successors in office and/or assigns to pay the sum offor such will and treaty to be made by the obligor and the Surety bind ourselves jointly and severally by these presents:—

SIGNED SEALED & DELIVERED BY THE Obligor this.....
WHEREAS the Government that the Iron & Steel Controller has agreed to enter into a Contract with the Obligor for import of on the undertaking of the Obligor to export produced by Messrs. Hindustan Steel Ltd., within three months, **AND WHEREAS** the Obligor and the Surety have at the direction of the Government entered into the bond as above-written as a security for honouring the undertaking of the Obligor to export.....produced by the Hindustan Steel Ltd. **NOW THE CONDITION** of the above written bond is such that if the Obligor shall fail to secure foreign purchaser for an arranged export out of India of.....produced by the Hindustan Steel Ltd., within three months out of India from the date of delivery of the materials by Hindustan Steel Ltd., or such further time as the Government may agree to allow to the Obligor these presents shall remain in full force and virtue and otherwise the same shall, be void and no effect **AND** it is hereby agreed and declared that the obligation of the Surety under these presents shall not be impaired in any way by reason of time or facilities being allowed to the Obligor by Government without notice to the Surety.

In **WITNESS WHEREOF** the parties of these presents have hereunto set their hands and seals this

SIGNED SEALED AND DELIVERED BY
 the Obligor

Signed Firm.

above names

in the presence of:

SIGNED & DELIVERED for and on
 behalf of the

Valid upto.....
 Signed Bank

The Surety above named.

by the said Bank at
 in the presence of:—

APPENDIX XIV

[See para 16(III) of the report]

EXTRACTS FROM THE DISSENTING NOTE ATTACHED TO THE MAJORITY
REPORT OF THE COMMITTEE OF INQUIRY (STEEL TRANSACTIONS)
(FEBRUARY, 1968).

FORM OF BANK GUARANTEE BOND

4.1. One of the conditions for the grant of a pre-import licence was that if a barterer was unable to furnish an irrevocable letter of credit for the entire quantity of export, he should be required to furnish a banker's guarantee to the extent of 15 per cent of the value of the import licence. It was to be made clear to the barterer that the guarantee was forfeitable in case of failure on his part to earn foreign exchange by export whatever be the reason therefor.

4.2. In some of the semis barter cases, the firms failed to earn the foreign exchange spent on pre-imports; but in no case was the bank guarantee forfeited. The failure to invoke the bank guarantee was undoubtedly, in part at least, due to a realisation that in form in which the bank guarantee was taken, it was of no avail. An examination of the form of the bank guarantee has thus become necessary.

4.3. How the Guarantee Bond was evolved.—It has been stated that the bank guarantee form was drafted by Shri S. N. Sen, the Central Government Solicitor at Calcutta. Shri S. C. Mukherjee sent to the Solicitor a note dated 9th March, 1960 in which he sought advice on the form of the bank guarantee. In the said note Shri Mukherjee had indicated to the Solicitor the purpose which the guarantee bond was to fulfil in the terms mentioned in the Ministry's Letter of 2nd February 1960. The records show that Shri S. N. Sen prepared a draft of the guarantee form and sent it to Shri Mukherjee with a note dated 28th March, 1960. Thereupon, Shri S. C. Mukherjee put up the form to the Controller with the following note:—

“Controller and P&AO may please see. We may ask all firms who have already been granted I/L and furnished bank guarantee in the old form to replace them by the one drawn up by the solicitor.”

Sd/- S. C. MUKHERJEE,
2-4-60.

Shri Bam put his signature below this on 4th April, 1960 signifying his approval.

4.4. It appears that when the matter was being investigated by the Public Accounts Committee Shri Mukherjee claimed that all he did was to adopt the form of the bank guarantee that was suggested by the Central Government Solicitor and that, not being himself a lawyer, he did not examine the form to see whether it did fulfil the requirements laid down in the letter dated 2nd February, 1960.

4.5. Substantial changes in the form.—Our Committee's investigation has revealed that Shri Mukherjee had not only made vital and far-reaching changes in the form after it was received from the Solicitor but had accepted guarantee bonds in which the banks had given themselves the liberty of limiting their liability to short periods which was not contemplated by the Solicitor's form. According to Shri S. N. Sen's evidence, the contingency on the happening of which the amount guaranteed by the bond was forfeitable was stated as follows in the form prepared by him:

“The condition of the above written bond is such that if the Obligor shall fail to secure foreign purchaser for and arrange export out of India of..... (1)..... tons of (2)..... produced by Hindustan Steel Limited within..... (3)..... months from the date of these presents or such further time as the Government may agree to allow to the Obligor.....”

4.6. Shri S. N. Sen, who was examined by the Committee, explained that the form of the bond prepared by him, of which he had kept a carbon copy in his own file, fulfilled the requirements laid down in the Ministry's letter dated 2nd February 1960. He explained that his form required the Obligor i.e., the firm, to export within the specified period *from the date of the bond* unless the time was extended by Government, it was at the Government's pleasure to extend the time or not. The criterion for enforcement of the bank guarantee according to the form devised by him was the efflux of a fixed period of time mentioned in the blank space No. (3) above. He expected this period to be fixed with reference to the delivery period etc. mentioned in each particular contract, but once the period had been mentioned, the bond was capable of being invoked on the basis entirely of the fact of failure to export and the efflux of a definite or ascertainable period of time from the date of the bond. No other criterion or reason was relevant or material for the enforcement of the bond. Therefore according to Shri S. N. Sen, the requirement of the Ministry's (*viz.*, that the guarantee should be forfeited on failure to export “whatever be the reasons therefor”) was completely met by his form. Shri S. N. Sen said that in the

form which he had drafted there was no provision for the bank limiting its liability by saying "valid upto...". Such a limitation was not contemplated by him.

4.7. The note of Shri Mukherjee with which he put up the form drafted by the Solicitor for the information and approval of the Controller did not mention that he (Shri Mukherjee) had made any alterations in it. Actually Shri Mukherjee filled up the blank space marked "(3)" above with the word "three" and he changed the words underlined above (*viz.*, "months from the date of these presents") into "months from the date of delivery by Hindustan Steel Limited". He made these alterations without consulting the Solicitor or anybody else.

4.8. It should be mentioned at this stage that Shri S. N. Sen was examined by our Committee on 3rd October, 1967, and Shri S. C. Mukherjee was examined by the Committee on five days commencing on the 18th September, 1967. To begin with, our Committee was not aware definitely of any changes having been made by anybody in the form of the guarantee bond as prepared by the Solicitor. The Committee proceeded on the assumption that the form actually adopted in the several cases of barter was the one as framed by the Solicitor. Shri N. N. Wanchoo, who had been examined earlier by the Committee was not aware that any changes had been made in the form drafted by the Solicitor. He deposed that in his opinion it was the duty of the Iron and Steel Controller to have applied his mind to the form as drafted by the Solicitor to see that it fulfilled the conditions laid down in the Ministry's letter of 2nd February 1960 and he felt that there was a failure to that extent. At the same time he mentioned that it was usual for lay officers generally to accept the advice of legal experts and not to scrutinise critically the forms and opinion given by professional men.

4.9. This was the background in my mind when the Committee began to examine Shri Mukherjee on 18th September, 1967. It was not clear to me what exactly was the form drafted by the solicitor. The file contains several forms with various corrections and alterations. So Mr. Mukherjee was questioned as follows:

I.185. Q. Have you recently seen the draft that the Solicitor prepared?

A. Yes, two or three months back the file came to us.

Q. Where is that form—in Calcutta or here?

A. I do not know. It is not in my office in Calcutta.

Q. You had supplied certain blanks left over by the Solicitor in the form of guarantee drafted by him. What are those blanks which you supplied?

A. Without seeing that, I will not be able to say.

Q. Did you in your own judgement consider that the form satisfied the conditions laid down by Government?

A. I did not apply my mind. The Solicitor's was the final word in drafting.

Q. You acted blindly and on trust?

A. I submitted it to the Controller and he said "yes this could be one". We thought that since the solicitor had drafted something, we could not improve it, except that where he left blanks I filled them. We did not at that time apply our mind. It was not usual in legal matters because we always go by what the Solicitor does.

4.10. Shri Mukherjee maintained that the form which he adopted on the advice of the Solicitor fulfilled the conditions laid down by Government. Then he was asked questions as follows:

I. 192. Q. Take this form a finally accepted by you which is at page 254 of the PAC Report. Suppose you had filled up the blanks (at the end) in this fashion: "valid upto 30th September, 1960." Assume there is delay on the part of HSL to supply the material. They failed to supply the materials even by a certain date, say by the beginning of September. Please explain how this bond could be enforced for failure to export in this case?

A. We have to get it extended.

Q. Therefore this bond by itself does not help you. Who has to get it extended?

A. We have to ask the party to extend the guarantee.

Q. If he refuses?

A. We can cancel.

Q. Cancel what?

A. The licence.

Q. The licence has already been availed of?

A. Then of course it would be difficult.

Q. Therefore even by filling it up in the fashion suggested by me and with that little delay in the supply of material could this bond in those circumstances be enforceable?

A. No, it will not be enforceable unless the validity is extended.

Q. Was this clause at the end, "valid upto....." in the form approved by the Solicitor?

A. I do not remember. But I think it was not there. It had to be introduced because the bank would not give an indefinite guarantee. My recollection is that he did not put it. This is the form in which they always give the guarantee because banks never give any indefinite bank guarantee.

4.11. Our questions, therefore, on the very first day of Shri Mukherjee's examination proceeded on the footing that apart from the "period of validity" there was no other change introduced by Shri Mukherjee.

4.12. On the second day of Shri Mukherjee's examination he was again asked about the form of the bank guarantee as follows:—

II.7. Q. Yesterday we were on the guarantee bond. Please make it clear what was your contribution to the evolution of the final draft of the guarantee bond, because we might have to ask other people about it. What alterations and additions did you make in the form of the guarantee bond after it came out of the Solicitor's hands?

A. Unless I see the file it would be difficult to say.

Q. You said you inserted the words "three months from the date of delivery"?

A. That is my recollection because he had left it blank.

Q. Why did you insert that phrase "within three months"?

A. I thought that was a reasonable time to be given to the exporter to export. After delivery he should be given some time.

Q. What do you mean by delivery?

A. Delivery by HSL.

Q. At port?

A. Yes.

Q. What is delivery? You will have to ascertain what it means?

A. The Solicitor had drafted the words "from the date of delivery". He only left the period blank and I inserted "three months" considering that it was a reasonable time.

- Q. You will have to ascertain the date of delivery in the legal sense. Did you feel you were competent to determine the date of delivery in the execution or operation of a contract between HSL and a barterer to which contract you were not a party?
- A. The words "date of delivery" were perhaps put by the solicitor. Perhaps I only inserted the words "three months".
- Q. Where did you insert it?
- A.if the obligor shall fail to secure foreign purchaser for and arrange export out of India of.produced by the HSL, within, three months out of India from the date of delivery of materials by HSL. . . .
- Q. Your contribution was "three months"?
- A. That is my recollection. I have to see the file.
- Q. I am showing you a form with alterations. Let us proceed on the assumption that these were the alterations that you made. We will check it up with the other thing when we get it. According to this document, the words you inserted seem to be "within three months" from the date of delivery of material by H.S.L. You altered the words "From the date of these presents" to "from the date of delivery".
- A. Yes, if this is in my handwriting.
- Q. Did you realise it would be necessary for you to determine the precise legal date of delivery in each case for the purpose of enforcement of this guarantee bond and you thought you had the machinery for determining all that?
- A. Normally, Sir, if we had reason to doubt we would just write to the bank to invoke the guarantee. It is for the other party to raise trouble.
- Q. It is very funny way of doing Government business to expect somebody else to raise trouble instead of taking initial precaution yourself to avoid trouble. Furthermore why did you allow as much as three months after delivery?
- A. Because I considered it was a reasonable time after delivery by HSL.
- Q. Where did you think delivery would normally take place?
- A. It depended on the contract, if it was f.a.s. then it would be f.a.s., if f.o.r. it would be f.o.r. and f.o.b. it would be f.o.b

Q. Did you alter it with reference to the terms of a particular contract?

A. No, Sir, it was a standard form.

Q. With no relationship to a particular contract?

A. Yes, Sir.

Q. Suppose the contract was f.a.s., even then you regarded three months as reasonable time?

A. No, Sir, not necessary at all.

Q. Then what is the meaning of your putting three months in a mechanical way for types of contracts?

A. It could be changed for different types of contracts, but we did not change.

Q. When you received the bank guarantee in a particular case, did you see how the date of validity as stipulated by the bank compared with the date of execution of the contract according to the contract documents?

A. No, I do not remember. Each case has to be seen. It is normally the office who checked it. I did not check all of them personally.

Q. Did it not occur to you whether it was a necessary part of our duty to check whether the validity date covered a sufficient period to make it effective?

A. At my level I had not been checking it.

4.13. From the questions and answers reproduced above it is clear that Shri Mukherjee tried in the beginning to suppress the fact that it was he who changed the form of the bank guarantee and make it practically useless.

4.14. The question now remains to be considered whether he made these vital alterations with a full knowledge of their implications or just carelessly. Knowing that we were, at the time, we examined him, handicapped by want of knowledge as to his precise contribution to the guarantee bond, it was unfortunate that an attempt should have been made to mislead the Committee by saying that it was the Solicitor who had put in the words "months from the date of delivery", whereas in point of fact it was Shri Mukherjee who changed the words "from the date of these presents" to "from the date of delivery by HSL". From the fact that an attempt was made to mislead us on this point, I conclude that he knew the significance of what he had done.

There is another circumstance which conclusively establishes Shri Mukherjee's awareness of the implications of what he had done. In the case of the pre-import licences issued to M/s. Ramkrishan Kulwant Rai on 10th June 1960, Shri Mukherjee was aware that the firm had not export contract with HSL. In that connection Shri Mukherjee had recorded a note on the 26th October, 1960, as follows:—

“In the Bank Guarantee which the firm has furnished they have clearly given an undertaking to export materials and we can easily forfeit their Bank Guarantee for their failure to export the materials for whatever reasons there may be.”

4.16. With reference to this note, Shri Mukherjee was asked whether on or about the date (26-10-60) on which he recorded the note he had seen the bank guarantee furnished by Ram Krishan Kulwant Rai and satisfied himself that that particular bond did not have any reference to “three months from the date of delivery” and whether he looked at it from that point of view. His answer is reproduced below:—

III. 37. A. It is my impression from my note that I did see the bank guarantee at that time and found that they have agreed to give an undertaking to export without linking supply with HSL, a deviation which perhaps was not noticed by our office earlier. So I recorded this note. Here perhaps we were in a stronger position to invoke the bank guarantee. That is my recollection.

Q. So your present recollection is that there was a deviation from the standard form in the bank guarantee that was furnished to you by RKKR originally?

A. Yes.

4.17. This answer clearly proves that Shri Mukherjee was aware that where the bank guarantee was linked with the date of delivery by HSL it would not be possible to enforce it without reference to facts or disputes about delivery. In other words, his deliberate action in introducing reference to the date of delivery in the standard form was made only with the idea of defeating the bank guarantee.

4.18. There is another document which conclusively establishes Shri Mukherjee's awareness of the effect of what he had done to the bank guarantee form in a letter, D.O. No. C/Progress/(96)/60, dated 18th July, 1960 to the address of Shri Bhoothalingam (drafted by Shri Mukherjee and signed by Shri Bam) he referred to the

serious situation that may arise if deliveries are long delayed in cases where pre-import licences had been issued. The following is an extract of the relevant portion of the letter:—

“This might create a very serious situation as we have, in many cases, permitted the firms to import steel, before export, against 15 per cent bank guarantee. Although the form of the Bank Guarantee (copy enclosed) has been so drafted by us in consultation with the Solicitor to the Central Government at Calcutta that the parties cannot go back on their commitment for export simply on the plea that supplies have been delayed by Hindustan Steel, we may find it difficult to force them to export the materials, particularly in cases where the prices of exportable goods go down considerably.”

From the Ministry's file in which this letter is recorded, it is seen that the copy of the guarantee bond was not actually sent along with this letter but the letter clearly shows that Shri Mukherjee knew that a guarantee bond, if it was to be useful must not have reference to date of delivery. And it is in respect of this vital aspect that he made the change in the Solicitor's form, without anybody's knowledge. In the letter above, he was no doubt giving assurances that everything was all right although he knew that the guarantee bond form as changed by him was very far from being all right.

4.19. There is another serious matter, namely, that when this question was being enquired into by the P.A.C., Shri Mukherjee allowed it to be understood that the form of the bank guarantee that was being used by him was the one that was suggested by the Solicitor. He allowed it to be understood that the defect lay more in the failure to watch renewal of bank guarantee than in the form itself. This had the effect of diverting attention to the question of failure to watch renewals etc. He did not even disclose the fact that the Government Solicitor's form did not contemplate that the bank should be permitted to limit its liability by reference to a deadline and without reference to the reasonable needs of the particular undertaking the fulfilment of which was to be guaranteed. A system of bank guarantee that requires periodical renewal without any sanction for compelling renewals is not a system that can be countenanced; and why should anybody agree to renew when there is no hold on him? The actual barter cases indicate that the firms did renew these bank guarantees only for so long as they had yet to get a Customs Clearances Permit for the clearance of their imported

consignments; but once they got all the consignments cleared, they naturally declined to renew. In the actual bank guarantees which the Committee had seen, the period of validity had been generally put in as six months or even less. Shri S. C. Mukherjee's assertion that banks would not give guarantees with longer period of validity has no basis. The Committee had seen bank guarantees given to other Departments by the State Bank of India which were valid for as long as three years from the date of the bond.

4.20. It seems, therefore, that Shri Mukherjee should be held responsible:

- (a) for having made very vital alterations in the form of guarantee with the awareness that by so doing he was protecting not the interest of Government but conferring practically complete immunity on the firms;
- (b) for having misled Shri Wanchoo, while he was giving evidence before the Public Accounts Committee, to believe that no alterations had been made in the Solicitor's draft;
- (c) for having in the beginning also tried to misled our own Committee; and
- (d) for effectively depriving the Government of the protection or safeguard which the bank guarantee was intended to provide, by
 - (i) allowing banks to limit the duration of their liability to short periods, usually six months or less; and
 - (ii) by making the enforcement of the bank guarantee dependent on settlements of disputes concerning dates of effective delivery which may embrace such diverse topics as quantity offered for delivery quality of the material offered for delivery *vis-a-vis* contract specifications, legal date of delivery, when is delivery complete, modus and points of delivery, and so forth.

4.21. Legal feasibility of Guarantee Bond in absolute terms.— In this connection, I must refer to a question which has been debated before the Committee *viz.* whether a guarantee bond that was to be enforceable whatever may be the reason for the failure to export is at all legally feasible in such absolute terms. Apart from force major or some such legal concepts which probably govern all undertakings (and not merely guarantees) I do not see how from the ordinary commonsense point of view it is unreasonable to demand that in consideration of having been allowed foreign exchange

for import, one should agree to forfeit a certain sum in the event of failure to make good the foreign exchange by export of specified commodities. It is the business of the obligor to protect himself by inserting suitable safeguards against non-supply in his separate contract with the supplier. Those safeguards, might well include provision for the obligor's liability to others in the event of failure of supply. If he makes those safeguards, no hardship is caused to him. His failure to provide himself with the safeguard which is open to him, would be no reason for saying that the guarantee which he himself has furnished to Government is unenforceable.

APPENDIX XV

[See para 17 of the Report]

COMMENTS OF THE MINISTRY OF STEEL AND HEAVY ENGINEERING ON THE FURTHER QUESTIONS OF PRIVILEGE RAISED BY SHRI MADHU LIMAYE, MEMBER, LOK SABHA, IN HIS LETTER OF THE 22ND MARCH, 1969, ADDRESSED TO THE SPEAKER OF LOK SABHA.

The Honourable Member has referred to two instances of alleged false evidence.

(i) That Shri S. C. Mukherjee, in his reply before the Public Accounts Committee had stated that the mistake in issuing the pre-import licence to M/s. Ramkrishan Kulwantrai without ensuring that there was a firm contract for export with Hindustan Steel Limited was noticed by him in the month of November, 1960, although he came to know of the mistake very much earlier, namely on 26th August, 1960. Incidentally, Shri Madhu Limaye has also referred to incorrect figures furnished by Shri Mukherjee to the Public Accounts Committee in regard to the value of imports made by M/s. Ramkrishan Kulwantrai after the mistake was noticed.

(ii) The second instance of alleged false evidence given by Shri Mukherjee before the Public Accounts Committee is regarding the form of Bank Guarantee in the case of the barter deals.

Following are the facts in regard to the first instance (relating to the issue of import licence to M/s. Ramkrishan Kulwantrai without ensuring that they had finalised the contract with Hindustan Steel Ltd.) came to notice, it may be mentioned that the first reference to it was made in Shri S. C. Mukherjee's note in File No. CP/RKK/32/60 extracted Appendix 4, Annexure II of the 56th Report of Public Accounts Committee part 2, pp. 30-31, dated 26th October, 1960 wherein he admitted that a serious lapse had occurred. In this note, Shri Mukherjee referred to a telephone conversation that Shri H. R. S. Rao, Asstt. Sales Manager of Hindustan Steel Limited had had with him on the previous day, when Shri Rao had brought the matter to his notice. This conversation was also referred to by Shri Rao in his letter of 25th February, 1961 to Hindustan Steel Limited's Head Office at Ranchi, wherein Shri Rao had stated that he had conveyed to Shri Mukherjee in August, 1960 itself, that he had learnt by accident from the representative of M/s. Ramkrishan Kulwantrai that the party had been able to secure pre-

import licence for approximately, one Crore of Rupees, without having entered into a contract with Hindustan Steel Limited. Shri Rao, however, added in that letter that Shri Mukherjee, during the course of this telephone conversation had mentioned to Shri Rao that there was nothing to worry about, as it would be possible to get the party to export, if not the semis, some other items like ores. It must be remembered at this stage that an earlier barter deal with M/s. Ramkrishan Kulwantrai for the export of 5,000 tons of slabs and the import of finished steel had been approved by the Steel Controller and a contract had been entered into by the party with HSL. Shri Mukherjee who was asked by the Sarkar Committee whether Shri H.R.S. Rao had told him on the 26th August, 1960, as he claims to have in his letter of 25th February, 1961, explained that he came to know of the lapse only on 25th October, 1960 from Shri H. R. S. Rao, as recorded by him (Shri S. C. Mukherjee) in his note of 26th October, 1960. The position is that there were two barter transactions for semis which M/s. Ramkrishan Kulwantrai had proposed—one for 5,000 tons and the other for 25,000 tons. There is also reference to two telephonic conversations between Shri S. C. Mukherjee and Shri H.R.S. Rao, one on the 26th August, 1960 and the other on 25th October, 1960 when these barter deals were discussed. There is no dispute between Shri H.R.S. Rao and Shri S. C. Mukherjee that the 25,000 tons barter deal was discussed on 25th October, 1960. It is only regarding the discussion which is alleged to have taken place on 26th August, 1960 that there is a dispute. The Sarkar Committee have stated, with reference to the conversation of 26th August, 1960 that "this conversation may be reasonably taken to have been concerning a barter deal with M/s. Ramkrishan Kulwantrai but which one, cannot be predicated with any certainty." It may also be mentioned that a letter had been issued by Shri Rao on 26th August, 1960 referring to the telephone conversation between Shri Mukherjee and himself and enclosing a copy of their (HSL's) letter dated 9th June, 1960 to the Iron & Steel Controller which related to the barter deal involving export of 5,000 tons of slabs by M/s. Ramkrishan Kulwantrai. In this letter there is no mention by Shri H. R. S. Rao about M/s. Ramkrishan Kulwantrai not entering into a contract with Hindustan Steel Limited for 25,000 tons of semis. It is also noticed that copies of all the letters leading to 25,000 tons barter deal from 5th May, 1960 to 7th October, 1960 were marked to Hindustan Steel Limited who do not seem to have pointed out that there was no contract between M/s. Ramkrishan Kulwantrai and themselves for 25,000 tons of semis.

Shri Madhu Limaye has referred to the letter of Shri N. P. Mathur, Joint Secretary of the Ministry of Steel and to the letter of Shri T. Swaminathan, former Secretary of the Ministry and to a letter of Shri S. Sahay, Iron & Steel Controller. In all these cases, the reference, as will be noted from a reading of paras 4.39 to 4.52 of the 50th Report of the P.A.C. was to when the mistake came to light in the Ministry and the emphasis at that time was with regard to the action the then Secretary should have taken. This is probably why the Ministry did not refer to the note of Shri S. C. Mukherjee of 26th October, 1960.

In regard to the ancillary point raised by Shri Madhu Limaye regarding the actual imports, made after the mistake was noticed, the position is as follows:—

Shri Padhi in his annotation found in para 5.47 of his Dissenting Note has stated as follows:—

“Our Committee’s investigation shows that actually Customs Clearance Permits of the value of Rs. 26,94,788 were issued after 25th October, 1960. Shri Mukherjee had given wrong figures both to our Committee as well as to the PAC.”

This aspect of the question has been dealt with in para 4.41 of the 50th Report of the PAC. The relevant portion is—

“By that time, i.e., November, 1960, the party had made imports of 8,297 tonnes of steel, valued at Rs. 95.08 lakhs and a balance of 149 tonnes worth Rs. 3.90 lakhs was only left. The Customs Clearance Permits were stopped at that time until the party entered into contract with HSL. (which was done on 18th January, 1961).”

It seems there was some misunderstanding regarding the word “import”. Pre-import licences for Rs. 98.98 lakhs were issued to M/s. Ramkrishan Kulwantrai in respect of contract No. 28 with Hindustan Steel Limited. It was decided not to issue any (Customs Clearance Permits) in this case after 25th October, 1960. After that date, Rs. 26.94 lakhs worth of goods arrived, and CCPs were issued to clear these goods. As on November, 1960, the value of goods yet to be shipped was Rs. 3.90 lakhs. Hence, the two values Rs. 26.94 and Rs. 3.90 lakhs referred to two different aspects of utilisation of the same licence.

While on this question, reference may be made to the evidence given to the PAC whether CCPs were stopped when the mistake

was noticed. While the evidence given by the Deptt. of Iron & Steel to the PAC was that CCP's were stopped, in actual fact 12 CCPs were issued to M/s. Ramkrishan Kulwantra in respect of semis barter contract No. 28 with the HSL and Contract No. 14 with HSL during the months of November and December, 1960. Whether it was right to have issued CCPs is a question which has been gone into by the Sarkar Committee in paras 6.20 and 6.21 of the Report. The Committee have held that for the purpose of import, legally speaking, it was not incumbent for the licensee to take a CCP and they have also said that it would not have been practically advisable to refuse the issue of CCPs, since the goods covered by the Import Licence were to arrive or had already arrived. Lastly, the Committee have said that no damage or loss was caused by the issue of CCPs.

Regarding the second specific instance quoted by Shri Madhu Limaye, the position is as follows:—

In regard to the form of Bank Guarantee Bond, Shri Padhi in para 4.20 of his Dissenting Note has stated that Shri Mukherjee is responsible for having misled Shri Wanchoo while he was giving evidence before the PAC to believe that no alterations had been made in the Solicitor's draft. The subject of the bank guarantee form has been dealt with in paras 4.62 to 4.65 of the 3th Report of the PAC. The only references to the Dy. I & S Controller in these paragraphs of the PAC is whether there was any failure when the old forms were used and why they (I & S Control Organisation) thought new form would be necessary. (Para 4.64 of the 50th Report of the P.A.C.)

In the questionnaire prepared by the PAC, Question No. 68 is the only one which relates to bank guarantee form and it reads as follows:—

“The Bank Guarantee form has not provided for any specific time-limit. The circumstances under which bank guarantees, with specific time-limit were accepted, should be explained. So (was) legal advice taken before accepting that time-limit as to why the bank guarantee cannot be forfeited.”

It would, therefore, appear that the point at issue was why they accepted the bank guarantees with specific time-limit. The question whether the form of the bank guarantee was in terms of the letter of 2nd February 1960 was gone into only at the time that the PAC took evidence. From the records that we have, there is no

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evidence to show that any brief was prepared by either the Department of Iron and Steel or the Iron & Steel Control Organisation on this question of form of bank guarantee. However, it is not known how the fact of alteration in the Solicitor's draft by Shri Mukherjee himself escaped his (Mukherjee's) notice and how he failed to correct Shri Wanchoo while the latter gave evidence before the PAC that the form employed for taking the bank guarantee was as per the draft given by the Solicitor.

This question of the form of bank guarantee was gone into in detail by the Sarkar Committee in para 4.18. They have held that the original draft proposed by the Govt.-Solicitor, Shri S. N. Sen, might be in accordance with the conditions stipulated in the letter of 2nd February, 1960 in that the bank guarantee was forfeitable whatever be the reasons for the failure to earn foreign exchange. They have, however, added that taking all the circumstances connected with the furnishing of the bank guarantee into consideration, it would be difficult to say whether it will be possible to enforce as an absolute condition, the condition imported by the words used by the Solicitor. They have gone further and said that by changing the form in the manner in which Shri Mukherjee had one, namely, providing for the export being made within a certain time of supply by HSL., the bank guarantee was made workable and easily enforceable. The Committee have also held in paras 4.19 & 4.20 that the bank guarantees, as taken by the Iron & Steel Control, are enforceable.

APPENDIX XVI

[See para 18 (iii) (i) of the Report]

Copy of letter No. SC (C)-5 (5) dated February, 1960 from Shri C. A. Nair, O.S.D., Deptt. of Iron and Steel to the Iron and Steel Controller.

The procedure adopted so far in the case of barter deals is to issue an import licence for Steel after export has taken place. In barter deals, the size of the export commodity is large and deliveries can be made only over a period of time. If the present procedure is adopted, it is felt that the import of steel may take place after our pressing needs are over. It may even come after our steel plants have started producing the same category. Hence the procedure to be followed for barter deals in exports involving the export of scrap, big iron, or steel ingots or slabs has been considered in consultation with the Ministry of finance and it has been decided to revise the existing procedure.

In cases where delay in exports is anticipated for reasons satisfactory to the Iron and Steel Controller, the following procedure may be adopted:

- (a) On production of an irrevocable letter of credit assigned in the favour of the exporter for the value of the entire export quantity, an import licence for import of steel items may be issued.
- (b) In case the exporter is not able to procure an irrevocable letter of credit for the entire quantity of export then he may be asked to furnish an irrevocable bank guarantee equivalent to 15 per cent of the value of the import licence applied for.

It should be made clear to the exporter that the guarantee will be forfeitable in case of failure to earn the foreign exchange by export, whatever be the reason therefor. It should also be made clear to the exporter that in case of failure to export, Iron and Steel Controller will have no further dealings with him. The guarantee will be releasable on actual export of the full quantity contracted for.

Import licence should be issued only in cases where a firm contract for export exists.

APPENDIX XVII

[See para 18 (III) (ii) of the Report]

NON-JUDICIAL STAMP RUPEES TEN

Dated the 17th April, 1960.

KNOW YE ALL BY THESE PRESENTS that we..... a firm registered under the Indian Partnership Act and carrying on business amongst other places at.....hereinafter referred to as the OBLIGOR (which term shall unless excluded by or repugnant to the subject for context include the partners therein for the time being and their respective heirs, executors, administration and assigns)....a Banking Company having its registered office at.....and branch office inter-alia at.....hereinafter referred to as the SURETY (which terms shall unless excluded by or repugnant to the subject or context include its successor or assigns) are held and firmly bound unto the PRESIDENT OF INDIA hereinafter referred to as the 'GOVERNMENT' (which term shall unless excluded by or repugnant to the subject or context include his successor or successors in office and/or assigns) to pay the sum of....for such will and treaty to be made by the obligor and the Surety bind ourselves jointly and severally by these presents:—

SIGNED SEALED & DELIVERED BY THE Obligor this..... WHEREAS the Government that the Iron and Steel Controller has agreed to enter into a Contract with the Obligor for import of on the undertaking of the Obligor to export produced by Messrs. Hindustan Steel Ltd., within three months, AND WHEREAS the obligor and the Surety have at the direction of the Government entered into the bond as above-written as a security for honouring the undertaking of the obligor to export.....produced by the Hindustan Steel Ltd. NOW THE CONDITION of the above written bond is such that if the Obligor shall fail to secure foreign purchaser for and arrange export out of India of..... produced by the Hindustan Steel Ltd., within three months out of India from the date of delivery of the materials by Hindustan Steel Ltd., or such further time as the Government may agree to allow to the Obligor these presents shall remain in full force and virtue and otherwise the same shall, be void and no effect AND it is hereby agreed and declared that the obligation of the Surety under these presents shall not be impaired in any way by reason of time or facilities being allowed to the Obligor by Government without notice to the surety.

IN WITNESS WHERE OF the parties of these presents have hereunto set their hands and seals this.

SIGNED SEALED AND DELIVERED BY
the Obligor

above named

Signed Firm

in the presence of

SIGNED & DELIVERED for and on
behalf of the

Valid upto.....

Signed Bank.

The Surety above named.

by the said Bank at
in the presence of:—

APPENDIX XVIII

[See para 18(III) (iii) of the Report]

KNOW YE ALL MEN BY THESE PRESENTS that we Aminchand Payarelal a Partnership firm registered under the Indian Partnership Act and carrying on business at 435, Canning Street, Calcutta hereinafter referred to as the OBLIGOR (which terms shall unless excluded by or repugnant to the subject or context include the partners therein for the time being and their respective heirs, executors, administrations and assigns) AND the Punjab National Bank Ltd. a Banking Company having its registered office at——— and a branch Office inter-alia at Canning Street, Calcutta, hereinafter referred to as the SURETY (which term shall unless excluded by or repugnant to the subject or context include its successor or assignee) are held and firmly bound unto the PRESIDENT OF INDIA hereinafter referred to as the 'Government' (which terms shall unless excluded by or repugnant to the subject or context include his successor or successors in office and/or assignee) to pay the sum of Rs. 13,24,800 (Rupees thirteen lakh twenty four thousand eight hundred only) for such will and treaty to be made we the Obligor and the Surety bind ourselves jointly and severally by these presents:—

SIGNED SEALED AND DELIVERED by the said Obligor this ——day of 1960.

WHEREAS the Government that the Iron and Steel Controller has agreed to enter into a Contract with the Obligor for import of —— tons of —— on the undertaking of the obligor to export 20,000 tons of billets produced by Messrs. Hindustan Steel Ltd., within months from the date of these presents AND WHEREAS the Obligor and the Surety have at the direction of the Government has entered into the bond as above written as a security for honouring the undertaking of the Obligor to export 20,000 tons of billets produced by the Hindustan Steel Ltd. NOW THE CONDITION of the above written bond is such that if the Obligor shall fail to secure foreign purchaser for and arrange export of 20,000 tons of billets produced by the Hindustan Steel Ltd. Ltd. within —— months out of India from the date of these presents or such further time as the Government may agree to allow to the Obligor these presents shall remain in full force and virtue and otherwise the

same shall, be void and no effect AND it is hereby agreed and declared that the obligation of the Surety under these presents shall not be impaired in any way by reason of time or facilities being allowed to the Obligor by Government without notice to the surety.

IN WITNESS WHEREOF the parties of these presents have here into set their hands and seals this day of One thousand nine hundred and sixty.

SIGNED SEALED AND DELIVERED BY

A partner of Messrs. Aminchand Payarelal the Obligor above named
at
in the presence of:

SIGNED & DELIVERED for and on behalf of the Punjab National Bank the Surety above named by the——of the said Bank at in the presence of:—

APPENDIX XIX

[See para 21 of the Report]

Report of the Public Accounts Committee on the question of privilege raised by Shri Madhu Limaye, M.P. against certain officers of the Department of Iron and Steel for allegedly giving false evidence before the Committee on Public Accounts.

INTRODUCTORY

On the 6th March, 1969, the Lok Sabha referred to the Committee of Privileges a question of privilege raised by Shri Madhu Limaye, M.P. against Shri N. N. Wanchoo, former Secretary, Department of Iron and Steel and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, for allegedly giving false evidence before the Committee on Public Accounts. In this connection, the House adopted the following motion:

“That the question of privilege against Shri N. N. Wanchoo, former Secretary, Department of Iron and Steel and Shri S. C. Mukherjee, then Deputy Iron and Steel Controller, for allegedly giving false evidence before the Public Accounts Committee, be referred to the Committee of privileges.”

2. Subsequently, Shri Madhu Limaye, submitted to the Speaker. Lok Sabha, another notice dated the 22nd March, 1969, citing further instances of allegedly false evidence given before the Public Accounts Committee and also referring to the information furnished to Public Accounts Committee by (i) Shri T. Swaminathan, Secretary to the Steel Ministry, (ii) Shri N. P. Mathur, Joint Secretary in that Ministry and (iii) Shri S. Sahay, Iron and Steel Controller.

3. Pursuant to a decision taken by the Committee of Privileges at their sittings held on 7th May and 16th July, 1969, the Chairman, Public Accounts Committee, was addressed by the Hon'ble Deputy Speaker, who was the Chairman of the Privileges Committee on the 17th July, 1969 for the “views of the Public Accounts Committee on the question whether any false evidence was given before the Public Accounts Committee, as alleged by Shri Madhu Limaye, and, if so, by whom and in what respect.”

4. The Public Accounts Committee considered the matter at their sitting held on the 7th August, 1969 and decided to remit it for detailed examination by a Sub-Committee.

5. At their sitting held on 22nd August, 1969, the Sub-Committee, after an examination of the issues involved, decided to take the evidence of Sarvashri N. N. Wanchoo, the then Secretary, Department of Iron and Steel, and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller. The Sub-Committee examined these two officers at their sitting held on the 22nd October, 1969, on the basis of a questionnaire sent to these officers in advance of the examination. The Sub-Committee held a further sitting on 16th March, 1970, to consider and adopt this report.

6. The Committee considered and approved the Report of the Sub-Committee at their sitting held on the 26th March, 1970.

REPORT

Issues Raised

Three issues have been raised by Shri Madhu Limaye:

Issue (i) That Shri N. N. Wanchoo, the then Secretary, Ministry of Steel and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller "gave false evidence" before the P.A.C. by not apprising the Committee of the existence of certain instructions issued by the Department of Steel about the conditions on which pre-import licences could be issued under barter deals.

Issue (ii) That in regard to a barter deal involving M/s. Ram Krishan Kulwant Rai, where the import licences were issued by mistake even though there was no export contract, Mr. Mukherjee gave "misleading" evidence before the Committee by telling them that the mistake came to notice sometimes in November and that the bulk of the imports had taken place by that time. Subsequently, in certain notes, which were submitted to the Committee, Shri N. P. Mathur, the then Joint Secretary, Shri T. Swaminathan, the then Secretary, Department of Steel and Shri S. Sahay, the then Iron and Steel Controller also failed to place the full facts in this regard, before the Committee.

Issue (iii) That in regard to guarantee bonds to be taken from firms which undertook barter deals, the P.A.C. was incorrectly informed during evidence that the Central

Government's Solicitor at Calcutta took the view that these bonds could not be made absolute and drafted them in a conditional manner.

1.2. The foregoing issues have been analysed by the Committee in the succeeding portion of this Report in the light of the evidence tendered before the P.A.C. by Sarvashri Wanchoo and Mukherjee and the clarifications obtained by the Sub-Committee when they examined these two officers personally. The Committee's findings on the question whether the evidence tendered was false or misleading have also been given.

Analysis and findings—Issue

1.3. The first issue raised by Shri Madhu Limaye arises out of the evidence tendered before the P.A.C. by Shri N. N. Wanchoo, the then Secretary, Ministry of Steel, Mines and Fuel at a sitting of the Committee of the P.A.C. held on 10th March, 1966. Shri Madhu Limaye has also mentioned Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller in his motion of privilege on this issue, but the Committee find from the verbatim proceedings of the Sub-Committee of the P.A.C. held on 10th March, 1966 that Shri Mukherjee did not himself tender any evidence on this issue.

1.4. The facts of the case relevant to this issue may be summarised first before proceeding to a consideration of the point whether the evidence tendered before the P.A.C. was misleading or not.

1.5 On 2nd February, 1960, the Ministry of Steel, Mines and Fuel issued instructions to the Iron and Steel Controller regarding the procedure to be followed for issue of preimport licences for barter deals. A copy of these instructions appears at Appendix I. According to these instructions, firms which participated in barter deals were allowed to make imports in advance of exports provided they produced an irrevocable bank guarantee equivalent to 15 per cent of the value of import licence. It was stipulated in the instructions issued by the Ministry that "import licence should be issued only in cases where a firm contract for export exists". In a communication sent to the Ministry of Steel, Mines and Fuel on 10th March, which appears as Appendix II, the then Deputy Iron and Steel Controller, Shri S. C. Mukherjee pointed out that it was "not quite clear" from the Ministry's instructions whether the condition of "firm contract for export" stipulated in the Ministry's instructions implied a contract between the bartering firm and the supplier of export material in India (e.g., Hindustan Steel) or a contract between the bartering firm and the buyer of the exportable material

overseas. The Ministry of Steel, Mines and Fuel, after consulting the Ministry of Finance (Department of Economic Affairs), clarified the position on 17th March, 1960 by saying that "there should be satisfactory evidence that the exporter in India has a definite commitment from a foreign party to buy the tonnage to be exported" and that Government would "leave the form of the evidence" to the Iron and Steel Controller.

1.6 Against the foregoing background, the evidence tendered before the Public Accounts Committee* by Shri Wanchoo can now be examined. In the course of examination of the witness in March, 1966 the PAC enquired whether the "condition of firm contract for export" did not imply a contract with a foreign buyer. Shri Wanchoo explaining the position, told the Committee that the instructions of the Ministry dated 2nd February, 1960 allowed pre-import on any one of two conditions. One was the production by the firm concerned of an irrevocable letter of credit assigned in its favour by the foreign buyer. This automatically implied "a pucca contract with the foreign importer". The alternative condition was production by the firm, intending to make imports, of an irrevocable bank guarantee equivalent to 15 per cent of the import licence. This condition, he added, "does not say in so many words that there should be a contract", but "the implication seems to be generally (that) there should be a contract". The Committee then enquired whether, when the intention of Government was that there should be a contract, this intention was understood by the Iron and Steel Controller. The evidence of the witness on this point and the further questioning that followed is best reproduced verbatim:

"Shri Wanchoo: May be the instructions of the Ministry left some room for different interpretations.

Mr. Chairman: Would it, therefore, be correct to say that the instructions were not followed by the Steel Controller in the manner in which they were intended with the result that the Steel Controller at the time of issuing the import licence, did not verify whether there was a firm contract or not. If it was verified, or not, you may kindly tell us.

Shri Wanchoo: I would not agree with the statement made by you. In the light of what Mr. Ramachandran said and what we have been discussing, I feel that the instructions of the Ministry were not as clear as they ought to have been on this particular point, viz., what was intended. Was it intended that there should be a firm export con-

The examination was actually done by a Sub-Committee constituted by P.A.C.

tract by the exporter with Hindustan Steel or was it intended that there should be a firm export contract with a foreign buyer?

Mr. Chairman: Do you mean to say that there was misunderstanding between the Economic Affairs Department and the Ministry of Steel?

Shri Wanchoo: I would not say that. The Ministry of Steel do not seem to have translated the instructions of the Economic Affairs Department in clear, unambiguous terms.

Mr. Chairman: Therefore, in my yesterday's theory, one more stage is added....

Shri Wanchoo: You can hold us responsible for this.

Mr. Chairman: In the first instance it was watering down....

Shri Wanchoo: It was not watering down; it was a question of not translating it in unambiguous terms. Watering down is deliberate; this was not deliberate.

Mr. Chairman: Let us say it was not deliberate. But nonetheless, the fact was this.

Shri Wanchoo: "Yes".

1.7. In para 4.35 of their Fiftieth Report, the Committee made the following observations on the basis of the evidence tendered before them:

"The Sub-Committee regret to observe that the views of Ministry of Finance were not communicated in clear and unambiguous terms by the Department of Iron and Steel, with the result the Iron and Steel Controller understood firm export contract as a mere sales contract with H.S.L. rather than firm contract with the foreign buyer. Even the Secretary, Ministry of Iron and Steel admitted in evidence that 'the Ministry of Iron and Steel do not seem to have translated the instructions of the Economic Affairs Department in clear and unambiguous terms'. The Sub-Committee feel that by not issuing the instructions regarding pre-import licences in clear and unambiguous terms, the Ministry of Iron and Steel watered down the instructions of the Finance Ministry, even though it might not have been deliberate as stated by the Secretary. The Sub-Committee cannot but deprecate in strongest words this failure on the part of the Iron and Steel Ministry".

1.8. It would be seen from the foregoing account of the evidence tendered before the P.A.C. that when the Committee enquired whether the condition of "firm contract for export" stipulated by Government implied a contract with the Indian supplier or the foreign importer, the Committee were told that the position was left ambiguous and that the Ministry of Steel, Mines and Fuel was responsible for this situation. No mention was made of the fact that this issue was posed before the Ministry in specific terms by the Iron and Steel Controller in a communication dated 10th March, 1960 and that the Ministry of Steel, Mines and Fuel clarified the position by saying that there should be a definite commitment to sell but the form of evidence to be relied upon was left to the Iron and Steel Controller. The question is whether omission to bring to the notice of the Committee the correspondence exchanged between the Ministry and the Iron and Steel Controller amounted to misleading the P.A.C.

1.9. Referring to the evidence tendered before the P.A.C. on the foregoing issue, Shri P. C. Padhi, a member of the Committee of Inquiry (Steel Transactions), which was constituted following the recommendations of the P.A.C., stated in a minute of dissent to that Committee's report that "Shri S. C. Mukherjee had made the Secretary (Shri N. N. Wanchoo) give evidence before the P.A.C. on the basis of a misleading brief, apparently to cover up his deliberate non-compliance with the Ministry's orders".

1.10. During evidence on 22nd October, 1969, the Sub-Committee enquired of Shri Wanchoo on what basis he tendered evidence before the P.A.C. and why he failed to mention to the Committee the fact that the Ministry of Steel, Mines and Fuel had clarified in a letter dated 10th March, 1960, the position in regard to firm contract for exports. Shri Wanchoo stated that he spoke with the aid of a brief. Elaborating the point further he said: "What really happened was that when a Sub-Committee of the P.A.C. visited Calcutta on the 29th and 30th November, 1965, it left with the Iron and Steel Control 80 questions to be answered direct by the Iron and Steel Controller. Replies were sent by the Iron and Steel Controller to the Ministry. They came in batches, over the signature of Shri S. C. Mukherjee, Deputy Iron and Steel Controller in three letters. The first was on 18th December, 1965, the second on the 23rd December, 1965 and the third on the 28th December, 1965. A letter was also sent by the Ministry to Shri S. C. Mukherjee, Deputy Iron and Steel Controller seeking certain clarifications. . . . The clarifications were received on the 15th January, 1966 over the

signature of Shri L. K. Bose of Iron and Steel Control. The replies to the questions sent by the Iron and Steel Control together with the clarifications were discussed in the Ministry with Shri S. C. Mukherjee and Shri L. K. Bose by Shri Verghese, Under Secretary in the Ministry and were put up to me on the 19th January, 1966 and were approved by me on the 20th January, 1966 after they had been seen by the Deputy Secretary concerned. These replies in themselves constituted the briefs which were available to me and which was based on materials supplied by the Iron and Steel Controller with certain slight amendments made in the Ministry..... These replies were furnished to the P.A.C. on the 22nd January, 1966.....I would like to stress that in none of these replies was there any mention of or reference to the clarifications sought by Steel Control to the Ministry's letter enquiring what was meant by 'export obligation' and therefore, the correspondence on this subject was never brought to my notice..... So my.....submission is that I was completely unaware of this particular exchange of correspondence between the Ministry and Steel Control which explains what was meant by the words 'export commitment' or 'export obligation'."

1.11. The Sub-Committee asked when the mistake first came to his notice and what action was taken thereafter. Shri Wanchoo stated: "The mistake first came to my notice towards the latter half of May, 1966 when I was examining the 50th Report of the PAC relating to this matter which.....was received in the Ministry at the end of April, 1966. I was examining the report with a view to preparing the comments of the Ministry on the report. My comments were sent to the Minister of Steel on 31st May, 1966. Now I discovered the error myself personally when examining the Ministry's file No. SC(C)5|5|60, renumbered SC(B)23|5|(60)."

"Shri Mukherjee then happened to be in Delhi. I, therefore, asked Shri Mukherjee verbally for an explanation why he had not brought this correspondence to my notice earlier when I was giving evidence before the PAC, particularly when there was no reference to it in the answers and the briefs prepared by the Steel Control..I asked him to look into this matter when he went back to Calcutta in order to report what action was taken by Steel Controller after having received the clarification from the Ministry which they had sought. Shri Mukherjee did so and wrote a letter to the Deputy Secretary in the Steel Ministry, Shri Caprihan, on 8th June, 1966" saying that the correspondence was "unfortunately lost sight of" when the material was prepared. "The fact of this error was reported by me to

the P.A.C. in the comments sent by the Steel Ministry on 19th July, 1966 after the comments had been finalised in the Ministry with the approval of the then Minister, Shri T. N. Singh."

1.12. Asked whether he did not go through the relevant files before giving evidence before the Sub-Committee of the P.A.C., Shri Wanchoo stated: "I did not go through all the files myself because my Under Secretary and Deputy Secretary had gone through the answers to these 80 questions that Mr. Mukherjee had prepared". Asked further whether he could not have done so before coming to give evidence before the P.A.C., the witness replied: "Theoretically yes, but physically it was not possible for me to have gone through each file myself because there were about 80 questions and probably a hundred files had to be gone through.....It is just physically not possible to do work in that manner. But technically, the answer to the question is 'Yes' and if I had gone through every page in every file myself, possibly I could have spotted this mistake earlier".

1.13. When it was pointed out that even Mr. Mukherjee and other officers had missed the relevant correspondence, the witness replied: "Unfortunately there was no very specific question on this point in the questionnaire. There were about 80 questions but they had not pinpointed this particular matter". Asked how it happened that nobody recalled the correspondence when questions were asked by the Public Accounts Committee about the connotation of the term 'firm contract', the witness replied: ".....all these transactions occurred long before I had joined this Ministry. I had not seen the file and therefore it could not have occurred to me, because I had not personal recollections of the case at all. But Mr. Mukherjee should have recollected, but unfortunately he did not".

1.14. In his evidence before the Sub-Committee, Shri S. C. Mukherjee stated: "Materials for reply to the questions were collected from the files of the office of the Steel Controller not only by me but by others also. Actually, I had dealt with barter deals only from the end of 1959 upto June, 1961. Thereafter I had not dealt with barter deals. In 1965, when the Sub-Committee of the PAC was appointed I was actually working as Secretary of the Khadikar Committee and Chairman of the Re-rolling Committee. I was not doing any work connected with steel control. But the then Controller, Mr. Nagendra Bahadur said that since I had dealt with the subject between 1959 and 1961 I may also be associated with it. That is how I was associated with it. The materials were collected by the officers who were dealing with it. Alongwith them I also went

through all the files, checked them and furnished them to the Department of Iron and Steel. In the Department of Iron and Steel they were modified and amplified with papers that were available in the Ministry and, finally, replies were prepared in the Ministry and sent to the P.A.C. So, it will not be correct to say that I prepared the brief.....the letter dated 17th March, 1960 was not included in the questions and answers. There was no specific question on the subject. Even then, perhaps it could have been given even to reply to questions wherein copies of correspondence were called for. But, somehow, we missed it in the Steel Controller's office because the file in which we located it had 200 pages and the subject was not clear. So, perhaps, we missed the letter because of that and it was not included in the materials furnished by us...When this was raised during oral evidence, I had no recollection of this letter because the letter formed part of the correspondence which took place in 1960 and the evidence was taken in 1966. I had dealt with barter deals only upto 1961. Thereafter I have not been doing this work. So, I had to give information only by going through the files. While going through the files, this particular letter did not come to my notice. During the oral evidence of the PAC Sub-Committee also, even though I went through all the files that were available from the Steel Controller's office, I could not spot this letter. So, I could not say anything about this." The witness further stated: "I could not have suppressed this letter because the letter was available not only in our file but also in the file of the Ministry. Secondly, there was no motive or purpose in suppressing the letter, because the letter was helpful to us. If we had produced that letter, our position before the PAC would have been much better".

1.15. It would be clear from the foregoing account that there was an omission on the part of Shri Wanchoo to bring to the notice of the Public Accounts Committee certain instructions issued by the Ministry of Steel, Mines and Fuel in March, 1960 about the conditions on which pre-import licences could be issued under barter deals. The Committee cannot, however, from this conclude that Shri Wanchoo had intended to mislead the P.A.C. The following considerations have weighed with the Committee in taking this view:

- (i) Shri Wanchoo was not the Secretary of the Ministry of Steel at the time these instructions were issued. He could, therefore, have been genuinely unaware of these instructions.
- (ii) Evidence on the subject was taken by the PAC in March, 1966, i.e., six years after instructions were issued. Shri

Wanchoo tendered evidence with the aid of a brief prepared by his departmental officers. The brief itself had been prepared on the basis of a questionnaire given to the Department by the P.A.C., which did not touch on this aspect of the transactions specifically. The files on the subject were numerous and even if it had been possible for Shri Wanchoo to have gone through them himself before coming to give evidence, he still might not have recalled a matter of detail of this nature, though the Committee regret that Shri Wanchoo did not, on his own admission, read through all the files.

- (iii) The omission to bring these instructions to the notice of the P.A.C. led to the Committee censuring the Ministry for its "failure" in this respect. Had the Committee been apprised of the existence of these instructions, the Ministry's position in this regard would have been vindicated. Shri Wanchoo, as the then Secretary of the Ministry, had every reason to bring these instructions to the notice of the Committee if he had been aware of them. It does not therefore seem reasonable to suppose that he suppressed them deliberately.
- (iv) The omission to bring this matter to the notice of the Committee was noticed by Shri Wanchoo himself after the evidence was tendered and in an Action Taken Note on para 4.35 to the Fiftieth Report, which was sent to the P.A.C. on 19th July, 1966, the Ministry rectified the omission.

1.16. The other question is whether Shri S. C. Mukherjee was responsible for misleading the PAC on this point. As the Committee have stated earlier, Shri Mukherjee did not tender evidence on this point before the PAC. He did aid in preparing a brief for Shri Wanchoo, but he was not the sole author of the brief. In any case, the brief as such was not placed before the PAC, it was an internal document of the Ministry prepared for the Secretary's facility. Though Shri S. C. Mukherjee could have, if he had been alert, corrected Shri Wanchoo when he was giving evidence before the Public Accounts Committee, the Committee cannot bring home to Shri S. C. Mukherjee any direct responsibility for the PAC having been misled on this point.

Findings—(Issue No. (II))*Issue of pre-import licence in the absence of an export contract.*

1.17. The second issue raised by Shri Madhu Limaye arises out of the evidence tendered before the PAC by Shri N. N. Wanchoo, the then Secretary, Ministry of Steel, Mines and Fuel and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller at a sitting held on 11th March, 1966.

1.18. Evidence on this point was also tendered by Shri S. C. Mukherjee before the P.A.C. at a sitting held on 19th August, 1966. The evidence related to a barter transaction (contract No. 28) involving M/s. Ramkrishan Kulwantrai in whose favour 5 pre-import licences were issued in June, 1960. At the time of issue of these licences, the party had no contract with Hindustan Steel for export of semis. The issue of these pre-import licences, therefore, contravened the instructions of the Ministry dated 2nd February, 1960 (referred to in an earlier portion of this report), according to which pre-import was permissible only if parties had a firm contract for export.

1.19. In the course of examination, the P.A.C. enquired "after how many months" the "mistake" that occurred in this case (i.e., issue of an import licence in absence of an export contract) "was noticed". Shri Mukherjee replied: "May to November", and Shri Wanchoo amplified: "The deal was sanctioned in May, 1960. It was in November, 1960 that it (the mistake) was brought to notice". At the subsequent sitting held on 18th August, 1966, Shri Mukherjee stated that this point came to his notice "on the 26th October, 1960". The Committee also asked whether, after the mistake came to their notice action was taken to check how much steel had been imported by the party. Shri Wanchoo replied: "We stopped their customs permits at that time until they got (an export) contract from Hindustan Steel", and Shri Mukherjee added: "Upto November, all but 149 tons were imported". Shri Mukherjee also drew the attention of the Committee to certain data furnished to the Committee, the gist of which is given in para 4.41 of the Fiftieth Report of P.A.C. (Third Lok Sabha). The information given to the Committee was that "by the time the party had made imports of 8,297 tonnes of steel valued at Rs. 95.08 lakhs and only 149 tonnes (value Rs. 3.9 lakhs) was left". The Committee's conclusion in para 4.48 of their Fiftieth Report ran as follows:

"It is also very surprising to note that there is no regular system in the office of the Iron and Steel Controller to

detect such mistakes and they came to know about it only in November, 1960, when H.S.L. pointed out after five months of the issue of imports licences and by which time the party had made bulk of imports”.

The two points that arise out of evidence on this issue are whether the Committee were misled in regard to

- (a) the date on which the mistake came to notice;
- (b) the quantum of imports that had taken place by the time the mistake came to notice.

1.20. For examining (a) above, it is necessary to consider the sequence of events leading to the discovery of the mistake as given in the Report of the Committee of Inquiry (Sarkar Committee), which was appointed pursuant to the recommendations of the PAC to investigate the barter transactions of the Iron and Steel Ministry. In this regard two different versions of this case appear in the Report. The dissenting report given by a member of the Committee, Shri P. C. Padhi, says that on 26th August, 1960, Shri H.R.S. Rao, Assistant Sales Manager, Hindustan Steel came to know from the firm about the issue of import licences to them on barter basis against export of 25,000 tonnes of 'semis'. Shri Rao immediately pointed out to the firm that Hindustan Steel did not have any commitment to supply 25,000 tonnes of semis for export. According to Shri Padhi's Report, Shri Rao thereafter called Shri S. C. Mukherjee over the telephone and apprised him of the fact that there was no export contract for supply of 25,000 tonnes of semis. This conversation was followed up with a letter dated 26th August, 1960, in which the conversation was referred to. A copy of the letter appears at Appendix III to this Report. Shri Rao had another occasion to talk to Shri Mukherjee on the same subject on 25th October, 1960 and this conversation was also followed up by a letter on the same day. A copy of it is at Appendix IV. Shri Mukherjee thereafter put up a note on 26th October, 1960 to Shri Bam, the Iron and Steel Controller, pointing out that there had been "a rather serious lapse" in issue of import licences to the firm. The lapse was brought to the personal notice of Shri Bhootalingam, the then Secretary, Ministry of Steel at a meeting which took place at Delhi on 2nd November, 1960, between Shri Bam and Shri Bhootalingam, when Shri S. C. Mukherjee was also present.

1.21. If the foregoing account is accepted, it would seem that the mistake in issue of import licences to the firm came to the notice

of the Iron and Steel Controller's Organisation in August, 1960 and not October/November, 1960 as was stated before the P.A.C.

1.22. The version of the case which appears in the majority report of the Committee of Inquiry is, however, different. The majority of the Committee of Inquiry have also referred to the two telephonic conversations between Shri H.R.S. Rao and Shri S. C. Mukherjee—one "shortly prior to August 26, 1960" and the other on 25th October, 1960. While the second of these conversations obviously related to this case, the majority have not been able to conclude that the first conversation also pertained to this case. Their view as given in the report is that "this conversation may be reasonably taken to have been concerning a barter deal with Ramkrishan Kulwantraï but, which one, cannot be predicted with any certainty".

1.23. When the Sub-Committee took evidence, they enquired of Shri S. C. Mukherjee whether he admitted substantially before the Committee of Inquiry into Steel Transactions that Shri H. R. S. Rao of Hindustan Steel had brought to his notice the mistake that occurred in this case in August, 1960. Shri S. C. Mukherjee replied: "I do not agree. I have always denied that during my oral evidence before the Sarkar Committee that Shri Rao had informed about this barter deal of 25,000 tons of ingot slabs before 25th October, 1960. I have categorically stated throughout that the information furnished by him in August, 1960 related to another barter deal." Shri Wanchoo in his evidence stated that as far as could be ascertained from the papers available in the Steel Ministry, the mistake was brought to the notice of the Ministry only in November, 1960 and not earlier.

1.24. On the basis of the available evidence, the Committee find it difficult to conclude that the mistake in issue of import licence came to the notice of the Iron and Steel Controller's Organisation earlier than 25th October, 1960. So far as the Ministry of Steel, Mines and Fuel is concerned, the facts that could be ascertained indicate that the mistake was reported to the Ministry by the Iron and Steel Controller in November, 1960, first orally and then through a written communication.

1.25. It is possible to take the view that the Assistant Sales Manager of Hindustan Steel Ltd. brought the mistake to the notice of the Deputy Iron and Steel Controller (Shri S. C. Mukherjee) sometime in August, 1960 itself. However, this view can be sustained only on the assumption that a telephonic conversation that took place between these two officers sometime prior to 26th August, 1960 related to this particular transaction. Documentary confirmation of this conversation, which is available in a letter

dated 26th August, 1960 sent by the Hindustan Steel Ltd. to the Deputy Iron and Steel Controller, does not, however, unambiguously indicate the exact subject matter that was discussed over the telephone. The letter referred to "supply of 5,000 tons of slabs to M/s. Ramkrishan Kulwantrai against our (Hindustan Steel's) original offer of 20,000 tons of slabs to the party" and proceeded to say that "we have so far sold only 5,000 tons of slabs to the party. . . . Now, amongst the export contracts of M/s. Ramkrishan Kulwantrai, which were approved under the barter scheme, there were two contracts one, contract No. 14 for export of 5,000 tons of slabs against which import licence was issued on 15th June, 1960, and another, contract No. 28 for export of 22,137 tons of slabs and 9,161 tons of ingots, against which import licence was issued on 7th June, 1960. The reference in Hindustan Steel's letter to sale of "5,000 tons" could well be construed to be a reference to contract No. 14 instead of contract No. 28 (which was the transaction on which evidence was taken by the PAC).

1.26. Another point bearing on this issue is also worth mentioning as it has been raised in Shri P. C. Padhi's minute of dissent to the report of the Committee of Inquiry. In February, 1961, the Assistant Sales Manager, Hindustan Steel wrote a letter to his head office at Ranchi in which he was categorical that he had brought the mistake in issue of import licence against contract No. 28 to the notice of the Deputy Iron and Steel Controller, when he spoke to him over the phone. This no doubt makes the position unambiguous, but this communication, besides having issued six months after the telephonic conversation, was not addressed or endorsed to the party with whom the conversation took place. In the circumstances its utility as a piece of evidence to be relied on is limited.

1.27. For the foregoing reasons the Committee are inclined to give the benefit of doubt to Shri S. C. Mukherjee and cannot hold that he misled the P.A.C. in regard to the date on which the mistake in issue of import licence came to his notice. So far as Shri N. N. Wanchoo is concerned, he spoke for the Ministry of Steel, Mines and Fuel, and, as has been stated by the Committee earlier, the mistake came to the notice of the Ministry only in November, 1960. The question of his having misled the P.A.C. does not, therefore, arise.

1.28. Shri Madhu Limaye's motion on the question of evidence given to the Public Accounts Committee regarding the date on which the mistake came to notice mentions three other officers—Shri T. S. Swaminathan, formerly Secretary, Ministry of Steel; Shri S. Sahay,

Iron and Steel Controller and Shri M. P. Mathur, Joint Secretary, Ministry of Steel. Notes signed by these officials submitted to the Public Accounts Committee which appear in Part II (Appendices) of the Fifty-Sixth Report of the Public Accounts Committee (Third Lok Sabha) dealt with the question of the date on which the mistake came to notice. Shri Mathur's note, which appears at pages 9-12 of the Fifty-Sixth Report mentions that "the import licence in this case was issued on 5th May, 1960 and the mistake came to light in November, 1960" and then proceeds to explain what action the Secretary of the Ministry thereafter took. Shri T. Swaminathan's note, which appears at pages 14 to 16 of the Fifty-Sixth Report says that "the mistake was pointed out to the Iron and Steel Controller by Hindustan Steel on 25th October, 1960" and Shri S. Sahay's note at pages 33-37 *ibid* also indicated the same position.

1.29. The foregoing section would indicate that the mistake in issue of import licence came to the notice of the Iron and Steel Controller's Organisation in October, 1960 and to the notice of the Ministry of Steel Mines and Fuel in November, 1960. In view of this, the question of the other officers named in this section having misled the Public Accounts Committee by furnishing wrong information about the date will not arise.

1.30. One point that arises at this stage is the clash between the dates mentioned in the evidence and notes. The evidence and notes refer to 25th October, 1960 as well as sometime in November, 1960 as the date on which the mistake came to light. A closer analysis would indicate that 25th October was the date on which the Hindustan Steel Limited brought the mistake to the notice of the Iron and Steel Controller, while it was in November that the Iron and Steel Controller brought the matter to the notice of the Ministry of Steel. In view of this, there appears to be no inconsistency on this point.

1.31. The second ancillary issue is whether the Public Accounts Committee was misled about the quantum of imports which had taken place by the time the issue of the import licence came to notice. It would be seen from para 4.41 of the Fiftieth Report of the Public Accounts Committee (Third Lok Sabha) that they were informed, by the time the mistake came to notice, "the party had made imports of 8,297 tonnes of steel valued at Rs. 95.08 lakhs and a balance of 149 tonnes worth Rs. 3.90 lakhs was only left."

1.32. In his minute of dissent to the report of the Committee of Inquiry, Shri P. C. Padhi has stated that "Shri Mukherjee had informed the Public Accounts Committee and also our Committee that the value of imports which were allowed after 26th October,

1960 (i.e., when the mistake came to light) was only Rs. 3.9 lakhs. In point of fact the correct figure is Rs. 26.94 lakhs."

1.33. During his evidence before the Sub-Committee on 22nd October, 1969, Shri Mukherjee stated: "This information was given on the basis of statement which was compiled in reply to one of the written questions by the Public Accounts Committee Sub-Committee calling for details of monthly imports against pre-import licence. It was question No. 31 in the folder. For this purpose, the date of the Customs Clearance Permit was taken as the date of import, as the dates of actual import were not available. The statement given to the PAC was monthwise. The date of shipment was not given. It was available in the file although it was not readily available with me at the time of giving oral evidence and compiling the information before the PAC. In the statement (Appendix V) now prepared I have given the dates of shipment also from the file. Only in two cases I could not find the CCP (Customs Clearance Permit) application and the date was not available; the date of actual import was not available and we took the date of the CCP as the date of import.

1.34. The Department of Steel in a memorandum to the Privileges Committee have stated that the figure of imports made after the mistake came to notice which were given to the PAC, i.e. Rs. 3.9 lakhs, represented the value of goods "yet to be shipped" as on November, 1960. The Department have, however, not controverted the figure of Rs. 26.94 lakhs given in Shri P. C. Padhi's note of dissent. They have stated that this figure relates to arrivals in India after 26th October, 1960 (when the mistake came to light) and have pointed out that if imports are to be understood to mean shipment from abroad, the value of pending imports as on November, 1960 was only Rs. 3.90 lakhs. To lend weight to this argument they have pointed out that for goods which had been already shipped, refusal of customs clearance would not have been legal. Apparently, what is implied is that imports should be deemed to have taken place for all practical purposes once goods are shipped from abroad.

1.35. The Sub-Committee asked for data about the quantum of imports made from time to time with the dates of issue of customs clearance permits. The data given to them on this point reproduced as Appendix V to this report would show that about 1937 tonnes were cleared against Customs Clearance Permits issued in or after November, 1960.

1.36. The first question that arises is when an import takes place. The Committee note that the word 'import' has been defined in Section 2(23) of the Customs Act, 1962, as 'bringing into India

from a place outside India". In this sense, the value of goods yet to be imported when the mistake in this case came to light could have been Rs. 26.94 lakhs and not Rs. 3.9 lakhs as mentioned to the P.A.C.

1.37. A further question arises out of the legal opinion adverted to by the Committee of Inquiry in paras 9.2 and 9.6 of their Report. It has been pointed out by the Committee of Inquiry that the opinion of the Ministry of Law is that "where there is an import licence, it is not necessary to obtain a customs clearance permit." In other words, once goods are shipped from abroad by a party who has obtained an import licence, the entry of these goods within the customs limit of India cannot be barred only by withholding a customs clearance permit. On this view of the case, it would appear that though goods worth Rs. 26.94 lakhs were physically imported into India, after 26th October, 1960 it would not have been feasible to stop imports except in the case of goods worth Rs. 3.9 lakhs which had as on that date not been shipped from abroad.

1.38. The Committee observe that there was a factual inaccuracy in the statement given to the PAC about the quantum and value of imports made by the party in this case after the mistake in issue of import licence came to notice in November, 1960. The Public Accounts Committee were informed that 149 tonnes of sheets valued at Rs. 3.9 lakhs were imported by the party after the mistake came to notice. In point of fact, about 1937 tonnes valued at Rs. 26.94 lakhs were cleared by the party against customs clearance permits which were issued in or after November, 1960.

1.39. The question is whether this amounted to a substantial misrepresentation of the position. The word 'import' has been defined in Section 2(23) of the Customs Act, 1962 as "bringing into India from a place outside India", On this view of the position, it could possibly be concluded that there was a misrepresentation of the position, as the party had as in November, 1960, yet to bring 'into India' goods valued at Rs. 26.94 lakhs. However, this has to be weighed against the implications of the legal opinion adverted to by the Committee of Inquiry that "when there is an import licence, it is not necessary to obtain a customs clearance permit." Effectively, this would imply that, as the party had, as in November, 1960, arranged for shipment from abroad of all but goods worth Rs. 3.9 lakhs, Government could not have stopped their import by denying Customs Clearance Permits. In other words, all that Government could have done when the mistake came to their notice was to have stopped imports valued at Rs. 3.9 lakhs by cancelling their import licence of taking some such other step. For this reason the Committee are inclined to take the view that the evidence given before the Public Accounts Committee, did not tantamount to misleading the

Committee, though the witness should have informed the Committee that goods valued at Rs. 26.94 lakhs were still to come into the country in November, 1960, when the mistake came to notice.

Analysis and Findings—(Issue iii)

Changes in bank guarantee form

1.40. The third issue raised by Shri Madhu Limaye arises out of the evidence tendered by Shri N. N. Wanchoo and Shri S. C. Mukherjee before the PAC at the sittings held on 9th and 10th March, 1966.

According too the conditions prescribed in the instructions issued by the Ministry of Steel dated 2nd February, 1960 referred to earlier, all intending exporters under the barter scheme were required to furnish a bank guarantee. The bank guarantee was "forfeitable in case of failure to earn the foreign exchange by export, whatever be the reason therefor." A few specimen forms of bank guarantee were sent to the Solicitor by the Iron & Steel Controller who drafted a bank guarantee form. According to the Report of the Committee of Inquiry "this form was in consonance with the conditions stipulated in the letter of 2nd February, 1960 making the guarantee forfeitable if there was a failure to earn foreign exchange irrespective of the reasons. Shri Mukherjee (the Deputy Iron and Steel Controller) made a change in the bank guarantee drafted by the Solicitor, namely that, instead of the words "within from the date of these presents" within which period the semis were to be exported, he put the words "within three months of the delivery of the material by the Hindustan Steel Limited."

1.41. During the course of examination of the witnesses in March, 1966, the P.A.C. enquired why qualified bank guarantees, as contemplated in terms of the instructions dated 2nd February, 1960 were accepted. Shri Wanchoo informed the Committee that the Government Solicitor "suggested the bank guarantee is a qualified manner". Shri S. C. Mukherjee also told the Committee that the Government Solicitor felt that one of the forms of bank guarantee earlier adopted was "not suitable and he (the Solicitor) drafted a different form". The Public Accounts Committee's observations based on the evidence were as follows:—

"4.66. This is yet another case where Iron and Steel Controller did not carry out the conditions laid down by the Ministry in their letter dated 2nd February, 1960, regarding furnishing of bank guarantee. The Iron and Steel Controller was responsible to the Ministry. If he felt any

difficulty in getting guarantees in the form required, he should have placed the matter before the Ministry for the consideration. The Sub-Committee regret to note that this was not done. On the other hand, he referred it to the Solicitor who drafted the guarantee form which was not in consonance with the intention of the Ministry.

The Sub-Committee fail to appreciate the attitude of the Government Solicitor who took upon himself obligation to advise that no bank would agree to such a bank guarantee. Instead of drafting the document and embodying the intentions of the Government, he went outside the scope of his duties and drafted a form which was least satisfactory. The result has been that limited, conditional and qualified bank-guarantees were furnished by the parties and accepted by the Iron and Steel Controller, with attendant difficulties in enforcing the same. The Sub-Committee cannot help feeling that there was a serious lapse on the part of Iron and Steel Controller in taking guarantees in a form which did not carry out intentions of the Ministry."

1.42. During evidence on 22nd October, 1969, the Sub-Committee asked Shri Wanchoo whether the evidence given by him in March, 1966 regarding the form of guarantee having been changed by the Solicitor was based on any records. Shri Wanchoo stated: "My statement that 'the Solicitor in drafting the guarantee took the view that no bank would agree to such an absolute guarantee which we had laid down in our letter' was based on a verbal statement made to me by Shri Mukherjee who was then sitting by my side at the time I was giving evidence. Since I am aware that very often the legal people draft things in a slightly different way. I thought what Shri Mukherjee told me must be correct. It would be observed that in paragraph 4.64 of the 50th Report of the Public Accounts Committee it is mentioned that Shri Mukherjee had himself stated in reply to the Public Accounts Committee that the Solicitor had considered the form not suitable and drafted a different form. This is also in substance what he told me when I was giving my evidence before the Public Accounts Committee on this point."

1.43. The Sub-Committee asked Shri S. C. Mukherjee why he did not inform the Public Accounts Committee in March, 1966 about the change made by him in the guarantee form as drafted by the Solicitor. Shri Mukherjee replied: "I did not make any change in the form of the bank guarantee drafted by the Solicitor; I only filled up two blanks left by the Solicitor. The blanks were where we had to

indicate the time to be allowed to the party to complete export obligation. The draft containing the insertions made in my own handwriting was approved by the Controller and kept on the file. In the form drafted by the Solicitor he kept blanks as follows:

'Whereas the Government, that is, the Iron and Steel Controller, has agreed to enter into a contract with the Obliger for import on the undertaking of the Obliger to export 20,000 tonnes of billets produced by Hindustan Steel Limited within.....months from the date of these presents', etc.

and then again

'if the Obliger fails to secure foreign purchase for, and arrange export of, 20,000 tonnes of billets produced by Hindustan Steel within.....months out of India from the date of these presents' etc.

"I filled in these blanks left by the Solicitor and I do not consider that the insertion made by me in the blank left by the Solicitor in the draft form was tantamount to any alteration in the form thereof. I only indicated the time and instead of 12 months from the date of the Presents, we said "three months from the date of delivery by Hindustan Steel Limited' because the material had to be produced by Hindustan Steel." When it was pointed out to him that he had changed the period of guarantee from the 'date of presents' to 'date of delivery' of material, the witness stated: "It was not a change really. The form was not changed by me". He further stated: "The draft with this change was submitted to the Iron and Steel Controller and it got his approval. We did not refer it to the Ministry". Asked why after the presentation of the 50th Report of the Public Accounts Committee containing strictures on the Government Solicitor for drafting a defective guarantee form, the change made by him was not brought to the notice of the Committee, Shri Mukherjee replied: "The impression that I gathered was that the (PAC) Sub-Committee was referring to a sentence appearing in the February, 1960 order. This stipulation was not made by the Solicitor, Solicitors' draft did not contain this stipulation that guarantee will be forfeited in case of failure to earn foreign exchange whatever may be reasons therefor. That is why I did not say, although, I was not also asked to give any comments on this." When it was pointed out that the witness had made a "material change" and that "the Committee was led to believe that this change was made by the Government Solicitor", Shri Mukherjee replied: "That I did not understand at that time."

1.44. It is evident that a material change in the form of the bank guarantee was made by Shri Mukherjee and not by the Government Solicitor. There was, therefore, misrepresentation of the position to this extent when evidence was tendered before the Public Accounts Committee in March, 1966. This was unfortunate as it led the Committee passing strictures against the Government Solicitor, which it would not have done, had it been apprised of the correct position.

Evidence on this point was tendered by Shri N. N. Wanchoo as well as Shri S. C. Mukherjee, but the Committee feel that, as the author of the changes that were made in the bank guarantee form, it was Shri Mukherjee's responsibility to have apprised the Public Accounts Committee of the correct position and to have correctly briefed Shri Wanchoo, particularly as the changed form of the bank guarantee had not been shown to the Ministry at any stage before evidence was given on this point. In fact, Shri P. C. Padhi in his minute of dissent to the Report of the Committee of Inquiry has found Shri Mukherjee responsible" for having misled Shri Wanchoo, while he was giving evidence before the Public Accounts Committee to believe that no alterations had been made in the Solicitor's draft. On the other hand, the majority of the Committee of Inquiry have pointed out that "by changing it (the bank guarantee form) in the way in which Shri Mukherjee had done, the bank guarantee was made workable and easily enforceable".

1.45. The Committee, however, cannot but come to the conclusion that Shri S. C. Mukherjee did not correctly present the facts to the Public Accounts Committee on the question of changes made in the bank guarantee form.

ENCLOSURE I

No. SC(C)-5(5)/60

GOVERNMENT OF INDIA

MINISTRY OF STEEL, MINES AND FUEL

(DEPARTMENT OF IRON AND STEEL)

New Delhi the 2nd February, 1960.

Magha, 1881 (Saka).

From

**Shri C. A. Nair,
Officer on Special Duty.**

To

..

**The Iron and Steel Controller,
33, Netaji Subhas Road.
Calcutta-1.**

SUBJECT: *Procedure for barter deals*

Sir,

The procedure adopted so far in the case of barter deals is to issue an import licence for steel after export has taken place. In barter, the size of the export commodity is large and deliveries can be made only over a period of time. If the present procedure is adopted, it is felt that the import of steel may take place after our pressing needs are over. It may even come after our steel plants have started producing the same category. Hence the procedure to be followed for barter deals in exports involving the export of scrap, pig iron or steel ingots or slabs has been considered in consultation with the Ministry of Finance and it has been decided to revise the existing procedure.

In cases where delay in exports is anticipated for reasons satisfactory to the Iron and Steel Controller, the following procedure may be adopted:

- (a) On production of an irrevocable letter of credit assigned in favour of the exporter for the value of the entire ex-

port quantity, an import licence for import of steel items may be issued.

- (b) In case the exporter is not able to procure an irrevocable letter of credit for the entire quantity of export then he may be asked to furnish an irrevocable bank guarantee equivalent to 15 per cent of the value of the import licence applied for.

It should be made clear to the exporter that the guarantee will be forfeitable in case of failure to earn the foreign exchange by export whatever be the reason therefor. It should also be made clear to the exporter that in case of failure to export, Iron and Steel Controller will have no further dealings with him. The guarantee will be releasable on actual export of the full quantity contracted for.

Import licence should be issued only in cases where a firm contract for export exists.

Yours faithfully,

Sd./C. A. Nair,

Officer on Special Duty.

ENCLOSURE II

IRON AND STEEL CONTROL

33, NETAJI SUBHAS ROAD, CALCUTTA.

D.O. No. C|3|59

March 10, 1960.

Dear Shri Ramanathan,

The other day I spoke to you about Ministry's letter No. SC (C) 5(5)/60 of 2nd February, 1960 laying down the procedure for barter deals. In paragraph 2(b) of this letter it is mentioned that import licence against barter deals should be issued before export is made only in case "where a firm contract for export" exist. We are not quite clear as to what firm contract for export the Ministry has in view in this context; in other words whether the Ministry desires that the exporters should have a firm contract with the supplier of the exportable material in India e.g. Hindustan Steel Ltd., Kalinga Industries Ltd., etc. or whether a firm contract for export should exist with the foreign buyer of the exportable materials and only

a letter of Credit would be lacking. You promised to look into the relevant file and give me a ring. As I have not received any communication from you so far and as a number of parties are pressing us for issue of import licences prior to export by submitting 15 per cent Bank Guarantee, I would request you to send me a telegram as soon as you get this letter.

Your Sincerely,
Sd. S. C. MUKHERJEE.

Shri G. Ramanathan, I.A.S.,
Deputy Secretary to the Government of India,
Ministry of Steel, Mines and Fuel,
Department of Iron and Steel,
NEW DELHI.

ENCLOSURE III

EXTRACTS OF THE LETTER No. 78|CCP|RKK(32)|60 DATED 26TH AUGUST,
1960 FROM MR. GHOSH TO SHRI S. C. MUKHERJEE

"With reference to Mr. Rao's telephonic conversation with you, I enclose a copy of our letter No. SE|24B|2153, dated 9th June, 1960, regarding supply of 5,000 tons of slabs to Messrs. Ram Krishan Kulwant Rai against our original offer of 20,000 tons of slabs to the party.

In this connection, I have to inform you that we have sold only 5,000 tons of slabs to the party against their enquiries for slabs and blooms."

ENCLOSURE IV

H. R. S. Rao,
ASSTT. Sales Manager (Exports),
Hindustan Steel Ltd.,
2, Fairlie Place, Calcutta-1.
D.O. No. SE. 16-14|24313

25th October, 1960.

**SUBJECT: Barter export of Slabs|Ingots|Blooms in exchange
to import of finished steel products.**

My dear Mukherjee,

I have to refer to your letter No. C|RKK|(32)|60 of 7th October, 1960 addressed to M's. Ram Krishan Kulwant Rai, Calcutta, copy to us.

In this connection I have to draw your attention to our letters Nos. SD|248|2153 of 9th June, SE|24B|13817 of 20th June, 1960 and SE/4 of 26th August, 1960 from which it will be observed that we have sold 5,000 tons of slabs only to M|s. Ram Krishan Kulwant Rai, Calcutta, against their various enquiries for Slabs and Blooms.

This confirms my phone conversation on date.

Yours sincerely,
Sd/ H. R. S. RAO.

Shri S. C. Mukherjee,
Dy. Iron and Steel Controller,
33, Netaji Subhas Road,
Calcutta.

ENCLOSURE V

IMPORT AGAINST RAM KRISHNA KULWANT RAI BARTER DEAL

(REPLY TO ISSUE (II)—Q No. 4)

No.	Date of shipment	Quantity (tonnes)	Date of CCP*
1	2	3	4
1.	15-7-60	49·525	8-8-60
2.	15-7-60	74·625	8-8-60
3.	12-7-60	85·621	10-8-60
4.	12-7-60	63·690	10-8-60
5.	15-7-60	100·395	17-8-60
6.	15-7-60	54·536	17-8-60
7.	16-7-60	198·145 ¹	23-8-60
8.	27-7-60	75·438	23-8-60
9.	28-7-60	198·000	23-8-60
10.	31-7-60	706·021	1-9-60
11.	31-7-60	328·180	1-9-60
12.	31-7-60	55·850	7-9-60
13.	31-7-60	695·975	15-9-60
14.	25-8-60	501·810	15-9-60
15.	26-8-60	223·450	23-9-60
16.	27-8-60	238·703	23-9-60
17.	27-8-60	215·250	23-9-60

1	2	3	4
18.	30-8-60	100·000	26-9-60
19.	31-8-60	338·436	6-10-60
20.	20-8-60	333·091	6-10-60
21.	20-8-60	352·359	6-10-60
22.	Not available on file	547·038	10-10-60
23.	20-8-60	180·512	10-10-60
24.	20-8-60	283·439	10-10-60
25.	26-8-60	99·800	10-10-60
26.	15-9-60	143·500	24-10-60
27.	14-9-60	269·855	24-10-60
28.	15-9-60	72·227	1-11-60
29.	15-9-60	72·186	1-11-60
30.	15-9-60	71·942	3-11-60
31.	15-9-60	90·025	3-11-60
32.	26-9-60	49·968	4-11-60
33.	27-9-60	1186·622	3-11-60
34.	15-9-60	58·224	16-11-60
35.	8-11-60	50·232	25-11-60
36.	15-9-60	136·042	29-11-60
37.	17-11-60	49·769	7-12-60
38.	Not available on file	100·000	9-2-61

Sd/—S.C. MUKHERJEE.

*Date of actual clearance of import in India not known.

APPENDIX XX

[See para 21 of the Report]

Evidence given by Shri N. N. Wanchoo, the then Secretary, Department of Iron and steel and Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller, before the Action Taken Sub-Committee of the Committee on Public Accounts.

The Sub-Committee of the Public Accounts Committee met at 15.00 hours on Wednesday, the 22nd October, 1969, in Room No. 50, Parliament House, New Delhi.

MEMBERS PRESENT

Shri N. R. Muniswamy—*Chairman*

2. Shri K. M. Koushik
3. Shri H. N. Mukerjee
4. Shrimati Sushila Rohatgi
5. Shri Tayappa Hari Sonavane
6. Prof. Shanti Kothari

Shri S. Ranganathan—*Comptroller & Auditor General of India.*

Shri H. B. Bhar—*Additional Deputy Comptroller & Auditor General (R)*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

Shri K. Seshadri—*Under Secretary.*

WITNESSES EXAMINED

Shri N. N. Wanchoo

Shri S. C. Mukherjee

MR. CHAIRMAN: At the outset, I would like to welcome Shri Wanchoo. We are happy that the Comptroller and Auditor-General is also with us here to guide us. As hon. Members are aware, the sub-committee has assembled today to take the evidence of Mr. Wanchoo on certain issues arising out of his testimony before the PAC. Mr. Wanchoo tendered evidence before the PAC at certain sittings

held on 9th March, 1966, 19th March, 1966, 11th March, 1966 and 18th August, 1966 in regard to certain barter transactions relating to the then Steel Ministry.

As hon. Members are aware, evidence tendered on certain points has become the subject-matter of a privilege motion. We are charged with the task of finding out whether the evidence tendered was factually correct. As members would have seen from the papers, there are three issues before us.

The first issue relates to certain conditions on which pre-imports under barter were allowed. As originally conceived in 1958, barter implied that foreign exchange for importing certain essential items for the economy should first be earned through exports. In regard to steel transactions, Government decided in 1960 that imports would precede the exports subject to certain conditions. These conditions were spelt out in a letter issued by the Steel Ministry on 2nd February, 1960. One of the conditions was that there should be a firm contract for export. When the PAC in the course of their examination on 10th March, 1966 inquired what the term 'firm contract for export' implied, there was apparently an omission on the part of the witness to bring to notice certain correspondence on the subject that took place in March, 1960.

The second issue relates to a case where pre-import licences were issued to a party for barter purposes even though there was no export contract. Evidence on the question when the mistake came to notice and what imports had taken place by that time was taken by the PAC on 11th March, 1966 and 18th August, 1966.

We have to ascertain the factual position in regard to both these issues.

The third issue relates to certain changes made in the bank guarantee specimen form which was to be obtained from the barterers. The PAC was informed at the sitting held on 9th March, 1966 that Government had made these changes. We have to find out what the correct position in this respect is.

Mr. Wanchoo can now proceed to answer the questions, which I believe he has already been supplied with.

SHRI WANCHOO: Before I give my answers to the questions, I would like to make one submission and that is that I became Secretary to the Ministry of Iron and Steel in July-August, 1961. These transactions which were the subject-matter of the PAC inquiry all

related to the year 1960 or even earlier, that is, over a year before I joined the Ministry, so that I had no personal knowledge of any of these transactions except what appeared on the records and the files placed before me. I would like to make this submission so that you can understand why certain mistakes occurred, because if I had personal knowledge, then, of course, I would have been speaking from recollection, but here I had absolutely no personal knowledge; these transactions had all occurred a year before I joined the Ministry.

With this preface, may I answer your first three questions which are as follows:

1. Please state whether it is correct that the evidence given on this point before the Sub-committee of the PAC in March, 1966 was based on a brief prepared by Shri S. C. Mukherjee, the then Deputy Iron and Steel Controller.
2. Please supply a copy of the brief.
3. Was this brief vetted by the Ministry of Iron and Steel, and if so, by whom?

With your permission, I would like to answer these three questions together. Actually, the briefs I used when I appeared before the PAC were the answers to the questions put by the PAC which had been substantially prepared by the Iron and Steel Control. I might give a little history of this matter.

What really happened was that when a sub-committee of the PAC visited Calcutta, on the 29th and 30th of November, 1965, it left with the Iron and Steel Control 80 questions to be answered direct by the Iron and Steel Controller. A reminder was sent by the PAC on the 14th December, 1965 to the Iron and Steel Controller for replying to these 80 questions. The replies were sent by the Iron and Steel Controller to the Ministry. They came in batches, over the signature of Shri S. C. Mukherjee, Deputy Iron and Steel Controller in three letters. The first was on 18th December, 1965, the second on the 23rd December, 1965 and the third on the 28th December, 1965. A letter was also sent by the Ministry to Shri S. C. Mukherjee, Deputy Iron and Steel Controller seeking certain clarifications. This letter was sent in January, 1966, seeking certain clarifications on certain points and suggesting personal discussion. The clarifications were received on the 15th January, 1966 over the signature of Shri L. K. Bose of Iron and Steel Control. The replies to the questions sent by the Iron and Steel Control together with the clarifications were discussed in the Ministry with Shri S. C. Mukherjee and Shri L. K. Bose by Shri Verghese. Under Secretary in the Ministry and were put up to me on the 19th January, 1966 and

were approved by me on the 20th January, 1966 after they had been seen by the Deputy Secretary concerned. These replies in themselves constituted the briefs which were available to me and which was based on materials supplied by the Iron and Steel Control with certain slight amendments made in the Ministry which I shall presently define. These replies were furnished to the PAC on the 22nd January, 1966. The nature of the amendments made to the draft reply sent by the Iron and Steel Control will be clear from the note along with the annexure recorded by Shri T. J. Verghese, Under Secretary in the Ministry on the 18th January, 1966.

I would like to submit to the Committee a copy of the note recorded by Shri Verghese along with the annexure which explains the amendments made. I shall read out some portions from Shri Verghese's note; I shall circulate the whole thing to you; it discusses the replies received from the Steel Controller and then says:

"These replies were examined in the Ministry and further discussed with Shri S. C. Muherjee and Shri L. K. Bose who were here last week. In the light of these discussions, draft replies have been modified wherever necessary.

Certain annexures originally sent by the Steel Controller which were not found necessary have been excluded. A separate note indicating wherever changes have been made in the Controller's reply is at slip V".

Then there was a note showing what changes have been made in the replies which starts by saying:

"The Steel Controller's replies given to questions 1-5, 7, 9, 13, 14, 15, 17-19, 22 and 23, 25-27, 29, 31-34, 36-53, 55-64, 66-80 have not been changed".

Then he indicates for the remaining about 10-12 questions where some slight changes had been made as to what was the nature of the changes.

I will place all these documents before the Committee so that they can see what were the slight changes made in the Ministry.

So far as I could see, the only questions put by the PAC SC which have a bearing on the question of conditions on which pre-import licences could be issued were questions Nos. 6, 28, 29, 49, 53 and 57. Copies of the replies furnished to the PAC to these questions will also be handed over by me to the Committee.

Actually these replies are with the PAC, but I have another set here bearing particularly on these questions.

I would like to stress that in none of these replies was there any mention of or reference to the clarifications sought by Steel Control to the Ministry's letter enquiring what was meant by 'export obligation' and therefore, the correspondence on this subject was never brought to my notice. In fact, in his letter of 8th June, 1966, when he was asked to explain why this correspondence was not mentioned, Shri Mukherjee stated as follows:

"The relevant correspondence is on our files, but these were unfortunately lost sight of when we prepared the material submitted by us to the PAC".

So my first submission is that I was completely unaware of this particular exchange of correspondence between the Ministry and Steel Control which explains what was meant by the words 'export commitment' or 'export obligation'. That is my answer.

Coming to the next questions on this issue (i), namely

- (4) How and when did the mistake first come to the notice of the Secretary; (5) what was the action taken by the Secretary on detection of the mistake? (6) was the explanation of the Dy. Iron and Steel Controller called for? If so what was the explanation given by him for preparing a wrong brief?

the mistake first came to my notice towards the latter half of May 1966 when I was examining the 50th Report of the PAC relating to this matter, which report is dated 22nd April, 1966 and was received in the Ministry at the end of April 1966. I was examining the report with a view to preparing the comments of the Ministry on the report. My comments were sent to the Minister of Steel on 31st May, 1966. Now I discovered the error myself personally when examining the Ministry's file No. SC (C) 5|5|60, renumbered SC(B) 23|5(60). To the best of my recollection, the error was detected by me when I was examining the papers for preparing our comments on the report of the PAC.

Shri Mukherjee then happened to be in Delhi. I therefore asked Shri Mukherjee verbally for an explanation why he had not brought this correspondence to my notice earlier when I was giving evidence before the PAC, particularly when there was no reference to it in the answers and the briefs prepared by the Steel Control. Shri Mukherjee stated to me that he had overlooked this correspondence which slipped his mind and that he had unfortunately lost sight of it. I

then asked him to look into this matter when he went back to Calcutta in order to report what action was taken by Steel Control after having received the clarification from the Ministry which they had sought. Shri Mukherjee did so and wrote a letter to the Deputy Secretary in the Steel Ministry, Shri Kaprihan, on 8 June, 1966. My recollection is that when I asked Shri Mukherjee for his explanation, a number of officers were also present, because we were examining and discussing the matter. I said nothing like 'Look here', what is this? Why was this not brought to my notice? Shri Mukherjee's reply of 8th June was as follows—I will place this also before Committee; since it is a short one, I will read it—

“My dear Kaprihan—You will recall, that when Secretary was preparing his comments on the 50th Report of the PAC with ref. to paragraphs 4.35-4.36, he located certain correspondence exchanged between our office and the Dept. of Iron and Steel in March, 1960, about the exact meaning of the words 'firms contract for export'. On return from Delhi, I have examined our files and find that the relevant correspondence is on our files, but these were unfortunately lost sight of when we prepared the materials submitted by us to the PAC.

The Ministry's letter dated 17 March, 1960 was seen by the Controller and the Price Accounts Officer, but there is no further noting on the file as to what action was taken on it. Presumably, the matter was discussed between the Controller, the Price Accounts Officer and myself, but unfortunately there is no noting about it on the file. However, I have prepared a note on this subject in consultation with Shri Bam who was the then Controller, a copy of which is enclosed for your information and necessary action, if any”.

The fact of this error was reported by me to the PAC in the comments sent by the Steel Ministry on 19 July, 1966 after the comments had been finalised in the Ministry with the approval of the then Minister, Shri T. N. Singh.

As regards issue (ii)—issue of pre-import licences in the absence of an export contract, my answer to the question:—

“It was stated before the PAC SC in March 1966 that it was in November that it (mistake) was brought to notice. In November, it came to our notice”. Please state whether the mistake was brought to the notice of the Ministry by Iron and Steel Controller or Hindustan Steel at any time before November 1960.”

is as follows. This refers to the issue of licence to import by the Steel Control to the firm Ramkrishan Kulwantraï without checking that the firm had a contract with Hindustan Steel Ltd. for the purchase of steel for export. As far as can be ascertained from the papers available in the Steel Ministry, the mistake was brought to the notice of the Ministry only in November 1960 and not earlier. The official papers in the Ministry show that there was a letter dated 14 November 1960 from Shri A. S. Bam, then Iron and Steel Controller, to Shri Srinagesh, then Chairman of Hindustan Steel Ltd., of which a copy was sent to the then Secretary Iron and Steel Ministry, Shri S. Bhoothalingam, which mentions that this matter was discussed in a meeting at Dum Dum on 13 November 1960. Annexure 12 of the 56th report of the PAC however reproduced a note dated 17-11-60 recorded by Shri Mukherjee on a Steel Control file in which he mentions that this question was discussed with the then Steel Secretary, Shri S. Bhoothalingam by the Iron and Steel Controller and Shri A. N. Subbaraman of Hindustan Steel Ltd. on 2 November, 1960 in New Delhi. There is no record of this discussion of the 2 November 1960 in the files of the Steel Ministry.

As regards issue (iii)—changes in bank guarantee form—and the question;

“It was stated by you before the Sub-Committee of the PAC that ‘the Solicitor in drafting the guarantee took the view that no bank would agree to such an absolute guarantee which we had laid down in our letter’—please state whether this statement was based on any records”.

I would point out that there was no direct question on this subject in the questionnaire sent by the PAC; although there were questions on the subject of timelimits in bank guarantee—vide questions 66—68, there was no question on the actual form of the guarantee. Therefore, from the papers that were before me, I had no knowledge of any records on this subject. My statement therefore that ‘the Solicitor in drafting the guarantee took the view that no bank would agree to such an absolute guarantee which we had laid down in our letter’ was based on a verbal statement made to me by Shri Mukherjee who was then sitting by my side at the time I was giving evi-

dence. Since I am aware that very often the legal people draft things in a slightly different way, I thought what Shri Mukherjee told me must be correct. It would be observed that in paragraph 4.64 of the 50th Report of the PAC it is mentioned that Shri Mukherjee had himself stated in reply to the PAC that the Solicitor had considered the form not suitable and drafted a different form. This is also in substance what he told me when I was giving my evidence before the PAC on this point.

These are my answers. I am handing over the documents to which I have referred.

MR. CHAIRMAN: When you gave evidence before the PAC, Shri Mukherjee was also by your side.

SHRI WANCHOO: He was sitting by my side.

MR. CHAIRMAN: He was with you. If you had made any wrong observation, he could have corrected you.

SHRI WANCHOO: When I found the papers on the file myself, I asked him 'What has happened? Why didn't you tell me about it?' He said this completely slipped his mind.

MR. CHAIRMAN: Does it mean that he did not follow the proceedings or he was absent-minded?

SHRI WANCHOO: He was present throughout when I was giving evidence.

SHRI H. N. MUKERJEE: You would appreciate that Parliament is naturally very particular about cases where even the remotest suspicion of negligence or something even worse in regard to import licence quota exists; you would appreciate that Parliament is very touchy in so far as this goes. That is why I still fail to understand how the connotation of the expression 'firm contract for export' had not been conveyed to you when you were giving evidence here before the PAC. All I can find out so far is that the fact of the Ministry concerned having given a certain idea in regard to the connotation of that expression has been actually conveyed but the conveyance of that fact has been forgotten; it was misplaced—something happened. I just cannot appreciate how on such a crucial matter this happened.

SHRI WANCHOO: I would put it this way in regard to the use of the expression that pre-import should be allowed when there was a firm commitment to export.

Now, this is a phrase which was transmitted by us to the Iron and Steel Controller in the bona fide belief that it was not ambiguous or liable to be misunderstood; for a commitment to export, one would have thought that it would mean an agreement with some foreign party, but apparently, the Steel Controller understood it in a somewhat different sense; they thought that a firm contract with Hindustan Steel for the export of iron and steel, whatever it was, would be sufficient compliance and I felt that even initially we might have clarified the expressions so that no room for doubt was left. But obviously, they had some doubts on the matter as to what our intention was. So, they referred the matter to the Government, and the Government replied to them, clarifying it and saying that what was intended really was a commitment with some foreign buyer. After that, since there was no specific question on this subject, in the list of 80 questions—there was a very large questionnaire of the PAC—the matter did not come up in an important way before me. It certainly did not come to my notice. If there had been a question in the PAC Questions as to of what was meant by his expression “a firm contract for export”, obviously this particular document which was not brought to my notice would have been brought to my notice. You can see here the voluminous brief which was prepared by us. You can just see the size of it. This was the brief in answer to those 80 questions, and it is possible that this slip occurred.

SHRI H. N. MUKERJEE: If you would permit me, it is not that we wish to be pressing on this matter too much, but what does worry me seriously is that the Ministry of Finance had said while defining that expression that it was a definite commitment from some private party to purchase this in order to be exported. So, this was a very clear, unambiguous, unequivocal statement which should have stuck up in the mind of the officers.

SHRI WANCHOO: This was indicated exactly to the officers.

SHRI H. N. MUKERJEE: And yet, while giving evidence explaining the transaction with the party, this mistake, this error, has arisen. This is something which somehow, we find it rather difficult to appreciate. I do not want to say anything more about it, but it does leave a sour taste in our mouth to a certain extent. No doubt all this occurred some six years ago and we are digging it out now.

SHRI WANCHOO: We transmitted the Finance Ministry's instructions in their own words to the Steel Controller. We did say that he should satisfy himself as to the form of evidence and he seems to have interpreted this to mean that a mere contract with Hindustan Steel was sufficient compliance with our instructions.

SHRI H. N. MUKERJEE: At the point of giving evidence, this mistake to a certain extent has occurred on the part of the Deputy Iron and Steel Controller. But may I know, after that, after you came to know of this default, this error, what other steps were taken in this regard to make sure that this kind of dereliction and failure of memory should not take place particularly in regard to the connotation of an expression which, if somebody was inclined in a wrong direction, may mean a very great loss to the country?

SHRI WANCHOO: I asked the officer to explain it and he gave his explanation saying that the subject was discussed with the Steel Controller, that there was no noting on the point in the Steel Controller's office vide the Mukherjee letter of the 8th June. This point had been discussed amongst themselves, and they seem to have arrived at the conclusion that since the form of evidence was left to them, they could be satisfied with a contract with Hindustan Steel. *Personally, I do not think their view was correct; but there it is.*

SHRI H. N. MUKERJEE: The other matter is in regard to the form of bank guarantee. The Solicitor-General does not appear to have suggested that the new form should be used, but this new form is like a bolt from the blue.

SHRI WANCHOO: There used to be an old form, and I am satisfied and I think the Steel Controller was satisfied, that the old form was not entirely appropriate to this Series of transactions. There was nothing wrong in trying to get a new form; however, the new form as finally used did not carry out strictly the intentions of Government.

SHRI H. N. MUKERJEE: Do the Government not allow changes in the form of guarantee?

SHRI WANCHOO: The old form was not quite suitable to this new transaction; it was not entirely appropriate for the sort of transaction that was to be covered by it.

SHRI H. N. MUKERJEE: Why?

SHRI WANCHOO: There was one old form. As far as I can see— I am speaking subject to correction—this form says: "In consideration of the President having agreed to exempt the contractors from the demand, under the terms and conditions of an agreement dated etc., of security deposit for due fulfilment by the said contractor of the terms and conditions...etc." Our guarantee was for

failing to export and thereby forfeiting the bond. This form was slightly different and was meant to be used when Security deposits were not taken so. I do not think there was anything wrong in asking for a new form. (The old form is reproduced at Appendix XXIII of the 50th Report of the PAC).

SHRI H. N. MUKERJEE: I can quite understand the private sector administration not sticking to a particular item for some special reasons, one thing or the other, but when the Government department does it, there must be some very special reasons and the PAC had to enquire why an absolute guarantee was not taken; it was a qualified guarantee.

SHRI WANCHOO: That was a mistake.

SHRI H. N. MUKERJEE: It may be for the purpose of better administration of this kind of job, this kind of a change is authorised or is permissible, but that rises a matter of principle which had agitated elsewhere a decision made. The Government department has to be a great deal more careful than the private sector company and its administration. What a private sector company could do voluntarily had been sought to be done by a public sector organisation. It may have been justified from what I see from the Sarkar Committee's findings—it may be nothing to make a song about it—but, at the same time, a matter of principle does happen to be involved: where the Government wants a thing to be guaranteed, the Comptroller and Auditor-General does naturally insist on the provision being specified; there is a change, and if that change is permissible, authorised by the Government department concerned, by the relevant authorities, I can understand it, but if somebody at some level of the administration makes a change and that is covered *post facto*, that leads to a bad impression.

SHRI WANCHOO: I think I have not made myself clear. The old form contained wordings like this: that is view of the fact that we are not taking a security deposit from you, please give us a bank guarantee. Therefore, that form was relevant to the circumstances where you were not taking a security deposit from the party. But here, the bond we wanted was for the due fulfilment of the export commitment. The wording of the form had, therefore, to suit the circumstances for which a bond was being taken. So, I submit that there was nothing wrong in asking for a new bond. The point was, the substantive condition of the bond, should have been changed. But there was no real mistake in asking for a bond which will suit the condition of the type of contract that was being entered into.

MR. CHAIRMAN: When examining them to find out the factual position, I do not think we will be right in going into the merits

of the case. Your questions are all right, but we are not here to go into the merits as to whether they altered it or improved it. Who has really altered it: that is the point.

SHRI H. N. MUKERJEE: I shall finish now. Did you make sure that the Government Solicitor was a party to the alteration in the bond of the guarantee and it was done properly and adequately with all the safeguards?

SHRI WANCHOO: As far as I can make out, the Government Solicitor had not altered; the actual bond used was not quite the bond which the Solicitor drafted. That is what I can make out from the Committee of Enquiry. There was some alteration made in the Steel Controller's Office in the form of the bond of which I was not aware.

SHRI H. N. MUKERJEE: So, it was made without reference to anybody: without reference to the Government; without reference to the Solicitor, without reference to anything that you can cite.

MR. CHAIRMAN: What was the alteration made?

SHRI WANCHOO: Apart from some gaps having to be filled the important alteration was that: the bond as drafted by the Government Solicitor provided that within a certain time from the date of signing, if the party failed to do certain things, this bond could be forfeited. This was what the Government Solicitor had drafted. The most important change made was that instead of saying if within a certain time from signing of the bond or contract, certain exports did not take place then that bond will be forfeited, what was said was, "...on the understanding to export, ... produced by Hindustan Steel, three months from the date of delivery of the material by Messrs Hindustan Steel, Limited."

MR. CHAIRMAN: Within three months.

SHRI WANCHOO: From the date of delivery of the material by Hindustan Steel. Supposing Hindustan Steel failed to deliver the material or delayed it, then the bond could not be enforced; whereas, as the Solicitor had drafter, the bond could have been enforced within three months from the date of signing irrespective of Hindustan Steel's performance.

MR. CHAIRMAN: Period of three months. Who incorporated it?—Three months from which date?

SHRI WANCHOO: That was the crucial thing. According to the solicitor, it was within a specified period of entering into the bond. According to the amendment made by the Dy. Steel Controller, it was three months from the date of delivery of materials by HSL.

MR. CHAIRMAN: Did he make any other changes?

SHRI WANCHOO: He had filled in some blanks, but this was the material change which was made in two places. The point was, when does the bank guarantee become enforceable? According to the solicitor, if within a certain period of entering into the bond, they failed to export, it became enforceable. But according to the amendment made by the Steel Controller, the enforcement of the bond became conditional on the supply of materials by HSL. If HSL does not supply the materials, the bank guarantee becomes infructuous. That was the change.

SHRIMATI SUSHILA ROHATGI: About the pre-import licence, I believe on the basis of what you have told us in detail that though these instructions of the Finance Ministry were there all along on the file, somehow they have managed to escape the attention of Mr. Mukherjee and in preparing the briefs, certain changes and alterations were made and certain annexures were left out. Was any mention made of this anywhere? I believe there was nothing on record to show it.

SHRI WANCHOO: There was absolutely no mention of it when the briefs were put upto me.

SHRIMATI SUSHILA ROHATGI: When the papers were there all the time, they have managed to escape the attention of Mr. Mukherjee. Even at a later stage, he did not bring the matter to the notice of the Secretary. It was only the Secretary who diagnosed the error and brought it to the notice of the Minister.

SHRI WANCHOO: And also to the notice of the PAC.

SHRIMATI SUSHILA ROHATGI: Yes. Supposing the Secretary had not been alert and had not found out the error himself, what would have happened in this case? Is there any agency for checking whether categorical instructions issued by the Finance Ministry are carried out by the officers of your ministry? I fail to understand how it could have escaped the attention of this gentleman. It was not a routine matter. It was a matter on which certain clarifications were sought. Is there any agency in the ministry for checking up that the instructions which are issued are followed and not allowed to lie on the file like this?

SHRI WANCHOO: Normally we do see that the instructions which are issued are followed, but cases can happen where some instructions may be ignored.

SHRIMATI SUSHILA ROHATGI: When there are reasons to doubt that there is some abnormality in a particular matter, what is the procedure in such cases to see that the instructions as followed?

SHRI WANCHOO: It is very difficult to say, because during the course of official business, hundreds of orders are issued every day to subordinate authorities and one assumes in the normal way that these orders are being carried out. I do not think any test check is made from time to time as to how many orders are carried out and how many are not. But if some flagrant disregard of some order occurs, in most cases it does come to notice. Either the aggrieved party or somebody else makes a complaint.

SHRIMATI SUSHILA ROHATGI: About the bank guarantee form, how was the Deputy Iron and Steel Controller competent to change it to such an extent that it changed the entire character of the bond?

MR. CHAIRMAN: That would be going into the merits of the case. We are only concerned with eliciting facts now.

SHRI SONAVANE: You said that the papers were lost sight of and therefore they were not brought to the notice of the committee.

SHRI WANCHOO: I said they were not brought to my notice first and therefore they were not brought to the notice of the committee.

SHRI SONAVANE: At least they were lost sight of by Mr. Mukherjee?

SHRI WANCHOO: I read out his letter to me. He has himself said that *it was a slip*.

SHRI SONAVANE: At the time when both of you were giving evidence, was this fact brought to your notice that he lost sight of it or that the papers were not traced at all?

SHRI WANCHOO: When I was giving evidence, obviously, if he had lost sight of it, he could not have told me about it because he had lost sight of it. Only when I spotted this and when I asked him, "You were sitting next to me. Why did you not mention all these things?", he said, "I have overlooked it or lost sight of it."

SHRI SONAVANE: Were those papers, which were traced later on, on the file itself?

SHRI WANCHOO: They were in the Steel Ministry file also.

SHRI SONAVANE: Did you happen to go through the file yourself before you came to give evidence?

SHRI WANCHOO: This is the volume of the Replies we sent which you can see for yourself how voluminary they are. I could not possibly have gone through every file—fully myself.

SHRI SONAVANE: Let us not elaborate on this. Did you go through the file or not?

SHRI WANCHOO: I did not go through all the files myself because my under-secretary and deputy secretary had gone through the answers to these 80 questions that Mr. Mukherjee had prepared. I did not go through every file personally nor did I see this particular file from cover to cover.

SHRI SONAVANE: To your knowledge, did Mr. Mukherjee go through the file before coming to the committee to give evidence?

SHRI WANCHOO: I do not know; obviously, he must have looked at some files before he prepared his briefs.

SHRI SONAVANE: Who first came across the papers, yourself or Mr. Mukherjee?

SHRI WANCHOO: I have explained already in my reply that it was I who spotted this when I went through the particular file. When the PAC report drew special attention to this matter, I naturally called for the file to see and while going through the pages in this file, I myself had spotted those two letters.

SHRI SONAVANE: Could you not have done so even before coming to give evidence, to satisfy yourself as the person in charge of the Ministry to see that everything was all right?

SHRI WANCHOO: Theoretically yes, but physically it was not possible for me to have gone through each file myself, because there were about 80 questions and probably a hundred files had to be gone through. While every care is taken to make over replies accurate. It cannot reasonably be expected that the Secretary would go through every file and every page of every file to check every statement made in the briefs prepared by the Steel Controller or the under-secretary or the deputy-secretary personally. It is just physically not possible to do work in that manner.

But technically, the answer to the question is 'Yes', and if I had gone through every page in every file myself, possibly I could have spotted this mistake earlier.

SHRI SONAVANE: You did not go through the file. What about Mr. Mukherjee and his assistants? Did they go through the file so as to see those pertinent papers?

SHRI WANCHOO: Unfortunately, there was no very specific question on this point in the questionnaire. There were about 80 questions but they had not pinpointed this particular matter. If they had pinpointed, somebody would have gone through the papers with a fine-tooth-comb; but because there was no pinpointed question, it escaped attention here also. I cannot say whether Shri Mukherjee or his staff went through this particular file or their corresponding papers in Steel Controller's office.

SHRI SONAVANE: How is it that when questions were asked about firm contract for export and its connotation, vague replies were given?

SHRI WANCHOO: I pointed out when that the Finance Ministry had used the word 'firm contract'. We had also used the word 'firm contract'. Apparently we thought that the meaning was fairly clear, but apparently the Steel Controller misunderstood it. I said we should have clarified beyond possibility of doubt.

SHRI SONAVANE: On this particular point when questions were asked about the connotation of the term, did it not occur to anybody that there was some correspondence on this subject? Was there no such recollection on the part of anybody?

SHRI WANCHOO: As I had pointed out, all these transactions occurred long before I had joined this Ministry. I had not seen the file and therefore it could not have occurred to me, because I had not the personal recollection of the case at all. But Mr. Mukherjee should have recollected, but unfortunately he did not.

SHRI SONAVANE: How many joint secretaries or under-secretaries did you have in your Ministry at that time?

SHRI WANCHOO: This was dealt with by a Deputy Secretary and an Under-Secretary in the Ministry.

SHRI SONAVANE: In the Steel Controller's office also, Mr. Mukherjee must have had his assistants.

SHRI WANCHOO: The replies came over the signature of Mr. Mukherjee. How many officers there were is something which I cannot say.

SHRI SONAVANE: All of them failed to see this correspondence, instructions and explanations?

SHRI WANCHOO: As I had pointed out, there was no pinpointed question on this.

SHRI SONAVANE: How is it that it was explained away by you in the committee in the way that you thought it fit to do?

SHRI WANCHOO: What I had said was this. The Finance Ministry had used the words 'export commitment'. We also had used the words. Normally I should have thought that there would have been no ambiguity as to what was meant by export commitment. But, unfortunately, the Steel Control seems to have interpreted the term in the sense of an export contract with Hindustan Steels. I personally do not agree with that interpretation, but anyway they seem to have interpreted it that way, and I said that it was a possible interpretation. But I added that perhaps it would have been better if we had made our meaning clearer in our letter. The correspondence that I have spotted myself did make the position clearer but I was not aware of it at the time that I gave my evidence.

PROF. SHANTI KOTHARI: I do not want to go into the merits of the statement of the witness that 'I could not have gone through all the files myself.' But I think that it is the practice in regard to the PAC meetings that the secretary not only reads the files in full but even anticipates what perhaps may be remotely a related question. In the present case, this is not only a question but it has behind it so much of story and history. I would suggest that any officer who appears before the PAC should take the PAC far more seriously rather than say that 'I could not have possibly gone through all the papers', and that a secretary is not expected to go through all the papers.

MR. CHAIRMAN: Now, Mr. Wanchoo may wait for some time in the adjacent room and if need be, we shall call him again.

(Shri Wanchoo then withdrew)

WITNESS EXAMINED

Shri S. C. Mukherjee

(Witness was called in and he took his seat)

MR. CHAIRMAN: Mr. Mukherjee, you are aware of the purpose for which we have assembled here. I need not repeat the points

raised in the privilege motion. The questions also have been given to you already and you may proceed to answer them.

SHRI S. C. MUKHERJEE: The first issue is in regard to the conditions on which pre-import licence could be issued. The question is as follows: Please state how the fact that a clarification regarding the definition of an export contract had been given by the Ministry of Iron and Steel was overlooked while preparing a brief for the Secretary.

This question is apparently based on Shri Padhi's dissenting note where he made an allegation that I prepared a misleading brief for Shri Wanchoo. But this is not quite correct. I did not prepare any brief for him on this subject. What happened was that the PAC sub-committee gave us a large number of questions and we were asked from the Steel Control to furnish materials for reply to the Department of Iron and Steel. The Department of Iron and Steel had to prepare replies to the questionnaire. Those questions and answers have been stated as the brief. No other brief was prepared by me. "Materials for reply to the questions were collected from the files of the office of the Steel Controller not only by me but by others also. Actually, I had dealt with barter deals only from the end of 1959 up to June 1961. Thereafter I had not dealt with barter deals. In 1965 when the Sub-committee of the PAC was appointed I was actually working as Secretary of the Khadilkar Committee and Chairman of the Re-rolling Committee. I was not doing any work connected with steel control. But the then Controller, Mr. Nagendra Bahadur said that since I had dealt with the subject between 1959 and 1961, I may also be associated with it. That is how I was associated with it. The materials were collected by the officers who were dealing with it. Along with them I also went through all the files, checked them and furnished them to the Department of Iron and Steel. In the Department of Iron and Steel they were modified and amplified with the papers that were available in the Ministry and, finally, replies were prepared in the Ministry and sent to the PAC. So, it will not be correct to say that I prepared the brief. That is a misleading statement. Of course, the letter dated 17th March, 1960 was not included in the questions and answers. There was no specific question on the subject. Even then, perhaps it could have been given even in reply to questions, wherein copies of correspondence were called for. But, somehow, we missed it in the Steel Controller's Office because the file in which we located it had 200 pages and the subject was not clear. So, perhaps, we missed the letter because of that and it was not included in the materials furnished by us.

Now, I come to the second question: Was the Ministry's letter dated 17th March, 1960 not in the relevant file? Was the relevant file not with the Deputy Iron and Steel Controller at that time? "As I have already explained, the letter was there when I went through the file. But this file is not on this specific subject; it is on the general subject of export of pig iron. It was there in the file. The file was not in my personal custody because I was not dealing with the subject in 1965. As I have already explained, at that time. I was Member-Secretary of the Khadilkar Committee and the Chairman of the Re-rolling Committee. I had, checked the material and forwarded it to the Ministry. So, the file was there, but it was not in my custody. That is the only thing that I could say."

Then I come to the third question: How was it that even during the course of examination of the matter by the PAC Sub-Committee the Deputy Iron and Steel Controller did not remember about this letter? When this was raised during oral evidence, I had no recollection of this letter because the letter formed part of the correspondence which took place in 1960 and the evidence was taken in 1966. I had dealt with barter deals only upto 1961. Thereafter I have not been doing this work. So, I had to give information only by going through the files. While going through the files this particular letter did not come to my notice. During the oral evidence of the PAC Sub-Committee also, even though I went through all the files that were available from the Steel Controller's office, I could not spot this letter. So I could not say anything about this.

The fourth question is this: Was the explanation of Deputy Iron and Steel Controller on this issue called for? If so, what was the explanation given to Shri Wanchoo when the mistake was detected by him? Explanation for not locating the letter was not called for. But when Shri Wanchoo found this letter in the file of the Ministry, I was also there with him. We were replying to the various points in the report of the PAC. He asked me: was this letter received by you? I replied, "I cannot say anything now, because the files are not with me. I will go to Calcutta and find out the actual position." When I went back to Calcutta I searched the file and found this letter. Then I submitted a note explaining what action was taken on this. If I may explain it further, "I could not have suppressed this letter because the letter was available not only in our file but also in the file of the Ministry. Secondly, there was no motive or purpose in suppressing the letter, because the letter was helpful to us. If we had produced that letter, our position before the PAC would have been much better. I had written that letter on 10th March and received the reply from the Ministry on 17th March, 1960.

MR. CHAIRMAN: You have got a very fine record of work. Everybody has given you a good chit that you are an outstanding worker. Shri Wanchoo has also testified to that during the course of his evidence. In the light of that, how can we swallow this statement that this letter escaped your notice and you were not able to trace this file?

SHRI S. C. MUKHERJEE: It is unfortunate. The main reason is that so many years had elapsed and I had not been dealing with this subject. So, I had to depend on files. At that time I did not remember this.

MR. CHAIRMAN: These things were found in the file. So, either you should say that you have not gone through the files thoroughly or you should give some other reason. Considering your record of service, which is so outstanding, how can I afford to accept this statement that it has escaped your notice?

SHRI S. C. MUKHERJEE: I can definitely say that I have gone through all the files as carefully as possible. There is no doubt about it.

SHRI K. M. KOUSHIK: Theoretically, it is possible that a man has forgotten in 1966 what he had done in 1959 or 1961, because he was put on some other job, and so many files had passed through him. But considering your record and experience it is a little hard for us to reconcile ourselves to the fact that after having worked for two years this could escape your notice. I am not able to appreciate it, more so because when Shri Wanchoo referred to it when you were in Delhi you said "I will go to Calcutta and see whether that letter was received in Calcutta or not." Then you went to Calcutta and confirmed that you have in fact received it. Having worked for two years in that post, how could you expect us to accept your submission that you did not remember that particular letter?

SHRI S. C. MUKHERJEE: It is a fact that I did not remember it. How I forgot it I cannot say.

Then I come to the next question about the issue of pre-import licences in the absence of an export contract. The question is:

"Please refer to paragraphs 5.34 and 5.35 of the Note of Dissent to the Report of Committee of Inquiry (Steel Transactions) wherein a reference has been made to a letter

written by Shri H. R. S. Rao of H.S.L. dated 25th February, 1961 to his Head Office at Ranchi. It is stated in para 5.35:

'Shri Rao was closely questioned by our Committee about his conversation and how he remembered it six months later. His evidence has not been shaken and is found to be completely trustworthy. Shri Mukherjee also could not ultimately deny the substantial accuracy of Shri Rao's version of the conversation though in the beginning in a written memorandum he had said 'I emphatically deny that I had any knowledge of the lapsebefore 25th October, 1960'."

Please state whether you agree with the observation made in para 5.35 of the Note of dissent that "Shri Mukherjee also could not ultimately deny the substantial accuracy of Shri Rao's version of the conversation."

I do not agree. I have always denied that during my oral evidence before the Sarkar Committee that Shri Rao had informed me about this barter deal of 25,000 tons of ingot slabs before 25th October, 1960. I have categorically stated throughout that the information furnished by him in August, 1960 related to another barter deal.

The second question is: Please state to what extent the fact stated by Shri Rao that the mistake was brought to your notice in August 1960 was accepted by you during evidence before the Committee of Inquiry. I did not accept during my oral evidence that the mistake regarding the deal sanctioned *vide* our letter dated 5th May, 1960, was brought to my notice by Shri Rao in August 1960.

Then, the next question is: Please state on what basis the information was given to the Public Accounts Committee that by November 1960 a balance of 149 tonnes worth Rs. 3.90 lakhs was left to be imported. This information was given on the basis of statement which was compiled in reply to one of the written questions by the PAC. Sub-Committee calling for details of monthly imports against pre-import licence. It was question No. 31 in the folder. For this purpose the date of the Customs Clearance Permit was taken as the date of import as the dates of actual import were not available. I have got a copy of the statement and, if necessary, I can furnish it.

MR. CHAIRMAN: As regards question No. 4, you can send a written reply.

SHRI S. C. MUKHERJEE: I have got the statement here and I can hand it over.

MR. CHAIRMAN: Please hand it over to us.

CAG: Were these facts not available when the evidence was tendered before the Committee?

SHRI S. C. MUKHERJEE: I have given the available date in statement. The statement given to the PAC was month-wise. The date of shipment was not given. It was available in the file although it was not readily available with me at the time of giving oral evidence and compiling the information before the PAC. In the statement now prepared I have given the dates of shipment also from the file. Only in two cases I could not find the CCP (Customs Clearance Permit) application and the date was not available; the date of actual import was not available and we took the date of the CCP as the date of import.

Coming to Issue No. (iii), the first question is: Please state why you did not inform the Sub-Committee of the Public Accounts Committee about the changes made by you in the guarantee form as drafted by the Solicitor. My reply to this is that I did not make any change in the form of the Bank Guarantee drafted by the Solicitor; I only filled up two blanks left by the Solicitor. These blanks were where we had to indicate the time to be allowed to the party to complete export obligation. The draft containing the insertions made in my own handwriting was approved by the Controller and kept on the file. In the form drafted by the Solicitor he kept blanks as follows:

“Whereas the Government, that is, the Iron and Steel Controller, has agreed to enter into a contract with the Obligor for import on the undertaking of the obligor to export 20,000 tonnes of billets produced by Hindustan Steel Limited within”—

here he has left a blank to indicate the number of months—

“months from the date of these presents” etc., and then again:—

“If the Obligor fails to secure foreign purchaser for, and arrange export of, 20,000 tonnes of billets produced by Hindustan Steel within”—

again, he has left a blank for indicating the number of months—

“months out of India from the date of these presents” etc.

I filled in these blanks left by the Solicitor and I do not consider that the insertion made by me in the blank left by the Solicitor in the draft form was tantamount to any alteration in the form thereof. I only indicated the time and instead of 12 months from the date of the Presents, we said "three months from the date of delivery by the Hindustan Steel Limited", because the material had to be produced by Hindustan Steel. That is quite clear from the draft itself and also from the Ministry's instructions.

CAG: This is the real point at issue. Has there been a change from "within three months from the date of these presents" to "within three months from the delivery of material".

SHRI S. C. MUKHERJEE: "Three" was not there. It was:

"within.....months from the date of these Presents".

So, I said:

"within three months from the date of delivery of material".

SHRI K. M. KOUSHIK: Instead of "Presents", you said, "date of delivery".

SHRI S. C. MUKHERJEE: Yes. It was not a change really. The form was not changed by me.

CAG: The material change that resulted was that the time limit instead of beginning from the signing of the Presents was shifted to begin from the date of delivery of material. That change was made by you; it was introduced by whatever amendment you made, though it may not amount to changing the form.

SHRI S. C. MUKHERJEE: That is right.

CAG: Was this change specifically brought to the notice of the Iron and Steel Controller and the Ministry of Iron and Steel?

SHRI S. C. MUKHERJEE: The draft with this change was submitted to the Iron and Steel Controller and it got his approval. We did not refer it to the Ministry.

MR. CHAIRMAN: Is the quantity that you have given in the statement handed over to us in tonnes or in what?

SHRI S. C. MUKHERJEE: The quantity is in tonnes.

MR. CHAIRMAN: You would have noted that we passed some remarks against the Solicitor depending upon your evidence. This is rather unfair, that is, to pass a remark against somebody for no fault of his. I would like to ask you whether you had brought this change to the notice of the Solicitor.

SHRI MUKHERJEE: No, Sir. As I told you, I did not think it was any material change. He wanted a time limit to be given.

MR. CHAIRMAN: The form may be all right. You have put three I's instead of two I's. You have indicated the period of delivery—'within three months'.

SHRI MUKHERJEE: "My argument is that the Solicitor has said 'steel produced by HSL'. 'Produced by HSL' has been put. If there is no production, how can there be export"?

MR. CHAIRMAN: We wanted to know as to who was responsible for this change. Now I understand from you that it was you and not he. You might have done it in the interests of anybody else. We are not concerned with that. We are concerned as to who has done it.

SHRI MUKHERJEE: I have done it because I thought it simple, I can only give my reasons.

SHRI SONAVANE: You said that since 1961 you were not at that job in the Steel Ministry and then when you were asked by your superior officer to come before the PAC to give evidence you readily agreed.

SHRI MUKHERJEE: Not only to give evidence but also to collect materials for reply to the questionnaires.

SHRI SONAVANE: Because you had that knowledge of the Ministry from 1959 to 1961 and you have dealt with this.

Now to Issue No. 1, while you were answering to question No. 2—Was the Ministry letter dated 17th March not in the relevant file?—you have said the existence of the letter was not to your knowledge.

SHRI MUKHERJEE: I had no recollection.

SHRI SONAVANE: The existence of the letter—was it not to your knowledge?

SHRI MUKHERJEE: I had said that the letter was in the Steel Controller's file but the file was not in my personal custody. I had gone through this file perhaps.

SHRI SONAVANE: But your office was at Calcutta and the letter was in Calcutta file when it was brought to your notice by Mr. Wanchoo.

SHRI MUKHERJEE: Yes, Sir.

SHRI SONAVANE: Now, while giving evidence you must have recollected that a certain letter was there and even though you had not traced that letter, still you did not say having read or received or filed the letter.

SHRI MUKHERJEE: I did not re-collect Sir.

SHRI SONAVANE: When the letter was received, did it not come to your knowledge, when it had come for signature and then you say 'file'?

SHRI MUKHERJEE: The letter was received by me. It was addressed to me. I submitted it to our Controller.

SHRI SONAVANE: At that time you have read that letter?

SHRI MUKHERJEE: That was in 1960. In 1966 I had no recollection.

SHRI SONAVANE: When the question came before the PAC on this relevant subject, you did not at all recollect the letter having been read by you and initially or that you asked it to be filed?

SHRI MUKHERJEE: Because six years had passed and we had dealt with so many other things. At that time I went through several files. But I had no recollection.

SHRI SONAVANE: When the question came up before the PAC, when some off-hand answers were given, did it not occur to you and you did not say or nobody said 'We will look into the file if there are any such instructions and then you would give the answer as is the practice here.'

SHRI MUKHERJEE: There was no specific question on this clarification because nobody knew about that clarification. The only question asked was: what was the interpretation of the term "firm export contract"? We said that our interpretation was that the export contract with HSL was taken as sufficient for the purpose of pre-import licence.

SHRI SONAVANE: On this very question that letter explaining the connotation and while answering that question or while that question was being answered in your presence did it not occur to you that such a letter was there?

SHRI MUKHERJEE: It was not in my recollection.

SHRI SONAVANE: When you gave the answer to the question as a man responsible to the work, you did not go through the file.

SHRI MUKHERJEE: I have gone through the file but it is a big file.

SHRI SONAVANE: Big or small, you get a big amount of salary every month.

SHRI MUKHERJEE: I have gone through it but this letter did not attract my attention.

SHRI SONAVANE: The letter did not attract you. So you did not go through the file?

SHRI MUKHERJEE: My recollection is that I have gone through all the files and this being an important file, the file must have been put up to me. I cannot say I did not go through the file because I must have gone through the file but this letter did not catch my eye. During the oral evidence also I could not locate this letter.

MR. CHAIRMAN: Whenever we examine witnesses, they are not examined on oath. While giving evidence I only request you to say as far as possible the truth. If there are errors, it does not matter. There is nothing wrong in accepting it. Just skipping over it is not good.

SHRI MUKHERJEE: I agree, Sir, I must say only the truth.

MR. CHAIRMAN: Even if there is an error, we can appreciate it.

SHRI MUKHERJEE: Whenever I have committed errors I have always accepted them. Even in this case of Sarcar Commission, I have accepted so many errors.

MR. CHAIRMAN: Suppose while your colleague—senior or junior officer is answering, there is an error in the statement of fact, if you know the truth, you can correct it.

Mr. Kothari—you want to ask any question?

SHRI SHANTI KOTHARI: I only wanted to know whether any extraneous influence was working at that time.

SHRI H. N. MUKHERJEE: In March, 1960, the Ministry of Finance gave your Ministry a definite idea as to what firm contracts for export should be. I take it from what I hear that since you have an outstanding record as an officer of the Steel Ministry, you should have thought, it was a very important thing that accommodation was given by the Finance Ministry—I assume, you must have taken it as a very important and significant declaration by Government.

SHRI S. C. MUKHERJEE: Yes.

SHRI H. N. MUKHERJEE: You surely are aware of all the difference between a contract between the barterer and foreign buyer and a contract between the barterer and Hindustan Steel.

SHRI S. C. MUKHERJEE: Yes.

SHRI H. N. MUKHERJEE: If that is so, how do you really, truly, expect us, to accept your statement that you are simply forgetting it? That is something on which I would like you to explain the position. That is all that I wish.

SHRI S. C. MUKHERJEE: The point is this. Finance Ministry's clarification as communicated to us by our Ministry said that there should be a firm commitment with the foreign buyer and the formal evidence was left to us. It did not specifically say that the export contract means a contract with foreign buyer. So, we accepted contract with Hindustan Steel. The contract with HSL was for export of materials and so we thought that this is a much better evidence of the firm's commitments because he must have found a buyer abroad. Otherwise if we only wanted a commitment from foreign buyer they can always produce some spurious document. Hence the contract is for export. It is with reference to barter deal. That is why we decided on accepting it. The export contract with HSL was taken as proof of export commitment for giving import licence. This clarification was there. It did not bring to my mind this letter. This letter was 6 years old.

SHRI H. N. MUKHERJEE: You say you were right in 1966 in your interpretation of the description firm contract for export as it applied in the a particular case.

SHRI S. C. MUKHERJEE: Yes.

SHRI H. N. MUKHERJEE: It is wrong to say what the Home Ministry has been saying all along that they had forgotten the direction given by the Ministry of Finance.

SHRI S. C. MUKHERJEE: Yes. The Sarkar Committee upheld my argument in this. The firm commitment and contract is slightly different. And, when there is a contract with Hindustan Steel it can be assumed that there is a commitment with foreign buyer. They have accepted our arguments.

SHRI H. N. MUKHERJEE: You are suggesting, from practical point of view, you interpreted the Finance Ministry's definition of firm contract in the way that was most desirable.

SHRI S. C. MUKHERJEE: Yes.

SHRI H. N. MUKHERJEE: From practical considerations you changed a directive of Government and the whole matter was left unexplained.

SHRI S. C. MUKHERJEE: We did not change. We interpreted its form of evidence was left to us. The letter said that there should be a firm commitment and form of evidence was left to us.

SHRI H. N. MUKHERJEE: The Sarkar Committee report states at page 58:

We are not prepared to disagree with the opinion of Shri S. C. Mukherjee that a Commitment with Hindustan Steel Ltd. was sufficient evidence of a definite commitment to export.

You made an interpretation which you justify only on the basis of practical considerations.

SHRI S. C. MUKHERJEE: It was left to us. It was not a directive. The evidence was left to us.

MR. CHAIRMAN: It is for your satisfaction, not for interpretation. It is left to you to interpret it according to the evidence.

SHRI S. C. MUKHERJEE: Form of evidence is left to us.

MR. CHAIRMAN: For evidence alone, that is left to you for your satisfaction. As regards interpretation—and the interpretation you have taken—would you not think it proper to report it back to the Committee, saying this was the interpretation? Are you taking steps to do that?

SHRI S. C. MUKHERJEE: If we thought it, we would have reported it. We did not think so.

SHRIMATI SUSHILA ROHATGI: In answer to a question put by Chairman you have said this is a form which the Finance Ministry had prescribed and you have to follow it. About the question whether there was any failure, you accept there was no failure. We find that an impression had been created that this entire change was made by the Solicitor himself. When this impression was given in the PAC you did not make any effort to correct Mr. Wanchoo there.

SHRI S. C. MUKHERJEE: I have not followed your point.

AUDITOR GENERAL: In the PAC report, on page 74, there is a sentence like this:

If he felt any difficulty in getting guarantees in the form required he should have placed the matter before the Ministry for their consideration. The Sub-Committee regret

to note that this was not done. On the other hand he referred it to the Solicitor who drafted the guarantee form which was not in consonance with the intention of the Ministry. The Sub-Committee fail to appreciate the attitude of Government Solicitor who took upon himself obligation to advise that no bank would agree to such a bank guarantee. Instead of drafting the document and embodying the intentions of the Government he went outside the scope of his duties and drafted a form which was least satisfactory.

The question was this. It would have appeared to you, that the Solicitor was being blamed for something which he did not do and you would have appraised the Committee of the whole position.

SHRI S. C. MUKHERJEE: The impression that I gathered was that the sub-committee was referring to a sentence appearing in the February 1960 order. This stipulation was not made by the Solicitor. Solicitor's doubt did not contain this stipulation that guarantee will be forfeited in case of failure to earn foreign exchange whatever may be reason therefor. That is why I did not say although I was not also asked to give any comments on this.

AUDITOR GENERAL: When you read the report and had discussion with your Secretary about the action taken report, at that stage, did it not occur to you that the Govt. Solicitor was being hauled up for something which he did not do?

SHRI S. C. MUKHERJEE: I took it that it was with reference to this sentence that a mistake was made. The sentence from the Ministry's instruction on the basis of which the import was allowed is this. "It should be made clear to the exporter that guarantee will be forfeitable in case of failure to earn foreign exchange by export whatever may be the reasons therefor." We thought that the PAC Sub-Committee was of the view that 'whatever may be the reasons therefor' should have been included in the draft which was not done.

AUDITOR-GENERAL: How is that at all referred to in this?

SHRI S. C. MUKHERJEE: This is a sentence occurring in the Ministry's instruction letter dated 2-2-1960—the basis of pre-import licence.

AUDITOR-GENERAL: If you read paras 4.65 and 4.66 of the report I think it is fairly clear as to what the sub-Committee had in mind. That was about this change which was made in the guarantee form.

MR. CHAIRMAN: But this has nothing to do with the arguments advanced by you.

SHRI S. C. MUKHERJEE: My impression was that this was with reference to the absoluteness of the guarantee. We appreciated the Government Solicitor's advice that no bank would agree with such a bank guarantee.

SHRIMATI SUSHILA ROHATGI: I shall make one thing clear here. The Iron and Steel Controller did not carry out the conditions laid down in the Ministry's instructions dated 2-2-1960 regarding the furnishing of guarantee.

SHRI S. C. MUKHERJEE: That was because we thought that this was with reference to the forfeiture of the bank guarantee for whatever may be the reasons therefor. The change made by me was only regarding the time to be allowed. If the period of twelve months, say, starts from the date of execution of the bond. Of course the export is to be made within 12 months. Here I may submit that the Solicitor himself says that they must export so much of billets produced by the Hindustan Steel Ltd. There cannot be any export unless there is production.

AUDITOR-GENERAL: The point which the hon. Member has in mind is this. Don't you know that the P.A.C. had made some adverse comments against the Government Solicitor? How did you think that it referred to something other than the change made by you?

SHRI S. C. MUKHERJEE: I thought that this was with reference to the sentence in the Ministry's instruction.

MR. CHAIRMAN: Will you please pinpoint that sentence? There are two things to be borne in mind. One is the change that has been incorporated by you in the guarantee. You have to see whether it is an implementable guarantee. The other is the failure to earn foreign exchange by export within three months from the date of delivery. The latter that you have suggested might be workable. I agree with all this. But why should you only refer to this particular sentence.

SHRI S. C. MUKHERJEE: Sir, when I read this report I got the impression that it was referring to this sentence because there was no stipulation like that.

MR. CHAIRMAN: The Sub-Committee failed to appreciate the attitude of the Government Solicitor in taking upon himself the obligation to advise that no bank would agree to such an absolute

guarantee. This paragraph only refers to this condition which you have put in. It is really in favour of the Government. All along this is the impression that we gathered from the evidence. You were also here when the evidence was given by Mr. Wanchoo. You could have corrected that impression. There may be slight errors here and there. But there is nothing wrong for you to accept that. What is the use of simply taking some sentence from somewhere and saying this was with reference to this sentence and so on.

SHRI S. C. MUKHERJEE: I was under the impression that the words inserted by me did not make any change in the form. He said the period starts from the date of signing of the bond whereas I said that, it starts from failure to earn foreign exchange by export within three months from the date of delivery of materials by HSL."

MR. CHAIRMAN: If it is from the date of delivery that means longer life. That does not take effect immediately.

SHRI S. C. MUKHERJEE: I agree. The H.S.L. is a government organisation. Materials produced by them will have to be exported. Suppose within 3 months the delivery is not made, the export does not take place. How can we enforce this guarantee? We cannot enforce that.

AUDITOR-GENERAL: We are not here to discuss the merits of it. The change that was finally made might have been very appropriate. But the question here is this. The Sub-Committee here was led to believe that the Solicitor did that thing which in fact he should not do.

SHRI S. C. MUKHERJEE: My submission is this. I thought that the Sub-Committee was finding fault with the Solicitor for not including the stipulation that the bank guarantee will be forfeitable in case of failure to earn foreign exchange by export whatever may be the reasons therefor.

MR. CHAIRMAN: That would mean two things—one is that it may be from the date of execution of the agreement and the other is that it may be effective from the date of delivery of the articles. The latter one takes long time whereas the earlier one takes only three months. It should not be like that. The Solicitor never meant like that. He meant only the earlier one. He goes by the form of guarantee. He says that this is forfeitable. You say it is not so, because the forfeiture period starts for failure to earn foreign exchange by export within three months from the date of delivery of the pig iron.

AUDITOR-GENERAL: As the draft came from the Solicitor, it was an attempt to give effect to the decision of Government. As per this letter by changing the date effective from the execution of the guarantee and making it 'within three months from the date of delivery' you made a material change. Now the Committee was led to believe that this change was made by the Government Solicitor.

SHRI S. C. MUKHERJEE: That I did not understand at that time.

AUDITOR-GENERAL: This Sub-Committee passed a stricture against the Government Solicitor for which possibly you were responsible. So the question I want to put is this. When you were preparing replies for the Action Taken Report and helped the Secretariat. Did not you therefore think that there should be a direct apology from you to this Committee for having led this Committee to believe that this change was made by the Government Solicitor?

SHRI S. C. MUKHERJEE: But I understand it differently. I understood that the Sub-Committee was referring to this particular sentence.

SHRIMATI SUSHILA ROHATGI: In spite of the impression that was created in the minds of the Committee by the evidence that you gave that the fault was entirely that of the Solicitor, why did you not make an attempt to correct that impression? When Mr. Wanchoo was speaking why did you not prefer to correct that impression? Don't you think that there is a material difference between these two periods?

SHRI S. C. MUKHERJEE: That is what I felt. My doubt was as to how to express the period. I can express the date from one date whereas you can express that from another date.

SHRIMATI SUSHILA ROHATGI: What is the date of effect of the guarantee?

SHRI S. C. MUKHERJEE: That takes effect from the date of signing.

SHRIMATI SUSHILA ROHATGI: But the date of delivery may come much later.

SHRI S. C. MUKHERJEE: My point is this. Unless the delivery has been made by Hindustan Steel Ltd. export cannot take place. Billets produced by the Hindustan Steel Ltd., have got to be exported. The man who will give this bond has to depend on supplies from Hindustan Steel. But it is clear that he has to export materials

produced by the Hindustan Steel. The delivery was uncertain. We did not know the date of delivery.....

SHRIMATI SUSHILA ROHATGI: If the scheme did not work out, then this sentence will make material difference.

SHRI MUKHERJEE: Difference in the mode of expression, but the effect is the same. That is my interpretation.

SHRI K. M. KOUISHIK: You have read the Finance Ministry's instructions. Is your action not running counter to those instructions? Please read out.

SHRI MUKHERJEE: This is the sentence: "It should be made clear to the exporter that the guarantee will be forfeitable in case of failure to earn foreign exchange by export, whatever may be the reason".

SHRI K. M. KOUISHIK: Whatever may be the reason. Are you not running counter to the instructions given by the Finance Ministry? Were you entitled to do it?

SHRI MUKHERJEE: What I want to say is that this sentence was not included by the solicitor. This was not expunged. This did not find a place there.

SHRI K. M. KOUISHIK: When actually the evidence was recorded, when Mr. Wanchoo's evidence was recorded, and when you knew it perfectly well, why did you not come forward with this at that time, "Yes, this is not the Solicitor's fault"?

SHRI MUKHERJEE: The Solicitor did not include this in the draft. You are making this question on the assumption that the Solicitor had suggested this. When this question was asked of Mr. Wanchoo, I had the impression—and perhaps Mr. Wanchoo had the impression—that the Solicitor did not include it, because this was against natural justice.

C. & A.G.: Will you see pages 73-74 of the PAC Report, 1965-66—50th Report? After reading this, do you still maintain that your inference or your impression was that this did not relate to the period from which it was going to run but only related only to the last sentence of this letter dated 2nd February?

SHRI MUKHERJEE: Yes.

AUDITOR-GENERAL: When the evidence was given by Mr. Wanchoo in your presence, why did you not correct it then and there?

SHRI MUKHERJEE: Because I did not think that we made any material change.

AUDITOR-GENERAL: You may think so. It is in the interest of the Government. Why did you not do so?

SHRI MUKHERJEE: Frankly speaking, I only got the impression from the P.A.C. that they were referring to this sentence.

AUDITOR-GENERAL: It may be a sentence there or anywhere else. When you found that the Solicitor was being taken to task for something which was not his fault, was it not your duty to come to the rescue of your colleague? According to you, did he do anything wrong?

SHRI MUKHERJEE: No.

AUDITOR-GENERAL: And, therefore, when the Solicitor is being taken to task, is it not correct for a public servant to stand up for a colleague?

SHRI MUKHERJEE: We accepted whatever he has done. We did not deprecate it, because we have introduced the form.

AUDITOR-GENERAL: The fact remains that the Solicitor was being taken to task for something which he did not do.

SHRI MUKHERJEE: No, Sir, that was not my impression. I thought that the Solicitor was being taken to task for not including this, "Whatever be the reasons".

AUDITOR-GENERAL: But is it not proper that you should have asked your Secretary, 'Here is the Solicitor who is being taken to task for something which he did not do'? You cannot let down someone.

SHRI MUKHERJEE: That was the explanation given on behalf of the Solicitor.

MR. CHAIRMAN: Why did you not come to the rescue?

SHRI S. C. MUKHERJEE: We should have made a reference back to the Ministry this is what Mr. Wanchoo has said.

MR. CHAIRMAN: Mr. Wanchoo, I have unnecessarily detained you. We wanted you after some time but I do not think there is anything to ask you now.

Thank you very much and your colleague also.

SHRI WANCHOO: May I leave.

MR. CHAIRMAN: Yes.

SHRI WANCHOO: Thank you.

MR. CHAIRMAN: Thank you also Mr. Mukherjee.

(Committee then adjourned)

APPENDIX XXI

[See para 21 of the Report] . . .

EXTRACTS OF NOTES ETC. FURNISHED BY SHRI N. N. WANCHOO TO THE
SUB-COMMITTEE AT THEIR SITTING HELD ON 22-10-69

Serial Nos. 34 to 36 (Receipts)—pp. 62—80|c.

The Sub-Committee of the Public Accounts Committee visited the Iron and Steel Controller's Office on the 29th and 30th November 1965 and discussed about the deals in which pre-imports were allowed against export of HSL semis, where foreign exchange was not earned by exports. DS(P) attended the meeting from Ministry's side. At that time the Sub-Committee wanted answers for a questionnaire given by them. The Steel Controller had sent his replies to the questions *vide* his letters at pages 51-52|cor. These replies were examined and it was felt that some further clarifications were necessary and these were called for. These were mainly to have additional information ready in case these would be required. The Steel Controller's reply for these may be seen at pages 62—78|cor.

These replies were examined and were further discussed with S|Shri S. C. Mukherjee and L. K. Bose, who were here last week. In the light of these discussions, draft replies have been modified wherever necessary. Certain annexures originally sent by the Steel Controller, which were not found necessary, have been excluded. A separate note indicating wherever changes have been made in the Controller's reply is at slip "W".

One point for consideration in this case is that in reply to question 17, 44, 62, 63 and 77, we are asked to furnish details about suspension|blacklisting of firms. Normally these are considered 'secret' and are not divulged to public bodies. As they have specifically asked for information in these cases, it is for consideration whether these are to be furnished as given in the draft.

[This is the case about which, Chairman, P.A.C., mentioned to Secretary on 17-1-66.]

Sd|- T. J. VERGHESE
18-1-66.

I have made a few verbal alternations.

Sd|- C. V. S. MANI

19-1-66.

May be supplied separately with a specific note that this information should be treated as strictly confidential

Sd|- N. N. WANCHOO

20-1-66

Sd|- T. J. VERGHESE

20-1-66

Secy|318|I&S

19-1-66

Intd. C. V. S. MANI

20-1-66

EXAMINATION OF THE REPLIES GIVEN BY THE IRON & STEEL CONTROLLER FOR THE QUESTIONNAIRE ISSUED BY THE SUB-COMMITTEE OF THE P.A.C.

The Steel Controller's replies given to Questions 1 to 5, 7, 9, 13, 14, 15, 17 to 19, 22 and 23, 25 to 27, 29, 31 to 34, 36 to 53, 55 to 64 and 66 to 80, have not been changed.

Question 6: The reply given by the Steel Controller starts with a reference to a letter written by him in November, 1959. It may be mentioned that even before receipt of this letter, the question of export of HSL semis had been under consideration in the Department and the reply has been modified taking this factor into account.

Question 8 (i) (iii): In our reply, the reason for not giving a separate statement in respect of pre-import deals of MMTC has been given.

Question No. 10: The original reply did not indicate the values. These have now been indicated. The reasons for the discrepancies in the figures given by the Steel Controller to the PAC earlier, have not been given, since this question does not specifically call for this information.

This information may, however, be kept handy for reference if necessary at the time of PAC meetings.

Questions 11 and 12: The original replies indicated the values only. Now, detailed contract-wise statements have been prepared and incorporated in our replies.

Question No. 16: The I&SC's reply has been given, as it is. Additional information regarding the dates from which steel is lying at the Ports was called for and this may be seen at page 70 corr.

Questions 20 and 21: The Controller's reply has been modified slightly. This is the one case where import licences were issued even

before there was a valid contract for exports between HSL and the firm. The Steel Controller, himself, has accepted that this is a mistake. Efforts were made to persuade HSL to supply the steel for export since the import licence had already been issued. The Steel Controller was asked to furnish full details—copies of notes extracted from his file may be seen at pages 71 to 74 corr. These are not given in the reply.

Question No. 24: The last paragraph of the Controller's reply has been amplified to indicate the correct position.

Question No. 28: The replies originally sent were not pertinent to the question. This has been re-drafted on the basis of the discussions with Shri S. C. Mukherjee.

Question No. 30: The information given by the Steel Controller originally at 30.2 has been deleted since it is not considered necessary to give it.

Question No. 35: A detailed history of each case of dispute has since been furnished by the Controller and this has been given in the reply.

Question No. 54: This question is regarding the reasons for not taking Bank guarantees in respect of the licences issued to M/s. Surrendra Overseas. The references given in the concluding portion of the original reply have been deleted as they do not throw any light on the reasons but only indicate the reasons for allowing pre-imports.

Question No. 65: This relates to the reasons for including a clause about pre-imports in the parter sanctions issued by the Controller even before the Ministry's formal concurrence was conveyed in February, 1960. The Sub-clauses 65.4 and 65.5 have been deleted as they are not relevant to the question.

Question No. 6: Coming back to the case of import of certain types of steel against export of semis, how did this transaction first start, i.e. how this barter deal was approved—by whom—when—and then, how these prospective licence were issued? What was the justification for advance licence?

Answer: In latter half of 1959, due to the time lag between the commissioning of the Open Hearth Furnaces and the commissioning of the Blooming and Slabbing Mills of the Hindustan Steel Plants, semis were available as surplus. In August 1959, the Iron and Steel Controller forwarded to Ministry a proposal received by him for the

export of semis and import of finished steel (from M/s. Amfnchand Payarelal), for advice, Ministry also was receiving similar requests from certain other parties during the period August to October, 1959. Hindustan Steel was requested to explore whether these exports may be allowed.

Meanwhile there was also exchange of correspondence in this matter between Hindustan Steel and the Department. On the basis of the materials available, an exhaustive examination was made in October, 1959 about export of the available semis and import of steel which was badly required. There was also a reference from the Iron and Steel Controller, received in November, 1959, asking for a clear cut policy that should be followed in respect of these barter deals. The matter was considered in consultation with the Ministry of Finance and a decision was conveyed *vide* Shri Bhoothalingam's D.O. letter No. SC(B)-12(92) |59, dated the 14th January, 1960— (Annexure 1). This empowered the Iron and Steel Controller to approve barter deals involving export of semis and import of finished steel.

In accordance with the policy laid down, barter proposals were generally received by the Iron and Steel Controller who had to approve the categories of steel to be imported and the prices thereof. The export price of the semis was negotiated and approved by Hindustan Steel simultaneously. Thereafter, formal approval was communicated to the party by the Iron and Steel Controller in a standard form which was devised for the purpose. (Annexure 2).

The dates on which the six barter deals (against which pre-import was allowed) were approved are shown on the next page.

The question of issuing licences before actual exports first come up for consideration in May, 1959, *vide* the Iron and Steel Controllers D.O. No. CP|151|VDS, dated 13-5-59—(Annexure 3). This was in connection with barter deals involving export of ferrous scrap. The Department conveyed its approval to pre-import, in consultation with the Ministry of Finance *vide* D.O. No. SC(B)-15(70) |59, dated 28-5-59.—(Annexure 4).

In September, 1959, the Iron and Steel Controller approached Ministry with the request whether pre-imports may be allowed even against exports of Pig Iron, *vide* his letter No. PIE|5, dated 17-9-69— (Annexure 5). This was because there was likelihood of delay in supply of pig iron and also the probability of changes in the prices of imported steel already negotiated, because of this delay. This request was being examined. In the meanwhile, the general question

of allowing pre-imports in regard to barter deals involving scrap, pig iron or steel ingots or slabs was considered in consultation with the Ministry of Finance, and a general permission was given vide letter No. SC(C)-5(5)|60, dated 2-2-60 subject to certain conditions set forth in the letter—(Annexure 6). The main consideration for allowing pre-imports was this:—that in barter, the size of the exported commodity being large, deliveries could be made only over a period of time. If imports were to be allowed only after exports had materialised then imports would have taken place only after the pressing needs were over and also perhaps at a time when our own Steel Plants might have started production of the same category.

REPLIES FURNISHED TO P.A.C. SUB-COMMITTEE

Question No. 28: What were the conditions imposed by Iron & Steel Controller in these Barter Deals? Were they usual or any special condition was also imposed?

Answer: The condition imposed in the barter deals was indicated in the sanction copies attached as annexure 2. These were the usual conditions for all barter deals.

Question No. 29: Who suggested first that these advance import licences may be given: Government or the Controller?

Answer: Please see reply to Question No. 6.

Question No. 49: Please furnish a copy of the letter dated 2-2-60 from the Ministry to your office.

Answer: Copy of the Ministry's letter No. SC(C)-5(5)|60 dated 2-2-60 is attached (Annexure 6).

Question No. 53: Copies of any further correspondence on this subject of advance licences, either with the Ministry, or the parties.

Answer: Copies of all relevant correspondence are attached at annexure 29|1 to 29|5.

Question No. 57: Please give a copy of the agreement entered into with these parties containing the export obligation.

Answer: There was no agreement with Steel Controller other than the Bank Guarantee and the Barter approval letters. A copy of the Standard Form of B.G. is at Annexure 22.

ANNEXURE I

SECRETARY, IRON & STEEL

No. SC(B)-12|92|59

My dear Bam,

January 14, 1960

Some time back, I wrote to you laying down the procedure for export of pig iron. The procedure in short was that scales for cash

should be left to the producers. We have already indicated to Hindustan Steel 150,000 tons as a target to go on with. Sale upto 50,000 tons on barter against steel is to be handled by you and sale upto 25,000 tons against the import of items others than steel by the State Trading Corporation.

2. I have been thinking of the procedure for ingots, slabs and perhaps billets. It looks as if we would have plenty of ingot|slabs to sell in 1960 and perhaps some billets. Here also, I would like to lay down a procedure for sale. As it stands, exports have to be approved by you and covered by an export licence. It is not our intention to allocate the State Trading Corporation a share in the export of ingots, blooms and billets for import of items other than steel. Therefore, only sale for cash and sale against the import of steel items will arise. I should think that we should leave sales for cash to Hindustan Steel themselves. As you perhaps know, Hindustan Steel have already sold about 30,000 tons of Rourkela ingots at 72 f.a.s. Indian ports. In regard to export on barter, I think that the best way to handle things will be for you to get the offers first. The offers will naturally indicate the prices for ingots and for steel to be imported. You might decide the steel prices first and get the concurrence of Hindustan Steel to the prices for the export items.

3. Ministry of Finance have agreed to exports of 200,000 tons ingots and slabs and 50,000 tons of billets on barter basis for imports of essential steel items. They have desired that in arranging the barter care should be taken to ensure that the categories arranged for import are not those which are available at lower prices against cash licences.

I think you could also indicate to a few select firms the procedure outlined above.

4. It is important that in view of the large surpluses of ingots and slabs we might have in 1960, offers are handled in a business-like way. It should be possible to close deals within a week of the receipt of an offer.

Yours sincerely,
Sd|- S. BHOOTHALINGAM

Shri A. S. Bam, ICS,
Iron & Steel Controller,
33, Netaji Subhas Road,
Calcutta-1.

ANNEXURE II
GOVERNMENT OF INDIA
MINISTRY OF STEEL & MINES
(DEPARTMENT OF IRON & STEEL)
IRON & STEEL CONTROL
 33, Netaji Subhas Road,
 Calcutta-1.

No.
 M/s.

Dated, the

Dear Sirs,

SUB: *Export of.....in exchange of import of steel materials*

Please refer to the correspondence ending with letter Nos..... both dated addressed to you by Hindustan Steel Co. (Transport & Shipping Office) Calcutta.

Your proposal for export of and import of steel in exchange thereof is approved by this office subject to the following terms and conditions:—

(a) You will be permitted to export the specifications, price and delivery of which is to be mutually agreed upon by you with.....

(b) Against the total foreign exchange earning amounting to.... you will have to import prime quality steel of the following categories and sizes at CIF Indian Port price per ton as indicated below:

Category	Size & specification	Quantity in tons	C&F price per M/Ton (Basis)
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The prices indicated above are inclusive of quality extra but exclusive of extras for sizes and thicknesses for which the extras laid down in the Benelux extras list will be applicable.

The above prices are applicable for materials shipped upto..... For materials shipped for during the period..... to reduction in price, if any, on the basis of price quoted in Metal Bulletin published in the will be applicable. For shipments made during the period reduction in price on the

basis of price quoted in Metal Bulletin published in the will be applicable.

(c) Export of will normally have to precede import of steel in exchange. Proposals for pre-import of steel may also be considered if satisfactory irrevocable letters of Credit for exports are produced and suitable Bank Guarantees are furnished.

(d) Manufacturing Mills Certificate in proof of specification of imported steel, where applicable, must be furnished along with each consignment of imported steel.

(e) If the statutory controlled price of steel to be imported is in excess of the landed cost of the same at the Indian Port plus your remuneration as fixed by the Iron & Steel Controller in terms of Public Notice No. SC(B)-10(9) dated 22-4-1952 as amended, the difference between statutory controlled price and landed cost plus remuneration in respect of such steel will have to be paid by you to the Iron & Steel Equalisation Fund. You may either pay such amount in cash or furnish a Bank Guarantee in the required pro-forma for the amount before Customs Clearance Permit is allowed to be issued for the steel imported by you.

(f) The steel to be imported in exchange must be subject to distribution control of the Iron & Steel Controller.

(g) The export of and export of steel in exchange as mentioned above will have to be completed with.....

Your acceptance of the above terms and conditions should be communicated to this office within 7 days from the date of issue of this letter, failing which this letter will be treated as cancelled without any further reference to you. You are also requested to submit a formal in without any further reference to you. You are also requested to submit a formal indent in form ISC-42 for for planning on the Steel Works. You may also submit your application for export and import licence to this office in the prescribed forms.

Yours faithfully,

Dy. Iron & Steel Controller

Copy to:

- (1) Shri B. N. Berry, Hindustan Steel Ltd., 2 Fairlie Place, Calcutta.
- (2) Ministry of Steel & Mines (Deptt. of Iron & Steel), New Delhi.

- (3) S.I.C. Section for issue of import Licence on application.
- (4) Industries 'B' Section for issue of export licence on application.
- (5) P. & A.O.

Dy. Iron & Steel Controller

ANNEXURE III

D.O. No. CP|15|VDS
My dear Ramanathan,

Dated, the 13th May, 1959

In connection with import of 2248 tons of B.P. Sheets on barter basis in exchange of 9338 tons of ferrous scrap, M|s. V. D. Swami & Co. have sought our permission to have the sheets imported before the scrap is exported as sheets are just ready for shipment whereas the firm is not yet ready to effect export. We generally insist that in barter deals exports should precede imports so that no foreign exchange is involved at any stage in the deal. We have as a matter of fact rejected such requests from one or two parties. The above firm is however prepared to furnish a performance bond for a value amounting to 15 per cent of the cost of scrap, guaranteeing due export on the requisite quantity of scrap within six months. Normally a bond for 3 per cent of the value of scrap is demanded by us on barter deals.

It is therefore for consideration of Ministry whether we may concede to the request of the firm.

Yours Sincerely,

Sd|- C. V. RAMACHANDRAN

Shri G. Ramanathan, IAS,
Dy. Secretary to the Govt. of India,
Ministry of Steel, Mines & Fuel,
Department of Iron & Steel,
New Delhi.

ANNEXURE IV

D.O. No. SC(B)-15(70)|59

New Delhi, 28-5-59.

My dear Ramachandran,

Please refer to your letter No. CP|15|VDS dated the 13th May, 1959 regarding barter proposal from V. D. Swami & Co. for the import of 2248 tons of B.P. sheets in exchange for 9338 tons of ferrous scrap. We agree that import may precede export provided the party

is prepared to furnish a bank guarantee for 20 per cent of the value of the deal. You may fix a reasonable time limit for the export of scrap.

Other cases where bank guarantee is produced, may be treated in the same manner.

Yours sincerely,
Sd/- G. RAMANATHAN

SHRI C. V. Ramachandran, IA&AS
Price & Accounts Officer,
Iron & Steel Controller,
33, Netaji Subhas Road,
Calcutta-1.

ANNEXURE V

IRON & STEEL CONTROL, CALCUTTA

D.O. No. PIE|5

September 14|17th, 1959.

Dear Shri Ramanathan,

I enclose a copy of a letter No. BR|ISC|2 dated 10th September 1959 from M|s. Ram Krishan Kulwant Rai, Calcutta, regarding the barter of pig iron for steel which has been sanctioned to them. The firm has requested that they may be allowed to import steel before export of pig iron. The reason given is that the prices of steel are going up following the American Steel Strike and they are finding it difficult to persuade their suppliers to keep the previous offers open for a long period. There is some force in this argument. It is also true that the actual export of pig iron is dependent on supplies from Bhilai. We have so far banned indents for 60,000 tonnes of basic grade pig iron on Bhilai and they are unable to produce at the rate of 1000 tonnes a day. Fortunately, however, Rourkela Steel Plant also has now switched over to basic grade pig iron and I am transferring 20,000 tons to them. Even then it will take at least two to three months for the Steel Works to supply the pig iron. They would, therefore, be able to export this pig iron only within a period of four to five months. If we insist on import of steel being deferred till the export of pig iron is completed, the firm may have real difficulty in getting steel at the prices at which the proposal was sanctioned.

You may kindly therefore consider whether we should not allow the firm to import steel in advance of export of pig iron after giving a bank guarantee for 20 per cent of the F.O.B. value of the pig iron to be exported. As you are aware, this procedure has already been

approved by you in case of barter of steel for scrap. I have also separately sent a proposal for allowing import of steel before export of pig iron by Metal Import Private Ltd. who has also been sanctioned a barter deal for export of 20,000 tons of pig iron for steel plates.

I shall be grateful for your immediate decision in the matter.

Yours sincerely,
Sd/- S. C. MUKHERJEE

Shri G. Ramanathan, IAS,
Dy. Secretary to the Govt. of India,
Ministry of Steel, Mines & Fuel,
New Delhi.

ANNEXURE VI

No. SC (C)-5 (5) | 60

GOVERNMENT OF INDIA

MINISTRY OF STEEL, MINES & FUEL

(DEPARTMENT OF IRON AND STEEL)

New Delhi, 2nd February, 1960.

From

Shri C. A. Nair,
Officer on Special Duty.

To

The Iron & Steel Controller,
33, Netaji Subhas Road,
Calcutta-1.

SUB: Procedure for barter deals

Sir,

The procedure adopted so far in the case of barter deals is to issue an import licence for steel after export has taken place. In barter deals, the size of the export commodity is large and deliveries can be made only over a period of time. If the present procedure is adopted, it is felt that the import of steel may take place after our pressing needs are over. It may even come after our steel plants have started producing the same category. Hence the procedure to be followed for barter deals in exports involving the export of scrap, pig iron, or steel ingots or slabs has been considered in consultation with the Ministry of Finance and it has been decided to revise the existing procedure.

2. In cases where delay in exports is anticipated for reasons satisfactory to the Iron and Steel Controller, the following procedure may be adopted:

- (a) On production of an irrevocable letter of credit assigned in the favour of the exporter for the value of the entire export quantity, an import licence for import of steel items may be issued.
- (b) In case the exporter is not able to procure an irrevocable letter of credit for the entire quantity of export then he may be asked to furnish an irrevocable bank guarantee equivalent to 15 per cent of the value of the import licence applied for.

It should be made clear to the exporter that the guarantee will be forfeitable in case of failure to earn the foreign exchange by export, whatever be the reason therefor. It should also be made clear to the exporter that in case of failure to export, Iron and Steel Controller will have no further dealings with him. The guarantee will be releasable on actual export of the full quantity contracted for.

Import licence should be issued only in cases where a firm contract for export exists.

Yours faithfully,
Sd/- C. A. NAIR,
Officer on Special Duty.

S. No.	Name of Party	Date of firm's offer	Date of HSL's confirmations of Export Price	Date of Barter approval	Date on which I/L was issued
1	M/s Aminchand Pyarelal Calcutta, Billets 15000 + 5000 = 20,000 tons	JP/SEC/EXP/Billets/1316 dt. 16-1-60 JP/SEC/EXP/Billets/ 1067 dt. 21-12-59	CTO/17A/ISE/60/886 dt 29-2-60 and CTO/24/Bart/SE/59/508 read with letter No. CTO/17/ A/SE/60/888 Dated 29-2-60	8-3-60	4 I/Ls on 16-3-60
2	-Do--Slabs 25,000 tons	JP/SEC/EXP/Slabs/1068 dt. 21-12-59	CTO/16/SLAB\$/SE/59/309 dt. 31-12-59 read with letter Nos. CTO/17A/ISB/60/590 of 5-2-60 CTO/17A/ISB/60/883 dt. 29-2- 60; CTO/17A/SE/60/907 dt. 2-3-60	19-3-60	1 I/L issued on 22-2-60 2 I/Ls on 25-6-60 1 I/L issued on 2-7-60
3	M/s Khem Chand Rajkumar, Calcutta	31421/60/GLM, DD dt. 15-1-60	CTO/24/Bart/SE/59/443 dt. 15-1-60 read with letter No. CTO/24F/SE/60/915 dt. 2-3-60	23-3-60	2 I/Ls issued both on 19-9-60
4	M/s J. S. Cohen & Co, Calcutta	5026 dt. 2-2-60	CTO/24/Bart/SE/59/561 dt. 3-2-60	10-2-60	1 I/L issued on 10-2-60
5	M/s Ramkrishen Kulwant Rai, Calcutta	BART/20 dt. 21-3-60	CTO/24/BART/SE/59/447 dt. 16-2-61	5-5-60	5 I/Ls issued on 7-6-60
6	M/s Surendra Overseas Ltd., Calcutta	The barter deals were put through by HSL themselves. Import Licences were issued on their request and with the approval of Department of Iron & steel.			1 I/L issued for 1500 tons of strips on 5-8-60 1 I/L issued for 500 tons of strips on 5-4-61.
7	-Do--				

S. C. Mukherjee,
Dy. Iron & Steel Controller

D.O. No. B&E|37|PAC|66|3903
IRON & STEEL CONTROL
33 Netaji Subhas Road,
Calcutta-1.
June 8, 1966.

My dear Caprihan,

You will recall that when Secretary was preparing his comments on the Fiftieth Report of the Public Accounts Committee with reference to paragraph 4.35 & 4.36 of the Report, he located certain correspondence exchanged between our office and the Deptt. of Iron & Steel in March, 1960 about the exact meaning of the words "firm Contract for export". On return from Delhi I have examined our files and find that the relevant correspondence is on our file but these were unfortunately lost sight of when we prepared the materials submitted by us to the Public Accounts Committee. The Ministry's letter dated 17th March, 1960 was seen by the Controller and the Price & Accounts Officer; but there is no further noting on the file as to what action was taken on it. Presumably the matter was discussed between Controller, P&AO and myself; but unfortunately there is no noting about it on the file. However, I have prepared a note on this subject in consultation with Shri Ram who was the then Controller and a copy of it is enclosed for your information and necessary action, if any.

Yours sincerely,
Sd|- S. C. MUKHERJEE

Shri P. P. Caprihan,
Dy. Secretary to the Govt. of India,
Ministry of Iron & Steel,
Udyog Bhavan,
New Delhi.

IRON & STEEL CONTROL

In paragraph 4.35 and 4.36 of the 50th Report, the Public Accounts Committee have referred to the meaning of the words "firm export contract" occurring in Ministry's letter dated 2nd February, 1960, in which the Iron & Steel Controller was authorised to permit import before export after taking 15 per cent Bank Guarantee. It was deposited before the Committee by a representative of the Ministry

of Finance that by the words "firm contract for export" they had meant a firm contract with a foreign buyer and therefore the Sub-Committee of the P.A.C. came to the conclusion that the Department of Iron & Steel did not communicate the Finance Ministry's intentions in unambiguous terms.

2. The relevant files have been again looked into. It has now been found that this matter was specifically referred to the Department of Iron & Steel for clarification by the Iron & Steel Controller in d.o. No. C/3/59 dated 10th March, 1960 which read as follows:

"The other day I spoke to you about Ministry's letter No. SC(C)-5(5)/60 of 2nd February, 1960 laying down the procedure for barter deals. In paragraph 2(b) of this letter it is mentioned that import licence against barter deals should be issued before export is made only in cases 'where a firm contract for export' exists. We are not quite clear as to what firm contract for export the Ministry has in view in this context in other words whether the Ministry desires that the exporter should have a firm contract with the supplier of the exportable material in India; e.g. Hindustan Steel Ltd., Kalinga Industries Ltd., etc., or whether a firm contract for export should exist with the foreign buyer of the exportable materials and only a Letter of credit would be lacking. You promised to look into the relevant file and to give me a ring. As I have not received any communication from you so far and as a number of parties are pressing us for issue of import licences prior to export by submitting 15 per cent Bank Guarantee, I would request you to send me a telegram as soon as you get this letter."

In reply to the above letter the Department of Iron & Steel stated (on 17-3-60) as follows:

"Please refer to your letter No. C/3/59, dated the 10th March, 1960. I have consulted the Economic Affairs Department. Government's intention is that at the time you allow import on a bank guarantee, you should have satisfactory evidence that the exporter to India has a definite commitment from a foreign party to purchase the tonnage proposed to be exported. We would leave the form of evidence to you."

3. It will be seen from the above correspondence that the Ministry of Finance did not, in March, 1960, consider that a *firm contract*

for export should exist with a foreign buyer before pre-import was allowed. They only desired that the exporter in India should have a definite commitment from a foreign party to purchase the tonnage proposed to be exported. The form of the evidence was left to the Iron & Steel Controller to decide. It follows therefore that the words "firm contract for export" actually referred to a contract with the Indian supplier of the exportable materials and not a contract with the foreign buyer. In so far as foreign buyer was concerned, the Iron & Steel Controller was only to have satisfactory evidence that the exporter in India has a definite commitment from a foreign party to purchase the tonnage proposed to be exported.

4. Obviously, the Iron & Steel Controller considered that a contract by the exporter with Hindustan Steel Ltd. which stipulated F.O.B. Indian Port or F.O.R. Indo-Pakistan Border delivery may be treated as sufficient evidence about definite commitment from a foreign buyer and therefore no further evidence was considered necessary.

5. It may be added that there has been no failure on the part of the barterers to export materials in cases where Hindustan Steel was able to supply the materials within the contracted period and in accordance with the contracted specification. This no doubt shows that the exporters had commitments from foreign buyers to purchase the materials which were contracted for by the exporters with Hindustan Steel Ltd.

6. It may also be added that short of a formal contract with the foreign buyer, Iron & Steel Controller could have only asked for a formal letter of offer from foreign buyer. It is a matter of common knowledge that such letters can be furnished by any Indian firm in steel trade because they normally work as agents of many foreign firms. Verification of such offers was almost impossible. Indirect evidence by stipulation of F.O.B. deliver in H.S.L. contracts was certainly better.

7. In retrospect, it would appear that insistence on a *firm contract with a foreign buyer* would have created difficulty due to ultimate failure of H.S.L. to adhere to the terms of delivery of some of the contract with the exporters. In some cases, in fact, Hindustan Steel is understood to have failed to deliver the materials according to the quality contracted for. (This matter is now a subject of arbitration and court proceedings and correct facts will be known only after the decision of the Court or the Arbitrators is known.). If firm contracts were entered into by the exporters with foreign buyers and

if, as it has happened, the Indian suppliers failed to deliver materials according to the terms of the contract, we would have been faced with additional foreign exchange expenditure for payment of compensation; that would have meant that not only we would have failed to earn the required foreign exchange but we would have been required to spend additional foreign exchange to compensate foreign buyers.

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